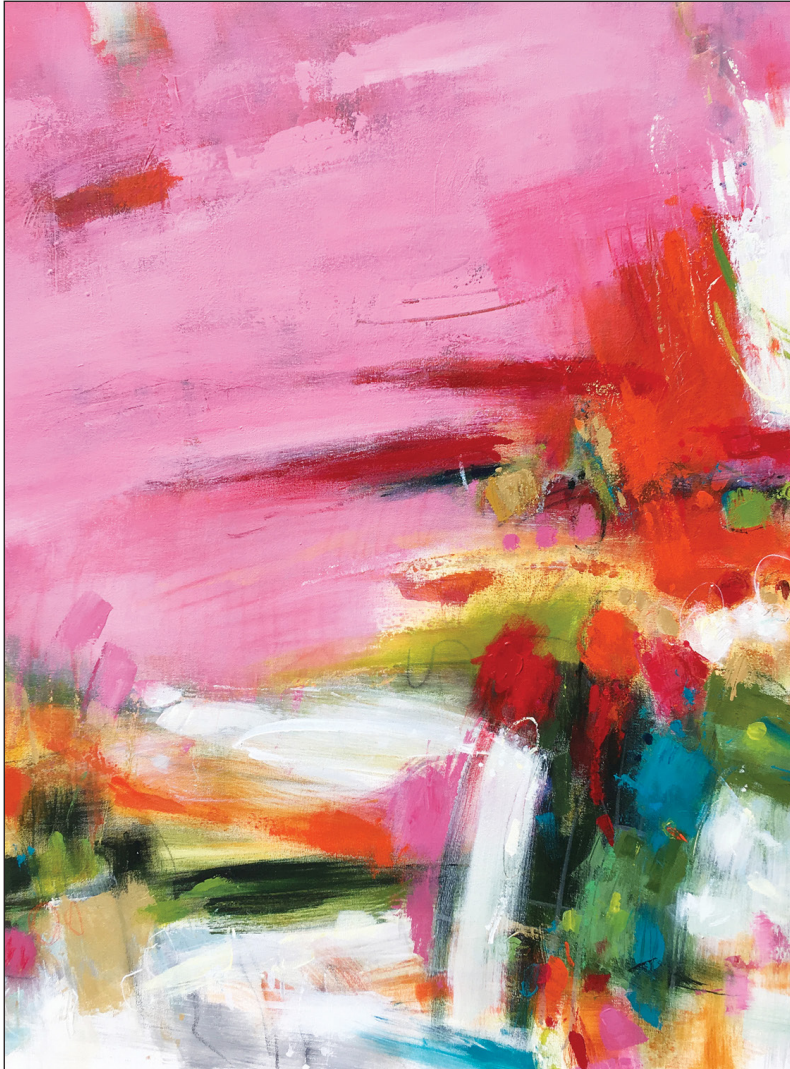


BAR BULLETIN

June 12, 2019 • Volume 58, No. 12



Playing Through, by Janet Bothne (see page 3)

www.janetbothne.com

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PAID ADVERTISING

Special Insert

**The New Mexico
Commission on
Access to Justice**

Your Choice.
Your Program.
Your Bar Foundation.

CLE programming from the Center for Legal Education

Mediating the Political Divide

Presented by Jessica Eaton Lawrence and Jocelyn M. Torres

Thursday, July 25, 2019

Noon-2 p.m.

2.0 EP

Live at the State Bar Center
Also available via Live Webcast!

Complimentary for attendees not seeking CLE credit.
Registration, however, is required.

\$19 Non-Attorneys with certificate of attendance

\$69 ADR Committee Members

\$109 Standard/Webcast Fee

Lawrence will present an overview of the social science of political polarization, how that polarization affects communication, and what mediators might do to help parties increase understanding and seek shared solutions. Torres will present ethical guidelines and concerns that mediators and attorneys should consider when addressing this subject matter.



12th Annual Legal Service Providers Conference: Legal Service Providers in Action



Thursday, Aug. 22, 2019

9 a.m.–4:15 p.m.

5.5 G .5 EP

Friday, Aug. 23, 2019

9 a.m.–4:15 p.m.

4.5 G 1.5 EP

Live at the State Bar Center

\$180 Standard Fee

Topics include:

- "Storytelling for a Fractured America: How to Persuade Both Red and Blue Jurors" presented by Randi McGinn
- "Hot Housing Issues in New Mexico"
- "Grandparents Raising Grandchildren: Critical Legal and Social Issues"
- "Maintaining Civility in an Uncivil World" presented by Justice Edward L. Chavez (ret.)

Registration and payment for the programs must be received prior to the program date. A \$20 late fee will be incurred when registering the day of the program. This fee does not apply to live webcast attendance.



Webinars—Earn live CLE credit from your desk!

Quick and convenient one hour CLEs that can be viewed from anywhere! Webinars are available online only through your computer, iPad or mobile device with internet capabilities. Attendees will receive live CLE credit after viewing.

Staying out of the News: How to Avoid Making
Techno-Ethical Mistakes that Put You on the Front Page
Tuesday, June 18, 2019

1.0 EP

Disorder in the Court: An Attorney's Guide to
Judicial Misconduct
Wednesday, June 19, 2019

1.0 G

How to Avoid Potential Malpractice Pitfalls in the
Cloud and in Everyday Law Office Computing
Monday, June 24, 2019

1.0 G

Eight Mistakes Experienced
Contract Drafters Usually Make
Thursday, July 11, 2019

1.0 G

The Paperless Law Firm- A Digital Dream
Tuesday, July 16, 2019

1.0 G

Bad Review? Bad Response? Bad Idea!—
Ethically Managing Your Online Reputation
Tuesday, July 23, 2019

1.0 EP

All webinars are
11 a.m. – noon MST
and registration closes the
morning of the program.
Standard price for all
teleseminars is **\$89**.



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Executive Director Richard Spinello
Director of Communications
Evann Kleinschmidt
505-797-6087 • notices@nmbar.org
Graphic Designer Julie Schwartz
jschwartz@nmbar.org
Account Executive Marcia C. Ulibarri
505-797-6058 • mulibarri@nmbar.org
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address@nmbar.org • www.nmbar.org

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Meetings

June

12

Children's Law Section Board
noon, Children's Court, Albuquerque

12

Tax Section Board
11 a.m., teleconference

13

Business Law Section Board
4 p.m., teleconference

14

Prosecutors Section Board
noon, teleconference

20

Public Law Section Board
noon, Legislative Finance Committee,
Santa Fe

21

Family Law Section Board
9 a.m., teleconference

21

Indian Law Section Board
noon, State Bar Center, Albuquerque

26

Natural Resources, Energy and
Environmental Law Section
noon, teleconference

27

Trial Practice Section
noon, State Bar Center, Albuquerque

Workshops and Legal Clinics

June

19

Legal Resources for the Elderly Workshop
10-11:15 a.m., Presentation; 11:30 a.m.-1
p.m., POA/AHCD Clinic, Socorro County
Senior Center, 505-797-6005

26

Consumer Debt/Bankruptcy Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

July

10

Divorce Options Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

24

Consumer Debt/Bankruptcy Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

August

7

Divorce Options Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

28

Consumer Debt/Bankruptcy Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

About Cover Image and Artist: Janet Bothne's artwork focuses on the limitless possibilities color presents as subject matter. Born near Boston, Bothne studied art at the University of M.A. at Amherst as well as UCLA, and Brentwood Art Center in California. She has exhibited in numerous venues such as The Los Angeles County Museum's Sales & Rental Gallery, The Santa Monica Art Museum and Miami Solo. She is currently represented in CA, FL, MA, MD & TX. She relocated to New Mexico in 2013 where she now shares her enthusiasm for art with the students she coaches in her abstract painting classes at "Studio J" in the North Valley. View additional works by visiting: www.janetbothne.com. Contact Janet to schedule a studio visit by email: janetbothne@mac.com or call 310-666-1944.

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: Monday-Friday 8 a.m.-5 p.m. Reference and Circulation Hours: Monday-Friday 8 a.m.-4:45 p.m. For more information, call 505-827-4850, email libref@nmcourts.gov or visit <https://lawlibrary.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 in early June in district and magistrate courts in the Sixth and Ninth judicial districts. The pilot program will expand to the Second Judicial District Court and the Bernalillo County Metropolitan Court later in June. 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. 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. Once the plaintiff makes an offer for possibly settling the dispute, an email goes to the defendant with an opportunity to respond. During the first two weeks of negotiations, the parties can request the help of a trained online mediator. If no agreement is reached after 30 days, the case will move forward in court. ODR notices will be emailed to the parties from no-reply@newmexicocourtsdmd.modria.com. The parties should check their inbox, spam and junk mailboxes to ensure they receive the ODR notices.

Third Judicial District Court Volunteer Attorneys Needed at Self Help Center

The Self Help Center at the Third Judicial Court, is currently seeking volunteer attorneys from the Dona Ana County area,

Professionalism Tip

Lawyer's Preamble

As a lawyer, I will strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers, and I will also conduct myself in accordance with the Creed of Professionalism when dealing with my client, opposing parties, their counsel, the courts, and any other person involved in the legal system, including the general public.

to assist with our monthly legal clinics. The Self Help Center hosts a legal clinic every Wednesday from 1-4 p.m. for pro se litigants dealing with issues in family law. Additionally, clinics are held on the second and last Tuesday of the month for civil issues. The clinics are set up to assist pro se litigants with legal advice and guidance that is outside the scope of the services the court may provide. The clinics are set up to respect the time of our volunteers and limit each clinic from seven to ten individuals. If interested in assisting the Self Help Division, contact David D. Vandenberg at lcrdexv@nmcourts.gov or call 575-528-8399.

Fifth Judicial District Court Notice of Mass Reassignment

Gov. Michelle Lujan Grisham has appointed Thomas E. Lilley to fill the judgeship vacancy in the 5th Judicial District Court, Chaves County, Division II. Effective June 14 a mass reassignment of cases will occur pursuant to NMSC Rule 1-088.1. Judge Thomas E. Lilley will be assigned all cases previously assigned to Judge Freddie J. Romero and/or Division II of Chaves County. Pursuant to Supreme Court Rule 1-088.1, parties who are allowed by the rule will have 10 days from July 10 to excuse Judge Thomas E. Lilley.

Thirteenth Judicial District Court

Notice of Mass Case Reassignment

Gov. Michelle Lujan Grisham announced the appointment of Amanda Sanchez Villalobos to fill the vacancy of Division IV of the Thirteenth Judicial District Court. Effective June 10 a mass reassignment of cases occurred. All cases in the Thirteenth Judicial District Court previously assigned to Judge Pedro G. Rael or to Division IV, are reassigned to Judge Amanda Sanchez Villalobos, Division IV. Parties who have not previously exercised their right to challenge or excuse will have 10 days from July 3 to challenge or excuse

Judge Amanda Sanchez Villalobos pursuant to NMRA 1-088.1.

Bernalillo County Metropolitan Court Investiture of Judge Jason M. Jaramillo

The judges and employees of the Bernalillo County Metropolitan Court cordially invite members of the legal community and the public to attend the investiture ceremony of the Honorable Jason M. Jaramillo, Division XII, at 5:15 p.m., June 14, in the Court's rotunda. Details regarding the reception to follow. Judges who want to participate in the ceremony should bring their robes and report to the First Floor Viewing Room by 4:45 p.m.

STATE BAR NEWS 2019 Annual Meeting Resolutions and Motions

Resolutions and motions will be heard at 1 p.m., Aug. 1, at the opening of the State Bar of New Mexico 2019 Annual Meeting at Hotel Albuquerque at Old Town, Albuquerque. To be presented for consideration, resolutions or motions must be submitted in writing by July 1 to Executive Director Richard Spinello, PO Box 92860, Albuquerque, NM 87199; fax to 505-828-3765; or email rspinello@nmbar.org.

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners of the State Bar and Bar Foundation met at the State Bar Center in Albuquerque, on May 17. Action taken at the meeting follows:

- Approved the Feb. 22 meeting minutes as submitted;
- Received a clean opinion on the 2018 Audit for the State Bar and Bar Foundation prepared by CliftonLarsonAllen and accepted the audit report;

- Accepted the April 2019 financials for the State Bar and the Bar Foundation;
- Received a 2018 Financial Dashboard and Five-Year Historical Comparison;
- Received the 2019 First Quarter Financials for the Client Protection Fund, Access to Justice Fund and the Judges and Lawyers Assistance Program;
- Received an update on licensing and MCLE; four attorneys were suspended for licensing and 96 attorneys were certified to the Court for MCLE non-compliance;
- Discussed sections and CLE programs and tabled the discussion for further information;
- Formed a committee to discuss consolidated fundraising with EAJ;
- Approved a Memorandum of Understanding between the State Bar and the Bar Foundation;
- Appointed Joseph F. Sawyer as Vice President of the Bar Foundation for 2019;
- Approved proceeding with the creation of a Legal Specialization Program which will include testing;
- Received an overview of MCLE and the policies as well as the Board's new role with regard to MCLE and will be bringing proposed changes to the policies and rules to the Board's Regulatory Committee;
- Received a report from the Policy and Bylaws Committee, which will be proposing a rule change for the Supreme Court Board, Committee and Commission liaisons;
- Reappointed Allison Block-Chavez to the ABA House of Delegates as the young lawyers delegate for a two-year term;
- Reappointed Mary H. Smith to the Civil Legal Services Commission for a three-year term;
- Reappointed Peter N. Ives and Earl Mettler to the DNA-Peoples Legal Services, Inc. Board for two-year and four-year terms, respectively;
- Held an executive session and approved the executive director's job description;
- Received a report from the State Bar's ATJ Fund Grant Commission; the funds for the ATJ Fund are received from IOLTA, Pro Hac Vice and donations through the licensing form, and this year the Commission awarded \$675,000 to 10 civil legal service providers;

- Approved the Annual Awards Committee recommendations for this year's recipients, which will be presented at the State Bar's Annual Meeting at Hotel Albuquerque in August;
- Received an update from the Family Law Section on its activities;
- Received an update on the Bar Commissioner Districts Annual Events; and
- Received an update on the Member Association Software Evaluation; staff will be attending a vendor conference to narrow down the options.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Aug. 1 meeting.

Committee on Women and the Legal Profession Nominations Open for 2018 Justice Pamela B. Minzner Outstanding Advocacy for Women Award

The Committee on Women and the Legal Profession seeks nominations of New Mexico attorneys who have distinguished themselves during 2018 by providing legal assistance to women who are underrepresented or underserved, or by advocating for causes that will ultimately benefit and/or further the rights of women. If you know of an attorney who deserves to be added to the award's distinguished list of honorees, submit 1-3 nomination letters describing the work and accomplishments of the nominee that merit recognition to Quiana Salazar-King at qsalazar-king@nmilc.org by June 30. The award ceremony will be held on Aug. 22 at the Albuquerque Country Club. This award is named for Justice Pamela B. Minzner, whose work in the legal profession furthered the causes and rights of women throughout society. Justice Minzner was the first female Chief Justice of the New Mexico Supreme Court and is remembered for her integrity, strong principals, and compassion. Justice Minzner was a great champion of the Committee and its mission.

New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- June 17, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets the third

Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.

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

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

Employee Assistance Program: Managing Stress Tool for Members

The Solutions Group, the State Bar's free Employee Assistance Program, announces a new platform for managing stress. My Stress Tools is an online suite of stress management and resilience-building resources which includes: training videos, relaxation music, meditation, stress tests, a journaling feature and much more. My Stress Tools helps you understand the root causes of your stress and gives you the help you need to dramatically reduce your stress and build your resilience. Your Employee Assistance Program is available to help you, 24/7. Call at 866-254-3555.

UNM SCHOOL OF LAW Spanish for Lawyers I

The UNM School of Law presents "Spanish for Lawyers I" (20.0 G CLE credits) this fall. This course will teach the basic legal terminology that is used in our judicial system in a variety of practice settings, including criminal law, domestic relations, and minor civil disputes. Practical aspects of language usage will be emphasized, and active participation is required. Lawyers must be conversant in Spanish, as the course is taught entirely in Spanish. All students will be tested prior to the start of class. Classes will be 4:30-6:30 p.m. on Thursdays, from Aug. 22-Nov. 21. To register or for more information, visit <http://lawschool.unm.edu/spanishforlawyers/>.

Law Library Hours Summer 2019

Through Aug. 18

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	Closed.

Reference

Monday–Friday	9 a.m.–6 p.m.
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Closures

July 4 (Independence Day)
July 5 (Independence Day)

OTHER NEWS

U.S. Council for International Business

International Arbitration Event Hosted in Albuquerque

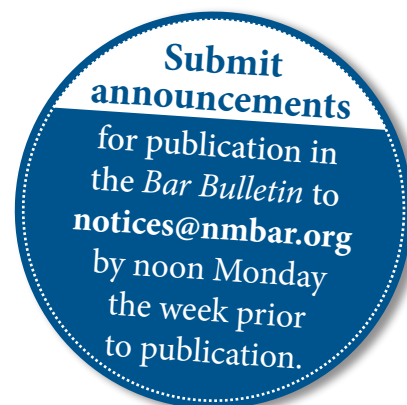
The U.S. Council for International Business is hosting an international arbitration event on June 12 from 11:30 a.m.-1:30 p.m.

at the law offices of Modrall Sperling in downtown Albuquerque. Topics include New Mexico and international business, key issues in international arbitration and a panel discussion on issues facing New Mexico companies in international arbitration. The event is open to the public, including local attorneys, in-house corporate counsel, government attorneys, UNM faculty, staff, and students, and community members. This program provides 1.5 G CLE credit. The cost is \$10 to help defray the cost of the lunch. R.S.V.P. at <https://en.xing-events.com/VVMFKJF.html> by June 7.

Vilendrer Law, PC National Survey on Dispute Resolution

Vilender Law PC has commissioned a study on the correlation between client outcomes and various litigation variables. The goal for this research is to

help attorneys obtain better litigation and settlement outcomes for their clients. The survey takes approximately 2 minutes and is confidential. The survey can be accessed at <https://www.vilendrerlaw.com/survey/>. Aggregated results of the survey will be shared at the conclusion of the study.



STATE BAR OF NEW MEXICO

2019 *Annual Awards*

Congratulations to the 2019 recipients!

The State Bar of New Mexico Annual Awards recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2018 or 2019. The Annual Awards will be presented during the 2019 Annual Meeting at 6 p.m., Friday, Aug. 2, at the Hotel Albuquerque at Old Town.

{ Distinguished Bar Service Award—Lawyer }

John P. "Jack" Burton

{ Distinguished Bar Service Award—Nonlawyer }

Tiffany Corn

{ Justice Pamela B. Minzner Professionalism Award }

The Hon. Stan Whitaker

{ Outstanding Legal Program Award }

**Second Judicial District Court
Judicial Supervision and Diversion Program**

{ Outstanding Young Lawyer of the Year Award }

Rebekah Reyes

{ Robert H. LaFollette Pro Bono Award }

Robert J. Andreotti

{ Seth D. Montgomery Distinguished Judicial Service Award }

The. Hon. Nan G. Nash

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





2019 ANNUAL MEETING

Aug. 1-3, 2019 • HOTEL ALBUQUERQUE at Old Town *and* HOTEL CHACO

Registration Now Open!

Early bird discounts are available through July 1.

To register and for a preliminary schedule, visit
www.nmbar.org/AnnualMeeting



WE ARE PROUD TO WELCOME OUR
Keynote Speaker

**Dan Abrams, Chief Legal Affairs Anchor at ABC News
and Founder of Abrams Media**

Abrams will present "Covering the Courts: The Convergence of Law and Media in Today's Highest Profile Cases." Don't miss his fascinating discussion of the media's impact on how we view the legal system and today's headline cases.

Sponsorships and Exhibitor Booths are available!

Learn how you can support the Annual Meeting and promote your firm and company to our attendees.

Lodging: Rooms start at \$159 at Hotel Albuquerque and \$179 at Hotel Chaco. Reserve your room by July 10.

*Note: We have secured room blocks at both hotels,
but Annual Meeting events will take place at Hotel Albuquerque.*

For more information on speakers, sponsorships/exhibitor booths, lodging and more, visit www.nmbar.org/AnnualMeeting



RED RAIDER HOSPITALITY LOUNGE

The Texas Tech University School of Law continues to show their support for the State Bar of New Mexico as the proud sponsor of the 2019 Red Raider Hospitality Lounge!



Rodey Law Firm is pleased to welcome **Henry M. ("Hank") Bohnhoff** back to the Firm. Bohnhoff practiced with the Rodey Law Firm from 1983-1987 and 1989-2017. He served as chief assistant attorney general and deputy attorney general for the State of New Mexico in 1987-1989. In January 2017, Gov. Susana Martinez appointed Bohnhoff to the New Mexico Court of Appeals where he served through the end of 2018.



Rothstein Donatelli, LLP, is pleased to announce that partner **Donna M. Connolly** has been appointed to the State Bar of New Mexico Access to Justice Fund Commission, which awards grants to civil legal services organizations that serve low income New Mexicans.



Walter Stern, a shareholder at Modrall Sperling, has been named chair of the Albuquerque Community Foundation for 2019. For the past six years, Stern served as Modrall Sperling's President.

Rodey, Dickason, Sloan, Akin, & Robb, PA

Southwest Super Lawyers: **Leslie McCarthy Apodaca** (business litigation), **Rick Beitler** (medical malpractice defense), **Perry E. Bendicksen III** (mergers and acquisitions), **David P. Buchholtz** (securities and corporate finance), **David W. Bunting** (business litigation), **John P. Burton** (real estate), **Denise M. Chanez** (medical malpractice defense), **Jeffrey M. Croasdel** (personal injury defense: products), **Jocelyn C. Drennan** (appellate), **Nelson Franse** (professional liability: defense), **Catherine T. Goldberg** (real estate), **Scott D. Gordon** (employment and labor), **Bruce D. Hall** (alternative dispute resolution), **Paul R. Koller** (personal injury defense: general), **Jeffrey L. Lowry** (employment and labor), **W. Mark Mowery** (medical malpractice defense), **Theresa W. Parrish** (employment and labor), **Charles (Kip) Purcell** (appellate), **Debora E. Ramirez** (business/corporate), **Edward R. Ricco** (appellate), **Brenda M. Saiz** (medical malpractice defense), **Andrew G. Schultz** (business litigation), **Seth L. Sparks** (transportation/maritime), **Thomas L. Stahl** (employment and labor), **Aaron C. Viets** (employment and labor) and **Charles J. Vigil** (employment and labor).

Southwest Super Lawyers: Rising Stars: **Cristina A. Adams**, **Tyler M. Cuff** and **Shannon M. Sherrell**

Southwest Super Lawyers: Top 25: **Leslie McCarthy Apodaca**, **Nelson Franse**, **Catherine Goldberg**, **Scott Gordon**, **Theresa Parrish**, **Ed Ricco**, **Andrew Schultz**, **Tom Stahl** and **Charles Vigil**



Kaitlyn Luck joined Holland & Hart's Santa Fe office as an associate in the firm's environmental and natural resources practice. She counsels energy clients on regulatory, administrative, and litigation matters. Luck regularly represents oil and gas companies before the Oil Conservation Division on regulatory and compliance issues. Luck received her J.D. from Texas Tech University School of Law and her B.A. from Texas State University.



Albuquerque attorney **Frank C. Salazar** of Sutin, Thayer & Browne has been selected as a Fellow to join the Construction Lawyers Society of America. Salazar has more than 36 years' experience in New Mexico representing a variety of public and private clients in a wide range of matters. He has practiced extensively in commercial litigation, particularly in construction law and real estate.

Modrall Sperling Law Firm

Chambers USA Rankings: Native American law (national): **Lynn H. Slade** and **Walter E. Stern III**; corporate/commercial (state): **Daniel M. Alsup**, **Peter Franklin**, **Katherine E. McKinney** and **Chris P. Muirhead**; corporate/commercial: tax (state): **James M. Parker** and **Marjorie A. Rogers**; environment, natural resources and regulated industries (state): **Stuart R. Butzier**, **John R. Cooney**, **Lynn H. Slade** and **Walter E. Stern III**; environment, natural resources and regulated industries: water law (state): **Maria O'Brien**; labor and employment: **Jennifer G. Anderson**, **Megan T. Muirhead** and **Brian K. Nichols**; labor and employment: employee benefits and compensation (state): **Karen L. Kahn** and **James M. Parker**; litigation: general commercial (state): **Timothy C. Holm** and **R. E. Thompson**; Native American law (state): **Deana M. Bennett**, **Brian K. Nichols**, **Lynn H. Slade** and **Walter E. Stern III**; real estate: (state) **Margaret L. Meister**.

Southwest Super Lawyers: **Jennifer G. Anderson**, **Martha G. Brown**, **Stuart R. Butzier**, **John R. Cooney**, **Donald A. DeCandia**, **Timothy L. Fields**, **Paul M. Fish**, **Stanley N. Harris**, **Michelle A. Hernandez**, **Timothy C. Holm**, **Margaret Lewis Meister**, **Megan T. Muirhead**, **Brian K. Nichols**, **Jennifer A. Noya**, **Maria O'Brien**, **James M. Parker**, **Marjorie A. Rogers**, **Lynn H. Slade**, **Walter E. Stern**, **Douglas R. Vadnais** and **Alex C. Walker**

Southwest Rising Star List: **Daniel M. Alsup**, **Spencer L. Edelman**, **Tomas J. Garcia**, **Jeremy K. Harrison**, **Mia Kern Lardy**, **Tiffany Roach Martin**, **Elizabeth A. Martinez**, **Nathan T. Nie-man**, **Christina C. Sheehan** and **Sarah M. Stevenson**

Southwest Super Lawyers: Top 25: **Stuart Butzier**, **John Cooney**, **James M. Parker** and **Lynn Slade**

Conklin, Woodcock & Ziegler, PC

Chambers USA: **Robert C. Conklin** (litigation: general commercial; labor and employment); **Jacqueline M. Woodcock** (labor and employment); and **John K. Ziegler** (labor and employment).



Eric D. Lanphere was born on Dec. 29, 1936, in Toledo, Ohio. He died Nov. 9, 2018 in Albuquerque. He was a graduate of Amherst College and the University of Michigan Law School. He served two years in the U.S. Army at Ft. Knox, Ky. He moved to Albuquerque in 1964 and for many years was an attorney with the law firm of Iden & Johnson, which later became Johnson & Lanphere. Lanphere was a talented courtroom lawyer, best remembered for his successful defense

of the *Albuquerque Journal* during a lengthy trial in which the plaintiff was represented by attorney F. Lee Bailey. As a young lawyer, Lanphere drove to work at the Simms Building for years with his close, lifelong friend, Judge James A. Parker, who gave a eulogy at his funeral. Lanphere is survived by his wife of 48 years, Carolyn, stepdaughter, Kimberly Lange, son Eric Lanphere and wife Debbie, and his grandchildren Brittany Lang, Maggie Lang, and Daniel Lanphere.



Daniel J. Sanchez was born on Oct. 4, 1977, to Daniel A. and Dinah Sanchez in Santa Fe and died April 29. He was the first born of three children. He is predeceased by his sister, DeAnna Sanchez, grandparents, Joe I. Sanchez, Celina Sanchez, A.L. Archuleta, Cora Archuleta, and an uncle, Everett Sanchez. He is survived by his wife, Miquela, children, Gianna and Daniel E. Sanchez of Albuquerque, his parents, Daniel A. and Dinah Sanchez of Santa Fe, his younger

brother, Diego Sanchez of San Diego, CA. Sanchez had many close family members, including aunts, uncles and cousins. Sanchez grew up in Santa Fe where he attended Temple Baptist, DeVargas Junior High and then graduated from St. Michael's High School. While attending several colleges, he discovered his passion, which led him to graduate from the University of New Mexico with his degree in Political Science. After graduating he then began his pursuit in law, where he then attended St. Mary's Law School in San Antonio, Texas, and received his Juris Doctorate. During his journey at law school he always maintained his strong connections with his family and friends, all while building more lifelong friends with his law school classmates. Miquela was by his side during his time at St. Mary's where they grew to love the city of San Antonio. Their first-born daughter, Gianna was even born there. Shortly after he graduated, they moved their family back to New Mexico. They wanted to be close to their family, family was always very important to Sanchez. Building their life in Albuquerque, they had the addition of Daniel Emilio to their family. Pursuing his passion with the law, he worked in several capacities as an attorney until he began his own practice. As an attorney he did everything he could to help his clients. He will always be remembered for doing everything he could to help others and his love of sports. There could not be a more loyal fan to the Dodgers, Lakers or Raiders than him. Sanchez always had a way of making everyone feel like they were family.

Elena Romero Morgan was born on Jan. 12, 1943, and passed away on April 20. Morgan was a resident of New Mexico at the time of passing.

Thomas A. Donnelly, an 89 years young Sagittarian, and a gentle giant whose height truly reflected the depth of the man he was, passed away at home on April 17, with his beloved wife and best friend, Paula, at his side. Judge Donnelly grew up in Albuquerque, graduated from the old Albuquerque High School, and then attended NMSU where he received a bachelor's degree and was, at 6' 6", an Aggie Basketball letterman. Thereafter he attended the University of New Mexico where he received a master's degree in government and economics. When anyone thinks or speaks of Judge Donnelly—public service, reform-minded, love of the law and curiosity—a man of integrity and compassion—are just some of the thoughts that come to mind. Donnelly's public service began after he graduated from the University of New Mexico and served as a staff sergeant in the anti-aircraft artillery division of the army for two years during the Korean War. Upon his return from Korea he used the G.I. Bill, obtained his law degree from the University of Arizona and was admitted to the Arizona and New Mexico bars. He was initially in private practice as a partner with the Catron Law firm of Santa Fe, but then shifted his law practice to the public arena, beginning first as a staff attorney for the New Mexico Legislature at the Legislative Council Service for two years (1959-60), where he drafted the first comprehensive revision of the state's entire criminal code since territorial days. Prior to running for district judge in 1972, he served as an assistant attorney general, acting as the attorney for the State Constitutional Revision Commission, State Criminal Study Revision Commission and counsel for the Governor's Commission on Government Reorganization. Donnelly's reform-minded nature was evident when he ran for and was elected in 1972 to the First Judicial District Court in Santa Fe. When running for the office, he had proposed improvements and implementation of legislation aimed at improving procedures for district courts. He argued for placing in operation a family court authorized by the legislature that year, and he argued for the need to hold jury trials and juvenile cases in Los Alamos and Rio Arriba on a regular basis. He believed that convening the court regularly in the counties where the cases were filed would expedite the disposition of pending cases for the convenience of the public and the litigants. After he was elected he worked to develop procedures for securing prompt trial settings of criminal and civil cases. After serving eight years on the district court bench, Gov. King appointed Judge Donnelly to fill a vacancy on the New Mexico Court of Appeals where he served for 19 years. His interest in speeding up and reforming the judicial process continued upon his appointment and subsequent election to the Court of Appeals, often known as the "work horse" appellate court. With his help the Court created a "fast track" alternative, in which decisions were announced on the day of the hearing from the bench instead of having to wait weeks for a written decision, and an innovative appellate mediator process. While still on the bench, the Supreme Court appointed Judge Donnelly to serve on the Judicial Standards Commission. After his retirement in Dec. of 1999, he continued his public service with his appointments to the Judicial Performance Evaluation Commission and the Judicial Ethics Advisory Committee. He also served as the co-chair of the two-year Legislative Structure and Process Interim Task Force, which studied operational issues related to the legislature and made recommendations to improve its functional effectiveness. Judge Donnelly, an incredibly modest man, received many awards over his lifetime of service (about which he never spoke), including the State Bar's Outstanding Judicial Service Award and the Seth Montgomery Distinguished Judicial Service Award. Prior to his service on the bench, he was awarded the Army Commendation

Medal, two battle stars and the Korean Presidential Service Medal for his service in the Korean War. After his retirement from writing countless legal opinions, he wanted to try his hand at writing fiction because as he said “writing fiction provides me with more latitude.” And he was quietly delighted to receive an award from the Southwest Writers Association for his short story “Psychic Chicken”. Donnelly will be remembered for his intellect and his humanity, his “old New Mexico” civility, his thoughtful and clear opinions which were a great reflection of how he impacted the law in New Mexico, the fairness and respect with which he treated all who came before him and his curiosity about everything around him. His nurse Rosie talked of the assignments he gave her about different topics to learn about and report back, and his love of and curiosity about history, particularly New Mexico history, was legendary. He was the judge in the 1973 case of the theft of Santa Fe’s beloved icon, La Conquistadora, which resulted in two thieves being sent to prison after they were apprehended following a ransom note they sent demanding thousands of dollars for her safe return and immunity from prosecution. No immunity was granted by the Judge. Donnelly was preceded in death by his father and mother, Dr. Thomas C. Donnelly and Mabel Clare Donnelly, and his step-mother Dorothea Berry. He is survived by his wife, Paula S. Donnelly; his son Patrick S. Donnelly and his son’s partner, Stephen Miller of Deerfield, Mass.; a daughter, Sarah McDonald; his stepson, Claude Paul Gottlieb of Port Angeles, Washington; and two grandchildren, Marshal Priestley and Karli Priestley, of Colorado Springs, Colorado.

Arnold W. Melbihess, born on Oct. 23, 1947, in Albuquerque, passed away at the age of 71, on Feb. 3, while visiting his family in Boise, Idaho. Melbihess grew up in Martinez Town and was proud to be a lifelong Albuquerque native. He attended Saint Mary’s High School and served in the U.S. Army 82nd Airborne Division. He graduated with his Bachelor of Arts from the University of New Mexico in 1970 and went on to receive his Juris Doctorate degree in 1973. Following graduation, he practiced law as an attorney in New Mexico for over 45 years. During his many years as an attorney, Melbihess received hundreds of thank you letters from his clients expressing their gratitude for the help he had given them. The letters described how he had treated them with compassion, dignity and respect. They felt he truly had their best interest in mind. This box of letters was one of his most treasured possessions and made him feel that he had done some good in the world by helping people. It was touching to read them. Melbihess (Papi as he is called by the family) is survived by his daughter Yvette, son Eric, and daughter-in-law Angela, as well as his lifelong friend and ex-wife Lucille. He leaves behind five amazing grandchildren (his true pride and joy) Tyler, Riley, Hudson, Sloan and Yale. He will always be remembered by them for his corny jokes, random trivia and the endless supply of children’s trinkets and his unconditional love for his family and dear friends. He had a passion for hiking, traveling, skiing and adventure. He would always say his greatest days were when he was with his grandchildren whether it be playing games, taking walks or just hanging out. He was an amazing grandfather, father, friend and peer.

Lourdes Maria Monserrat left us peacefully in her sleep at home on March 26 after spending the day walking her dogs, Domino and Squirt, at the dog park. She was born July 16, 1947, in Havana, Cuba, to a comfortable middle-class family of four children, mom, dad, brothers Bernardo and Javier and sister Alina. She excelled in swimming in her youth and represented Cuba in the Pan-American games in Chicago in 1959. At the time of the Cuban Revolution, Lourdes and her family were forced to leave Cuba and did so via the U.S. CIA’s operation Pedro Pan. Aided by Catholic Charities, Monserrat and brother Bernardo were placed with the Helwig family in Albuquerque. The rest of her family eventually joined them in Albuquerque and they built a new life in New Mexico. Lourdes’ father worked for the City of Albuquerque until his retirement. Monserrat attended Holy Ghost parochial school, St. Pius High School and graduated Summa Cum Laude from the University of Albuquerque. She went on to teach high school in Rochester, New York, then joined the Peace Corps with her brother, Bernardo. In Honduras she created a system of pre-schools, something unheard of in Honduras at that time. After a second stint in the Peace Corps, this time in Africa, Monserrat returned to New Mexico to life on a ranch south of Santa Fe. She took in foster children, was a big sister, started a summer camp for kids on the ranch, volunteered at the animal shelter, was involved in Attitudinal Healing and became a member of the Santa Fe Buddhist Center before her death. In addition to being a licensed New Mexico practicing attorney and having a master’s degree, she completed all but her PhD dissertation in Latin American studies. Monserrat was an avid student of politics and public affairs. Her personal journey instilled in her the obligation to become informed and to participate in politics and discussion of public policy. She loved the governmental institutions of our democracy. She volunteered for Jerry Apodaca’s gubernatorial campaign and was given a staff assignment in his new government. She twice served stints in D.C. on behalf of New Mexico. Her annual legislative staff work analyzing bills and discussing public policy was a passion. In Santa Fe she was a leading member of a church without borders, organization, pastor, boundaries, except one: “you cannot be the light and hold another in darkness”. She believed with the Dalai Lama: “There is no need for temples, no need for complicated philosophies. My brain and my heart are my temples, my philosophy is kindness.” On October 8, 1998 Monserrat’s Angel Isabela was born. Monserrat and her husband of 25 years, Frank Coppler, immigrated and adopted Isabela into this country from Chihuahua State, Mexico. Isabela, now 21, is scheduled to graduate from UNM next year with a bachelor’s degree in International Relations. Monserrat is survived by her daughter, Isabela, brothers Javier and Bernardo, sister Alina and nieces Caroline and Cristina.

Douglas (Doug) Seegmiller passed away on May 7, 2019 at Northridge Senior Living Center where he lived since October 2018 after being diagnosed with hydrocephalus. He was 70 years old. He is survived by his brother, Brian Seegmiller of Arvada, Colorado, and Chyrelle Orndoff of Krum, Texas. Seegmiller was born and raised in Los Alamos, N.M., the son of scientists working for Los Alamos National Labs. He received his undergraduate degree from Stanford University and his law degree from the University of Michigan Law School. He practiced law in New Mexico for 30 years. Seegmiller was an ardent litigator on behalf of his clients. When he was not practicing law, he learned German, French and Spanish, enjoyed playing chess, and loved to hunt and fish. He will be missed.

On April 24, **Matthew J. Sandoval's** work on earth was completed. Our adored and beloved husband, father and grandfather encountered the face of the lord and slipped peacefully into God's loving arms. He will be dearly and forever missed. Sandoval was a man whose passion was in serving others. He had a great love and respect for all people and proudly served the communities of Guadalupe, Mora and San Miguel Counties. His efforts to serve were not limited, as he loved the State of New Mexico and also had a positive impact in the lives of many others throughout the State. He never wavered from his belief and dedication to serve with love, humility and passion. His love for the law and advocacy for social justice was not something he learned it was in his blood and he was driven to serve others, in a fair manner. He strived for this, in partnership with the lord, as he prayed daily and often for wisdom and guidance from the lord as he executed his work and personal relationships. Sandoval was born to Matt and Helen Sandoval on Sept. 24, 1950. He attended and graduated from West Las Vegas High School in 1968. He continued his education at New Mexico Highlands University where he received his bachelor's degree in social work and his Master's in social work, all while working full-time with the police department. Upon his 20-year retirement, he attended the University of New Mexico School of Law where he received his Juris Doctorate. Having worked almost 50 years, his accomplishments were many. As a senior in high school, and only 17 years old, he began his law career as a dispatcher for the Old Town Police Department. He worked his way up through the ranks becoming a police officer, detective, training officer and retiring with the rank of Police Captain (20 years). Two days after retiring from the Police Department, he entered Law School. The first summer of law school, he worked an externship with the Las Vegas Legal Aid Office. During the summer breaks of his second and third year of law school, he worked an externship with the 4th Judicial District Office, and the semester prior to graduation worked clinic with the 2nd Judicial District. Upon returning to Las Vegas, he worked as an assistant for the 4th Judicial District Court and then entered private practice as a personal injury and disability attorney. In 1997, he was elected District Attorney for 4th Judicial District and served two terms (8 years). He was employed as City of Las Vegas Attorney for 2-1/2 years. He then was elected and later retained as district judge for 4th Judicial District for 12 years prior to becoming ill. He proudly served on many budget committees and has lobbied for over 30 years at the Legislature for FOP, district attorneys, City of Las Vegas and district courts. Additionally, he was a member of the Fraternal Order of Police from 1980-2008, having served as state chaplain for two years and state treasurer for 24 years consecutively. He was also a member of the Knights of Columbus, Elks and CASA. He was an active parishioner of both Our Lady of Sorrows and Immaculate Conception Church. He is preceded in death by his sons Baby Matthew and Marcus Sandoval, nephew Steve Marquez, numerous other close relatives and many dear friends. Sandoval is survived by his loving and devoted wife of almost 47 years, Loretta, their daughter and son-in-law Melissa and Kenny, and his treasured grandchildren who brought him so much joy and happiness, Benito, Mateo, Angelica, Diegomarcos, and Ariana Vigil. He is also survived by his sister Karen Marquez and brother-in-law Leonard Marquez, their children Michael Marquez (Michelle) and family, and Maria Marquez and family, 14 god-children, many cherished "brothers-from-other mothers," along with numerous family, and close friends.

It is with heavy hearts and great sadness that we announce the passing of a man who was a beloved brother, a respected figure in the community, and a district court judge for 26 years. **Albert Spencer "Pat" Murdoch** passed away suddenly from cardiac complications April 15. He will be greatly missed by all who knew him. Murdoch lived his life with courage, dignity, compassion and rare insight, while maintaining a humorous and optimistic outlook on the world. His kindness, thoughtfulness, warmth and wisdom will be well remembered. Murdoch had a thirst for knowledge, and a great desire to pass on this knowledge to those he loved—his siblings, friends, grand nieces and nephews. Murdoch is a native of New Mexico. Born in Springer and raised in Albuquerque. He attended Del Norte High School, received his bachelor's degree in sociology from UNM in 1975, and later attended UNM School of Law, graduating in 1978. Murdoch had the courage and strength to pursue a visible career in law during a time when disabilities were not welcomed. He accepted the challenge and succeeded against the odds. Murdoch began his career in the Public Defender's Office as a felony lawyer. He promptly became deputy district defender, supervising the felony division. Murdoch was appointed as the head of the Public Defender's office in 1983. Murdoch became the youngest person in the state of New Mexico to be appointed to the district court bench in 1985. He served the court and public for 26 years with integrity and fairness. He firmly believed in the inherent dignity of people and never stopped looking for the good, especially in the courtroom. Many people who served with him in his court room felt that he ruled with an unwavering passion for justice. His decisions were based on his command of the rule of law, and a strong moral compass. As a victim of polio, Murdoch's personal life was fraught with physical difficulties and challenges. He accepted and overcame these challenges with the utmost determination and grace. He was an example of character to all people he encountered, and also became an early advocate of equal opportunities for the disabled community in all walks of life. These opportunities included involvement in adult and youth wheelchair basketball programs, pioneering pairing of disabled individuals in the Big Brothers of America program, all the while being a role model for the disabled population. The most noticeable things about Murdoch were not his crutches, but all of things he did, and accomplished, and the ways he loved and served people. He is survived by one brother, two sisters, a nephew, and two nieces.

Legal Education

June

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| <p>12 International Arbitration: Key Issues for New Mexico Businesses
1.5 G
Live Seminar, Albuquerque
U.S. Council for International Business
https://en.xing-events.com/VVMFKJf.html</p> | <p>18 Ethics of Co-Counsel and Referral Relationships
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 How to Avoid Potential Malpractice Pitfalls in the Cloud and in Everyday Law Office Computing
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 Ethics in Negotiations- Boasts, Shading and Impropriety
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Staying Out of the News: How to Avoid Making Techno-Ethical Mistakes that Put You on the Front Page
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Fifth Annual Symposium on Diversity and Inclusion (2019)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 2018 Family Law Institute: Hot Topics in Family Law Day 1
5.0 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Disorder in the Court: An Attorney's Guide to Judicial Misconduct
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 What Starbucks Teaches Us About Attracting Clients the Ethical Way (2018)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 Common Tax Pitfalls for Small Business Attorneys (2019)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Bridge the Gap Mentorship Program CLE (Full Day Program)
5.0 G, 1.0 EP
Live Seminar/Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Abuse and Neglect in Children's Court (2019)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 Bankruptcy Fundamentals for the Non-Bankruptcy Attorney (2018)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Bridge the Gap Mentorship Program CLE (Partial-Day Program)
3.0 G, 1.0 EP
Live Seminar/Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

July

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| <p>7 Litigating in the 21st Century CLE
5.7 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> | <p>10 Your Client Wants to Sell on the Web: What You Need to Know Pt 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 How to Practice Series: Estate Planning (2019)
5.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Your Client Wants to Sell on the Web: What You Need to Know Pt 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 Eight Mistakes Experienced Contract Drafters Usually Make
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 Avoid Lawsuits by Cultivating Respect in the Workplace (2019)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

July

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| <p>12 Employment and Labor Law Legislative Update (2019)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Surviving White Collar Cases- Prosecution and Defense Perspectives (2019)
5.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 Employee Leave Law
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 The Paperless Law Firm- A Digital Dream
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 2018 Business Law Institute
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Mediating the Political Divide
2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Ethics and New Clients: Inadvertent Clients, Intake and More
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Bad Review? Bad Response? Bad Idea!- Ethically Managing Your Online Reputation
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

August

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| <p>14 Lawyer Ethics in Employment Law
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Spanish for Lawyers I
20.0 G
Live Seminar, Albuquerque
UNM School of Law
lawschool.unm.edu/spanishforlawyers/</p> | <p>28 Easements in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>21 IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Trust and Estate Planning for Cabins, Boats and Other Family Recreational Assets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

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

Opinions

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

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

Effective May 24, 2019

PUBLISHED OPINIONS

A-1-CA-36643	State v. J Fernandez	Reverse/Remand	05/20/2019
A-1-CA-36506	State v. B Adams	Reverse/Remand	05/21/2019
A-1-CA-35812	State v. S Garcia	Vacate/Remand	05/23/2019

UNPUBLISHED OPINIONS

A-1-CA-35899	State v. J Mondragon	Affirm/Reverse/Remand	05/20/2019
A-1-CA-36296	State v. J Lujan	Affirm	05/20/2019
A-1-CA-36850	K Duerinck v. Bd of Supervisors	Affirm	05/20/2019
A-1-CA-37312	C Nackers v. J Fraser	Affirm	05/20/2019
A-1-CA-37388	S Barraza v. A Solano	Reverse	05/20/2019
A-1-CA-37516	State v. J Ornelas	Affirm	05/20/2019
A-1-CA-37639	M Gallegos v. Isleta Resort	Dismiss	05/20/2019
A-1-CA-37656	State v. L Smith	Affirm	05/20/2019
A-1-CA-37663	State v. F Clyde	Affirm/Remand	05/20/2019
A-1-CA-37679	M Griego v. Duke City Redi-Mix	Affirm	05/20/2019
A-1-CA-37784	State v. F Larez	Affirm	05/20/2019
A-1-CA-37817	State v. S Hamby	Reverse/Remand	05/20/2019
A-1-CA-37933	CYFD v. Juan R	Affirm	05/20/2019
A-1-CA-33634	M Elkins v. Waterfall Community	Affirm	05/21/2019
A-1-CA-35712	Rio Grande v. City of Albuquerque	Affirm	05/21/2019
A-1-CA-35956	State v. J Cummings	Dismiss	05/21/2019
A-1-CA-35974	JP Morgan v. T McDermott	Reverse/Remand	05/21/2019
A-1-CA-36378	State v. C Talk	Reverse/Remand	05/21/2019
A-1-CA-36839	State v. E Garcia	Reverse/Remand	05/21/2019
A-1-CA-36863	State v. D Riley	Reverse/Remand	05/21/2019
A-1-CA-37624	D Harrah v. B Tinley	Affirm	05/21/2019
A-1-CA-37713	State v. Isaiah R	Affirm	05/21/2019
A-1-CA-37731	D Stone v. Quay County Sheriff's	Affirm	05/21/2019
A-1-CA-37824	L Romero v. C Briscoe	Affirm	05/21/2019
A-1-CA-34258	State v. M Bylon-Escobedo	Affirm	05/22/2019
A-1-CA-35179	State v. D Garcia	Affirm	05/22/2019
A-1-CA-35775	State v. K Sanchez	Affirm/Vacate/Remand	05/22/2019
A-1-CA-37282	State v. S Talamante	Affirm	05/22/2019
A-1-CA-35834	State v. A Perez	Affirm	05/23/2019
A-1-CA-36055	State Farm v. Farmers Insurance	Affirm	05/23/2019
A-1-CA-36300	C Wilson v. Farmers Insurance	Affirm	05/23/2019
A-1-CA-37799	State v. D Bolanos	Affirm	05/23/2019

Opinions

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

A-1-CA-37886	CYFD v. Helen G.	Affirm	05/23/2019
A-1-CA-36305	Board of County Comm v. Tax & Rev	Affirm	05/24/2019
A-1-CA-36476	E Mottola v. L Martin	Affirm	05/24/2019
A-1-CA-37114	S. Lucero v. Los Alamos National Laboratory	Affirm	05/24/2019
A-1-CA-37367	R. Forsythe v. Ford Motor Company	Reverse	05/24/2019
A-1-CA-37581	State v. A Cruz	Affirm	05/24/2019
A-1-CA-37693	State v. P Martinez	Affirm	05/24/2019

Effective May 31, 2019

PUBLISHED OPINIONS

A-1-CA-35474	Belen Consolidated v. Valencia	Reverse/Remand	05/29/2019
A-1-CA-37081	G Nash v. Board of Commissioners	Affirm	05/29/2019
A-1-CA-35912	State Ex Rel v. Oppenheimer CO	Affirm	05/30/2019
A-1-CA-35462	State v. J Dorado	Affirm	05/31/2019

UNPUBLISHED OPINIONS

A-1-CA-35585	State v. A Cobos	Reverse/Remand	05/28/2019
A-1-CA-37655	State v. R Fast	Affirm	05/28/2019
A-1-CA-37675	State v. G Gallegos Jr	Affirm	05/28/2019
A-1-CA-37711	K Parrish v. Roosevelt County Board of County	Affirm	05/28/2019
A-1-CA-35836	D Warner v. C Wallace	Affirm/Reverse/Remand	05/29/2019
A-1-CA-36025	State v. S Bravo	Affirm/Reverse/Remand	05/29/2019
A-1-CA-36497	State v. D Sanchez	Affirm	05/29/2019
A-1-CA-35831	J Valencia v. Santa Fe Police Office	Affirm	05/30/2019
A-1-CA-35997	State v. M Cox	Affirm	05/30/2019
A-1-CA-36760	State v. S Turquoise	Affirm/Remand	05/30/2019
A-1-CA-36191	J Sneed v. S Vaughn	Affirm	05/31/2019
A-1-CA-36632	Peabody Coalsales Co v. NM Taxation and Rev	Affirm	05/31/2019
A-1-CA-37109	State v. A Pamphille	Affirm	05/31/2019
A-1-CA-37215	A Romero v. J Carver	Affirm	05/31/2019
A-1-CA-37428	V Arellano v. New Mexico Department of Health	Affirm	05/31/2019
A-1-CA-37625	State v. R Barreras	Affirm	05/31/2019
A-1-CA-37698	Shepherd of the Hills v. K Krohn	Dismiss	05/31/2019

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Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective May 17, 2019, and
has a new address:

Dawn Penni Adrian
PO Box 699
Los Lunas, NM 87031

Effective May 17, 2019:

J. Daniel Gregory
2801 Race Street, Suite 103
Fort Worth, TX 76111

Effective May 17, 2019, and
has a new address:

Jon D. Hendra
403 S. 16th Street
Artesia, NM 88210

Effective April 18, 2019:

Kathleen A. Miller
2720 Joe Sanchez Road SW
Albuquerque, NM 87105

CLERK'S CERTIFICATE OF ADMISSION

On May 21, 2019
Jack Shane Brooks
Sprouse Shrader Smith PLLC
701 S. Taylor Street, Suite 500
Amarillo, TX 79105
806-468-3300
806-373-3454 (fax)
shane.brooks@sprouselaw.
com

On May 21, 2019
Lucas A. Edwards
Shinnick & Ryan LLP
1650 Hotel Circle N.,
Suite 200
San Diego, CA 92108
619-239-5900
619-239-1833 (fax)
ledwards@srffirms.com

On May 21, 2019
Ryan E. Friedman
Supreme Court of New
Mexico
237 Don Gaspar Avenue
Santa Fe, NM 87501
505-827-4850
librxf@nmcourts.gov

On May 21, 2019
Brecken N. Larson
Katz Herdman MacGillivray
& Fullerton PC
PO Box 250
123 E. Marcy Street, Suite 200
(87501)
Santa Fe, NM 87504
505-946-2819
505-988-1286 (fax)
bnl@santafelawgroup.com

On May 21, 2019
Quyen T. Pham
Law Offices of Quyen T.
Pham
1908 W. Colter Street
Phoenix, AZ 85015
602-246-1000
602-702-5211 (fax)
quyen@phamlaws.com

On May 21, 2019
Joshua Richard Stein
Fergus & Fergus, LLP
3100 Edloe Street, Suite 335
Houston, TX 77027
713-702-4585
joshsteinesq@gmail.com

On May 21, 2019
Anne Marie Swank
Judicial Branch of Arizona
18380 N. 40th Street
Phoenix, AZ 85032
602-372-0537
swanka@
superiorcourt.maricopa.gov

On May 21, 2019
James Zhi Yao
419 Flannery Park Lane
Houston, TX 77094
281-827-3509
jyao@aminilegal.com

IN MEMORIAM

As of April 17, 2019:
Hon. Thomas A. Donnelly
2324 Calle Camarico
Santa Fe, NM 87505

As of March 19, 2019:
James Hesselden Foley
PO Box 7427
Albuquerque, NM 87194

As of April 27, 2019:
Virgil Henry Lewis II
12532 W. Fetlock Trail
Peoria, AZ 85383

As of February 3, 2019:
Arnold William Melbihess
3307 Santa Clara Avenue SE
Albuquerque, NM 87106

As of March 26, 2019:
Lourdes M. Monserrat
909 Calle Vistoso
Santa Fe, NM 87501

As of April 20, 2019:
**Elena Marie Romero
Morgan**
1483 Clark Road
Santa Fe, NM 87507

As of March 15, 2019:
Joy Elaine Pendleton
1002 N. Linam Street #4
Hobbs, NM 88240

As of April 24, 2019:
**Hon. Matthew John
Sandoval Jr.**
721 Colorado Drive
Las Vegas, NM 87701

CLERK'S CERTIFICATE OF LIMITED ADMISSION

On May 20, 2019
Ruslan D. Ivanov
Law Offices of the Public
Defender
506 S. Main Street, Suite 700
Las Cruces, NM 88001
575-541-3193
ruslan.ivanov@lopdmn.us

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

Jeffrey H. Albright
201 Third Street NW,
Suite 1880
Albuquerque, NM 87102
505-926-4105
ja@jalblaw.com

William R. Anderson
O'Brien & Padilla, PC
6000 Indian School Road NE,
Suite 200
Albuquerque, NM 87110
505-883-8181
505-883-3232 (fax)
wanderson@obrienlawoffice.
com

Casey A. Barthel
Barthel Law Office
119 E. Theissen Street
Boerne, TX 78006
830-446-6974
casey@barthellaw.com

Roberta Suzanne Batley
Batley Powers Family Law PA
316 Osuna Road NE,
Suite 301
Albuquerque, NM 87107
505-246-0500
505-246-9953 (fax)
bbatley@batleypowers.com

Ryan D. Baughman
Law Office of Ryan D.
Baughman, LLC
1400 Central Avenue SE,
Suite 2000
Albuquerque, NM 87106
505-675-0732
505-988-6628 (fax)
ryan@nmlawoffice.com

Hon. Bryan P. Biedscheid
First Judicial District Court
PO Box 2268
225 Montezuma Avenue
(87501)
Santa Fe, NM 87504
505-455-8215
505-455-8169 (fax)

Brian Paul Brack
Dixon Scholl Carrillo PA
PO Box 94147
6700 Jefferson Street NE,
Bldg. B, Suite 1 (87109)
Albuquerque, NM 87199
505-244-3890
505-244-3889 (fax)
bbrack@dsc-law.com

**Hon. G. Michelle
Brown-Yazzie**
Mescalero Apache Tribe
PO Box 227
159 Deer Trail
Mescalero, NM 88340
575-464-0414

Nicholas H. Bullock
223 14th Street NW
Albuquerque, NM 87104
575-644-6240
hemphill.bullock@gmail.com

Mitchel S. Burns
Burns Law Group
100 W. Apache Street
Farmington, NM 87401
505-257-9112
505-672-7764 (fax)
mitch@mburnslawgroup.com

Michael B. Calderon
Doughty Alcaraz, PA
20 First Plaza Ctr. NW,
Suite 412
Albuquerque, NM 87102
505-242-7070
505-242-8707 (fax)
michael@doughtyalcaraz.com

Chandler Piché Carney
1355 Trifecta Way
Westfield, IN 46074
317-727-9799
cpcarney2@gmail.com

Karen Kimbro Chase
United States District Court,
District of New Mexico
333 Lomas Blvd. NW,
Suite 730
Albuquerque, NM 87102
505-348-2373
505-348-2375 (fax)
karen_chase@nmd.uscourts.
gov

Daniel Thomas Cornish
Keller & Keller
505 Marquette Avenue NW,
Suite 1300
Albuquerque, NM 87102
505-938-2300
dcornish@2keller.com

Alfonso Cota
New Mexico Human Services
Department
653 Utah Avenue
Las Cruces, NM 88001
575-373-6043
alfonso.cota@state.nm.us

Jonathan E. Dominguez
Butt Thornton & Baehr PC
PO Box 3170
4101 Indian School Road NE,
Suite 300 (87110)
Albuquerque, NM 87190
505-884-0777
jedominguez@btblaw.com

Brendan K. Egan
New Mexico Human Services
Department
Child Support Enforcement
Division
39A Plaza la Prensa
Santa Fe, NM 87507
505-476-9597
505-476-6265 (fax)
brendan.egan@state.nm.us

Jason Christopher Eley
Tucker, Burns, Yoder and Eley
105 N. Orchard Avenue
Farmington, NM 87401
505-325-7755
505-325-6239 (fax)
eley@tbylaw.com

Isaac Seth Emmanuel
Oryx Law LLC
108 Wellesley Drive SE
Albuquerque, NM 87106
505-348-4946 (phone & fax)
ise@oryx.law

Isaac Estrada
1951 NW 7th Avenue,
Suite 300
Miami, FL 33127
308-243-3444
305-243-3510 (fax)
ixe93@miami.edu

Jay L. Faurot
Jay L. Faurot, PA
1407 Utton Lane
Farmington, NM 87401
505-325-1838
505-326-2006 (fax)
jayfaurot87401@gmail.com

Sandra L. Gardner
New Mexico Human Services
Department
Child Support Enforcement
Division
1010 18th Street NW
Albuquerque, NM 87104
505-222-9927
505-222-9996 (fax)
sandra.l.gardner@state.nm.us

Ellen A. Geske
New Mexico Supreme Court
PO Box 848
237 Don Gaspar Avenue
(87501)
Santa Fe, NM 87504
505-827-4935
505-827-4610 (fax)
supeag@nmcourts.gov

Jan B. Gilman-Tepper
Batley Powers Family Law PA
316 Osuna Road NE,
Suite 301
Albuquerque, NM 87107
505-246-0500
505-246-9953 (fax)
jgilmanteppe@batleypowers.
com

Darlene Teryssa Gomez
Law Offices of Darlene
Gomez, LLC
1412 Lomas Blvd. NW
Albuquerque, NM 87104
505-842-0392
505-842-0686 (fax)
dargomezlaw@gmail.com

R. Matthew Graham
Thompson Law LLP
3300 Oak Lawn Avenue, 3rd
Floor
Dallas, TX 75219
214-755-7777
214-716-0116 (fax)
mgraham@triallawyers.com

Denise Soto Hall
Hall Legal Group, LLC
PO Box 92524
Albuquerque, NM 87199
505-710-7182
dsotohall@gmail.com

Kyle Jordan Hibner
New Mexico Children, Youth
and Families Department
4359 Jager Drive NE, Suite D
Rio Rancho, NM 87144
505-629-7344
505-771-5969 (fax)
kyle.hibner@state.nm.us

Tyler Holyfield
845 W. Page Avenue
Gilbert, AZ 85233
480-352-1709
tyler@holyfieldlaw.com

Hon. Valerie A. Huling (ret.)
6000 Uptown Blvd. NE,
Suite 305
Albuquerque, NM 87110
505-238-1981
vhuling1@gmail.com

Joshua Neal Humphreys
Allison, Bass and Magee LLC
402 W. 12th Street
Austin, TX 78701
512-482-0701
512-480-0902 (fax)
j.humphreys@allison-bass.
com

Julie L. Hunt
701 W. Beech Street, #1909
San Diego, CA 92101
714-404-8214
juliehunt4law@gmail.com

Billy J. Jimenez
New Mexico Department of
Health
1190 St. Francis Drive,
Suite N4095
Santa Fe, NM 87505
505-827-2913
505-827-2930 (fax)
billy.jimenez@state.nm.us

Stephen Nathaniel Puente Jochem

234 Division Avenue NE
Washington, DC 20019
505-879-2036
jochemsnap@gmail.com

Elisabeth Johnson

New Mexico Legislative
Council Service
490 Old Santa Fe Trail,
Suite 411
Santa Fe, NM 87501
505-986-4600
elisabeth.johnson@nmlegis.gov

Dennis Eugene Jontz

Lewis Roca Rothgerber
Christie LLP
201 Third Street NW,
Suite 500
Albuquerque, NM 87102
505-764-5405
505-764-5469 (fax)
djontz@lrrc.com

M.J. Keefe

Keefe Law LLC
3225 Ortiz Drive NE
Albuquerque, NM 87110
505-262-0000
mjkeefe@theabqlawfirm.com

Hon. Melissa A. Kennelly

Eighth Judicial District Court
1413 S. Second Street
Raton, NM 87740
575-445-5585

William Kirschner

935 Flora Vista Drive
Las Cruces, NM 88007
701-212-2837
billytheknd@gmail.com

Gertrude Lee

Office of the Eleventh Judicial
District Attorney
200 W. Hill Street, Suite 100
Gallup, NM 87301
505-722-2281
505-863-4741 (fax)
glee@da.state.nm.us

Niva J. Lind

12231 Academy Rd. NE,
Unit 301, PMB #176
Albuquerque, NM 87111
505-290-0144
nj1145@gmail.com

Jeneva Alicia LiRosi

1132 Whitby Moore Street
Charlotte, NC 28273
505-328-0330
jeneva.lirosi@gmail.com

Sandra Dene Morgan Little

Batley Powers Family Law PA
316 Osuna Road NE,
Suite 301
Albuquerque, NM 87107
505-246-0500
505-246-9953 (fax)
slittle@batleypowers.com

Amalia J. Skogen Lucero

26 Camino Don Juan
Placitas, NM 87043
505-771-8799
mike_amalia@comcast.net

Jenny Patten Magallanes

Akin, Gump, Strauss, Hauer
& Feld, LLP
2001 K Street NW
Washington, DC 20006
202-887-4572
202-887-4288 (fax)
jpatten@akingump.com

Brian R. Mannal

Civerolo, Gralow & Hill, PA
PO Box 887
20 First Plaza NW, Suite 500
(87102)
Albuquerque, NM 87103
505-764-6008
505-764-6099 (fax)
mannalb@civerolo.com

Robert C. Martin

PO Box 93233
Albuquerque, NM 87199
505-819-3243
rcmlaw@netscape.com

Audrey K. McKee

City of Albuquerque Legal
Department
PO Box 2248
1 Civic Plaza NW (87102)
Albuquerque, NM 87103
505-768-4586
505-768-4505 (fax)
amckee@cabq.gov

Jason Lawrence Mendoza

Southwest Law Firm
1516 San Pedro Drive NE
Albuquerque, NM 87110
602-282-9999
602-297-6898 (fax)
jay@southwestlf.com

Jeffrey Merrill Mitchell

O'Brien & Padilla, PC
6000 Indian School Road NE,
Suite 200
Albuquerque, NM 87110
505-883-8181
505-883-3232 (fax)
jmitchell@obrienlawoffice.com

Eduardo Montemayor

Office of the Attorney General
PO Box 12548
Austin, TX 78711
512-463-1989
eduardo.montemayor@oag.texas.gov

Ashleigh G. Morris

Morris Law, LLC
12231 Academy Rd. NE,
Unit 301, PMB #280
Albuquerque, NM 87111
505-702-1878

Monica J. Newcomer Miller

PO Box 7040
625 Silver Avenue SW,
Suite 410 (87102)
Albuquerque, NM 87194
505-247-1023
505-633-8056 (fax)
mnewcomermiller@nmilc.org

Gabriel M. Parra

Law Offices of Gabriel M.
Parra, LLC
2300 Walnut Blvd.
Corvallis, OR 97330
541-768-4894
gparra@samhealth.org

James I. Patterson

1914 Father Sky Street NE
Albuquerque, NM 87112
505-728-3865
proshooter@aol.com

Justin Paul Pizzonia

Pizzonia Law
5720 Osuna Road NE
Albuquerque, NM 87109
505-999-1080
505-217-3100 (fax)
justin@pizzonialaw.com

Randy Wayne Powers Jr.

Batley Powers Family Law PA
316 Osuna Road NE,
Suite 301
Albuquerque, NM 87107
505-246-0500
505-246-9953 (fax)
rpowers@batleypowers.com

Keith Rinaldi

Office of the Second Judicial
District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102
505-350-6917
keith.rinaldi@da2nd.state.nm.us

Hon. John F. Robbenhaar

United States District Court,
District of New Mexico
333 Lomas Blvd. NW,
Suite 730
Albuquerque, NM 87102
505-348-2370

Christina Rosado

PO Box 118371
Carrollton, TX 75011
505-280-2170
crosadonm@gmail.com

Robyn Lee Rose

Office of the 21st Judicial
District Attorney
PO Box 20000
125 N. Spruce Street
Grand Junction, CO 81502
970-244-1730
robyn.rose@mesacounty.us

Sheryl Lynn Saavedra

Batley Powers Family Law PA
316 Osuna Road NE,
Suite 301
Albuquerque, NM 87107
505-246-0500
505-246-9953 (fax)
ssaavedra@batleypowers.com

Andrew M. Sanchez Sr.

Scariano, Himes and Petrarca
5051 Journal Center Blvd. NE,
Suite 320
Albuquerque, NM 87109
505-259-2069
312-565-0000 (fax)
asanchez@edlawyer.com

Jeramy I. Schmehl

Ray, McChristian & Jeans
6501 Americas Parkway NE,
Suite 820
Albuquerque, NM 87110
505-212-8017
505-212-0140 (fax)
jschmehl@rmjfirm.com

Janice Burt Schryer
3485 Midnight Ridge Drive
Las Cruces, NM 88011
575-386-6572
dschryer04@msn.com

Gregory E. Sopkin
1595 Wynkoop Street
Denver, CO 80202
303-312-6170
sopkin.gregory@epa.gov

James Corey Stackhouse
Burns Law Group
100 W. Apache Street
Farmington, NM 87401
505-257-9112
505-672-7764 (fax)
corey@mburnslawgroup.com

Eric Allen Sutton
Sutton Legal LLC
347 Lagunayra Drive NE
Albuquerque, NM 87108
773-255-8851
eric.sutton@gmail.com

Rebecca A. Torres
Torres Law Firm
7701 Innovation Way NE
Rio Rancho, NM 87144
505-221-6709
505-370-4125 (fax)
bt@torreslawnm.com

Jeremy P. Trujillo
1400 Central Avenue SE,
Suite 2000
Albuquerque, NM 87106
505-226-1062
jtrujillo@
trujillolawnewmexico.com

Brian Tucker
PO Box 27518
Albuquerque, NM 87125
505-226-2189
brituck2@gmail.com

Yasmin E. Voglewede
Elvora Law Firm
118 Broadway, Suite 517
San Antonio, TX 78205
210-907-9736
yasminv@elvorlaw.com

**Hon. Deborah Davis Walker
(ret.)**
PO Box 6528
Albuquerque, NM 87197
505-681-4042
ddwalker825@gmail.com

Thomas Patrick Whelan Jr.
1500 Fifth Street, Suite 2
Santa Fe, NM 87505
505-983-4810
tpwhelanjr@aol.com

Bryan L. Williams
Williams Injury Law, PC
4801 All Saints Road NW
Albuquerque, NM 87120
505-594-4444
505-214-5990 (fax)
bryan@bryan4results.com

Lisa Y. Wynn
Morris Hall, PLLC
8208 Louisiana Blvd. NE,
Suite C
Albuquerque, NM 87113
505-889-0100
lwynn@morristrust.com

Pamela Dee Kennedy
Pamela D. Kennedy, Attorney
At Law
1215 Tijeras Avenue NW
Albuquerque, NM 87102
505-247-4101
505-247-3349 (fax)
pkennedy@abqimmigrant.
com

Charles B. Kinney III
26 Sierra del Sol
Santa Fe, NM 87508
505-577-6346
cbk@umich.edu

Lauren E. Riley
Batley Powers Family Law PA
316 Osuna Road NE,
Suite 301
Albuquerque, NM 87107
505-246-0500
505-246-9953 (fax)
lriley@batleypowers.com

Brian J. Fisher
Mayer LLP
500 Marquette Avenue NW,
Suite 1200
Albuquerque, NM 87102
505-595-1414
505-595-1415 (fax)
bfisher@mayerllp.com

Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective June 12, 2019

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

There are no proposed rule changes open for comment.

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2019 NMRA:

Effective Date

Rules of Civil Procedure for the District Courts

- 1-004.1 Guardianship and conservatorship proceedings; process 01/14/2019
- 1-140 Guardianship and conservatorship proceedings; mandatory use forms 01/14/2019
- 1-142 Guardianship and conservatorship proceedings; proof of certification of professional guardians and conservators 07/01/2019

Civil Forms

4-999 Notice of hearing and rights 01/14/2019

Local Rules for the Sixth Judicial District Court

LR6-213 Electronic filing authorized 09/01/2019

Local Rules for the Twelfth Judicial District Court

LR12-201 Electronic filing authorized 09/01/2019

Local Rules for the Thirteenth Judicial District Court

LR13-208 Electronic filing authorized 09/01/2019

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 and Court of Appeals

Certiorari Denied, February 25, 2019, No. S-1-SC-37421

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-013

No. A-1-CA-34839 (filed November 13, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

ANGELA CATT,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

MARK T. SÁNCHEZ, District Judge

HECTOR H. BALDERAS,
Attorney General
Santa Fe, NM
CHARLES J. GUTIERREZ,
Assistant Attorney General
Albuquerque, New Mexico
for Appellee

JENNIFER J. WERNERSBACH
LAW OFFICES OF
JENNIFER J. WERNERSBACH, PC
Albuquerque, New Mexico
for Appellant

Opinion

JENNIFER L. ATTREP, Judge

{1} Defendant Angela Catt was convicted by a jury of racketeering, conspiracy to commit racketeering, and conspiracy to commit drug trafficking. Defendant moved the district court to set aside the racketeering convictions¹ and enter judgments of acquittal on the grounds that the jury had failed to find she committed the requisite two predicate acts and that there was instructional error. Defendant additionally argued that retrial would violate her right to be free from double jeopardy on the ground that sufficient predicate acts were lacking. The district court vacated Defendant's racketeering convictions but permitted retrial. Defendant now appeals this order. We hold that instructional error warranted vacating Defendant's racketeering convictions. Because the State may rely on conspiracy to commit drug trafficking

as a predicate offense, however, sufficient predicates exist to permit retrial of the racketeering charges. Defendant additionally appeals her conviction for conspiracy to commit drug trafficking on sufficiency grounds. We hold that substantial evidence supported this conviction. We therefore affirm.

BACKGROUND

{2} Defendant was alleged to be associated with a methamphetamine trafficking organization known as "the AZ Boys." She was charged by indictment with three counts of methamphetamine trafficking occurring on March 18, 2012, April 8, 2012, and May 1, 2012; three counts of conspiracy to traffic methamphetamine related to the same dates; and one count each of racketeering and conspiracy to commit racketeering. After a four-day trial, a jury convicted Defendant of racketeering (Count 1), conspiracy to commit racketeering (Count 2), and conspiracy to traffic methamphetamine on April 8, 2012 (Count 8). The jury acquitted Defendant of the trafficking and

conspiracy to traffic counts pertaining to the date of March 18, 2012 (Counts 5 and 6), as well as the trafficking count pertaining to the date of April 8, 2012 (Count 7). The jury deadlocked on the trafficking and conspiracy to traffic counts related to the alleged conduct of May 1, 2012 (Counts 3 and 4). The district court declared a mistrial as to those counts and permitted retrial. Defendant does not appeal this decision.

{3} Shortly after trial, Defendant moved the district court to set aside her racketeering convictions, and to enter judgments of "not guilty" or dismiss the racketeering counts with prejudice. Defendant argued that the failure of the jury to convict her of two trafficking counts demonstrated that insufficient evidence existed to convict her of racketeering and conspiracy to racketeer. Therefore, Defendant asserted, a retrial of those counts would violate her right not to be tried twice for the same conduct. At the hearing on Defendant's motion, Defendant additionally argued that the jury instruction defining "racketeering" was incorrect because it included all of the possible predicate offenses but failed to provide the elements of those crimes. The State agreed that the jury instructions for the racketeering counts were incorrect. Ultimately, the State did not oppose vacatur of the racketeering convictions but argued that retrial, not acquittal or dismissal, was the appropriate remedy. Both Defendant and the State maintained that the convictions for the racketeering charges and acquittals for the trafficking charges were inconsistent.

{4} The district court vacated the racketeering convictions but ordered a retrial. Although the exact basis for the district court's decision is not clear, the court noted the inconsistencies in the verdicts, that the motion was uncontested in terms of vacating the racketeering convictions, and that the State agreed that there was instructional error. The district court additionally entered a judgment and sentence on Defendant's conviction for conspiracy to commit trafficking methamphetamine on April 8, 2012 (Count 8), sentencing Defendant to a four-year term of incarceration. Defendant appeals the district court's denial of her request for judgments of acquittal or dismissal

¹For ease of reference, the Court refers to racketeering and conspiracy to commit racketeering collectively as "the racketeering convictions," "the racketeering charges," or "the racketeering counts" when no distinction is necessary.

Table 1			
Count	Charge	Verdict	District Court's Order
1	Racketeering	Guilty	Vacated / re-trial ordered
2	Conspiracy to commit racketeering	Guilty	Vacated / re-trial ordered
3	Trafficking methamphetamine on May 1, 2012	Deadlocked	Retrial ordered
4	Conspiracy to commit trafficking methamphetamine on May 1, 2012	Deadlocked	Retrial ordered
5	Trafficking methamphetamine on March 18, 2012	Not Guilty	Judgment of acquittal entered
6	Conspiracy to commit trafficking methamphetamine on March 18, 2012	Not Guilty	Judgment of acquittal entered
7	Trafficking methamphetamine on April 8, 2012	Not Guilty	Judgment of acquittal entered
8	Conspiracy to commit trafficking methamphetamine on April 8, 2012	Guilty	Judgment and sentence entered

of the racketeering charges and appeals her conviction for conspiracy to commit drug trafficking for sufficiency of the evidence. Additional facts are discussed as needed in our analysis. Table 1 summarizes the present posture of the charges.

THE RACKETEERING CONVICTIONS

{5} We first address whether this Court has jurisdiction to review the denial of Defendant's motion for acquittal or dismissal in the absence of a final order. Concluding we do, we then lay out general principles of double jeopardy and racketeering. We next hold that the district court correctly determined that both racketeering convictions should be set aside for instructional error. The issue then is whether Defendant can, consistent with her right to be free from double jeopardy, be subject to retrial on these charges. We hold that she can. Finally, although the parties request us to opine

about the scope of retrial, we decline to do so.

I. The Court Has Jurisdiction to Review the District Court's Order Denying Defendant's Motion for Acquittal or Dismissal

{6} The State argues that Defendant's appeal should be summarily dismissed "for want of a final order" or, if the appeal is construed as an interlocutory appeal, because it is untimely. The district court's order, however, implicates Defendant's constitutional right to avoid double jeopardy—indeed, Defendant's "right not to be subjected to a second trial for the same offense could not be remedied once the second trial has taken place." *State v. Apodaca*, 1997-NMCA-051, ¶ 16, 123 N.M. 372, 940 P.2d 478. This Court, therefore, has jurisdiction to immediately review the district court's denial of Defendant's motion for acquittal or dismissal of the racketeering charges. *See id.* ¶¶ 15-17 (holding that "a

defendant has a constitutional right to appeal from an order denying a motion to dismiss a charge on the ground that trial of the charge would subject the defendant to double jeopardy" and that this Court has jurisdiction to hear such an appeal); *see also State v. McClaugherty*, 2007-NMCA-041, ¶ 27, 141 N.M. 468, 157 P.3d 33 ("The denial of the motion [to bar reprosecution] below is all that is required by *Apodaca* to confer jurisdiction on this Court to hear an immediate direct appeal.").

II. Double Jeopardy

{7} The Constitutions of the United States and New Mexico guarantee that no person shall be "twice put in jeopardy" for the same offense.² U.S. Const. amend. V; N.M. Const. art. II, § 15. "The Double Jeopardy Clause operates to protect an individual from repeated attempts by the state, 'with all its resources and power,' to secure a conviction, with the consequent anxiety, embarrassment, and undue expense to a

² Neither party argues that there is any difference in the application of the state and federal constitutional provisions to this case. We, therefore, do not distinguish between them in our analysis. *See State v. Ben*, 2015-NMCA-118, ¶ 7, 362 P.3d 180.

defendant that results from retrial.” *Ben*, 2015-NMCA-118, ¶ 7 (quoting *Cty. of Los Alamos v. Tapia*, 1990-NMSC-038, ¶ 16, 109 N.M. 736, 790 P.2d 1017). “In common parlance, the state, upon failing to convict a defendant after a full and fair opportunity to do so is barred from a second bite of the apple.” *Id.* (internal quotation marks and citation omitted). Retrial is not barred, however, when a conviction has been set aside for reasons other than insufficiency of the evidence. *State v. Lizzol*, 2007-NMSC-024, ¶ 14, 141 N.M. 705, 160 P.3d 886 (holding that “when a defendant’s conviction is vacated on appeal because of trial error, e.g., . . . incorrect instructions, . . . as opposed to insufficiency of the evidence, the defendant may be retried” (internal quotation marks and citation omitted)). We “review[] claims involving alleged violations of a defendant’s right to be free from double jeopardy de novo.” *State v. Loza*, 2018-NMSC-034, ¶ 4, 426 P.3d 034.

III. The Racketeering Act

{8} New Mexico’s Racketeering Act (the Racketeering Act), NMSA 1978, §§ 30-42-1 to -6 (1980, as amended through 2015), provides, in relevant part:

C. It is unlawful for a person employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise’s affairs by engaging in a pattern of racketeering activity. . . .

D. It is unlawful for a person to conspire to violate the provisions of Subsection[] . . . C of this section.

Section 30-42-4. The Racketeering Act is based on the Racketeering Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. §§ 1961-1968 (2012), the federal statute criminalizing racketeering. *Loza*, 2018-NMSC-034, ¶ 12. “[A]ccordingly we look to federal cases interpreting RICO for guidance in interpreting our [Racketeering] Act.” *Id.*; see also *State v. Rael*, 1999-NMCA-068, ¶ 11, 127 N.M. 347, 981 P.2d 280 (finding “federal decisions interpreting RICO . . . instructive”).

{9} In this case, Defendant was charged under Section 30-42-4(C), requiring, among other things, a “pattern of racketeering.” The Racketeering Act defines a “pattern of racketeering” as “engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in [the Racketeering Act,]” provided that the incidents occurred within a certain time frame not at issue here. Section 30-42-3(D). “Racketeering,” in turn, is defined as “any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of” twenty-five offenses, including trafficking in controlled substances. Section 30-42-3(A). Thus, to establish a “pattern of racketeering,” the state must prove “two incidents of racketeering,” often referred to as “predicate offenses” or “predicate acts.” Section 30-42-3(D); cf. *State v. Clifford*, 1994-NMSC-048, ¶ 19, 117 N.M. 508, 873 P.2d 254 (“To be convicted under Section 30-42-4(A), [the d]efendants must have committed at least two punishable offenses that constitute racketeering.” (citing § 30-42-3(D))); *State v. Crews*, 1989-NMCA-088, ¶ 47, 110 N.M. 723, 799 P.2d 592 (discussing the elements of racketeering). At issue in this case is whether the jury was instructed correctly on all the elements of the racketeering charges, and whether sufficient predicates exist to permit retrial.

IV. The District Court Did Not Err in Vacating the Racketeering Convictions for Instructional Error

{10} “When the defendant has been found guilty, the court on motion of the defendant, or on its own motion, may grant a new trial if required in the interest of justice.” Rule 5-614(A) NMRA.

When reviewing a [district] court’s grant of a new trial, the appellate court must follow a two-step approach. First, this court must determine whether the grant of a new trial is based upon legal error. Second, this court must determine whether the error is substantial enough to warrant the exercise of the [district] court’s discretion.

State v. Danek, 1993-NMCA-062, ¶ 20, 117 N.M. 471, 872 P.2d 889 (citations omitted), *aff’d as modified*, 1994-NMSC-071, 118 N.M. 8, 878 P.2d 326. “The [district] court’s decision will only be reversed upon a showing of clear and manifest abuse of discretion.” *Id.*

{11} For the reasons set forth below, the district court did not abuse its discretion in vacating the racketeering convictions because the jury instructions for those counts were erroneous.³ See, e.g., *State v. Parish*, 1994-NMSC-073, ¶ 4, 118 N.M. 39, 878 P.2d 988 (“Reversible error arises if . . . a reasonable juror would have been confused or misdirected.”); see also *State v. Montoya*, 2013-NMSC-020, ¶ 14, 306 P.3d 426 (“In applying the fundamental error analysis to deficient jury instructions, we are required to reverse when the misinstruction leaves us with no way of knowing whether the conviction was or was not based on the lack of the essential element.” (internal quotation marks and citation omitted)).

{12} **Racketeering.** As to racketeering, the jury was instructed as follows:

For you to find [D]efendant guilty of racketeering (conduct or participate) as charged in Count 1, the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. There is an existence of an enterprise.
2. [D]efendant was associated with the enterprise.
3. [D]efendant participated in the conduct of the affairs of the enterprise through a pattern of racketeering activity through the commission of two or more crimes.
4. [D]efendant engaged in at least two incidents of racketeering with the intent to commit a prohibited activity. . . .
5. [D]efendant was not acting under duress.
6. This happened in New Mexico

³ In vacating the racketeering convictions, the district court seems to have relied on inconsistent or irreconcilable verdicts as one basis for its decision. On appeal, Defendant does not rely on this as a basis for setting aside the racketeering convictions, or for acquittal or dismissal of the racketeering counts. Neither do we. See *State v. Leyba*, 1969-NMCA-030, ¶ 37, 80 N.M. 190, 453 P.2d 211 (holding that an acquittal that is “irreconcilable” with a conviction “does not require the conviction to be set aside as a matter of law”); see also *United States v. Powell*, 469 U.S. 57, 64 (1984) (“[W]here truly inconsistent verdicts have been reached, the most that can be said is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions[.]” (alteration, omission, internal quotation marks, and citation omitted)); *State v. Gallegos*, 2007-NMSC-007, ¶ 26, 141 N.M. 185, 152 P.3d 828 (“[W]e will affirm the [district] court’s decision if it was right for any reason so long as it is not unfair to the appellant for us to do so.”).

New Mexico Civil Legal Service Providers Resource Guide

The New Mexico Civil Legal Services (CLS) Providers help low-income New Mexicans address basic human needs such as health, safety, housing, education, child custody, and financial stability.

GENERAL

New Mexico Legal Aid

New Mexico Legal Aid helps low-income families secure and maintain public benefits, affordable housing, safety for domestic violence victims and their children and protection from consumer fraud. Services include a statewide access intake, legal helpline, advice, brief services, legal representation, referrals, outreach, education, training, and pro se clinics.

Service Area: Statewide
Tel.: 833-LGL-HELP
Website: newmexicolegalaid.org

CHILDREN & YOUTH

Pegasus Legal Services for Children

Services to vulnerable children and youth including health, education, homelessness, guardianship, and teen parenting.

Service Area: Statewide
Tel.: 505-244-1101
Website: pegasuslaw.org

SENIORS

Senior Citizen's Law Office

Civil legal services for Central New Mexico seniors including direct representation, systemic advocacy, and outreach, education and training. Focus areas include public benefits; health care coverage and access; housing; consumer rights; long term care; and advance directives.

Service Area: Bernalillo, Torrance, Sandoval & Valencia
Tel.: 505-265-2300
Website: sclonm.org

WOMEN & GIRLS

Southwest Women's Law Center

Supports women and girls in New Mexico through legislative advocacy, pro bono engagement, legal research and reporting and coalition building.

Service Area: Statewide
Tel.: 505-244-0502
Website: swwomenslaw.org

DISABILITIES

Disability Rights New Mexico

Individual advocacy for persons with disabilities to resolve disability rights problems; advocacy and training to promote, protect and expand the rights of persons with disabilities.

Service Area: Statewide
Tel.: 800-432-4682
Website: drnm.org

HOMEOWNERS

United South Broadway Corp.

Fair Lending Center

Direct legal representation and educational workshops for homeowners at risk of losing their homes to foreclosure. Consumer education and advocacy on fair housing and fair lending issues.

Service Area: Statewide
Tel.: 505-764-8867
Website: unitedsouthbroadway.org

IMMIGRANTS

Catholic Charities

Center for Immigration and Citizenship Legal Assistance

Low cost immigration legal services, including family-based petitions, DACA, and citizenship.

Service Area: Albuquerque and Santa Fe metro
Tel.: 505-724-4600
Website: ccasfnm.org

VAWA Immigration Project

Free representation for immigrant victims of domestic violence, sexual assault, and child sexual abuse.

Service Area: Statewide
Tel.: 505-724-4649.
Website: ccasfnm.org

NM Immigrant Law Center

Legal assistance to asylum seekers, unaccompanied minors, and low-income immigrants facing separation due to deportation.

Service Area: Statewide
Tel.: 505-247-1023
Website: nmilc.org

VICTIMS OF DOMESTIC VIOLENCE

Enlace Comunitario

Civil legal services to survivors of domestic violence in Central NM, including direct legal representation for domestic matters; divorce, custody and child support; and DV civil Orders of Protection. Enlace also provides Pro Se legal advocacy and assistance. Enlace targets individuals experiencing domestic violence in the Latino immigrant community, and anyone in need of legal advocacy in domestic matters and related domestic violence.

Service Area: Albuquerque metro
Tel.: 505-243-8972
Website: enlacenm.org

NATIVE AMERICANS WITH DISABILITIES

Native American Disability Law Center

Provides individual and systemic legal advocacy to address the unique legal needs of Native Americans with disabilities; also provides training and assistance to address policy issues and expand the understanding of the legal rights of Native Americans with disabilities.

Service Area: Four corners area
Tel.: 800-862-7271
Website: natedisabilitylaw.org

NATIVE AMERICANS

DNA People's Legal Services

Civil legal services to low-income residents of Arizona, Utah, and New Mexico, including the Navajo Nation and six other Native American nations.

Service Area: Northwest New Mexico including: San Juan County, the Jicarilla Apache Nation, portions of the Navajo Nation that are in New Mexico including the non-contiguous Navajo communities of Ramah, Alamo, and To-hajiilee
Tel.: 505-325-8886
Website: dnalegalservices.org

POLICY & SYSTEMIC CHANGE

New Mexico Center on Law & Poverty

Provides legal and policy advocacy to address poverty through systems-wide change that promotes the health, education, and economic well-being of New Mexico's families. NMCLP offers representation on systemic issues including: education, healthcare, public benefits, workers' rights, fair lending, and access to justice.

Service Area: Statewide
Tel.: 505-255-2840
Website: nmpovertylaw.org

New Mexico Civil Legal Services Commission

The CLS Providers receive funding from the New Mexico Civil Legal Services Fund. The CLS Fund is managed by the New Mexico Civil Legal Services Commission which disburses funds from the New Mexico Civil Legal Services Fund to non-profit agencies who offer a "full range of free legal services to low-income persons living in New Mexico." The NM Civil Legal Services Commission is guided by the State Plan of the New Mexico Supreme Court's Commission on Access to Justice.

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The words “Dedicated to the Administration of Equal Justice Under Law” are prominently displayed in the courtroom at the New Mexico Supreme Court. It regularly reminds me that our judicial system must be accessible to everyone.

In this special insert you will learn about the laudable work of the Supreme Court’s Commission on Access to Justice, how you can help support and promote access to justice and the legal services and resources available in our community. Please take a moment to read further and contemplate how you can lend your skills, energy and time to making justice for all a reality; because everybody deserves a chance.

In service,
C. Shannon Bacon
Associate Justice
New Mexico Supreme Court

The New Mexico
Commission on
Access to Justice

The New Mexico Commission on Access to Justice

THE COMMISSION

The New Mexico Supreme Court created the Commission on Access to Justice (the Commission) in 2004 to expand civil legal help for New Mexicans living in poverty. Made up of judges, attorneys, court staff, civil legal services providers, and other community members, the Commission's goal is to ensure that every New Mexican has access to effective assistance for basic legal needs such as safety, child custody and support, housing, relief from consumer debt, and government benefits.

The Goal: Ensure access to effective assistance for basic legal needs for all New Mexicans

ADVANCES IN CREATING ACCESS TO JUSTICE FOR ALL NEW MEXICANS

Since its creation, the Commission has achieved a series of groundbreaking advances: mandatory pro bono reporting, the establishment of pro bono committees in each of the thirteen judicial districts, creation of the position of Statewide Pro Bono Coordinator, and establishment of the Volunteer Attorney Pool in the Second Judicial District. As a consequence of these steps, volunteer service by attorneys around the state has increased dramatically.

Volunteerism by New Mexican Attorneys has increased dramatically

LEGAL ASSISTANCE BEYOND LAWYERS

Recognizing that a goal of providing legal assistance in the form of a lawyer for every legal problem is unrealistic, the Commission has looked for other ways to expand access such as legal clinics and enhanced courthouse self-help centers. The Commission has also successfully advocated for the adoption of rules that permit unbundled legal representation and limited licensure for attorneys in good standing in other states that work for a New Mexico legal aid organization.

The Commission is expanding access to justice through legal clinics, self-help centers, and new rules

STRATEGIC PLANNING FOR CIVIL LEGAL SERVICES IN NEW MEXICO

Currently, the Commission is developing a strategic plan based on a model created by the National Center for State Courts (NCSC). The NCSC model sets out 16 components of an effective civil legal services system; it contemplates improved access for middle as well as low-income people; it calls for including all community members, legal and non-legal, in the effort to increase access to justice; and insists that efforts consider the user's point of view (and the ecosystem through which they address their needs) in order to foster the integration of resources and efforts.

The Commission will present its draft strategic plan at its June 14, 2019 meeting.

The New Mexico Commission on Access to Justice will have regular updates in the Bar Bulletin to increase awareness about innovative ways to increase access to justice for low and middle-income individuals.

MAKING COURTS MORE ACCESSIBLE

New Mexico is making significant progress in increasing access to courts and the justice system through technology, especially to self-represented litigants. However, there are a number of ways courts could use existing technology to continue to increase access and resources.

Using Technology to Increase Access to Justice¹
Courts should be providing the same type of customer service that court customers are used to in their everyday lives—but not all courts are currently living up to those expectations.

Customers are used to—and demand—services that are available to them through the internet.

In today's courts, self-represented parties are most in need of many of these technological improvements. Unlike lawyers, most self-represented litigants are one-time court users. Their experience in court is bewildering, intimidating, and frustrating because they do not understand the language used, the rules applied, or the process followed in the court.

18 Ways Courts Can Use Technology to Improve the Experience of Self-Represented Litigants
New Mexico has already begun to use some of these technology-based solutions.

- 1 Make sure customers can obtain information and court services using smartphones by making court websites mobile device friendly
 - 2 Allow customers to present photos, videos, and other information from smartphones in the courtroom
 - 3 Allow customers to appear in court by telephone or video conference
 - 4 Allow parties to schedule hearings at their convenience using scheduling software
 - 5 Allow parties to pay fees, fines, and other financial obligations online
 - 6 Use Wayfinding to help customers find their way through the courthouse using an app on their smartphone
 - 7 Make sure customers can obtain information and forms remotely
- New Mexico has Supreme Court-approved forms available online as well as a self-help guide.**

- 8 Simplify the process of form completion
Self-represented litigants in New Mexico can use Guide & File, a free online service to prepare and populate court documents for divorce, domestic violence orders of protection, and free process in plain language.
The forms available through Guide & File will eventually include most Supreme Court-approved forms. (<https://www.nmcourts.gov/guide-file.aspx>)
- 9 Enable self-represented litigants to file electronically
- 10 Create orders or judgments at the end of a hearing or trial
- 11 Create a website where people can enter information about their potential legal problems to get information and referrals for legal services
New Mexico Legal Aid is developing this type of statewide website.
- 12 Enable online dispute resolution
The New Mexico judiciary is piloting online dispute resolution in the Second, Sixth, and Ninth Judicial Districts in debt and money due cases.
- 13 Enable automated text messaging from the court to customers
Bernalillo County Metropolitan Court and the Second Judicial District use text messages in some case types to remind customers of their court dates.
- 14 Use text messaging to guide customers through their cases by providing information about procedural steps
- 15 Use technology to simplify the service of process
- 16 Eliminate notarization requirements for court filings
New Mexico allows non-notarized filings for most case filings pursuant to Rule 1-1011.
- 17 Maintain a list of each customer's personal needs including any need for an interpreter or disability accommodations
- 18 Allow courts to choose the pieces of their case management systems that best meet the need of the individual court and its customers

ALL for Civil
RISE Justice

¹Adapted from John Greacen, "Eighteen Ways Courts Should Use Technology to Better Serve their Customers," Institute for the Advancement of the American Legal System, 2018.

on or between the 1st day of November, 2007 and the 15th day of May, 2012.

A subsequent instruction set out the Racketeering Act's definition of "racketeering," i.e., "any act that is chargeable or indictable under the laws of New Mexico . . . involving any of" the following offenses: (1) murder, (2) robbery, (3) kidnapping, (4) forgery, (5) larceny, (6) fraud, (7) embezzlement, (8) receiving stolen property, (9) bribery, (10) gambling, (11) illegal kickbacks, (12) extortion, (13) trafficking in controlled substances, (14) arson and aggravated arson, (15) promoting prostitution, (16) criminal solicitation, (17) fraudulent securities practices, (18) loan sharking, (19) distribution of controlled substances or controlled substance analogues, (20) a violation of the provisions of Section 4 of the Money Laundering Act, (21) unlawful taking of a vehicle or motor vehicle, (22) embezzlement of a vehicle or motor vehicle, (23) fraudulently obtaining a vehicle or motor vehicle, (24) receiving or transferring stolen vehicles or motor vehicles, and (25) altering or changing the serial number, engine number, decal or other numbers or marks of a vehicle or motor vehicle. See § 30-42-3(A).

{13} The parties agree that this instruction was flawed because it failed to define the elements of each predicate offense that must be proved at trial, and that the error warranted vacating Defendant's conviction for racketeering (Count 1). We agree. New Mexico law is clear that "[t]he court must instruct the jury upon all questions of law essential for a conviction of any crime submitted to the jury." Rule 5-608 NMRA; see *Clifford*, 1994-NMSC-048, ¶ 12 (holding that a failure to instruct on an essential element may rise to fundamental error). As already provided, to convict a defendant of racketeering under Section 30-42-4(C), the jury must find that the defendant committed at least two predicate acts. See *Clifford*, 1994-NMSC-048, ¶ 19. To do so, it is necessary that the jury is instructed on the essential elements of the alleged predicate acts upon which racketeering is based. See *State v. Sloan*, No. S-1-SC-34858, dec. ¶ 6 (N.M. Sup. Ct. June 23, 2016) (nonprecedential) (holding "that the failure to instruct the jury on the essential elements of the predicate felony . . . amounts to fundamental

error requiring the reversal of [the] defendant's felony murder conviction and remand for a new trial on that charge"); see also UJI 14-2810 NMRA (requiring the jury to be instructed on the essential elements of the felony alleged to be the purpose of a conspiracy); cf. *United States v. Carrillo*, 229 F.3d 177, 184 (2d Cir. 2000) ("[C]onfusion and unfairness can arise from failure to charge the elements of the state law crimes constituting racketeering acts").

{14} Here, although the jury was given an instruction that listed twenty-five different predicate offenses, the jury was instructed on the essential elements of only two possible predicate offenses—trafficking in controlled substances and conspiracy to traffic in controlled substances.⁴ Because the instructions permitted the jury to convict Defendant for racketeering based on predicate offenses for which the jury had no elements, the instructions were erroneous. As such, Defendant's conviction for racketeering (Count 1) was properly vacated. See *Montoya*, 2013-NMSC-020, ¶ 14; *Parish*, 1994-NMSC-073, ¶ 4; see also *United States v. Latorre-Cacho*, 874 F.3d 299, 313 (1st Cir. 2017) (vacating a racketeering conviction where the jury was improperly instructed on the predicate offenses); *State v. Adkins*, 737 N.E.2d 1021, 1033-34 (Ohio Ct. App. 2000) (holding that "this is a case where the predicate offenses as submitted to the jury were *legally* flawed and thus, inadequate to support the conviction in this case under [Ohio's racketeering statute] as a matter of law").

{15} **Conspiracy to Commit Racketeering.** On appeal, the State argues that Defendant's conviction for conspiracy to commit racketeering should be reinstated because the district court incorrectly determined that the jury instruction was erroneous. We decline to do so. First, the State agreed to vacatur of Defendant's conspiracy to racketeer conviction partially on the ground that the instruction—which the State specifically requested—was erroneous. Generally, this Court "will not allow the State to invite error and then to complain of it." *State v. Dominguez*, 2008-NMCA-029, ¶ 13, 143 N.M. 549, 178 P.3d 834. Second, in addition to the error identified with the substantive racketeering instruction, we conclude that the conspiracy to racketeer instruction is flawed on other grounds.

{16} As to the conspiracy to commit racketeering instruction, the jury was instructed as follows:

For you to find [D]efendant guilty of conspiracy to commit racketeering (conduct or participate) as charged in Count 2, the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. [D]efendant and another person by words or acts agreed together to commit racketeering;
2. [D]efendant and the other person intended to commit racketeering;
3. [D]efendant was not acting under duress[;]
4. This happened in New Mexico on or between the 1st day of November, 2007 and the 15th day of May, 2012.

This instruction tracks the uniform jury instruction for conspiracy, inserting "racketeering" as the named felony that was the subject of the conspiracy. See UJI 14-2810. Although the intention of the conspiracy to commit racketeering instruction may have been to incorporate all the elements from the racketeering instruction pertaining to Count 1, it did not accomplish this. {17} Instead, the jury instruction refers to "racketeering" alone. Although "racketeering" is a separate criminal offense (as charged in Count 1), it also is a *defined term* meaning any act involving any of twenty-five predicate offenses. It is not clear from the instruction in Count 2 whether "racketeering" refers to the separate criminal offense or to the defined term. If it is the latter, the instruction for Count 2 (conspiracy to commit racketeering) requires only that Defendant and another agreed to and intended to commit any one of the twenty-five predicate acts. This leads to the possibility that, for example, if the jury determined that Defendant committed one count of conspiracy to commit drug trafficking, the jury also could have convicted Defendant for conspiracy to commit racketeering on this basis *alone*. This is impermissible. The instruction omitted, among other things, any elements pertaining to an enterprise or a pattern of racketeering. Cf. *State v. Hughes*, 1988-NMCA-108, ¶ 39,

⁴ Defendant disputes whether conspiracy to commit drug trafficking may be a valid predicate offense. We address this argument in depth in Section V below.

108 N.M. 143, 767 P.2d 382 (comparing requirements for trafficking conspiracy and racketeering conspiracy). And indeed the State acknowledges that the instruction for conspiracy to commit racketeering must contain such elements. Because the conspiracy to commit racketeering instruction permitted the jury to convict Defendant on the mere agreement to commit a single predicate act, Defendant's conviction for the same cannot stand. See *Montoya*, 2013-NMSC-020, ¶ 14; *Parish*, 1994-NMSC-073, ¶ 4.

{18} Defendant argues on appeal that to maintain a conviction for conspiracy to racketeer, the State must prove she committed two predicate acts, making no distinction between racketeering and conspiracy to racketeer. The State disagrees and, quoting *United States v. Nguyen*, argues instead that it need only prove that Defendant “either agree[d] to commit two predicate [racketeering] acts or agree[d] to participate in the conduct of the enterprise with the knowledge and intent that other members of the conspiracy would commit at least two predicate acts in furtherance of the enterprise.” 255 F.3d 1335, 1341 (11th Cir. 2001). Because of the likelihood that Defendant on retrial will raise the same argument about the conspiracy to racketeer instruction she raises on appeal and because this issue is well-developed, we address this purely legal argument here.

{19} To the extent Defendant relies on *Hughes*, 1988-NMCA-108, for the proposition that the State must prove that she committed two predicate acts in order to convict her of conspiracy to racketeer, we conclude that *Hughes* does not so hold. The issue before the Court in *Hughes* was whether convictions for conspiracy to racketeer and conspiracy to traffic merged such that multiple sentences were barred. 1988-NMCA-108, ¶ 37. The statement on which Defendant relies— “[c]onspiracy to traffic by manufacturing can be proved by demonstrating one instance of manufacturing, while conspiracy to racketeer

requires a showing of an enterprise and at least two predicate offenses”—was made in the context of comparing the elements of those two crimes. *Id.* ¶ 39. This Court, however, did not address whether a defendant must commit the predicate acts to be convicted of conspiracy to racketeer. See *id.* Hence, Defendant's reliance on *Hughes* is unavailing and does not establish the level of proof required for conspiracy to racketeer. See *Sangre de Cristo Dev. Corp. 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.”).

{20} We accordingly look to federal case law on point. See *Loza*, 2018-NMSC-034, ¶ 12; *Rael*, 1999-NMCA-068, ¶ 11. Both our Racketeering Act and RICO, the federal racketeering act, have substantially identical statutory requirements for conspiracy to commit racketeering. Compare § 30-42-4(D) (“It is unlawful for a person to conspire to violate the provisions of Subsections A through C of this section.”), with 18 U.S.C. § 1962(d) (“It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.”). The United States Supreme Court in *Salinas v. United States*, 522 U.S. 52 (1997), soundly rejected the idea that a defendant must have committed or agreed to commit two predicate acts to support a racketeering conspiracy conviction. *Id.* 64-66. Instead, *Salinas* held that a conviction for conspiracy to commit racketeering was supported where, even though the defendant “did not [commit or agree to commit the acts of racketeering], there was ample evidence . . . that [another member of the conspiracy] committed at least two acts of racketeering activity . . . and that [the defendant] knew about and agreed to facilitate the scheme.” *Id.* at 66.

{21} In rejecting the defendant's argument that he could only be convicted of conspiracy to commit racketeering if he committed the predicate acts, the Supreme

Court relied on general principles of conspiracy that “[t]he partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other.” *Id.* at 63-64. We share these same principles in our conspiracy jurisprudence. See *State v. Armijo*, 1995-NMCA-115, ¶ 5, 120 N.M. 702, 905 P.2d 740 (“As a general rule, one who participates in a criminal venture is treated by the law as if he or she had committed all of the criminal acts of the other participants. . . . A conspirator is ordinarily responsible for the criminal acts of coconspirators in furtherance of the conspiracy.”); cf. *State v. Gallegos*, 2011-NMSC-027, ¶ 45, 149 N.M. 704, 254 P.3d 655 (noting that “a conspiracy is complete when the agreement is reached” and “New Mexico does not require proof of an overt act” (alteration, internal quotation marks, and citations omitted)). We presume, as did the Supreme Court in *Salinas*, that our Legislature “intended to use the term [conspire] in its conventional sense,” and that, contrary to Defendant's assertion, our Legislature did not intend to require the State to prove that a defendant committed or agreed to commit the predicate acts herself to sustain a conviction for conspiracy to commit racketeering. 522 U.S. at 64; see also *Citation Bingo, Ltd. v. Otten*, 1996-NMSC-003, ¶ 21, 121 N.M. 205, 910 P.2d 281 (“[W]e presume that the legislature was aware of existing statutory and common law and did not intend to enact a law inconsistent with existing law.”).

{22} We find *Salinas* persuasive and adopt its holding here. We, however, do not endeavor to set out the essential elements required for a jury instruction on conspiracy to commit racketeering. The potential nuances of such an instruction are simply not before us in this appeal.⁵

V. The District Court Did Not Err in Ordering Retrial on the Racketeering Counts

{23} Having determined that the instructions for both racketeering and conspiracy

⁵In addition to the new uniform jury instructions on conspiracy effective at the end of this year (UJIs 14-2810, 14-2810A, 14-2810B, and 14-6019B NMRA, <http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx>), the substantial federal authority pertaining to the essential elements of conspiracy to commit racketeering may provide guidance to the district court and parties when crafting a jury instruction to fit the evidence on retrial. For reference, we provide citation to pattern jury instructions adopted by several federal circuit courts. See, e.g., 2B Fed. Jury Prac. & Instr. § 56:11 (6th ed.) (setting out pattern jury instructions on conspiracy to commit racketeering through a pattern of racketeering, and including model criminal jury instruction from the United States Court of Appeals for the Eighth Circuit); Mod. Crim. Jury Instr. 3rd Cir. 6.18.1962D (2018) (Third Circuit pattern instruction); Fed. Crim. Jury Instr. 7th Cir. 1962(d)[1] (2012 ed.) (Seventh Circuit pattern instruction); Pattern Crim. Jury Instr. 11th Cir. OI 075.2 (2016) (Eleventh Circuit pattern instruction). It should be noted that the federal circuits diverge, and in some cases conflict, on various elements required for conspiracy to commit racketeering. Our citation to these instructions in no way endorses the approach taken by any one of these circuits.

to commit racketeering were erroneous, and that the district court did not abuse its discretion in vacating Defendant's racketeering convictions, we next examine whether retrial is appropriate. Generally, when a conviction is vacated for trial error, including incorrect instructions, the defendant may be retried. *Lizzol*, 2007-NMSC-024, ¶ 14; *Clifford*, 1994-NMSC-048, ¶ 12 (reversing a conviction where the jury instructions omitted an essential element and remanding for a new trial on that count). If a conviction is vacated on insufficiency of evidence grounds, however, double jeopardy principles will bar retrial. *Lizzol*, 2007-NMSC-024, ¶¶ 13, 14. {24} Defendant maintains that only the trafficking counts, not the conspiracy to commit trafficking counts, can serve as predicate offenses. Because she was acquitted of two of the three trafficking charges, Defendant thereby maintains that only one possible predicate offense remains for retrial—and, thus, the State can never prove that she committed two predicate acts without her being retried for conduct on which she was acquitted. Viewed this way, Defendant asserts that the evidence is insufficient to support her racketeering convictions and the district court erred by denying her motion for acquittal or dismissal.⁶

{25} The fundamental premise underlying Defendant's argument is that the conspiracy to commit trafficking charges cannot serve as predicate acts. The State argues otherwise, although it admits that at trial it "operated from the false premise that a conspiracy to commit one of the [twenty-five] enumerated offenses . . . cannot serve as a predicate racketeering act." Without citation to any authority, Defendant argues that the errors of the first trial do not permit the State to rely on conspiracy to commit trafficking as a predicate for racketeering. We need not consider this unsupported argument. See *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.3d 1329. Regardless, our Supreme Court has recognized that a retrial is a new trial, and, for example, the district court on retrial is under no obligation to give the same jury instructions that were

given at the first trial. See *State v. Torrez*, 2013-NMSC-034, ¶¶ 33-34, 305 P.3d 944 (rejecting argument that same instruction must be given on retrial because state failed to object to it at first trial); cf. *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 41, 125 N.M. 721, 965 P.2d 305 ("The application of the law-of-the-case doctrine, however, is discretionary and flexible; it will not be used to uphold a clearly incorrect decision."); *State v. Jimenez*, 2007-NMCA-005, ¶ 22, 141 N.M. 106, 151 P.3d 67 ("[T]he [s]tate has already gotten a conviction, and so allowing the [s]tate to retry the case would not mean giving the [s]tate an opportunity to correct its past mistakes that led to an acquittal, which is one outcome that double jeopardy is designed to prevent").

{26} Defendant further submits that "the district court did not allow the State to base their racketeering allegations on other conspiracies." Defendant, however, provides no citation to the record showing that the district court made such a ruling or operated under such a premise, and we will not comb the record to find such support. See *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 ("We will not search the record for facts, arguments, and rulings in order to support generalized arguments."). Moreover, the district court's order denying Defendant's motion for acquittal or dismissal demonstrates that the district court appears to have determined that conspiracy to commit drug trafficking could be a predicate act. Even if the district court did not so determine, we may affirm the district court's decision on this basis. See *Gallegos*, 2007-NMSC-007, ¶ 26 ("[W]e will affirm the [district] court's decision if it was right for any reason so long as it is not unfair to the appellant for us to do so").

{27} Our appellate courts have not examined whether conspiracy to commit a racketeering act can serve a predicate offense under our Racketeering Act, so we again turn to federal case law. See *Loza*, 2018-NMSC-034, ¶ 12; *Rael*, 1999-NMCA-068, ¶ 11. Federal courts construing language in the RICO statute providing that "rack-

eteering" is "any act . . . involving" certain listed offenses consistently have held that "[t]his language is certainly broad enough on its face to include conspiracies involving [those listed crimes]." *United States v. Weisman*, 624 F.2d 1118, 1123-24 (2d Cir. 1980) (holding that conspiracies to commit securities and bankruptcy fraud and drug related offenses can serve as predicates to a RICO charge), *abrogated in part on other grounds as recognized in Ianniello v. United States*, 10 F.3d 59 (2d Cir. 1993); see also, e.g., *United States v. Darden*, 70 F.3d 1507, 1524-25 (8th Cir. 1995) (narcotics conspiracy constitutes a RICO predicate); *United States v. Licavoli*, 725 F.2d 1040, 1045 (6th Cir. 1984) (conspiracy to commit murder constitutes a RICO predicate); *United States v. Phillips*, 664 F.2d 971, 1015 (5th Cir. 1981) ("Conspiracy may properly be alleged as a predicate act of racketeering under RICO[.]"). {28} The Racketeering Act's definition of "racketeering" employs the same broad language as the RICO statute. Section 30-42-3(A) provides that "racketeering" means any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses[.]" including "trafficking in controlled substances." (Emphasis added.) Just as the federal RICO statute, the plain language of our Racketeering Act is broad and expansive enough to include conspiracies as acts of racketeering. See *Weisman*, 624 F.2d at 1124 (holding that substantially identical language is "certainly broad enough on its face to include conspiracies"). Thus, consistent with the construction of RICO by federal courts, we conclude that conspiracy to commit trafficking in controlled substances may serve as a predicate offense for racketeering.

{29} In this case, the jury acquitted Defendant of three of the possible predicate offenses (two trafficking and one conspiracy to traffic), convicted her on one (conspiracy to traffic), and deadlocked on the remaining two (one trafficking and one conspiracy to traffic). The fact that the jury

⁶As discussed above, the State need not prove that Defendant committed two predicate acts to be convicted of conspiracy to racketeer. Given this holding, we need only examine Defendant's arguments that insufficient predicate acts exist to permit retrial in the context of the racketeering charge, not the conspiracy to commit racketeering charge. Defendant has advanced no argument specific to the sufficiency of the evidence for the conspiracy to racketeer charge and we, therefore, do not address it. See *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not . . . guess at what a party's arguments might be." (alteration, internal quotation marks, and citation omitted)). There being instructional error on the conspiracy to commit racketeering charge and no corresponding insufficiency of evidence, retrial of Count 2 is not barred by double jeopardy. See *Lizzol*, 2007-NMSC-024, ¶¶ 13, 14.

deadlocked on two of the possible predicates results in a mistrial, not an acquittal, of the racketeering charges. *See United States v. Gotti*, 451 F.3d 133, 137 (2d Cir. 2006) (“Assuming the other elements of the RICO charge were proved to the jury’s satisfaction, lack of unanimity as to two predicate acts results in a hung jury and a mistrial, not a judgment of acquittal.”); *cf. United States v. Vastola*, 899 F.2d 211, 222 (3d Cir. 1990) (reversing the district court’s grant of acquittal to the defendant where the jury “found [the defendant] guilty of only one of the four predicate racketeering acts” and either deadlocked or acquitted on the remaining three predicate acts, but then convicted him for racketeering), *vacated on other grounds by Vastola v. United States*, 497 U.S. 1001 (1990). The district court, therefore, correctly denied Defendant’s motion for acquittal or dismissal and ordered retrial of the racketeering charges.

IV. The Court Will Not Address Arguments Pertaining To the Scope of Retrial

{30} The remaining arguments pertaining to the racketeering charges advanced by the parties relate to the scope of the retrial and not whether retrial should happen at all. These issues, however, are outside our review of the district court’s order and should be addressed by the district court in the first instance. *See Apodaca*, 1997-NMCA-051, ¶ 16 (limiting the constitutional right to appeal a non-final order when “interests [are] of the greatest importance,” such as “a defendant’s right not to be subjected to a second trial for the same offense[, a violation of which] could not be remedied once the second trial has taken place”); *see also United States v. Wittig*, 575 F.3d 1085, 1096 (10th Cir. 2009) (declining to address the defendant’s collateral estoppel arguments and stating that the court’s “jurisdiction [under the collateral order doctrine] extends only to vindicate the right not to be tried at all, not the right to be tried in a particular way”).

{31} For instance, the parties dispute whether the State on retrial can rely on uncharged conduct as proof of predicate offenses for the racketeering charges. Defendant invokes the compulsory joinder rule, Rule 5-203(A) NMRA, and the law-of-the-case doctrine in support of

her argument that the State cannot rely on any uncharged predicates. The State, in turn, requests carte blanche permission to rely on any and all uncharged predicates, without even naming the offenses it intends to rely on at retrial. But the parties did not present these arguments to the district court and the district court did not decide this issue below. *See Graham v. Cocherell*, 1987-NMCA-013, ¶ 16, 105 N.M. 401, 733 P.2d 370 (“As an appellate court, we are . . . limited to a review of the questions that have been presented to and ruled on by the [district] court”). Moreover, the parties argue in the abstract before us. Without knowing, among other things, what predicate acts the State may attempt to rely on and whether Defendant had adequate notice of such predicates, our resolution of these matters require us to predict what might happen on retrial and to issue an advisory opinion based on that speculation. *See State v. Zamora*, 2005-NMCA-039, ¶ 28, 137 N.M. 301, 110 P.3d 517 (stating that “[t]he remaining issues raised by [the d]efendant may or may not arise on the retrial” and declining to consider them because “[a]ppellate courts do not give advisory opinions.” (internal quotation marks and citation omitted)). This we will not do.

{32} For the foregoing reasons, we decline to address the parties’ remaining arguments pertaining to the scope of retrial.

THE CONSPIRACY TO COMMIT DRUG TRAFFICKING CONVICTION

{33} Defendant additionally appeals from her judgment and sentence on conspiracy to commit trafficking methamphetamine (Count 8) for sufficiency of the evidence. We first address whether this Court has jurisdiction to review Defendant’s conviction on Count 8. Concluding we do, we determine that Defendant’s conviction is supported by substantial evidence.

I. This Court Has Jurisdiction to Review Defendant’s Conviction for Conspiracy to Commit Trafficking

{34} The State contends that Defendant’s appeal from her judgment and sentence should be dismissed “for want of a final order.” The State argues that even though the district court entered a judgment and sentence on Count 8, the judgment did not dispose of all issues of law and fact

to the fullest extent possible and, thus, is non-final.

{35} In criminal cases, “an appeal may be taken by the defendant to the supreme court or court of appeals . . . within thirty days from the entry of any final judgment[.]” NMSA 1978, § 39-3-3(A) (1972). “[T]he judgment is final for the purpose of appeal when it terminates the litigation on the merits and leaves nothing to be done but enforcement. A sentence must be *imposed* to complete the steps of the prosecution.” *State v. Durant*, 2000-NMCA-066, ¶ 5, 129 N.M. 345, 7 P.3d 495 (alterations, internal quotation marks, and citation omitted). Generally, a “judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the [district] court to the fullest extent possible”—termed the “last act” requirement of the finality rule. *Id.* ¶ 7 (internal quotation marks and citation omitted). We have, however, recognized exceptions to the “last act” requirement. Under the “sufficiently aggrieved” exception, our Court recognized that an appeal may be taken “when the consequences of the order that is not the last contemplated order in the case are sufficiently severe that the aggrieved party should be granted a right to appeal to alleviate hardship that would otherwise accrue if the appeal were delayed.” *Id.* ¶ 8.

{36} In this case, the district court sentenced Defendant in May 2015 to a four-year term of incarceration, followed by a mandatory two-year term of parole, and immediately remanded Defendant to the New Mexico Department of Corrections. Given that Defendant has been convicted of a felony and incarcerated, there are immediate and definite consequences—both direct and collateral. *See id.* ¶¶ 9, 10. Defendant is “sufficiently aggrieved” to permit her immediate appeal from the judgment and sentence on Count 8.⁷ Further, given Defendant already availed herself of the right to immediately appeal the district court’s denial of her motion for acquittal on double jeopardy grounds, the usual countervailing arguments against piecemeal appeals simply are not at play in this case. *See State v. Candy L.*, 2003-NMCA-109, ¶ 6, 134 N.M. 213, 215,

⁷A number of jurisdictions regard a conviction and entry of a judgment and sentence on less than all counts of a multicount indictment as final and appealable notwithstanding that a retrial remains on other counts, treating the remaining counts as severed from the convicted counts. *See, e.g., United States v. King*, 257 F.3d 1013, 1020 (9th Cir. 2001); *United States v. Abrams*, 137 F.3d 704, 709 (2d Cir. 1998); *State v. McCave*, 805 N.W.2d 290, 304 (Neb. 2011).

75 P.3d 429, 431 (noting policy disfavoring piecemeal appeals). Accordingly, we conclude that the judgment and sentence entered on Count 8 is sufficiently final to be appealable, and we proceed to address Defendant's sufficiency of the evidence argument.

II. Sufficient Evidence Supports Defendant's Conviction for Conspiracy to Commit Drug Trafficking

{37} "In reviewing the sufficiency of evidence used to support a conviction, we resolve all disputed facts in favor of the State, indulge all reasonable inferences in support of the verdict, and disregard all evidence and inferences to the contrary." *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. "Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant's version of the facts." *Id.* "The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (alteration, internal quotation marks, and citation omitted).

{38} In determining whether substantial evidence exists, we review the evidence against the instructions submitted to the jury. *State v. Caldwell*, 2008-NMCA-049, ¶ 29, 143 N.M. 792, 182 P.3d 175. Defendant was convicted of conspiracy to commit trafficking methamphetamine, contrary to NMSA 1978, Sections 30-31-20 (2006) and 30-28-2 (1979). To support Defendant's conviction, the State was required to prove beyond a reasonable doubt each of the following elements:

1. [D]efendant and another person by words or acts agreed together to commit trafficking methamphetamine by possession with intent to distribute;
2. [D]efendant and the other person intended to commit trafficking methamphetamine by possession with intent to distribute;
3. [D]efendant was not acting under duress[;]
4. This happened in New Mexico on or about the 8th day of April, 2012.

UJI 14-2810 (conspiracy). As required by the conspiracy instruction, the essential elements of trafficking methamphetamine by possession with intent to distribute (UJI

14-3104 NMRA) also were given. UJI 14-2810 use note 1. As to duress, the jury was instructed that "[i]f [D]efendant feared immediate great bodily harm to herself or another person if she did not commit the crime(s), and if a reasonable person would have acted in the same way under the circumstances, you must find [D]efendant not guilty." See UJI 14-5130 NMRA.

{39} The AZ Boys, the methamphetamine trafficking organization Defendant was alleged to be associated with, was run by Defendant's boyfriend, Robert (Bob) Chavez, and his brother Joe Chavez. The State's primary witness was Sonya Sanders, who had been Defendant's friend and later became an informant. Sanders' testimony was as follows: In February 2012, Defendant asked Sanders if she wanted to travel to Arizona "to make some money." Defendant explained to Sanders that Bob Chavez, Joe Chavez, and Defendant needed a driver because the previous driver "had gotten busted" for possession of methamphetamine. Sanders agreed and indicated that she knew that "driving" for Defendant meant transporting drugs.

{40} Sanders made a total of three trips with Defendant and Bob Chavez to Phoenix, Arizona and back to Alamogordo, New Mexico, which were the bases for the drug trafficking charges in the indictment. On the first trip in March 2012, Sanders traveled with Defendant and Bob Chavez to a house in Phoenix. Sanders made the return trip to Alamogordo in a rental truck, while Bob Chavez and Defendant drove back in another vehicle. Sanders did not perform well on the first drive back from Arizona. While driving, Sanders observed Bob Chavez hitting Defendant; Sanders believed Bob Chavez was taking out his anger about her driving on Defendant. Both Defendant and Joe Chavez gave Defendant advice on how to drive better in the future. Joe Chavez and Defendant paid Sanders in cash and methamphetamine for the first trip.

{41} After the first trip, Defendant and Bob Chavez arranged to buy a truck for Sanders, "to go back and forth to Arizona with them." About ten days later, Sanders received a call from Defendant who instructed Sanders that "we're gonna leave in a couple hours, get ready." They stayed in Phoenix for several days. Despite Bob Chavez's displeasure, Defendant ensured that they left back to Alamogordo in time for Sanders to spend Easter (April 8, 2012) with her children. As they prepared for the return trip, Sanders observed Defendant

and Bob Chavez make preparations with a tire on a tarp, and at one point, Defendant handed Sanders some methamphetamine to help her stay awake for the return trip. Sanders later observed the tire had been loaded onto her truck. After getting back to Alamogordo, Defendant "was really happy . . . [because] for the first time in a long time," they had someone who was "able to drive." Defendant and Bob Chavez compensated Sanders with a combination of methamphetamine and cash.

{42} Sometime after the second trip, Sanders was stopped pursuant to a warrant for selling methamphetamine. Sanders agreed to cooperate with law enforcement to help bring down the AZ Boys. In May 2012, Sanders participated in a third trip to Arizona while cooperating with law enforcement. During this trip, Sanders saw bruising on Defendant and observed Bob Chavez abusing Defendant; at one point, Sanders asked Defendant to leave with her but Defendant would not go. Law enforcement ultimately recovered four pounds of methamphetamine from the spare tire of the truck Sanders had driven back from Arizona on the third trip.

{43} At trial, Defendant testified on her own behalf and raised the defense of duress. Although Defendant claimed not to have knowledge about or involvement in the AZ Boys organization, some of Defendant's testimony corroborated Sanders' testimony. For instance, Defendant testified she had "invited [Sanders] to go to Phoenix" at Bob Chavez's direction, although Defendant claimed not to know why. Defendant spoke with Sanders about making a second trip to Phoenix. Defendant advised Sanders "to be ready," and to try not to make any mistakes. Defendant testified that she had given Sanders methamphetamine when they were in Phoenix on the second trip to help Sanders stay awake for the drive back. Defendant testified that she knew Bob Chavez "was selling drugs," but claimed not to know about the "interstate methamphetamine trafficking organization" until the second trip with Sanders. In reference to the tires that were used in the second and third trips, Defendant added that "any person in their right mind would know what was going on."

{44} Defendant testified to the abusive and controlling nature of her relationship with Bob Chavez and that she feared for her life if she left him. Defendant, however, acknowledged that she and Bob Chavez had previously broken up, and she had re-

ceived family support during the breakup. She also acknowledged that she was able to go to her mother's home, which was close to the local police station, and that she had family members who were retired law enforcement.

{45} The foregoing evidence, when viewed in the light most favorable to the verdict, is sufficient to support the conviction for conspiracy to commit trafficking. There was testimony that the second trip from Phoenix to Alamogordo happened on or about April 8, 2012, meeting the fourth element. There was significant circumstantial evidence that Defendant agreed with one or more individuals to commit trafficking methamphetamine and intended to commit this offense, meeting the first and second elements. See *State v. Montoya*, 2015-NMSC-010, ¶ 53, 345 P.3d 1056 ("Just because the evidence supporting the conviction was circumstantial does not mean it was not substantial evidence."

(internal quotation marks and citation omitted)); *State v. Pacheco*, 2008-NMCA-131, ¶ 46, 145 N.M. 40, 193 P.3d 587 (observing that "conspiracy is rarely susceptible of direct proof and that circumstantial evidence is sufficient to support a conspiracy conviction"); *State v. Donaldson*, 1983-NMCA-064, ¶ 25, 100 N.M. 111, 666 P.2d 1258 (stating that "possession of a large quantity of a controlled substance, inconsistent with personal use, is sufficient proof of trafficking"). Defendant's contention on appeal that she merely submitted or acquiesced to the conduct of others simply is not borne out when viewing the evidence in the light most favorable to the verdict. Further, the jury heard testimony that Defendant exerted some influence over Bob Chavez during the second trip and had options available to her other than committing the offense. As such, a rational jury could have determined beyond a reasonable doubt that Defendant did not act

under duress. Therefore, the evidence was sufficient to establish beyond a reasonable doubt that Defendant committed each element of conspiracy to commit trafficking methamphetamine (Count 8).

Conclusion

{46} We affirm the district court's order vacating the racketeering convictions, denying Defendant's motion for acquittal or dismissal, and permitting retrial of the racketeering counts. Having determined that substantial evidence supports Defendant's conviction for conspiracy to commit drug trafficking, we also affirm Defendant's conviction for the same.

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

JENNIFER L. ATTREP, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge
DANIEL J. GALLEGOS, Judge

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-014

No. A-1-CA-35908 (filed December 5, 2018)

WILFREDO ESPINOZA,
Plaintiff-Appellant,
v.
CITY OF ALBUQUERQUE,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

VALERIE HULING, District Judge

THOMAS J. MESCALL, II
PHILLIP PATRICK BACA
MESCALL LAW FIRM, P.C.
Albuquerque, New Mexico
for Appellant

JESSICA M. HERNANDEZ,
City Attorney
JEFFREY B. DRIGGERS,
Assistant City Attorney
ANDREW S. COON,
Assistant City Attorney
Albuquerque, New Mexico
for Appellee

BRAD CATES
C. BRAD LANE-CATES, ATTORNEY
Fairacres, New Mexico
ROBERT FROMMER
INSTITUTE FOR JUSTICE
Arlington, Virginia
for Amici Curiae Arlene Harjo

Opinion

STEPHEN G. FRENCH, Judge

{1} This case requires us to resolve whether the New Mexico Forfeiture Act (NMFA), NMSA 1978, §§ 31-27-1 to -11 (2002, as amended through 2015), preempts the City of Albuquerque's (the City) civil forfeiture ordinance, Albuquerque, N.M., Rev. Ordinances ch. 7, art. VI, §§ 7-6-1 to -7 (1992, as amended through 2014) (the Ordinance). Concluding that it does, we reverse the district court's judgment and order denying Wilfredo Espinoza's (Plaintiff) verified petition for writ of mandamus, and dismissing his complaint for declaratory and injunctive relief.

BACKGROUND

{2} In 2016 the City seized Plaintiff's vehicle pursuant to the Ordinance, which provides that a motor vehicle "is hereby declared to be a nuisance and subject to immediate seizure and forfeiture" if the

vehicle is "[o]perated by a person in the commission of a DWI offense" or "by a person whose license is suspended or revoked" as a result of a DWI conviction or arrest. Albuquerque, N.M., Rev. Ordinance § 7-6-2. Plaintiff sued the City seeking (1) a declaration that the Ordinance is in "violation of the [NMFA]," (2) a permanent injunction prohibiting the City from enforcing the Ordinance, and (3) an order requiring the City to return Plaintiff's vehicle to him. The City answered and stated, among other things, that the NMFA does not apply to the Ordinance, after which Plaintiff filed a verified petition for writ of mandamus and prohibition and motion for judgment on the pleadings. After briefing and a hearing on the matter, the district court entered a final judgment and order finding that the NMFA "does not preempt or limit in any way the City of Albuquerque's ordinance[.]" The court dismissed Plaintiff's complaint and denied the petition. This appeal followed.

DISCUSSION

{3} The sole issue presented by this appeal is whether the NMFA preempts the Ordinance. Whether a municipal ordinance enacted by a home-rule municipality is preempted by state law "requires us to construe together a constitutional amendment, the statutes, and an ordinance, which involves a question of law reviewed de novo." *Prot. & Advocacy Sys. v. City of Albuquerque*, 2008-NMCA-149, ¶ 43, 145 N.M. 156, 195 P.3d 1. "Interpretation of constitutional clauses begins with the language of the text[.]" as does our construction of statutes. *New Mexicans for Free Enterprise (NMFE) v. City of Santa Fe*, 2006-NMCA-007, ¶ 11, 138 N.M. 785, 126 P.3d 1149. We begin with the language of the statute, "resorting to other sources when necessary, and ultimately seeking to determine and give effect to the intent of the [L]egislature." *Id.*

The New Mexico Forfeiture Act

{4} The New Mexico Legislature enacted the NMFA in 2002 and substantially revised it in 2015. Of particular importance are the amendments made to Section 31-27-2, enumerating the purposes of the NMFA. Prior to 2015, the stated purposes of the NMFA were to "(1) make uniform the standards and procedures for the seizure and forfeiture of property subject to forfeiture[.], and (2) protect the constitutional rights of persons accused of a crime and of innocent persons holding interests in property subject to forfeiture." Section 31-27-2(A) (2002). The Legislature expounded upon the NMFA's purposes in the 2015 amendments. In addition to the existing two purposes, the NMFA is intended to "(3) deter criminal activity by reducing its economic incentives; (4) increase the pecuniary loss from criminal activity; (5) protect against the wrongful forfeiture of property; and (6) ensure that only *criminal* forfeiture is allowed in [New Mexico]." Section 31-27-1(A)(3-6).

{5} To that end, the NMFA is a criminal forfeiture proceeding that allows property to be forfeited by a law enforcement officer when a person is arrested for and convicted of a criminal offense, and the state establishes by clear and convincing evidence that the property is subject to forfeiture because it was acquired through the commission of the criminal offense, or it was an instrumentality that the person used in the commission of the criminal offense. *See* § 31-27-4(A), (B).

{6} The state may seize property prior to a person's conviction for a criminal offense only under certain circumstances.

Section 31-27-4(D), (E). The court can issue a preliminary order to seize property after determining that there is a “substantial probability” that (1) the state will be able to prove the property is subject to forfeiture; (2) the property will be destroyed, removed from the state, or otherwise made unavailable if the court does not enter the order permitting seizure; and (3) the need to preserve the property through the order outweighs the hardship to the owner and those known to claim an interest in the property. Section 31-27-4(D). Property may be seized without the preliminary order only if (1) the seizure is incident to a lawful arrest for a crime, or a search conducted pursuant to a search warrant and the arresting officer has probable cause to believe both that property is subject to forfeiture and that the arrested or search person is an owner of the property; (2) the seized property is the subject of a judgment in favor of the state; or (3) the officer has probable cause to believe both that the property is subject to forfeiture and that the delay caused by obtaining a preliminary order would result in the removal or destruction of the property. Section 31-27-4(E).

{7} The NMFA requires that “[w]ithin thirty days of making a seizure of property or simultaneously upon filing a related criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or return the property to the person from whom it was seized.” Section 31-27-5(A). Those that claim an interest in the property must then answer the complaint, Section 31-27-6(A), and following the trial for the criminal offense, a forfeiture proceeding may begin. Section 31-27-6(C). During the proceeding, the state has the burden of proving, by clear and convincing evidence, that (1) the person whose property is alleged to be subject to forfeiture is an owner of the property; (2) the criminal prosecution of the owner of the property resulted in a conviction; and (3) the value of the property to be forfeited does not reasonably exceed the monetary gain derived from the crime, the monetary loss caused by the crime, or the value of the convicted owner’s interest in the property. Section 31-27-6(F),(G).

{8} If the state meets its burden, the court enters a judgment of forfeiture. Section 31-27-6(G). After the closing of the forfeiture proceeding, “the person whose property was forfeited may petition the court to determine whether the forfeiture was unconstitutionally excessive,” and “grossly

disproportional to the seriousness of the criminal offense for which the person was convicted[.]” requiring the court to consider a host of factors, including the seriousness of the crime and its impact on the community, and the sentence imposed for the commission of the crime. Section 31-26-6 (K), (L), (M).

{9} Finally, the NMFA describes the processes whereby the state acquires title to the forfeited property, as well as the sale of the forfeited property, and the disposition of the proceeds from the sale of the forfeited property, which is to be distributed into the state’s general fund. Section 31-27-7.

The City’s Forfeiture Ordinance

{10} The Ordinance permits the City to subject motor vehicles to “immediate seizure and forfeiture” if they are:

(A) Operated by a person in the commission of a DWI offense . . . and has, on at least one prior occasion, been arrested, summonsed or convicted for (i) an offense of driving under the influence of an intoxicating liquor or drugs in any jurisdiction, or (ii) homicide by vehicle or great bodily harm by vehicle . . . while under the influence of intoxicating liquor or while under the influence of any drug and/or[;]

(B) Operated by a person whose license is suspended or revoked as a result of conviction for driving while intoxicated or suspended or revoked as a result of a driving while intoxicated arrest.

Albuquerque, N.M., Rev. Ordinance § 7-6-2. The Ordinance allows for seizure by court order, or without such order if the seizure is incident to an arrest of the driver for driving while intoxicated or driving while his or her license is suspended or revoked as a result of an arrest for driving while intoxicated. Albuquerque, N.M., Rev. Ordinance § 7-6-5(A), (B).

{11} Once seized, the arresting officer serves a “Notice of Forfeiture” to the person from whom the vehicle was seized. Albuquerque, N.M., Rev. Ordinance § 7-6-5(D). The owner may then request a hearing in front of a city hearing officer—that is “informal and not bound by the technical rules of evidence”—to determine whether the officer had probable cause to seize the vehicle. Albuquerque, N.M., Rev. Ordinance § 7-6-5(D)(8). If so, “proceed-

ings for an order for forfeiture shall be instituted promptly. *Id.* Once the property is forfeited, the police department sells the vehicle and uses the proceeds to “carry out the purpose and intent” of the Ordinance. Albuquerque, N.M., Rev. Ordinance § 7-6-5(E).

{12} Finally, the Ordinance provides an “innocent owner defense,” which allows any owner or co-owner of the property an opportunity to demonstrate by a preponderance of the evidence that he or she “could not have reasonably anticipated that the vehicle could be used in a manner constituting” a nuisance. Albuquerque, N.M., Rev. Ordinance § 7-6-7(A) (internal quotation marks omitted). If the owner makes this prima facie showing, “the burden is upon the city to prove by a preponderance of the evidence that the owner could have reasonably anticipated that the vehicle could be used in the manner constituting the nuisance.” *Id.*

Preemption

{13} Plaintiff argues that several provisions of the Ordinance are inconsistent with the NMFA, and the NMFA thereby preempts the Ordinance. The City relies upon Section 31-27-2(B)(1) of the NMFA and argues that the Ordinance does not conflict with the NMFA because “the Legislature allowed municipalities the decision to opt-in to the [NMFA.]” Section 31-27-2(B)(1) states: “The [NMFA] applies to seizures, forfeitures and dispositions of property subject to forfeiture pursuant to laws that specifically apply the [NMFA.]” Based upon this statutory language, and the lack of language in the Ordinance expressly providing that the NMFA applies to the Ordinance, the City maintains that the NMFA cannot preempt the Ordinance. Indeed, the City maintains that the “other provisions of the [NMFA], are irrelevant since the [NMFA] does not apply to the Ordinance.”

{14} We agree with Plaintiff, and therefore we begin with the law of preemption in New Mexico. We then explain why the City’s argument is incorrect. “A municipality . . . may exercise all legislative powers and perform all functions not expressly denied by general law or charter.” N.M. Const. art. X, § 6(D). The City “no longer has to look to the [L]egislature for a grant of power to act, but only looks to legislative enactments to see if any express limitations have been placed on their power to act.” NMFE, 2006-NMCA-007, ¶ 15 (internal quotation marks and citation omitted); see *Titus v. City of Albuquerque*, 2011-

NMCA-038, ¶ 15, 149 N.M. 556, 252 P.3d 780 (defining “Albuquerque is a home[-] rule charter municipality”). An enactment by the Legislature preempts a municipality’s ordinance if it “expressly denies municipalities the authority to legislate similar matters[.]” *Casuse v. City of Gallup*, 1987-NMSC-112, ¶ 3, 106 N.M. 571, 746 P.2d 1103. Determination of express denials of a home-rule municipality’s power or authority involves a two-step process. “In the first step, a court asks whether a state law is a general law,” and “[i]n the second step, we ask whether state law expressly denies the City’s power to enact the [o]rdinance in question.” *Prot. & Advocacy Sys.*, 2008-NMCA-149, ¶¶ 46-47 (internal quotation marks and citation omitted).

The NMFA Is a General Law

{15} A general law is “one that [a]ffects the community at large, as opposed to a local law that deals with a particular locality.” *Casuse*, 1987-NMSC-112, ¶ 3. A general law “applies generally throughout the state, relates to a matter of statewide concern, and impacts inhabitants across the entire state.” *Smith v. City of Santa Fe*, 2006-NMCA-048, ¶ 9, 139 N.M. 410, 133 P.3d 866; see *Apodaca v. Wilson*, 1974-NMSC-071, ¶ 16, 86 N.M. 516, 525 P.2d 876 (emphasizing that in order “to control or limit municipal enactments, the general law must be of general concern to the people of the state”).

{16} An example of a general law is a statute governing utility rate-making, which is a matter of statewide rather than local concern “because a proposed service rate for one municipality can affect rates to other municipalities in the state.” *City of Albuquerque v. N.M. Pub. Serv. Comm’n (Public Service Commission)*, 1993-NMSC-021, ¶ 25, 115 N.M. 521, 854 P.2d 348. The Minimum Wage Act is also a general law because “an hourly minimum wage is of obvious concern to workers across the state and it applies to all workers in the state.” *NMFE*, 2006-NMCA-007, ¶ 18. In contrast, state provisions setting the allowable number of municipal commissioners is not a matter of general concern because the number of commissioners a municipality has “is predominately, if not entirely, of interest to the citizens of the” municipality for which the commissioners serve. *State ex rel. Haynes v. Bonem*, 1992-NMSC-062, ¶ 21, 114 N.M. 627, 845 P.2d 150. Similarly, a statute regulating government employees’ First Amendment activities is not a matter of general concern because it touches upon the regulation

of only *municipal* employees’ activities in order to further the efficiency of governmental operations. *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 52, 358 P.3d 249 (emphasis added).

{17} Like the statutes at issue in *Public Service Commission* and *NMFE*, the NMFA applies to and thereby affects all New Mexicans. See § 31-27-2(A)(6) (explaining that the NMFA is intended to ensure that “only criminal forfeiture is allowed in this state,” i.e. *statewide*). The Legislature intended that the extinguishment of civil forfeiture and the existence of specific procedures for only criminal forfeiture proceedings apply across the state. See § 31-27-2(A)(1) (explaining that one purpose of the NMFA is to “*make uniform* the standards and procedures for the seizure and forfeiture of property” (emphasis added)). Both its protective and punitive aspects are intended to apply to all persons in New Mexico. See Section 31-27-2(B)(1) (making the NMFA applicable to all “seizures, forfeitures, and dispositions of property subject to forfeiture”); § 31-27-2(A)(2) (recognizing that the NMFA is intended to protect the rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture, not only to target and thereby deter the conduct of those engaged in criminal activity). We, therefore, conclude that the NMFA is a general law because it applies generally throughout the state, relates to a matter of statewide concern, and impacts everyone across the entire state.

The NMFA Expressly Denies Home-Rule Municipalities Authority to Enforce Civil Asset Forfeiture Proceedings

{18} Having concluded that the NMFA is a general law, we next consider whether it “expressly denies” the City the authority to maintain and enforce the Ordinance. *Kane*, 2015-NMSC-027, ¶ 49. While earlier cases construing the phrase “not expressly denied,” N.M. Const. art. X, § 6(D), required the statute to contain “some *express statement* of the authority or power denied[.]” *Apodaca*, 1974-NMSC-071, ¶ 16 (emphasis added), our Supreme Court more recently has rejected the argument that Article X, Section 6(D) “allows a municipality to disregard an express law of the Legislature unless the law specifically states ‘and no municipality may do otherwise.’” *Casuse*, 1987-NMSC-112, ¶ 6. Rather, any general law “that clearly intends to preempt a governmental area should be sufficient without necessarily stating that affected municipalities

must comply and cannot operate to the contrary.” *Id.* “[A] negation of the power *in haec verba* is not necessary; words or expressions which are tantamount or equivalent to such a negation are equally effective.” *Haynes*, 1992-NMSC-062, ¶ 22. Specifically, we are to look to the “explicitly articulated purposes” of the general law, if enumerated, and in light of the purposes of the general law, determine whether the local law would circumvent and thereby frustrate Legislative intent in enacting the statute. *ACLU v. City of Albuquerque*, 1999-NMSC-044, ¶ 13, 128 N.M. 315, 992 P.2d 866; see *City of Albuquerque v. N.M. Pub. Regulation Comm’n*, 2003-NMSC-028, ¶ 7, 134 N.M. 472, 79 P.3d 297 (“Local governments also cannot use . . . their home[-]rule power to frustrate or violate established public policy.”). The question, then, is one of legislative intent. See *NMFE*, 2006-NMCA-007, ¶ 19 (describing the analysis as an inquiry into (1) whether the general law evinces an intent to negate municipal power, (2) whether there is a clear intent to preempt the governmental area from municipal policymaking, and (3) whether municipal authority to act would be “so inconsistent” with the general law that the general law “is the equivalent of an express denial”); see also *Prot. & Advocacy Sys.*, 2008-NMCA-149, ¶ 61 (“When considering preemption, we must, above all, follow our Legislature’s intent[.]”).

{19} We begin by examining the clearest expression of the Legislature’s intent when enacting a statute: the expressly stated purposes of the NMFA. See *Sims v. Sims*, 1996-NMSC-078, ¶ 17, 122 N.M. 618, 930 P.2d 153 (explaining that the plain meaning rule requires a court to give effect to the statute’s language and refrain from further interpretation when the language is clear and unambiguous); see also *ACLU*, 1999-NMSC-044, ¶ 11 (holding that the Children’s Code preempted the City’s curfew ordinance, citing first to and relying heavily upon the Legislature’s stated purpose within the Children’s Code). The Legislature specifically enumerated the purposes of the NMFA. See § 31-27-2(A). Importantly, the Legislature intended to “ensure that *only* criminal forfeiture is allowed in this state.” Section 31-27-2(A)(6) (emphasis added). Additionally, the NMFA is meant to “*make uniform* the standards and procedures for the seizure and forfeiture of property subject to forfeiture.” Section 31-27-2(A)(1) (emphasis added). While the language of the NMFA does not prohibit municipalities from enacting and

enforcing criminal forfeiture proceedings, it restricts forfeiture to criminal proceedings, and imposes specific requirements on any criminal forfeiture proceedings that must comport with the provisions of the NMFA. *See id.* The Ordinance, however, allows the City to accomplish precisely what the Legislature intended the NMFA to eliminate: *civil* forfeiture. *City of Albuquerque ex rel. Albuquerque Police Dep't v. One (1) 1984 White Chevy*, 2002-NMSC-014, ¶¶ 1, 4, 132 N.M. 187, 46 P.3d 94 (describing the ordinance as a civil forfeiture proceeding).

{20} In several specific ways, the procedures of the Ordinance for seizing and forfeiting a person's property are at odds with the procedures set forth in the NMFA. First, the NMFA requires the person to be convicted of the criminal offense to which the property is tied before that property becomes potentially subject to forfeiture. *See* § 31-27-4(A) (providing that a person's property is subject to forfeiture if the person "was arrested for an offense to which forfeiture applies[,] and "the person is convicted by a criminal court of the offense"); § 31-27-5(A) (requiring that the state, within thirty days of seizing the property or filing a related criminal indictment, file a complaint of ancillary forfeiture proceedings or return the property to the person from whom it was seized). The Ordinance, on the other hand, allows for forfeiture of property upon a person's arrest—before conviction—for a criminal offense. *See* Albuquerque, N.M., Rev. Ordinance §§ 7-6-2, -5(B) (providing that a vehicle is subject to "immediate seizure and forfeiture" if "seizure is incident to an arrest of the driver"). Nothing in the Ordinance requires that the person be convicted of DWI or driving on a revoked or suspended license as a result of a DWI before the officer seizes and subjects the vehicle to forfeiture, or that criminal proceedings occur contemporaneous with the City's effort to forfeit the vehicle.

{21} Second, the NMFA carefully sets out the procedure for replevin hearings—initiator proceedings at which an individual who claims an interest in the property seized can seek its return prior to the resolution of the related criminal matter—*see* § 31-27-4.1, whereas the Ordinance specifically states that seized

vehicles "shall not be subject to replevin," but are "deemed to be in the custody of the [p]olice [d]epartment." Albuquerque, N.M., Rev. Ordinance § 7-6-5(C).

{22} Third, the NMFA places the burden on the *state* to prove that the property owner "had actual knowledge that the property was subject to forfeiture" because of its use in the course of criminal activity. Section 31-27-7.1(F)(1). This is in stark contrast to the Ordinance, which places the burden of proof on the *owner of the property* to prove that he or she "could not have reasonably anticipated that the vehicle could be used in a manner constituting" a public nuisance. Albuquerque, N.M., Rev. Ordinance § 7-6-7(A).¹ Beyond that, the NMFA calls for a different burden of proof than the Ordinance. *See* § 31-27-7.1(F)(1) (proving by clear and convincing evidence); Albuquerque, N.M., Rev. Ordinance § 7-6-7(A) (demonstrating preponderance of evidence).

{23} Finally, as another example, the NMFA provides the person whose property is subject to forfeiture an opportunity to contest the conclusion of the proceeding. At the close of a forfeiture proceeding conducted in accordance with the procedures of the NMFA, the person whose property was forfeited may petition the court to determine whether the forfeiture was "unconstitutionally excessive" and "grossly disproportional to the seriousness of the criminal offense for which the person was convicted" in light of several factors, including the impact of the crime on the community and the sentence imposed for the commission of the crime. Section 31-27-6(K), (L), (M). Under the Ordinance, there exists no means for the person to contest the conclusions drawn at the close of the probable cause hearing, nor does the Ordinance provide the presiding official any discretion to consider whether forfeiture is a proportionate response to the factual nuances of the circumstances presented, critically, the seriousness of the crime. Rather, at the close of the "informal" hearing where it is determined that the seizure was supported by probable cause, "proceedings for an order for forfeiture shall be instituted promptly." Albuquerque, N.M., Rev. Ordinance § 7-6-5(D).

{24} The Ordinance and the NMFA are functionally at odds with one another. The

NMFA constrains the circumstances under which a person's property may be subject to permanent forfeiture, for example, by requiring conviction (not merely arrest) prior to the initiation of forfeiture proceedings, by allowing persons to seek replevin, by shifting the burden of proof to the state, by heightening the burden of proof before the court can conclude that the property is subject to forfeiture, and by allowing the person to petition the court to determine whether a finding of forfeiture was unconstitutionally excessive. The Ordinance, however, simply—and far more strictly—deems the property associated with the named conduct forfeitable without further consideration. *See* Albuquerque, N.M., Rev. Ordinance § 7-6-2 (providing that a motor vehicle operated under the described circumstances "is hereby declared to be a nuisance and subject to immediate seizure and forfeiture"). Such a *per se* approach to seizing and forfeiting property owned by individuals is wholly contrary to the language and spirit of the NMFA. Thus, because the Legislature intended to eliminate civil forfeiture and the Ordinance allows for it, and because the procedures set forth in the Ordinance are different from and contrary to the procedures outlined in the NMFA, we conclude that the Ordinance is so inconsistent with the terms of the NMFA that the NMFA is the equivalent of an express denial of the City's authority to enforce the Ordinance.

{25} We find further support for our analysis of the NMFA's purposes and provisions in our case law. In *ACLU*, 1999-NMSC-044, ¶¶ 13,15, for example, the Delinquency Act was found to have "comprehensively" and "exhaustively" addressed the conduct and behavior of children that could be described as criminal, thus a local ordinance providing criminal penalties for curfew violations conflicted with and was preempted by the state law. By contrast, *NMFE*, 2006-NMCA-007, ¶ 20, held that the Minimum Wage Act did not preempt a city ordinance setting the minimum wage higher than that in the statute because "unlike the situation in *ACLU*, [the] state law does not establish any type of comprehensive wage-setting program or scheme and the Minimum Wage Act does not exhaustively address the subject of minimum wages."

¹ The provision of the Ordinance requiring owners of seized property to prove their innocence was recently found to be an unconstitutional procedural due process violation. *See Harjo v. City of Albuquerque*, 307 F. Supp. 3d 1163, 1210 (D.N.M. 2018), *modified on reconsideration* by 326 F. Supp. 3d 1145 (D.N.M. 2018)

{26} Like the general law at issue in *ACLU*, the NMFA comprehensively addresses asset forfeiture by expressly limiting the circumstances under which such proceedings may occur—namely, only in the criminal context—and by detailing each step of the seizure and forfeiture process. It sets forth specific procedures for each step of the process, including (1) when an order to seize potentially forfeitable property may be issued, Section 31-27-4; (2) what documentation of receipt of property the property owner must receive following seizure, Section 31-27-4.1(A); (3) under what circumstances a party may move the court to issue a writ of replevin and what responsive pleadings are permitted, Section 31-27-4.1(B),(C); (4) the timing and form of the complaint for the state to initiate a permanent forfeiture of property, as well as the requirements for service of process, Section 31-27-5; (5) the mechanisms available for persons who claim an interest in seized and forfeited property and the rules of procedure and burdens of proof to be applied in the forfeiture proceeding along with the option to appeal the district court's decision following the proceeding, Section 31-27-6; and (6) the disposition of forfeited property and depositing of proceeds from the sale of forfeited property into the state's general fund, Section 31-27-7. As in *ACLU*, we conclude that the Legislature, through these extensive, detailed, and comprehensive provisions has “exhaustively address[ed]” the existence and manner of enacting and enforcing asset forfeiture proceedings. *ACLU*, 1999-NMSC-049, ¶ 15.

The NMFA Does Not Operate as an “Opt-In” Statute as the City Argues

{27} Finally, we address the City's argument. The City relies upon Section 31-27-2(B)(1) of the NMFA and argues that the Ordinance does not conflict with and therefore cannot be preempted by the NMFA because “the Legislature allowed municipalities the decision to opt-in to the [NMFA].” Section 31-27-2(B)(1) states: The NMFA “applies to seizures, forfeitures and dispositions of property subject to forfeiture pursuant to laws that specifically apply the [NMFA.]” Because the Ordinance does not contain language expressly providing that the NMFA applies, the City maintains that the NMFA cannot preempt the Ordinance.

{28} We disagree, based first upon the fact that the City's interpretation of Section

31-27-2(B)(1) subverts the NMFA's clearly stated purpose, that is, to ensure that only criminal forfeiture exists in New Mexico. Under the City's interpretation, a municipality wishing to enact a civil forfeiture law could entirely avoid the NMFA and the stated rationale that underpins it, along with all of its requirements concerning forfeiture proceedings by simply not mentioning the NMFA in a given ordinance and in so doing, allow non-criminal asset forfeiture—such as that embodied by the City's Ordinance—to continue from municipality to municipality.

{29} Second, whether the NMFA only applies to statutes “that specifically apply the [NMFA],” as the City interprets Section 31-27-2(B)(1), is an issue separate and distinct from preemption. We view the related language to mean that the Legislature may, in another statute, provide that the NMFA applies to the statute in order to incorporate its procedures and penalties into the substance of the statute. See, e.g., NMSA 1978, § 60-7A-5(C) (2002) (penalizing the unlawful manufacture or sale of alcoholic beverages or any money “that is the fruit or instrumentality” of such by subjecting it to forfeiture and providing that “the provisions of the [NMFA] apply to the seizure, forfeiture[,] and disposal of such property); NMSA 1978, § 17-2-20.1(A), (C) (2002) (providing that “[t]he provisions of the [NMFA] apply to the seizure, forfeiture and disposal of property” when “used as instrumentalities in the commission of” possessing, taking, or attempting to take big game during closed season). The latter concept—preemption—is an issue that arises any time two governing bodies attempt to regulate the same subject matter. The inferior of the two governing bodies, the local government, cannot exempt itself from the application of the sovereign's laws. See *Casuse* 1987-NMSC-112, ¶ 6 (“It is commonly recognized that a sovereign and its subdivision may tax the same activity without causing an inconsistency in the law. However, when two statutes that are governmental or regulatory in nature conflict, the law of the sovereign controls.”). Where a municipality's ordinance interferes with a general law, the general law, i.e. the law of the sovereign, preempts that of its subdivision, regardless of whether the language of the municipality's ordinance acknowledges the existence of the laws of the sovereign.

{30} Finally, if the City is correct that the statute only applies to cities that include

in their ordinances such similar words as “and the NMFA applies,” courts would be precluded from engaging in a preemption analysis at all for any statute with a provision similar to Section 31-27-2(B)(1). As previously described, the analysis for determining whether a law is a general law requires us to examine the effect of a legislative enactment—whether it affects all of the inhabitants of the state and is therefore of statewide concern, or whether it affects only the inhabitants of the municipality and is therefore of only local concern. *Haynes*, 1992-NMSC-062, ¶ 19. Under the City's view, it is the local government that determines which of the sovereign's laws are general. If true, a municipality could simply assert that the law is not of statewide concern because it does not apply to all municipalities by the very terms of the municipality's own ordinances. Where local governments are able to decide which statutes of the sovereign apply to them based upon the wishes of local officials and the language of a local ordinance, local governments can evade a determination that an otherwise restrictive statute is a general law. We find it quite unlikely that the Legislature would empower an inferior governmental body with the capacity to decide which statutes are general laws and which are not. The City's argument turns the interaction between sovereigns and the subdivisions that exist within them completely on its head. {31} We conclude that the NMFA denies the City's authority to seize and forfeit property under the Ordinance because the enforcement of the Ordinance frustrates, and, in fact, completely contradicts the Legislature's intent in amending the NMFA. Thus, the NMFA preempts the Ordinance in its entirety.

CONCLUSION

{32} We conclude that the NMFA preempts the Ordinance and reverse the judgment and order of the district court.

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

STEPHEN G. FRENCH, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

HENRY M. BOHNHOFF, Judge

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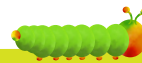
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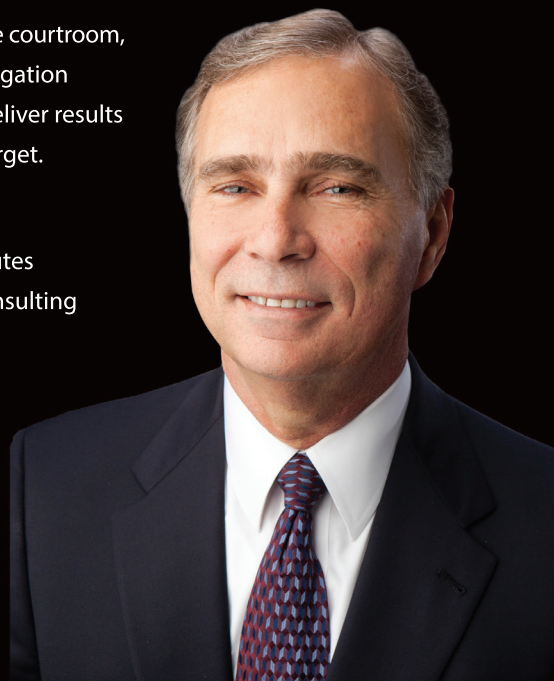
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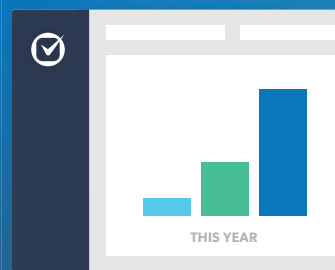
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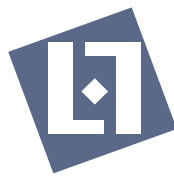


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Guebert Bruckner Gentile P.C. seeks an attorney with up to five years' experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner Gentile P.C.,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

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad and Roswell offices. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to 5thDA@da.state.nm.us.

Associate Attorney

Holt Mynatt Martínez, 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.

Assistant Trial Attorney 1st Judicial District Attorney

The First Judicial District Attorney's Office has an entry level magistrate court attorney position. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us.

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Associate Attorney

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Bilingual Associate Attorney (Uptown Albuquerque)

Rebecca Kitson Law is adding a full time, bilingual associate attorney position. Candidate must have passion and commitment to advocate for immigrants in all areas of relief. We are an inclusive, supportive office culture that welcomes all to apply. Must be fluent in Spanish. Must be willing to travel for Hearings and Interviews, as needed. Law License from any state accepted but New Mexico preferred. Preference will be given to those with 1-2 years of law-related experience. Salary DOE, full benefits and fun perks offered. Please send letter of interest, resume, and writing sample to rk@rkitsonlaw.com. You will only be contacted if you are being considered for the position. Please note that incomplete applications will not be considered.

Associate Attorney

Hatcher Law Group, P.A. seeks an associate attorney with two-plus years of legal experience for our downtown Santa Fe office. We are looking for an individual motivated to excel at the practice of law in a litigation-focused practice. Hatcher Law Group defends individuals, state and local governments and institutional clients in the areas of insurance defense, coverage, workers compensation, employment and civil rights. We offer a great work environment, competitive salary and opportunities for future growth. Send your cover letter, resume and a writing sample via email to juliez@hatcherlawgroupnm.com.

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Investigative Trial Counsel Attorney

The State of New Mexico Judicial Standards Commission is hiring an attorney to serve as Investigative Trial Counsel. Applications are due July 10, 2019. Please see the full advertisement at www.nmjsc.org/contact/career-opportunities/ or <https://nmcourts.gov/Human-Resources/career-opportunities.aspx> for details.

Assistant General Counsel, Attorney III (Position # 18526)

The New Mexico Department of Transportation is recruiting to fill an Attorney III position. The position provides representation of the Department in matters involving public finance, contracts, administrative law, rulemaking, IPRA, and government procurement law. The ideal candidate will handle legal review and analysis of the Department's financial transactions, including grant and bonding matters; draft and review contracts; assist in compliance matters; review and provide analysis on proposed policies, regulations, and legislation; and perform other duties as assigned. The ideal candidate may also be assigned primary responsibility for matters relating to the Department's Transit & Rail, Planning and Traffic Safety Divisions. The ideal candidate must be able to interact with others professionally, attend frequent meetings, make presentations in a variety of contexts, and possess advanced legal-based skills in research, reading and writing. The requirements for the position are a Juris Doctor Law degree from an accredited law school, a current license as a New Mexico attorney in good standing and a minimum of five (5) years of experience practicing law, of which at least three (3) years in areas of contract law and financial transactions is preferred. The position is a Pay Band LH, annual salary range from \$63,851 to \$101,996, depending on qualifications and experience. All state benefits will apply. The position is located in Santa Fe. Overnight travel throughout the state, good standing with the New Mexico State Bar and a valid New Mexico or other state driver's license are required. We offer the selected applicant a pleasant environment, supportive colleagues and dedicated support staff. Working conditions are primarily in an office or courtroom setting with occasional high pressure situations. Interested persons must submit an on-line application through the State Personnel Office website at <http://www.spo.state.nm.us/>, no later than the applicable closing date posted by State Personnel. Additionally, please submit a copy of your resume, transcripts and bar card to Darlene Madrid, Human Resources Division, New Mexico Department of Transportation, Santa Fe, New Mexico 87504. The New Mexico Department of Transportation is an equal opportunity employer.

Associate Attorney

Small law firm in Deming New Mexico is seeking an associate attorney. This position will provide the successful candidate with the opportunity to expand his or her practice and eventually take over the firm. Must have strong research and writing skills. To apply for this opportunity interested and qualified candidates should mail their resume to Turner Law Office, 900 S. Platinum Ave., Deming New Mexico 88030 or email rfturnerlaw@qwestoffice.net

Assistant General Counsel - Attorney III (NMDOT)

The New Mexico Department of Transportation is recruiting to fill an Attorney III position. The position provides representation of the Department in eminent domain and right-of-way related litigation matters in state court, in administrative hearings, and in other practice areas as assigned by the General Counsel. The person filling this position will also provide comprehensive legal advice and counsel to the Department's upper management on right-of-way issues involving utilities, railroads, tribal entities, access control and environmental law. Experience in real estate law, governmental entity defense litigation or representation in complex civil litigation matters is highly desirable. Experience in environmental law and Indian law would be useful. The requirements for the position are a Juris Doctor Law degree from an accredited law school, a current license as a New Mexico attorney in good standing and a minimum of five (5) years of experience practicing law, of which three (3) years must be in litigation. The position is a Pay Band LH, annual salary range from \$63,851 to \$101,996 depending on qualifications and experience. All state benefits will apply. Overnight travel throughout the state, good standing with the New Mexico State Bar and a valid New Mexico driver's license are required. We offer the selected applicant a pleasant environment, supportive colleagues and dedicated support staff. Working conditions: Primarily in an office or courtroom setting with occasional high pressure situations. Interested persons must submit an on-line application through the State Personnel Office website at <http://www.spo.state.nm.us/>, no later than the applicable closing date posted by State Personnel. Additionally, please submit a copy of your resume, transcripts and bar card to Celina Lopez, Human Resources Division, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504. The New Mexico Department of Transportation is an equal opportunity employer.

Two Full-Time Attorneys

Pegasus Legal Services for Children is expanding and seeking two full-time attorneys to represent runaway youth, children and youth in CYFD custody, youth and young parents, care givers in kinship guardianship cases, and perform other areas of youth law. Five years' legal experience and some experience in civil/family law preferred. Demonstrated interest in working on behalf of children and youth preferred. Excellent interpersonal skills, writing skills, attention to detail, ability to work as a team with other staff, and ability to multitask. To apply, submit your resume and cover letter to info@pegasuslaw.org. No phone calls please.

Assistant City Attorney

Assistant City Attorney position available with a main focus on providing legal advice to the City of Albuquerque and its various departments regarding Inspection of Public Records Act ("IPRA") requests, and advising on subpoenas issued to the City, its departments, or employees. Applicant must be admitted to the practice of law in New Mexico, be an active member of the Bar in good standing, and have at least two (2) years of attorney experience in New Mexico. Preferred qualification: knowledge of IPRA, and civil and/or criminal procedure. A successful candidate will have strong communication skills, be able to work within a diverse legal team, and interact daily with other City employees and members of the public. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please submit resume to attention of "IPRA Attorney Application"; c/o Angela M. Aragon; Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or amaragon@cabq.gov. Application deadline is June 26, 2019.

Full-time Associate Attorney in Santa Fe

Cuddy & McCarthy, LLP, a 23 attorney law firm with offices in Santa Fe and Albuquerque, New Mexico, has an immediate opening in our Santa Fe office for a full-time associate attorney. This is a great opportunity to work in our Education Law Department in legal fields that include constitutional, federal and state statutory law, general civil practice, real estate, labor and human resources. Candidates must have 2-3 years of experience preferably in education law. Must be organized, professional, and responsible with great follow-through, possess strong people skills, as well as excellent time management skills. Strong research, writing, and oral communication skills are required. Candidates must be team oriented and committed to serving our clients. Ability to travel throughout New Mexico to client sites required. Salary based upon qualifications and experience. Please send cover letter, resume, law school transcript and a writing sample to: ejaramillo@cuddymccarthy.com. All replies will be kept confidential...we promise.

Associate Litigation Attorney Santa Fe and Albuquerque

The law firm of Murr Siler & Accomazzo, P.C. seeks an associate attorney with 3 - 6+ years of litigation experience for its New Mexico office. Candidates should possess strong research and writing skills, significant courtroom experience, and an interest in one or more of the following practice areas: consumer finance, creditors' rights, mortgage lending and servicing, foreclosure, real estate, title, and bankruptcy law. We offer competitive benefits and salary, including performance-based bonuses. Please submit your résumé to rweiman@msa.legal.

PNM Resources, Inc. Regulatory Attorney II,III,IV Req. ID: 6086480 Albuquerque, NM

PNM Resources has an opening for an Attorney II, III or IV for a regulatory attorney position. Incumbent will handle moderately complex legal matters and regulatory projects. Conduct legal research, draft more significant corporate legal documents and conducts more significant transactions and represents the corporation in moderately complex regulatory proceedings. Involves provisional legal services to the utility in area of regulatory and areas of law that are core to corporate legal needs. Juris doctorate degree from an accredited law school, with a minimum of three years related experience in the actual practice of law. Must be licensed to practice law in New Mexico within one year of the hiring date. To read a full job description and apply, go to www.pnm.com/careers, register, upload a resume and answer all posting questions. Deadline is not later than June 26, 2019. PNM Resources and affiliates are Equal Opportunity/Affirmative Action employers. Women, minorities, disabled individuals and veterans are encouraged to apply.

Litigation Attorney

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

Associate Attorney

Well-established law firm has an immediate opening in their Albuquerque office for a full-time Associate Attorney. This opening is for the Litigation Department, which is focused on Insurance Defense. Candidates must be organized, professional, responsible, thorough, possess strong people skills, as well as excellent time management skills in a fast-paced environment. Additionally, strong research and writing skills are required. Candidates must be well suited as team players and be committed to helping meet our clients' needs. Outstanding benefits package, and salary based upon qualifications and experience. Please send cover letter and resume to: apuckett@hinklelawfirm.com

Assistant Santa Fe County Attorney

Now hiring an Assistant Santa Fe County Attorney - Preferred applicants will have a commitment to public service and a strong background in local government representation, including familiarity with at least some of the following topics: public records inspection and retention; conduct of meetings subject to Open Meetings Act; representation of public bodies; administrative adjudications, appeals, and rulemakings; negotiation and preparation of contracts; real estate transactions; government procurement; zoning, planning, subdivisions, and local land use regulation; public housing; public utilities, roads and other public infrastructure; law enforcement and detention; local taxes and finances; civil litigation and appeals. The forgoing list is not exhaustive, but is intend to convey the nature of our diverse and dynamic practice. Successful applicants must have strong analytic, research, communication and interpersonal skills. Our office is collaborative and fast paced. The salary range is from \$27.0817 to \$40.6221 per hour. Individuals interested in joining our team must apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities.

Senior Assistant City Attorney/Prosecutor

Fulltime regular, exempt position that represents the City in municipal court prosecutions, administrative hearings, and appeals in District Court. Work is performed in a standard office environment. Provides legal assessments and recommendations; conducts factual and legal analysis to determine whether legal issues should be prosecuted or defended based on the facts of law and evidence. Conducts conferences with opposing parties concerning settlement of cases. Juris Doctor Degree AND three year's experience in a civil law practice; at least one year of public law experience preferred. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico, and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. SALARY: \$73,957.99 - \$110,936.99 / Annually OPENING DATE: 05/07/19 CLOSING DATE: Continuous. For detailed information and/or to apply, please visit our website www.las-cruces.org

Senior Trial Attorney Positions Available in the Albuquerque Area

The Thirteenth Judicial District Attorney's Office is seeking Senior Trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us or 505-771-7411 for an application. Apply as soon as possible. These positions will fill up fast!

Court of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is accepting applications for three full-time permanent Associate Staff Attorney or Assistant Staff Attorney positions. These positions may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. The target pay for the Associate Staff Attorney positions is \$70,500, plus generous fringe benefits. The target pay for the Assistant Staff Attorney positions is \$64,000, plus generous fringe benefits. Eligibility for the Associate Staff Attorney positions requires three years of practice or judicial experience plus New Mexico Bar admission. Eligibility for the Assistant Staff Attorney positions requires one year of practice or judicial experience plus New Mexico Bar admission. The Associate Staff Attorney or Assistant Staff Attorney positions require management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required. The work atmosphere is congenial yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Resume Supplemental Form, along with a letter of interest, resume, law school transcript, and writing sample of 5-7 double-spaced pages to Nathan Hale, aocneh@nmcourts.gov, 237 Don Gaspar Ave., Room 25, Santa Fe, New Mexico 87501, no later than 4:00 p.m. on Friday, June 28, 2019. More information is available at www.nmcourts.gov/careers. The New Mexico Judicial Branch is an equal-opportunity employer.

Paralegal

The Santa Fe office of Hinkle Shanor LLP is seeking a litigation paralegal to support its environmental, natural resources and water, electric utility, administrative law, and general civil litigation groups. A minimum of five years' legal experience, college degree, and paralegal certificate are required. Proven experience in large volume case organization and management is necessary. The ideal candidate will have excellent analytical, proofreading, cite-checking, writing and communication skills. Competitive salary and benefits. All inquiries kept confidential. E-mail resume to: gromero@hinklelawfirm.com

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

Paralegal

Rothstein Donatelli LLP is looking for a paralegal in the Santa Fe office with at least five year's experience, preferably in real estate and civil litigation. This person will work primarily in our Indian Law section but will provide support for other practice areas. Excellent benefits. Salary dependent on experience. Send resume to Joseph at jmeserve@rothsteinlaw.com

Legal Assistant/Legal Secretary

Solo practitioner seeking a legal assistant/legal secretary. Practice focuses on personal injury and some family law. Must have a good working knowledge of Word, QuickBooks, Odyssey, Excel, and electronic case filing. Duties: answering telephones, client billing, filing, drafting correspondence, scheduling appointments, drafting pleadings, and e-filing. Required Skills: Teamwork, Communication, Individual Motivation, Time Management, Decision-making, and Leadership. Please fax cover letter and resume to 505-243-1778 or email it to robbyndixonlaw@gmail.com.

Paralegal

Solo practitioner seeking an experienced, professional, full-time paralegal for a litigation practice. Practice is limited to probate litigation, guardianships, and elder law (and some plaintiff's personal injury). Experience with probate and guardianships preferred. The ideal candidate will be professional in dress, appearance, and demeanor; will have an excellent command of the English language; will possess above-average writing skills; and will have experience with Timeslips and e-filing; and can answer discovery and draft pleadings with minimal supervision. Position offers a very pleasant working environment. Salary commensurate with experience. Please send a cover letter along with your resume to ben@benhancocklaw.com.

Full-Time Legal Office Administrator

The City of Albuquerque Legal Department is seeking a full-time Legal Office Administrator to manage and oversee the Legal Department's fiscal and budget operations, outside vendor contracts and grant administration, and provide management of front desk personnel. The Legal Office Administrator is responsible for coordinating assigned activities with other divisions and outside agencies and providing highly responsible and complex administrative support to the City Attorney. A strong financial and budgetary management background is imperative. 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>.

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