

BAR BULLETIN

December 11, 2019 • Volume 58, No. 25



Upcoming MCLE 2019 Compliance Deadlines

Dec 31, 2019: last day to complete Minimum Continuing Legal Education credits without incurring additional fees.

Visit www.nmbar.org/MCLE to check credits
and search MCLE approved courses.

Contact, 505-797-6054 or mcle@nmbar.org, with questions.

New Legal Professionals Support Group	5
2020 Licensing Notification	8
State Bar Fee Arbitration Program Pro Bono Opportunity	8
Board of Bar Commissioners Meeting Summary	8

Hearsay/In Memoriam	10
From the New Mexico Court of Appeals	
2019-NMCA-035: N.M. Human Servs. Dep't v. Toney.....	23
2019-NMCA-036: State v. Gonzales.....	29
2019-NMCA-037: State v. Dorado.....	34

—SPECIAL INSERT—
YLD in Brief



Looking forward into CLE season



CLE programming from the Center for Legal Education

Cornucopia of Law: Practical Applications for Paralegals and Lawyers

Friday, Dec. 13, 2019

9 a.m.–4:30 p.m.

5.0 G 1.0 EP

Live at the State Bar Center • Also available via Live Webcam!



Lawyers Professional Liability and Insurance Committee

Tuesday, Dec. 17, 2019

1–3 p.m.

2.0 EP

Live at the State Bar Center • Also available via Live Webcam!



Basics of Trust Accounting: How to Comply with Disciplinary Rule 17-204

Monday, Dec. 16, 2019

9–10 a.m.

1.0 EP

Live at the State Bar Center • Also available via Live Webcam!



Speaking to Win: The Art of Effective Speaking for Lawyers

Wednesday, Dec. 18, 2019

9 a.m.–4:30 p.m.

5.0 G 1.0 EP

Live at the State Bar Center • Also available via Live Webcam!



Using Metrics and Analytics for Ethical Solo and Small Firm Marketing

Monday, Dec. 16, 2019

3–4 p.m.

1.0 EP

Live at the State Bar Center

Member Appreciation Series: special pricing for section members



Trial Practice Institute: Trial Know How

Thursday, Dec. 19, 2019

9 a.m.–5:15 p.m.

5.2 G 1.2 EP

Live at the State Bar Center • Also available via Live Webcam!



2019 Mock Meeting of the Ethics Advisory Committee

Tuesday, Dec. 17, 2019

9–11 p.m.

2.0 EP

Live at the State Bar Center • Also available via Live Webcam!



Powered by New Mexico: Energy Use and Production in the Land of Enchantment

Friday, Dec. 20, 2019

8:30 a.m.–5 p.m.

4.5 G 1.5 EP

Live at the State Bar Center • Also available via Live Webcam!



Access to Justice: Best Path Forward: Point - Counterpoint

Tuesday, Dec. 17, 2019

11:15 a.m.–12:15 p.m.

1.0 EP

Live at the State Bar Center • Also available via Live Webcam!



Visit
www.nmbar.org/cle
for details and pricing.



Officers, Board of Bar Commissioners

Gerald G. Dixon, President
Ernestina R. Cruz, President-elect
Carla C. Martinez, Secretary Treasurer
Wesley O. Pool, Immediate Past President

Board of Editors

Gabrielle Dorian, Chair	Taylor V. Bui
Gregory B. Dawkins	Michael Eshleman
Debora K. Gerads	James Kalm
Anne E. Minard	Matthew Ramirez
Michael Sievers	Constance Tatham

State Bar Staff

Executive Director Richard Spinello
Director of Communications
Evann Kleinschmidt
Graphic Designer Julie Schwartz
jschwartz@nmbar.org
Account Executive Marcia C. Ulibarri
505-797-6058 • mulibarri@nmbar.org
Communications Coordinator Cassandra Scott
505-797-6040 • notices@nmbar.org
Digital Print Center
Manager Brian Sanchez
Assistant Michael Rizzo

©2019, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at www.nmbar.org.

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

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
address@nmbar.org • www.nmbar.org

December 11, 2019 • Vol. 58, No. 25

Table of Contents

Notices	4
Calendar of Continuing Legal Education.....	6
Board of Bar Commissioners Meeting Summary.....	8
Hearsay/In Memoriam	10
Court of Appeals Opinions List.....	18
Clerk Certificates.....	19

From the New Mexico Court of Appeals

2019-NMCA-035: N.M. Human Servs. Dep't v. Toney	25
2019-NMCA-036: State v. Gonzales.....	29
2019-NMCA-037: State v. Dorado	34
Advertising	37

Meetings

December

- 11**
Children's Law Section Board
Noon, Children's Court, Albuquerque
- 11**
Tax Section Board
11 a.m., teleconference
- 12**
Business Law Section Board
4 p.m., teleconference
- 13**
Prosecutors Section Board
Noon, teleconference
- 17**
Solo and Small Firm Section Board
11 a.m., State Bar Center
- 19**
Public Law Section Board
Noon, Legislative Finance Committee, Santa Fe
- 20**
Indian Law Section Board
Noon, State Bar Center
- 20**
Family Law Section Board
9 a.m., teleconference
- 24**
Intellectual Property Law Section Board
Noon, JAlbright Law LLC, Albuquerque
- 25**
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

Workshops and Legal Clinics

December

- 11**
Consumer Debt/Bankruptcy Workshop
6–9 p.m., State Bar Center, Albuquerque,
505-797-6094
- 13**
Legal Services and Programs Committee
Free Legal Clinic, 10 a.m.-1 p.m.
Bernalillo County Metropolitan Court

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov/>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

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 free in-house use of 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 & Circulation Hours: Monday-Friday 8:00 a.m.-4:45 p.m. For more information call 505-827-4850, email libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>. The First Judicial District Court Judicial Nominating Commission will meet beginning at 9:00 a.m. on Thursday, December 12, 2019, at the Santa Fe County Courthouse located at 225 Montezuma Ave, Santa Fe, New Mexico to evaluate the applicants for this position.

New Mexico Commission on Access to Justice

The next meeting of the Commission is Dec. 13 from noon-4 p.m. at the State Bar of New Mexico. Commission goals include expanding resources for civil legal assistance to New Mexicans living in poverty, increasing public awareness, and encouraging and supporting pro bono work by attorneys. Interested parties from the private bar and the public are welcome to attend. More information about the Commission is available at www.accessjustice.nmcourts.gov.

Second Judicial District Court Destruction of Exhibits

Pursuant to New Mexico Judicial Retention and Destruction Schedules, the Second Judicial District Court will destroy exhibits filed with the Court, the Criminal (CR) for the years of 2009 to 2013 including but not limited to cases which have been consolidated. Cases on appeal are excluded. Parties are advised that exhibits may be retrieved through Jan. 3, 2020. Should you have cases with exhibits, please verify exhibit information with the Special Services Division, at

Professionalism Tip

With respect to opposing parties and their counsel:

I will agree to reasonable requests for extensions of time or waivers of formalities when legitimate interests of my client will not be adversely affected.

841-6717, from 8 a.m. to 3:30 p.m., Monday through Friday. Plaintiff's exhibits will be released to counsel for the plaintiff(s) or plaintiffs themselves and defendant's exhibits will be released to counsel of record for defendant(s) or defendants themselves by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Holiday Giving Tree

The Second Judicial District Court is hosting a holiday giving tree featuring four New Mexico charitable organizations, including Animal Humane New Mexico, the Albuquerque Public Schools Title I McKinney-Vento Project, the New Mexico Veterans Integration Center and New Mexico Kids Matter. Beginning Nov. 22, charity "wish lists" will be located on the fourth floor atrium alongside the holiday giving tree. All four charities will join judges and court staff at 10 a.m. on Dec. 20 on the SJDC Fourth Floor Atrium for a distribution ceremony. Animal Humane New Mexico will be bringing adoptable companion animals to this holiday event. Donations can be delivered to Second Judicial District Court Administration, third floor, room 325. Second Judicial District Court invites you to participate in the spirit of giving for the 2019 holiday season. Please call Court Administration directly at 505-841-7425 with questions.

Third Judicial District Court Notice of Right to Excuse Judge

The Third Judicial District Court will be re-assigning two dockets in the Children's Court (JR) and domestic (DM) effective Dec. 16. A percentage of pending domestic cases previously assigned to the Honorable Grace B. Duran, District Judge, Division III, shall be assigned to the Honorable Marci Beyer and the remaining percentage shall be assigned to the Honorable Lisa C. Schultz. All pending children's court cases previously assigned to the Honorable Marci Beyer, District Judge, Division II, shall be assigned to the Honorable Grace B. Duran. Pursuant to Supreme Court Rule 1.088.1, parties who

have not yet exercised a peremptory excusal will have 10 days to excuse Judge Grace B. Duran, Judge Lisa C. Schultz, and Judge Marci Beyer from the date of the newly assigned dockets.

Tenth Judicial District Court Destruction of Exhibits:

The Tenth Judicial District Court will destroy exhibits filed with the Court in civil cases for the years of 2006 to 2016. Parties are advised that exhibits may be retrieved beginning through Dec. 15. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Eleventh Judicial District Court Suspension of Subsection (C) of Local Rule LR11-302

LR11-302 (C) states: "As a sanction for all other technical violations, the probationer shall be incarcerated for five days." The judges of the Eleventh Judicial District Court have decided that effective immediately, subsection (C) of LR11-302 is suspended indefinitely. The remainder of LR11-302 remains in effect.

Thirteenth Judicial District Court Nominating Commission and Vacancy Applicants

Three applications were received in the Judicial Selection Office as of Nov. 20 at 5 p.m.; for the judicial vacancy in the Thirteenth Judicial District Court due to the retirement of the Honorable Judge Louis P. McDonald, effective Dec. 31. The Thirteenth Judicial District Court Nominating Commission will meet at 9 a.m. on Dec. 16 at the Thirteenth Judicial District Court - Sandoval located at 1500 Idalia Rd, Bernalillo, NM 87004, to evaluate the applicants for this position. The committee meeting is open to the public and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard. The names of the applicants in alphabetical order: **Steven Paul Archibeque, James Andrew Noel and Christopher G. Perez.**

Thirteenth Judicial District Court

Announcement of Vacancy

A vacancy on the Thirteenth Judicial District Court will exist in Bernalillo, NM as of Feb. 1, 2020, due to the retirement of the Honorable Judge John F. Davis, effective Jan. 31, 2020. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. Applications, as well as information related to qualifications for the position, may be obtained from the Judicial Selection website: <http://lawschool.unm.edu/judsel/application.php>, or emailed to you by contacting Beverly Akin at 505-277-4700. The deadline for applications has been set for Jan. 14, 2020, at 5 p.m. Applications received after that date will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Committee will meet at 9 a.m. on Jan. 28, 2020, at the Thirteenth Judicial District Court - Sandoval located at 1500 Idalia Rd, Bernalillo, NM 87004, to evaluate the applicants for this position. The Committee meeting is open to the public and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard.

Bernalillo County Metropolitan Court

Volunteers are Needed for Legal Clinics

The Legal Services and Programs Committee of the State Bar and the Bernalillo County Metropolitan Court hold a free legal clinic from 10 a.m. until 1 p.m. the second Friday of every month. Attorneys answer legal questions and provide free consultations at the Bernalillo County Metropolitan Court, 9th Floor, 401 Lomas Blvd NW, in the following areas of law: landlord/tenant, consumer rights, employee wage disputes, debts/bankruptcy, trial discovery preparation. Clients will be seen on a first-come, first-served basis and attendance is limited to the first 25 persons.

Court Closure Notice

The Bernalillo County Metropolitan Court will be closing its doors briefly from 11 a.m. to 1:30 p.m. on Dec. 20 for the court's annual holiday lunch. The outdoor bonding window will remain open for the posting of bonds and to accept any urgent filings.

Notice of Mass Reassignment

Bernalillo County Metropolitan Court Chief Judge Sandra Engel announced the mass reassignment of cases in Division XVI and XIX as a result of the creation of the Metropolitan Court Felony Unit within the Criminal Division. Pursuant to Supreme Court Rule 23-109 NMRA, Chief Judge Engel announced that effective Dec. 2, all criminal cases previously assigned to Judge David A. Murphy and to Judge Linda S. Rogers will be reassigned pursuant to New Mexico Rule of Criminal Procedure for Metropolitan Courts 7-105(A)(2) to one of the Metropolitan Court's 14 remaining Criminal Division Judges. Parties who have not yet exercised a peremptory excusal, pursuant to Supreme Court Rule 7-106 NMRA, will have 10 business days from Dec. 2 to excuse the reassigned judge.

STATE BAR NEWS

New Mexico Judges and Lawyers Assistance Program Santa Fe Attorney Support Group Meeting

- Dec. 18, noon-1 p.m.
- Jan. 15, noon-1 p.m.

The new attorney support group, Recovery Responsibilities, explores non-traditional recovery approaches, and has a focus on meditation and other creative tools in support of the recovery process from addiction of any kind. It meets at the District Courthouse, 225 Montezuma Ave, Room 270. For more information, contact Victoria Amada, vamada@nmag.gov, 505-620-7056.

NEW Legal Professionals Support Group focused on Depression/

- Dec. 18, 5:30-7 p.m.
- Jan. 8, 5:30-7 p.m.
- Jan. 22, 5:30-7 p.m.

This group meets from 5:30-7 p.m. on the first and third Wednesday of every month at the UNM School of Law, King Room. (Law Library, upstairs and to immediate left). The purpose of this group is to address the negative impact anxiety and depression can have in people's lives and to develop the skills on how to regulate these symptoms through learning and developing several different strategies and techniques that can be applied to their life. The process will help the individual to understand and manage cognitive, behavior, and physiological components of anxiety and depression. The group will incorporate cognitive behavioral, psychoeducational, and stress reduction techniques

— *Featured* —

Member Benefit



The
Solutions
Group

Take advantage of a free employee assistance program, a service offered by the New Mexico Judges and Lawyers Assistance Program in cooperation with The Solutions Group. Get help and support for yourself, your family and your employees. Services include up to four FREE counseling sessions/issue/year for any behavioral health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other free services include management consultation, stress management education, critical incident stress debriefing, substance use disorder assessments, video counseling and 24/7 call center. Providers are located throughout the state.

**To access this service call
855-231-7737 or 505-254-3555
and identify with NMJLAP.
All calls are confidential.**

that are considered a practical and structured form of psychotherapy. All participants must sign up before their first attendance ONLY. Contact Tenessa Eakins at 505-797-6093 to participate or for questions.

Attorney Support Groups Substance Abuse

- Dec. 16, 5:30 p.m.
 - Jan 6, 5:30 p.m.
 - Jan 13, 5:30 p.m.
- UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law

Continued on page 8.

Legal Education

December

11	Business Law: Top Challenges 19.7 G, 3.2 EP Live Program, Albuquerque NBI Inc www.nbi-sems.com	13	To Indemnify or to Hold Harmless: 1.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org	17	Letters of Intent in Real Estate Transactions 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
11	Bridge the Gap Mentorship CLE (Full Day) 5.0 G, 1.0 EP Live Webcast/Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	13	Ethics & Artificial Intelligence: What Lawyers Should Know 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org	18	Transitions to Retire for Solo and Small Firm Practitioners 0.5 G, 0.5 EP Live Webinar Center for Legal Education of NMSBF www.nmbar.org
12	Bridge the Gap Mentorship CLE (Partial Day) 3.0 G, 1.0 EP Live Webcast/Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	16	Handling a Divorce Case From Start to Finish 5.0 G, 1.0 EP Live Program, Albuquerque NBI Inc www.nbi-sems.com	18	Speaking to Win: The Art of Effective Speaking for Lawyers 5.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
13	Cornucopia of Law: Practical Applications for Paralegals and Lawyers 5.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	16	Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	18	Ethics of Joint Representations: Keeping Secrets & Telling Tales 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org
13	Forensic Science and Ethics 6.0 G Live Seminar, Las Cruces New Mexico Criminal Defense Lawyers www.nmcdla.org	16	Using Metrics and Analytics for Ethical Solo and Small Firm Marketing 1.0 EP Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	19	2019 Trial Practice Institute: Trial Know How 5.2 G, 1.2 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
13	7th Annual Wage Theft in New Mexico: Common Injustice Practice Opportunity 3.0 G, 1.0 EP Live Seminar, Las Cruces The United Workers' Center of New Mexico gguzman.uwc@gmail.com	17	Access to Justice: Best Path Forward: Point - Counterpoint 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	19	Trust and Estate Planning for Retirement Plans – IRAs, 401(k)s, and More 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
13	Medical Cannabis Law in New Mexico 5.0 G, 1.0 EP Live Program, Santa Fe NBI Inc www.nbi-sems.com	17	2019 Mock Meeting of the Ethics Advisory Committee 2.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	20	Powered by New Mexico: Energy Use and Production in Land of Enchantment 1.5 G, 4.5 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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.

- | | | |
|---|--|--|
| <p>23 Transgender 101 for Lawyers
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Law Library in Your Pocket: Mobile Apps for Legal Research (2019)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Find it Fast and Free (and Ethically) with Google, Fastcase 7 and Social Media Sites
4.0 G, 2.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>23 Preparing for Mediation
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Asset Protection Techniques for Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Social Media as Investigative Research and Evidence
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>23 30th Annual Appellate Practice Institute (2019)
7.2 G
Live Replay/Live Webcast
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Fluff is for Pillows, Not Legal Writing
3.0 G
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 2019 Family Law Institute
5.0 G, 2.0 EP
Live Replay/Live Webcast
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>23 Mediating the Political Divide
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Everything I Need to Know about Legal Ethics I Learned from the Kardashians
3.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

Library. 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.

Fee Arbitration Program Seeking Volunteer Arbitrators

The State Bar's Fee Arbitration Program provides attorneys and clients with an out-of-court method of resolving fee disputes. Volunteer arbitrators review case materials, hold hearings and issue awards. For more information or to volunteer, visit nmbar.org/feearbitration.

Solo and Small Firm Section 2019 Annual Meeting

The Solo and Small Firm Section will host its Annual Meeting at 4 p.m. on Dec. 16. Section members are invited to attend the annual meeting to hear what the section has done in 2019 and the exciting plans for 2020. Refreshments and appetizers will be provided. The meeting will be preceded by a CLE co-sponsored by the section that will run from 3–4 p.m. Members can attend in person, attend the CLE and then stay on via webcast, or call-in via teleconference. To R.S.V.P. for the meeting, please email Member Services at memberservices@nmbar.org.

Minimum Continuing Legal Education Compliance Deadline Approaching

Dec. 31, 2019 is the last day to complete 2019 Minimum Continuing Legal Education requirements. For a list of upcoming MCLE

approved courses, visit www.nmbar.org/MCLE. Contact MCLE with questions at 505-797-6054 or mcle@nmbar.org.

State Bar of New Mexico Licensing Certifications and Fees Due by Feb. 1, 2020

2020 State Bar licensing requirements are now due. To avoid late fees, submit by Feb. 1, 2020. In order to complete annual licensing requirements and pay by credit card, visit www.nmbar.org/licenser renewal. To request a PDF copy of the license renewal form, email license@nmbar.org. For questions, email license@nmbar.org. For technical support, email clopez@nmbar.org.

UNM SCHOOL OF LAW Law Library Hours Fall 2019

Through Dec. 31

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.
---------------	---------------

Holiday Closures

Winter Break: Dec. 23–Jan. 1, 2020

UNM School of Law Spanish for Lawyers I

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. The class will take place from 4:30 to 6:30 p.m. on Thursdays between Jan. 9 and April 16. This course has been approved by MCLE for 20 general CLE credits. To register, visit <http://lawschool.unm.edu/spanishforlawyers/>.

OTHER BARS Christian Legal Aid Fellowship Luncheons and Breakfasts

Christian Legal Aid invites members of the legal community to fellowship luncheons/breakfasts which are an opportunity for current attorney volunteers, and those interested in volunteering, to meet to learn

about recent issues NMCLA attorneys have experienced in providing legal counseling services to the poor and homeless through the NMCLA weekly interview sessions. They are also opportunities to share ideas on how NMCLA volunteer attorneys may become more effective in providing legal services to the poor and homeless. Upcoming dates are: Feb. 6, 2020, at noon at Tomasitas; April 7, 2020, at 7 a.m. at The Egg and I; June 4, 2020, at noon at Japanese Kitchen; and Aug. 12, 2020, at 7 a.m. at Stripes at Wyoming and Academy. For more information, visit nmchristianlegalaid.org or email christian-legalaid@hotmail.com

New Mexico Hispanic Bar Association 7th Annual Wage Theft in New Mexico: Common Injustice Practice Opportunity

The event will take place noon–4:30 p.m. on Dec. 13 in Las Cruces at NMSU. The CLE is worth three general credits and one ethics credit. The price is \$99 for general admission and \$75 for NMHBA members. For more information, please email gguzman.uwc@gmail.com.

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners for the State Bar and the NM State Bar Foundation met on Oct. 25 at the State Bar Center, Albuquerque, NM. Action taken at the meeting follows:

- Approved the Aug. 1 meeting minutes;
- Accepted the September 2019 financials;
- Approved the 2020 Budgets for the State Bar and the N.M. State Bar Foundation;
- Received the third quarter financials for the Client Protection Fund, Access to Justice Fund and the Judges and Lawyers Assistance Program;
- Reviewed and approved the Three-Year Strategic Plan with amendments for statewide/rural and out-of-state member outreach and created a Statewide/Rural Outreach Committee and a Member Services Committee;
- Elected the 2020 State Bar officers as follows: Carla C. Martinez as President-Elect and Carolyn A. Wolf as Secretary-Treasurer;
- Elected the 2020 NM State Bar Foundation officers as follows: Benjamin I. Sherman as Treasurer, Joseph F. Sawyer as Secretary, Clara Moran and Jared G. Kalunki as first and second Vice Presidents, and Aja N. Brooks as President;

- Received proposals for the Digital Print Center equipment and approved the proposal from Konica Minolta for the lease of a color printer;
- Held an executive session to discuss a personnel issue;
- Received a report on the Executive Committee meetings held in September and October;
- Received a report from the Policy and Bylaw Committee regarding the recommendation from the Lawyers Professional Liability and Insurance Committee (LPLIC) regarding releasing professional liability insurance information; the Board approved requesting the Supreme Court to permit the State Bar to ask whether or not members have liability insurance in the amounts required under Rule 16-105 and the name of the insurance carrier and to disclose that information upon request;
- Reported on the Lawyers Professional Liability and Insurance Committee's meeting at which The Bar Plan and ALPS presented information on liability insurance and discussed the Bar's future collaboration with liability insurance carriers; the committee will discuss further and report back to the Board;
- The Policy and Bylaws Committee also

reviewed a proposal regarding Supreme Court Board, Committee and Commission liaisons and the committee is drafting rule changes for those that it determined should have a full member and is also looking at terms;

- Reported that the Policy and Bylaws Committee is obtaining additional information on the revised Bar Foundation Bylaws;
- Received a report from the Regulatory Committee and materials for the new Legal Specialization program, as well as a letter to the current specialists notifying them of the new program; and reported that changes to the MCLE rules will be presented for approval at the December meeting;
- Received a report from the Annual Awards Committee and approved renaming the Distinguished Bar Service Award in memory of Judge Sarah M. Singleton and adding language to the criteria to include service to the public;
- Received a report from the Special Committee charged with reviewing the Solo and Small Firm Section's request to become a division; the committee will be meeting with the Section Board to discuss further;
- Received a report on the Judges and Lawyers Assistance Program and will be meeting with and assisting the JLAP Com-

mittee on wellness issues;

- Received a report on the new Association Management Software Application; staff is reviewing and ranking the proposals and if a decision is made before the December Board meeting, the Executive Committee will make the decision;
- Received an update on the Client Protection Fund Commission recommendation regarding a mandatory fee arbitration program for lawyer/client fee disputes;
- Received reports on Bar Commissioner Districts Annual Events;
- Received a report on the Business Courts/Complex Litigation Committee chaired by President Dixon;
- Received the 2020 Board meeting dates as follows: Feb. 7, April 17-18, June 18 (Santa Fe, in conjunction with the State Bar Annual Meeting), Sept. 25, and Dec. 9 or 10 in Santa Fe;
- Received a written report from the State Bar's representative to the Rocky Mountain Mineral Law Foundation; and
- Received information on the Health Law Section's request regarding revenue sharing for their CLE program and denied the request.

THANK

You

The State Bar of New Mexico would like to express its appreciation and gratitude to the following attorneys that participate in the **CONSUMER DEBT BANKRUPTCY WORKSHOP.**

Thank you for your professionalism, time and service to the community in New Mexico.

Ron Holmes
Mike Daniels
Al Schimmel

Arun Melwani
Erik Thunberg
Don Provencio
Wayne McCook

Mike Lash
Matthew Gandert
Leslie Maxwell



On July 27 at the Annual American Association for Justice Convention, this year held in San Diego, Calif. **Lawrence Edward Chacon**, Class of 1986, was honored and given the Johnny Cochran Soring Eagle Award by the Minority Caucus of American Association for Justice. Past recipients have included Johnny Cochran and 16 others. For a complete list of past recipients please

Google The Johnny Cochran Soaring Eagle Award. Chacon has previously been honored by The American Association for Justice, formally Trial Lawyers of America for his volunteer representation of two families who had loved ones killed in the 9/11 attack on the World Trade Center in New York City. For that contribution Chacon's Name was interred into the Congressional Record along with other volunteer attorneys.



Tomas Garcia, an associate with Modrall Sperling, has been appointed by the American Bar Association as state membership chair. He is commissioned with spearheading ABA membership growth and engagement in New Mexico. Garcia will serve a three-year term ending with the adjournment of the ABA's Annual Meeting in 2022. He is a 2019 recipient of the ABA's On the Rise – Top 40 Young Lawyers Award, and

in 2015 New Mexico Defense Lawyers Association named him "Young Lawyer of the Year." Garcia is ranked by Southwest Super Lawyers® and has an AV® peer-review rating from Martindale-Hubbell. He is a graduate of Yale University, Harvard University, and Georgetown University Law Center.



George "Dave" Giddens has been selected by his peers for inclusion in the 26th edition of The Best Lawyers in America® for his work in two practice areas – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law and Commercial Litigation. This is his 7th year of recognition by the organization. *Best Lawyers* is a peer-review recognition program that captures the consensus opinion of leading lawyers

about the professional abilities of their colleagues within the same geographical area and legal practice area. Giddens is the founder and managing shareholder of Giddens + Gatton Law, P.C., and focuses primarily on commercial real estate and bankruptcy law. Practicing law since 1983, Giddens founded the Law Office of George "Dave" Giddens in 1997 and has been working to assist clients through the process of corporate and personal bankruptcy and financial reorganization for more than 35 years. Giddens is a member of several community organizations including the Albuquerque Chamber of Commerce, and the Albuquerque Hispano Chamber of Commerce, and is an active member of St. Stephen's United Methodist Church. Giddens earned his undergraduate degree from the University of Kansas and his juris doctor from the University of Kansas in 1983.



Michael Schwarz of Santa Fe has been selected for inclusion in the 2020 edition of Best Lawyers in America in the areas of Employment and Civil Rights Law.



Tiffany Roach Martin (right) and Nathan Nieman(left) have been named to Benchmark Litigation's 2019 "Under 40 Hot List," a publication which honors the achievement of the nation's most accomplished legal partners age forty and under. The list was

compiled by a process of peer review and case examination.

Martin is recognized in Civil Litigation, Insurance, Labor and Employment, and Trusts & Estates Litigation and Dispute Resolution. This is her fourth consecutive year to make the list. She maintains an active and diverse civil litigation practice in which she represents international, national, and regional corporations as well as local businesses. Martin has experience in state and federal court litigation and has extensive knowledge of federal practice and procedure in the United States District Court for the District of New Mexico.

Nieman is recognized in the area of General Commercial Litigation for the third year in a row. He has broad litigation experience including commercial litigation, personal injury, wrongful death, insurance, prescription medication products liability, workers' compensation, unfair trade practices, and employment discrimination cases in federal, state, and agency courts.



WBMH Law's **Michael Golden** has been named Best Lawyers® Santa Fe Family Lawyer of the Year for the second time in four years. This honor marks the fifth time since 2012 that a WBMH attorney has been recognized as being at the top of the field.

The honor is particularly satisfying, since it is based on peer review. *Best Lawyers* uses a process designed to capture the consensus opinion of local lawyers about the professional abilities of their colleagues. To be named Lawyer of the Year means Golden's professional colleagues rated him highest overall for a family lawyer in Santa Fe. Golden has been practicing family law for over 40 years, 31 of which were as partner at Moore & Golden. His career has spanned all aspects of family law, but Golden's preferred work is in alternative dispute resolution. Golden joined WBMH in 2016, of counsel, to continue this work in financially complex cases. Along with his WBMH colleagues, Golden focuses on family law cases in which financial or geographic complexities require the highest level of family law competence. Golden and WBMH partners David Walther and Sarah Bennett were also selected by their peers for inclusion in the 2020 edition of *Best Lawyers in America*, a distinction all three have earned year after year.



Forty-one lawyers with the Rodey Law Firm are listed in The Best Lawyers in America-2020. Rodey lawyers Mark Adams, Leslie McCarthy Apodaca, Sandra Beerle, Rick Beitler, Perry Bendicksen III, Jose Blanton, Michael Brescia, David Buchholtz, David Bunting, John Burton, Denise Chanez, Jeffrey Croasdell, Jocelyn Drennan, Nelson Franse, Kurt Gilbert, Catherine Goldberg, Scott Gordon, Alan Hall, Bruce Hall, Justin Horwitz, Michael Kaemper, Paul Koller,

Jeffrey Lowry, Dick Minzner, Donald Monnheim, Michael Morgan, W. Mark Mowery, Sunny Nixon, Theresa Parrish, Charles (Kip) Purcell, Debora Ramirez, Edward Ricco, Brenda Saiz, John P. Salazar, Andrew Schultz, Charles Seibert, Seth Sparks, Tracy Sprouls, Robert St. John, Thomas Stahl, and **Charles Vigil** are listed for their expertise and experience in particular areas of law.

Jay F. Stein and James C. Brockmann of Stein & Brockmann, P.A., have been named to Best Lawyers in America in the field of water law for 2020. Brockmann has been chosen as 'Lawyer of the Year' for 2020 in the practice area of water law."

Morgan McPheeters, formerly of Durham, Pittard & Spalding, LLP, has formed the law firm McPheeters Law, PLLC. McPheeters handles civil appeals and provides litigation strategy & support to trial lawyers across Texas and in New Mexico. She is a graduate of New Mexico State University and Baylor University School of Law.

Nine Modrall Sperling shareholders have been selected by Best Lawyers in America® as a 2020 "Lawyer of the Year" in Albuquerque and Santa Fe. Only a single lawyer in each practice area and designated market is honored with this recognition.

Shareholders named Best Lawyers 2020 "Lawyer of the Year" are:

- Stuart R. Butzier, Litigation - Environmental, Santa Fe
- Earl E. DeBrine, Jr., oil and gas law, Albuquerque
- Stan N. Harris, litigation, land use and zoning, Albuquerque
- Timothy C. Holm, railroad law, Albuquerque
- James P. Houghton, construction law, Albuquerque
- Meg Meister, real estate law, Albuquerque
- Arthur D. Melendres, administrative/regulatory law, Albuquerque
- Walter E. Stern, natural resources law, Albuquerque
- Douglas R. Vadnais, litigation-bankruptcy, Albuquerque

Additionally, 30 of the firm's lawyers are listed in the 2020 edition of Best Lawyers, with Spencer Edelman and Jeremy Harrison being named to the list for the first time. Shareholders named "Best Lawyers" are:

- Daniel M. Alsup, public finance law
- Jennifer G. Anderson, commercial litigation, litigation-healthcare
- Martha G. Brown, commercial litigation, product liability litigation-defendants
- Stuart R. Butzier, environmental law, litigation-environmental, mining law, natural resources law
- John R. Cooney, antitrust law, bet-the-company litigation, commercial litigation, energy law, mining law, natural resources law, oil and gas law
- Earl E. DeBrine, Jr., oil and gas law, railroad law
- Joan E. Drake, energy regulatory law
- Spencer L. Edelman, bankruptcy and creditor debtor rights/insolvency and reorganization law
- Timothy L. Fields, insurance law, personal injury litigation - defendants, product liability litigation-defendants, railroad law
- Paul M. Fish, bankruptcy and creditor debtor rights/insolvency and reorganization law, bet-the-company litigation, litigation-bankruptcy, mortgage banking foreclosure law
- Peter Franklin, public finance law
- Stan N. Harris, litigation-land use and zoning
- Jeremy K. Harrison, personal injury litigation - defendants
- Timothy C. Holm, commercial litigation, mass tort litigation/class actions-defendants, personal injury litigation - defendants, product liability litigation-defendants, railroad law
- James P. Houghton, construction law, litigation-construction, real estate law
- Karen L. Kahn, employee benefits (ERISA) law
- Meg Meister, commercial transactions/UCC law, corporate law, real estate law
- Arthur D. Melendres, administrative/regulatory law, education law, municipal law
- Christopher P. Muirhead, municipal law, public finance law
- Megan T. Muirhead, mass tort litigation/class actions-defendants
- Brian K. Nichols, Native American law
- Jennifer A. Noya, employment law-individuals, insurance law, litigation-labor and employment
- Maria O'Brien, water law
- Roberta Cooper Ramo, arbitration, mediation
- Marjorie Rogers, business organizations including LLCs and partnerships, closely held companies and family businesses law,

employee benefits (ERISA) law, non-profit/charities law, tax law, trusts and estates

- Lynn Slade, energy law, environmental law, Native American law, natural resources law, oil and gas law
- Walter E Stern, energy law, environmental law, mining law, Native American law, natural resources law, oil and gas law
- R. E. Thompson, commercial litigation, government relations practice, litigation-construction
- Douglas R. Vadnais, bankruptcy and creditor debtor rights/insolvency and reorganization law, bet-the-company litigation, litigation-bankruptcy, mortgage banking foreclosure law
- Alex C. Walker, personal injury litigation – defendants, product liability litigation-defendants



U.S. News and World Report and *The Best Lawyers in America* have named **Rodey Law Firm** one of the best law firms in New Mexico. Rodey is included and recognized in the Best Law Firms list for professional excellence and persistently impressive ratings from clients and peers. Achieving a ranking signals a unique combination of quality law practice and breadth of legal expertise. Consistently recognized for

excellence in business law and litigation, Rodey is a full-service law firm serving clients in New Mexico and across the nation since 1883.

Fifty-seven attorneys from **Brownstein Hyatt Farber Schreck** were selected by their peers for inclusion in the 2020 edition of *Best Lawyers in America*, the legal profession's oldest and most respected peer-review publication. Attorneys from eight of Brownstein's offices were recognized in 33 different law categories ranging from bankruptcy, litigation and gaming to corporate, real estate and government relations. Shareholder **Eric Burris** is recognized on the Best Lawyers in America list for his work in product liability litigation-defendants. With 30 years of experience, Burris has worked extensively in civil litigation in New Mexico. Additionally, he is office managing partner of the firm's Albuquerque office and chair of the firm's Litigation Department.

U.S. News Best Lawyers® named **Modrall Sperling** a top firm in 42 areas of law in Albuquerque and Santa Fe, and recognized the firm as a top firm in the area of Native American Law on a nationwide basis. Best Law Firms rankings are based on a rigorous evaluation process that includes client evaluations, attorney evaluations, peer reviews from ranked attorneys, and a data analysis completed by U.S. News. Of the 42 areas of law where Modrall Sperling ranked as a top firm, 33 areas were given a Tier 1 ranking. To receive a Tier 1 ranking, a firm is considered to be the best in the city or nation in a given practice area. The firm received recognition in the following areas of law: national recognition, native american law, metropolitan recognition, administrative/regulatory law, antitrust law, arbitration, bankruptcy and creditor debtor rights / insolvency and reorganization law, bet-the-company litigation, business organizations (including LLC's and partnerships), commercial litigation, construction law, corporate law, education law, employee benefits (erisa) law, employment, law - individuals, energy law, environmental law – Albuquerque and Santa Fe, gov-

ernment relations practice, insurance law, litigation – bankruptcy, litigation – construction, litigation – environmental, litigation – health care, litigation – labor & employment, litigation – land use & zoning, mass tort litigation / class actions - defendants, mediation, mining law, mortgage banking foreclosure law, municipal law, native american law, natural resources law – albuquerque and santa fe, non-profit / charities law, oil & gas law, personal injury litigation – defendants, product liability litigation - defendants, public finance law – albuquerque and santa fe, railroad law, real estate law, tax law, trusts & estates law and water law.



Modrall Sperling is pleased to announce that **Haley Adams** (left) and **Adam Wright** (right) have joined the firm's Albuquerque office.

Haley Adams focuses her practice on energy, water, environmental and natural resources

law. Prior to joining Modrall Sperling, Adams practiced with the New Mexico State Land Office for two years, where she assisted in long-term commercial lease drafting and negotiation, litigated contract and water law issues and managed the agency's compliance with the New Mexico Inspection of Public Records Act.

Adam Wright represents clients in a wide range of commercial litigation matters. Wright's practice also focuses on trademark, copyright, false advertising, unfair trade practices, and trade secret litigation, as well as advising clients on copyright and trademark registration issues. Additionally, he has represented media companies in defamation and First Amendment litigation.



U.S. News & World Report and *Best Lawyers* have named **Giddens + Gatton Law, P.C.**, a 2020 Best Law Firm for two practice areas – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, and Commercial Litigation. Firms recognized by *Best Lawyers* have achieved professional excellence with persistently impressive ratings from clients and peers. Achieving a ranking signals a unique combination of quality law practice and breadth of legal expertise. To be eligible

for a ranking, a firm must have a lawyer listed in *The Best Lawyers in America*, which recognizes the top 5 percent of practicing attorneys in the U.S. George "Dave" Giddens (left), founder and managing shareholder of Giddens + Gatton Law, P.C., was recently selected for Best Lawyers in America® for his work in two practice areas – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law and Commercial Litigation. This is his 7th year of recognition by the organization. Giddens + Gatton Law, P.C., has a staff of four attorneys who serve individuals, small businesses and bankers in the areas of bankruptcy, creditor's rights, business law and real estate law. Individuals may contact the firm at 505-271-1053 or visit their website at www.giddenslaw.com.

Charles Alan (“Chuck”) Purdy died peacefully on Aug. 19 surrounded by family and friends. Purdy was born on Sept. 13, 1955, in East Chicago, Ind. The oldest of four children, he grew up in Tucson, Ariz. As a child, he rode bikes, ran cross-country, camped with his family in the White Mountains and sang in the Tucson Boys Choir, where he cultivated his strong, clear tenor voice. He is remembered by all for his singing and had the repertoire of a living jukebox. Purdy attended the University of Arizona, earning his law degree in 1980. He moved to Santa Fe in 1981, where he devotedly served the Northern New Mexico community for over three decades, providing personal injury and employment law. Among his most significant contributions was the “Bridge Case,” which served to improve New Mexico highway safety. An avid outdoorsman and sportsman, his daughter and grandson grew up climbing the high mountains and 14ers on his strong shoulders. Purdy had an encyclopedic vocabulary and memory for facts and enthusiastically shared his love of flora, fauna, birds and constellations with his family and friends. Oh, and don’t forget politics and history, which Purdy could talk about for hours. Purdy regularly pruned and “fire-scaped” his land with his treasured chain saw, earning him the nickname, “Right Hand of Mother Nature.” He was never one to hurry, so in his later years, his family and grandson affectionately dubbed him “Granddaddy Box Turtle” in homage to his first childhood pet, a Sonoran Box Turtle. Purdy loved his family and friends with all his heart and was known by all as a kind and gentle soul. He was generously endowed with the “Goofball Gene” and was known for his wicked, dry sense of humor. His siblings particularly remember the “wicked” part. The last passion Purdy cultivated was his love for his Rock Steady Boxing community and class, where he assumed the boxing name, “Ali,” and regularly demonstrated both his determination and his goofball nature. His daughter remembers that Purdy lived by his own - often given - advice: “Beauty is as Beauty does.” He is survived by his wife and partner of 35 years, Kate Cook; his daughter, Francesca Rose Bottos; his grandson, Jonah Charles Waipa; his mother, Phyllis Kell; and his sisters, Janice Cook and Rhonda Jaska. His brother, Bruce Purdy, preceded him in death. He is also survived by his nieces and nephews, Shannon Farrow, Jessica Cooper, Eric Purdy, Jaclyn Lehmuth, and Curtis Purdy; and his great nieces and nephew, Jacob Cooper, Olivia Cooper, and Kennedy Lehmuth. His family wishes to express their heartfelt gratitude for the kind and loving care of his caretakers and doctors and for the devotion of his aides, nurses, and the administration at Kingston.

Stanley C. “Stan” Sager, loving husband and father, died in Albuquerque on Sunday, May 12 at the age of 89. His beloved wife of 66 years, Shirley A. Sager, survives him, as do daughters, Gayle Sager Keenan and husband J. Michael Keenan, and Ann Sager. He is also survived by his grandchildren, Meghann Keenan Brown and husband Jason, Brett Robertson and husband Craig, Daniel Keenan, Max Fawver and wife Sharon, James Fawver, all of Albuquerque, Kevin Fawver of Wichita; and by his great-grandchildren, Alyssa, Hunter, and Adrien Fawver, Jack and Alexandria Robertson; as well as by his sisters, Lola Lewis of Liberty, MO, and Portia Maxon of Topeka, KS; and many nieces and nephews. Stan was predeceased by his son, Dr. Kurt M. Sager; grandson, Thomas Michael Keenan; great-grandson, Jaden Kurt Fawver; his brother, Richard Sager and wife Marge; and his parents, Mr. and Mrs. J. I. Sager. Stan was born in Concordia, KS, in 1929, and attended Clyde, Kansas schools. As a senior he

earned a Navy scholarship to Kansas University. Upon graduation from KU in 1951, he was commissioned as a U.S. Naval officer. He attended amphibious training at Coronado, CA, and helped take the USS Logan, APA 196, out of mothballs for service in the Korean theater. Stan sailed to what was then Occupied Japan on the Logan, where he was transferred to the LST 602. In 1952, he and the former Shirley Wilkie were married. Eight months later he contracted a paralyzing case of polio while on training exercises with Marines at Camp Pendleton, CA, to prepare for his second tour in waters off Occupied Japan and Korea. Left by the polio as a paraplegic and placed on the Navy retired list, Stan was a good-natured man whose disability did not hold him back. With his wife’s encouragement, he attended law school at Washburn University in Topeka with help of classmates who carried him in his wheelchair up and down two long flights of stairs every school day. Each afternoon he took physical therapy at the VA hospital and cared for son Kurt to give Shirley a break. He graduated with Dean’s Honors. He turned down employment offers from the Kansas Supreme Court and the VA because they planned special accommodations for his disability while he insisted he could compete in a law practice without such accommodations. He taught himself to walk on crutches against medical advice in the belief that few clients would hire a lawyer in a wheelchair in those pre-ADA days. He then practiced law with a tax firm in Topeka until he and Shirley decided to move to Albuquerque with their three small children. A natural storyteller, Stan took great joy in telling wild and humorous yarns to his children and, later, to his grandchildren. He also enjoyed helping daughter Gayle homeschool her three children by assisting with the science curriculum. For years he taught adult Bible classes at his church, St. John’s United Methodist, and was an adjunct professor at the UNM School of Architecture, where he taught seminars on legal issues for design professionals. He was a regular seminar presenter at Bar Association and AIA programs. Stan had two law practices: one with his law firm, Sager, Curran, Sturges and Tepper, which grew to 23 lawyers with offices in Albuquerque and Las Cruces under his management, and one at night, when he would return to his office to do pro-bono work. He was admitted to practice law in all New Mexico and Kansas courts, the U.S. Supreme Court, and the Tax Court. He received numerous awards from the State Bar for his work with low income New Mexicans, including the coveted Professionalism award. He was instrumental in organizing the Department of Internal Audit for The United Methodist Church and chaired the denomination’s audit committee. He was elected three times as lead N.M. delegate to the Methodist General Conference and was elected to chair its Legislative Committee on Finance and Administration in 2000. He was awarded the Judge Woodrow B. Seals honor from the Perkins School of Theology, SMU. He was a State Bar Commissioner, chaired the Lawyer Referral for the Elderly Project, which included over 300 volunteer attorneys statewide, was an original member of the NM Legal Services Commission and was treasurer of the NM Conference Methodist Foundation and of the Zia Chapter, Paralyzed Veterans of America. He was president of the Child Guidance Center and of Sandia Kiwanis, and gave pro-bono services in organizing the Roadrunner Food Bank, the Storehouse, Grace Incorporated, The Confraternity of the Sacred Heart of Mary, and many United Methodist churches and other charities. As a practicing attorney

he represented many architectural and engineering firms and occasional physicians and surgeons. He authored numerous historical articles and wrote two published books, ¡Viva Elfego! and Four Corners: Where the Holy Spirit Touches Navajo Hearts and numerous treatises on internal auditing, disability and professionalism. He was awarded the honorary degree Doctor of Law by Washburn School of Law, to whose graduating class he delivered the keynote commencement address in 2013. Stan, in his later years, returned to using a manual wheelchair, in which he rolled over much of the US and all Canadian provinces with Shirley. They drove all over Europe and Brazil, even though hotels were often less than ideal for a disabled person. Whatever architectural barriers or human prejudices he faced, Stan remembered the saying that had gotten him through the hard early days of his disability, with Shirley's backing: "Do my best with what I've got." That's what he did. Family members wish to thank, as Stan did, the wonderful people at the SCI (Spinal Cord Injury) Unit at the VA as well as other units there for their constant, kind, and professional care. Warm thanks, also, to the caregivers from Home Instead, Anthony and Jeanette, in particular. Many thanks to Washburn students and faculty who made law school possible.

Raymond Hamilton, 68, passed away peacefully Sept. 2 after a brief illness. Hamilton was born to Zelma Lee Dobbins Hamilton and Tommie Lee Hamilton in Hobbs, NM on Dec. 14, 1950. He graduated from Hobbs High School in 1968, with a 3.8 GPA and was selected to go to Boys State. He graduated with a Bachelor of Science in Education from the University of New Mexico in Albuquerque. He received a J.D. Degree from Harvard Law School in 1975. Hamilton returned to New Mexico and worked for NM Attorney General Toney Anaya in Santa Fe, then spent 30 years as an Assistance U. S. Attorney for the Department of Justice in Albuquerque until retirement in 2011. He attributed his longevity in U. S. Attorney's Office to R. E. Thompson and John Kelly. Under John Kelly, Hamilton became chief of the Civil Division. Hamilton was co-founder of the New Mexico Black Lawyers Association along with the Honorable Tommy Jewell Jr., and attorney Hannah B. Best (both of whom are retired) and remained active as an officer in NMBLA until his passing. Hamilton maintained membership in the Albuquerque Branch of the NAACP, Associate with Albuquerque Section of the National Council of Negro Women, Incorporated, New Mexico Black Caucus, the Democratic Party of NM, the State Bar of New Mexico, and the National Bar Association. He formerly served terms on the Board of Bar Examiners, Character and Fitness Committee of the NM Disciplinary Board, as well as Legal Aid Society of Albuquerque Inc. Hamilton was an avid tennis player. He had a close-knit group of friends calling themselves the Barelás Brothers. They included Juan Abeyta, Bobby Avila, Tommy Jewell, Dan Smith, Woody Smith, and the late Vic Pedro. Hamilton promoted diversity and fought for civil rights. He was always helping someone whenever he could. He mentored many young lawyers, and in particular, first-year law students at UNM School of Law. He had a great and ongoing concern for African American students who failed the Bar Exam and would make time to work with those students so they could pass on the next take. He was recognized by many organizations for his accomplishments. Hamilton was preceded in death by his parents (Tommie and Zelma Hamilton), a brother (Larry Hamilton), and a sister (Betty Spirlin). He leaves to cherish his memory his wife, Cecilia La Verne (Shelton) Webb of Albuquerque, three sons, Christopher Woods

of Las Cruces, Richard Hamilton of Hobbs, Steven Hamilton of Albuquerque; aunt, Marie Johnson, of Oakland, CA; stepson, Troy Taylor of Albuquerque; grandchildren, Jarrod and Maya Woods, Ebba and Tavin Taylor; one brother, Charles (Pamela) Becknell of Rio Rancho; two brothers-in-law, Lawrence (Kate) Shelton of Boise, ID and Darryl Shelton of Danville, VA; a special cousin, Sheldra Wormhoudt of Mandeville, La; in laws Elizabeth and Joe Brown of Albuquerque, and a host of nieces, nephews, cousins and friends.

Robert E. Tangora, explorer, defender, and teacher, died March 30 in Santa Fe, N.M., after an extended illness. The youngest child of the late Betty and Robert Tangora, he was born Feb. 15, 1956 in Seattle, Wash. Tangora completed high school in Mexico City and graduated from St. John's College, Santa Fe. After college, he lived in New York City where he restored antique furniture for Sotheby's and studied and taught Tai Chi Chuan. In the late 1980s, he travelled extensively in China, Nepal and Malaysia where he studied Tai Chi, Chi Kung and Buddhist mediation. Upon returning to Santa Fe, Tangora continued studying and teaching Tai Chi. He then left Santa Fe to attend Cornell Law School. Upon graduating from Cornell, Tangora was admitted to the New Mexico Bar in 1993. He specialized in criminal defense and appeals, arguing many cases in the Court of Appeals and Supreme Court of New Mexico, notably *State v. Navarette*. He also taught Yang and Wu Style Tai Chi, Chi Kung and Taoist Meditation in Santa Fe, California and Boston for many years and authored *The Internal Structure of Cloud Hands*, published in 2012. Tangora was a true renaissance man who loved to explore the mountains, deserts and rivers of the Southwest for climbing, hiking and white-water rafting. He was a woodworker, chef, and photographer, with great interest in music, physics and philosophy. Tangora delighted in bringing friends together for feasting and fellowship. He could tell a good story and liked to regale his friends with tales from his far-flung travels. He will be missed by many and remembered forever. Tangora is survived by his sister, Patricia Tangora of Seattle, Wash.

In Loving Memory of **Richard J. Smith**: So how to describe Rick Smith? Professionally, he was a fierce state and federal prosecutor and a compassionate federal administrative law judge. Personally, he was a scholar, writer, orator, poet, linocut artist, raconteur, traveler, paternal leader of a large widespread far-flung family of individualists, and lover of jazz, red beans and rice, chicory coffee and all things New Orleans, and a lover of cats and rivers. He considered himself the best tomato grower on Canyon Road. Santa Fe was his soul place. His favorite restaurant was The Compound, which he frequented for more than 40 years; his favorite bar was his friend Nick Klonis' Evangelo's, where the sailfish Rick caught in Mexico still hangs on the wall. When he retired in 2013 after working 44 years for the government, he celebrated with a black-tie dinner for three at The Compound with his wife Layne and son Todd; the next day a raucous party with old friends, family and Texas roadhouse and soul music at Evangelo's. Rick was born in 1944 to James Milnor Smith of New Orleans and Madelyn Morehouse Smith of Iowa. They came to New Mexico in the 1950s when the young FBI agent-- so the four children were told--was ordered by J. Edgar Hoover to "catch the Atomic Spy." Rick is survived by his wife Layne Vickers Smith of

Santa Fe, and son Todd Nels Torkelson, of Eagan, Minnesota, his sister, Judy Calhoun Proffitt (James) of El Paso, and brother David Smith (Laurel) of Albuquerque, and extended family including many nieces and nephews. His parents and brother Ken Smith predeceased him. Rick was in the first graduating class of Albuquerque's Manzano High School in 1962, Princeton University class of 1966 and University of Texas Law School class of 1969. A state legal group presented him with a plaque proclaiming him a man of New Mexico, a judge of integrity. For those of us who loved him, he was a loyal son, friend, brother, husband, father figure, uncle. He died suddenly Nov. 8, 2018.

Judge William A. Short II, passed away on Nov. 29, 2018. He was preceded in death by his parents, Ernest and Ethel Bryan Short and daughter, Kelly D. Short. He is survived by his wife, Lynn M. Short; daughters, Cynthia June Short and Karen Lynn Short; grandchildren, Celena (Aaron), Christina (Robert), and Brett (Zach), and grandson, Dillon; and great-grandchildren Job, Maven and Kevin. He has a sister, Ernestine Kipp and numerous nieces and nephews. Bill grew up in Lordsburg, NM, and graduated high school from the New Mexico Military Institute. He attended various universities, graduating from UNM School of Law in 1968. Prior to graduating from law school he was a businessman, rancher and rodeo cowboy. He also played cowboy polo. He was appointed as a judge in 1975. He met Lynn that year, they were married in 1978 and lived in Albuquerque for many years before moving to El Vado Lake. Bill did many things in his life and even after being a lawyer for 50 years and a judge for 16 of them, he was still a cowboy at heart.

Shannan Louise Carter passed away suddenly May 6. She was on a trip from Calgary to Vancouver, heading for a cruise to Alaska. She experienced a massive brain bleed in Banff, and was gone in minutes. Carter was born to Helen and Mitchell Carter in September of 1953 in Hobart, Oklahoma, Helen's hometown. She grew up in Albuquerque, finished college at the University of New Mexico and went to law school there, one of the youngest in her class. While in law school she also got a Master's in Public Administration, and that was the basis for her career at the UNM Health Sciences Center. She did not like litigation (or most lawyers!) but preferred working in administration and risk management. Carter had that rare capacity to see the big picture, to craft solutions, and to read people. She was loyal to her colleagues and to the institution. Working at UNM Hospital and the HSC from 1982 to 2010, she became part of the institutional memory and helped to research and to write *The Daily Practice of Compassion*, a history of their first fifty years. In retirement Carter enjoyed golfing on the UNM little nine, taking cruises and meeting new friends on the ships, loving her pets Queenie the Dalmatian, Boss the black cross, and Tuna the demanding orange cat. She is survived by her brother Joe Carter in Cortez, Colorado; her spouse of 38 years Janet Yates; her Aunt Shirley Strickler and cousins; and her dear and loyal friends. Cremation took place in Canada.

Victor (Carlin) E. Carlin, 71, beloved husband, father, and grandfather passed away on Saturday, Jan. 19. He was born in Columbus, Ohio on April 14, 1947 to Earl and Miriam Carlin. Carlin grew up in Columbus, Ohio and moved to Albuquerque, New Mexico in 1978. He is survived by his wife, Sofia Carlin, of 44 years; daughters, Ingrid Mae Carlin and Kelly Carlin Powers; son in law, James Powers and grandchildren, Oliver and Bowen Powers, who were the joy of his life; and numerous loving cousins

in Ohio. Victor loved New Mexico and the outdoors. He enjoyed skiing, hiking, and running. Carlin was a practicing attorney with the Moses Law Firm for 37 years. His practice was limited primarily to business, commercial, and real estate law including assisting creditors with problem loans and in bankruptcy proceedings. But, above all, Carlin was a true Marine and he loved serving in the military. Lt. Col. Carlin received his commission as a Second Lieutenant in the United States Marine Corps in June of 1969 through Naval ROTC at the University of Colorado and Officer's Candidate School at Quantico, Virginia. During his five years on active duty in the Marine Corps he attended Army Rotary Wing Flight School. He served a 13 month tour of duty in Vietnam in 1971 as a Marine helicopter pilot, and he served a 9 month tour of duty in the Mediterranean Sea of the on the USS Iwo Jima (LPH-2) in 1973-74. In 1974 LtCol. Carlin resigned his commission as a regular officer in the Marine Corps, left active duty, and enrolled at University of Toledo College of Law in Toledo, Ohio. In May 1978 LtCol. Carlin joined the Ohio Army National Guard as a CW-2 helicopter pilot. Upon graduation LtCol. Carlin moved to New Mexico and joined the 717th Medical Detachment (Helicopter Ambulance), New Mexico Army National Guard (NMARNG), as a medevac pilot. In November of 1990 LtCol. Carlin's Army National Guard Unit was activated and mobilized for the Persian Gulf War. During that six months activation, beginning in February of 1991 LtCol. Carlin served three and a half months as a CW-2 medevac pilot in the 812th Medical Co. (Helicopter Ambulance), in Northern Saudi Arabia and Kuwait. During his 13 years as a medevac pilot in the New Mexico Army National Guard LtCol. Carlin served for two years as the Executive Officer and for an additional two years as the Commander of the 717th Medical Detachment (Helicopter Ambulance). After returning from the Persian Gulf War in June of 1991 the New Mexico Air National Guard (NMANG) asked LtCol. Carlin (then a CW-2 in the NMARNG) if he would consider joining the 150th Fighter Wing as a Judge Advocate. LtCol. Carlin joined the 150th Fighter Wing as a Judge Advocate (with the rank of Major) in February of 1992. In March of 1998 he was promoted to his current rank of Lieutenant Colonel. Subsequently, after completing Air Command and Staff College by correspondence he was appointed as the Staff Judge Advocate for the 150th Fighter Wing, NMANG.

Margarita Haury, 60, passed away on Oct. 1. She entered this world on April 20, 1959, in Albuquerque, NM, born to Henry and Filomena Griego. She is survived by her sister, Clara Kilcup; nieces, Emma Kilcup and Madeleine Kilcup; brother-in-law, Glen Kilcup; and lifelong friend, Claudia McCulloch. She was preceded in death by husband, Richard Haury; and both of her parents. Margarita attended the University of Notre Dame, which launched her into a career of service; she was a prosecutor for over 20 years, during which she was Deputy District Attorney working directly for Bernalillo District Attorney, Steve Schiff. Always the curious intellectual, she spent her free time voraciously reading books, completing crossword puzzles with ease, and helping her trivia team Starbadger with her vast knowledge. She was a nature-lover. Watching birds, caring for animals, and spending time in her garden brought her much joy. During the later years of her life, she became a teacher at La Academia de Esperanza. It takes a special type of person to be a teacher there, a patient, loving soul. Many friends she made at La Academia got to know this side of Margarita, and as kindred spirits were there at her bedside in her last days.

From the courtroom to his family home, Matt was loved and respected by all. He had a passion for the law and a commitment to raise a family with strong values and dedication to making a difference. His love of life and the law translated into immense pride for his family and into joy and professionalism in practicing law. He kept the promise he made to his mother when he was 11 years old: “ser un hombre bueno” or “to be a good man.” **Matias Abelino Zamora** was born in Mora, N.M., on April 14, 1927, to Jose Matias Zamora and Antonina Lucero Zamora, the youngest of five children (Adelia, Louis, Estevan, and Maclovio). His father, a school superintendent, encouraged Matt to help others in the community and emphasized the importance of education. In 1945 during World War II, Matt was drafted into the Army working as a military police officer in Germany and then as a member of counterintelligence where he became fluent in German and Russian, in addition to English and Spanish. Matt took advantage of the G.I. Bill to attend and graduate from New Mexico Highlands University. In Las Vegas, NM, he met the love of his life, the former Emeline Lujan, and they later married in Washington, D.C. in 1952. In 1951, Matt attended Georgetown University School of Law in Washington, D.C. and received his Doctor of Jurisprudence in 1954. In 1965, Governor Jack Campbell appointed him as a District Judge for the Fourth Judicial District. He was the first person born in Mora to be appointed to the bench in that district. Following his judicial appointment, Matt resumed his passion as a trial attorney, helping families throughout Northern New Mexico, until his retirement in 1993. He served on the Boards of the International Academy of Trial Lawyers, the American College of Trial Lawyers, and was a founding member of the New Mexico Trial Lawyers Association. He was a dedicated board member of the Foundations for both St. Michael's High School and New Mexico Highlands University. From playing golf, to playing cards, listening to mariachi music, fishing or reading Shakespeare and Edgar Allen Poe, Matt lived life through laughter, honesty, faith, respect for others, and integrity. He is now at peace and reunited with his son D. Diego Zamora, who predeceased him. Matt is survived by his wife Emeline and loyal dog Pepper, children Roseanna Gonzales (Gerard), Alonzo Zamora, Monica Zamora (Rick Crowell) and Geno Zamora (Sheila); grandchildren Enrico Gonzales, Andrea Garcia (Genaro), Stefan Crowell (Trish), Alex Crowell (Jaime), Matias A. Zamora II, Kelly Shea and Ryan Shea; and great-grandchildren Jacob and Jordan Garcia; Kyle, Austin and Emeline Crowell; Stevan Gallegos; Thomas and Bella Shea; daughters-in-law Bernadette Zamora and Beverley Zamora; nephew Walter Adams (Romie) and many cousins, nieces, nephews, endless friends and cherished colleagues.

Martin Joseph Knanishu passed away at the Albuquerque, New Mexico Veterans Medical Center on June 17 at the age of 70 with loving family and friends by his side. He is preceded in death by his parents Martin and Arletha Knanishu; sisters Carole Knanishu, Katherine McCutcheon and cousin Nancy Knanishu. He is survived by his sister Sallie Knanishu; nieces and nephews Leslie Berg, Elizabeth Dillon, Sandra McCutcheon, David Olsen, Martin Olsen, Luke Knanishu; and cousins Timothy Knanishu and Joel Knanishu. Martin was born on November 14, 1948 in Rock Island, Illinois. He attended Augustana College in Rock Island graduating in 1970. Soon after he was drafted into the US Army and served in Vietnam. He then entered the University of Illinois College of Law in Champaign, Illinois graduating in 1975 with a Juris Doctor degree. After passing the Bar exam, Martin's career as

a lawyer began in the University of Illinois Student Legal Service, then in long service as a Public Defender, and in private practices concentrating in criminal defense law in both Champaign and Albuquerque, New Mexico. After retirement Martin volunteered to teach English as a Second Language in Champaign-Urbana and the Albuquerque area. Martin settled in Placitas, NM where he built his beloved adobe home by the Sandia Mountains. Martin will be remembered by his family and many friends for his dedication to his work, his commitment to his clients, his generosity, for his finely tuned sense of humor, his bright smile, and for rarely being seen without his black Chuck Taylor All Stars. An avid music fan, he and his nephew David would monitor the radar for the next Grateful Dead concert. Martin's family wishes to thank nursing staff, sitters, doctors, especially Clare Ironside, and our Social Worker Tracey Dunn at the Veteran's Hospital in Albuquerque for the competent and loving care they gave Martin, and to the staff at the VILA as well. We will always be grateful to all his friends, to the VanDriessche family and to Libby Hopkins for their love and commitment through the years and through Martin's final days.

Jack A. Smith Sept. 19, 1924 to Aug. 19 Jack was born in Albuquerque in 1924. After graduating from Albuquerque High School, he enlisted in the United States Navy where he served as a navigator aboard an oil tanker in the Pacific theater during WWII. After he was honorably discharged from the Navy at the war's end, he attended the University of New Mexico for his undergraduate studies. He then attended the George Washington University School of Law where he received his law degree. He was admitted to the New Mexico Bar in 1951. Throughout his career as a lawyer, Jack was known and respected as a tough and savvy litigator who was a tenacious and passionate advocate for his clients regardless of their station in life. He was preceded in death by his wife, Tommie Lou Smith., and his son Stephen C. Smith. He is survived by Kathleen Smith (Howard Smith, deceased), Karen Whatley (J.R. Whatley, deceased), and Roger I. Smith (Jennifer Churchill). He is also survived by grandchildren and great grandchildren. His humor and character will be missed by all who knew him.

Judith Ann Bova was born in Boston, Mass., May 1, 1949, to Suzanne Peretti and Charles Bova. She died suddenly in Albuquerque, N.M. on May 7. She will be forever missed by all of us who were lucky enough to meet her. She is survived by her son, Dylan Patrick Storment; brothers Peter and Stephen Bova, and many close friends she had made thruout her 70 years. Judith spent her early years in Boston, the Cape, New Jersey & New York City where she worked in various theaters on and off-Broadway. She married Reginald Storment in 1976. She was Political Science major at UNM & later passed the bar exam and became a lawyer in 1982. Judith & Reginald's son, Dylan was born Oct 1983. Judith practiced criminal defense law in Santa Fe, Taos, and greater New Mexico for 20+ years. She loved every aspect of criminal defense, specifically the trials where she was able to fight for the rights of those accused of crimes. Judith and Reginald grew apart over the years, and divorced. In 2002, she married Bill Stinebaugh from Mosquero, NM. The two of them had known each other for many years prior. She moved to Mosquero and built their life and home together; gardening, cooking, and helping him with his business.

G. Mateo Munoz Sept. 21, 1949 - Sept. 29, 2019 Mateo was born in San Bernardino where he grew up and attended local schools and graduated from Pacific High School in 1967. He moved to Sacramento where he obtained his law degree and then worked for the State Attorney General's office. He is survived by his daughter Calise, his son Diego, His father Gilbert Munoz along with his three sisters; Erlinda (Mark), Marla and Judith and many nieces, nephews and cousins. He was preceded in death by his mother Frances on November 2, 2016. There will be a memorial mass on Nov. 1, 2019 at 11:00 a.m. at the Immaculate Conception Catholic Church at 1106 N. La Cadena Dr., Colton CA and a reception following at the American Legion Club at 1401 Veteran Way, Colton, CA at 12:30 p.m.

Wilmer "Bill" Raymond Ticer, 74, of Port Tobacco, Maryland, passed away on Dec. 19, 2018. Bill was born on June 15, 1944, at Station Barracks, Harrisburg, Pennsylvania, to the late Thomas Harold Ticer and Sarah Odelite Cook Ticer. He graduated from Los Alamos High School, New Mexico in 1962. Attended and graduated from University of Maryland, Far East Division, Korea in 1965, University of New Mexico, Albuquerque, New Mexico, Undergraduate B.A. in 1968, Major Political Science and University of New Mexico in 1971 with J.D. Degree. He served in the U. S. Army for three years earning the rank of Sergeant. He also did with the Peace Corps. A practicing Attorney in New Mexico, Washington, DC and Maryland, Bill worked on Capitol Hill with various members of the Senate and House of Representatives; active leader and participant of the Charles County Family Law Clinic, providing Pro Bono legal services to the community of Charles County. Bill enjoyed motorcycle riding, doing crossword puzzles, hunting, reading history, boating and horses. He also enjoyed his grandson and helping many people in many ways. He was a member of the American Bar Association, Federal Bar Association, Charles County Bar Association (CCBA) and the American Legion Post 82 in La Plata, Maryland. Bill Ticer is survived by his wife of 27 ½ years, Brenda Ticer; grandson Damien Patrick Ticer; brothers Tom Ticer of Colorado and Robert Ticer of Florida; half-sister Paula Natz of Utah; two nephews and a niece. In addition to his parents, Bill was preceded in death by his son William Patrick Ticer and half-brother Harold Ticer.

Kimberleigh Joelle Lowman, 58, of Mesa, Ariz. passed away on June 9. She was born February 20, 1961 in Fort Lauderdale, FL to Howard William and Eleanore Mary [Martino] Bell. Kim was an adventurous woman, who loved the outdoors and enjoyed water skiing, snow skiing and camping. In her early 20s, she met Branson Dale Lowman II and the two dated for a few years before getting married on May 20, 1989. During their honeymoon, they traveled to the Channel Islands where they spent time scuba diving and just being with each other then went on to spend some time at Disneyland. After a few years of marriage, Kim and Branson started their family and were blessed with two children, Branson and Kindred. Kim loved being a mom and had a lot of love in her heart and decided to adopt Alicia and Alexandra. Kim and Branson moved around quite a few times due to Branson's military service; she earned her undergraduate degree in English at the University of Nevada Las Vegas and then went on to earn her law degree at the University of New Mexico School of Law. Kim started practicing law right after, working mostly in Real Estate law. After some time in New Mexico, the family was relocated to Indiana, where Kim would work as an attorney, starting a property management company. As well as, donating much of her time to the local Chamber of Commerce and various other organizations. Kim loved to travel and embraced every move as a new adventure. After Indiana, the family was relocated to Fort Leavenworth, Kansas, Charlottesville, Virginia, Key West, Florida, Newport, Rhode Island, Wiesbaden, Germany, and then to Mesa, Arizona. Kim is survived by her beloved husband, Branson Dale Lowman II; her son, Branson Dale "Scoob" Lowman III; daughters, Kindred "Honey Bunny" Lowman, Alicia "Sweetie Pie" Lowman and Alexandra "Pookum Bear" Lowman; grandson, Atticus Lowman; her brother, Jim Bell; brothers-in-law Harold Larson, Breen Lowman and Bryce Roth, Sisters-in-Law, Tiffany Roth and Tammy Lowman and Father-in-Law Branson (Bud) Lowman. A visitation will be held on Saturday, June 22, 2019 from 9:00 to 11:00am with a funeral following at 11:00am at Mariposa Gardens Cemetery Chapel, 6747 E. Broadway Rd, Mesa AZ 85206. In lieu of flowers, the family requests donations be made in Kim's name to: the Cancer research organization or community support center in their area.

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 Nov. 15, 2019

UNPUBLISHED OPINIONS

A-1-CA-36717	K Vinyard v. Human Services Department	Affirm	11/12/2019
A-1-CA-37146	State v. A Sena	Reverse/Remand	11/12/2019
A-1-CA-37497	State v. D Aguilera	Affirm/Reverse/Remand	11/12/2019
A-1-CA-37762	State v. K Lozoya-Archie	Reverse/Remand/Vacate	11/13/2019
A-1-CA-35375	Wilderness Gate v. Watermill	Affirm	11/14/2019
A-1-CA-35738	State v. D Gonzalez	Affirm	11/14/2019
A-1-CA-36215	AFSCME v. City of Albuquerque	Affirm	11/14/2019
A-1-CA-36293	State v. D Lechuga	Affirm	11/14/2019
A-1-CA-36598	L Olsen v. Board of Regents	Affirm	11/14/2019
A-1-CA-36766	State v. C Fernandez	Dismiss	11/15/2019
A-1-CA-37025	State v. C Perez	Affirm/Reverse/Remand	11/15/2019

Effective Nov. 22, 2019

UNPUBLISHED OPINIONS

A-1-CA-36021	State v. A Duran	Affirm	11/18/2019
A-1-CA-36319	State v. E Renick	Affirm	11/18/2019
A-1-CA-36479	State v. A Aragon	Affirm/Vacate/Remand	11/19/2019
A-1-CA-37083	State v. T Barajas	Affirm	11/19/2019
A-1-CA-37954	CYFD v. Rueben D	Affirm	11/19/2019
A-1-CA-36319	State v. E Renick	Affirm	11/20/2019
A-1-CA-37022	State v. J Soto	Affirm	11/20/2019
A-1-CA-36297	J Pacheco v. R Aguilar	Affirm	11/21/2019
A-1-CA-38263	CYFD v. Rachel O	Affirm	11/21/2019
A-1-CA-35771	State v. A Cruz	Affirm	11/22/2019
A-1-CA-35792	State v. L Francis	Affirm/Reverse	11/22/2019
A-1-CA-36559	State v. M Calhoun Jr	Affirm	11/22/2019

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

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

Mark Andrew Probasco
Office of the Attorney General
201 Third Street, NW,
Suite 300
Albuquerque, NM 87102
505-717-3564
mprobasco@nmag.gov

Mel Reese-Lashley
Office of Medicare Hearing
and Appeals
500 Gold Avenue, SW
Albuquerque, NM 87102
505-407-3856
melrl1919@gmail.com

Alex E. Reynolds
Atkins, Hollmann, Jones,
Peacock, Lewis & Lyon
3800 E. 42nd Street
Odessa, TX 79762
432-331-1600
432-363-1310 (fax)
areynolds@odessalawfirm.
com

Derek T. Rollins
Ogletree, Deakins, Nash,
Smoak & Stewart, PC
301 Congress Avenue,
Suite 1150
Austin, TX 78701
512-344-4700
512-344-4701 (fax)
derek.rollins@ogletree.com

Orlando A. Sandoval
Sandoval Law Firm
1101 Fourth Street, NW
Albuquerque, NM 87102
505-247-4944
505-247-1120 (fax)
injury505@gmail.com

Robert L. Silva
Navajo Housing Authority
POBox 4980
Window Rock, AZ 86515
928-871-2600
rsilva@hooghan.org

Jessica Singer
114 W. 23rd Street
Grand Island, NE 68801
505-250-9790
singer5150@msn.com

Jeffrey R. Taylor
Rodey, Dickason, Sloan, Akin
& Robb, PA
POBox 1888
201 Third Street, NW,
Suite 2200 (87102)
Albuquerque, NM 87103
505-768-7232
505-768-7395 (fax)
rtaylor@rodey.com

Jeremy J. Theoret
Marrs Griebel Law, Ltd.
1000 Gold Avenue, SW
Albuquerque, NM 87102
505-433-3926
505-639-4161 (fax)
jeremy@marrslegal.com

Minal P. Unruh
Butt Thornton & Baehr PC
POBox 3170
4101 Indian School Road, NE,
Suite 300S (87110)
Albuquerque, NM 87190
505-884-0777
505-889-8870 (fax)
mpunruh@btblaw.com

Laure van Heijenoort
Walker & van Heijenoort, PC
6508 Poza Rica Court, NW
Los Ranchos, NM 87107
505-991-2190
lvh@wvhn.net

William G. Walker
Walker & van Heijenoort, PC
6508 Poza Rica Court, NW
Los Ranchos, NM 87107
505-991-2190
wvhlawfirm@wvhn.net

Karen Howden Weaver
Zwicker & Associates, PC
6565 Americas Parkway, NE,
Suite 200
Albuquerque, NM 87110
505-205-0709
kweaver@zwickerpc.com

Evan N. Wesley
405 W. Congress Street
Tucson, AZ 85701
520-907-6164
wesley.en09@gmail.com

Rachel Olivia Woods
POBox 66503
Albuquerque, NM 87193
505-610-8284
rachel.o.woods@gmail.com

Colleen Olivia Yorke
Vistra Germany
Westendstrasse 28
Frankfurt am Main, Germany
49 69 583035700
colleen.yorke@vistra.com

Mark D. Freudenheim
Boyle & Freudenheim
16 Spirit Court
Santa Fe, NM 87506
505-989-5057
mark.boylelawoffice@gmail.
com

Amanda Navarro
Justice Legal Group
1516 San Pedro Drive, NE
Albuquerque, NM 87110
505-880-8737
505-881-8738 (fax)
amandan@justicelegalgroup.
com

Michael H. Schwarz
POBox 1656
Santa Fe, NM 87504
505-988-2053
ms@nmbarrister.com

R. Alfred Walker
Office of Superintendent of
Insurance
POBox 1689
1120 Paseo de Peralta (87501)
Santa Fe, NM 87504
505-216-8780
alfred.walker@state.nm.us

Alan R. Wilson
Wilson Law Firm, PC
8205 Spain Rd., NE,
Suite 203
Albuquerque, NM 87109
505-828-4804
505-828-4802 (fax)
awilson@alanwilsonlaw.us

Allison H. Block-Chavez
Susan J. Carter
Kevin D. Hammar
Ryan Kluthe
Jason M. Wexler
Aldridge, Hammar & Wexler,
PA
1212 Pennsylvania Street, NE
Albuquerque, NM 87110
505-266-8787
505-255-4029 (fax)

CLERK'S CERTIFICATE OF CORRECTION

a clerk's certificate of rein-
statement to active status dat-
ed Oct. 17, 2019, reported an
incorrect address for **Matthew**
Joseph Bouillon Mascarenas.
The correct information is as
follows:

Matthew Joseph Bouillon
Mascarenas
New Mexico Securities
Division
2550 Cerrillos Road, 3rd
Floor
Santa Fe, NM 87505
505-670-5528
matthew.bouillon@state.
nm.us

IN MEMORIAM

As of January 19, 2019:
Victor E. Carlin
PO Box 27047
Albuquerque, NM 87125

As of May 6, 2019:
Shannan L. Carter
9 Blueberry Lane
Los Lunas, NM 87031

As of November 29, 2018:
William Allen Short
 HC 75 Box 1243
 Los Ojos, NM 87551

As of August 19, 2019:
Jack A. Smith
 PO Box 1669
 Albuquerque, NM 87103

As of June 22, 2019:
Erik M. Williams
 2732 N. Wilshire Blvd.
 Roswell, NM 88201

As of September 1, 2019:
Matias A. Zamora
 2862 Plaza Amarilla
 Santa Fe, NM 87507

**CLERK'S CERTIFICATE
 OF LIMITED
 ADMISSION**

On November 4, 2019:
Shane Edwin Goranson
 Law Offices of the Public
 Defender
 300 Gossett Drive
 Aztec, NM 87410
 505-386-4060
 shane.goranson@lopndm.us

On November 4, 2019:
Tara Jean Pazo
 New Mexico Children, Youth
 and Families Department
 1031 Lambertson Place, NE
 Albuquerque, NM 87107
 505-841-7980
 505-841-7982 (fax)
 taraj.pazo@state.nm.us

**CLERK'S CERTIFICATE
 OF WITHDRAWAL AND
 CHANGE OF ADDRESS**

Effective November 4, 2019:
Peter Arthur Mommer
 4957 W. Shalecrest Court
 Boise, ID 83703

Effective November 4, 2019:
J. Brent Ricks
 2835 Trellis, NW
 Albuquerque, NM 87107

**CLERK'S CERTIFICATE
 OF LIMITED
 ADMISSION**

On November 4, 2019:
Tara Jean Pazo
 New Mexico Children, Youth
 and Families Department
 1031 Lambertson Place, NE
 Albuquerque, NM 87107
 505-841-7980
 505-841-7982 (fax)
 taraj.pazo@state.nm.us

**CLERK'S CERTIFICATE
 OF DISBARMENT**

Effective November 6, 2019:
J. Marcos Perales Pina
 7362 Remcon Circle
 El Paso, TX 79912
 915-225-2292
 marcos.perales@peraleslegal.
 com

**CLERK'S CERTIFICATE
 OF ADDRESS AND/OR
 TELEPHONE CHANGES**

Jamshid Ghazi Askar
 Office of Mohave County
 Public Defender
 318 N. Fifth Street
 Kingman, AZ 86401
 949-304-7154
 abqjamie@gmail.com

Monica Ault
 Monica Ault Law, LLC
 2019 Galisteo Street, Suite C-2
 Albuquerque, NM 87505
 505-216-6265
 monica.aultlaw@gmail.com

Nicole L. Banks
 United State Bankruptcy
 Court, District of New Mexico
 333 Lomas Blvd. NW
 Albuquerque, NM 87102
 505-600-4658
 nicole_banks@nmb.uscourts.
 gov

Pamela Ann Beckman
 COPE, Inc.
 909 S. Florida Avenue
 Alamogordo, NM 88310
 575-434-3622
 pamela.beckman@copedv.org

Sandy Barnhart y Chavez
 Jay Goodman & Associates,
 PC
 2019 Galisteo Street, Suite C3
 Santa Fe, NM 87505
 505-989-8117
 505-989-3440 (fax)
 sbyc@jaygoodman.com

Catherine Beckett
 4805 Briarwood Avenue
 #P206
 Midland, TX 79707
 575-202-8703
 cbecf105@yahoo.com

Emily P. Carey
 Office of Federal Public
 Defender - District of New
 Mexico
 111 Lomas Blvd., NW,
 Suite 501
 Albuquerque, NM 87102
 505-346-2489
 505-346-2494 (fax)
 emily_carey@fd.org

Carolyn Griffin Carmody
 1510 S. 77th Street
 Lincoln, NE 68506
 802-310-3598
 clgrif02@yahoo.com

Kyle R. Castillo
 Scott & Kienzle, PA
 1011 Las Lomas Road, NE
 Albuquerque, NM 87102
 505-246-8600
 kylecastillo@kienzlelaw.com

Shannon Lane Chapman
 Grable Martin Fulton PLLC
 1608 Linscomb Avenue
 Austin, TX 78704
 202-257-8858
 schapman@grablemartin.com

James P. Deacon
 60 Whiteford Road
 Rochester, NY 14620
 216-924-7373
 james.deacon22@gmail.com

Caitlin L. Dillon
 Office of the Attorney General
 201 Third Street, NW,
 Suite 300
 Albuquerque, NM 87102
 505-717-3578
 cdillon@nmag.gov

Wesley Enns
 Pregenzer Baysinger Wide-
 man & Sale, PC
 2424 Louisiana Blvd., NE,
 Suite 200
 Albuquerque, NM 87110
 505-872-0505
 505-872-1009 (fax)
 wenns@pbwslaw.com

Shehade Fakhoury
 PO Box 1231
 Bodega Bay, CA 94923
 661-210-9361
 shehade.fakhoury@gmail.com

John Adam Frase
 Guebert Bruckner Gentile PC
 PO Box 93880
 6801 Jefferson Street, NW,
 Suite 400 (87109)
 Albuquerque, NM 87199
 505-823-2300
 505-823-9600 (fax)
 jfrase@guebertlaw.com

Jose Eli Fresquez III
 New Mexico Children, Youth
 and Families Department
 1120 Paseo de Peralta
 Santa Fe, NM 87501
 917-348-1049
 eli.fresquez@state.nm.us

Michael P. Fricke
 Office of the State Engineer
 130 S. Capitol Place
 Santa Fe, NM 87501
 505-827-7844
 michael.fricke@state.nm.us

Consuelo Usula Garcia
 Office of the Eighth Judicial
 District Attorney
 220 Fourth Avenue
 Raton, NM 87740
 575-445-5516
 575-445-0737 (fax)
 cgarcia2@da.state.nm.us

Chance A. Gauthier
 New Mexico Judicial
 Standards Commission
 PO Box 27248
 Albuquerque, NM 87125
 505-222-9353

Jordon P. George
Moss George LLP
PO Box 90067
7415 Laster Avenue, NE
(87109)
Albuquerque, NM 87199
505-977-4445
jordon@mossgeorge.com

Mick I. R. Gutierrez
New Mexico Legal Aid, Inc.
600 E. Montana,
Suite D
Las Cruces, NM 88001
575-915-1283
mickg@nmlegalaid.org

Allan Joseph Hisey
Law Office of Allan J. Hisey
4924 Scenic Lake Drive
Georgetown, TX 78626
505-259-7721
allan@ahisey.com

Kaela Skye Holmen
1519 Tierra Verde Place, SW
Albuquerque, NM 87105
505-554-5489
kaela.holmen@gmail.com

Henry C. Hosford Jr.
Baskind & Hosford, PC
615 E. Schuster Avenue,
Suite 1
El Paso, TX 79902
915-544-0737
hhosford@bh-ep.com

Demyra LaShontae Hover
Office of the Third Judicial
District Attorney
845 N. Motel Blvd.,
Suite D
Las Cruces, NM 88007
575-524-6370
575-524-6379 (fax)
dhover@da.state.nm.us

William Scott Jaworski
Jaworski Law
105 Bryn Mawr Drive, SE
Albuquerque, NM 87106
505-585-1441
505-393-4533 (fax)
wsj@jaworskilaw.com

Christopher D. Johnson
Munsch Hardt Kopf & Harr,
PC
700 Milam Street,
Suite 2700
Houston, TX 77002
713-222-4096
cjohnson@munsch.com

Mary E. Jones
Hartline Barger LLP
500 Marquette Avenue, NW,
Suite 770
Albuquerque, NM 87102
505-336-5300
mjones@hartlinebarger.com

Peter Aeneas Keys
PO Box 244
105 Chalcopryte Court
Tyrone, NM 88065
575-388-2521
575-388-5747 (fax)
pakeys@newmexico.com

Steven J. Lucero
Adams+Crow Law Firm
5051 Journal Center Blvd.,
NE,
Suite 320
Albuquerque, NM 87109
505-582-2819
505-212-0439 (fax)
steven@adamscrow.com

Chandra F. Mansfield
15201 Mason Road,
Suite 283
Cypress, TX 77433
281-616-7630
cfmansfield1@gmail.com

Elisabeth Anne Millich
Elisabeth A. Millich, LLC
11024 Montgomery Blvd.,
NE, #344
Albuquerque, NM 87111
505-979-7080
lisa@millichlaw.com

Lara Zdravecky Moriarty
Hansen, Kohls, Sommer &
Jacob, LLP
1520 Eureka Road,
Suite 100
Roseville, CA 95661
916-781-2550
916-781-5339 (fax)
lmoriarty@hansenkohls.com

Donald James Mooney Jr.
Mooney Law Firm
621 E. Mehring Way #506
Cincinnati, OH 45202
513-403-3160
djmooney@mac.com

Ashleigh G. Morris
U.S. Department of Interior,
Office of the Solicitor
505 Marquette Avenue, NW,
Suite 1800
Albuquerque, NM 87102
505-248-5622
505-248-5623 (fax)
ashleigh.morris@sol.doi.gov

James Matthew Murray
2808 Cessna Court
Dallas, TX 75228
720-841-0827
james.murray@colorado.edu

James W. Newell
2222 Uptown Loop Drive, NE
#2307
Albuquerque, NM 87110
928-277-4083
jwn0216@gmail.com

John P. Newell
PO Box 46096
Rio Rancho, NM 87174
775-223-1725
jpnewell@live.com

David C. Odegard
DeLara Supik Odegard PC
PO Box 91596
7801 Academy Road, NE,
Suite 2-201 (87109)
Albuquerque, NM 87199
505-999-1500
505-835-1335 (fax)
odegard@delaralaw.com

Richard Q. Ohlfs
Machol & Johannes LLLP
4209 Montgomery Blvd., NE
Albuquerque, NM 87109
505-217-2845
richard.ohlfs@mjfirm.com

Daniel R. Olsen
Wolfe & Wyman LLP
980 Ninth Street,
Suite 1750
Sacramento, CA 95814
916-912-4700
916-329-8905 (fax)
drolsen@wolfewyman.com

Daljitpal Singh Parmar
Parmar American Visa Law
345 W. Central Avenue,
Suite 4D
Coolidge, AZ 85128
310-310-5203
parmarvisalaw@gmail.com

Krishna H. Picard
Krishna Picard Law Office,
LLC
PO Box 6042
Santa Fe, NM 87502
505-982-9583
krishna@krishnapicardlaw.com

Robert Retherford
N.M. Children, Youth and
Families Department
1950 Fifth Street
Santa Fe, NM 87505
505-860-0382
robert.retherford@state.nm.us

Earl Augustus Rhoads III
Law Offices of the Public
Defender
285 S. Boardman Drive,
Suite B
Gallup, NM 87301
505-726-4535
505-726-4566 (fax)
earl.rhoads@lopdmn.us

Marita B. Robinson
Office of Montrose Public
Defender
100 Tessitore Court
Montrose, CO 81481
970-249-4791
maritarobinsonlaw@gmail.com

Petra E. Rogers
PO Box 82821
Albuquerque, NM 87198
505-301-4481
petrarogers@msn.com

Young-Jun Roh
Cuddy & McCarthy, LLP
201 Third Street, NW, Suite
1300
Albuquerque, NM 87102
505-888-1335
888-977-3816 (fax)
jroh@cuddymccarthy.co

Robyn Lee Rose
City of Albuquerque Legal
Department
PO Box 2248
One Civic Plaza, NW (87102)
Albuquerque, NM 87103
505-768-4559
rrose@cabq.gov

Robert F. Sanchez
232 State Road 503
Nambe, NM 87506
505-690-5147
robertfsanchez@hotmail.com

Noell E. Sauer
333 Lomas Blvd., NW,
Suite 770
Albuquerque, NM 87102
505-348-2330
noell_sauer@nmd.uscourts.gov

Courtney A. Schumacher
2211 Tucker Avenue, NE
Albuquerque, NM 87106
505-841-4618
coacas@nmcourts.gov

David E. Shelle
Shelle Legal, LLC
10623 Quasar Street, NW
Albuquerque, NM 87114
505-226-4546
shellelegal@outlook.com

Daniel Snyder
Office of Federal Public
Defender - District of New
Mexico
111 Lomas Blvd., NW,
Suite 501
Albuquerque, NM 87102
505-346-2489
505-346-2494 (fax)
daniel_snyder@fd.org

Joshua Richard Stein
2413 Orleans Lane
Seabrook, TX 77586
713-702-4585
josh.stein.esq@gmail.com

Roger Doyle Taylor
2 Saddle Club Drive
Midland, TX 79705
432-559-8522
robertaylorjd@yahoo.com

Bryan W. Thomason
Thomason Law Firm
111 Lomas Blvd., NW,
Suite 200
Albuquerque, NM 87102
505-265-9630
505-265-9601 (fax)
bthomason@thomasonlaw.net

Patrick F. Trujillo
300 Menaul Blvd., NW,
Suite A, PMB #484
Albuquerque, NM 87107
505-681-7375
pftrujillolaw@gmail.com

Joy Keshi Walker
Office of the Fifth Judicial
District Attorney
301 N. Dalmont Street
Hobbs, NM 88240
575-397-2471
575-397-6484 (fax)
jwalker@da.state.nm.us

Jensen Nicole Wallace
Pregenzer Baysinger
Wideman & Sale, PC
2424 Louisiana Blvd., NE,
Suite 200
Albuquerque, NM 87110
505-872-0505
505-872-1009 (fax)
jwallace@pbwslaw.com

Moses B. Winston V
Texas Office of Public Utility
Counsel
PO Box 12397
1701 N. Congress Avenue,
Suite 9-180 (78701)
Austin, TX 78711
512-936-7500
moses.winston@opuc.texas.gov

Kelly A. Genova
Kelly A. Genova, PC
916 Silver Avenue, SW
Albuquerque, NM 87102
505-244-0547
kgenova@aol.com

Anne Gibson
Gibson Law Office, LLC
1502 N. Date Street,
Suite A
Truth or Consequences, NM
87901
575-894-0550
575-952-2314 (fax)
aegibsonlaw@yahoo.com

Kathryn Hardy
Alan Maestas Law Office
224 Cruz Alta,
Suite H
Taos, NM 87571
575-737-0509
kathryn@alanslaw.com

David Wayne Lauritzen
Cotton, Bledsoe, Tighe &
Dawson, PC
PO Box 2776
500 W. Illinois Avenue,
Suite 300 (79701)
Midland, TX 79702
432-685-8555
432-682-3672 (fax)
dlauritzen@cbtd.com

Gianna M. Mendoza
Office of University Counsel
MSC05 3440
1 University of New Mexico
Albuquerque, NM 87131
505-277-3440
505-277-4154 (fax)
giamendoza@salud.unm.edu

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective November 4, 2019:
Robert P. Worcester
18507 E. Agua Verde Drive
Rio Verde, AZ 85263

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-035

No. A-1-CA-37442 (filed May 2, 2019)

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT,
CHILD SUPPORT ENFORCEMENT
DIVISION (CSED), and KANEAN
TOLEDO,
Petitioners-Appellees,
v.
HOWARD TONEY, JR.,
Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY

Cheryl H. Johnston, District Judge

Certiorari Denied, June 25, 2019, No. S-1-SC-37701.

Released for Publication July 23, 2019.

New Mexico Legal Aid, Inc.
KATHRYN SUZANNE ALMOND
SIMON TUCK
Bernalillo, NM
EDNA FRANCES SPRAGUE
Albuquerque, NM
for Appellee Kanean Toledo

Human Services Department
Titus and Murphy Law Firm
TYSON K. GOBBLE
Farmington, NM
for Appellant

New Mexico Human Services
Department
Child Support Enforcement Division
SARAH J. BATZLI
LARRY HEYECK
KRISTIN SANDERSON
Santa Fe, NM
for Appellee

Opinion

Zachary A. Ives, Judge

{1} The district court ordered Howard Toney (Father) to pay child support retroactive to the date of his separation from Kanean Toledo (Mother) pursuant to the New Mexico Uniform Parentage

Act (NMUPA), NMSA 1978, §§ 40-11A-101 to -903 (2009).¹ Father argues that the NMUPA's retroactive child support provision, § 40-11-1-636(G), does not apply to him because he acknowledged paternity before Mother and the Child Support Enforcement Division (CSED) petitioned for child support. We disagree and affirm.

BACKGROUND

{2} In 2005, when she was fifteen years old, Mother gave birth to a daughter. Mother and Father were not married when their daughter was born, and Father executed an acknowledgement of paternity. The couple lived together off and on and then separated in 2006. Father only paid Mother child support in 2011 and 2012.

{3} Mother assigned her right to child support to the State because it had provided assistance to the child. *See generally* NMSA 1978, § 27-2-28 (2009). In August of 2016, CSED filed a petition on behalf of Mother and the State seeking child and medical support from Father.

{4} By stipulated order, the district court directed Father to make monthly payments to Mother for ongoing child and medical support. After considering the parties' legal arguments and testimony, a child support hearing officer concluded that the NMUPA applied and recommended that the district court order Father to pay child support retroactive to his separation from Mother in 2006.

{5} Father objected to this recommendation, arguing that Section 40-11A-636(G) did not apply because he had previously acknowledged paternity. Father asserted that he was therefore not responsible for any child support from the time of his daughter's birth in 2005 through the filing of the petition in August 2016.

{6} The district court overruled the objection and adopted the hearing officer's recommendation, concluding that the NMUPA applied and authorized an order of support retroactive to the date of the couple's separation. Father appeals.

DISCUSSION

Standard of Review

{7} "We review the setting of child support orders for abuse of discretion." *Zabolzadeh v. Zabolzadeh*, 2009-NMCA-046, ¶ 4, 146 N.M. 125, 207 P.3d 359. It is an abuse of discretion for a district court to base a discretionary decision on or apply an incorrect standard or incorrect substantive law. *Id.* Father challenges the district court's interpretation of the NMUPA, an issue of statutory construction we review de novo. *Moongate Water Co. v. City of Las Cruces*, 2013-NMSC-018, ¶ 6, 302 P.3d 405.

¹The NMUPA came into effect on January 1, 2010, replacing its simultaneously-repealed predecessor statute, the Uniform Parentage Act, NMSA 1978, § 40-11-1 to -23 (1986, as amended through 2004).

The NMUPA

{8} To “ascertain the legislative intent” behind the NMUPA, we “begin with [its] plain language.” *N.M. Indus. Energy Consumers v. Pub. Regulation Comm’n*, 2007-NMSC-053, ¶ 21, 142 N.M. 533, 168 P.3d 105. “Because we consider statutes in the context of the broader act in which they are situated, we read them in conjunction with statutes addressing the same subject matter, ensuring a harmonious, common-sense reading.” *Chatterjee v. King*, 2012-NMSC-019, ¶ 12, 280 P.3d 283. Our interpretations must “facilitate [the statute’s] operation and the achievement of [its] goals.” *Padilla v. Montano*, 1993-NMCA-127, ¶ 23, 116 N.M. 398, 862 P.2d 1257. We “consider the practical implications” of potential interpretations, *Bishop v. Evangelical Good Samaritan Soc’y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361, rejecting those that “defeat [the statute’s] intended purpose[.]” *Padilla*, 1993-NMCA-127, ¶ 23.

{9} The NMUPA governs the “determination of parentage[.]” § 40-11A-103(A), which is “the establishment of the parent-child relationship[.]” § 40-11A-102(H), “the legal relationship” between a parent and child, § 40-11A-102(N). The NMUPA provides two legal mechanisms for determining parentage: (1) “the signing of a valid acknowledgment of paternity” and (2) “adjudication by the court[.]” Section 40-11A-102(H).

{10} In contrast to an adjudication of parentage, which involves a judicial proceeding generally governed by our rules of civil procedure, § 40-11A-601, the execution of an acknowledgment of paternity under the NMUPA is a relatively simple, inexpensive,² and informal process. To execute an acknowledgment, “[t]he mother of a child and a man claiming to be the genetic father [must] sign an acknowledgment of paternity with intent to establish the man’s paternity.” Section 40-11A-301. Their signatures must be under penalty of perjury and on a form provided by the Bureau of Vital Records and Health Statistics. Sec-

tion 40-11A-302(A)(1)-(2); *see also* § 40-11A-102(E). The acknowledgment must contain various statements indicating that the acknowledging signatory is indeed the child’s father and notifying the signatories of the legal effects of the acknowledgment, § 40-11A-302(A), and it is void if it states or falsely denies that a different man is the child’s acknowledged, adjudicated, or, in most cases, presumed father.³ Section 40-11A-302(B).

{11} An acknowledgment of paternity satisfying the requirements described above and filed with the bureau “is equivalent to an adjudication of paternity of a child[.]” § 40-11A-305(A), and is binding on all signatories, § 40-11A-637(A)(1), with two exceptions. The NMUPA allows signatories to avoid an acknowledgment’s legal consequences through rescission and challenge, both of which involve judicial proceedings governed by the same rules that govern adjudication of paternity. *See* § 40-11A-305(A) (providing that a valid acknowledgment is equivalent to an adjudication except as provided in the rescission and challenge statutes); § 40-11A-307 (providing for rescission); § 40-11A-308 (providing for challenge within two years based on fraud, duress, or material mistake of fact); § 40-11A-309 (describing procedure for rescission or challenge); § 40-11A-309(D) (providing that proceedings for rescission and challenge “shall be conducted in the same manner as a proceeding to adjudicate parentage”).

{12} The NMUPA also provides for proceedings to enforce the obligations arising from the parent-child relationship. “[A]ny interested party” may enforce “the obligation of the noncustodial parent” if “existence of the parental relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under the [NMUPA] or under prior law[.]” Section 40-11A-639(A). A custodial parent or

any other interested party may enforce a noncustodial parent’s duty to pay child support by timely initiating a “proceeding to adjudicate child support.” Section 40-11A-607(A).

{13} District courts have broad remedial authority in enforcement proceedings. Our Legislature did not cabin their powers to the entry of orders adjudicating paternity pursuant to Section 40-11A-636(A). Rather, under Section 40-11A-636(G), courts may also enter judgments and orders addressing a wide array of common issues involving parents and children—including orders requiring noncustodial parents to fulfill their “duty of past and future support[.]” Subsection (G) states, in relevant part:

The court shall order child support retroactive to the date of the child’s birth, but not to exceed twelve years unless there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within twelve years of the child’s birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in deciding whether or how long to order retroactive support, the court shall consider:

- (1) whether the alleged or presumed father has absconded or could not be located; and
- (2) whether equitable defenses are available.⁴

Id.

Application of the NMUPA to Father

{14} We believe the district court’s application of the NMUPA’s retroactive support provision to Father is consistent with the plain language, structure, and purpose of the NMUPA. By filing a timely petition, CSED sought to enforce “the obligation of the noncustodial parent,”⁵ § 40-11A-639(A), through a

²The NMUPA explicitly prohibits the Bureau of Vital Records and Health Statistics from charging a fee for the filing of an acknowledgment of paternity. Section 40-11A-306.

³The NMUPA defines “presumed father” as “a man who, by operation of law pursuant to Section [40-11A]-204 . . . is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding[.]” Section 40-11A-102(P).

⁴The quoted provision of Section 40-11A-636(G) is unique to New Mexico. It was not part of the model legislation from which our Legislature derived certain other provisions of the NMUPA and its predecessor. Nor does this language appear in a statute in any other state.

⁵Although there may be temporal limitations on awards of retroactive support beyond those explicitly provided for in Section 40-11A-607, the NMUPA’s statute of limitations, *see* § 40-11A-636(G)(2) (providing for equitable defenses to the award of retroactive support); *cf. Zabolzadeh*, 2009-NMCA-046, ¶ 6, we express no opinion on their applicability in cases where, as here, there has been no prior adjudication of parentage.

YLD BOARD

Allison Block-Chavez, Chair
Shasta N. Inman, Vice Chair

Director-at-Large, Position 1, **Allison Block-Chavez**
Director-at-Large, Position 2, **Shasta N. Inman**
Director-at-Large, Position 3, **Evan Cochnar**
Director-at-Large, Position 4, **Lindsay Cutler**
Director-at-Large, Position 5, **Billy Jimenez**
Region 1 Director, **Mariah McKay**
Region 2 Director, **Breanna Contreras**
Region 3 Director, **Shuhao Wang**
Region 4 Director, **Jessica Streeter**
Region 5 Director, **Darin McDougall**
Past Chair, **Sean FitzPatrick**
ABA District 23 Representative, **George Biederman**
Student Director (non-voting), **Benjamin Maggard**
ABA House of Delegates Representative (non-voting),
Allison Block-Chavez

YLD LIAISONS

Animal Law, **Christal Weatherly**
Appellate Practice, **Randy Taylor**
Bankruptcy Law, **Kevin Cartwright**
Children's Law, **Jessica Perez**
Elder Law, **Katie Roehl**
Employment and Labor Law, **Jacqueline Kafka**
Family Law, **Lauren Riley**
Health Law, **Brenna Gaytan**
Immigration Law, **Andres Santiago**
Indian Law, **Alyssa Mercado**
Intellectual Property, **Jaime Mayfield**
Natural Resources, Energy & Environmental Law, **Haley Adams**
Prosecutors, **John Osborn**
Public Law, **Cady Sartorius**
Real Property, Trust and Estate, **Toby Luteneberger**
Solo and Small Firm, **Brian Smith**
Tax, **Matthew Montoya**
Trial Practice, **Carter B. Harrison**

2019 PROGRAM CHAIRS

Annual Public Service Project for Outlying Areas, **Mariah McKay**
CLE at the State Bar of New Mexico Annual meeting,
Billy Jimenez and **Breanna Contreras**
Constitution Day Week, **Mariah McKay** and **Darin McDougall**
Diversity Collaboration, **Allison Block-Chavez**
#Fit2Practice, **Mariah McKay** and **Sean FitzPatrick**
Homeless Legal Clinics, **Crystal Anson** – **Albuquerque**,
Joseph Walsh - **Santa Fe**
Law Day Call In, **Allison Block-Chavez**
Law Camp, **Shasta Inman**
Lunch with Judges Program, **Evan Cochnar** and **Jessica Streeter**
Membership Engagement, **Billy Jimenez**,
Evan Cochnar and **Shasta Inman**
State Bar Student Essay Contest, **Darin McDougall**
Social Media, **Sean FitzPatrick** and **Shasta Inman**
Wills for Heroes, **Mariah McKay**, **Allison Block-Chavez**,
Evan Cochnar and **Jessica Streeter**
Veterans Clinic, **Sean FitzPatrick** and **Lindsay Cutler**
UNMSOL Career-related programs
(mentorship, mock interview, speed networking),
Darin McDougall, **Billy Jimenez** and **Evan Cochnar**
UNMSOL Summer Fellowship program, **Allison Block-Chavez**
YLD CLE (Non-Annual Meeting), **Breanna Contreras**
YLD In Brief, **Sean FitzPatrick**



Message from the YLD Chair

The New Mexico Young Lawyers Division continues to be committed to you, its members, while providing public service to our state and mentorship opportunities to aspiring attorneys. The YLD program chairs and liaisons have worked hard this past year to deliver new programming and we have big plans for 2020!

This past year we focused on attorney well-being through our #Fit2Practice initiatives. Volunteers for Wills for Heroes provided approximately 80 simple estate plans to first responders across the state. Young lawyer volunteers have mentored and supported middle school and law students on their path to becoming lawyers through the annual Law Camp program and UNM School of Law mentorship programs.

The YLD looks forward to an exciting 2020. In our quarterly newsletter, we will be highlighting young lawyers doing interesting work. If you know a young lawyer that is doing exciting work in their practice or community, or if you want to share a project that you are passionate about, contact me to be featured in our Young Lawyer Spotlight.

Additionally, the YLD is working with the New Mexico Supreme Court, Committee on Diversity in the Legal Profession, and the State Bar on judicial pipeline programming. Part of this programming will include more Lunch with Judges (and Justices) events through the state and programming to provide information and encourage aspiring judges.

We want all New Mexico young lawyers to engage with the Division and participate in its many programs. If you would like the YLD to organize a program in your community, contact us! If you are interested in mentoring students and creating a pipeline to becoming a lawyer or a judge, we have the opportunity for you! If you are want to obtain pro bono hours and a rewarding experience, participate in our Wills for Heroes programs across the state or come to our regular Veterans or Homeless legal clinics. If you're interested in getting involved on a national level, the YLD can guide you on how to get started with the American Bar Association.

The YLD is here for you and we want to support you as you grow as an attorney. I invite you to participate to our next event in your community, meet colleagues and share ideas. Please feel free to reach out me to learn about getting involved. I am honored to serve as the YLD Chair and I am excited to share the year ahead with you!

Allison Block-Chavez
2019 YLD Acting Chair

Program Updates

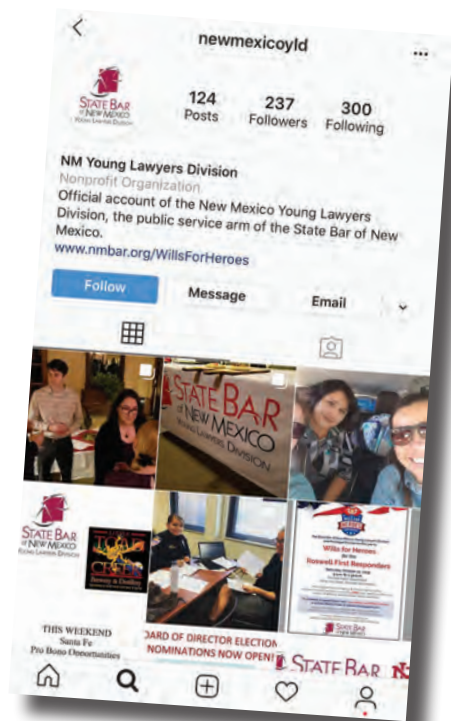
#Fit2Practice

This year the New Mexico YLD continued its commitment to provide activities that focus on well-being. From discounted tickets at Ski Santa Fe for YLD Ski Day, complimentary registration at the Chips and Salsa 5k, an uplifting start to the day at the Annual Meeting Poolside Yoga, a morning nature walk along the Bosque of the Rio Grande or the NMLYD Yoga brunch at La Cumbre Brewing Company, the YLD recognizes that healthy lawyers make for better practitioners. Follow our social media pages to get the scoop on the next event, or send us a message on an event you would like to see the YLD participate in.



Social Media

The New Mexico YLD social media pages continues to grow this year this year! Follow us on Twitter, Facebook and Instagram @NewMexicoYLD to stay up to date on upcoming pro bono and other volunteer opportunities, CLE programs, mentorship and networking events. Our goal is to get information to you without clogging your email inbox, and also engage our membership! Look for personalized hashtags at future events so you can follow along with the discussion, and tag @NewMexicoYLD when you are at legal fairs and networking events, mentoring UNMSOL students, or being otherwise involved with the YLD.



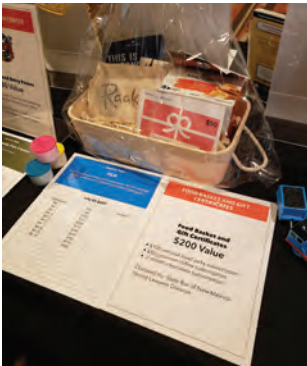
State Bar of New Mexico Annual Meeting



The New Mexico YLD sponsored several #Fit2Practice events at the 2019 State Bar of New Mexico Annual Meeting. There was an early morning nature trail hike and sunrise yoga for those who wanted a healthy way to start their day.

The YLD's contribution to the silent auction benefiting the State Bar Foundation included a "subscribe to YLD" theme with monthly subscriptions to coffee, chocolate, and artisanal beef jerky!

After a long day of Continuing Legal Education, the YLD with the help from a number of sponsors hosted the Party Summons for all state bar members to come interact with the Young Lawyers of New Mexico. Senior lawyers, newly admitted attorneys, and everyone in between gathered to share their experiences at the Annual meeting so far and make new connections.



Public Service Project in Outlying Areas

Recognizing the need for legal services and bar engagement in the outlying areas of New Mexico, this year, the Young Lawyers Division traveled to Silver City to put on a Wills for Heroes Program and host a networking event at the Little Toad Creek restaurant. Afterwards the YLD collaborated to plan the next years events and come up with ways to better serve the membership and public.



Wills for Heroes



The YLD The YLD organized four Wills for Heroes events across the state. In May, we worked with the Albuquerque Police Department to provide much needed legal documents to its officers and their spouses. YLD and paralegal volunteers advised clients and prepared over 40 wills and powers of attorneys. In October, YLD program chairs traversed the state from Santa Fe to Roswell and then to Silver City with computers and printers in tow. During those three back-to-back events, YLD and paralegal volunteers prepared another 40 wills and powers of attorney.

For volunteers participating at a Wills for Heroes event is a rewarding pro bono experience. First responders are always very appreciative of volunteers spending their Saturday morning helping them to put their estate and legal affairs in order in the event that tragedy hits. If you are interested in participating, volunteering requires only a Saturday morning

and program coordinators are onsite to guide and support volunteers. The YLD provides computers with software pre-loaded to prepare the documents and breakfast. In 2020, we have events tentatively planned for February 29, 2020 with the Bernalillo County Fire Department and March 28, 2020 with the Carlsbad Fire Department. Contact us to volunteer!



Veteran's Legal Clinic



The YLD continues to partner with the Veteran's Affairs Department to provide a legal clinic for veterans at the New Mexico Veteran's Memorial. This Veteran's Civil Justice Initiative has been an ongoing program the YLD puts on approximately once per quarter. Through these clinics, veterans with a variety of legal issues are able to consult with experienced attorneys and if no resolution is possible immediately, they are referred to civil legal services providers or pro bono representation. Thanks to partnerships with groups such as United South Broadway, the Volunteer Attorney Program, New Mexico Legal Aid and other service provers, veterans in need can receive assistance with housing, employment and other civil issues. The program could not exist without the help of volunteer attorneys and paralegals. Thank you to everyone who assisted in 2019!

**Visit www.nmbar.org/yld to
volunteer for the 2020 clinics!**

American Bar Association YLD Mountain West Regional Summit

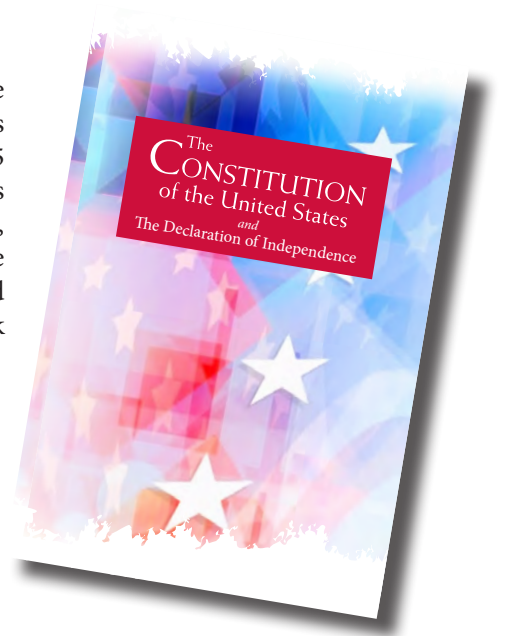
Each year at the Mountain West Regional Summit young lawyers gather to put on the Regional Summit. This year it was in Steamboat Springs Colorado. A number of CLE's pertaining to the issues that Young lawyers face were presented. Not only legal education, but public service, and networking opportunities were a focus of this years event with Young lawyers providing service at Lift Up (including some healthy exercise clearing snow from their greenhouse). Lift Up provides emergency assistance to unemployed or impoverished individuals and families in Routt County.

Stay tuned to our social media for next year's Regional Summit information.



Constitution Day

In September of 2019, attorneys, teachers, and students from across the state participated in Constitution Day. New Mexico attorneys gave presentations about the United States Constitution to fifth graders in approximately 25 different schools. Speakers chose from a variety of scenarios to teach students about the importance of the constitution. From aliens coming to take away rights, unless students voted which ones to keep, to a mini trial to determine who took the presenters pen, students engaged in critical thinking on what their rights mean and why they are protected. The Young Lawyers Division of the State Bar wishes to thank all the participants who made Constitution Day a great success.



UNM School of Law Mentorship Program

The Every year the YLD pairs law students with young lawyers as part of the YLD/UNM School of Law mentorship program. In September, lawyers and law students descended upon UNM School of Law to network and develop professional skills. This year the mentorship program worked with the Judges and Lawyers Assistance Program to put on Mocktail Bar at the program's kickoff event which had over 100 attendees.

SCHOOL OF LAW Mentorship Program

The second event included a Speed Networking and Holiday Happy Hour event held at Casa Rondena Winery. These hosted events allow law students to get the inside scoop and practical tips on what it will be like to go through law school and enter the job market in a few short years. The program has a renewed focus on discussing professionalism and dealing with ethical issues combined with its ongoing focus on mentorship, networking, and well-being. Future events will include the Mock Interview program and coordination with the YLD's #Fit2Practice programs.



Essay Contest

2019 STATE BAR STUDENT ESSAY CONTEST

The State Bar of New Mexico, the Young Lawyers Division and The Modrall Sperling Law Firm continued the annual Student Essay Contest where high school juniors and seniors are given a legal prompt and asked to write a 1,000 word essay. This program is sponsored in honor of James E. Sperling and encourages high schoolers to think critically about deep, complex legal issues. The essays that win every year can be on par legal briefing filed by many attorneys and that trend continued with this year's winner, Savannah Higgins of West Las Vegas High School.



Continuing Legal Education

YLD partnered with the Intellectual Property Section to put on a day-long CLE in Santa Fe about the brewery and creative industries. Craft and regional brewers presented alongside the attorneys who represent them on a broad range of technical legal issues, including trademarks and brand protection, brewery corporate formation and capital raising issues, employment and drug testing policies, and acquisitions of local breweries by bigger brands. Attendees also learned about unique intellectual property issues in the estate planning context. The CLE was held at the New Mexico History Museum on the Santa Fe Plaza, and attendees finished the day with a reception at the Draft Station to enjoy local brews and pizza. This co-sponsored CLE with the Intellectual Property Section is the first day-long CLE of its kind by the YLD, which plans to partner with other sections in the future to produce interesting and engaging CLE content for its members. If you have an idea for a CLE you'd like to plan for 2020, please get in touch with Breanna Contreras, Region 2 Director of the YLD, at breanna@bardackeallison.com



Lunch with Judges

Lunch with Judges is designed to allow YLD members to meet with members of the bench in an informal setting to help young lawyers establish personal connections and receive invaluable early career advice, as well as give judges a chance to hear the issues and concerns of new attorneys.

New Mexico YLD held a Lunch with Judges on November 1, 2019, hosted by Modrall Sperling, with Justice C. Shannon Bacon, Judge James A. Parker, Judge Steven C. Yarbrough, Judge John F. Robbenhaar and Judge Jerry H. Ritter. The YLD board is hoping that this event will be the kickoff for a regularized schedule of such events throughout 2020!

A Look Back at 2019



“proceeding to adjudicate child support” under Section 40-11A-607. The petition included the undisputed allegation that Father is the child’s father, which in turn rested on Father’s acknowledgement of paternity. No party challenged the acknowledgement based on allegations of fraud, duress, material mistake of fact, or genetic testing. *See generally* §§ 40-11A-308, -309, -631(A). Properly treating the unchallenged acknowledgement as the functional equivalent of an adjudication of paternity, the district court exercised its remedial authority under Section 40-11A-636(G). The court considered the parties’ arguments and testimony regarding Father’s child support obligations. It then directed Father to fulfill his duty “of past and future support,” *id.*, ordering him to pay retroactive to when Father and Mother separated. In our view, the court’s actions were well within its authority under the NMUPA and therefore were not an abuse of discretion.

{15} Father sees this differently. He argues that the NMUPA’s retroactivity provision—which on its face is generally applicable—does not apply to him because he acknowledged paternity before CSED filed the petition. Father relies heavily on a pair of cases in which fathers sought to be exempted from the UPA’s retroactive child support provision: *Sisneroz v. Polanco*, 1999-NMCA-039, 126 N.M. 779, 975 P.2d 392, and *Zabolzadeh v. Zabolzadeh*, 2009-NMCA-046, 146 N.M. 125, 207 P.3d 359. But neither case dictates the holding Father seeks. The issue in *Sisneroz* was “whether the UPA applie[d] to fathers who do not deny paternity of their children but never formally acknowledge their paternity or assume legal responsibility for their support.” 1999-NMCA-039, ¶ 6. Rejecting the father’s request for an exemption, we held that the UPA authorized retroactive support. *See id.* ¶ 10. In *Zabolzadeh*, the issue was whether the UPA authorized retroactive support in a proceeding brought in New Mexico twelve years after a California court had adjudicated paternity based on a stipulation by the mother and father. 2009-NMCA-046,

¶¶ 1-4. In the particular circumstances of that case, we reversed the award of retroactive child support, finding error in the district court’s adjudication of paternity “for the second time when [the f]ather’s paternity had already been judicially acknowledged and adjudicated in the California court.” *Id.* ¶ 5; *see id.* ¶¶ 6-7.

{16} After *Sisneroz* and *Zabolzadeh*, we addressed a mother’s request for an exemption from the UPA’s retroactive child support provision in *Diamond v. Diamond*, 2011-NMCA-002, 149 N.M. 133, 245 P.3d 578, *rev’d on other grounds*, 2012-NMSC-022, 283 P.3d 260. There, we rejected the mother’s argument “that the UPA was an improper vehicle for any award of child support because [her] parentage was not in dispute.” *Id.* ¶ 27. We explained that, in *Zabolzadeh*, “[t]he father’s paternity was established by court order” in California years before the mother petitioned for retroactive child support in New Mexico. *Diamond*, 2011-NMCA-002, ¶ 29. We then distinguished *Zabolzadeh*, reasoning that “[i]n the present case . . . [the m]other’s parentage of [the d]aughter, while not disputed, had never been judicially acknowledged and adjudicated.” *Diamond*, 2011-NMCA-002, ¶ 30. Accordingly, we concluded in *Diamond* that the UPA was an “appropriate vehicle” for determination of parentage and retroactive child support.⁶ *Id.* ¶ 33.

{17} Like *Diamond*, Father’s case is distinct from *Zabolzadeh*. Just as the parentage of the mother in *Diamond* was not judicially acknowledged and adjudicated before the UPA proceedings were initiated, Father’s parentage was not judicially acknowledged and adjudicated at any time before CSED filed its petition in 2016. Father does not contend otherwise.

{18} Instead, Father asks us to expand the narrow exemption we recognized in *Zabolzadeh* so that it includes all fathers who acknowledge paternity through the informal procedures in the NMUPA before they are named as respondents in an enforcement proceeding. Father argues that he enjoys an exemption from

the NMUPA’s retroactive support provision because he previously acknowledged paternity. Under Father’s theory, an acknowledgement of paternity executed before a petition for support is filed should have the same preclusive effect as an adjudication of parentage entered by a court before a support petition is filed. {19} Whether Father’s argument has merit turns on the meaning of Section 40-11A-305(A), which states: “Except as otherwise provided in Sections [40-11A]-307 and [40-11A]-308[,] . . . a valid acknowledgement of paternity filed with the bureau is equivalent to an adjudication of paternity of a child.” In discerning the legislative intent behind this equivalency provision, we consider its plain language in light of its “function within [the] comprehensive legislative scheme” of the NMUPA, including the enforcement and remedial provisions governing proceedings to adjudicate child support. *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939. “Equivalent” means “like in signification or import” or “corresponding or virtually identical especially in effect or function.” *Equivalent*, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/equivalent> (last updated Apr. 7, 2019); *accord Equivalent*, *Black’s Law Dictionary* (9th ed. 2009) (defining term as “[e]qual in . . . force, . . . effect, or significance” or “[c]orresponding in effect or function”). Accordingly, to determine the meaning of the equivalence between adjudications and acknowledgments of paternity, we focus on the effect, function, and import of the competing interpretations in the child support context. {20} Under Father’s reading of the equivalency language in Section 40-11A-305(A), adjudication and acknowledgement would have opposite effects and functions. Despite its mandate that they be treated “equivalently,” the NMUPA would prohibit retroactive support when paternity is acknowledged and allow it when paternity is adjudicated. We have found nothing in the NMUPA to suggest that our Legislature intended for the two legally equivalent mechanisms of establishing paternity to have opposite effects

⁶*Sisneroz*, *Zabolzadeh*, and *Diamond* involved two different versions of the UPA. *See Diamond*, 2011-NMCA-002, ¶ 5 (applying UPA as amended through 2004); *Zabolzadeh*, 2009-NMCA-046, ¶ 1 (same); *Sisneroz*, 1999-NMCA-039, ¶ 1 (applying the UPA as amended through 1997). No party invites us to revisit the holdings or reasoning of *Sisneroz*, *Zabolzadeh*, and *Diamond* in light of the changes that came with the NMUPA, and we need not do so to resolve Father’s appeal.

on children, parents, and the state. We therefore reject Father's interpretation of the equivalency provision and decline his invitation to exempt acknowledged fathers from the NMUPA remedy of retroactive support.⁷

{21} Instead, we hold that the NMUPA authorizes district courts to order retroactive support when an acknowledgement of paternity has established the parent-child relationship. Our holding rests on the plain meaning of the equivalency provision and our understanding of the NMUPA's structure and purpose. We begin where a district court begins its analysis of a petition for child support: the threshold question of whether paternity is contested or uncontested. When paternity is contested, the NMUPA requires the court to adjudicate paternity before it adjudicates child support. The existence of an acknowledgement of paternity does not necessarily mean that paternity will be uncontested. When someone challenges an acknowledgement, the court must adjudicate paternity. See §§ 40-11A-308, 309(D), -636(A). If, at the end of the adjudicatory process, the court finds paternity, it proceeds to the remedial phase, which entails application of the child support provisions of Section 40-11A-636(G) to the facts of the case before it.

{22} An unchallenged acknowledgement of paternity, such as the one at issue in Father's appeal, gives the parties and the courts a dramatically shorter path to the same destination: the child support remedies in Section 40-11A-636(G). When an acknowledgement goes unchallenged, paternity is uncontested, and the court moves directly to the determination of remedies. The only remaining step is to enforce the father's duty of support by entering a judgment or order, which may include a provision requiring "retroactive"

or "past" support. Section 40-11A-636(G). The acknowledgement shortcut obviates the need for further proceedings regarding paternity.⁸ See § 40-11A-201(B)(2) ("The father-child relationship is established [by] an effective acknowledgment of paternity . . . unless the acknowledgment has been rescinded or successfully challenged[.]").

{23} An unchallenged acknowledgement conclusively establishes paternity, just as the court's adjudication of paternity would have if a party had contested paternity. In other words, "a valid acknowledgement of paternity . . . is equivalent to an adjudication of paternity." Section 40-11A-305(A). Because they are equivalents, both a valid acknowledgement of paternity and an adjudication of paternity authorize a court to order child support, including retroactively. Valid acknowledgements have the same function and effect as adjudications in the child support adjudication process.

{24} Our holding today advances the Legislature's goal of broadly applying the NMUPA to ensure that it serves its important purposes, unhindered by overly technical application of provisions designed to ensure that all parents contribute equitably to their children's financial support. Our Supreme Court has recognized that "the Legislature clearly intended that the UPA have broad application." *Chatterjee v. King*, 2012-NMSC-019, ¶ 7, 280 P.3d 283 (internal quotation marks omitted).⁹ Our courts must therefore read the statute in light of the goals the Legislature sought to achieve, see *id.* ¶¶ 33-34, including protecting "the interest that children have in their own support." *Id.* ¶ 33. Were we to adopt Father's position and recognize a categorical exemption from the NMUPA for acknowledged fathers, children would be deprived of important resources they are entitled to from birth. This would undermine a key legislative goal and violate

an overarching command of our family law jurisprudence: "in every proceeding in which minor children are involved, a court's primary obligation is to further the best interests of the child." *Wasson v. Wasson*, 1978-NMCA-092, ¶ 4, 92 N.M. 162, 584 P.2d 713; see *Chatterjee*, 2012-NMSC-019, ¶ 37 ("[T]he child's best interests are served when intending parents physically, emotionally, and financially support the child from the time the child comes into their lives."); *Wallis v. Smith*, 2001-NMCA-017, ¶ 10, 130 N.M. 214, 22 P.3d 682 ("Making each parent financially responsible for the conception and birth of children . . . illuminates a strong public policy that makes paramount the interests of the child.").

{25} A judicially crafted exemption for acknowledged fathers would also harm the person who has custody of the child—often the mother—by requiring that person to shoulder more than her or his fair share. See *Sisneroz*, 1999-NMCA-039, ¶ 15 ("Retroactive child support is for the benefit of a child as well as for that child's custodian."). All parents have a duty to support their children starting at birth. See *Stringer v. Dudoich*, 1978-NMSC-071, ¶ 7, 92 N.M. 98, 583 P.2d 462 ("A child has the right of support from his parents whether or not he is in their custody."); *Mintz v. Zoernig*, 2008-NMCA-162, ¶ 15, 145 N.M. 362, 198 P.3d 861 (recognizing that "a natural father is required to support his children" and that child support is a parent's most important obligation). The NMUPA codifies this duty for both acknowledged and adjudicated fathers. Acknowledging paternity is a way for a father to accept his share of financial responsibility for a child, not to shift responsibility to the mother or another custodian.

{26} In addition, Father's requested exemption would harm the state, which

⁷The parties discuss our calendar notice and summary disposition in *State ex rel. Human Services Department v. Kindred*, No. 33,541, mem. op. (N.M. Ct. App. July 1, 2014) (non-precedential), in which we reversed the district court's award of retroactive support. In our notice of proposed summary disposition, we indicated, as Father argues here, that the NMUPA's retroactivity provision does not apply when a father has acknowledged paternity before judicial proceedings regarding paternity or child support begin. We "suggest[ed] that the basis for distinguishing *Zabolzadeh* that existed in *Diamond*"—the lack of a "judicial[] acknowledge[ment] and adjudica[tion]" of parentage, *Diamond*, 2011-NMCA-002, ¶ 30—was inapplicable because the NMUPA's equivalency provision "equates an acknowledgment . . . to an adjudication of paternity[.]" We therefore proposed "rel[iance] on *Zabolzadeh*" in reasoning that the NMUPA did not apply because paternity was not in dispute. Our ensuing memorandum opinion noted that "[n]o memorandum opposing summary reversal ha[d] been filed, and the time for doing so ha[d] expired." *Kindred*, No. 33,541, mem. op. ¶ 1. Having now considered the issue with the benefit of full briefing, which we did not have in *Kindred*, we resolve the issue differently for the reasons we explain in the text of this opinion.

⁸Despite the informal nature of acknowledgment execution, the court may not even "ratify" an unchallenged acknowledgement. Section 40-11A-310.

⁹Although *Chatterjee* interpreted the NMUPA's predecessor, nothing in the NMUPA gives us any reason to believe that our Legislature intended for the NMUPA to apply more narrowly than the UPA.

“has a strong interest in ensuring that a child will be cared for, financially and otherwise, by two parents” because the state “ultimately assume[s] the responsibility of caring for the child.” *Chatterjee*, 2012-NMSC-019, ¶ 32. Indeed, protecting this state interest was “one of the primary reasons that the original UPA was created,” and, as our Supreme Court has recognized, “it makes little sense to read the statute without keeping this overarching legislative goal in mind.” *Id.* Father’s reading of the NMUPA would undermine this goal. {27} Father’s reading would also undermine the goal of encouraging parents to choose the simpler, faster, and less expensive mechanism for determining paternity: acknowledgement. The NMUPA requires the signature of *both* parents for an acknowledgment of paternity to be valid. Sections 40-11A-301, -302(A)(2). Custodial parents would have a powerful incentive to withhold their signatures were we to hold, as Father urges, that signing an acknowledgment precludes retroactive support.

{28} Even if we identified significant ambiguity in the NMUPA’s relevant provisions, which we do not, we would reject Father’s proposed holding because it would lead to “absurd [and] unjust” results. *In re Portal*, 2002-NMSC-011, ¶ 5, 132 N.M. 171, 45 P.3d 891 (internal quotation marks and citation omitted). A fundamental principle of our family law jurisprudence is that children should not “be penalized because of the decisions that their parents make[.]” *Chatterjee*, 2012-NMSC-019, ¶ 33; see *Padilla v. Montano*, 1993-NMCA-127, ¶ 31, 116 N.M. 398, 862 P.2d 1257 (interpreting the UPA to prevent the child from being punished for the mother’s “failure to pursue a [claim] for paternity and support during [the c]hild’s minority”). Father’s proposed exemption would violate this principle by depriving certain children of financial support based on the action or inaction of their parents. An exemption would unjustly penalize children whose fathers acknowledge paternity but fail to support their children and whose mothers (or other custodians or interested parties)

do not immediately petition for child support. Every such child would be deprived of support for all of the time between the father’s acknowledgement and the filing of the petition, regardless of the circumstances.

{29} We can imagine numerous hypothetical situations that illustrate the injustice and absurdity of such an approach. We offer two. Consider first a child whose unmarried father and mother acknowledge paternity when the child is born. The father then fails to provide financial support. Due to a serious illness the mother suffers shortly after the child’s birth, she is unable to petition for support for six months. Under Father’s proposed holding, the child would be deprived of the father’s support for six months, and the mother (and perhaps the State) would bear the burden of supporting the child during that time.

{30} Comparing this hypothetical situation to a similar one further confirms the illogic of exempting fathers who have acknowledged paternity. The facts are the same as those described above—with one exception. The father does not acknowledge paternity. Instead, after the mother recovers from her illness, she successfully petitions for an adjudication of paternity. Under Father’s proposed interpretation of the NMUPA, a court could order support for this child retroactive to his or her birth but could not order the same support for the child whose father previously acknowledged paternity. We do not believe the NMUPA arbitrarily draws consequential lines between groups of children, making each child’s financial support depend on whether or not the child’s father chooses to acknowledge paternity before the child’s mother chooses to initiate judicial proceedings.¹⁰ See *Chatterjee*, 2012-NMSC-019, ¶ 33 (recognizing that children should not be penalized for their parents’ choices).

{31} Other arbitrary results would flow from Father’s proposed holding. Children whose parents unsuccessfully attack an acknowledgment of paternity would be entitled to retroactive support, but children whose parents execute but do not

attack an acknowledgment would not. The NMUPA provides two methods a signatory may use to attack an acknowledgment of paternity to avoid its legal effects: rescission, § 40-11A-307, and challenge, § 40-11A-308. Both methods involve judicial proceedings that “shall be conducted in the same manner as a proceeding to adjudicate parentage.” Section 40-11A-309(D). And, as Section 40-11A-636(A) provides, proceedings to adjudicate parentage produce orders adjudicating parentage. It follows that Section 40-11A-636 applies when a party attacks an acknowledgment, whether by rescission or challenge. When an attack fails, and a court determines that an acknowledgment is binding, the court is authorized to enter an order adjudicating a signatory to be the father, an order that under Section 40-11A-636(G) could be accompanied by an order for retroactive support. Father’s reading would thus authorize retroactive support for children whose parents acknowledge paternity and later launch failed attacks, but prohibit it for children of parents who execute an acknowledgment and never attack it. Surely the Legislature did not intend to draw such an arbitrary, unjust distinction.

{32} Father’s final argument is that applying the NMUPA’s retroactive support provision to fathers who have previously acknowledged paternity, as he did, would be inequitable because it would reward mothers and other custodians who fail to promptly petition for child support, as he claims Mother did. But applying the NMUPA’s retroactive support provision does not prohibit parents from presenting equitable arguments like Father’s. On the contrary, under the NMUPA, “in deciding whether or how long to order retroactive support, the court shall consider[.]” among other things, “whether equitable defenses are applicable.” Section 40-11A-636(G). Instead of categorically forbidding or categorically requiring retroactive support, the NMUPA calls for a case-by-case approach to retroactive support issues, including consideration of any equitable defenses.

¹⁰Our interpretation of the NMUPA’s retroactivity provision avoids the constitutional questions and potential statutory discord that troubled the district court. See *Chatterjee*, 2012-NMSC-019, ¶ 18 (interpreting UPA broadly “to avoid an interpretation . . . that would raise constitutional concerns”); *State v. Smith*, 2004-NMSC-032, ¶ 13, 136 N.M. 372, 98 P.3d 1022 (“[O]ur task is to construe statutes in harmony whenever possible.”). Concluding that the NMUPA deprives certain children of retroactive support would raise equal protection questions. See U.S. Const. amend. XIV, § 1; N.M. Const. art. II, § 18. It would also raise questions under the NMUPA’s equal rights provision, Section 40-11A-202. See *id.* (“A child born to parents who are not married to each other has the same rights pursuant to the law as a child born to parents who are married to each other.”). We need not answer those questions to decide Father’s appeal.

{33} Adhering to the NMUPA's provisions, the district court gave Father the opportunity to present his equitable argument. The district court weighed the parties' competing arguments and evidence about whether Mother's actions constituted waiver, including Mother's testimony about her efforts to locate Father for the purpose of seeking child support and the parties' conflicting testimony about whether Mother ever asked Father to stop paying child support.¹¹ The court then made a case-specific decision about whether to order retroactive support, as the NMUPA requires.

CONCLUSION

{34} We affirm the district court's order requiring Father to pay retroactive child support. We remand for further proceedings consistent with this opinion.

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

ZACHARY A. IVES, Judge

WE CONCUR:

J. MILES HANISEE, Judge

JACQUELINE R. MEDINA, Judge

¹¹Neither CSED nor Mother questioned whether waiver is a viable defense. *See generally Webb v. Menix*, 2004-NMCA-048, ¶¶ 4-11, 135 N.M. 531, 90 P.3d 989 (discussing two kinds of common-law waiver in the child support context); *Sisneroz*, 1999-NMCA-039, ¶ 11 (declining to rule on mother's argument "that she could not bind her child to a waiver of retroactive child support without court appointment of a guardian ad litem and some measure of judicial approval").

Advance Opinions

<http://www.nmcompcomm.us/>

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-036

No. A-1-CA-35208 (filed May 2, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DAVID GONZALES,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Douglas R. Driggers, District Judge

Certiorari Denied, July 1, 2019, No. S-1-SC-37707.
Released for Publication July 23, 2019.

HECTOR H. BALDERAS,
Attorney General
MAHA KHOURY,
Assistant Attorney General
Santa Fe, NM
for Appellee

BENNETT J. BAUR,
Chief Public Defender
C. DAVID HENDERSON,
Appellate Defender
Santa Fe, NM
for Appellant

Opinion

Jennifer L. Attrep, Judge

{1} Defendant David Gonzales appeals his convictions for racing on highways (NMSA 1978, § 66-8-115 (1978)), aggravated fleeing a law enforcement officer (NMSA 1978, § 30-22-1.1 (2003)), and careless driving (NMSA 1978, § 66-8-114 (1978)). Defendant argues that: (1) there is insufficient evidence to sustain his conviction for racing on highways and (2) his convictions for aggravated fleeing and careless driving violate double jeopardy. We agree with Defendant's double jeopardy argument and, accordingly, remand to the district court to vacate Defendant's conviction for careless driving. We otherwise affirm.

BACKGROUND

{2} At trial, Officer Joshua Herrera of the Las Cruces Police Department testified to the events giving rise to Defendant's convictions. While on duty in his marked patrol car, Officer Herrera was stopped at a red light behind two pickup trucks. One truck was directly in front of him

and the other truck was in the right-hand lane. When the light turned green, Officer Herrera observed the driver of the truck to his right (later identified as Defendant) "rev[] up [his] engine and start[] peeling out." Defendant's truck "sat there while the tires were squealing," creating blue smoke. Defendant then "darted into the intersection once the tires were able to gain grip." Defendant's truck "lunged forward so fast that it left a gap" between Defendant and the rest of traffic, which enabled Officer Herrera to pull into Defendant's lane.

{3} After Officer Herrera engaged his emergency lights, Defendant pulled into a bank parking lot. Officer Herrera pulled in behind Defendant, left his emergency lights on, and got out of his patrol car. As the officer approached, the truck began "creeping forward" as if Defendant had left it in drive and taken his foot off the brake. Officer Herrera ordered Defendant to stop, and Defendant eventually brought his vehicle to a stop. When asked what happened at the intersection, Officer Herrera testified that Defendant said that "the guy beside him had pissed him off," referring to the truck to Defendant's left at

the intersection. Defendant disputed this statement at trial and testified that he told Officer Herrera that he "popped the clutch in the intersection." After Officer Herrera requested Defendant's driver's license, insurance, and registration, Defendant "stepped on the gas" and took off from the parking lot. According to the officer, he had to "jump back . . . to get away from [Defendant's] vehicle." Defendant "sped down the parking lot," turned out onto the street, and passed "through civilian traffic at a high rate of speed."

{4} Officer Herrera ran back to his patrol car, advised dispatch that Defendant was fleeing, and began to pursue Defendant with his lights and sirens on. There was substantial traffic on the road at the time, and the officer observed Defendant make a right-hand turn onto Roadrunner Lane, causing a white car to maneuver out of the way. Officer Herrera pursued Defendant onto Roadrunner Lane, where Defendant continued to drive fast behind other vehicles, forcing these vehicles to attempt to move to the right. Due to traffic conditions, Officer Herrera's supervisor quickly ordered him to stop pursuing Defendant. {5} As the officer began to slow down and turn off his lights and sirens, he saw Defendant attempt to make a right-hand turn into a driveway. Because he was driving too fast, however, Defendant was unable to complete the turn successfully. His truck flew into the air and landed upside down in a ditch full of water. Officer Herrera then re-engaged his emergency equipment and proceeded to the crash, finding Defendant's truck partially submerged in water with Defendant trapped inside. With the help of other officers, Officer Herrera pulled Defendant to safety. Defendant testified that the entire chase took maybe three minutes and spanned a distance of, at most, a half of a mile. The parties stipulated at trial that, shortly after the incident, Defendant's blood alcohol content was above the legal limit.

{6} Defendant was charged with aggravated assault upon a peace officer, aggravated fleeing a law enforcement officer, driving while under the influence, careless driving, racing on highways, and various other Motor Vehicle Code offenses. Prior to trial, Defendant pleaded guilty to two Motor Vehicle Code offenses. The jury acquitted Defendant of aggravated assault upon a peace officer and convicted him of all remaining charges. Defendant appeals

his convictions for racing on highways, aggravated fleeing a law enforcement officer, and careless driving.

DISCUSSION

I. Sufficient Evidence Supports Defendant's Conviction for Racing on Highways

{7} Defendant first contends that the evidence at trial was insufficient to support his conviction for racing on highways. To the extent Defendant's sufficiency argument turns on an interpretation of the racing on highways statute, "that presents a question of law which is reviewed de novo on appeal." *State v. Chavez*, 2009-NMSC-035, ¶ 10, 146 N.M. 434, 211 P.3d 891. As is stated often, "[i]n interpreting a statute, our primary objective is to give effect to the Legislature's intent." *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125. "In discerning legislative intent, we look first to the language used and the plain meaning of that language." *Id.* "[W]hen a statute contains clear and unambiguous language, we will heed that language and refrain from further statutory interpretation." *Id.* "After reviewing the statutory standard, we apply a substantial evidence standard to review the sufficiency of the evidence at trial." *Chavez*, 2009-NMSC-035, ¶ 11.

{8} The racing on highways statute provides, in relevant part, that:

no person shall drive a vehicle on a highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law, and no person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

Section 66-8-115(A). The jury was instructed consistent with this statutory language. Both at trial and on appeal, the State contends that Defendant's conduct at the stop light prior to the traffic stop violated the portion of Section 66-8-115 criminalizing driving in an "exhibition of

speed or acceleration." *Id.* The State does not contend that Defendant engaged in any race, competition, contest, or test. Defendant argues that in order to be convicted under Section 66-8-115 for exhibition of speed or acceleration, two elements must be present—first, there must be a competition or agreement with another driver, and second, any exhibition must include a display of driving skill or prowess to an audience.

{9} In service of his primary contention that a person can violate Section 66-8-115 only by making an agreement with another or by engaging in a competition, Defendant relies on a non-precedential memorandum opinion from this Court. In *State v. Dominguez*, this Court stated in passing that, "[a]s for exhibition of speed, [Section 66-8-115] applies to drag racing and speed competitions." No. 30,189, memo op. at *3 (N.M. Ct. App. May 4, 2010) (non-precedential). *Dominguez* did not, however, address the elements necessary for conviction under Section 66-8-115, nor did it address conduct similar to that at issue in this appeal. *Id.* To the extent *Dominguez* can be read to require that a race or competition with another is a necessary element of every violation of Section 66-8-115, that conclusion is contrary to the clear and unambiguous language in the statute, as discussed below, and is in tension with an earlier Supreme Court opinion in which the Court imposed no such requirement. See *State v. Luna*, 1980-NMSC-009, ¶¶ 5, 10, 93 N.M. 773, 606 P.2d 183 (construing municipal ordinance identical to Section 66-8-115 and concluding that a traffic stop was "reasonable and valid" where the defendant "pull[ed] away from a street intersection at a high rate of acceleration, causing the rear tires of his car to spin on the pavement"), *abrogated on other grounds by Horton v. California*, 496 U.S. 128 (1990). Consequently, we do not find *Dominguez* persuasive and we decline to follow its rationale. See Rule 12-405(A) NMRA ("Non-precedential dispositions may be cited for any persuasive value[.]").

{10} Moreover, Defendant's construction of Section 66-8-115 is not borne out by the statutory language. The statute sets out a

list of prohibited driving activities—in particular, "no person shall drive a vehicle on a highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration or for the purpose of making a speed record . . . and no person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition." Section 66-8-115(A) (emphases added). The use of the disjunctive "or" makes plain that the statute may be violated in a number of ways—by engaging in a race, drag race, competition, contest, test, or exhibition—at least two of which (a test or an exhibition) require no agreement or competition among drivers. Were we to interpret "exhibitions of speed or acceleration" to require some element of competition or agreement, as Defendant requests, this portion of the statute would be redundant given the other prohibitions. Consequently, we decline to read Section 66-8-115 in this manner. See *Trujillo*, 2009-NMSC-012, ¶ 11 ("We will not read into a statute any words that are not there, particularly when the statute is complete and makes sense as written."); *State v. Padilla*, 2008-NMSC-006, ¶ 33, 143 N.M. 310, 176 P.3d 299 ("A statute must be construed so that no part of the statute is rendered surplusage or superfluous." (internal quotation marks and citations omitted)). Based on the clear and unambiguous statutory language, we conclude that "exhibition of speed or acceleration" does not require an agreement or competition.¹

{11} Defendant next advances a narrow definition of "exhibition," asserting it requires a "display of driving skill to an audience." The term "exhibition" is not defined in the relevant criminal statutes. It has, however, been defined by our Supreme Court in other criminal contexts. In *State v. Myers*, for example, our Supreme Court relied on a dictionary definition to define an "exhibition" as a "showing, evincing, or showing off." 2009-NMSC-016, ¶ 19, 146 N.M. 128, 207 P.3d 1105 (construing the meaning of "lewd and sexually explicit exhibition" within NMSA 1978, Section 30-6A-2(A) (5) (2001) (internal quotation marks and

¹We note that our conclusion here is in line with other jurisdictions' constructions of similar statutes. See *People v. Grier*, 38 Cal. Rptr. 11, 12 (Dist. Ct. App. 1964) (concluding that statute "could be violated by two or more persons competing in speed in vehicles on the highway or by one person displaying the speed of his vehicle on the highway to another person in the first person's car or in another car" (emphasis added) (internal quotation marks and citation omitted)); *People v. Heckard*, 431 P.2d 1014, 1016 (Colo. 1967) (concluding that statute "defines two primary offenses, . . . the 'speed or acceleration contest,' and the 'exhibition of speed or acceleration.' . . . [and that a] 'contest' ordinarily implies a plurality of participants in a deliberate, competitive act . . . , while an 'exhibition' implies a person's display, for the purpose of attracting public attention, of the same acts").

citation omitted)). The Court also found guidance in the dictionary definition of the verb “to exhibit,” meaning to “show or display outwardly especially by visible signs or actions[.]” *Id.* (alteration, omission, internal quotation marks, and citation omitted). We find these dictionary definitions instructive in our construction of Section 66-8-115. *See State v. Lindsey*, 2017-NMCA-048, ¶ 14, 396 P.3d 199 (“Our courts often use dictionary definitions to ascertain the ordinary meaning of words that form the basis of statutory construction inquiries.” (alteration, internal quotation marks, and citation omitted)). Contrary to Defendant’s contention, the plain meaning of the term “exhibition” does not require a display of a particular skill, such as driving prowess. And, as discussed below, any requirement that the “exhibition of speed or acceleration” involve a public display to another has been met in this case.

{12} We pause to emphasize that we have not attempted to draw the boundaries of criminality of “exhibition of speed or acceleration,” nor do we suggest that every tire screech, squeal, or instance of peeling out will be sufficient to impose criminal liability under Section 66-8-115. Nonetheless, we have little trouble concluding that the evidence in this case is sufficient to support a conviction under Section 66-8-115 for “exhibition of speed or acceleration.” “The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” *State v. Salgado*, 1999-NMSC-008, ¶ 25, 126 N.M. 691, 974 P.2d 661 (internal quotation marks and citation omitted). In making this determination, we “view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176.

{13} In this case, with an officer and at least one other motorist present, Defendant revved his engine as soon as a traffic light turned green, causing his tires to peel out, squeal, and produce blue smoke.

Once Defendant’s tires gained traction on the road, his truck “darted into the intersection[.]” accelerating quickly in front of other traffic. Further, when asked what happened at the intersection, according to Officer Herrera, Defendant said that “the guy beside him had pissed him off[.]” Viewing this evidence in the light most favorable to the verdict, there is substantial evidence that Defendant intentionally engaged in an outward display of speed or acceleration to another. *See Luna*, 1980-NMSC-009, ¶ 10 (assuming that there is a display requirement for exhibition of speed or acceleration and concluding any such requirement was met when at least one person, a police officer, was present to witness the defendant’s conduct at an intersection); *Grier*, 38 Cal. Rptr. at 11 (holding that the defendant engaged in an “exhibition of speed on a highway” when he accelerated in such a manner “as to cause the tires to scream loudly and to lose traction”); *Bice v. State*, 17 S.W.3d 354, 355-56 (Tex. Ct. App. 2000) (holding, under a substantially similar statute, that the defendant engaged in an “exhibition of vehicle speed or acceleration” when he left a stoplight by spinning his tires). We, therefore, conclude that a rational jury could have found beyond a reasonable doubt the essential facts required for conviction under Section 66-8-115 for “exhibition of speed or acceleration.” We affirm Defendant’s conviction for the same.

II. Defendant’s Convictions for Both Aggravated Fleeing and Careless Driving Violate Double Jeopardy

{14} Defendant challenges his convictions for aggravated fleeing and careless driving as violating his constitutional right to be free from double jeopardy. The double jeopardy clause “protects defendants from receiving multiple punishments for the same offense.” *State v. Ramirez*, 2018-NMSC-003, ¶ 38, 409 P.3d 902 (internal quotation marks and citation omitted); *see* U.S. Const. amend. V; N.M. Const. art. II, § 15. Defendant raises a double-description double jeopardy claim, “in which a single act results in multiple charges under different criminal statutes[.]” *State v. Bernal*, 2006-NMSC-050, ¶ 7, 140 N.M. 644, 146 P.3d 289. In analyzing double-description challenges, we employ the two-part test, set out in *Swafford v. State*, in which we examine: (1) whether the conduct is unitary, and, if so, (2) whether the Legislature intended to punish the offenses separately. 1991-NMSC-043, ¶ 25, 112 N.M. 3, 810 P.2d 1223. “Only if the first part of the test

is answered in the affirmative, and the second in the negative, will the double jeopardy clause prohibit multiple punishment in the same trial.” *Id.* Defendant’s double jeopardy challenge presents a constitutional question of law, which we review *de novo*. *State v. Swick*, 2012-NMSC-018, ¶ 10, 279 P.3d 747.

A. Unitary Conduct

{15} The resolution of the unitary-conduct question “depends to a large degree on the elements of the charged offenses and the facts presented at trial.” *State v. Franco*, 2005-NMSC-013, ¶ 7, 137 N.M. 447, 112 P.3d 1104 (internal quotation marks and citation omitted). “[S]eparate punishments may be imposed if the offenses are separated by sufficient indicia of distinctness.” *Id.* (internal quotation marks and citation omitted). In making this determination, “we consider such factors as whether acts were close in time and space, their similarity, the sequence in which they occurred, whether other events intervened, and the defendant’s goals for and mental state during each act.” *Id.* “The proper analytical framework is whether the facts presented at trial establish that the jury reasonably could have inferred independent factual bases for the charged offenses.” *Id.* (internal quotation marks and citation omitted).

{16} Defendant was charged with aggravated fleeing a law enforcement officer. In order to prove that charge, the State was required to show in relevant part that Defendant “willfully and carelessly dr[ove] his [motor] vehicle in a manner that endanger[ed] the life of another person[.]” Section 30-22-1.1(A); *see also* UJI 14-2217 NMRA (jury instruction for aggravated fleeing a law enforcement officer). Defendant was also charged with careless driving, which requires proof that Defendant operated a motor vehicle on a highway “in a careless, inattentive or imprudent manner, without due regard for the width, grade, curves, corners, traffic, weather and road conditions and all other attendant circumstances.” Section 66-8-114(B); *see also* UJI 14-4505 NMRA (jury instruction for careless driving).

{17} Defendant argues that the State relied on the same conduct—Defendant’s driving on Roadrunner Lane—as the basis for both his aggravated fleeing and careless driving convictions. The State disagrees and argues that Defendant’s conduct is not unitary because the jury reasonably could have inferred separate factual bases supporting each charge. In particular,

the State argues that the conduct at issue here is not unitary because “[t]he offense of aggravated fleeing a law enforcement officer was completed and all its elements were met when [Defendant sped off from the bank parking lot], endangering the life and safety of Officer Herrera who was standing very close to Defendant’s vehicle.” The State’s argument is not well supported.

{18} In the context of a defendant’s continuous flight from law enforcement, this Court has rejected the principle that the technical completion of one offense is sufficient to find non-unitary conduct. In particular, in *State v. Padilla*, we examined whether the defendant’s flight from law enforcement—first in a vehicle and then on foot—was non-unitary. 2006-NMCA-107, ¶¶ 24-30, 140 N.M. 333, 142 P.3d 921 *rev’d on other grounds*, 2008-NMSC-006. Although we recognized that “our Supreme Court has recently emphasized that conduct may be viewed as non-unitary if one can clearly discern a point in the events where one crime has been completed and another crime has yet to be committed,” *id.* ¶ 29 (citing *State v. DeGraff*, 2006-NMSC-011, ¶ 27, 139 N.M. 211, 131 P.3d 61), we, nevertheless, concluded that “it is artificial to parse conduct when a suspect flees from the police in one way and then immediately continues to flee in another way,” *id.* ¶ 30. {19} Likewise, here, there is nothing in the record that would serve to separate the offenses of aggravated fleeing and careless driving under the State’s theory on appeal. From the testimony at trial, it appears this entire incident lasted at most minutes and spanned less than one mile. There were no discernable intervening events between Defendant’s initial flight in the parking lot and his continuing flight on Roadrunner Lane, and Defendant throughout drove in a manner that suggested a singular focus—escaping apprehension. All this supports a determination that Defendant engaged in one continuous course of unitary conduct. See *Padilla*, 2006-NMCA-107, ¶ 30 (concluding that the defendant’s flight, first in a vehicle and then on foot, was unitary conduct); *State v. LeFebvre*, 2001-NMCA-009, ¶¶ 15-18, 130 N.M. 130, 19 P.3d 825 (concluding that, notwithstanding that the defendant used different means to evade officers and wrecked his vehicle, which precipitated his flight on foot, there was unitary conduct that could support only one conviction for evading or obstructing an officer).

{20} Regardless, the State at trial did not direct the jury to Defendant’s actions in the parking lot as the basis for the aggravated fleeing offense. Instead, the State specifically directed the jury to consider Defendant’s conduct on Roadrunner Lane as satisfying the essential elements of both aggravated fleeing and careless driving. With respect to aggravated fleeing, the State argued in closing: “Was [Defendant] putting other people at risk? Look at Roadrunner [Lane]. . . . He’s forcing traffic to move to the right while he’s passing it.” Also in closing, the State discussed careless driving, directing the jury to “just look at Roadrunner Lane” for testimony establishing the required elements. See *State v. Silvas*, 2015-NMSC-006, ¶¶ 10, 19, 343 P.3d 616 (considering the state’s closing arguments in determining whether the defendant’s conduct was unitary); *State v. Ramirez*, 2016-NMCA-072, ¶ 17, 387 P.3d 266 (same); *State v. Contreras*, 2007-NMCA-045, ¶ 22, 141 N.M. 434, 156 P.3d 725 (same).

{21} Citing to *State v. Herrera*, 2015-NMCA-116, 362 P.3d 167, the State nevertheless contends that “when reviewing whether conduct is unitary in the double jeopardy context, we [should] indulge in all presumptions in favor of the verdict.” *Id.* ¶ 12 (internal quotation marks and citation omitted). We question the applicability of this presumption in a case, such as this, where the State specifically directs the jury to the same conduct to establish two crimes. In such a case, our Supreme Court has indicated that, even where there was ample evidence of non-unitary conduct, we should presume unitary conduct where the State’s theory at trial relied on the same conduct to prove the two offenses at issue. See *Franco*, 2005-NMSC-013, ¶ 11 (presuming unitary conduct where the state’s theory at trial relied on the same conduct to convict the defendant of both possession of a controlled substance and tampering with evidence, even though there was ample evidence in the record of non-unitary conduct); *cf.* *Contreras*, 2007-NMCA-045, ¶ 23 (declining to presume unitary conduct where the state had not limited its legal theory to a single factual basis for multiple charges and additionally “provided the jury with sufficiently distinct factual bases upon which it could base [the d]efendant’s conviction”). Because the State explicitly directed the jury to consider the same conduct to support De-

fendant’s convictions for both aggravated fleeing and careless driving, we presume unitary conduct.

B. Legislative Intent

{22} Having presumed unitary conduct, we analyze the second *Swafford* prong. *Franco*, 2005-NMSC-013, ¶ 11.² “The sole limitation on multiple punishments is legislative intent[.]” *Id.* ¶ 12 (alteration, internal quotation marks, and citation omitted). “When, as here, the statutes themselves do not expressly provide for multiple punishments, we begin by applying the rule of statutory construction from *Blockburger v. United States*, 284 U.S. 299 (1932), to determine whether each provision requires proof of a fact that the other does not.” *State v. Branch*, 2018-NMCA-031, ¶ 24, 417 P.3d 1141. If all elements of one statute are “subsumed within the other, then the analysis ends and the statutes are considered the same for double jeopardy purposes.” *Silvas*, 2015-NMSC-006, ¶ 12; see *Swafford*, 1991-NMSC-043, ¶ 30 (stating that when the statutes are the same under the legislative intent prong, “punishment cannot be had for both”). When dealing with statutes that are “vague and unspecific” or “written with many alternatives,” we apply a modified version of the *Blockburger* analysis. *State v. Gutierrez*, 2011-NMSC-024, ¶ 59, 150 N.M. 232, 258 P.3d 1024 (internal quotation marks and citation omitted). Under the modified *Blockburger* analysis, “we no longer apply a strict elements test in the abstract; rather, we look to the state’s trial theory to identify the specific criminal cause of action for which the defendant was convicted, filling in the case-specific meaning of generic terms in the statute when necessary.” *Branch*, 2018-NMCA-031, ¶ 25.

{23} Both statutes at issue here define the criminal conduct broadly. As noted, aggravated fleeing requires that a defendant “willfully and carelessly dr[ove] his [motor] vehicle in a manner that endanger[ed] the life of another person,” § 30-22-1.1(A), while careless driving requires proof that a defendant operated a motor vehicle on a highway “in a careless, inattentive or imprudent manner, without due regard for the width, grade, curves, corners, traffic, weather and road conditions and all other attendant circumstances,” § 66-8-114. Given these terms, there are innumerable ways in which a

²Regrettably, the State did not present any argument in its briefing regarding the legislative intent prong of *Swafford*, and so we conduct this analysis without input from the State.

person might drive that would violate both statutes. Consequently, we apply modified *Blockburger* here. See *State v. Luna*, 2018-NMCA-025, ¶ 14, ___ P.3d ___ (applying modified *Blockburger* where the “generic terms [of the statute] make it possible for numerous forms of conduct to qualify as the requisite actus reus element of the statute”), *cert. denied*, 2018-NMCERT-___ (No. S-1-SC-36896, Jan. 23, 2018); see also *Swick*, 2012-NMSC-018, ¶ 25 (applying the modified *Blockburger* analysis to the attempted murder statute because many forms of conduct could satisfy the necessary elements); *Branch*, 2018-NMCA-031, ¶ 28 (applying the modified *Blockburger* analysis to the aggravated assault statute because many forms of conduct could satisfy the necessary elements). In applying modified *Blockburger*, we examine “the actual legal theory in [this] particular case by considering such resources as the evidence, the charging documents, and the jury instructions.” *State v. Montoya*, 2013-NMSC-020, ¶ 49, 306 P.3d 426.

{24} Because the indictment and jury instructions provide no detail about the State’s theory of the case, we look to the evidence as discussed by the State in closing arguments. See *Silvas*, 2015-NMSC-006, ¶¶ 19-20 (looking to the state’s closing argument as evidence of the state’s theory for purposes of applying a modified *Blockburger* analysis); see also *Swick*, 2012-NMSC-018, ¶ 21 (examining charging document and jury instructions in modified *Blockburger* analysis). As noted, the State directed the jury during its closing to Defendant’s driving on Roadrunner Lane as the basis for both aggravated fleeing and careless driving. Under the State’s theory at trial, Defendant committed aggravated

fleeing when he “willfully and carelessly [drove] a vehicle” down Roadrunner Lane (a highway, as defined in NMSA 1978, Section 66-1-4.8(B) (1991)), endangering other motorists. Likewise, Defendant drove “in a careless, inattentive or imprudent manner” based on the same conduct occurring on Roadrunner Lane. Section 66-8-114(B). Thus, although careless driving, when viewed in the abstract, requires proof of an element that aggravated fleeing does not—i.e., operating a motor vehicle on a highway, § 66-8-114(A)—as applied in this case, it does not. See *Silvas*, 2015-NMSC-006, ¶ 14 (considering, under modified *Blockburger*, “not only whether each statute in the abstract requires proof of a fact that the other does not, but also whether the statute, as applied by the [s]tate in a given case, overlaps with other criminal statutes so that the accused is being punished twice for the same offense” (alteration, internal quotation marks, and citation omitted)). Because Defendant’s conduct occurred on a highway, in this case, careless driving does not require proof of any fact not contained in aggravated fleeing.

{25} “The only arguable difference in the two crimes is a slightly different articulation of the necessary mental state.” *Padilla*, 2006-NMCA-107, ¶ 34. We note, however, that driving a vehicle “willfully and carelessly” as required by the aggravated fleeing statute encompasses the mental state of civil negligence necessary to sustain a conviction for careless driving. See *State v. Yarborough*, 1996-NMSC-068, ¶ 21, 122 N.M. 596, 930 P.2d 131 (holding “that the careless-driving statute requires only a showing of ordinary or civil negligence”); *Padilla*, 2006-NMCA-107, ¶

34 (concluding that the differing mental states required by two statutes evidenced “a distinction without a difference” when the lesser mental state would always be subsumed within the greater). Applying modified *Blockburger* to the State’s theory of the case, all elements of careless driving are subsumed within the elements of aggravated fleeing. Thus, there is no indication that the Legislature intended to punish these two crimes separately. See *Swafford*, 1991-NMSC-043, ¶ 30 (stating that when the two charged statutes are the same under legislative intent prong, “punishment cannot be had for both”).

{26} We, therefore, conclude that Defendant’s convictions for both aggravated fleeing and careless driving violate double jeopardy, and consequently Defendant’s conviction for careless driving must be vacated. See *Padilla*, 2006-NMCA-107, ¶ 36 (“Where we conclude that double jeopardy has been violated, we vacate the lesser offense and retain the conviction for the greater offense.”).

CONCLUSION

{27} Having concluded Defendant’s right to be free from double jeopardy was violated, we remand to the district court to vacate the lesser offense of careless driving and to resentencing Defendant accordingly. Because we also conclude that Defendant’s conviction for racing on highways is supported by sufficient evidence, we affirm the same.

{28} IT IS SO ORDERED.
JENNIFER L. ATTREP, Judge

WE CONCUR:
LINDA M. VANZI, Judge
J. MILES HANISEE, Judge

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-037

No. A-1-CA-35462 (filed May 31, 2019)

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JAVIER DORADO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Fernando R. Macias, District Judge

Certiorari Denied, July 2, 2019, No. S-1-SC-37712.

Released for Publication July 23, 2019.

JOHN J. WOYKOVSKY,
Assistant Attorney General
Albuquerque, NM
for Appellee

BENNETT J. BAUR,
Chief Public Defender
B. DOUGLAS WOOD III,
Assistant Appellate Defender
Santa Fe, NM
for Appellant

Opinion

Megan P. Duffy, Judge

{1} A jury convicted Defendant Javier Dorado of assault on a peace officer and disorderly conduct. On appeal, Defendant argues that the State exercised its peremptory challenges in a racially discriminatory manner in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986), and his constitutional rights. Detecting no violation, we affirm.

BACKGROUND

{2} Defendant was charged with one count of assault upon a peace officer, contrary to NMSA 1978, Section 30-22-21 (1971), and one count of disorderly conduct, contrary to NMSA 1978, Section 30-20-1(A) (1967). The State was allowed three peremptory challenges and exercised them to strike Potential Jurors Five, Fifteen, and Eighteen—all persons with Hispanic surnames. See Rule 5-606(D)(1)(c) NMRA (providing in relevant part that “the state shall be allowed three (3) challenges”). After the State used its third strike on Potential Juror Eighteen, De-

fendant’s counsel asked for a reason for the strike. The district court responded to the question, stating, “Well, let me see. Let me see if there is a basis for your request. Okay. [The State used one strike on Potential Juror Five]. They used another one on [Potential Jurors Fifteen and Eighteen]. Two Hispanic males, one Hispanic female.” The court told the State it could “address any of the three.” {3} In response, one prosecutor said the State struck Potential Juror Fifteen because “I just didn’t like his general demeanor. It didn’t appear to be favorable to the State. Oftentimes we just go off the instinct based on body language, and that’s why I [asked that Potential Juror Fifteen be stricken].” The State said it struck Potential Juror Eighteen because “he is a young male from Anthony. And while he did not make any—he did not say that he knew [D]efendant, he is from the same area.” The State said it struck Potential Juror Five because she was younger, around Defendant’s age, and because she is from Anthony.

{4} The district court observed that the majority of the jury panel at that point was Hispanic and concluded that the peremptory strikes had not been used improperly, to which Defendant’s attorney replied, “Yes, your Honor” without raising further objection or argument. Of the thirteen jury members finally selected, seven were Hispanic. The jury found Defendant guilty of both charges.

DISCUSSION

{5} “It is well established that the [s]tate may not, during the jury selection process, use its peremptory challenges to exclude otherwise unbiased and well-qualified individuals solely on the basis of their race.” *State v. Martinez*, 2002-NMCA-036, ¶ 9, 131 N.M. 746, 42 P.3d 851. “Such invidious discrimination violates the Equal Protection Clause of the United States Constitution and causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process.” *State v. Salas*, 2010-NMSC-028, ¶ 30, 148 N.M. 313, 236 P.3d 32 (internal quotation marks and citation omitted); see U.S. Const. amend. XIV, § 1; N.M. Const. art. II, §§ 14, 18.¹ To evaluate whether peremptory challenges have been exercised in a discriminatory manner, our courts have adopted and apply a three-part test based on the United States Supreme Court’s decisions in *Batson* and *Purkett v. Elem*, 514 U.S. 765 (1995). Our Supreme Court in *Salas* stated:

First, the opponent of a peremptory challenge bears the burden to establish a prima facie case indicating that the peremptory challenge has been exercised in a discriminatory way (step one). To make a prima facie showing, a party must prove that (1) a peremptory challenge was used to remove a member of a protected group from the jury panel, and (2) the facts and other related circumstances raise an inference that the individual was excluded solely on the basis of his or her membership in a protected group.

If the opponent of the peremptory challenge successfully makes a prima facie showing, then the burden shifts to the proponent of the challenge to come forward with a

¹Defendant does not argue that the New Mexico Constitution provides broader protection against allegedly discriminatory peremptory challenges than the United States Constitution, nor do we address this question here.

race or gender-neutral explanation (step two). The second step of this process does not demand an explanation that is persuasive, or even plausible. Rather, the issue is the facial validity of the proffered explanation. Unless a discriminatory intent is inherent in the party's explanation, the reason offered will be deemed race or gender-neutral. If a race or gender-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial or gender discrimination. The ultimate burden of persuasion regarding racial or gender motivation rests with, and never shifts from, the opponent of the strike.

Salas, 2010-NMSC-028, ¶¶ 31-32 (alterations, internal quotation marks, and citations omitted).

{6} “We review the trial court’s factual findings regarding a *Batson* challenge using a deferential standard of review, as it is the responsibility of the trial court to (1) evaluate the sincerity of both parties, (2) rely on its own observations of the challenged jurors, and (3) draw on its experience in supervising voir dire.” *Salas*, 2010-NMSC-028, ¶ 33 (alteration, internal quotation marks, and citations omitted). “However, we are not required to defer to the district court regarding whether a stated reason for a challenge is constitutionally adequate; therefore, we apply a de novo standard of review to the ultimate question of constitutionality.” *State v. Bailey*, 2008-NMCA-084, ¶ 15, 144 N.M. 279, 186 P.3d 908.

1. Defendant Made a Prima Facie Case of Discrimination

{7} The State argues that Defendant did not make a prima facie case for purposes of step one of the *Batson* analysis. Accordingly, we consider whether Defendant proved “(1) a peremptory challenge was used to remove a member of a protected group from the jury panel, and (2) the facts and other related circumstances raise an inference that the individual was excluded solely on the basis of his or her membership in a protected group.” *Salas*, 2010-NMSC-028, ¶ 31. The State used all three of its peremptory strikes against prospective jurors with Hispanic surnames. It is well settled that “Hispanics are a cognizable group under a *Batson* challenge.” *Bustos v. City of Clovis*, 2016-NMCA-018, ¶ 33, 365 P.3d 67. In *Martinez*, we held that the “the prosecution’s use of all

three of its peremptory challenges against Hispanics created an inference of discrimination sufficient to support a prima facie case.” 2002-NMCA-036, ¶ 30. Likewise, in *Bailey*, we stated that by asking if the state had a legitimate, non-discriminatory reason for its challenges, the district court “implicitly found that [the d]efendant had made a prima facie showing that the [s]tate’s challenges were racially motivated.” 2008-NMCA-084, ¶ 17; see *Bustos*, 2016-NMCA-018, ¶ 33 (same). Under the circumstances here, we agree with the district court that Defendant established a prima facie case of discriminatory conduct under the first step of the *Batson* analysis.

2. The State’s Reasons Were Facially Race-Neutral

{8} Although Defendant argues that “the error in this matter occurred with respect to the third step,” he also asks us to “hold that the State . . . failed to meet its burden in the second step of the [*Batson* analysis].” In particular, Defendant argues that the State “failed to provide a satisfactory race-neutral basis for exercising peremptory strikes against [Potential Juror Five] and [Potential Juror Eighteen] based on their address being in Anthony[.]” and that body language is an unsatisfactory explanation for striking Potential Juror Fifteen. The only inquiry at step two is the “facial validity of the proffered explanation,” an issue determined on the basis of whether “a discriminatory intent is inherent” in the explanation. *Salas*, 2010-NMSC-028, ¶ 32 (internal quotation marks and citation omitted). The State’s explanation does not have to be “persuasive, or even plausible[.]” *id.* (internal quotation marks and citation omitted), but instead “must be sufficiently specific to allow the party challenging the strike to exercise its right to refute the stated reason or otherwise prove purposeful discrimination.” *Bustos*, 2016-NMCA-018, ¶ 41 (internal quotation marks and citation omitted).

{9} Turning first to Potential Jurors Five and Eighteen, we address whether the State’s reasons for striking these potential jurors—residence and age—were race-neutral or inherently discriminatory. New Mexico has not addressed the question of whether the combination of age and residence is a facially race-neutral reason for exercising a peremptory strike. Other jurisdictions, however, have held that the combination is facially race neutral. See *Higginbotham v. State*, 428 S.E.2d 592, 593-94 (Ga. Ct. App. 1993) (affirming exclusion of veniremember “who lived in the same general area as appellant and

was of approximately the same age as he” because “[o]bviously, possible affinity between a prospective juror and the very defendant on trial can constitute a neutral and non-racial explanation for the employment of a peremptory strike. . . . [and i]t was not required that the [s]tate prove that the prospective juror and appellant were personally acquainted” (citations omitted), *abrogated on other grounds as recognized by King v. State*, 447 S.E.2d 645, 650 (Ga. Ct. App. 1994); *People v. Smith*, 630 N.E.2d 1068, 1085 (Ill. App. Ct. 1994) (affirming exclusion of a veniremember “because of her age and because she lived on the south side of the city, where the crime occurred” as race-neutral); *State v. Lewis*, 2017-Ohio-7480, 96 N.E.3d 1203, at ¶ 33 (affirming peremptory strike when the state explained the strike based on the veniremember being “close in age to the age of these defendants” and being from a neighborhood that, based on the prosecutor’s prior experience, tended to favor the defense (internal quotation marks and citation omitted)); *State v. Garriss*, 714 S.E.2d 888, 898 (S.C. Ct. App. 2011) (affirming peremptory strike of juror when the stated reason was “because [the potential juror] was close in age to [the defendant] and was from [the same city as the defendant]; therefore, the solicitor assumed that the juror and [the defendant] went to school together”).

{10} Here, the State exercised peremptory strikes to remove Potential Jurors Five and Eighteen because they were close in age to Defendant and lived in the same small city as Defendant. Based on the prosecutor’s statement to the district court—“while [Potential Juror Eighteen] did not say he knew . . . [D]efendant, he is from the same area”—the State expressed some concern that these potential jurors might know Defendant or have an affinity toward him. The State argues on appeal that “it is reasonable to infer that similarly aged people in such a small town may have gone to the same small school—and so might have some familiarity or connection—even if there was no ‘personal or professional relationship’ that would require disclosure during voir dire.” We agree based on these facts that the State’s reason for striking these jurors was facially race-neutral and not inherently prejudicial. See, e.g., *Higginbotham*, 428 S.E.2d at 594 (“We cannot condemn the prosecutor’s reluctance to gamble on the significance of the proximity of residence and nearness in age.” (alteration, internal quotation marks, and citation omitted)).

{11} The State's justification here, based on its overarching concern that potential jurors may have some affiliation with Defendant, distinguishes this case from those cited by Defendant in which veniremembers' places of residence were used as a surrogate for racial stereotypes and socioeconomic status. In *United States v. Bishop*, 959 F.2d 820 (9th Cir. 1992), *overruled on other grounds by United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010), for example, the court held that the prosecutor's strikes based on the veniremember's address in Compton ultimately "reflected and conveyed deeply ingrained and pernicious stereotypes" because the prosecutor's justification for the strikes conveyed an assumption that members of the community shared collective experiences of violence and feelings regarding the police based on their race and socioeconomic status. *Bishop*, 959 F.2d at 822, 825. Similarly, in *Ex Parte Bird*, 594 So. 2d 676, 682-83 (Ala. 1991), the court determined that the prosecutor's strike based on a veniremember's street address was not an acceptable race-neutral reason because the prosecutor had not asked the veniremember any questions on voir dire, the allegation that the veniremember lived in a "high crime" area failed to demonstrate any relevance to the case, and may also "serve to eliminate from jury service those individuals living at the lower end of the socioeconomic scale." *Id.* at 682. In these cases, the prosecutors' use of peremptory strikes based on address were held invalid because they sanctioned underlying, discriminatory purposes founded upon the characteristics and assumed beliefs of the communities in which the veniremembers lived. The prosecutor's strikes in this case related to concerns of affinity and were relevant to the specific facts of this case, and consequently, do not demonstrate discriminatory intent similar to *Bishop* and *Ex Parte Bird*.

{12} Turning next to Potential Juror Fifteen, the State's explanation for striking this juror was based on his body language and demeanor. Our Supreme Court has held that body language is a facially neutral reason for a peremptory strike. *See State v. Begay*, 1998-NMSC-029, ¶¶ 13, 15, 125 N.M. 541,

964 P.2d 102. In *Begay*, the state explained that it exercised a peremptory strike against a Native American veniremember "because she was not very responsive on the jury questionnaire and had displayed unfavorable body language." *Id.* ¶ 13. Our Supreme Court found no error where the district court accepted this as facially valid. *Id.* ¶ 15. Similarly, in *State v. Jones*, 1997-NMSC-016, ¶ 4, 123 N.M. 73, 934 P.2d 267, our Supreme Court concluded that the district court did not err in ruling that the state's use of a peremptory strike against a prospective juror for "failure to make eye contact and lack of assertiveness" was racially neutral, *id.* ¶ 5, although noting that "subjective judgments . . . are particularly susceptible to the kind of abuse prohibited by *Batson*["]. *Id.* ¶ 4 (internal quotations marks and citation omitted). The *Jones* court observed that "[m]any of the judgments made by counsel in picking a jury are purely intuitive and based upon inarticulable factors. Therefore, while subjective considerations might not be susceptible to objective rebuttal or verification, . . . they are permitted because of the inherent nature of peremptory challenges, with the understanding that ultimate *Batson* findings largely will turn on evaluation of credibility of counsel's explanations." *Id.* ¶ 4 (alterations, internal quotations marks, and citations omitted). In light of *Begay* and *Jones*, the State's explanation that it exercised the strike against Potential Juror Fifteen based on body language and demeanor is not inherently discriminatory. Because the State's reasons for challenging these jurors were racially neutral and specific, we see no error in the second step of the *Batson* analysis.

3. Defendant Failed to Show That the State's Challenges Were Purposefully Discriminatory

{13} Because we hold that the State came forward with facially race-neutral reasons for its peremptory strikes, we move on to the third step of the *Batson* analysis. "A peremptory challenge that is found to be valid on its face stands unless the defendant comes forward with a refutation of the stated reason—e.g., by challenging its factual basis—or proof of purposeful discrimination by the prosecutor." *Begay*, 1998-NMSC-029, ¶ 14. Where

the defendant does not "come forward with evidence showing the prosecutor's explanation was without basis in fact or that the prosecutor purposefully discriminated against the juror based on race[.]" a district court does not err in finding that a peremptory challenge is valid and not discriminatory. *Id.*; *see State v. Chavez*, 2009-NMCA-089, ¶ 5, 146 N.M. 729, 214 P.3d 794 ("Insofar as [the d]efendant failed to demonstrate the prosecutor's explanation was without basis in fact or that the prosecutor purposefully discriminated against the juror based on race, we uphold the district court's ruling.").

{14} While we have recognized several ways in which a defendant can show purposeful discrimination,² in this case Defendant's counsel did not challenge the prosecutor's explanations or otherwise make any argument or showing that the State purposefully discriminated in its use of peremptory strikes. *See Begay*, 1998-NMSC-029, ¶ 15 (upholding the district court's ruling that the state's peremptory challenge was proper where "the prosecutor's explanation was accepted by the [district] court as facially valid[.] . . . [and the d]efendant's counsel neither challenged the prosecutor's professed reason for striking [the prospective juror] nor otherwise showed that the prosecutor intentionally discriminated"). The district court informed counsel for both sides that it did not believe there was a basis for Defendant's challenge to the State's peremptory strikes, to which Defendant's attorney responded, "Yes, your honor." Under these circumstances, and given Defendant's failure to carry his burden of proving purposeful discrimination under *Batson*, the district court did not err in ruling that the State's peremptory challenges were proper.

CONCLUSION

{15} For the foregoing reasons, we affirm.

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

MEGAN P. DUFFY, Judge

WE CONCUR:

M. MONICA ZAMORA, Chief Judge

JENNIFER L. ATTREP, Judge

²*See, e.g., State v. Wilson*, 1994-NMSC-009, ¶ 28, 116 N.M. 793, 867 P.2d 1175 (stating that purposeful discrimination may be shown based on "the extent of voir dire of the excluded jurors, whether the explanation is related to the particular case, and whether a past pattern of challenges against members of a particular racial group exists"); *Bustos*, 2016-NMCA-018, ¶ 49 (concluding, in light of total selection process, the defendants' challenges established a "pattern of conduct and a motive to keep Hispanics off of the jury"); *State v. Guzman*, 1994-NMCA-149, ¶ 19, 119 N.M. 190, 889 P.2d 225 (finding a *Batson* violation where the same factors that were identified to strike Hispanics were not applied to strike Anglos); *State v. Goode*, 1988-NMCA-044, ¶ 14, 107 N.M. 298, 756 P.2d 578 (stating that a prosecutor's proposed reason for striking a juror may also be pretextual when the prosecutor strikes jurors for a reason that does not appear to be related to the case).



JOHN ATTWOOD, AT YOUR SERVICE.

John brings thirteen years of expertise to our trust services division. He is a Nationally Certified Guardian (NCG), with expertise in administering Conservatorships, Special Needs Trusts, Personal Injury Trusts, Personal Trusts and Estate Administration. John is joining our team of seasoned trust and wealth management professionals, with more than 100 years combined experience, holding industry certifications, including CFA®, CFP® and CTFA®.

ALBUQUERQUE

8110 Ventura NE
4301 The 25 Way NE

RIO RANCHO

3002 Southern Blvd. SE

For more info visit firstamb.com



Investment Products: * NOT A DEPOSIT * NOT FDIC INSURED * NO BANK GUARANTEE *
* NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY * MAY LOSE VALUE *



JOHN L. ATTWOOD NCG
505-798-3582 | jattwood@firstamb.com



Civil Concepts is meticulous in selecting the concise words, photos, details, sketches and graphics in order to explain complex technical concepts that are paramount to the audience's understanding of the subject matter. We interpret the complex and then translate, so it's understood.



FORENSIC ENGINEERING & CONSTRUCTION EXPERTS

Manny Barrera, P.E.

mannybarrera@civilconcepts.biz | Albuquerque, NM
Office: (505) 318-0440 | Cell: (505) 314-3346

www.civconglobal.com

Inaugural NEW MEXICO ESTATE PLANNING → CONFERENCE



ALBUQUERQUE
COMMUNITY
FOUNDATION
leadership • trust • legacy

Feb 21 2020

A one-day seminar to provide a multitude of perspectives in the estate planning industry. Designed specifically for attorneys, bankers, investment advisors, estate planning and tax practitioners and financial planners.

**CLE credits
pending**

Early Bird
Registration
through 12/31/19
→ **abqcf.org**



Check out our brand new
events calendar!

Events from:

- ✓ State Bar
- ✓ Courts
- ✓ UNM
- ✓ Voluntary bars
- ✓ And more!

Search by:

- ✓ Date
- ✓ Event type
- ✓ Organizer

Stay Organized– Stay Mobile!

Import your favorite events to your preferred calendar tool (Google, Apple Calendar or Outlook).



www.nmbar.org/eventscalendar



**Thank you for your
support and
referrals.**

Pieroni Family Law, L.L.C.
Helping Families and Children

Allison P. Pieroni
Attorney at Law

3200 Carlisle Blvd NE, Suite 219
Albuquerque, NM 87110
app@apfamilylaw.com

v (505) 830-6032
f (505) 830-6033
www.apfamilylaw.com

NEW FEATURE

Read the *Bar Bulletin*
online with



- Beautiful layout
- Keyword search
- Get notification of new issues
- Access from your mobile phone

www.nmbar.org/barbulletin
issuu.com/nmbar



Great attorneys deserve
a great home loan.

- No mortgage insurance required
- Loans with competitive rates, designed just for you¹²
- No down payment required for loans up to \$850,000
- Low down payment on loans up to \$1,500,000
- Purchase and rate/term refinance for primary residence
- 5/1 and 7/1 Adjustable Rate Mortgage (ARMs)³

Call to learn more.

LOAN THANH PHAN

Senior Mortgage Loan Officer
NMLS 595174
loan.phan@flagstar.com
505.504.6862



JESSICA CAMACHO LAYNE

Senior Mortgage Loan Officer
NMLS 496251
jessica.camacho@flagstar.com
505.313.2835

6745 Academy Road, Suite B • Albuquerque, NM 87109

flagstar.com

Est. 1987



Equal Housing Lender

Member FDIC

¹²Borrower must open a checking or savings account with Flagstar Bank to participate.

³Eligible borrowers include those employed as: a medical resident (with educational license), doctor of medicine (MD), doctor or dental surgery (DDS), doctor or dental medicine or surgeon (DMD), doctor of optometry (OD), doctor of ophthalmology (MD), doctor of osteopathic medicine (DO), doctor of podiatric medicine (DPM), certified public accountant (CPA), attorney, veterinarian, nurse anesthetist, nurse practitioner, clinical nurse specialist, and airline transport pilot (ATP).

³With an adjustable-rate mortgage (ARM), your 5/1 loan will have an initial fixed-rate period of 60 months and your 7/1 loan will have an initial fixed-rate period of 84 months. After the fixed rate period, your interest rate will adjust up or down according to market rates at the time of the reset. Rate is variable after the fixed-rate period and subject to change once every year for the remaining life of the loan.

This is not a commitment to lend. Programs available only to qualified borrowers. Subject to credit approval, underwriting approval, and lender terms and conditions. Programs subject to change without notice. Primary residence only. Restrictions may apply.

LAWPAY
AN AFFINIPAY SOLUTION

LawPay lets you easily
accept online credit, debit,
and eCheck payments from
clients. We also ensure you
stay in compliance with ABA
and IOLTA guidelines.

It's easy to get started

888-726-7816 or visit
lawpay.com/nmbar



Proud Member Benefit Provider

BACA & HOWARD P.C.

CERTIFIED PUBLIC ACCOUNTANTS



Samuel L. Baca, CPA/ABV/CFE, CVA, MAFF



Adam C. Baca CPA/ABV, CVA

WE PROVIDE CPA EXPERT WITNESS SERVICES

Business Valuations | Damage Studies | Estate and Trust Litigation
Marital Dissolutions | Partner or Shareholder Disputes | Other Litigation

2155 Louisiana Blvd NE Ste. 7000, Albuquerque, NM 87110
505-200-3800 | www.bacahoward.com



CUDDY & MCCARTHY, LLP

Attorneys at Law

Cuddy & McCarthy, LLP is honored to announce it has been selected by U.S. News & World Report - Best Lawyers to be included in the 2020 Edition of "Best Law Firms" rankings.

SANTA FE OFFICE
1701 Old Pecos Trail, Santa Fe, NM 87505
Tel: 505-988-4476 • Fax: 888-977-3814

ALBUQUERQUE OFFICE
201 Third Street, N.W., Suite 1300
Tel: 505-888-1335 • Fax: 888-977-3816

www.cuddymccarthy.com

Expertise. Accuracy. Credibility.

From the boardroom to the courtroom, rely on the forensic and litigation expertise at Atkinson to deliver results that are on time and on target.

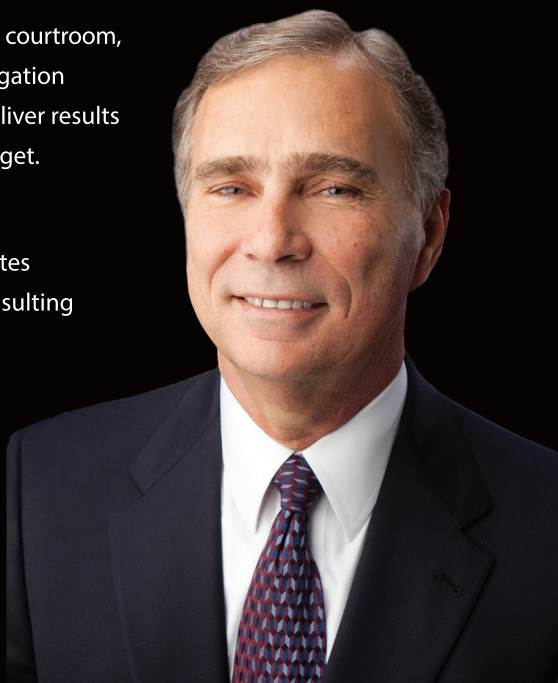
Litigation Services
Partner/Shareholder Disputes
Forensic Accounting & Consulting
Valuation Services

atkinson

Certified Public Accountants

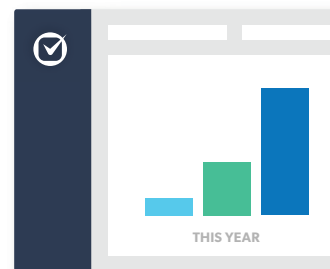
atkinsoncpa.com
albuquerque
505 843-6492

Henry South,
CPA, CVA



**Data matters.
Get more with Clio.**

Better run your firm with the insights you need to make smart business decisions.



1-866-734-7216
landing.clio.com/NMBar



State Bar of New Mexico Members
receive an exclusive 10% discount.

—David Ferrance—
**Appeals, Research,
& Writing**

Former State and
Federal Appellate Clerk

(505) 273-9379
dave@ferrancepc.com

David Stotts
Attorney at Law

Commercial
Real Estate
Loan Workouts,
Lenders or Borrowers

242-1933

Caren I. Friedman
APPELLATE SPECIALIST

505/466-6418
cf@appellatecounsel.info

Peter Brill, J.D.

- Expert Witness
Testimony
- Settlement Facilitation
- Litigation Support

pbi
construction
consulting



www.pbicc.com

Over 3 decades of extensive construction experience
(505) 795.7807 • pbrill@pbicc.com

VERITAS ATHENA LLC
Clarity, Competence, Purpose, Transparency



GUARDIANS AND CONSERVATORS

www.veritas-athena.com • 505-337-9151

Gregory T. Ireland, President, Nationally Certified Guardian
gti@veritas-athena.com

Crystal Anson, General Counsel
ca@veritas-athena.com

REDW BUSINESS VALUATION EXPERTS

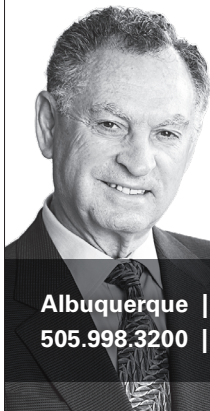
One team to meet your financial needs:

- Gift and Estate Tax Planning
- Purchase Price Allocations
- Financial Reporting
- Employee Stock Ownership Plans
- Mergers and Acquisitions
- Marital Dissolutions
- Expert Testimony
- Ownership Disputes & Other Litigation

Carl Alongi,
CPA/ABW/CFF, PFS, ASA

Ed Street,
CPA/ABW/CFF, CVA, ASA

Mike Pattengale,
CPA, CGMA, ABV



Albuquerque | Phoenix
505.998.3200 | redw.com

REDW LLC
CPAs | Advisors



Mediation & Arbitration Don Bruckner

33 years litigation experience
representing both plaintiffs & defendants
*personal injury, wrongful death, construction defect,
insurance coverage & bad faith*



donbruckner@guebertlaw.com
505.823.2300

SHORT DEADLINES CAN BE ACCOMMODATED

Bespoke lawyering for a new millennium
THE BEZPALKO LAW FIRM
*Legal Research
Tech Consulting*
(505) 341-9353
www.bezpalkolawfirm.com

Visit the
State Bar of
New Mexico's
website

www.nmbar.org

GERALD S. FREDMAN, M.D.

FORENSIC PSYCHIATRY

- Expert consultations, reports and testimony
- Civil matters including mental anguish, competency, undue influence, malpractice and other psychiatric issues
- Criminal matters including diminished capacity, diminished responsibility, various competencies and other psychiatric issues
- Treatment of accident victims for depression, anxiety, PTSD, traumatic brain injury etc.

2741 Indian School Rd. NE, Albuquerque, NM 87106
505. 837-9696 • Email: gsfredman@gmail.com

JANE YOHALEM

— *Appeals* —

Fellow of the American
Academy of Appellate Lawyers



(505) 988-2826
jbyohalem@gmail.com

— MEDIATION — JOHN B. POUND

jbpsfnm@gmail.com
505-983-8060
505 Don Gaspar, Santa Fe

MURIEL McCLELLAND

Family Law

SETTLEMENT FACILITATION
SPECIAL MASTER
MEDIATION
ARBITRATION

39 YEARS EXPERIENCE

(505) 433-2081
e-mail: murielmcc@aol.com

ROBERT CASWELL INVESTIGATIONS



rcipi.com
505-797-5661

When you need to know the facts, call the experts

Internal Investigations, EEOC, Employee misconduct,
Backgrounds, Locates, Surveillance, Fraud, Process Serving
and more!

Serving New Mexico for over 25 years



LinkedIn

LIKE

Follow

TWEET

Share

Comment

Connect

www.nmbar.org

Positions

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.

Trial Attorney

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

Experienced Attorney for Civil Litigation Defense Firm

The Albuquerque office of Ray | Peña | McChristian, PC is growing and we want you to join our busy practice. You should have enough years of experience (3-10+) to take a file and run with it from initial evaluation through discovery and up into trial. We're trial lawyers and we have plenty civil litigation defense work to keep you challenged. Check out our website at www.raylaw.com for more information about the scope of our practice. If you join us, you'll be well supported with the infrastructure of a multi-state firm even as you get the chance to work with a group of top-notch legal professionals that want you to succeed. We offer a competitive salary, great benefits and a straight-forward shareholder track. Send your resume to cray@raylaw.com and get started on the next stage of your career.

Personal Injury Associate

Caruso Law Offices, an ABQ plaintiff personal injury/wrongful death law firm has an immediate opening for associate with 3+ yrs. litigation experience, including arbitration, bench and jury trial. Must have excellent communication, organizational, and client services skills. Good pay, benefits and profit sharing. Send confidential response to Mark Caruso, mark@carusolaw.com or 4302 Carlisle NE, ABQ NM 87107 or fax 505-883-5012. See our website at www.carusolaw.com

New Mexico Public Education Department's Special Education Bureau – Attorney Supervisor and Attorney Advanced

The New Mexico Public Education Department is seeking attorneys for its Special Education Bureau. The openings include an Attorney Supervisor position, and a Lawyer Advanced position. More details about the positions and how to apply are available at <http://www.spo.state.nm.us/>. Please check the website periodically for updates to the list of available positions.

Attorney

Krehbiel & Barnett, P.C., a medical malpractice defense firm, seeks an attorney with at least two years of experience. We are a small law firm looking to expand. We seek an attorney who is willing to grow with the practice. Candidate should have strong writing and analytical skills. Please send letter of interest and resume to Katie Barnett at kbarnett@lady-justice.us.

Associate Attorney

Law Offices of Lynda Latta, LLC seeks associate attorney for fast paced law firm specializing in family law and criminal misdemeanor defense. Excellent computer and communication skills, ability to multitask and being a good team player are all required. Pay DOE. Send resume via mail: Attn. Holly @ 715 Tijeras Ave. NW, 87102 or email: holly@lyndalatta.com

New Mexico Center on Law and Poverty – Senior Education Attorney

New Mexico Center on Law and Poverty seeks an experienced attorney to carry out litigation, policy advocacy and outreach to transform the state's public education system. The attorney will work with educational leaders throughout New Mexico on major policy reforms and litigation related to education, including compliance with the landmark Yazzie court ruling that requires a sufficient public education system for students and comprehensive program and funding reforms (learn more at www.nmpovertylaw.org/our-work/education/). Required: minimum seven years as an attorney; strong leadership and strategic thinking skills; passionate about education policy, racial justice and community lawyering; excellent litigator, writer and researcher; ability to manage complex projects; 'no-stone-unturned' thoroughness and persistence. Preferred: Indigenous language or Spanish speaker, experience with lobbying, coalition-building and media. Apply in confidence by emailing a resume and cover letter to contact@nmpovertylaw.org. We are an equal opportunity employer. Native Americans, other people of color and people with disabilities are especially encouraged to apply.

Senior Trial Attorney/Deputy District Attorney Taos County

The Eighth Judicial District attorney's office is accepting applications for a Senior Trial Attorney/Deputy District Attorney in the Taos office. The Senior Trial Attorney position will handle a combination of misdemeanor and felony level cases, whereas the Deputy District Attorney position will handle primarily felony level cases. Senior Trial and Deputy District Attorney positions are mid-level to advanced level positions of which is a minimum of two (2) to four (4) years of criminal law experience is preferred, respectively. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan. Please submit a letter of interest and a resume to Suzanne Valerio, District Office Manager, 105 Albright St., Suite L, Taos, New Mexico 87571, or submit electronically to svalerio@da.state.nm.us. Applications will be accepted until and attorney has been hired for the position.

Advocate

Disability Rights New Mexico, a legal rights center for persons with disabilities, seeks full time Advocate to assist our constituents in accessing needed services, redressing discrimination, and achieving equal opportunity. At least BA in social services, counseling or related field required. Experience with disability rights issues, knowledge of state administrative remedies in Medicaid, Special Ed, DVR and procedures preferred. Bilingual Spanish/English a plus. Persons with disabilities and minorities encouraged to apply. Mail, fax or e-mail cover letter, resume and names of three references by December 15, 2019 to Disability Rights New Mexico, 3916 Juan Tabo NE, ABQ NM 87111; fax #505-256-3184; e-mail DPriola@DRNM.org.

Associate Attorney

Tucker, Yoder, Hatfield, Eley & Associates, the largest firm in San Juan County, practicing in New Mexico and Colorado, has an immediate associate opening in its Farmington office for civil, domestic relations and criminal practice. Ideal candidates will be team players, ready to assist clients in a variety of cases. New Mexico and Colorado bar admission a plus. Salary depending on experience. Please send cover letter and resume to jennifer@tbylaw.com

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 City Attorney

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.

Senior Trial Attorney/Trial Attorney

The 13th Judicial District Attorney's Office is accepting resumes for Senior Trial Attorney's and Trial Attorney's. This position requires extensive knowledge in the areas of criminal prosecution, rules of criminal procedure and requires handling complex felony litigation. Salary is commensurate with experience. Send resumes to Krissy Fajardo, Program Specialist, P.O. Box 1750, Bernalillo, NM 87004, or via E-Mail to: kfajardo@da.state.nm.us. Deadline for submission of resumes: Open until filled.

Associate Attorney

Holt Mynatt Martínez P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking associate attorneys with 0-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@hmm-law.com.

Public Regulation Commission Hearing Examiners

(2 positions: PRC #49592, #49594)

Job ID 108916 Santa Fe

Salary \$32.89-\$52.54 Hourly; \$68,418-\$109,292 Annually; Pay Band LJ; This position is continuous and will remain open until filled. Hearing Examiners provide independent recommended decisions, including findings of fact and conclusions of law, to the NMPRC Commissioners in adjudicated cases involving the regulation of public utilities, telecommunications carriers and motor carriers. They manage and organize complex, multi-discipline and multi-issue cases; preside over evidentiary hearings sometimes involving up to 20 parties, 40 witnesses and thousands of pages of evidence; and write recommended decisions, accomplished by reading and analyzing the evidence, and incorporating that evidence and analysis into a recommended decision similar to a court opinion. The ideal candidate will have experience practicing law in areas directly related to public utility regulation; experience as an administrative law judge or hearing officer; educational experience in areas directly related to public utility regulation, such as economics, accounting or engineering; and experience practicing law involving substantial research and writing. Minimum qualifications include a J.D. from an accredited school of law and five years of experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for a limited practice license (Rules 15-301.1 and 15-301.2 NMRA). For more information on limited practice license please visit <http://nmexam.org/limited-license/>. Substitutions may apply. To apply please visit www.spo.state.nm.us

Trial Attorney

1st Judicial District Attorney

The First Judicial District Attorney's Office is accepting applications for a trial attorney position in our Santa Fe office. We are seeking applicants with three (3) to five (5) years of experience in criminal law who have a strong interest in prosecuting violent crimes. Please send resume and letter of interest to: "DA Employment," PO Box 2041, 327 Sandoval Street, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us. Applications will be accepted until the position has been filled.

Assistant Attorney General and Legal Assistant positions

The Office of the New Mexico Attorney General is recruiting for Assistant Attorney General and Legal Assistant positions in Civil and Criminal Affairs. The job postings and further details are available at www.nmag.gov/human-resources.aspx.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is an aggressive, successful Albuquerque-based complex civil commercial and tort litigation firm seeking an extremely hardworking and diligent associate attorney with great academic credentials. This is a terrific opportunity for the right lawyer, if you are interested in a long term future with this firm. A new lawyer with up to 3 years of experience is preferred. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

Litigation Attorney

With 52 offices and over 1,400 attorneys, Lewis Brisbois is one of the largest and most prestigious law firms in the nation. Our Albuquerque office is seeking associates with a minimum of three years litigation defense experience. Candidates must have credentials from ABA approved law school, actively licensed by the New Mexico state bar, and have excellent writing skills. Duties include but are not limited to independently managing a litigation caseload from beginning to end, communicating with clients and providing timely reporting, appearing at depositions and various court appearances and working closely with other attorneys and Partners on matters. Please submit your resume along with a cover letter and two writing samples to phxrecruiter@lewisbrisbois.com and indicate "New Mexico Litigation Attorney Position". All resumes will remain confidential. LBBS does not accept referrals from employment businesses and/or employment agencies with respect to the vacancies posted on this site. All employment businesses/agencies are required to contact LBBS's human resources department to obtain prior written authorization before referring any candidates to LBBS. The obtaining of prior written authorization is a condition precedent to any agreement (verbal or written) between the employment business/ agency and LBBS. In the absence of such written authorization being obtained any actions undertaken by the employment business/agency shall be deemed to have been performed without the consent or contractual agreement of LBBS. LBBS shall therefore not be liable for any fees arising from such actions or any fees arising from any referrals by employment businesses/agencies in respect of the vacancies posted on this site.

Attorney

Batley Powers Family Law, a nationally recognized firm, seeks an Attorney with 3+ years' experience for its growing practice. We are looking for someone who strives to do their best in an environment that encourages personal growth and development. Strong writing, research, ability to multi-task and good interpersonal skills are a must. Please apply if you play well with others, flourish in a team environment and are interested in embracing the challenges of family law. We offer a competitive salary, excellent benefits and a family friendly work environment. Please email resume by 12/31/19 to andree@batleypowers.com.

Associate Litigation Attorney

Ortiz & Zamora, LLC, is growing and seeks a motivated New Mexico licensed attorney for an associate or senior associate position stationed in its Santa Fe office. Civil litigation experience is preferred and the attorney will manage an active civil litigation docket, will work directly with partners and other attorneys, and will develop and implement litigation strategies. Experience with discovery, motion practice, hearings, and trial preparation desired. Salary D.O.E. Please email your resume to nadine@ortiz-zamora.com.

Request for Proposals (RFP)

The New Mexico Lottery Authority (NMLA) hereby provides notice of its intent to request Proposals for Legal Services. The RFP will be available December 11, 2019. Law Firms (offeror's) who are interested in submitting Proposals for this RFP may contact the NMLA's Purchaser email at rfp@nmlottery.com. Copies are available for review by email, mail or during normal business hours at the NMLA corporate office - 4511 Osuna Road NE, Albuquerque, NM 87109. Mon-Fri 8:30-4:30 p.m. Proposals are due by 12:00 pm MT January 15, 2020. The NMLA reserves the right to accept or reject any or all proposals or parts thereof.

Senior Trial Attorney

The Third Judicial District Attorney's Office in Las Cruces is looking for: Senior Trial Attorney. Requirements: Licensed attorney to practice law in New Mexico plus a minimum of four (4) years as a practicing attorney in criminal law or three (3) years as a prosecuting attorney. Salary Range: \$66,293.76-\$82,867.20; Salary will be based upon experience and the District Attorney's Personnel and Compensation Plan. Submit Resume to Yvette Sierra, District Office Manager at ysierra@da.state.nm.us. Further description of this position is listed on our website <http://donaanacountyda.com/>

Legal Assistant

Frye & Kelly, P.C. is a boutique law firm in Albuquerque, NM. We are seeking a motivated and team-oriented individual for a legal assistant position. Candidates must have solid clerical, organizational, computer and word processing skills. Please email resumes and references to jlw@fryelaw.us.

Paralegal

Looking for Paralegal w/excellent WP/writing skills. 4-attorney office, some litigation, comfortable workplace. \$55 -65,000/annual DOE. Indian Preference. (505) 256-4911

Full-Time Legal Assistant

Robles Rael & Anaya, P.C. is seeking a full-time legal assistant for their municipal division. The successful candidate will support attorneys and paralegals by preparing correspondence, scheduling, handling routine client matters, a variety of administrative functions, filing pleadings, and other projects as needed. Competitive salary and benefits. Please submit a resume to chelsea@roblesrael.com.

NEW

Bar Bulletin Advertising Deadlines

The Bar Bulletin publishes every other week on Wednesdays.

Submission deadlines are also on **Wednesdays, three 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, three weeks prior to publication.**

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

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

Trust Associate/ Administrative Assistant

Empire Trust Inc. is seeking to expand its team with the right applicant to fill a full-time position. Job duties include recordkeeping for trust accounts and assisting trust officers with daily tasks. Must have good organizational, book-keeping, computer and word processing skills with high attention to detail. Trust and/or banking experience preferred. Excellent benefits. Please submit a resume, references and salary requirements to info@empiretrustinc.com

Paralegal

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

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, and will have an excellent command of the English language. Experience with timekeeping and e-filing essential. Must be able to answer/propound discovery and draft routine pleadings with minimal supervision. Position offers a very pleasant working environment. Salary commensurate with experience; top salary for the best candidates. Please send a cover letter with your resume to ben@benhancocklaw.com.

Paralegal

Paralegal position available with uptown law firm. General civil practice including domestic relations, business transactions, and civil litigation. Looking for that right person who can take initiative by proactively managing cases and timely respond to clients. Must be personal, well-spoken, organized, committed, and able to multi-task. FT position. Send resume and pay requirements to bryan@thehrsolution.org.

Miscellaneous

Want To Purchase

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

DIAL 222-2222 !!!

222-2222 phone number is now available in Albuquerque! Fantastic opportunity to identify, brand and grow your practice. Long term lease available and affordable. Contact rwr2d2@aol.com for immediate details.

Check this Out!!!

A **NEW** attorney support group has started in Santa Fe with a focus on meditation and other creative tools in support of the recovery process from addiction of any kind. It is not a 12-step or education group, but utilizes recovery literature from a variety of spectrums. The meeting is called "Recovery Possibilities". The group explores non-traditional recovery approaches. **It meets the first and third Wednesday of every month** at the **District Courthouse, 225 Montezuma Ave, Room 270** from **12 noon to 1 pm**.

All attorneys welcome!

For more information, contact
Victoria Amada, vamada@nmag.gov, (505) 620-7056.





Chatterjee v King, 2012-NMSC-019

FOR SAME-SEX COUPLES, WHO'S A PARENT? WHO'S NOT?

Determining custody can be complex for same-sex couples. In *Chatterjee v King*, the New Mexico Supreme Court clarified the process for same-sex parents.

Chatterjee and King were domestic partners who decided to adopt a child. The couple traveled to Russia to adopt, but the strict laws of the county prevented them from adopting jointly. Although King became the sole adoptive parent, both women participated equally in the child's care for 8 years.

After the couple separated, Chatterjee filed a petition claiming she was a "presumed natural parent" under the New Mexico Uniform Parentage Act. This status would have assured Chatterjee standing to file for joint custody. King moved to dismiss Chatterjee's petition, arguing that Chatterjee was a "third party" and, as such, prohibited from custody rights, absent unfitness of the natural or adoptive parent.

The case was ultimately decided in NM's Supreme Court. The Court issued a unanimous decision that the criteria under which a man can be found to be a natural parent should be held to apply equally to women.

Chatterjee had standing, and New Mexico had a clearer framework for determining parentage.

Interestingly, the United States Supreme Court's holding in *Obergefell v. Hodges* just three years later likely made future decisions on this issue easier, as SCOTUS opined "A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education."

Read more about this case and
WBMH's POV on our blog at:
wbmhlaw.com/caselaw

Expertly navigating complex family law



123 E. Marcy Street, Suite 205, Santa Fe, NM
505.795.7117 | www.wbmhlaw.com

Kiss paper checks goodbye

You deserve a payment solution that doesn't leave you waiting and wondering.

xxxxx LawPay



Paper checks are notoriously unreliable. They get lost in the mail, they get tossed in the laundry, and they carry a lot of sensitive information around with them wherever they go.

LawPay changes all of that. Give your clients the flexibility to pay you from anywhere, anytime. Most importantly, we ensure you stay in compliance with ABA and IOLTA guidelines.

It's easy to get started

888-726-7816 or visit lawpay.com/nmbar



Proud Member Benefit Provider

LAWPAY®

AN AFFINIPAY SOLUTION