

BAR BULLETIN

June 26, 2019 • Volume 58, No. 13



With Tender Majesty, by Sarah Hartshorne (see page 3)

sarahhartshorne.com

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MODRALL SPERLING IS PLEASED TO WELCOME OUR NEW ASSOCIATE.



Bayard Roberts IV

Modrall Sperling is pleased to announce that Bayard Roberts IV has joined our firm as an Associate in our Litigation Department.

A magna cum laude graduate of the University of New Mexico School of Law, Bayard assists on matters involving insurance, torts, commercial liability, professional liability, and natural resource law.

Bayard was nominated for appointment to the United States Naval Academy by both Senator Jeff Bingaman and Congresswoman Heather Wilson. He graduated with a B.S. in Economics in 2010 and was commissioned as a Second Lieutenant in the United States Marines Corps.

Over the next five years, Bayard deployed several times in support of Operation Enduring Freedom, including service at Camp Leatherneck, Afghanistan, where he directed aviation operations in southwest Afghanistan in support of combat, medical, and humanitarian operations.

Prior to joining Modrall Sperling, Bayard served as a judicial law clerk for Justice Gary L. Clingman at the New Mexico Supreme Court.

PROBLEM SOLVING. GAME CHANGING.



MODRALL SPERLING

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Albuquerque

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Meetings

June

- 26**
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference
- 27**
Trial Practice Section Board
Noon, State Bar Center
- 28**
Cannabis Law Section Board
9 a.m., State Bar Center
- 28**
Immigration Law Section Board
Noon, teleconference
- 28**
Intellectual Property Law Section Board
Noon, JALbright Law LLC, Albuquerque

July

- 2**
Health Law Section Board
9 a.m., teleconference
- 3**
Employment and Labor Law Section Board
Noon, State Bar Center
- 3**
Real Property, Trust and Estate Section Board
Noon, State Bar Center
- 9**
Appellate Practice Section Board
Noon, State Bar Center

Workshops and Legal Clinics

July

- 10**
Divorce Options Workshop
6–8 p.m., State Bar Center, Albuquerque, 505-797-6000
- 10**
Legal Workshop for Seniors
Neighborhood Senior Center, Gallup, 10-11:15 a.m., presentation; 11:30 a.m.-1 p.m., POA/AHCD Workshop
- 18**
Legal Workshop for Seniors
Chaves County J.O.Y. Center, Roswell, 10-11:15 a.m., presentation; 11:30 a.m.-1 p.m., POA/AHCD Workshop
- 19**
Legal Workshop for Seniors
Bonnie Dallas Senior Center, Farmington, 10-11:15 a.m., presentation; 11:30 a.m.-1 p.m., POA/AHCD Workshop
- 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: The focus of Sarah Hartshorne's work has been on capturing the unique in the ordinary, the beauty in the mundane. Like the impressionists, she paints in oil from everyday life and the world around her, sharing what often goes unnoticed and exploring the play of light and shadow.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

For a summary of recent Supreme Court rule-making activity, visit www.nmbar.org/notices and select the "Courts" tab.

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 implemented 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.

Professionalism Tip

In all matters: "My Word is My Bond."

Fifth Judicial District Court Notice of Mass Reassignment

Gov. Michelle Lujan Grisham has appointed Thomas E. Lilley to fill the judgeship vacancy in the Fifth Judicial District Court, Chaves County, Division II. Effective June 14 a mass reassignment of cases occurred pursuant to NMSC Rule 1-088.1. Judge Thomas E. Lilley was 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.

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.

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

- 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#.
- July 15, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the

Law Library (Group meets the third Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.

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

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 Alumni/ae Association UNM Law School Santa Fe Area Alumni and Friends Gathering

Join UNM School of Law alumni and friends for a gathering from 5:30–7 p.m., July 19, at the Rio Chama Steakhouse in Santa Fe. There will be food, beer and wine and a silent auction featuring local artists Jesse Blanchard, Elizabeth Henry, Peter Ogilvie, Barbara Shapiro & Kate Joyce. Register at https://forms.unm.edu/forms/santa_fe_gathering. Contact Melissa Lobato at lobato@law.unm.edu for more information.

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 BARS National Association of Patent Practitioners Annual Membership Conference in Seattle

The National Association of Patent Practitioners (NAPP) will be holding their Annual Conference at the University of Washington School of Law in Seattle on July 21–24. This is a great opportunity to gain insight on current issues from IP leaders, including William LaMarca, Prof. Martin Adelman, Robert Stall, Christopher Carani, Marc Scott, Carl Hermanns, Lindsay Calkins, Tom Wong, Priya Cloutier, Louis Hoffman, John Whitaker, and others. On Monday, July 22, NAPP and University of Washington School of Law will hold a joint program on global IP issues, focusing on cross-border strategies with Asia. Networking breaks and social events enable attendees to interact with other patent professionals within NAPP and Seattle IP community. More than 17 hours of Continuing Legal Education (CLE) credit, including 1 hour of Ethics, is available. View the agenda, find more information and register at napp.org.

New Mexico Defense Lawyers Association Insurance Bad Faith Seminar

Join the New Mexico Defense Lawyers Association for "Insurance Bad Faith Seminar" on Aug. 23. This full-day seminar will cover the latest trends and developments in bad faith litigation including post-litigation "continuing" bad faith, "defense within limits" ("burning limits" policies), bad faith from the policyholder's perspec-

tive, responding to time-limited policy limit demands, and effective trial strategies for defending insurers. This program is designed to benefit practitioners who represent insurers in bad faith litigation as well as insurance claims professionals, in-house counsel, and outside defense counsel who defend policyholders. A solid understanding of extra-contractual liability is essential for all who work in the insurance defense arena.

OTHER NEWS Anti-Defamation League Mountain States Region 20th Anniversary Supreme Court Review Live Stream

The Anti-Defamation League Mountain States Region is hosting the 2019 20th Anniversary Supreme Court Review live stream event from 10 a.m.–noon MST on July 9. Members of the legal community and public are invited to join us for this live streamed program from the National Constitution Center in Philadelphia with distinguished legal scholars as they discuss the most important cases of the term, including adding the citizenship question to the 2020 census, partisan gerrymandering, and religious symbols in the public square. They will also discuss challenges to the president's executive actions in the lower courts and what to expect at the Supreme Court next year. Anyone may take part in this event by joining the program from any computer at <https://www.adl.org/supreme-court-review>.

Karl E. Johnson Celebration of Life

The family and friends of Karl E. Johnson (April 28, 1948–June 3, 2019) invite member of the legal community to his celebration of life from 4–7 p.m., June 28, at the courtyard of the Indian Pueblo Cultural Center, 2401 12th St. NW, Albuquerque, NM 87104. In lieu of flowers, direct contributions to the New Mexico State Bar Foundation for the Karl E. Johnson Indian Law Scholarship, PO Box 92860, Albuquerque, NM 87199-2860. R.S.V.P.s are requested for the celebration of life. Visit <https://karlejohnson.wixsite.com/website>.

NEW FEATURE

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Legal Education

June

- | | | |
|---|---|--|
| <p>28 Volunteer Attorney Program Orientation
2.0 EP
Live Seminar, Albuquerque
Volunteer Attorney Program
www.lawaccess.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>28 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>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>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>28 Trial Lawyers—Past, Present and Future
6.3 G, 1.5 EP
Live Seminar, Santa Fe
TEX ABOTA
www.tex-abota.org</p> |

July

- | | | |
|---|--|---|
| <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>11 Rocky Mountain Public Employer Labor Relations Association Annual Conference
10.0 G
Live Seminar, Albuquerque
Rocky Mountain Public Employer
505-831-0440</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>8 Analysis of Private Target M&A DealPoints and Post-Closing Claims
1.0 EP
Live Seminar, Santa Fe
Holland and Hart
www.hollandhart.com</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>16 What Robin Hood, John Adams, and Aldo Leopold Can Teach Us About Ethics
1.0 EP
Live Seminar, Alamogordo
12 Judicial District Court
575-257-1010</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>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> | <p>17 Hydrology in Water Law Proceedings
6.5 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com</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 Employment and Labor Law Legislative Update (2019)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Top Challenges in Family Law
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI, Inc.
www.nbi-sems.com</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>15 Electric Power in the Southwest
12.0 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com</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> |

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.

July

- | | | |
|--|---|--|
| <p>18 Natural Resource Damages
10.2 G
Live Seminar, Albuquerque
Law Seminars International
www.lawseminars.com</p> | <p>22 Water Resource/Groundwater Annual Conference
2.2 G
Live Seminar, Albuquerque
American Ground Water Trust
603-228-5444</p> | <p>24 Employee Leave Law
1.0 G
Teleseminar
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>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> | <p>25 Mediating the Political Divide
2.0 EP
Webcast/Live Seminar, Albuquerque
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>23 How to Make Stress Work for you
1.0 G
Live Seminar, Santa Fe
Holland and Hart
www.hollandhart.com</p> | |

August

- | | | |
|--|--|---|
| <p>1 Introduction to the Practice of Law in New Mexico (Reciprocity)
4.5 G, 2.5 EP
Live Seminar, Albuquerque
New Mexico Board of Bar Examiners
www.nmexam.org</p> | <p>16 Children's Code: Delinquency Rules, Procedure and the Child's Rights (2019)
1.5 G, 1.0 EP
Live Replay, Albuquerque
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> |
| <p>14 Lawyer Ethics in Employment Law
1.0 EP
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>28 Easements in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 2019's Best Law Office Technology, Software Tools- Improve Client Service, Increase Speed and Lower Your Costs
5.0 G, 1.0 EP
Live Replay, Albuquerque
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 Making your Case with a Better Memory (2019)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 2018 Mock Meeting of the Ethics Advisory Committee
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22-23 12th Annual Legal Service Providers Conference: Legal Service Providers in Action (Two Day Conference)
10.0 G, 2.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Advanced Mediation Skills Workshop (2018)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| | | <p>28 Health Law Legislative Update (2019)
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

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 June 7, 2019

PUBLISHED OPINIONS

A-1-CA-37339	CYFD v. Tanisha G. & Isaac G.	Affirm	06/04/2019
A-1-CA-36622	K Salehpoor v. NM Institute of Mining and Technology	Affirm/Remand	06/06/2019

UNPUBLISHED OPINIONS

A-1-CA-37680	Federal National v. A Archuleta	Affirm	06/03/2019
A-1-CA-37768	State v. J Muldez	Affirm	06/03/2019
A-1-CA-36034	Parkview Community v. D Peper	Affirm	06/04/2019
A-1-CA-36156	State v. R Julian	Affirm	06/04/2019
A-1-CA-36231	In Re: Estate of E Rivera	Affirm	06/04/2019
A-1-CA-36221	P Sanchez v. D Sanchez	Affirm	06/05/2019
A-1-CA-36318	State v. L Villalobos	Affirm/Reverse	06/05/2019
A-1-CA-37180	State v. J Harrison	Reverse/Remand	06/05/2019
A-1-CA-37889	State v. D McDaniel	Affirm	06/06/2019

Effective June 14, 2019

PUBLISHED OPINIONS

A-1-CA-35470	State v. M Franco	Affirm/Vacate/Remand	06/13/2019
A-1-CA-36657	State v. P Martinez	Affirm	06/13/2019
A-1-CA-35863	D Schmidt v. Tavenners	Reverse/Remand	06/14/2019

UNPUBLISHED OPINIONS

A-1-CA-35746	State v. R Julian	Affirm/Reverse/Remand	06/11/2019
A-1-CA-36632	Peabody Coalsales Co v. NM Taxation and Rev	Affirm	06/12/2019
A-1-CA-36661	L Bruton v. K Bruton	Affirm	06/12/2019
A-1-CA-37561	State v. M Jaramillo	Reverse/Remand	06/12/2019
A-1-CA-37826	State v. A Andrade	Reverse/Remand	06/12/2019
A-1-CA-37848	R Cano C v. J Peterson	Affirm	06/12/2019
A-1-CA-37484	State v. J Donaldson	Reverse/Remand	06/13/2019

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

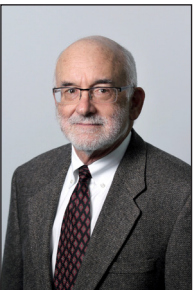
<http://coa.nmcourts.gov/documents/index.htm>



Sutin, Thayer & Browne law firm congratulates **Stefan Chacón** on his recent appointment as chair of the Litigation and Risk Management Interest Group of the national American Bar Association's Health Law Section. This is the largest interest group within the ABA Health Law Section, with more than 1,000 members nationwide. Chacón is a lawyer in the firm's Albuquerque office, with a practice in healthcare law and commercial litigation.



Sutin, Thayer & Browne law firm congratulates **Jesse Hale** on his recent appointment as vice chair of the Membership Committee of the national American Bar Association's Health Law Section. The membership committee focuses on recruiting and retaining members of the Health Law Section, and on member benefits. Hale is a lawyer in the firm's Albuquerque office, focusing on healthcare law, commercial litigation and real estate law.



Sutin, Thayer & Browne law firm congratulates **David Johnson** on his recent appointment as vice chair of the Substance Use Disorders and Mental Health Interest Group of the national American Bar Association's Health Law Section. The committee's current priority is addressing the opioid epidemic. Johnson is a lawyer in the firm's Albuquerque office, with a practice in healthcare law as related to regulatory, operational, transactional, fraud and abuse issues, and litigation matters.

Rodey, Dickason, Sloan, Akin And Robb, P.A.

Chambers USA: Leading Lawyers for Business (2019): **Mark K. Adams** (environment, natural resources and regulated industries; water law), **Rick Beitler** (litigation: medical malpractice and insurance defense), **Perry E. Bendicksen III** (corporate/commercial), **David P. Buchholtz** (corporate/commercial), **David W. Bunting** (litigation: general commercial), **Jeffrey Croasdel** (litigation: general commercial), **Nelson Franse** (litigation: general commercial; medical malpractice and insurance defense), **Catherine T. Goldberg** (real estate), **Scott D. Gordon** (labor and employment), **Alan Hall** (corporate/commercial), **Bruce Hall** (litigation: general commercial), **Justin A. Horwitz** (corporate/commercial), **Jeffrey L. Lowry** (labor and employment), **Donald B. Monnheim** (corporate/commercial), **Sunny J. Nixon** (environment, natural resources and regulated industries: water law), **Theresa W. Parrish** (labor and employment), **Debora E. Ramirez** (real estate), **John P. Salazar** (real estate), **Andrew G. Schultz** (litigation: general commercial), **Tracy Sprouls** (corporate/commercial: tax), **Thomas L. Stahl** (labor and employment) and **Charles J. Vigil** (labor and employment).

In Memoriam



Karl E. Johnson, Jr., died suddenly on June 3, of complications from cancer. He was Of Counsel at Barnhouse Keegan Solimon & West LLP, formerly Johnson Barnhouse & Keegan LLP, where he was the managing partner from 2003-2017. His Indian law practice focused on commercial, construction, real estate, water rights, taxation and environmental matters, as well as general counsel representation of Indian tribes and tribal business enterprises in the western

United States. Johnson began his legal career in 1979 as a Reginald Heber Smith Fellow with DNA – People's Legal Services on the Navajo Indian Reservation, working primarily in the area of consumer litigation. In 1981, he joined the faculty of the University of New Mexico School of Law, where for six years he taught courses in federal Indian law, commercial transactions, sales, business associations and jurisprudence, and supervised student transactional and trial work on more than 500 civil and

criminal cases in the law school's clinical education program. He twice received the law school's Outstanding Professor award. In 1987, Johnson opened his own general civil practice, emphasizing commercial, business and real estate litigation and transactions, while continuing to serve on a part-time basis as an attorney advisor and visiting professor in the law school clinic. He also served for a number of years as executive director of the Center for Civic Values, a nonprofit that managed the Interest on Lawyer Trust Accounts (IOLTA), Domestic Violence Legal HELpline and the New Mexico High School mock trial programs. During his career, Johnson co-authored, or co-edited with his wife Michelle Giger, law-related education teacher resource manuals including *Environmental Citizenship: Building a Healthy Community*; *The Struggle for Justice*; and *21st Century Citizenship*, as well as several high school mock trial cases that have been used across the U.S. and around the world. He received the Keep the Dream Alive Award from the Dr. Martin Luther King Multicultural Council, the Outstanding Lawyer of Albuquerque Award from the Albuquerque Bar Association, and the Pinnacle Award from

the State Bar of New Mexico. He was a member of the Board of the New Mexico Foundation for Open Government, the Indian Law Section of the State Bar of New Mexico, and 1000 Friends of New Mexico. He also served on the Albuquerque Character Counts Leadership Council and the State Bar of New Mexico's Task Force on Minorities in the Profession and its Legal Services Committee. Johnson attended Williams College, the University of Oklahoma and the University of Oregon School of Law, where he graduated Order of the Coif. As a lifelong Democrat, Johnson was committed to a woman's right to choose, equal pay for equal work, LGBTQ equality, healthcare for all, protecting the planet and many other progressive ideals. He never met a stranger and was often referred to as Mr. Chamber of Commerce for his ready smile, friendly manner, and goofy sense of humor that kept his daughters in eye-rolling mode throughout their childhood. He enjoyed nearly all styles of music and had a massive collection. He loved traveling the world, and since 2003 he and Michelle visited more than 35 countries on four continents. His favorite place was the Big Island of Hawai'i, where he had a deep love and abiding respect for the native Hawai'i people and their culture. He leaves behind a legacy of commitment to social justice and public service and a loving family who will miss him always.

Judge Alvin Jones was born on Nov. 30, 1944, and passed away on May 28. Judge Jones was a resident of New Mexico at the time of passing. He spent most of his childhood in Alamogordo, and then earned a bachelor's degree from the New Mexico School of Mines and a juris doctor from the University of New Mexico. To his wife, she simply says, "he was the love of my life." Alvin Francis Jones was born in Albuquerque, New Mexico in 1944 to Alvin Franklin Jones, an airplane mechanic with the Army Air Corps and Edna Crow, a secretary.

Linda S. Lonsdale, a highly successful midwife, educator, and prosecutor, who dedicated her career to public service and took a special interest in assisting indigent women and loving animals, ascended into heaven on May 30 after a four-year battle with ovarian cancer. She was 72. Lonsdale began her career as nurse, graduating from University of California, Loma Lonsdale, with a BSN, with a focus in maternal health. Lonsdale volunteered with the Peace Corp as an OB/GYN nurse in India for two years. She said one could tell that she was optimist because she chose to provide maternal health, including birth control, in a highly populated country. Lonsdale found great joy in serving needy women and their infants. She also made life-long friends with her fellow health profession volunteers in the Peace Corp, including Betty Pope, who recalled that Lonsdale was the most well-educated and intelligent woman she had ever worked with. Lonsdale then attended Johns Hopkins Univ. School of Public Health and earned a MCH in Midwifery and a Masters of Public Health. With her work experience and strong intellect, Georgetown University hired Lonsdale to teach public health and midwifery. While in DC, Lonsdale met the love of her life, Don Murray. But the east coast city life was not for Lonsdale. She and Don moved west. Lonsdale was born on August 14, 1946 in Glendale, CA, in Los

Angeles County, but spent every summer of her youth on a ranch near Salmon, Idaho with her grandmother, aunt, uncle, and cousin Alberta Wiederrick. It was here that Lonsdale developed her life-long love of dogs, cats, horses and wide-open spaces. Lonsdale and Don moved to Santa Fe for Lonsdale to work as the Director of Maternal Health for the NM Department of Health. Lonsdale traveled the state to help ensure that pregnant women and mothers were receiving the best health care possible. Lonsdale and Don purchased land south of Santa Fe and built an adobe home for themselves and their several horses, cats, and dogs. They both loved riding their cherished horses on the open range outside of Santa Fe. She also loved to garden, growing enough vegetables to feed an office full of coworkers. Lonsdale became a Santa Fe Master Gardener, and won several first prizes at the NM State Fair for her vegetables. She and Don enjoyed entertaining at their adobe haven for their neighbors, fellow animal lovers, friends, and Don's children and grandchildren. At the age of 40 and peak of her midwifery career, Lonsdale enrolled in UNM Law School. After graduating with honors in 1989, Lonsdale began her third successful career as a prosecutor at the First Judicial District Attorney's Office. She rose through the ranks to a position of Chief Deputy District Attorney. Alongside District Attorney and friend, Henry Valdez, Lonsdale won several high profile and complex cases, including the murder cases of State v. Jerome Martinez and State v. Arthur "Bozo" Lopez. Henry remembers Lonsdale fondly, "Having graduated at the top of her law school class, Lonsdale had many options, she chose prosecution. The citizens of the First Judicial District benefited greatly from her public service calling." Lonsdale took great pride in mentoring younger attorneys, office staff, and police officers, many of whom went onto highly successful careers. Lonsdale described her goal as a prosecutor as always seeking justice not only for criminal defendants, but also for victims, witnesses, law enforcement, office staff and the community. She said that she sought "not impartiality, but objectivity; not mercy or vengeance, but fairness; not sympathy or prejudice, but compassion; and not politics, but professionalism." While justice was not always served in every case in her 19 years as a prosecutor, Lonsdale fought like hell in both small and large cases to obtain it. Lonsdale also loved traveling to foreign lands. She visited every country in Europe and Asia, and all 50 states. She retired from the DA's Office in 2008, and continued traveling the world and spending time with Don, their horses, Whip and Lady, cats, and adored Labrador Retriever, Amy. After Don's passing in 2011, Lonsdale devoted more time to volunteering, including the State Bar Animal Law Section and Committee on Women and the Legal Profession. Lonsdale was an avid reader and dedicated advocate for social justice. But also enjoyed completing the NY Times crossword puzzle up to the day of her death. Lonsdale was preceded in death by her mother Fern Santee Lonsdale, her father Lionel Lonsdale, and her soulmate, Don Murray. She is survived by her cousin Alberta Wiederrick and husband Bob; Don's children, Dr. Denise Murray Bray, Dawn Murray, and Michael Murray, and their partners and children; along with countless loving friends and colleagues; her horses, Whip and Lady, and her beloved Amy the dog, who misses her dearly.

James M. Parker was born to Robert (Bob) and Evelyn Parker in 1942. Parker joined his two older brothers, Robert and Al, in the family home in Ponca City, Okla. Their little sister, Jane, would later complete the Parker family in 1946. Parker always said Jane was the cover-up for the mistake his parents made with him. At the age of three he would start his life-long battle with asthma. As an incredibly successful participant in a research grant in Scripts Institute in La Jolla, California in 1991 Jim was able to, in essence be cured of his disease. As weeks progressed he would often say I never knew a human could feel so good. Although his asthma had been put under control the damage done to his lungs ultimately caused his death on Friday, May 31. Even though he struggled with his asthma he was able to be a star on his high school tennis team and later at the collegiate level. Jim took such pride in saying that he played some truly great tennis players in the U.S. mid-west tournaments successfully beating people that would later make winning appearances at Wimbledon. As a third generation Oklahoma State University Cowboy, where his grandfather was the dean of the agricultural department and one of the founders of the OSU Kappa Sigma Fraternity, Jim earned his undergraduate degree in accounting as well as his law degree through a combined curriculum with University of Oklahoma School of Law in a six-year program. His workaholic lifestyle began while he carried heavy course loads, worked as a house boy in the Zeta Tau Alpha sorority, and played team tennis. Humor was an absolute mainstay in his life. During their 52 years of marriage to Linda Hisey Parker, Jim took great joy in telling anyone who would listen about their beginnings, "Oh, you know, hometown girl makes good, marries local hero." Or in reference to his marriage tenure he would say when asked he had had eight good years out of 52 and his wife would jokingly say "At least you've had eight." In 1971 the couple began their family with the birth of Todd followed by a second son, Tyson two years later. Jim's unrelenting passion for sports continued with a coaching job at Lobo Little League, often times handling two teams at a time, and later American Legion teams. After his sons left for college he continued to coach "for pay" at

Menaul High School and Albuquerque Academy Middle School, estimating with a smile that he made roughly \$.15 per hour. Jim also enjoyed playing sports long after most would have stopped. Even though the umpires had instituted "Dinosaur Run Rule" for him, if he was close to touching the base he was safe, Jim finally stepped away from the Modrall softball team after one of the coaches announced Jim was their only player who could turn a homerun into a triple. As the personification of a Type A personality he was always setting goals that when met were rewarded with something as simple as a getting his ever-present cowboy boots polished at the Model Barber shop, go watch UNM Lobo Baseball game or buy a new cowboy hat at the Men's Hat Shop. His last major goal was to actively practice law for 50 years and when met reduced his seven-day work week to three days. Jim frequently lamented that it was almost impossible to cram his normal 72-hour work week into 36. His legal career repeatedly received acknowledgements of his talents such as "Super Lawyers of the Southwest" and inclusions in the "Best Lawyers of America" in not the usual one or two classifications but in multiple areas of expertise. His passion for small businesses was transferred to the Washington D.C. based Small Business Council of America where he served for over 30 years and was awarded the Connie Murdock Award for Excellence. But the apex in his career occurred when he was selected as one of the 100 best graduates over 100 years at OSU Spears School of Business. Jim and Linda's family grew to include Todd's wife, Yvette; and daughter, Miranda and Tyson's wife, Krista; and daughters, Lillian and Ella. In addition to attending the many sporting events of his granddaughters he still found time to serve on local community boards such as Albuquerque Petroleum, Club, Samaritan Counselling Center and Corrales Cultural Arts Council. As a lawyer to hundreds of both small and large family owned businesses he and Linda co-founded the UNM ASM Parker Center for Family Business. His advice was not just based on working with other families but actually had hands on experience in the Thompson Parker Lumber Co in Oklahoma where his father was the regional manager.

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
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CLERK'S CERTIFICATE OF WITHDRAWAL

Effective May 30, 2019:
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CLERK'S CERTIFICATE OF SUSPENSION

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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Effective June 17, 2019

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

Proposal 2019-021 – Grievance about guardian or conservator New Form 4-999.1 NMRA 06/24/19

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 |
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Local Rules for the Twelfth Judicial District Court

- | | | |
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| LR12-201 | Electronic filing authorized | 09/01/2019 |
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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>.

Certiorari Denied, February 14, 2019, No. S-1-SC-37473

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-015

No. A-1-CA-35000 (filed December 13, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
LAVERLE J. DEANS,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
CINDY M. MERCER, District Judge

HECTOR H. BALDERAS,
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MARIS VEIDEMANIS,
Assistant Attorney General
Santa Fe, New Mexico
for Appellee

BENNETT J. BAUR,
Chief Public Defender
NINA LALEVIC,
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion

Jennifer L. Attrep, Judge

{1} Defendant Laverle Deans appeals from the denial of his motion to dismiss on speedy trial grounds after conditionally pleading guilty to one count of possession of child pornography, contrary to NMSA 1978, Section 30-6A-3(A) (2007, amended 2016). The alleged violation of Defendant's right to a speedy trial arises in a unique context. During the pendency of Defendant's case, the New Mexico Supreme Court determined that multiple counts of possession of child pornography (like those in Defendant's indictment) could only be charged as one count. *See State v. Olsson*, 2014-NMSC-012, 324 P.3d 1230. Consequently, the district court merged the twenty counts of possession of child pornography Defendant faced into one count, dramatically reducing Defendant's exposure from thirty years of incarceration to eighteen months of incarceration. Because we determine that Defendant's right to a speedy trial was not violated, we affirm the district court.

BACKGROUND

{2} For simplicity, we outline the pertinent timeline here based on the testimony presented at the hearing on Defendant's

speedy trial motion, as well as the record and available hearing transcripts. The only testimony offered at the speedy trial hearing was that of Anne Keener, former assistant district attorney who was the prosecutor on the case for most relevant time periods. More details will be included in our discussion as needed.

Time Line of Events

{3} March 7, 2012: Defendant arrested and charged with possession of child pornography.

March 29, 2012: Defendant indicted on twenty identical counts of possession of child pornography based on his alleged possession of twenty photographs, retrieved by law enforcement from his computer.

April 11, 2012: Defendant arraigned and held in custody on cash bond.

May 29, 2012: First judge reassignment.

July 20, 2012: Defense counsel, Peter Ortega, entered an appearance and pro forma demand for speedy trial.

December 19, 2012: Pretrial conference held for trial set in January 2013, at which the State requested a continuance. Although it was not on the record, Ms. Keener testified that defense counsel stipulated to the con-

tinuance. The State represented that the case was not ready for trial and plea negotiations were ongoing. The State further represented that if a plea agreement was not reached, then a superseding indictment with 900 additional counts of possession of child pornography would be filed. The State requested a plea status in thirty days to see if the case could be resolved. The district court took the case off the trial docket and set a hearing for January 30, 2013.

January 8, 2013: Defendant filed a pro se motion to dismiss his attorney, Mr. Ortega. Defendant complained that he had not yet been provided discovery, and that substitute counsel, not Mr. Ortega, was present at the pretrial conference. Mr. Ortega filed a motion to withdraw on January 30, 2013.

January 30, 2013: No transcript of this hearing exists in the record. Ms. Keener testified that, at this hearing, the district court denied Defendant's motion to dismiss his attorney and counsel informed the court that plea negotiations were still ongoing.

July 24, 2013: The State sent a written plea offer to defense counsel.

October 23, 2013: Defendant filed his second pro se motion to dismiss his attorney, Mr. Ortega. Defendant complained that Mr. Ortega was not ready for trial and had not hired an investigator. Defendant further stated that Mr. Ortega had used "unsavory tactics" to attempt to persuade him to accept a plea, did not want to represent Defendant unless he accepted the plea, and did not have Defendant's best interests in mind.

December 9, 2013: Mr. Ortega filed his second motion to withdraw, stating, inter alia, that Defendant "refuses to heed" his advice.

December 11, 2013: Defense counsel filed a one-page motion to dismiss for lack of a speedy trial.

December 31, 2013: Ms. Keener and Mr. Ortega met with Defendant at jail to go over the plea offer. The plea agreement called for Defendant to plead guilty to all twenty counts, leaving a sentence of zero to thirty years of incarceration up to the judge; in return, the State would not pursue the additional counts. According to Ms. Keener, Defendant did not reject the plea offer but requested additional time to consider it.

January 6, 2014: The district court held a very brief hearing and permitted Mr. Ortega to withdraw as counsel. The judge did not mention or rule on the pending speedy trial motion and did not set the case for trial.

January 22, 2014: Defense counsel, Gregory Gaudette, entered an appearance and pro forma demand for speedy trial.

April 21, 2014: The New Mexico Supreme Court decided *Olsson*,

2014-NMSC-012, in which it held that the state cannot charge multiple counts of possession of child pornography under Section 30-6A-3(A) based solely on the possession of multiple images. *Id.* ¶¶ 1-2, 47.

June 13, 2014: Defense counsel filed a motion to merge the twenty counts into one count, pursuant to *Olsson*, 2014-NMSC-012, which later was granted, and a motion to reconsider conditions of release, asserting that Defendant had already served the maximum sentence.

June 24, 2014: Defense counsel filed a second motion to dismiss for violation of Defendant's right to speedy trial.

June 30, 2014: The district court held a hearing and apparently addressed the motion to merge counts and motion to reconsider conditions of release, although we do not have a transcript of this hearing.

July 3, 2014: The district court signed an order releasing Defendant from custody.

August 1, 2014: Second judge reassignment.

August 4, 2014: The State filed its response to Defendant's speedy trial motion. The district court may have held a hearing on this date, but there is no transcript of this hearing in the record.

September 8, 2014: The State filed an amended response to Defendant's speedy trial motion. The district court held a hearing on Defendant's speedy trial motion and denied the motion.

{4} After the denial of his speedy trial motion, Defendant's case was set to go to trial on October 14, 2014. Prior to trial, Defendant pleaded guilty to one count of possession of child pornography, contrary to Section 30-6A-3(A), and reserved the

right to appeal the denial of his speedy trial motion. Defendant was later sentenced to eighteen months incarceration, the maximum term of imprisonment at the time, and received credit for time served. This appeal followed.

DISCUSSION

{5} "The right of the accused to a speedy trial is guaranteed by both the Sixth Amendment of the United States Constitution and Article II, Section 14 of the New Mexico Constitution." *Spearman*, 2012-NMSC-023, ¶ 16. In determining whether a defendant has been deprived of the right to a speedy trial, we analyze the four factors set out by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972): "(1) the length of delay in bringing the case to trial, (2) the reasons for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) the prejudice to the defendant caused by the delay." *State v. Serros*, 2016-NMSC-008, ¶ 5, 366 P.3d 1121. "We weigh these factors according to the unique circumstances of each case in light of the [s]tate and the defendant's conduct and the harm to the defendant from the delay." *Id.* (internal quotation marks and citation omitted). "On appeal, we give deference to the district court's factual findings, but we review the weighing and the balancing of the *Barker* factors de novo." *State v. Collier*, 2013-NMSC-015, ¶ 39, 301 P.3d 370 (alterations, internal quotation marks, and citation omitted).

Length of Delay

{6} "The first factor, length of delay, is both the threshold question in the speedy trial analysis and a factor to be weighed with the other three *Barker* factors." *State v. Ochoa*, 2017-NMSC-031, ¶ 12, 406 P.3d 505. In *State v. Garza*, 2009-NMSC-038, 146 N.M. 499, 212 P.3d 387, our Supreme Court adopted guidelines establishing the reasonable timeframe in which criminal cases should be brought to trial based on their respective complexity—twelve months for a simple case, fifteen months for an intermediate case, and eighteen months for a complex case. *Id.* ¶ 2. If the total time of delay exceeds the applicable guideline, the full analysis of the *Barker* factors is triggered, and this factor weighs in favor of the defendant. See *Garza*, 2009-NMSC-038, ¶ 21; *Serros*, 2016-NMSC-008, ¶ 26. The weight we assign this factor is proportional to the length of the delay—

"[a]s the delay lengthens, it weighs increasingly in favor of the accused." *Ochoa*, 2017-NMSC-031, ¶ 14.

{7} Because the district court below did not make a determination on the issue of complexity, we are free to make this determination. See *State v. O'Neal*, 2009-NMCA-020, ¶ 16, 145 N.M. 604, 203 P.3d 135; see also *State v. Coffin*, 1999-NMSC-038, ¶ 57, 128 N.M. 192, 991 P.2d 477 (determining complexity of case in the absence of relevant trial court findings). Factors bearing on the complexity of the case include the number and complexity of the charges, the number of witnesses, and whether expert testimony is necessary. See, e.g., *State v. Montoya*, 2011-NMCA-074, ¶ 16, 150 N.M. 415, 259 P.3d 820 (comparing simple cases, which "require less investigation and tend to involve primarily police officer testimony," with intermediate cases, which tend to "involve numerous or relatively difficult criminal charges and evidentiary issues, numerous witnesses, expert testimony, and scientific evidence" (internal quotation marks and citation omitted)); *State v. Laney*, 2003-NMCA-144, ¶ 14, 134 N.M. 648, 81 P.3d 591 (noting that cases of intermediate complexity are characterized by numerous witnesses, expert testimony, and scientific evidence).

{8} The number of counts Defendant initially faced is not a helpful metric in this case as the counts eventually merged. Likewise, in the absence of any explanation from the State whether the listed witnesses would be called at trial, the State's supplemental witness list, which was filed prior to the merger of the counts and listed some thirty-three witnesses, is of little assistance in our analysis. Ms. Keener, however, did testify that proof at trial would require calling multiple witnesses with expertise pertaining to the extraction of data from Defendant's computer. There also was a fairly large volume of discovery from the State in this case (342 pages and two CDs). And Ms. Keener discussed the difficulty and lengthiness of jury selection in child pornography cases. Given the foregoing, and without the benefit of the district court's determination of complexity, we find this case to be of intermediate complexity. See *Montoya*, 2011-NMCA-074, ¶ 16 (concluding that a case involving four somewhat difficult charges and nine witnesses, including two experts, was of

¹Because Defendant does not assert that New Mexico's speedy trial guarantee should be interpreted any differently than the Sixth Amendment's guarantee, and our courts have not done so in the past, we treat both protections as the same here. *State v. Spearman*, 2012-NMSC-023, ¶ 16 n.1, 283 P.3d 272.

intermediate complexity); *State v. Tortolito*, 1997-NMCA-128, ¶¶ 3, 7, 124 N.M. 368, 950 P.2d 811 (upholding the district court's finding that a case involving three separate charges fell into the "high end of the intermediately complex range," in part, because the case required scientific investigation and DNA analysis (internal quotation marks omitted)). Thus, the presumptive period for this "intermediate" case to be brought to trial is fifteen months. *Garza*, 2009-NMSC-038, ¶ 2.

{9} The delay in this case stretched for thirty months, from Defendant's arrest on March 7, 2012, until the hearing on Defendant's speedy trial motion on September 8, 2014. A delay of thirty months is twice the presumptive period and weighs heavily against the State. See *State v. Taylor*, 2015-NMCA-012, ¶ 9, 343 P.3d 199 (weighing the length of delay, which was approximately twice as long as the presumptively prejudicial delay, heavily against the state); *State v. Vigil-Giron*, 2014-NMCA-069, ¶¶ 19, 65, 327 P.3d 1129 (same).

Reasons for the Delay

{10} The second *Barker* factor evaluates the reasons for each period of delay and assigns responsibility for each period accordingly. See *Barker*, 407 U.S. at 531. "Our courts have recognized three types of delay that may be attributable to the state and one type attributable to the defense." *State v. Brown*, 2017-NMCA-046, ¶ 18, 396 P.3d 171. First, intentional delay, which is "a deliberate attempt to delay prosecution of the case in order to hamper the defense[.]" weighs heavily against the state. *Id.* The second type of delay is negligent or administrative, which also weighs against the state because "it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun[.]" but it does so more lightly than intentional delay. *Id.* (internal quotation marks and citation omitted). "[A]s the length of the delay increases, this type of delay begins to weigh more heavily against the state." *Id.* Third is delay caused by valid reasons, which "are neutral and do not weigh against the state." *Id.* Finally, any delay caused by the defendant generally weighs against the defendant. *Id.*

{11} The district court did not undertake an evaluation of the specific periods of delay, and the record in this case is not as clear as it could be in terms of the reasons for various delays. We, thus, evaluate the periods of delay within the constraints of the record before us.

A. Ten-Month Period From Arrest Until Defendant's First Motion to Dismiss Counsel

{12} Save for two brief periods of time, Defendant and the State agree that this case proceeded normally from the date of Defendant's arrest on March 7, 2012, until Defendant filed his first motion to dismiss counsel on January 8, 2013. Defendant first points to the fact that he was arrested on March 7, 2012, but he was not indicted until March 29, 2012. Defendant appears to have been arrested on a magistrate court warrant and therefore was entitled to have a preliminary hearing on or before March 21, 2012. See Rule 6-202(A)(1) NMRA; Rule 6-104(A)(2) NMRA. The State, however, obtained an enlargement of time from the magistrate court for good cause shown until March 29, 2012, pursuant to the rules. See Rule 6-202(A)(2). The eight-day delay in having a probable cause determination in this case was negligible, was justified by the State before the magistrate court, and will not be held against the State here. Defendant next points to the fact that the case was reassigned to a different judge on May 29, 2012. Defendant does not argue that this reassignment actually caused any delay, nor is it apparent from the record that it did. As such, we do not weigh this period against either party. See *State v. Parrish*, 2011-NMCA-033, ¶ 25, 149 N.M. 506, 252 P.3d 730 (determining that, during the period of time when judges were reassigned, the case progressed with customary promptness and so the time period would weigh neutrally). The parties agree that the remainder of this ten-month period proceeded normally, and we weigh this entire period neutrally. See *State v. Maddox*, 2008-NMSC-062, ¶ 27, 145 N.M. 242, 195 P.3d 1254 (weighing period neutrally where "the case moved toward trial with customary promptness"), *abrogated on other grounds by Garza*, 2009-NMSC-038, ¶¶ 47-48.

B. Twelve-Month Period for Plea Negotiation

{13} The period from January 2013 until January 2014 was marked in large part by plea negotiations. The Supreme Court in *Maddox* explained that "[g]enerally, there is no rule attributing delay resulting from attempted plea negotiations to a specific party and absent some act of bad faith or some prejudice to the defendant, plea negotiations are themselves not a factor to be held against either party." 2008-NMSC-062, ¶ 24 (internal quotation marks and citation omitted). The Court went on to

note, however, that "[b]ecause the [s]tate has the burden of bringing a case to trial, we will weigh unreasonable periods of delay against the [s]tate." *Id.* ¶ 26. Likewise, the Court noted that the time a defendant fails to timely respond to plea offers will weigh only slightly against the state. *Id.* This Court has "read *Maddox* to require the delay from plea negotiations to be weighed against the [s]tate when there exist measurable periods of negotiation." *State v. Wilson*, 2010-NMCA-018, ¶ 33, 147 N.M. 706, 228 P.3d 490. "How heavily the delay is to be weighed depends on the length of that delay and the amount of delay caused by a defendant in failing to timely respond to a plea offer." *Id.*

{14} In this case, the parties were in plea negotiations for a period of approximately one year from January 2013 to January 2014. Upon the State's request at the pre-trial conference in December 2012, the trial in January 2013 was vacated, and it does not appear that the trial was reset until after the denial of Defendant's speedy trial motion. During the December 2012 pretrial conference, the State explained that the parties were in plea negotiations and that the case was not ready to go to trial in January. Further, if plea negotiations were not successful, the State planned to add 900 counts through a superseding indictment. Ms. Keener testified that defense counsel was in agreement with the requested continuance. A status hearing then was held in late January 2013, at which it again was represented that the parties were in plea negotiations. In July 2013, the State sent defense counsel a written plea agreement. In December 2013, Ms. Keener, along with defense counsel, personally met with Defendant at the jail to go over the plea and the fact that a superseding indictment would be filed if an agreement was not reached. Additionally, sometime during this period, Ms. Keener met with Defendant's family about the plea, and they expressed that they did not want the State to pursue additional charges.

{15} During this entire one-year period in which plea discussions were ongoing, Ms. Keener testified that defense repeatedly asked for additional time to consider the plea offer and Defendant apparently did not reject the plea. Defendant, however, expressed his dissatisfaction with his attorney in two pro se motions to dismiss counsel and specifically described his displeasure with his attorney's "unsavory tactics" in attempting to persuade him to

take a plea. During the December 2013 meeting with Ms. Keener, Defendant, nevertheless, personally requested additional time from the State to consider the plea offer and to postpone the State's pursuit of a superseding indictment.

{16} While the State represented that it continued to leave the plea offer open at the request of the defense and for Defendant's benefit, the State still was under a duty to "affirmatively seek to move the case to trial, even while plea negotiations [were] pending." *Maddox*, 2008-NMSC-062, ¶ 26. One year is simply "too long a delay to reasonably attribute solely to awaiting a response to [a plea] offer." *Id.* Given the protracted period of time in which the parties attempted to negotiate a plea to no avail, we weigh this time against the State. *See Wilson*, 2010-NMCA-018, ¶ 33. However, given that Defendant played a role in extending out the plea negotiation process by requesting that the plea offer remain open and the State not move forward with a superseding indictment, we weigh this period of time only slightly against the State. *See State v. Samora*, 2016-NMSC-031, ¶ 13, 387 P.3d 230 (weighing nineteen month period consisting predominately of plea negotiations slightly against the state); *Brown*, 2017-NMCA-046, ¶ 22 (weighing eleven months of delay resulting from plea negotiations slightly against the state).

C. Five and One-Half-Month Period From the Withdrawal of Defense Counsel Until the Filing of the Speedy Trial Motion

{17} We next examine the approximately five and one-half-month period of time from when Mr. Ortega was permitted to withdraw as defense counsel (January 6, 2014) until Defendant filed his second motion to dismiss on speedy trial grounds (June 24, 2014). The State argues that the bulk of this time period should be weighed against Defendant because it was time necessary for his newly appointed counsel, Greg Gaudette, to become familiar with the case and discuss the plea offer with Defendant. Without citing to any authority, Defendant argues that this period of time should be weighed neutrally. In support of the State's position, Ms. Keener testified that, after Mr. Gaudette entered his appearance, he needed additional time to review the discovery and requested that the State not file a superseding indictment and not withdraw the plea offer. "[D]elays sought or caused by defense counsel are ordinarily attributed to the defendant[.]" *State v. Fierro*, 2012-NMCA-054, ¶ 40, 278 P.3d 541 (citing *Vermont v. Brillon*, 556 U.S.

81, 89-94 (2009)); *see also State v. Steinmetz*, 2014-NMCA-070, ¶¶ 14-15, 327 P.3d 1145 (concluding that delay caused by defense counsel should weigh against the defendant). Only in reply does Defendant argue that the rationale in *Serros*, in which our Supreme Court carved out a limited exception to this general rule, should apply. 2016-NMSC-008, ¶¶ 35-43, 47.

{18} In *Serros*, the Court looked critically at delays a defendant traditionally would be held accountable for—e.g., stipulated continuances and removing defense counsel. *Id.* ¶¶ 44-67. Instead of holding the defendant accountable for these delays, the Court accepted the defendant's uncontroverted testimony about his attorneys' neglect, which precipitated the delays. *See, e.g., id.* ¶¶ 46, 49-50, 54-56, 58-60, 62. Less than two years later, however, our Supreme Court made clear that the reach of the *Serros* exception is very limited. *See State v. Castro*, 2017-NMSC-027, ¶¶ 12-14, 402 P.3d 688. The Court limited *Serros* to situations where a defendant suffers extreme prejudice and is effectively blameless in the delay. *Castro*, 2017-NMSC-027, ¶¶ 12-14. In this case, Defendant personally requested additional time to consider the plea offer and postpone a superseding indictment and trial, and, as discussed below, Defendant on balance did not suffer prejudice. As such, this is not the type of case in which the *Serros* exception applies and we decline to apply it here. *Id.* ¶ 14 ("This is not an extreme case where the prejudice is palpable, and it is necessary to consider attorney neglect when analyzing whether the right to a speedy trial was violated. Therefore, the . . . *Serros* analysis does not apply."). Instead, we apply the general rule that delays caused by defense counsel are attributable to the defendant. *See Steinmetz*, 2014-NMCA-070, ¶¶ 14-15; *Fierro*, 2012-NMCA-054, ¶ 40. As such, we weigh this approximately five and one-half-month period against Defendant.

D. Two and One-Half-Month Period From the Filing of the Speedy Trial Motion Until the Hearing on the Motion

{19} Defendant finally argues that the approximately two and one-half-month period of time between the filing of his motion to dismiss on speedy trial grounds (June 24, 2014) and the hearing on the motion (September 8, 2014) should weigh against the State because the State failed to timely respond to the motion. The day after the speedy trial motion was filed, the district court set a hearing on the motion for August 4, 2014. The State's response to Defendant's

motion was due on July 14, 2014; but the State did not file its response until the day of the scheduled hearing, which was three weeks late. *See* Rule 5-120(E) NMRA; Rule 5-104(C) NMRA. A judge reassignment occurred on August 1, 2014, and it is unclear from the record whether the hearing set for August 4, 2014, actually was held, and there is no record of this hearing on appeal. The district court apparently continued the hearing to September 8, 2014, the same date the State filed an amended response to Defendant's speedy trial motion.

{20} This final two and one-half-month period of delay was not discussed by the parties before the district court; and the record is devoid as to why the district court permitted the late filing of the State's response or why the court continued the speedy trial hearing. The continuance could have been a result of the State's late response or the judge reassignment, or it could have been a result of a stipulated continuance or some other normal delay. Without any record to make this determination, we will not speculate that this delay should be attributable to the State. *See State v. Sandoval*, 1966-NMSC-143, ¶ 6, 76 N.M. 570, 417 P.2d 56 (refusing to speculate on an issue when it was not presented to the district court and the record was "wholly silent on the point"); *State v. Jim*, 1988-NMCA-092, ¶ 3, 107 N.M. 779, 765 P.2d 195 ("It is [the] defendant's burden to bring up a record sufficient for review of the issues he raises on appeal. If he does not, all inferences will be resolved in favor of the trial court's ruling," (citation omitted)). As such, we weigh this two and one-half-month period neutrally.

Assertion of the Right

{21} The third *Barker* factor analyzes the degree to which the defendant has asserted his right to a speedy trial. 407 U.S. at 531-32. "Under this factor we accord weight to the frequency and force of the defendant's objections to the delay and analyze the defendant's actions with regard to the delay." *Samora*, 2016-NMSC-031, ¶ 19 (alteration, internal quotation marks, and citation omitted). "[T]he timeliness and vigor with which the right is asserted may be considered as an indication of whether a defendant was denied needed access to speedy trial over his objection[.]" *Garza*, 2009-NMSC-038, ¶ 32.

{22} In this case, the district court weighed this factor neutrally. In conjunction with defense counsel's two entries of appearance, each filed a pro forma demand for speedy trial. "Pro forma assertions are sufficient to assert the right, but are given little weight in a defendant's favor." *Ochoa*,

2017-NMSC-031, ¶ 41. In addition, on December 11, 2013, defense counsel filed a one-page speedy trial motion. This three-sentence motion contained no argument and did not in any way explain how Defendant's right to speedy trial had been violated. And just weeks after this motion was filed, Defendant personally requested additional time to consider the State's plea offer and postpone the filing of a superseding indictment and subsequent trial on the same. Defendant's action diluted his speedy trial assertion. See *Samora*, 2016-NMSC-031, ¶ 20 ("[The d]efendant's assertions of the right were mitigated by his acquiescence to, and responsibility for, numerous delays."); *Steinmetz*, 2014-NMCA-070, ¶¶ 60-62 (finding the defendant's seven assertions of the right were at best nominal considering "his own delay-causing actions"). On June 24, 2014, Defendant ultimately filed the speedy trial motion that is the subject of this appeal. Given this record, we find that Defendant's actions certainly were "a sufficient assertion of his right," although the assertion of the right was not impressive or aggressive. *Spearman*, 2012-NMSC-023, ¶ 33. Contrary to the district court, we weigh this factor in Defendant's favor, albeit slightly. See *Maddox*, 2008-NMSC-062, ¶ 31 (weighing assertion of the right slightly in the defendant's favor when the defendant's assertions were "neither timely nor forceful"); *State v. Moreno*, 2010-NMCA-044, ¶ 35, 148 N.M. 253, 233 P.3d 782 (concluding that the assertion factor weighs only slightly in favor of the defendant when he asserted his right once pro forma, and in a motion to dismiss two and one-half months prior to trial).

Prejudice

{23} The final *Barker* factor requires us to look at the prejudice suffered by the defendant as a result of the delay. *Ochoa*, 2017-NMSC-031, ¶ 48. This analysis is conducted "in the light of the interests of defendants which the speedy trial right was designed to protect"—that is, "preventing oppressive pretrial incarceration, minimizing anxiety and concern of the accused, and limiting the possibility that the defense will be impaired." *Id.* (quoting *Barker*, 407 U.S. at 532). Generally, it is the defendant's burden to "make a particularized showing of prejudice to demonstrate a violation of any of the three interests." *Samora*, 2016-NMSC-031, ¶ 21. But "this burden varies with the length of pretrial incarceration." *Ochoa*, 2017-NMSC-031, ¶ 52.

{24} In this case, Defendant failed to present any evidence of particularized prejudice

to the district court and instead relied on his lengthy period of pretrial incarceration; the district court summarily found Defendant suffered no actual prejudice. "When, as in this case, a defendant was continuously incarcerated for an extended period of time, it requires no speculation to determine that the defendant suffered some prejudice." *Id.* ¶ 57. We, therefore, "presume that Defendant was prejudiced simply by being continuously incarcerated" for nearly twenty-eight months. *Id.* However, in the absence of proof of particularized prejudice, this presumed prejudice does not weigh strongly in Defendant's favor. *Id.* ¶¶ 64-65. And, in light of our analysis below, we ultimately do not weigh this factor in Defendant's favor at all.

{25} The prejudice that Defendant experienced due to his lengthy pretrial incarceration is tempered by the fact that a clarification of the law during the pendency of Defendant's case was to his great advantage. As already noted, in April 2014, the Supreme Court decided *Olsson*, applying the rule of lenity to ambiguous statutory language and holding that a defendant cannot be charged with multiple counts of possession of child pornography under Section 30-6A-3(A) based solely on the possession of multiple images. *Olsson*, 2014-NMSC-012, ¶¶ 2, 47. Defendant benefitted from this decision when the district court granted his motion to merge the twenty counts of possession of child pornography into one count. As a result of *Olsson*, Defendant no longer faced a sentence of thirty years or more but only one fourth degree felony, with a maximum term of incarceration of eighteen months at the time. See NMSA 1978, § 31-18-15(A)(10) (2007, amended 2016). Defendant complains that he did not get the full benefit of *Olsson* because he spent more than eighteen months in jail without good time credit. This misses the mark. Had his case been finalized prior to the issuance of *Olsson*, Defendant may have received a much greater term of imprisonment than he ultimately served and it is doubtful whether he would have been able to take advantage of *Olsson* in a collateral proceeding. See, e.g., *Kersey v. Hatch*, 2010-NMSC-020, ¶ 30, 148 N.M. 381, 237 P.3d 683 (holding that "new methodology for review of double jeopardy claims involving multiple separate convictions for felony murder and the underlying predicate felony . . . is not available for retroactive application in habeas corpus proceedings" (citations omitted)).

{26} Just as the passage of time may benefit a defendant either through the weakening of the state's case or the strengthening of his own case, the passage of time here

occasioned a change of the law that benefitted Defendant by greatly reducing his potential term of incarceration. See *Barker*, 407 U.S. at 521 ("[The] deprivation of the right [to speedy trial] may work to the accused's advantage. . . . As the time between the commission of the crime and trial lengthens, [prosecution] witnesses may become unavailable or their memories may fade. . . . Thus, . . . deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself."); *State v. Smith*, 2016-NMSC-007, ¶ 60, 367 P.3d 420 (concluding that delay was not unconstitutionally prejudicial where new methods of DNA statistical analyses that strengthened the defendant's case were made available during the pendency of the case). Given the lack of a particularized showing of prejudice and the corresponding benefit to Defendant from the delay, we decline to weigh this factor in his favor.

Balancing the Barker Factors

{27} In balancing the *Barker* factors, no one factor is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." 407 U.S. at 533. In this case, although the length of the delay weighs heavily in Defendant's favor, the reasons for the delay and the assertion of the right to a speedy trial on balance weigh only slightly in his favor. And while we can presume prejudice because of the length of Defendant's pretrial incarceration, we do not weigh this factor in Defendant's favor given the unique circumstances of this case, which ultimately resulted in a benefit to Defendant. We, therefore, conclude that Defendant was not deprived of his right to a speedy trial. See *Garza*, 2009-NMSC-038, ¶¶ 24, 30, 34, 40 (holding that the defendant's speedy trial rights were not violated when the first three factors weighed in his favor to some degree, but he failed to put on evidence of particularized prejudice); *Montoya*, 2011-NMCA-074, ¶ 24 (same); *Wilson*, 2010-NMCA-018, ¶ 50 (same).

CONCLUSION

{28} For the foregoing reasons, we affirm the district court's denial of Defendant's motion to dismiss for violation of his right to a speedy trial.

{29} IT IS SO ORDERED.

JENNIFER L. ATTREP, Judge

WE CONCUR:

STEPHEN G. FRENCH, Judge

DANIEL J. GALLEGOS, Judge

Certiorari Granted, March 11, 2019, S-1-SC-37430

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-016

No. A-1-CA-36906 (filed October 24, 2018)

STATE OF NEW MEXICO ex rel.
HECTOR BALDERAS, ATTORNEY
GENERAL,
Plaintiff-Appellee,

v.

BRISTOL-MYERS SQUIBB COMPANY,
SANOFI-AVENTIS U.S. LLC, SANOFI US
SERVICES, INC. f/k/a SANOFI-AVENTIS
U.S. INC., SANOFI-SYNTHELABO INC.,
and DOE DEFENDANTS 1 to 100,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

SARAH M. SINGLETON, District Judge Pro Tem

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Opinion

Linda M. Vanzi, Chief Judge

{1} In this interlocutory appeal, we consider whether a federal district court’s dismissal of qui tam claims for failure to state a claim bars the State from pursuing different claims arising from similar facts,

where the State had not intervened in the qui tam action. We conclude that it does not and, therefore, affirm the denial of Defendants’ motion to dismiss.

BACKGROUND

Qui Tam Actions

{2} In order to situate the facts leading to this appeal, we begin with an overview of qui tam actions generally and the relevant

statutes that establish and govern them. “In a ‘qui tam action,’ a private plaintiff, . . . known as a ‘relator,’ brings suit on behalf of the government to recover a remedy for a harm done to the government.” 36 Am. Jur. 2d *Forfeitures and Penalties* § 83 (2018) (footnotes omitted). “He or she pursues the government’s claim against the defendant and asserts the injury in fact suffered by the government, which confers standing on the relator to bring the action as a representative of the [s]tate and as a partial assignee of the government’s claim.” *Id.* (footnotes omitted). A qui tam action arises only by statute, specifically authorizing a private party to sue on behalf of the government. *Id.* The federal False Claims Act (FCA) and state laws similar to it are typical qui tam statutes. See *United Seniors Ass’n v. Philip Morris USA*, 500 F.3d 19, 24 (1st Cir. 2007) (stating that the FCA is a “typical and commonly-invoked qui tam action”).

The FCA and the New Mexico Medicaid False Claims Act

{3} “The [FCA] prohibits false or fraudulent claims for payment to the United States, and authorizes civil actions to remedy such fraud to be brought by the Attorney General or by private individuals in the government’s name.” 32 Am. Jur. 2d *False Pretenses* § 85 (2018); 31 U.S.C. §§ 3729-3733 (2012). Under the FCA, “[t]he Attorney General diligently must investigate a violation of the false claims statute[,]” and “[i]f the Attorney General finds that a person has violated or is violating such statute, the Attorney General may bring a civil action against the person.” 32 Am. Jur. 2d *False Pretenses* § 85; 31 U.S.C. § 3730(a). In addition, the FCA permits relators to “file qui tam civil actions on behalf of the United States for the making of a false claim against government funds.” 32 Am. Jur. 2d *False Pretenses* § 85; 31 U.S.C. § 3730(b).

{4} Similarly, the New Mexico Medicaid False Claims Act (MFCA), NMSA 1978, §§ 27-14-1 to -15 (2004), provides for liability where a person presents “a claim for payment under the medicaid program knowing that such claim is false” or otherwise defrauds the state through the state medicaid program. Section 27144. Like the FCA, the MFCA requires the Human Services Department (HSD) to investigate suspected violations and permits HSD to bring a civil action. Section 27-14-7(A). In addition, the MFCA contains a qui tam provision that permits “[a] private civil action [to] be brought by an affected person

for a violation of the [MFCA] on behalf of the person bringing suit and for the state.” Section 27-14-7(B).

{5} Both the FCA and MFCA require a relator to provide a copy of the complaint and written disclosure of material evidence possessed by the relator to the government so that the government may determine whether there is substantial evidence that a violation has occurred. 31 U.S.C. § 3730(b)(2); § 27-14-7(C). The complaint is sealed for at least sixty days to allow the government to undertake such an investigation. 31 U.S.C. § 3730(b)(2); § 27-14-7(C). Upon completion of the investigation, the government may either “proceed with the action, in which case the action shall be conducted by the [g]overnment[.]” or decline to take over the action. 31 U.S.C. § 3730(b)(4); § 27-14-7(E). If the government declines to pursue the claims in the relator’s complaint, “the person who initiated the action shall have the right to conduct the action.” 31 U.S.C. § 3730(c)(3); § 27-14-8(D). Regardless of whether the government intervenes in the action, the relator may receive a portion of any ensuing recovery. 31 U.S.C. § 3730(d); § 27-14-9.

{6} The FCA and MFCA differ in that, under the MFCA, the relator may continue the action only “[i]f the department determined that there is substantial evidence that a violation of the [MFCA] has occurred” and that “[i]f the department determines that there is not substantial evidence that a violation has occurred, the complaint shall be dismissed.” Section 27-14-7(C), (E)(2).

The First Suit: *In re Plavix Marketing, Sales Practice & Products Liability Litigation*

{7} The first suit at issue was initiated in March 2011 by relator Elisa Dickson (Relator), who filed a complaint alleging that Bristol-Myers Squibb Company, Sanofi-Aventis U.S., LLC; Sanofi-Aventis U.S., Inc.; and Sanofi-Synthelabo, Inc., (Defendants), manufacturers and marketers of the prescription drug Plavix, promoted Plavix in violation of the FCA and various states’ similar fraud statutes, including New Mexico’s MFCA. See *In re Plavix Mktg., Sales Practice & Prods. Liab. Litig. (No. II) v. Bristol-Myers Squibb Co.*, ___ F. Supp. 3d ___, 2017 WL 2780744, at *1-4 (D.N.J. 2017).¹ Pursuant to the provisions of the MFCA, Relator served

New Mexico with “a copy of the complaint and written disclosure of substantially all material evidence and information [Relator] possesses.” Section 27-14-7(C). New Mexico declined to intervene in Relator’s suit and, therefore, declined to take over litigation of the MFCA claim. *In re Plavix Mktg.*, 2017 WL 2780744, at *2.

{8} Relator filed several amended complaints. *Id.* In August 2015, the federal district court dismissed the New Mexico MFCA claim, among others, for failure to state a claim for relief. *Id.* A year later, in August 2016, Relator filed a fourth amended complaint reasserting the MFCA claim, among others. *Id.* at *3. On Defendants’ motion, the federal district court dismissed Relator’s fourth amended complaint in June 2017. *Id.* at *1, *3. Relator did not appeal the dismissal or request permission to amend the complaint again. This final dismissal is central to Defendants’ claim preclusion argument.

The Second Suit: *State of New Mexico ex rel. Hector Balderas, Attorney General v. Bristol-Myers Squibb, et al.*

{9} Shortly after Relator filed the fourth amended complaint in *In re Plavix Marketing*, but before its final dismissal, the New Mexico Attorney General (the State) brought the present action in the First Judicial District Court. The complaint alleges that “Defendants’ false, deceptive, and unfair labeling and promotion of their prescription antiplatelet drug Plavix” violated the New Mexico Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2009); the New Mexico Medicaid Fraud Act (MFA), NMSA 1978, §§ 30-44-1 to -8 (1989, as amended through 2004); and the New Mexico Fraud Against Taxpayers Act (FATA), NMSA 1978, §§ 44-9-1 to -14 (2007, as amended through 2015), as well as common law and equitable causes of action. The complaint did not allege violations of the MFCA.

{10} Defendants moved to dismiss the State’s complaint, arguing that the State had failed to state its claims. They also maintained that the suit should be dismissed without prejudice or stayed pending resolution of the *In re Plavix Marketing* action and that the State was inappropriately splitting its claims. Without ruling on the substantive arguments in the motion, the state district court stayed the action pending the outcome of Defendants’ mo-

tion to dismiss in *In re Plavix Marketing*. Once the federal district court dismissed Relator’s fourth amended complaint, the state district court lifted the stay and ordered supplemental briefing on the impact of the dismissal of Relator’s claims on the State’s complaint and Defendants’ motion to dismiss. In supplemental briefing, Defendants argued that the doctrine of claim preclusion bars the State’s complaint. They also argued that, even if claim preclusion did not bar the State’s claims in their entirety, the claims based on the MFA and FATA should be dismissed for failure to state a claim for the same reasons relied on by the federal district court.

{11} The state district court granted in part and denied in part Defendants’ motion to dismiss for failure to state a claim. It found that the State’s MFA claim failed as a matter of law and that the economic loss doctrine barred the State’s negligence claim. It therefore dismissed those claims with prejudice. It found that the State had inadequately pleaded the UPA and equitable tolling claims but dismissed those claims without prejudice and ordered the State to file an amended complaint if it chose to rectify the deficiencies in the first complaint. The court found the remaining claims adequately pleaded. The State then filed its first amended complaint, which includes claims for violations of the UPA and FATA, as well as common law claims for fraud and unjust enrichment.

{12} In a separate order, the state district court denied Defendants’ motion to dismiss the State’s complaint on claim preclusion grounds. Although it stated that Relator’s claims had been dismissed “with prejudice,” it found that “[claim preclusion] does not apply here because the causes of action are not the same in the two suits” and that “[R]elator in [*In re Plavix Marketing*] did not assert any of the claims the State asserts in this case, but rather only a single New Mexico [MFCA] claim.” It also stated that “while [R]elator . . . stood in the shoes of the State of New Mexico for purposes of the New Mexico [MFCA] claim, [R]elator did not stand in the State’s shoes for purposes of the claims asserted by the State here.” Finally, the state district court concluded that “in a case such as this, where [R]elator’s claims were dismissed based on a failure to comply with the heightened pleading requirements of [Federal Rule of Civil Procedure]

¹Relator filed the initial complaint in Illinois, but the suit was transferred to the United States District Court for the District of New Jersey to be part of the Plavix Multi-District Litigation. *Id.* at *2.

9(b), and not based on the merits of the claim, it would be inappropriate to bar the State's claims."

{13} However, the state district court also found that "[r]egarding the application of [claim preclusion] only," its order "(1) does not practically dispose of the merits of the action, (2) involves a controlling question of law as to which there is substantial ground for difference of opinion, and (3) an immediate appeal from this order or decision may materially advance the ultimate termination of the litigation." See NMSA 1978, § 39-3-4(A), (B) (1999) (providing for interlocutory appeal of district court orders pursuant to this Court's appellate jurisdiction). It therefore certified for interlocutory appeal the portion of the order pertaining to application of claim preclusion. This Court granted Defendants' application for interlocutory appeal. See Rule 12-203 NMRA (governing interlocutory appeals).

Discussion

{14} The issue before the Court is whether the federal court's dismissal of Relator's MFCA claim precludes the State's claims for violations of the UPA and FATA, as well as common law fraud and unjust enrichment. We review such questions of law de novo. *Bank of N.Y. v. Romero*, 2016-NMCA-091, ¶ 15, 382 P.3d 991. In addition, "[b]ecause the prior action was in federal court, federal law determines the preclusive effect of a federal judgment." *Moffat v. Branch*, 2005-NMCA-103, ¶ 11, 138 N.M. 224, 118 P.3d 732; see Restatement (Second) of Judgments § 87 (1982) ("Federal law determines the effects under the rules of [claim preclusion] of a judgment of a federal court."). However, this Court may rely on both federal and New Mexico law on claim preclusion because "[f]ederal law and New Mexico law are not divergent on claim preclusion doctrine, and both find the Restatement (Second) of Judgments . . . persuasive." *Moffat*, 2005-NMCA-103, ¶ 11.

General Claim Preclusion Law

{15} "[Claim preclusion] prevents a party or its privies from repeatedly suing another party for the same cause of action when the first suit involving the parties resulted in a final judgment on the merits." *Rosette, Inc. v. U.S. Dep't of the Interior*, 2007-NMCA-136, ¶ 33, 142 N.M. 717,

169 P.3d 704. Generally, the doctrine applies where "three elements are met: (1) a final judgment on the merits in an earlier action, (2) identity of parties or privies in the two suits, and (3) identity of the cause of action in both suits." *Id.* When these elements are satisfied, the defense of claim preclusion bars relitigation not only of claims actually brought by the plaintiff and its privies, but also claims that could have been brought in the first action. *Kirby v. Guardian Life Ins. Co. of Am.*, 2010-NMSC-014, ¶ 61, 148 N.M. 106, 231 P.3d 87.

{16} For claim preclusion to apply, the first suit must have ended in a "judgment on the merits." *Rosette, Inc.*, 2007-NMCA-136, ¶ 33. Generally, a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a "judgment on the merits" for purposes of claim preclusion. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n.3 (1981).² Although this general rule is often stated broadly, it is not without nuance. Because "[a] motion to dismiss for failure to state a claim under Rule 1-012(B)(6) . . . tests the legal sufficiency of the complaint, not the facts that support it[.]" *Wallis v. Smith*, 2001-NMCA-017, ¶ 6, 130 N.M. 214, 22 P.3d 682, the designation of such a dismissal as "on the merits" is something of a misnomer. In *Kirby*, the New Mexico Supreme Court explained that "[a] dismissal with prejudice is an adjudication on the merits *only to the extent that* when a claim has been dismissed with prejudice, the [final judgment on the merits] element of [claim preclusion] . . . will be presumed so as to bar a subsequent suit." 2010-NMSC-014, ¶ 66 (emphasis added). This is so because "[i]f this were otherwise, plaintiffs could simply ignore dismissals and file the same claim as many times as they wished, so long as the claim never progressed to a determination of the substantive issues." *Id.* Thus, the intent behind considering a Rule 12(b)(6) dismissal as "on the merits" is practical: to limit repetitive filings. See *Kirby*, 2010-NMSC-014, ¶ 66. Such a dismissal obviously does not involve "a judicial determination of" the actual merits. See *id.* ¶ 67. Conversely, "[t]he words 'without prejudice' when used in an order or decree generally indicate that there has been no resolution of the controversy on

its merits and leave the issues in litigation open to another suit as if no action had ever been brought." *Bralley v. City of Albuquerque*, 1985-NMCA-043, ¶ 18, 102 N.M. 715, 699 P.2d 646.

Defendants' Arguments

{17} Defendants contend that the elements of claim preclusion are met here. Defendants argue that the *In re Plavix Marketing* dismissal was "on the merits" because Relator either failed to plead the requisite materiality under *Universal Health Services, Inc. v. United States ex rel. Escobar*, ___ U.S. ___, ___, 136 S. Ct. 1989, 2001-03 (2016), or failed to allege conduct recognized as violative of the FCA. See *United States ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 487 (3d Cir. 2017) ("A [FCA] violation includes four elements: falsity, causation, knowledge, and materiality."); *In re Plavix Mktg.*, 2017 WL 2780744, *8 (same). They also claim that the State was in privity with Relator because Relator represented the State's interests in the *In re Plavix Marketing* action. Finally, they argue that the State's claims "arise out of a common nucleus of operative facts" related to Defendants' marketing practices and, therefore, constitute the "same cause of action" as in *In re Plavix Marketing*. In sum, Defendants maintain that, as a privy to Relator, the State was required to bring all of its claims in *In re Plavix Marketing*, and having failed to do so, the State must be barred from bringing them in a different suit.

Claim Preclusion in the Context of Qui Tam Actions

{18} We first observe that, as a general proposition, "[i]f [the relator] had litigated a qui tam action to the gills and lost, neither another relator nor the [government] could start afresh." *United States ex rel. Lusby v. Rolls-Royce Corp.*, 570 F.3d 849, 853 (7th Cir. 2009). This is true because the relator sues on behalf of the government to vindicate the government's interests, and, although the government is not a named party to the relator's suit, it is a real party in interest. *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 934 (2009) (stating that the government, although a real party in interest, is not a "party" to a qui tam action).

{19} However, courts have also recognized that, under certain circumstances,

²"Because the language of Rule 1-012 [NMRA] closely parallels that of its federal counterpart, Rule 12 of the Federal Rules of Civil Procedure, we find federal authority interpreting Rule 12 . . . instructive." *Doe v. Roman Catholic Diocese of Boise, Inc.*, 1996-NMCA-057, ¶ 5, 121 N.M. 738, 918 P.2d 17. We also cite to Rule 1-012(B)(6) NMRA and Federal Rule of Civil Procedure 12(b)(6) interchangeably.

the government's role in vindicating public interests militates against preclusion of its claims. Cf. Nathan D. Sturycz, *The King and I?: An Examination of the Interest Qui Tam Relators Represent and the Implications for Future False Claims Act Litigation*, 28 St. Louis U. Pub. L. Rev. 459, 462-63 (2009) (noting that even though "[i]n the non-FCA context, the concepts of preclusion would normally prevent duplicative litigation[, a]pplication of preclusion [in FCA cases] is muddled . . . by the distinction between the interests represented in a prior private cause of action and those represented in FCA litigation"). Thus, courts have repeatedly found that suits by or on behalf of the government should not be precluded by certain actions of a private party, even when that party acts as a qui tam relator. This is especially true when the first suit is dismissed for reasons unrelated to the merits of the claims.

{20} For example, federal courts have relied on the fact that a Rule 12(b)(6) dismissal is based only on the relator's complaint, not the factual bases underlying the allegations, to hold that such a dismissal does not preclude the government's claims when the government has not intervened. See, e.g., *United States ex rel. Williams v. Bell Helicopter Textron, Inc.*, 417 F.3d 450, 455-56 (5th Cir. 2005).

{21} In *Williams*, the district court dismissed the relator's FCA claims because the relator failed to plead them with sufficient particularity under Rules 12(b)(6) and (9)(b). *Williams*, 417 F.3d at 455. The district court dismissed the complaint with prejudice as to both the relator and the government, stating that it was "dismissing the claims against the government with prejudice because it believed 'the United States has had ample opportunity to participate in the prosecution of those claims if [it] had any notion that any of them has the slightest merit,' " suggesting that the government's failure to intervene indicated that it found the claims meritless. *Id.*

{22} The United States Court of Appeals for the Fifth Circuit reversed and modified the dismissal to be without prejudice as to the government. *Id.* at 456. First, the court dismissed as "unreasonable" any speculation about the government's reasons for not intervening and the district court's inference that the government would have intervened if it found the relator's FCA claims "meritorious." *Id.* at 455. It observed that the FCA requires the Attorney General to conduct an investigation of the relator's allegations, but the FCA "does not

require the government to proceed if its investigation yields a meritorious claim." *Id.* "Indeed, absent any obligation to the contrary, it may opt out for any number of reasons. For example, a decision not to intervene may 'not necessarily be an admission by the [government] that it has suffered no injury in fact, but rather the result of a cost-benefit analysis.'" *Id.* (alterations omitted) (quoting *United States ex rel. Berge v. Bd. of Trs. of the Univ. of Ala.*, 104 F.3d 1453, 1458 (4th Cir. 1997)). The court concluded, "[G]iven the Rule 9(b) deficiencies, the government may have determined that the costs associated with proceeding based on a poorly drafted complaint outweighed any anticipated benefits." *Williams*, 417 F.3d at 455.

{23} The *Williams* court then noted that a dismissal with prejudice as to the government would give private parties "perverse incentives" to file poorly drafted or improperly pleaded qui tam actions. *Id.* "By essentially requiring the government to intervene in order to avoid forfeiting any future claims against the defendant, private parties would have the added incentive to file FCA suits lacking in the required particularity, knowing full well that the government would be obligated to intervene and ultimately 'fill in the blanks' of the deficient complaint." *Id.* It went on to state that the district court's approach would allow "a relator, in the most egregious of circumstances, to make sweeping allegations that, while true, he is unable to effectively litigate, but which nonetheless bind the government, via [claim preclusion], and prevent it from suing over those concerns at a later date when more information is available." *Id.* (internal quotation marks and citation omitted). It therefore concluded that the district court had abused its discretion by dismissing the complaint with prejudice as to the government. *Id.* at 456.

{24} Without deciding the preclusive effect of a Rule 12(b)(6) dismissal on future related actions, but relying on *Williams*, the Eleventh Circuit also modified a district court's dismissal for failure to state a claim to be without prejudice to the government. *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1057 (11th Cir. 2015). A number of federal district courts have also followed *Williams* and held that a dismissal of a relator's complaint for insufficient pleading should be without prejudice to the government. In each of these cases, the government had declined to intervene in the relators' actions. See,

e.g., *United States v. KForce Gov't Sols., Inc.*, No. 8:13-cv-1517-T-36TBM, 2014 WL 5823460, at *6 n.2, *9 (M.D. Fla. Nov. 10, 2014) (dismissing an FCA complaint for failure to satisfy the Rule 9 pleading requirements and stating that dismissal is without prejudice to the government); *United States ex rel. Boros v. Health Mgmt. Assocs. (Health Mgmt. I)*, No. 4:10-cv-10013-KMM, 2013 WL 12077816, at *1-2 (S.D. Fla. July 26, 2013) (clarifying that dismissal was without prejudice to the government after the relator's FCA complaint was dismissed for failure to state a claim); *United States ex rel. Banigan v. Organon USA, Inc.*, Civil Action H-08-3314, 2013 WL 12142351, at *34 (S.D. Tex. Feb. 1, 2013) (agreeing that "the dismissal [for inadequate pleadings] should be without prejudice to the [government] because it has no involvement in preparing the complaint" and stating that "if the [c]ourt dismisses [the r]elators' complaint on insufficient pleading grounds, the dismissal would not preclude the government from bringing or continuing an action involving the same or similar claims"); *United States ex rel. Rostholder v. Omnicare, Inc.*, No. CCB-07-1283, 2012 WL 3399789, at *15 (D. Md. Aug. 14, 2012) (stating that "[t]he government's decision not to intervene . . . does not suggest that the government necessarily believed that no FCA case was viable . . . [and a]ccordingly, it would be inappropriate to dismiss with prejudice as to the [government] or as to the states or localities on whose behalf relator brought this claim" (emphasis added)), *aff'd*, 745 F.3d 694 (4th Cir. 2014). But see *Lusby*, 570 F.3d at 853 (stating that the district court erred in ordering a qui tam complaint dismissed with prejudice to the plaintiff and without prejudice to the government, but holding that judgment in a private suit did not bar a later qui tam action).

{25} Similarly, courts have dismissed a complaint with prejudice to the relator, but without prejudice to the government, where the relator failed to prosecute or acted improperly in litigation. See, e.g., *United States ex rel. Prince v. Va. Res. Auth.*, 2014 WL 3405657, at *3 (W.D. Va. July 10, 2014) (failure to prosecute), *aff'd*, 593 Fed. App'x 230 (4th Cir. 2015); *United States ex rel. King v. DSE, Inc.*, No. 8:08-CV-2416-T-23EAJ, 2013 WL 610531, at *11 (M.D. Fla. Jan. 17, 2013) (litigation misconduct); cf. *United States ex rel. Vaughn v. United Biologics, L.L.C.*, ___ F.3d. ___, 2018 WL 5000074, at *5 (5th Cir. 2018) (stating that "when the case's outcome is

decided by the relator's voluntary decision to quit, courts tend not to bind the [g]overnment to that decision automatically" and collecting cases).

{26} Although distinguishable on its facts, *State ex rel. Peterson v. Aramark Correctional Services, LLC*, 2014-NMCA-036, 321 P.3d 128, echoes the reasoning in *Williams*. In *Peterson*, this Court considered whether a summary judgment in the plaintiff's personal injury suit barred the same plaintiff's later qui tam action against the same defendant. 2014-NMCA-036, ¶¶ 1-2. Holding that it did not, this Court noted that, as a qui tam relator, the plaintiff represented the state, rather than himself, and therefore, his capacity in the two suits was not the same and the "same parties or their privies" element of claim preclusion was not met. *Id.* ¶¶ 24, 33. In its analysis, this Court, like *Williams*, recognized that claim preclusion in the qui tam context could operate adverse to the public interest. *Peterson*, 2014-NMCA-036, ¶ 30. It stated that "it would be inappropriate to snuff out the government's interest [in the qui tam action] just because a potential relator thoughtlessly omitted a qui tam claim from a[n earlier] personal suit." *Id.* (alterations omitted) (quoting *Lusby*, 570 F.3d at 852). "[W]ere a personal lawsuit held to preclude a qui tam suit on claim preclusion grounds, the government would be incapable of vindicating its interest by bringing a new qui tam suit, either on its own or through another relator" because the government would be bound by the judgment in the personal lawsuit. *Id.*³

{27} Defendants argue that the *Williams* holding is inapposite for three reasons. Defendants first argue that the United States Supreme Court's decision in *Eisenstein* supersedes *Williams*. Defendants rely on the statement in *Eisenstein* that "the [government] is bound by the judgment in all FCA actions regardless of its participation in the case." 556 U.S. at 936. But the *Eisenstein* Court was not considering the issue here; rather, the issue there was whether the government was a "party" to a privately initiated FCA action such that the private party could benefit from the longer period in which to appeal provided to the government under Federal Rule of Appellate Procedure 4(a)(1)(B). *Eisenstein*,

556 U.S. at 931. "The general rule is that cases are not authority for propositions not considered." *Sangre de Cristo Dev. Corp. v. City of Santa Fe*, 1972-NMSC-076, ¶ 23, 84 N.M. 343, 503 P.2d 323.

{28} In addition, the statement relied on by Defendants was a statement of the appellant's argument, not a statement of law by the Court. See *Eisenstein*, 556 U.S. at 936 ("[P]etitioner relies on the fact that the [government] is bound by the judgment in all FCA actions regardless of its participation in the case." (emphasis added)). "[I]n light of *Eisenstein*'s narrow holding—that the [g]overnment was not a 'party' for the purposes of [Rule] 4(a)(1)(B)—it would be inappropriate to interpret this passing observation so broadly." *Vaughn*, 2018 WL 5000074, at *6 (rejecting an argument that *Eisenstein* abrogated *Williams*); accord *USA ex rel. Mastej v. Health Mgmt. Assocs. (Health Mgmt. II)*, No. 2:11-cv-89-FtM-29DNE, 2014 WL 12616929, at *2 (M.D. Fla. June 10, 2014); *Health Mgmt. I*, 2013 WL 12077816, at *1. Finally, as shown above, a number of federal courts have relied on *Williams* after *Eisenstein* was decided in 2009. But see *Lusby*, 570 F.3d at 853 (stating that *Eisenstein* foreclosed dismissal without prejudice as to the government).

{29} Defendants next argue that the policy considerations in *Williams* are inapposite because the MFCA "required New Mexico to determine whether there was substantial evidence of a violation . . . and to dismiss the claim if none existed." They argue that this "obligation means that no qui tam complaint brought under the [MFCA] should ever receive the State's approval to proceed if, like the [*Williams*] complaint, it is so facially deficient that it lacks substantial evidentiary support." It is true that Section 27-14-7 requires that, when a claim is supported by substantial evidence, the state must either pursue the claim or permit the relator to pursue it. See § 27-14-7(E) (providing that if there is substantial evidence, the state "shall: (1) proceed with the action, in which case the action shall be conducted by the department; or (2) notify the court and the person who brought the action that it declines to take over the action" (emphasis added)). However, Defendants' argument conflates a determination of evidence

supporting a claim with a determination of the adequacy of the relator's complaint. The state is required to determine only whether "there is substantial evidence that a violation has occurred," not whether the relator's complaint adequately alleges a violation. Section 27-14-7(C); see *Wallis*, 2001-NMCA-017, ¶ 6 (stating that "[a] motion to dismiss for failure to state a claim under Rule 1-012(B)(6) . . . tests the legal sufficiency of the complaint, not the facts that support it"). To hold that the state is required to involve itself in the articulation of the relator's claims in the complaint is tantamount to requiring the state to intervene in the action. Such a result is contrary to the clear intent of the MFCA to deputize private parties to seek recovery on the state's behalf. See *Berge*, 104 F.3d at 1458 (stating that "the plain language of the [FCA] clearly anticipates that even after the [government] has 'diligently' investigated a violation . . . , the [g]overnment will not necessarily pursue all meritorious claims; otherwise there is little purpose to the qui tam provision permitting private attorneys general"); see *Vaughn*, 2018 WL 5000074, at *5 (citing *Williams* for the proposition that "the non-intervening [g]overnment should not be bound by the fate of an incompetent relator, lest it be forced to intervene in every action"); see also § 27-14-8(D) ("If the state elects not to proceed with the action, the person bringing the action shall have the right to conduct the action."); cf. *Williams*, 417 F.3d at 455 (stating that the government might decline to intervene, even if there is evidence of a violation, because "the costs associated with proceeding based on a poorly drafted complaint [by the relator] outweighed any anticipated benefits").

{30} Finally, Defendants contend that *Williams* is factually distinguishable from the circumstances here. They argue that in *Williams*, the qui tam complaint was dismissed because it was "so deficient [under Rule 9(b)] that the court never reached the merits of the claim[.]" *Williams*, 417 F.3d at 456, whereas here Relator's claim was instead dismissed based on the "heightened pleading standard for materiality under the FCA," rather than the pleading requirements for fraud under Rule 9(b). *In re Plavix Mktg.*, 2017 WL 2780744, *10.

³Notably, although it was unnecessary for the *Peterson* Court to discuss this fact under the circumstances of that case, "the district court granted [the defendant's] motion for summary judgment, and dismissed, with prejudice, all claims brought on behalf of [the qui tam p]laintiff, stating, however, that its order did not prejudice the [s]tate's ability to bring a related action based on the same facts." *Id.* ¶ 20.

They point out that the federal district court found that Relator had “pleaded herself out of court” by alleging facts that negated an essential element of an FCA claim. Thus, because Relator “could not plead the required element of ‘materiality’ as a matter of law[,]” the dismissal was on the merits.

{31} We do not read *Williams* as narrowly as Defendants. The *Williams* holding was not limited to the Rule 9(b) pleading standard. Instead, the core of the *Williams* holding is the failure to adequately plead an FCA claim under Rule 12(b)(6), regardless of the standard applied. See *Williams*, 417 F.3d at 453 (stating that the defendant “moved to dismiss under Rule 12(b)(6) for failure to state a claim because the complaint did not comply with the requirements of Rule 9(b)”). The reasoning for the holding was that the government should not be bound by the relator’s weaknesses in pleading what might be a valid claim, whatever those weaknesses are. In other words, “[w]hy would Congress want [a poorly plead but meritorious] earlier suit to bar a later potentially successful suit that might result in a large recovery for the [g]overnment?” *Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter*, 135 S. Ct. 1970, 1979 (2015); see *id.* (rejecting an argument that “a first-filed suit would bar all subsequent related suits even if that earlier suit was dismissed for a reason having nothing to do with the merits”). Hence, even if the *In re Plavix Marketing*

dismissal was not based on Rule 9(b), an issue we need not decide, *Williams* would still apply here. See *KForce Gov’t Sols.*, 2014 WL 5823460, at *9 (dismissing the relator’s complaint where “the facts . . . plead . . . preclude a claim under the FCA” with prejudice, but without prejudice as to the government).

Dismissal of Relator’s Qui Tam Action Does Not Bar the State’s Claims

{32} The dismissal order in *In re Plavix Marketing* does not specify whether it is with or without prejudice to Relator or the government. *In re Plavix Mktg.*, 2017 WL 2780744, at *1, *23. Nevertheless, because the order did not provide for a fifth amendment and disposed of all of Relator’s claims, we construe it as an adjudication on the merits as to Relator, consistent with the general rule that a dismissal under Rule 12(b)(6) is an adjudication on the merits for claim preclusion purposes. *Moitie*, 452 U.S. at 399 n.3 (stating that “[t]he dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a judgment on the merits” (internal quotation marks and citation omitted)); see *Kirby*, 2010-NMSC-014, ¶ 66 (stating that this approach prevents repetitive suits); *Bralley*, 1985-NMCA-043, ¶ 14 (“An order dismissing a party’s entire complaint without authorizing or specifying a definite time for leave to file an amended complaint, is a final order for purposes of appeal.”).

{33} However, for the reasons stated in *Williams* and its progeny, we construe

the order as without prejudice to the government. Cf. *Bralley*, 1985-NMCA-043, ¶ 18 (stating that “[t]he words ‘without prejudice’ when used in an order or decree generally indicate that there has been no resolution of the controversy on its merits and leave the issues in litigation open to another suit as if no action had ever been brought”). Thus, as to the State, the federal district court’s dismissal of Relator’s fourth amended complaint is not a “final judgment on the merits” for claim preclusion purposes. “Because the claim preclusion doctrine does not bar a subsequent lawsuit unless all [of the claim preclusion] elements are met, we do not consider the parties’ remaining claim preclusion arguments.” *Peterson*, 2014-NMCA-036, ¶ 33.

Conclusion

{34} Consistent with federal FCA and claim preclusion law, we construe the *In re Plavix Marketing* dismissal as without prejudice to the State’s claims, and, therefore, hold that the dismissal does not bar the State’s present claims under the UPA and FATA, as well as common law claims for fraud and unjust enrichment. Accordingly, we affirm the state district court’s denial of Defendants’ motion to dismiss.

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

LINDA M. VANZI, Chief Judge

WE CONCUR:

J. MILES HANISEE, Judge

JULIE J. VARGAS, Judge



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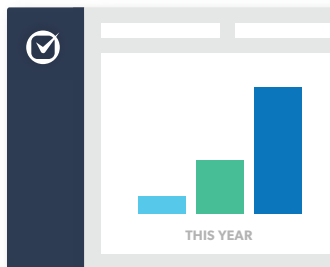
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Positions

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New Mexico Legal Group, a cutting edge divorce and family law firm, is looking for another experienced attorney to join our team. This is a unique opportunity to be involved in creating the very culture and financial rewards that you have always wanted in a law firm. We practice at the highest levels in our field, with independence and cutting edge practice and marketing strategies. The firm offers excellent pay (100k+), health insurance, an automatic 3% contribution to 401(k) and future profit sharing. This is also a great opportunity for lawyers in a solo practice who would like to merge their practice. Qualified candidates should send a resume and cover letter to DCrum@NewMexicoLegalGroup.com. In addition to your professional experience, your letter should talk about who you are as a person and what makes you perfect for this position (this is the most important document you will submit). We look forward to meeting you!

Lawyer Position

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

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

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

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.

DNA-People's Legal Services, Inc.

We are a non-profit legal aid and are currently hiring! DNA is one of the largest Indian legal service organizations in the country, located in northern AZ, northwest NM, and southern UT. We serve clients who live in poverty, with their civil legal needs, such as consumer law, domestic violence, guardianships and other family law, landlord/tenant, employment and public benefits cases. We practice in tribal, state, federal and administrative courts. Applicants must be able to live in remote areas, with limited Starbucks in sight, and must enjoy outdoor activities, such as hiking in canyons, running, cycling, climbing and camping. Having a reliable vehicle means that you can work in one of our on-reservation offices, as opposed to off-reservation. Visit our website <https://dnalegalservices.org/career-opportunities-2/>, any questions call (928) 283-3206.

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.

Associate Attorney

Stiff, Keith & Garcia seeks civil defense litigation associate. Excellent benefits and salary DOE. Great working environment. Send resume to resume01@swcp.com

Assistant City Attorney — Employment and Labor Division

The City of Albuquerque Legal Department is looking to fill two Assistant City Attorney positions within its Employment and Labor Division. This Division is responsible for representing the City in litigation related to employment and labor law in New Mexico State and Federal Courts, before the City of Albuquerque Personnel Board, and before the City of Albuquerque Labor Board. The Division also provides counsel throughout all City Departments related to employment and labor issues. Attention to detail, strong writing skills, and the ability to work well as a part of a team are essential. Five or more years' experience in employment or labor law is preferred for the first position. Two or more years of experience in civil litigation is preferred for the second, with additional preference given for experience in employment or labor law. Applicants must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Assistant City Attorney — Municipal Affairs Division

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Affairs Division. The department's team of attorneys provides a broad range of general counsel legal services to the Mayor's Office, City Council, and various City departments, boards, commissions, and agencies. The legal services provided by the Division include, but are not limited to, drafting legal opinions, reviewing and drafting ordinances and executive/administrative instructions, reviewing and drafting contracts, providing counsel on Inspection of Public Records Act requests and other open government issues, providing advice on City ordinances and State/Federal statutes and regulations, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing skills are essential. Five (5)+ years' experience is preferred and Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Assistant City Attorney — Property and Finance Division

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Property and Finance Division. The work includes, but is not limited to: contract drafting, analysis, and negotiations; drafting ordinances; regulatory law; Inspection of Public Records Act; procurement; general commercial transaction issues; intergovernmental agreements; dispute resolution; and civil litigation. Attention to detail and strong writing skills are essential. Three (3)+ years' experience is preferred and must be an active member of the State Bar of New Mexico, in good standing. Please submit resume and writing sample to attention of "Legal Department Property Finance Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

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 foregoing list is not exhaustive, but is intended 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.

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.

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!

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@cordelllaw.com

Assistant City Attorney— Traffic Arraignment Program

The City of Albuquerque Legal Department is hiring an Assistant City Attorney position in the Property and Finance division of the City Attorney's Office. The position will administer the traffic arraignment program and assist in areas of real estate and land use, governmental affairs, regulatory law, procurement, general commercial transaction issues, civil litigation and. The department's team of attorneys provide legal advice and guidance to City departments and boards, as well as represent the City and City Council on complex matters before administrative tribunals and in New Mexico State and Federal courts. Attention to detail and strong writing skills are essential. Applicant must be an active member of the State Bar of New Mexico in good standing or able to attain bar membership within three months of hire. Salary will be based upon experience. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Assistant Attorney Generals

The Office of the New Mexico Attorney General is seeking attorneys with 1 to 7 years' experience for two Assistant Attorney General positions in its Open Government Division based in Santa Fe. A copy of the job posting and further details available at www.nmag.gov/human-resources.aspx or by emailing Division Director Sally Malavé at smalave@nmag.gov.

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, July 5, 2019. More information is available at www.nmcourts.gov/careers. The New Mexico Judicial Branch is an equal-opportunity employer.

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

Licensed Attorney

Taos Pueblo is requesting proposals for a licensed attorney to serve as the Child Welfare/Juvenile Presenting Officer to support the Taos Pueblo Child Welfare system and the associated programs in investigating, preparing for, and presenting Child Welfare cases and Juvenile cases in the Taos Pueblo Tribal Court. Interested parties may secure a copy of the Proposal Packet from the Division of Health and Community Services Office, 230 Rotten Tree Road, Taos, New Mexico 87571, by calling 575-758-7824 X 113, or via email by sending a request to ebayles@taospueblo.com. Due date for proposals: July 12th, 2019

Associate Prosecutor and Court Prosecutor / Law Clerk

The Pueblo of Laguna is seeking applicants for the position of: ASSOCIATE PROSECUTOR and COURT PROSECUTOR: Will present/file criminal complaints and prosecutes individuals accused of violating criminal laws or Pueblo laws, codes, and/or ordinances. Assist law enforcement on warrants, subpoenas and charging decisions. Work with service providers to recommend sentences, referrals and other related services. LAW CLERK: Perform legal analysis, research and prepare legal files and documents. For more information, contact the Pueblo of Laguna Human Resources Office at (505) 552-6654 or visit our website www.lagunapueblo-nsn.gov

State of New Mexico – General Counsel

The State of New Mexico seeks to hire General Counsel for the Aging & Long Term Services Department, the New Mexico Corrections Department, the Office of African American Affairs, the Department of Game and Fish, the Department of Homeland Security & Emergency Management, the Department of Indian Affairs, the Department of Information Technology, the Human Services Department, the Taxation & Revenue Department, the New Mexico Livestock Board and the New Mexico State Fair Commission. Minimum qualifications include a Juris Doctorate degree from an accredited school of law and three years of experience in the practice of law. Please submit a cover letter, resume and references to vanessa.kennedy@state.nm.us.

Assistant City Attorney

Assistant City Attorney position available with the City of Albuquerque with a main focus on assisting the City of Albuquerque and the Albuquerque Police Department in achieving operational compliance with the Court Approved Settlement Agreement (CASA). The attorney will provide oral and written legal advice, recommendations, and opinions to a variety of levels of Department personnel and City staff on matters regarding the operations and performance of APD. The attorney will regularly interact with and attend meetings with: the parties and monitor; the Civilian Police Oversight Agency and its Board; community policing councils; amici; other stakeholders and members of the community. Applicant must be admitted to the practice of law in New Mexico and be an active member of the Bar in good standing. Preferred qualifications include: knowledge of state and federal laws regarding constitutional policing and police practices; experience in the practice of local or state government; strong organization skills; strong legal research and writing skills; experience in project development and management; experience in business letter writing; and supervisory experience. Experience in report and proposal preparations, developing curricula, and application of adult educational principles is a plus. 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 "Compliance Attorney Application"; c/o Angela M. Aragon; HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103 or amaragon@cabq.gov.

Assistant Attorney General and a second position to focus on multi-state tobacco litigation

The Civil Litigation Division of the Office of the New Mexico Attorney General is recruiting candidates to fill openings for an Assistant Attorney General and a second position to focus on multi-state tobacco litigation. The job posting, with details and instructions to apply, is available at www.nmag.gov/human-resources.aspx or by emailing Litigation Division Director Joseph Dworak at jdworak@nmag.gov. Both positions will be based in the Attorney General's main office in Santa Fe. For best consideration, applications should be received by before the start of business Tuesday, July 9th. However, applications will be reviewed on a rolling basis and the position will remain open until filled.

Patent Attorney

Los Alamos National Laboratory Los Alamos, New Mexico

The Office of General Counsel is seeking an experienced patent attorney to provide constructive and supportive legal advice and counsel to LANL managers and employees, advising them regarding the legal aspects and consequences of proposed courses of action and identifying alternative courses of action that will avoid or minimize legal difficulties for LANL while also facilitating mission accomplishment. Responsibilities will include oversight, management, and exploitation of the LANL patent and copyright estate, management of outside counsel for Intellectual Property matters, the preparation and review of license agreements, Cooperative Research and Development Agreements, Strategic Sponsored Partnership Agreements, Material Transfer Agreements, and other technology transfer agreements. The patent attorney will work to implement LANL's strategic vision of its intellectual assets, including internal education of scientists and engineers as well as the various LANL business units. The patent attorney will work with clients to develop and implement risk mitigation strategies, and will be expected to practice preventive law by anticipating and working to avoid unreasonable risks and conduct and participate in negotiations with outside persons, other entities, and their patent attorneys who may be in either an adversarial or a partnership relationship with LANL. For job requirements and to apply for Job Number IRC73981 on line refer to: <https://www.lanl.gov/careers/career-options/jobs/index.php> For specific questions about the status of this job call 667-2955. Los Alamos National Laboratory is an EO employer – Veterans/Disabled and other protected categories. Qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, disability or protected veteran status.

Felony Attorney Positions

1st Judicial District Attorney

The First Judicial District Attorney's Office has felony attorney positions for the Santa Fe and Espanola Offices. 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.

General Counsel

The Pueblo of Pojoaque Legal Department is soliciting General Counsel applications. Requirements: at least 10 years of experience in civil and criminal law, litigation experience, New Mexico license or ability to become a NM bar member soon. Applicants must be able to handle a large volume of work, work with agencies at all levels of government, and be highly motivated and organized. Familiarity with Federal Indian Law preferred. Please send a resume, writing sample, and references to lbarnhart@pojoaque.org.

Member Services Coordinator

The State Bar of New Mexico seeks a dynamic full-time Member Services Coordinator. The Member Services Department provides administrative support to the volunteer-driven sections, divisions, and committees of the State Bar of New Mexico. For full details and instruction on how to apply, visit <https://www.nmbar.org/NmbarDocs/AboutUs/Careers/MemberServicesCoordinatorRev.pdf>

DDC RFP for Legal Services

Diné Development Corporation, a wholly owned corporation of the Navajo Nation, is seeking a full-service law firm to serve as General Counsel to DDC and its existing six subsidiaries and multiple new subsidiaries planned for development over the next several years. The firm should have attorneys with varying backgrounds to provide the full array of legal services to DDC described in the "Scope of Legal Services" in the Request for Proposals (RFP). Proposals are due July 15, 2019 at 4:00PM MDT at the DDC Office in Albuquerque, NM. The complete RFP can be downloaded at <http://ddc-dine.com/>. For any downloading issues, please email Jocelyn at jocelyn.billy-upshaw@ddc-dine.com.

Legal Assistant

Legal Assistant for litigation defense downtown law firm. Looking for someone with relevant experience, knowledge of e-filing in State and Federal courts, strong organizational skills, cooperative attitude, and attention to detail. Full time, salary DOE, great benefits incl. health, dental & life ins. and 401K match. Please e-mail resume to kayserk@civerolo.com, or mail to Civerolo, Gralow & Hill, PA, PO Box 887, Albuquerque NM 87103.

Paralegal

Paralegal for downtown defense law firm. 5+ years paralegal experience and experience with preparing medical records summaries. Strong organizational skills, motivated and attention to detail necessary. Must be familiar with Outlook and Word. Full time, salary DOE, great benefits incl. health, dental & life ins. and 401K match. E-mail resume to: kayserk@civerolo.com, or mail to Civerolo, Gralow & Hill, PA, PO Box 887, Albuquerque NM 87103.

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 benhancocklaw.com.

Medical Paralegal

Allen, Shepherd, Lewis & Syra, P.A. is seeking a part-time medical paralegal with 3-5 years of directly related experience requesting, reviewing and summarizing medical records in a defense civil litigation law firm as a medical paralegal or equivalent combination of education and/or experience related to the discipline. Other primary duties include drafting documents, locating individuals, requesting and organizing documents for attorneys. Must have knowledge of medical terminology and be familiar with prescription medications. Must know how to prepare medical chronologies, medical expense itemizations and other related documents. Responsible for communicating with various internal and external parties, maintaining electronic databases, and providing support to other employees as requested. Please send resume with cover letter to HR@allenlawnm.com or by mail to Allen, Shepherd, Lewis & Syra, P.A. Attn: Human Resources, P. O. Box 94750, Albuquerque, NM 87199-4750. All replies will be kept confidential. EOE.

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

Site Procurement Manager/ Contracts Administrator

Laguna Development Corporation is seeking a Site Contracts Administrator specialized in the practice area of contracts law and manages a Site Procurement Department. In working with Corporate Chief Legal Counsel, the Incumbent shall provide legal support to protect LDC's rights on matters concerning the obligations, risks and privileges of LDC, an enterprise owned by a federally recognized tribe. Bachelor's Degree and Juris doctorate required, demonstrated knowledge of contract law, demonstrated experience with or willingness to learn principles of Indian law including, but not limited to, sovereign immunity and tribally-owned enterprises operating on and off the exterior boundaries of a tribe. Please visit www.lagunadevcorp.com Careers section for full job description, requirements and to apply. Contact HR at (505)352-7900 with any questions.

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Starting in January, the *Bar Bulletin* will publish every other week on Wednesdays.

Submission deadlines are also on Wednesdays, two weeks prior to publishing by 4 p.m. Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.

**For more advertising information, contact: Marcia C. Ulibarri
at 505-797-6058 or email mulibarri@nmbar.org**

The 2019 publication schedule can be found at
www.nmbar.org/BarBulletin.



2019 ANNUAL MEETING

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

Registration Now Open!

To register and for a preliminary schedule, visit
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Keynote Speaker

**Dan Abrams, Chief Legal Affairs Anchor at ABC News
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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.

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*Note: We have secured room blocks at both hotels,
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