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Bar Bulletin

January 22, 2020 • Volume 59, No. 2

Spirits United, by Margaret Letzkus (see page 3)

Inside This Issue

For the past 25 years, the Hartline Barger firm has earned the trust of its clients in the defense litigation world. As we begin 2020, we celebrate the strengthening of our team with the exciting addition of two offices in Albuquerque and Santa Fe, staffed by professionals with vast litigation experience in New Mexico. We are nationally recognized, trial-ready, and open for business.

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STATE BAR of NEW MEXICO

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About Cover Image and Artist: Margaret Letzkus was born and raised in Texas with summers reserved for the southwest destinations of New Mexico, Colorado, and Arizona. She has lived on both coasts and currently resides in New Mexico. The rich mix of cultures within Texas and New Mexico had a profound impact on her artwork. The colors of the land, sunsets, textiles, fiestas, excited her at an early age and have become her passion as a painter. She started painting as a child influenced by the color and composition of the Fauves. Her whimsical pieces contain a sense of humor and a great deal of serendipity. View more of her work at www.margaret-letzkus.com

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 a.m.-4:45 p.m. For more information call 505-827-4850, email libref@nmcourts.gov or visit https://lawlibrary.nmcourts.gov.

U.S. District Court for the District of New Mexico

Notice to Federal Bench & Bar Association Members

The 2020 Bench & Bar spending plan has been approved in the amount of $36,625 for 17 identified projects. To view the detailed spending plan, see the "Attorney Information" page on the Court's website at https://www.nmd.uscourts.gov/.

Judge Kea Riggs Fills A Vacancy on the U.S. District Court for The District of New Mexico

With the U.S. Senate recently voting to confirm the presidential nomination of State District Judge Kea Riggs to be a U.S. District Judge for the District of New Mexico, President Donald J. Trump signed the commission formally appointing Judge Riggs to the position of U.S. District Judge. At 2:45 p.m., MST, Dec. 31, 2019, in Roswell, N.M., Senior U.S. Circuit Judge Bobby R. Baldock administered the oath of office to Judge Riggs thereby allowing her to become the 23rd U.S. District Judge in New Mexico since statehood in 1912. Albuquerque will be the official duty station for Judge Riggs and in the coming weeks there will be a formal investiture ceremony at the U.S. Courthouse in Albuquerque.

Professionalism Tip

With respect to opposing parties and their counsel:

I will not use litigation, delay tactics, or other courses of conduct to harass the opposing party or their counsel.

New Mexico Court of Appeals

Applicant Announcement

Six applications were received in the Judicial Selection Office, for the Judicial Vacancy on the New Mexico Court of Appeals due to the retirement of the Honorable Judge M. Monica Zamora effective Jan. 31. The New Mexico Court of Appeals Judicial Nominating Commission will meet beginning at 9 a.m. on Jan. 17 to interview applicants for the position at the Court of Appeals 2211 Tucker NE, Albuquerque, N.M. 87106. The Commission meeting is open to the public and anyone who wishes to speak about any of the candidates will have an opportunity to be heard. The names of the applicants in alphabetical order: **Gerald Edward Baca, Leander Bergen, Shammara Haley Henderson, Kerry Christopher Kiernan, Paul David Mannick and Jane Bloom Yohalem.**

Second Judicial District Court

Destruction Of Grand Jury Tapes

In accordance with 1.17.230.502 NMAC, taped proceedings on grand jury matters cases filed in 1982 through 1998 will be destroyed. To review a comprehensive list of case numbers and party names or attorneys who have cases with proceedings on tape and wish to have duplicates made should verify tape information with the Special Services Division 505-222-4580 from 8 a.m.-4 p.m. Monday through Friday. The aforementioned tapes will be destroyed after Jan. 29.

Fifth Judicial District Court

Announcement of Vacancy

A vacancy will exist in the Fifth Judicial District Court, Chaves County due to the resignation of the Honorable Kea W. Riggs, effective Dec. 31, 2019. Inquiries regarding additional details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. Sergio Pareja, chair of the Judicial Nominating Commission, solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 8 of the New Mexico Constitution. Applications may be obtained from the judicial selection website: http://lawschool.unm.edu/judsel/application.php. The deadline for applications has been set for Jan. 20 at 5 p.m. Applications received after that date and time will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Commission will meet at 9 a.m. on Jan. 30, at the Chaves County Courthouse, 400 N. Virginia, Roswell, N.M., to evaluate the applicants for this position. The Commission 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.

Eighth Judicial District Court

Notice of Mass Case Reassignment

Gov. Michelle Lujan Grisham announced the appointment of Jeffrey A. Shannon to fill the vacancy of Division III of the Eighth Judicial District Court. Effective Dec. 12, 2019, a mass reassignment of cases previously assigned to Judge Jeff Foster McElroy, retired, were reassigned to Judge Jeffrey Shannon, Division III. Parties who have not previously exercised their right to challenge or excuse will have ten days from Jan. 22 to challenge or excuse Judge Jeffrey Shannon, Division III pursuant to NMRA 1-008.1.

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

Announcement of Consideration of Additional Applications

The Thirteenth Judicial District Nominating Commission met on Dec. 16, 2019, and submitted three names to Governor

Michelle Lujan Grisham for consideration to fill the vacancy created due to the retirement of the Honorable Judge Louis P. McDonald. Pursuant to her authority to do so, Governor Lujan Grisham has requested that the commission consider submitting additional names to her for consideration. Accordingly, Dean Sergio Pareja of the UNM School of Law, designated by the New Mexico Constitution to Chair the Thirteenth Judicial District Nominating Commission, is soliciting additional applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Constitution. 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 calling the Judicial Selection Office at 505-277-4700. The deadline for applications has been set for Jan. 24 at 5 p.m. Applications received after that date will not be considered. Applications received by the initial deadline of Nov. 20, 2019, remain viable. Applicants who appeared before the commission on Dec. 16, 2019, including the three applicants whose names were submitted to Governor Lujan Grisham, do not need to reapply or reappear before the commission at this time. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The date and time of the reconvening of the Thirteenth Judicial District Nominating Committee will be Feb. 3 beginning at 9 a.m., at the Thirteenth Judicial District Court located at 1500 Idalia Road, Bernalillo, N.M. 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 speak at that time.

Bernalillo County Metropolitan Court

Volunteers are Neded 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, emndployee 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.

State Bar News

New Mexico Judges and Lawyers Assistance Program

Santa Fe Attorney Support Group Meeting

- Feb. 5, noon-1 p.m.
- Feb. 19, noon-1 p.m.

Recovery Possibilities – this support group 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 at 505-620-7056.

NEW Legal Professionals Support Group focused on Depression/ Anxiety

- Feb. 5, 5:30-7 p.m.
- Feb. 19, 5:30-7 p.m.

This group meets 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, psycho educational, and stress reduction techniques that are considered a practical and structured form of psychotherapy. You are not required to sign up in advance, so feel free to just show up! Conact Tenessa Eakins at 505-797-6093 or teakins@nmbar.org for questions.

Attorney Support Groups Substance Abuse

- Feb. 3, 5:30 p.m.
- Feb 10, 5:30 p.m.
- Feb 17, 5:30 p.m.

UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law 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.

— Featured —

Member Benefit

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Smarter legal research.

Fastcase is a free member service that includes cases, statutes, regulations, court rules and constitutions. This service is available through www.nmbar.org. Fastcase also offers free live training webinars. Visit www.fastcase.com/webinars to view current offerings. Reference attorneys will provide assistance from 8 a.m. to 8 p.m. ET, Monday–Friday. Customer service can be reached at 866-773-2782 or support@fastcase.com. For more information, contact Christopher Lopez, clopez@nmbar.org or 505-797-6018.

Employee Assistance Program

Managing Stress Tool for Members

Globally, an estimated 264 million people suffer from depression, one of the leading causes of disability, with many of these people also suffering from symptoms of anxiety. A recent WHO-led study estimates that depression and anxiety disorders cost the global economy US$ 1 trillion each year in lost productivity. Unemployment is a well-recognized risk factor for mental health problems, while returning to, or getting work is protective. A negative working environment may lead to physical and mental health problems, harmful use of substances or alcohol, absenteeism and lost productivity. Workplaces that promote mental health and support people with

mental disorders are more likely to reduce absenteeism, increase productivity and benefit from associated economic gains. "Mental health in the workplace". World Health Organization, May 2019, www.who.int/mental_health/in_the_workplace/en/. Whether in a professional or personal setting, most of us will experience the effects of mental health conditions either directly or indirectly at some point in our lives. The NM Judges and Lawyers Assistance Program is available to assist in addition to our contracted Employee Assistance Program (EAP). No matter what you, a colleague, or family member is going through, The Solutions Group, the State Bar's FREE EAP, can help. Call 866-254-3555 to receive FOUR FREE counseling sessions per issue, per year! Every call is completely CONFIDENTIAL and FREE. For more information, https://www.nmbar.org/jlap or https://www.solutionsbiz.com/Pages/default.aspx.

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. In order to complete annual licensing requirements and pay by credit card, visit www.nmbar.org/licenserenewal. 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.

Judicial Clerkship Program

Inaugural Program Accepting Applications

The State Bar of New Mexico began accepting applications for its inaugural Judicial Clerkship Program on Dec. 20, 2019, for second-year law students. This program was jointly initiated by New Mexico Supreme Court Justice David K. Thomson and the State Bar's Committee on Diversity and Young Lawyers Division. The program is a full-time (32 hours per week), 10 week, summer internship program open to all second-year diverse law students. The program provides opportunities to underrepresented students, which may include, but is not limited to, members of racial or ethnic minorities, women, identify as LGBTQIA+, students with disabilities, students who are economically disadvantaged. Interested students must submit applications via PDF format no later than Feb. 7. To learn more about this inaugural program, visit nmbar.org/judicialclerkship.

Solo and Small Firm Section

January Lunch Series Features Judge Edward L. Chavez

The Solo and Small Firm invites you to the first Lunch Series presentation on Jan. 22 at noon. Hon. Chavez will host an informal conversation around recent Supreme Court administrative issues. There is no cost for members of the Solo and Small Firm Section and lunch will be provided. Those would like to join the SSFS can pay $15 on the date of the event, or join the SSFS here which includes lunch, membership in the SSFS for the. Guests are welcome to attend the presentation. To R.S.V.P, contact Member Services at memberservices@nmbar.org.

UNM School of Law

Law Library Hours Spring 2020

Through May 16

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.

Exceptions

Monday-Thursday, March 15-22: During Sprink Break the library will be open to the public from 8 a.m.-6 p.m.

Reference

Monday–Friday	9 a.m.–6 p.m.

Closures

Monday, Jan. 20 (Martin Luther King Day)

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 at noon at Tomasitas; April 7 at 7 a.m. at The Egg and I; June 4 at noon at Japanese Kitchen; and Aug. 12 at 7 a.m. at Stripes at Wyoming and Academy. For more information, visit nmchristianlegalaid.org or email christianlegalaid@hotmail.com

University of Arizona College of Law

Certificate Program in Mexican Public Law and Policy

The University of Arizona James E. Rogers College of Law is partering with Universidad Nacional Autónoma de México on a first-of-its-kind certificate program teaching Mexican public law and policy in the U.S. The courses will be available both online and in person on the University of Arizona campus. This innovative certification program is open to attorneys, judges, scholars, business leaders and anyone else interested in the subject. The certificate program begins in January and consists of four 7.5-week courses. Intermediate Spanish fluency is necessary, though each course will have a bilingual teaching assistant and all faculty members are bilingual. For more information, email mexlaw@email.arizona.edu or by visit law.arizona.edu/mexlaw.

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 Dec. 13, 2019

PUBLISHED OPINIONS

A-1-CA-36905	State v. W Franklin	Reverse/Remand	12/09/2019
A-1-CA-36634	V Vigil v. A Taintor	Affirm	12/11/2019
A-1-CA-36186	G Martinez v. Board of County Comm of Rio Arriba County	Reverse	12/12/2019

UNPUBLISHED OPINIONS

A-1-CA-36376	M Bryant v. City of Clovis	Affirm	12/09/2019
A-1-CA-36885	State v. P L Bell	Reverse/Remand	12/09/2019
A-1-CA-36826	State v. F Slowman	Affirm/Reverse	12/10/2019
A-1-CA-37061	State v. O Millirans	Affirm/Reverse/Remand	12/10/2019
A-1-CA-37074	State v. M Jackson	Affirm	12/10/2019
A-1-CA-37368	D Gladish v. R Rodriguez	Affirm	12/11/2019
A-1-CA-36842	State v. G Williams	Affirm	12/12/2019
A-1-CA-35939	State v. S Serrano	Affirm	12/13/2019

Effective Dec. 27, 2019

PUBLISHED OPINIONS

A-1-CA-36403	State v. W Kalinowski	Affirm/Reverse/Remand	12/19/2019
A-1-CA-36059	State v. J Gonzales	Reverse/Remand	12/23/2019
A-1-CA-36308	K Rogers v. Red Boots	Affirm	12/24/2019
A-1-CA-36309	K Rogers v. D Smoak	Affirm	12/24/2019

UNPUBLISHED OPINIONS

A-1-CA-34765	State v. C Smith	Reverse/Remand	12/16/2019
A-1-CA-36564	State v. M Jimenez	Affirm	12/17/2019
A-1-CA-35201	Ben-Mat v. City of Santa Fe	Affirm	12/18/2019
A-1-CA-36847	State v. A May	Affirm/Reverse	12/18/2019
A-1-CA-36879	P Moreno v. LSF9 Master	Affirm/Reverse/Remand	12/18/2019
A-1-CA-37840	CYFD v. Amie W	Affirm	12/18/2019
A-1-CA-37149	State v. A Tapia	Affirm	12/19/2019
A-1-CA-37141	C Varoz v. ABQ Public School Board	Affirm	12/20/2019
A-1-CA-37181	State v. A Scott	Affirm/Reverse	12/20/2019
A-1-CA-37566	M Gutierrez v. Cast & Crew	Reverse/Remand	12/20/2019
A-1-CA-35681	State v. S Lujan	Affirm/Vacate/Remand	12/23/2019

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

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

A-1-CA-35934	State v. D Rodriguez	Affirm/Reverse	12/23/2019
A-1-CA-36552	State v. R Martinez	Affirm	12/23/2019
A-1-CA-36700	State v. F Campos	Reverse/Remand	12/23/2019
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A-1-CA-37436	State v. M Johnson	Affirm	12/23/2019
A-1-CA-37839	State v. F Varela	Affirm	12/23/2019
A-1-CA-37871	State v. S Romero	Affirm	12/26/2019
A-1-CA-37727	CYFD v. Donna E and Harley E	Affirm	12/27/2019

Effective Jan. 30, 2020

PUBLISHED OPINIONS

A-1-CA-36565	M McDonald v. Zimmer Inc	Affirm	12/30/2019

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A-1-CA-37150	State v. F Lucero	Affirm/Reverse/Remand	12/31/2019
A-1-CA-37420	A Bustos v. Clovis Healthcare	Dismiss	12/31/2019

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

HATS OFF

TO OUR 2019

Fee Arbitration Program Volunteers!

The State Bar's Fee Arbitration Program wishes to thank the following volunteers who have generously given their time to arbitrate fee disputes between attorneys and clients in 2019.

Meredith Baker	James Ellis	Thomas Guerra	Diane McGaha
Lynn Barnhill	Anne Gibson	Darryl Millet	Donna Trujillo Dodd

The purpose of the State Bar's Fee Arbitration program is to provide attorneys and clients with an out-of-court method of resolving fee disputes that is expeditious, inexpensive, and impartial. The State Bar offers this program as a free service. For more information or to join the panel of volunteer arbitrators please visit **nmbar.org/feearbitration.**

STATE BAR of NEW MEXICO
OFFICE OF GENERAL COUNSEL

The Indian Law Section is working hard to support and promote Indian law lawyers, and one of its most successful initiatives is the **Bar Preparation Scholarship Fund**. The cost of preparing for and taking the bar exam poses one of the biggest hurdles graduating law students face each year. Faculty and graduates consistently identify alleviating this financial strain as one of the key factors in passing the bar. In an effort to lift this burden, the ILS established a fund for the purpose of awarding bar preparation scholarships to third-year law students who want to practice Indian law in New Mexico.

How Can I Help? New graduates, most of whom are already burdened by sizeable debt from student loans, face a potential price tag of almost $3,000 for bar prep. The Section hopes to fund multiple scholarships up to that amount, a substantial step in meeting the needs of law students intending to practice Indian Law in New Mexico.

To make a tax deductible donation, visit **www.nmbar.org/indianlaw** or make a check out to the New Mexico State Bar Foundation and note "ILS Bar Prep" in the memo line. Please mail checks to:

State Bar of New Mexico, Attn: Member Services,
PO Box 92860. Albuquerque, NM 87199

For more information, contact Member Services at memberservices@nmbar.org

STATE BAR of NEW MEXICO
INDIAN LAW SECTION

Announcing the

2020 Judicial Clerkship Program

Justice David K. Thomson of the New Mexico Supreme Court, the State Bar of New Mexico Committee on Diversity in the Legal Profession and the Young Lawyers Division are proud to announce the application process is now open for the inaugural Judicial Clerkship Program. The purpose of this jointly initiated program is to provide opportunities to students who are members of traditionally underrepresented groups in the legal profession, particularly within the judiciary. An additional goal of the program is to prepare underrepresented individuals with the tools necessary to obtain judicial clerkships. The program provides opportunities to underrepresented students, which may include, but is not limited to, members of racial or ethnic minorities, women, identify as LGBTQ, students with disabilities, students who are economically disadvantaged.

About: The program is a full-time (32 hours per week), 10 week, summer internship program open to all second-year diverse law students. The program will primarily take place at the New Mexico Supreme Court in Santa Fe, New Mexico or at the U.S. Federal Court in Albuquerque, New Mexico. Interested students must submit applications via PDF format no later than **Friday, Feb. 7.**

To learn more about the application qualifications and process, please visit www.nmbar.org/judicialclerkship.

For more information, contact Member Services at memberservices@nmbar.org

Interested in funding a clerkship position? Contact Member Services!

State Bar of New Mexico
Committee on Diversity in the Legal Profession

Supreme Court State of New Mexico

State Bar of New Mexico
Young Lawyers Division

U.S. News Best Lawyers® named **Sutin, Thayer & Browne** a top firm in 15 areas of law in Albuquerque and Santa Fe. Six of these ranked practices achieved Tier 1 status, indicating the firm is considered to be the best in the city in that practice area. According to U.S. News & World Report, the firm's rankings "reflect the highest level of respect a firm can earn among other leading lawyers and clients." The firm received recognition in the following areas of law: (metropolitan tier 1, Albuquerque) corporate law, health care law, mergers and acquisitions, securities/capital markets law, tax law; (Santa Fe) banking and finance law, (metropolitan tier 2, Albuquerque), employment law – management, family law, family law mediation, real estate law; (Santa Fe) corporate law, financial services regulation law, public finance law; (metropolitan tier 3, Albuquerque) banking and finance law, and medical malpractice law – defendants. 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 and World Report.

Stephen K. Royce was elected Managing Partner of Cuddy & McCarthy, LLP on Oct. 7, 2019. Royce joined the Firm in 2016. His practice focuses on a state-wide litigation practice serving clients in federal and state courts. He holds broad, cross-disciplinary experience in complex civil and commercial litigation matters, including the areas of banking; construction defect; fiduciary, probate and trust; insurance coverage and bad faith; long term care and nursing facility claims; and wrongful death and catastrophic injury matters.

Ripley B. Harwood joined Cuddy & McCarthy, LLP in October 2019 as of counsel in the Albuquerque office, where he maintains a state-wide litigation practice serving clients in federal, state, and Tribal courts. He has broad, cross-disciplinary experience in complex civil litigation matters, including areas of insurance defense, personal injury defense, insurance coverage and insurance bad faith, governmental entity defense, Indian law, environmental law, wrongful death and catastrophic injury cases, professional negligence and employment discrimination matters.

Paul M. Roybal is an associate attorney at Cuddy & McCarthy, LLP, since August 2019. His experience covers a wide variety of practice areas, including education, insurance defense, government affairs, employment and labor, real estate and commercial disputes. Roybal graduated magna cum laude from the UNM School of Law with a certificate in natural resources and environmental law. He served as a professional articles editor with the New Mexico Law Review and received the Excellence in Health Law award for his published article on pharmacy malpractice. In addition, he was inducted into the National Order of the Coif, an honor reserved for the top ten percent of UNM Law's graduating class.

MaryAnn T. Roman is an associate attorney at Cuddy & McCarthy, LLP where she has practiced since August 2019. Roman received her Bachelor of Arts in English, professional writing from the University of Idaho in 2015 and Juris Doctor from Gonzaga University School of Law in 2018. As a law student, Roman interned with several law firms in New York City, Idaho and Washington State where she gained valuable experience in medical malpractice, employment, estate planning, family, and property law. In addition to sharpening her legal skills on the job, Roman competed in the National Trial Competition, where she demonstrated her litigation proficiency in the courtroom.

Cuddy & McCarthy, LLP is pleased to announce that **Marlow B. Hooper,** associate attorney, has been named to The National Black Lawyers Top 40 Under 40 for New Mexico. This award recognizes the top 40 Black lawyers under 40 in each state or region who excel in their profession or promote diversity. Hooper's practice areas include education law, employment law, family law, civil litigation, real estate law and criminal defense.

Sutin, Thayer & Browne has been recognized by the American Bar Association's Health Law Section in this year's Regional Law Firm Recognition List. The Sutin firm ranked fifth in the West region, an area comprising Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Almost a dozen attorneys work in the Sutin health law team; four of these (David Johnson, Deborah Mann, Stefan Chacon and Jesse Hale) practice health law exclusively or primarily. Collectively, they have more than six decades of experience representing healthcare clients and have been recognized for their expertise by such organizations as Martindale-Hubbell, Best Lawyers in America and Southwest Super Lawyers.

Christina M. Looney has been elected as Sutin, Thayer & Browne's newest shareholder. As a member of the firm's litigation group, she practices primarily in the area of family law, which encompasses divorce, child custody and time sharing, child support alimony, and the valuation and division of complex assets such as professional practices and other businesses in the divorce context. Looney also has experience in commercial litigation, education law, and employment law. She earned her B.B.A. from UNM in 2009, graduating *summa cum laude*, and her J.D. from the UNM School of Law in 2013.

Randy Taylor has joined the Rodey Law Firm. Taylor is an associate in the Albuquerque office. He is a member of the litigation department, practicing primarily with the products and general liability practice group. During law school, Taylor worked at the New Mexico Legislative Council Service, externed with the New Mexico Department of Workforce Solutions, and interned at the New Mexico Court of Appeals for the Honorable Jonathan B. Sutin. Following law school, Taylor clerked for the Honorable Carmen E. Garza, Chief United States Magistrate Judge for the District of New Mexico. Taylor received his law degree from the UNM School of Law, graduating cum laude.

Modrall Sperling is pleased to have two associate attorneys join the rank of shareholder in 2020. **Sonya Burke** (left) practices primarily in insurance coverage defense, in which she represents insurance companies and their insureds in a variety of contexts. Burke represents professionals in professional liability matters, and has represented realtors, attorneys, and contractors. She assists with construction and design cases, employment matters including EEOC investigations, and breach of contract litigation. Burke received her law degree from Boston University School of Law, where she served as the administrative editor of the BU Public Interest Law Journal in addition to representing indigent defendants through the BU Criminal Clinic. She received her undergraduate degree in English, with a French minor, from the University of Texas at Austin. As a native New Mexican, Burke believes it is important to contribute to our community. She recently completed her second term as secretary of the board of Hopeworks. **Tomas Garcia** (right) practices commercial, healthcare, torts/personal injury, and transportation litigation. He has experience representing business professionals in corporate disputes, health care facilities and medical professionals in malpractice and regulatory matters, and commercial transportation companies in actions in state and federal court. Prior to joining Modrall Sperling, Garcia clerked for the late Justice Charles W. Daniels at the New Mexico Supreme Court. Garcia served as chair of the State Bar of New Mexico Young Lawyers Division in 2017 and was recently elected to a position on the State Bar of New Mexico Board of Bar Commissioners. He is an active member of the American Bar Association, serving as the statewide membership chair for New Mexico, and a vice director of the strategic planning committee for the Section of Litigation. An Albuquerque native, Garcia received his law degree from Georgetown University Law Center in 2011. He received a bachelor's degree from Yale University and a master's degree from the Kennedy School of Government at Harvard University.

Modrall Sperling has been named "New Mexico Firm of the Year" and has been designated "highly recommended" by B*enchmark Litigation* and *Benchmark Labor and Employment*. *Benchmark* recognizes the following firm lawyers in its 2020 edition: Jennifer Anderson (Local Litigation Star, Labor & Employment Star, 2019 Top 250 Women in Litigation), Martha Brown (Local Litigation Star), Spencer Edelman (Future Star), Timothy Fields (Local Litigation Star), Jeremy Harrison (Future Star), Timothy Holm (Local Litigation Star), Betsy Martinez (Future Star), Megan Muirhead (Local Litigation Star, Labor & Employment Star), Brian Nichols (Local Litigation Star, Labor & Employment Star), Nathan Nieman (Future Star, 40 & Under Hot List 2019), Jennifer Noya (Local Litigation Star), Maria O'Brien (Local Litigation Star), Tiffany Roach Martin (40 & Under Hot List 2019, Labor & Employment Star), Marjorie Rogers (Local Litigation Star), Lynn Slade (Local Litigation Star), Sarah Stevenson (Future Star), R.E. Thompson (Local Litigation Star), Alex Walker (Local Litigation Star). *Benchmark Litigation* publishes a comprehensive annual guide to America's leading litigation firms and attorneys; it is the only publication to focus exclusively on U.S. commercial litigation.

Barbara G. Stephenson has joined Sutin, Thayer & Browne as the firm's newest attorney. With a focus in employment law, she brings more than 30 years' experience in representing public and private employers throughout New Mexico. Much of her time is spent in preventive practice; Stephenson has extensive experience in working to keep clients out of litigation through training, pre-termination counseling, developing strategies and action plans, and writing, revising and reviewing employer policies and employee handbooks. She also performs workplace investigations into allegations of harassment and discrimination and regularly updates her clients in recent case law and regulatory developments as they pertain to employers. Stephenson represents clients before state and federal agencies including the New Mexico Human Rights Bureau, the Equal Employment Opportunity Commission, and the New Mexico Department of Workforce Solutions. She has an AV Preeminent rating from Martindale-Hubbell, and has been ranked in *Best Lawyers in America* since 2001, in *Chambers USA* since 2002, and in *Super Lawyers*® since 2007.

Jerry Neil Williams was born of Melvin Audice Williams and Merle O'Neil Gilbert Williams on March 20, 1933. At the age of two, Jerry's mother passed and he was lovingly raised by his aunt Velma and uncle Gus Taylor in San Angelo. Jerry's cousins James 'Jamie' and Helane Taylor were brother and sister to him. Jerry also has a half-brother Stephen Williams and a half-sister Susan Spurlock. Jerry attended San Angelo High School and San Angelo College where he was a noted football player. He went on to the University of New Mexico earning a Bachelor's degree in philosophy; and later a law degree at the University of Wyoming. In 1953 he enlisted in the Air Force and was accepted as an Aviation Cadet. Jerry became a F-100 Pilot serving in Germany 55-58, and in Viet Nam 67-69 where he survived bailout of his crippled jet on one of his missions. While in service he was promoted to Major and received the Purple Heart, Flying Cross and many other honors. After the war he was reassigned to the Air National Guard in Albuquerque NM where he met his wife, Sandra Ann Lewing. He adopted her son Gregory Britt Anderson Williams (Fla.) and they had a daughter Steffany O'Neil Williams-Ward (N.C.). Jerry was selected to be a representative for the Air National Guard and relocated to the Washington DC area, where he lived with his family for several years. Jerry longed to return to the Southwest, eventually he settled in Hobbs NM where he practiced law and lived a humble life. Jerry suffered from PTSD and had difficulty with personal relationships, however his most profound relationship was with our Heavenly Father and Creator. He was a dedicated and astute student of the Lord's Word and theology; and a committed member of the Lutheran Church Missouri Synod. Jerry did not see himself of this world, but rather knew he was only temporally in this world as a son of God who was entrusted to disciple. He gave a legacy of faithful prayer and sowed the seeds of relationship with Christ into his family and children. Jerry went home on June 1, 2017. He was 84. He leaves behind devoted friends and family that love and will miss him dearly.

Peter Byron Rames, 72, of Albuquerque, died on Nov. 29, 2019, from complications from liver cancer. At the time of death, he was a resident at Princeton Place. Peter was born in Minneapolis, Minnesota,on Feb. 17, 1947, to Barbara Weir and Dr. Eugene Rames. The family moved to Cooperstown, New York where Peter's father practiced medicine and grew to include brothers Richard and River.Peter lived in Cooperstown until he left for college in the fall of 1964. He attended Brown University and received an AB in American Civilization in 1969 and both a JD and MBA from the University of New Mexico in 1988. Peter's work career was long and varied. He was a reporter for the Providence Journal, ran a Community Action Agency in Rhode Island, and practiced law as an independent practitioner. He was most proud of his work for the New Mexico Public Defenders office. Peter is survived by his three daughters: Billie, Mary, and Molly Rames-Schultz. One of Peter's greatest joys in life was making silver-dollar sized chocolate chip pancakes for his daughters on the weekends. Peter's family and friends will all remember his love of music, often demonstrated by his guitar playing and singing. Peter also loved Karmann Ghias, dancing, white suits, and baking.

Robert J. Dodds III was born Sept. 19, 1943, and passed away Sept. 10, 2019. He was 75 years old.

Richard Martin Leverick passed away on Dec. 15, 2019. He was a member of the State Bar since 1982. He was the owner/president of the law firm of Leverick & Musselman, LLC since 1986. He had the honor of standing before the New Mexico Supreme Court on multiple occasions to present precedent setting legal cases. He is survived by his wife of 25 years, Pamela and his daughter and grandchildren.

Henry Charles Griego, 82, of Plymouth, Mass., died Oct. 23, 2019. He served in the U.S. Army and Reserve from 1958 to 1962. Griego received his law degree from the UNM School of Law and his LL.M. from Boston University School of Law and was admitted to the Texas Bar in 1980. He was admitted to the New Mexico Bar in 1973. Griego was assistant attorney general for the New Mexico Environmental Improvement Board from 1973 to 1978; in private practice in Albuquerque, New Mexico, from 1978 to 1979; and with the IRS Office of Chief Counsel Southwest Region from 1979 to 1996. He received achievement awards from the IRS in 1991, 1992, and 1993, as well as various other awards from the IRS. Griego had a great compassion for animals. He was an adventurous spirit with a love of travel. Griego enjoyed classical music and computers. He is survived by his wife of 40 years, Roberta "Roie" Griego; stepson, Eric L. Shaffer; and sisters, Kathleen Ramirez and Rosemary Blatchford.

Charles David Batts was born Nov. 20, 1940, and died Nov. 19, 2018. "He came, he did, he left." A simple man with complex gifts. "Simple Gifts" A Shaker song by Elder Joseph 'Tis the gift to be simple, 'tis the gift to be free 'Tis the gift to come down where we ought to be, And when we find ourselves in the place just right, 'Twill be in the valley of love and delight. When true simplicity is gained, To bow and to bend we shan't be ashamed, To turn, turn will be our delight, Till by turning, turning we come 'round right. He was preceded in death by father Charles Noble Batts, mother Helen Josephine Glabasnia, and daughter Casey Batts. He is survived by his wife Marilyn, sisters Betty Gruitch and Carla Jelinek, children David (Alison) and Callie (Charlie), grandchildren Jaiden, Cassidy, and Beatrix, and many other loving family members.

NEW MEXICO MOCK TRIAL

GENE FRANCHINI HIGH SCHOOL MOCK TRIAL COMPETITION

An Innovative, Hands-On Experience in the Law

Judges needed for the qualifier rounds in Las Cruces and Albuquerque

The Gene Franchini New Mexico High School Mock Trial Competition needs judges for the qualifier rounds. The qualifier competition will be held February 21st and 22nd, 2020 in LAS CRUCES AND ALBUQUERQUE. It will be hosted by the Bernalillo County Metropolitan Court in Albuquerque and the Third Judicial District Court in Las Cruces.

Mock trial is an innovative, hands-on experience in the law for high school students of all ages and abilities. Every year hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people.

Please sign up at http://www.civicvalues.org/judge-volunteer-registration by February 1, 2020.
If you have any questions, please contact Kristen at the Center for Civic Values at 764-9417 or Kristen@civicvalues.org.

CV CENTER FOR CIVIC VALUES
PROVIDING EDUCATION AND RESOURCES FOR PUBLIC PARTICIPATION IN THE LAW

Legal Education

January

23 **Arbitration Clauses in Business Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Taos Health Law Roundtable**
10.0 G, 1.0 EP
Live Seminar
Health Law Roundtable
www.healthlawroundtable.com

24 **Ethics of Working with Witnesses**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

24 **2019 Employment and Labor Law Institute**
4.7 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **Access to Justice: Best Path Forward: Point - Counterpoint**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **Current Immigration Issues for the Criminal Defense Attorney 2019 Immigration Law Institute**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **2019 Mock Meeting of the Ethics Advisory Committee**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **SALT Online: Understanding State & Local Taxes When Your Client Sells Online**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

30 **Discover Hidden and Undocumented Google Search Secrets**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

31 **2019 Family Law Institute – Day 2**
5.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **How to Get Your Bounce Back: Using Resilience to Preserve Your Fitness to Practice**
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **An In-Depth Look at the Latest Info and Ethical Considerations Pertaining to Cultural Competency and Implicit Bias in the Legal Profession**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **Fluff is For Pillows, Not Legal Writing**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

February

6 **2020 Ethics Update Part 1**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **2020 Ethics Update Part 2**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

13 **2020 Sex Harassment Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Family Feuds in Trust: How to Anticipate and Avoid**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Elder Law Institute: Empowering Vulnerable New Mexicans**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

21 **Everything I Need to Know about Legal Ethics I Learned from the Kardashians**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

21 **The Secrets of Leveraging Your Law Practice: Effective Operations, Efficiency Hacks and Outsourcing for the Modern Law Firm**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

21 **Reforms in Adult Guardianship**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Responding to Demand Letters: Tone and Substance**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Cornucopia of Law: Practical Application for Paralegals and Lawyers**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Clarence Darrow – A One-Man Play Starring Judge Sandy Brooks**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Meet John Adams: A Lively and Revolutionary Conversation with America's Second President**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Ethics and Malpractice Potpourri**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Introduction to the Practice of Law in New Mexico (Reciprocity)**
4.5 G, 2.5 EP
Live Seminar
New Mexico Board Of Bar Examiners
www.nmexam.org

March

4 **Office Leases: Current Trends & Most Highly Negotiated Provisions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

12 **Practical Tech and eDiscovery Advice for the Non-Tech Attorney**
1.5 G
Live Seminar
International Litigation Services
888-313-4457

13 **Governance for Nonprofit and Exempt Organizations**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Indemnification & Hold Harmless Agreements in Real Estate Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Health Care Issues in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

24 **Ethics and Conflicts with Clients, Part 1**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

25 **Ethics and Conflicts with Clients, Part 2**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **2020 Americans with Disabilities Act Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Regional Seminar**
17.2 G, 1.0 EP
Live Seminar
Trial Lawyers College
307-432-4042

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 CHANGE TO INACTIVE STATUS AND CHANGE OF ADDRESS

Effective November 19, 2019:
Shasta L. Brooks
1001A E. Harmony Road, PMB #50
Fort Collins, CO 80525

Effective December 1, 2019:
Nancy A. Dominski
PO Box 511277
Milwaukee, WI 53203

Effective December 1, 2019:
Steven Tredennick
106 Fannin Avenue
Round Rock, TX 78664

Effective December 1, 2019:
Paula J. West
3501 Aspen Avenue, NE
Albuquerque, NM 87106

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective December 1, 2019:
John R. Gerbracht
PO Box 769
Socorro, NM 87801

Effective December 1, 2019:
William Parker Gralow
4911 Glenwood Hills Drive, NE
Albuquerque, NM 87111

Effective July 31, 2019:
Shannon A. Parden
9 Morgan Court
Sandia Park, NM 87048

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective December 4, 2019:
Kevin Grzebielski
28 Halite Way
Fitchburg, WI 53711

Effective December 4, 2019:
Kim E. Kaufman
3016 Calle de Alamo, NW
Albuquerque, NM 87104

Effective December 4, 2019:
Barbara J. Merryman
7920 Rancho de Palomas Drive, NE
Albuquerque, NM 87109

Effective December 4, 2019:
Ogden M. Reid
9 Evergreen Drive
Placitas, NM 87043

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective December 2, 2019:
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Fort Myers, FL 33907
575-779-3710
billhudson.attorney@gmail.com

CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

Effective December 4, 2019:
Jennifer Mammano Ward
313 N. Gilbert Road, Suite 300
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Effective December 4, 2019:
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Tweed Heads South NSW 2486
Australia

CLERK'S CERTIFICATE OF LIMITED ADMISSION

On **December 2, 2019**:
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Law Offices of the Public Defender
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ramsey.younis@lopdnm.us

CLERK'S CERTIFICATE OF ADMISSION

On December 10, 2019:
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On December 10, 2019:
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On December 10, 2019:
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On December 10, 2019:
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Jody Taliaferro McCormack
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On December 10, 2019:
Erika Rose Pirotte
Navajo Nation Department of Justice
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On December 10, 2019:
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On December 10, 2019:
Shannara E. Quissell
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On December 10, 2019:
Kathy Michelle Rivas Duarte
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3773 Cherry Creek N. Drive
Denver, CO 80209
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On December 10, 2019:
Gary D. Roper
Allstate Insurance Co.
14000 Quail Springs Pkwy.,
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On December 10, 2019:
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On December 10, 2019:
Gregory David Smith
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432-682-2448 (fax)
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On December 10, 2019:
Samantha Lynn Yager
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Suite 303
Buffalo, NY 14204
716-517-3065
samantha.yager
@libertymutual.com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective October 1, 2019:
Sarah J. Batzli
1 Nacimiento Peak
Santa Fe, NM 87508

Effective December 2, 2019:
Bruce E. Wiggins
PO Box 1308
Albuquerque, NM 87103

CLERK'S CERTIFICATE OF AMENDED LIMITED ADMISSION

Effective December 2, 2019:
Justin Garwood
Office of the Sixth Judicial District Attorney
108 E. Poplar Street
Deming, NM 88030
575-546-6526
575-546-0336 (fax)
jgarwood@da.state.nm.us

Effective November 18, 2019:
Molly Graver
New Mexico Center on Law and Poverty
924 Park Avenue, SW,
Suite C
Albuquerque, NM 87102
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Effective October 19, 2019:
Lance Jaggers
New Mexico Children, Youth and Families Department
Protective Services Division
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Roswell, NM 88201
575-624-6071
lance.jaggers@state.nm.us

CLERK'S CERTIFICATE OF NAME CHANGE

As of December 12, 2019:
Allison Pool Martinez f/k/a Allison Pool Hedgecock
New Mexico Tourism Department
491 Old Santa Fe Trail
Santa Fe, NM 87501
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allison.martinez@state.nm.us

As of December 9, 2019:
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Office of the Second Judicial District Attorney
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Albuquerque, NM 87102
505-222-1237
mia.ulibarri@da2nd.state.nm.us

CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

Effective December 12, 2019:
Edward G. Newville
PO Box 977
Placitas, NM 87043

CLERK'S CERTIFICATE OF NAME AND ADDRESS CHANGE

As of December 5, 2019:
Nelly Valencia
1845 S. Dobson Road,
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Mesa, AZ 85202
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moralesimmigrationlaw@gmail.com

CLERK'S CERTIFICATE OF DISBARMENT

Effective December 9, 2019:
Rosanna C. Vazquez
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rosanna@rvazquezlaw.com

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective December 31, 2019:
Susan K. Alkema
4813 Sunningdale Court, NE
Albuquerque, NM 87110

Effective December 31, 2019:
M. Lea Brownfield
PO Box 57
Mesilla, NM 88046

Effective December 31, 2019:
Alberta Therese Marie Lux
5009 General Bradley Street, NE
Albuquerque, NM 87111

CLERK'S CERTIFICATE OF NAME CHANGE

As of December 3, 2019:
Gabriela M. Delgadillo f/k/a Gabriela M. Stewart
128 E. DeVargas Street
Santa Fe, NM 87501
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CLERK'S CERTIFICATE OF LIMITED ADMISSION

On **December 19, 2019**:
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ACLU of New Mexico
PO Box 566
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505-266-5916 (fax)
phaidle@aclu-nm.org

On **December 19, 2019**:
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505-254-2559 (fax)
cmajestro@yahoo.com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS AND CHANGE OF ADDRESS

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From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-043

No. A-1-CA-36506 (filed May 21, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
BRIAN ADAMS,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
Daylene Marsh, District Judge

Certiorari Granted, August 9, 2019, No. S-1-SC-37722.
Released for Publication September 17, 2019.

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Opinion

Linda M. Vanzi, Judge.

{1} This interlocutory appeal arises from the district court's order excluding the results of Defendant Brian Adams' blood test on the basis that the individual who drew his blood was not authorized to do so under the Implied Consent Act, NMSA 1978, §§ 66-8-105 to -112 (1978, as amended through 2015). On appeal, the State contends that the district court abused its discretion in excluding the blood test results because the person who drew the blood was an emergency medical technician (EMT) whose additional training and experience qualified her to draw blood. We first hold that the State properly took this interlocutory appeal under NMSA 1978, Section 39-3-3(B)(2) (1972), because the blood test results constituted substantial proof of a material fact. We further hold that the EMT was qualified to draw Defendant's blood under the Implied Consent Act. As the district court based its exclusion of the blood test results on a misapprehension of our case law and the statutory requirements for who may draw blood, its exclusion constituted an abuse of discretion. Accordingly, we reverse and remand.

BACKGROUND

{2} A Farmington police officer was dispatched to a local gas station after receiving a report of a possible drunk driver. Upon arriving at the gas station, the officer made contact with Defendant, who was inflating the tires of a car matching the description provided by the caller. The officer noticed Defendant had slurred speech and bloodshot, "glossy" eyes. Upon contacting the caller himself and confirming that the caller witnessed Defendant driving the vehicle, the officer had Defendant perform several field sobriety tests. During the tests, the officer observed Defendant swaying, failing to follow directions, and unable to balance on one foot. The officer also noticed Defendant's breath had a "slight odor of alcohol." Defendant admitted to drinking whiskey and taking Xanax and Suboxone earlier in the day. Based on these observations and Defendant's admission, the officer arrested Defendant for driving while intoxicated (DWI). After Defendant agreed to a blood draw pursuant to the Implied Consent Act, the officer transported Defendant to the San Juan Regional Medical Center (the Medical Center). The officer directed Danica Atwood, a hospital employee and licensed EMT, to perform the blood draw using a sealed blood draw kit. The Scientific Laboratory Division of the New Mexico Department of Health (SLD) subsequently tested Defendant's blood, which tested negative for alcohol but positive for marijuana-related metabolites, benzodiazepines, and synthetic opioids.

{3} The State charged Defendant with one count of non-aggravated DWI, in violation of NMSA 1978, Section 66-8-102 (2016). Defendant moved to suppress the blood test results on the basis that Atwood was not qualified to perform blood draws under NMSA 1978, Section 66-8-103 (1978), which provides that "[o]nly a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol test." After the magistrate court denied his motion to suppress, Defendant pleaded no contest, reserving his right to appeal the magistrate court's decision not to suppress the blood test results.

{4} On appeal, the district court held an evidentiary hearing, during which Defendant argued that the district court should suppress the blood test results based on *State v. Garcia*, 2016-NMCA-044, ¶ 1, 370 P.3d 791 (holding that a licensed EMT did not fit within the statutory categories of persons "authorized to draw blood for the purpose of determining its alcohol or drug content under the Implied Consent Act"). In response, the State argued that, although an EMT license alone was not sufficient to qualify Atwood to draw blood pursuant to Section 66-8-103, her additional experience and training qualified her to do so as a laboratory technician or technologist. In support of the State's argument, Atwood testified to the following. At the time she drew Defendant's blood, Atwood held an EMT-basic license, and had been employed as an EMT and emergency department technician in the Medical Center emergency room for approximately four months. Atwood's job duties included drawing blood for medical laboratory testing, as well as performing blood draws at the request of law enforcement personnel. She worked three twelve-hour shifts per week and would draw blood from twenty-five people on average each shift. Atwood testified that, after initially being trained by other technicians and nurses in the manner in which blood is drawn at the Medical Center, she performed blood draws under supervision for six weeks until hospital personnel determined that she was competent to perform blood draws unsupervised. On cross-examination, Atwood confirmed that she never worked in a laboratory and that she was not licensed or certified as a phlebotomist.

{5} Although Atwood stated that she never received any specific training pursuant to the Implied Consent Act, she explained some of the differences between drawing blood for medical laboratory testing and drawing blood for law enforcement purposes. For medical blood draws, technicians could draw blood out of an IV line,

clean the puncture site with alcohol, and give the sample to another hospital employee for transport to a laboratory for testing. However, for "legal" blood draws, technicians had to clean the puncture site with a non-alcoholic substance, such as iodine, use the collection tubes provided by the officer, and hand the tubes directly to the officer after completing the draw. Atwood testified that she collected Defendant's blood using an unexpired, SLD-approved blood collection kit in accordance with the kit's instructions.

{6} After the hearing, the district court granted Defendant's motion to suppress and entered findings of fact and conclusions of law. The district court found that

> Defendant's blood was drawn by Danica Atwood, a hospital employee employed in dual capacities as an [EMT] and as an "Emergency Department Technician." Ms. Atwood's training as an Emergency Department Technician included on-the-job training in drawing blood, which, according to the [Medical Center's] policy and procedures qualified her to do "legal alcohol blood draws at the request of law enforcement personnel."

However, the district court concluded that this Court's "categorical holding" in *Garcia*, 2016-NMCA-044, ¶ 20, "that a person's 'license as an EMT does not qualify her to draw blood to determine its alcohol or drug content under the Implied Consent Act[,]' " precluded a ruling that Atwood was the same or similar to a laboratory technician for purposes of Section 66-8-103. As such, the district court excluded the blood test results. The State timely appealed the district court's order pursuant to Section 39-3-3(B)(2), certifying that the appeal was "not taken for purpose of delay, and the evidence is a substantial proof of a fact material in the proceeding."

DISCUSSION

I. The State May Appeal Pursuant to Section 39-3-3(B)(2)

{7} Before considering the merits of the State's argument, we must determine the threshold issue of whether the State has a right to appeal. Defendant contends that the State cannot appeal the district court's exclusion of the blood test results because the State has other evidence it can use to convict Defendant of DWI. We disagree.

{8} "A court's jurisdiction derives from a statute or constitutional provision." *State v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415 (internal quotation marks and citation omitted). Whether a party has a statutory right to an appeal is a question of law, which we review de novo. *Id.* "The principal command of statutory construction is that the court should determine and effectuate the intent of the Legislature, using the plain language of the statute as the primary indicator of legislative intent." *State v. Hobbs*, 2016-NMCA-022, ¶ 9, 366 P.3d 304 (alteration, internal quotation marks, and citation omitted). "When a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *State v. Taylor E.*, 2016-NMCA-100, ¶ 26, 385 P.3d 639 (internal quotation marks and citation omitted).

{9} Section 39-3-3(B)(2) provides, in pertinent part,

> In any criminal proceeding in district court an appeal may be taken by the state to the [S]upreme [C]ourt or [C]ourt of [A]ppeals, as appellate jurisdiction may be vested by law in these courts . . . within ten days from a decision or order of a district court suppressing or excluding evidence . . . , if the district attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Defendant does not dispute that the State timely filed in the district court a certification compliant with Section 39-3-3(B)(2), or question the State's motives for taking this appeal. Rather, Defendant contends that the blood test results are not "substantial proof of a fact material in the proceeding" because the State could still prove its case without them. *See id.* Specifically, Defendant claims that because the officer and the caller could testify as to their observations of Defendant, including his performance on the field sobriety tests and admission to drinking alcohol and taking prescription drugs, the State could still prove its case without the blood test results by demonstrating that Defendant was "impair[ed] to the slightest degree." *See* § 66-8-102(A) ("It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state."); *State v. Gurule*, 2011-NMCA-042, ¶ 7, 149 N.M. 599, 252 P.3d 823 ("In order to convict under [Section 66-8-102](A), a court must find that the defendant was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the driver and the public as a result of drinking the liquor." (internal quotation marks and citation omitted)); *see State v. Neal*, 2008-NMCA-008, ¶ 27, 143 N.M. 341, 176 P.3d 330 ("Given the testimony as to [the d]efendant's driving behavior, physical condition, admission of drinking, and performance on the field sobriety tests, the factfinder could rely on common knowledge and experience to determine whether [the d]efendant was under the influence of alcohol.").

{10} Defendant reads *State v. Gomez*, 2006-NMCA-132, ¶ 7, 140 N.M. 586, 144 P.3d 145, to stand for the proposition that the State cannot appeal the exclusion of evidence unless the exclusion would "make it impossible for the State to prove the elements of its case." Defendant's understanding of *Gomez* is flawed. In *Gomez*, the State sought to invoke Section 39-3-3(B)(2) as a basis to appeal the district court's midtrial order excluding the defendant's blood test results. *Gomez*, 2006-NMCA-132, ¶ 3. On appeal, Judge Robinson, authoring the lead opinion, reasoned that because the defendant admitted to drinking and the arresting officer observed him exhibit behaviors indicative of intoxication, the State did not need the blood test results to prove that the defendant was guilty of DWI under the "impaired to the slightest degree" standard. *See id.* ¶¶ 6-7. As a result, Judge Robinson concluded that the state could not appeal the exclusion of the blood test results because they "did not go to the heart of the proof required to establish DWI." *Id.* ¶ 7.

{11} Importantly, however, neither of the other panel members joined in Judge Robinson's opinion. *See id.* ¶ 22 (Bustamante, C.J., specially concurring) ("I concur in the result of Judge Robinson's opinion."); *id.* ¶ 44 (Fry, J., specially concurring) ("I concur in the result of Judge Robinson's opinion, but I do not agree with the rationale supporting the result. I concur fully in Chief Judge Bustamante's concurring opinion."). Thus, Chief Judge Bustamante's special concurrence constituted the opinion of our Court, not Judge Robinson's opinion. *See State v. Mendez*, 2009-NMCA-060, ¶ 11, 146 N.M. 409, 211 P.3d 206 ("[W]e observe that the special concurrences of Judges Bustamante and Fry in *Gomez* constitute the opinion of this Court."), *rev'd on other grounds*, 2010-NMSC-044, ¶ 56, 148 N.M. 761, 242 P.3d 328; *see also Commonwealth v. Hopkins*, A.3d 1133, 1139 (Pa. 2017) (recognizing that a lead opinion written by one judge "lack[s] the force of precedent" where the two other panelists do not join in its reasoning). Notably, Chief Judge Bustamante specifically declined to address the merits of the district attorney's certification, instead holding that "Section 39-3-3(B)(2) does not provide an automatic appeal from suppression or exclusionary orders entered after jeopardy has attached in a trial." *Gomez*, 2006-NMCA-132, ¶¶ 22, 42-43 (Bustamante, C.J., specially concurring). As the timing of the State's appeal is not an issue in the instant case, Defendant's reliance on *Gomez* is unavailing.

{12} Defendant also cites *State v. Vasquez*, 2014-NMSC-010, 326 P.3d 447, and *State v. Romero*, 2000-NMCA-029, 128 N.M. 806, 999 P.2d 1038, in support of his argument that the exclusion of evidence must essentially "ma[k]e it impossible for the State to prove an element of its case." *Romero*, 2000-NMCA-029, ¶ 9. However, we do not read these cases as holding that the State may only appeal pursuant to Section 39-3-3(B)(2) when it cannot possibly convict without the excluded evidence. Indeed, we later clarified the substantive standard in *Romero* by explaining, "[W]e do not read *Romero* as allowing the state to appeal only when the district court's ruling makes it impossible for the state to prove its case. Rather, we interpret *Romero* as requiring that the excluded evidence be important or significant, as opposed to evidence of minor consequence." *Mendez*, 2009-NMCA-060, ¶ 12. Nor did *Vasquez* alter this standard, as the parties in that case did not dispute whether the state could proceed without the excluded evidence. *See* 2014-NMSC-010, ¶ 28 ("[T]he State could not proceed with its prosecution without the[excluded] witnesses, and no one claims otherwise."). Consequently, our Supreme Court had no occasion to consider the issue on certiorari review. *See State v. Sanchez*, 2015-NMSC-018, ¶ 26, 350 P.3d 1169 ("The

general rule is that cases are not authority for propositions not considered." (internal quotation marks and citation omitted)). Thus, Defendant's argument that the State may only appeal when the district court's evidentiary ruling makes it impossible to prove its case finds no support in either *Romero* or *Vasquez*.

{13} We conclude that Defendant's blood test results are "important or significant" under the circumstances of this case. *See Mendez*, 2009-NMCA-060, ¶ 12. In order to prove that Defendant was intoxicated under Section 66-8-102, the State must demonstrate beyond a reasonable doubt that Defendant (1) "was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the driver and the public as a result of drinking . . . liquor[,]" *Gurule*, 2011-NMCA-042, ¶ 7; *see* § 66-8-102(A); (2) was under the influence of drugs to a degree that rendered him incapable of safely driving a vehicle, *see* § 66-8-102(B); or (3) had an alcohol concentration of eight one hundredths or more in his breath or blood within three hours of driving as the result of liquor consumed before or while driving, *see* § 66-8-102(C)(1). To this end, the State has the option to introduce the blood test results to demonstrate the amount of alcohol or drugs in his blood. *See* § 66-8-110(A) ("The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any . . . criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs."). While the test results here did not register any blood alcohol content, Defendant's blood tested positive for marijuana-related metabolites, benzodiazepines, and synthetic opioids. Without the blood test results, the State would have to rely solely on witness testimony to demonstrate Defendant's intoxication, a potentially more difficult task, given the possibility that its witnesses may become unavailable or have faded memories. Nor is it clear that, without the benefit of the test results, the State would be able to muster sufficient proof that Defendant had ingested marijuana, as he only admitted to drinking liquor and taking prescription drugs. Furthermore, as Defendant only admitted to taking prescription drugs earlier in the day, the test results were necessary to prove the amount of drugs remaining in his system at the time of arrest in order to show that he was still impaired. Thus, we conclude that the blood test results constitute "substantial proof of a fact material" sufficient to allow an interlocutory appeal pursuant to Section 39-3-3(B)(2).

II. The District Court's Suppression of the Blood Test Results Constituted an Abuse of Discretion

{14} The State argues that the district court abused its discretion by holding that Atwood was not authorized to draw Defendant's blood under the Implied Consent Act based on her status as an EMT. Specifically, the State contends that the district court misinterpreted *Garcia* as precluding a finding that Atwood was authorized to draw blood under the Implied Consent Act, and asserts that Atwood's training and experience are sufficient to qualify her as a laboratory technician or technologist under Section 66-8-103. We agree.

{15} "We review the [district] court's decision to exclude or admit evidence for an abuse of discretion." *State v. Hanson*, 2015-NMCA-057, ¶ 5, 348 P.3d 1070. "A [district] court abuses its discretion when it exercises its discretion based on a misunderstanding of the law." *State v. Lente*, 2005-NMCA-111, ¶ 3, 138 N.M. 312, 119 P.3d 737 "We review de novo whether the district court's decision to exclude evidence was based upon a misapprehension of the law." *Romero*, 2000-NMCA-029, ¶ 6.

A. Garcia Does Not Require Exclusion of Defendant's Blood Test Results

{16} The Implied Consent Act provides that every motorist in this state, upon being arrested for DWI, is deemed to have consented to a chemical test to determine the drug or alcohol content of his or her blood. Section 66-8-107(A); *see In re Suazo*, 1994-NMSC-070, ¶ 7, 117 N.M. 785, 877 P.2d 1088. Any chemical test performed pursuant to the Implied Consent Act must be approved by the SLD and administered at the direction of a law enforcement officer. Section 66-8-107(B). The Legislature restricted the classes of persons authorized to draw blood for chemical tests performed pursuant to the Implied Consent Act. *See* § 66-8-109(A) ("Only the persons authorized by Section 66-8-103 . . . shall withdraw blood from any person for the purpose of determining its alcohol or drug content."). Section 66-8-103 delineates the categories of persons authorized to perform blood draws under the Implied Consent Act: "Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol test." Section 66-8-103 serves the dual purposes of ensuring "the safety of the subject and the reliability of the sample." *State v. Wiberg*, 1988-NMCA-022, ¶ 14, 107 N.M. 152, 754 P.2d 529. Our Court has upheld the exclusion of blood test results when the blood sample is drawn by an individual who does not fall within any of the statutorily enumerated categories of authorized blood drawers. *See, e.g.*, *Garcia*, 2016-NMCA-044, ¶ 23 ("The State failed to meet its burden of proving that [the d]efendant's blood was drawn by a person authorized to do so under Section 66-8-103, and the results of the test are therefore inadmissible.").

{17} We addressed Section 66-8-103 most recently in *Garcia*, where we affirmed the district court's exclusion of blood test results obtained as the result of a blood draw performed by an EMT while she was treating the defendant in an ambulance following an accident. 2016-NMCA-044, ¶¶ 3-5, 24. As a result of a head-on collision, the defendant in that case suffered injuries and had to be transported to the hospital via ambulance. *Id.* ¶ 3. After the responding officer noticed signs of intoxication, the officer asked an EMT in the ambulance to draw the defendant's blood. *Id.* The officer provided the EMT with an SLD-approved blood draw kit. *Id.* ¶ 4. However, the EMT did not read the kit's instructions or use the needle included in the kit because she wanted "[t]o avoid compromising [the d]efendant's care, which was her first priority[.]" *Id.* ¶ 5. Instead, the EMT used a sterile IV catheter and syringe from the ambulance's supply. *Id.* After SLD determined that the defendant's blood sample contained marijuana-related metabolites, the State charged the defendant with causing great bodily harm by vehicle while driving under the influence of drugs or alcohol. *Id.* ¶¶ 5-6. The district court granted the defendant's motion to suppress the blood test results on the ground that the EMT was not qualified to perform blood draws. *Id.* ¶ 7.

{18} On appeal, the State argued that the EMT qualified under Section 66-8-103 as a "licensed professional." *Garcia*, 2016-NMCA-044, ¶ 11. After surveying several related cases from New Mexico and other states, *id.* ¶¶ 12-17, we turned to the language of our statute and concluded that Section 66-8-103 established five distinct categories of individuals qualified to withdraw blood pursuant to the Implied Consent Act: (1) physicians, (2) licensed professional nurses, (3) licensed practical nurses; (4) laboratory technicians (employed by a hospital or physician),[1] and (5) technologists (employed by a hospital or physician). *Garcia*, 2016-NMCA-044, ¶¶ 18-19. Thus, we held that "[t]here is no separate category of a 'licensed professional,' as urged by the State[,] . . . and since [the EMT] d[id] not satisfy any of the categories that are listed as the 'only' ones qualified to draw blood samples she [was] not qualified under the Implied Consent Act." *Id.* ¶ 19.

{19} We continued by adding that, even if there were a separate category of "licensed professional," the EMT's license did not qualify her to draw blood under the Implied Consent Act. *Id.* ¶ 20. In arriving at this conclusion, we noted that the EMT was employed by an ambulance company licensed to provide "emergency medical services," which were defined as "the services rendered by providers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury." *Id.* ¶ 20 (quoting NMSA 1978, § 24-10B-3(K) (2003)); *see generally* Emergency Medical Services Act, NMSA 1978, §§ 24-10B-1 to -13 (1983, as amended through 2014). Within

[1] *Garcia* suggested, but did not hold, that a laboratory technician must be employed by a hospital or physician. *See* 2016-NMCA-044, ¶ 18 ("Because we have found no applicable separate statutory definition for a 'laboratory technician' and given the structure of the phrase, it appears that a laboratory technician must be employed by a hospital or physician to qualify. However, that question is not before us in this case."). We agree with *Garcia* that Section 66-8-103 appears to require a hospital or physician to employ the laboratory technician. Nonetheless, as Defendant does not dispute that Atwood worked in a hospital, we assume, without deciding, that Section 66-8-103 requires a laboratory technician to be employed by a hospital or physician.

this statutory framework, we concluded that the EMT's license allowed her to perform blood draws, "but only in the context of providing . . . services rendered 'in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.' " *Garcia*, 2016-NMCA-044, ¶¶ 21-22 (quoting § 24-10B-3(K)). We also noted that the general EMT training did "not include the protocols for performing blood draws that comply with the [SLD] regulations . . . under the Implied Consent Act." *Id.* ¶ 22. Given these facts, we held that the EMT's licensure "did not authorize her to draw blood for the purpose of determining its alcohol or drug content." *Id.*

{20} Here, Defendant contends, and the district court concluded, that *Garcia* is outcome determinative on the question of whether Atwood, a licensed EMT, is authorized to draw blood under Section 66-8-103. The State, on the other hand, argues that *Garcia* does not preclude a determination that Atwood is authorized to draw blood on the basis of her additional training and experience because *Garcia*, as the State puts it, "merely held that an individual's EMT license *alone* did not entitle her to membership in any of the categories of individuals authorized to draw blood under Section 66-8-103." (Emphasis added.) We find the State's argument to be persuasive.

{21} The distinguishable facts presented and arguments made in the instant case warrant a different analysis than that of *Garcia*, which did not address the question whether an EMT can qualify as a laboratory technician or technologist employed by a hospital or physician based on the EMT's additional training and experience. Unlike *Garcia*, the State, here, is not arguing that Atwood is qualified to draw blood under Section 66-8-103 simply because she holds an EMT license. Rather, the State is arguing that Atwood's license, *combined with her experience and training*, qualifies her as a laboratory technician or technologist. We had no occasion to address this argument in *Garcia*, as the State only argued in that case that the EMT qualified under a separate category set forth in Section 66-8-103 (i.e., a "licensed professional"). *See Garcia*, 2016-NMCA-044, ¶ 11. There is no indication that the state in *Garcia* argued that the EMT qualified as a laboratory technician or technologist employed by a hospital or physician. Nor is there any indication that the *Garcia* EMT had any additional training or experience in drawing blood that would qualify her under any other category listed in Section 66-8-103.

{22} Rather, this Court in *Garcia* merely addressed the issue of whether an EMT license, *by itself*, qualified an individual to perform blood draws under Section 66-8-103. After determining that Section 66-8-103 did not contain a sixth category of authorized blood drawers, i.e., one covering "licensed professionals," we stated, "*Even if we were able to accept the State's argument for a separate category of a 'licensed professional,'* [the EMT's] license as an EMT does not qualify her to draw blood . . . under the Implied Consent Act." *Garcia*, 2016-NMCA-044, ¶¶ 19-20 (emphasis added). Thus, it is clear we were addressing whether the EMT's license would qualify her under the asserted (but rejected) category of "licensed professional," not whether an EMT with greater experience and training could potentially qualify under another enumerated category. Therefore, *Garcia* does not stand for the proposition that Section 66-8-103 prohibits all EMTs from drawing blood. *See Sanchez*, 2015-NMSC-018, ¶ 26 ("The general rule is that cases are not authority for propositions not considered." (internal quotation marks and citation omitted)).

{23} Moreover, the facts of *Garcia* are distinguishable. While both cases involve EMTs, the circumstances of the blood draws involved in each case could not be more different. Unlike *Garcia*, there is no evidence that Atwood sacrificed the reliability of the test results because she was treating Defendant for injuries. *See* 2016-NMCA-044, ¶ 5. While it was unclear how much experience the *Garcia* EMT had with blood draws, Atwood testified that she typically performed approximately twenty-five blood draws each shift. Perhaps most importantly, Atwood drew Defendant's blood in a hospital setting using an SLD-approved test kit, unlike the makeshift, ambulance-based blood draw involved in *Garcia*. *See id.* ¶¶ 3-5. These differences are significant, as they demonstrate that Atwood had significantly more experience than the *Garcia* EMT in drawing blood for purposes of the Implied Consent Act and that the blood sample used here was inherently more reliable than the one used in *Garcia*. In light of the foregoing, we conclude that *Garcia* does not dictate the result of this case.

B. Atwood Is Authorized to Draw Blood Under Section 66-8-103

{24} We turn now to the merits of the State's contention that Atwood qualifies as either a laboratory technician or a technologist under Section 66-8-103 based on her additional experience and training. In order to answer this question, we must determine what the Legislature intended in using the terms "laboratory technician" and "technologist." We begin with the term "laboratory technician."

{25} "The primary goal in construing a statute is to ascertain and give effect to the intent of the Legislature." *State v. Holt*, 2016-NMSC-011, ¶ 10, 368 P.3d 409 (internal quotation marks and citation omitted). "In doing so, we first look to the words the Legislature chose and the plain meaning of the language." *State v. Ramos-Arenas*, 2012-NMCA-117, ¶ 6, 290 P.3d 733 (internal quotation marks and citation omitted). "The words of a statute, including terms not statutorily defined, should be given their ordinary meaning absent clear and express legislative intention to the contrary." *Id.* (internal quotation marks and citation omitted). "We reject a mechanical statutory construction when the results would be absurd, unreasonable, or contrary to the spirit of the statute. When interpreting a statute, we are also informed by the history, background, and overall structure of the statute, as well as its function within a comprehensive legislative scheme." *State v. Almanzar*, 2014-NMSC-001, ¶ 15, 316 P.3d 183 (internal quotation marks and citations omitted).

{26} There is no statutory or regulatory definition of "laboratory technician." Moreover, unlike physicians or nurses, New Mexico does not have a statutory or regulatory licensing requirement for laboratory technicians. *See generally* Medical Practice Act, NMSA 1978, §§ 61-6-1 to -35 (1923, as amended through 2017) (providing licensure requirements and penalties for practicing medicine without a license); Nursing Practice Act, NMSA 1978, §§ 61-3-1 to -31 (1968, as amended through 2019) (providing licensure requirements and penalties for practicing nursing without a license). "In the absence of a statutory definition, we rely on a dictionary definition to determine the meaning of the language used." *City of Eunice v. N.M. Taxation & Revenue Dep't*, 2014-NMCA-085, ¶ 14, 331 P.3d 986. "Technician" is generally defined as "one who has acquired the technique of an . . . area of specialization." *Technician*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003); *State v. Webster*, 726 P.2d 831, 833 (Nev. 1986) ("We note that 'technician' is generally used in a generic sense. A technician is one versed or skilled in the technical details of a subject or art." (alteration, internal quotation marks, and citation omitted)). Thus, a laboratory technician is a person who has acquired the technique of an area of specialization suitable for working in a laboratory setting. More specifically, in the context of Section 66-8-103, which only pertains to blood draws, the specialized skill required is that of drawing blood. *See* NMSA 1978, § 12-2A-2 (1997) ("Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage. A word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context."); *Janet v. Marshall*, 2013-NMCA-037, ¶ 9, 296 P.3d 1253 ("We look at the plain meaning of the words used in the context of the statutory text as a whole." (internal quotation marks and citation omitted)).

{27} New Mexico courts have not previously addressed the requirements for qualification as a laboratory technician under Section 66-8-103. However, several other states have addressed similar issues in determining when and under what circumstances an individual qualifies as a statutorily undefined and unlicensed professional for purposes of their counterpart implied consent laws and concluded that the proper indicator is whether the medical community accepted the individual's training and experience as adequate for the position. *See, e.g.*, *State v. Masteller*, 198 N.W.2d 503, 504 (S.D. 1972) ("In authorizing laboratory technicians, medical technicians, and medical technologists to withdraw blood samples our statute merely adopts approved medical practice. It assures the individual that blood sampling will be performed by trained medical personnel in clinical surroundings. Our legislature was obviously aware that some

hospital, clinic, laboratory, or physician would be responsible for the training, qualifications, and competence of medical assistants employed and supervised by them to perform the routine task of withdrawing a blood sample. No other standard is needed for the protection of the individual or the preservation of the purity of the blood sample."); *see also, e.g.*, *People v. Randle*, 148, 538 N.E.2d 1253, 1255 (Ill. App. Ct. 1989) ("Illinois has no formal licensing requirements for becoming a phlebotomist. It does not seem pragmatic, then, for a court to impose a higher standard for phlebotomists than that standard imposed by the health care industry. If hospitals, physicians and other medical people, all who bear heavy responsibility for the lives and health of those in their care, see fit to trust [the phlebotomist] to follow correct medical procedures, it makes little sense for courts to find [the phlebotomist] untrained and unqualified."); *State v. Winquist*, 247 N.W.2d 256, 259 (Iowa 1976) ("The test to determine whether a person holding himself out as a medical technologist is a medical technologist . . . is whether a satisfactory showing can be made that he has sufficient training in the withdrawal of blood to accomplish the legislative objectives of protecting the individual's health, guarding against infection and pain, and assuring the accuracy of the test, all in accordance with accepted medical standards."); *Holler v. N. Dakota Dep't of Transp. Dir.*, 470 N.W.2d 616, 617 (N.D. 1991) ("Where there is no statutory requirement of licensure or educational or training standards, the test for determining whether the person is a qualified technician is whether a satisfactory showing can be made that the technician has sufficient training in the withdrawal of blood to accomplish the legislative objectives of protecting the individual's health, guarding against infection and pain, and assuring the accuracy of the test, all in accordance with accepted medical standards." (footnote omitted) (citing *Winquist*, 247 N.W.2d at 259)); *Masteller*, 198 N.W.2d at 504 (noting that the statute authorizing laboratory technicians, medical technicians, and medical technologists to withdraw blood samples merely adopts approved medical practice and assures the individual that blood sampling will be performed by trained medical personnel in clinical surroundings. And further providing that "[n] o other standard is needed for the protection of the individual or the preservation of the purity of the blood sample."); *State v. Bingham*, 921 S.W.2d 494, 496 (Tex. Ct. App. 1996) ("The commonsense interpretation of the term 'qualified technician[]' . . . must include a phlebotomist who a hospital or other medical facility has determined to be qualified in the technical job of venesection or phlebotomy, i.e., the drawing of blood."). We find the logic in this line of cases persuasive and similarly conclude that in authorizing laboratory technicians employed by a hospital or physician to withdraw blood under the Implied Consent Act—irrespective of their licensure status—our Legislature was adopting approved medical practice. In other words, an individual qualifies as a laboratory technician for purposes of Section 66-8-103 so long as a hospital or physician determined that she was qualified to perform blood draws in accordance with accepted medical standards based on her demonstrable skills, training, and experience.[2]

{28} While Atwood did not have the title "laboratory technician," or work in a laboratory, these facts alone are of no moment. Rather, the controlling factors are the individual's assigned duties, skills, training, and experience. *See State v. Stegman*, 203 P.3d 52, 58 (Kan. Ct. App. 2009) ("If the person in question has sufficient training in the withdrawal of blood to accomplish the legislative objectives of protecting the individual's health, guarding against infection and pain, and assuring the accuracy of the test, all in accordance with accepted medical standards, then . . . that person is a phlebotomist regardless of whether he or she is called a 'phlebotomist' by his or her employer."); *see also Arizona ex rel. Pennartz v. Olcavage*, 30 P.3d 649, 655 n.4 (Ariz. Ct. App. 2001) (emphasizing that "it is the training and experience that makes a person 'qualified'—not the title itself"); *People v. Jenne*, 425 N.W.2d 116, 117 (Mich. Ct. App. 1988) (concluding that an individual qualified as a "medical technician" because of her training despite having a different title); *Krause v. State*, 405 S.W.3d 82, 86 (Tex. Crim. App. 2013) ("The record also confirms that, functionally, [the blood drawer] was not emergency medical services personnel. It is true that [she] had training in general emergency procedures. She also was licensed as an EMT-I and had that title at the hospital. But that training and her license and title had little to do with what she actually did at the hospital, which was almost exclusively drawing blood." (emphasis omitted)). Thus, we hold that an individual qualifies as a laboratory technician, despite her official title, if she has sufficient skills, training, and experience to assure a hospital or physician that she is qualified to perform blood draws in accordance with approved medical practice.

{29} Turning to the facts of this case, we conclude that Atwood's assigned duties, skills, training, and experience qualify her to draw blood under Section 66-8-103. As the district court found, "Atwood's training as an [e]mergency [d]epartment [t]echnician included on-the-job training in drawing blood, which, according to the [Medical Center's] policy and procedures qualified her to do 'legal alcohol blood draws at the request of law enforcement personnel.' " Atwood had been employed by the Medical Center as an EMT and emergency room technician for approximately four months at the time she drew Defendant's blood. Atwood's assigned duties included drawing blood for legal and medical laboratory testing, a task she was called on to do roughly twenty-five times per shift, on average. Atwood received training from other technicians and nurses in drawing blood, and the Medical Center determined she was competent to perform draws unsupervised. Finally, Atwood confirmed, and Defendant does not dispute, that the blood draw was properly performed in accordance with the SLD-approved blood draw kit instructions. Based on this showing, we conclude that Atwood qualifies as a laboratory technician under Section 66-8-103. Accordingly, we hold that the district court abused its discretion in excluding the blood test results.

{30} The regulations promulgated by the SLD bolster our holding. The Legislature has shown significant deference to the SLD's expertise in terms of ensuring the reliability of tests taken pursuant to the Implied Consent Act. *See* NMSA 1978, § 24-1-22(A) (2003) ("The [SLD] is authorized to promulgate and approve satisfactory techniques or methods to test persons believed to be operating a motor vehicle . . . under the influence of drugs or alcohol and to issue certification for test operators and their instructors that shall be subject to termination or revocation at the discretion of the [SLD]."); § 24-1-22(B) ("The [SLD] shall establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples."); § 24-1-22(C) ("All laboratories analyzing breath, blood or urine samples pursuant to the provisions of the Implied Consent Act . . . shall be certified by the [SLD]."). In light of this deference, the fact that SLD regulations provide that "[t]he term laboratory technician shall include phlebotomists" is particularly persuasive. 7.33.2.15(A)(1) NMAC; *see Kirkpatrick v. Bd. of Cty. Comm'rs of Santa Fe*

[2]We recognize that national organizations offer certifications for laboratory technicians. *See generally* Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook: *How to Become a Medical and Clinical Laboratory Technologist or Technician*, https://www.bls.gov/ooh/healthcare/medical-and-clinical-laboratory-technologists-and-technicians.htm#tab-4 (last visited Apr. 22, 2019) (providing information on obtaining medical laboratory technician certifications). However, because New Mexico does not require laboratory technicians to hold any such certification and because Section 66-8-103 does not specify that laboratory technicians must be licensed or certified, we do not believe the Legislature intended to authorize only laboratory technicians holding a national certification to draw blood under the Implied Consent Act. If the Legislature intended to authorize only certified laboratory technicians to draw blood under Section 66-8-103, it could have expressly included such a requirement similar to the licensure requirement for professional or practical nurses. *See State v. Ramos*, 2013-NMSC-031, ¶ 15, 305 P.3d 921 (noting that when the Legislature knew how to include something, and did not, the courts assume the choice was deliberate). Thus, we decline to read into the statute any additional requirement that laboratory technicians must hold a national certification. *See State v. Hubble*, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579 ("We will not read into a statute language which is not there, especially when it makes sense as it is written.").

Cty., 2009-NMCA-110, ¶ 11, 147 N.M. 127, 217 P.3d 613 (stating that one of our rules of statutory interpretation is to "give persuasive weight to long-standing administrative constructions of statutes by the agency charged with administering them" (internal quotation marks and citation omitted)). Granted, like the term "laboratory technician," "phlebotomist" is also undefined by statute or regulation. Nor is there a state licensing requirement for phlebotomists. Rather, the term "phlebotomist" is generally used in a generic sense to refer to those who practice phlebotomy, which is defined as "the letting of blood for transfusion, diagnosis, or experiment[.]" *Phlebotomy*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003); *see Pennartz*, 30 P.3d at 655 ("[A] phlebotomist, by definition, is a person who, through training or experience, is competent to draw blood."). Given Atwood's testimony that she regularly performed blood draws as part of her duties at the Medical Center, we conclude that she qualifies as a phlebotomist, a status which SLD considers to be in the same vein as laboratory technicians.

{31} We find unavailing Defendant's remaining argument that Atwood is not qualified to draw blood under Section 66-8-103 because she does not work in a role that permits or requires her to test bodily fluids. Nowhere in the Implied Consent Act is there any indication that a blood drawer is expected or required to perform the blood-alcohol analysis. Indeed, by regulation, "[t]he blood samples *shall* be delivered to SLD or a laboratory certified by SLD to conduct tests for alcohol or other drug content." 7.33.2.15(A)(4) NMAC (emphasis added). Thus, the fact that Atwood does not have the knowledge or authority to test the blood sample is irrelevant.

{32} The result we reach today is in line with the purposes of Section 66-8-103, as well as the Implied Consent Act as a whole. Our decision ensures the safety of defendants and the reliability of blood samples by limiting those authorized to draw blood to qualified individuals who have been approved by the medical community to perform such tasks. *See Wiberg*, 1988-NMCA-022, ¶ 14 (stating that the purpose of Section 66-8-103 is to ensure "the safety of the subject and the reliability of the sample"). At the same time, our decision also avoids unnecessarily narrowing the class of individuals qualified to perform blood draws in aid of the prosecution of DWI offenses. *See Wiberg*, 1988-NMCA-022, ¶ 13 (rejecting a construction of the Implied Consent Act urged by the defense that "would significantly and unnecessarily limit the classes of individuals who could assist in furthering the statute's legislative purpose" of deterring drunk drivers and removing them from the highways).

{33} Finally, we note that defendants may always challenge the admissibility of a blood test based upon concerns that the individual performing the blood draw did not follow the proper procedures. However, as Defendant does not dispute that Atwood followed the instructions in the SLD-approved blood draw kit in gathering his blood sample in this case, we need not address any such issue here. Given our conclusion, we need not address whether Atwood also qualifies under Section 66-8-103 as a technologist.

CONCLUSION

{34} For the forgoing reasons, we reverse the district court's order excluding Defendant's blood test results and remand for further proceedings consistent with this opinion.

{35} IT IS SO ORDERED.
LINDA M. VANZI, Judge

WE CONCUR:
J. MILES HANISEE, Judge
JACQUELINE R. MEDINA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-044

No. A-1-CA-35474 (filed May 29, 2019)

BELEN CONSOLIDATED SCHOOL
DISTRICT,
Respondent,
v.
THE COUNTY OF VALENCIA,
Petitioner.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
James L. Sanchez, District Judge
and
GREGORY A. NASH and SUSIE K. NASH,
Plaintiffs-Appellants,
v.
GROUP I:
BOARD OF COUNTY COMMISSIONERS
OF CATRON COUNTY, NEW MEXICO,
a Political Subdivision of the State of
New Mexico; and ELENA GELLERT,
and
GROUP II:
ALL UNKNOWN CLAIMANTS OF
INTEREST IN THE PREMISES
ADVERSE TO THE PLAINTIFFS,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF CATRON COUNTY
Shannon Murdock, District Judge

Nos. S-1-SC-37692 and S-1-SC-37778.
Released for Publication September 17, 2019.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.
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ZACHARY L. MCCORMICK
Albuquerque, NM
for Respondent Belen Consolidated
School District

NANCE, PATO & STOUT, LLC
ADREN R. NANCE
|DAVID M. PATO
Socorro, NM
for Petitioner Valencia County
for Appellees Catron County Board
of Commissioners

THE TURNER LAW FIRM, LLC
SCOTT E. TURNER
Albuquerque, NM
for Appellants Gregory A. Nash and
Susie K. Nash

Opinion

Megan P. Duffy, Judge.

{1} The formal opinion filed in this case on May 2, 2019, is hereby withdrawn and this opinion is substituted in its place. In these appeals, we address whether the defendant counties are immune from Plaintiffs' quiet title lawsuits under NMSA 1978, Section 42-11-1 (1979) ("Granting immunity; providing for exceptions."). In two separate quiet title suits, Plaintiffs named the County of Valencia (Valencia County) and the Board of County Commissioners of Catron County (Catron County) (collectively, the Counties) as parties who claimed or may claim an interest in the subject properties. In both actions, the Counties responded by filing motions to dismiss on the ground that Section 42-11-1 provided them with immunity and barred the lawsuits. In the Valencia County suit, the district court determined that Valencia County was not immune from suit and allowed the lawsuit to proceed. In the Catron County suit, the district court reached the opposite conclusion and dismissed the lawsuit. Because these appeals raise substantially similar issues, we exercise

our discretion to consolidate them for decision. *See* Rule 12-317(B) NMRA. We conclude that Section 42-11-1 grants the Counties immunity from these lawsuits, and that there is no statutory exception to the Counties' immunity in these cases. We therefore reverse the district court in the Valencia County suit and affirm the district court in the Catron County suit.

BACKGROUND

Development of Immunity in New Mexico

{2} Before presenting the factual and procedural background of these cases, we provide a brief overview of the history and development of the law of immunity relevant to this appeal. In 1876, our territorial legislature "adopted the common law as the rule of practice and decision[.]" *Beals v. Ares*, 1919-NMSC-067, ¶ 36, 25 N.M. 459, 185 P. 780. Consequently, New Mexico followed the common law doctrine of sovereign immunity, whereby "no sovereign state can be sued in its own courts or in any other without its consent and permission." *Hicks v. State*, 1975-NMSC-056, ¶ 4, 88 N.M. 588, 544 P.2d 1153 (internal quotation marks and citation omitted), *superseded by statute as stated in Upton v. Clovis Mun. Sch. Dist.*, 2006-NMSC-040, ¶ 8, 140 N.M. 205, 141 P.3d 739; *see id.* ("[T]he doctrine of sovereign immunity is one of common law, judicially created."). Due to the "oftentimes harsh results of that doctrine," our Legislature carved out certain statutory exceptions to sovereign immunity in which the state gave its consent to be sued. *Id.* ¶ 5. In 1947, the Legislature enacted such an exception in NMSA 1978, Section 42-6-12 (1947),[1] allowing the State to be sued in certain property actions. *See Brosseau v. N.M. State Highway Dep't*, 1978-NMSC-098, ¶ 6, 92 N.M. 328, 587 P.2d 1339 (stating that the purpose of Section 42-6-12 was to create an exception to sovereign immunity). Section 42-6-12 provides:

> Upon the conditions herein prescribed for the protection of the state of New Mexico, the consent of the state is given to be named a party in any suit which is now pending or which may hereafter be brought in any court of competent jurisdiction of the state to quiet title to or for the foreclosure of a mortgage or other lien upon real estate or personal property, for the purpose of securing an adjudication touching any mortgage or other lien the state may have or claim on the premises or personal property involved.

{3} Section 42-6-12 remains in effect and unmodified since its enactment. In its seventy-two year history, it has been construed only once, in 1958, when the New Mexico Supreme Court, relying on specific language in the statute, concluded that the scope of the state's consent to suit granted by the statute was limited to quiet title actions against the state "for the limited purpose of aiding a mortgagee who discovers that the [s]tate has acquired an interest in the mortgaged property and is unable to pass a marketable title to the purchaser at a foreclosure sale unless the state can be joined in the foreclosure suit." *Maes v. Old Lincoln Cty. Mem'l Comm'n*, 1958-NMSC-115, ¶ 10, 64 N.M. 475, 330 P.2d 556; *see also Nevares v. State Armory Bd.*, 1969-NMSC-144, ¶ 11, 81 N.M. 268, 466 P.2d 114 (applying *Maes* without analysis).

{4} In 1975, the New Mexico Supreme Court abolished sovereign immunity "as a defense by the [s]tate, or any of its political subdivisions, in tort actions." *Hicks*, 1975-NMSC-056, ¶ 9 ("Sovereign immunity was born out of the judicial branch of government, and it is the same branch which may dispose of the doctrine."). Three years later, our Supreme Court extended the holding of *Hicks* and abolished sovereign immunity in quiet title actions as well. *Brosseau*, 1978-NMSC-098, ¶ 11.

{5} The Legislature responded to *Hicks* by enacting statutes that created immunity for the State once again. *See* NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2015) (Tort Claims Act); *Ferguson v. N.M. State Highway Comm'n*, 1982-NMCA-180, ¶¶ 4-6, 99 N.M. 194, 656 P.2d 244 (affirming the Legislature's constitutional authority to adopt statutory partial immunity and observing that New Mexico turned from common law total immunity to our Supreme Court's denial of any immunity to partial statutory immunity). And one year after *Brosseau* was decided, the Legislature reestablished immunity in property actions by enacting Section 42-11-1, which provides that "[t]he state of New Mexico and its political subdivisions . . . may not be named a defendant in any suit, action, case or legal proceeding involving a claim of title to or interest in real property except as specifically authorized by law."

The Valencia County Suit

{6} In the Valencia County suit, Plaintiff Belen Consolidated School District (School District) sought to quiet title to a piece of real property in order to sell it. The School District named Valencia County as a party defendant, alleging that Valencia County had claimed an interest in the property. Valencia County filed a motion to dismiss, claiming immunity from suit pursuant to Section 42-11-1. And although it never asserted a specific claim to title, Valencia County stated that it used the land in question as a park and sports facility for area youth. In response, the School District claimed that Section 42-6-12 provides an exception to Valencia County's immunity and allows for quiet title lawsuits against political subdivisions of the state, including counties. At the hearing, the district court concluded that *Brosseau* was controlling and denied Valencia County's motion to dismiss. We accepted Valencia County's appeal on a writ of error pursuant to Rule 12-503(B) NMRA.

The Catron County Suit

{7} In the Catron County suit, Plaintiffs Gregory A. Nash and Susie K. Nash (the Nashes) filed a complaint against Catron County and others to quiet title to a piece of real property that they owned in fee simple pursuant to a recorded warranty deed. The Nashes' property is located adjacent to and shares a boundary line with a property located in Reserve, New Mexico, which is owned by Catron County and apparently houses the Catron County courthouse complex. The Nashes named Catron County as a party that may claim an interest in their property due to a later-recorded deed and "to the extent [Catron] County may not agree with the location of the boundary line of the [p]roperty."

{8} Catron County moved to dismiss the Nashes' complaint for failure to state a claim upon which relief may be granted, arguing that it was immune from suit pursuant to Section 42-11-1. Catron County acknowledged that Section 42-6-12 provides an exception to immunity but argued that our Supreme Court's holding in *Maes* controlled and limited the state's consent to be sued to foreclosure suits in which the state claims an interest in the mortgaged property. In response, the Nashes relied upon *Brosseau*, particularly its statement that "[t]he doctrine of sovereign immunity may not be interposed to bar quiet title actions if its effect is to deny one a remedy for the taking of his property without compensation." 1978-NMSC-098, ¶ 12. They asked the district court to consider the public policy articulated in *Brosseau*—that "[i]t is in the public interest that [clouds on title] be removed in order that land be put to its full potential use[,]" and that property owners "may have no adequate substitute to obtain an adjudication of their property rights as against the claimed interest of the [s]tate." *Id.* ¶¶ 11-12. The district court granted Catron County's motion to dismiss, concluding the Nashes' claim was barred by statutory immunity.

DISCUSSION

{9} Whether Section 42-11-1 bars Plaintiffs' quiet title suits against the Counties is a question of law that we review de novo. *See Rutherford v. Chaves Cty.*, 2003-NMSC-010, ¶ 8, 133 N.M. 756, 69 P.3d 1199 ("The standard of review for determining whether governmental immunity under the [Tort Claims Act] bars a tort claim is a question of law which we review de novo."), *abrogated on other grounds as recognized by Lujan v. N.M. Dep't of Transp.*, 2015-NMCA-005, ¶¶ 8-9, 341 P.3d 1.

{10} The starting point for our discussion is to define the framework of controlling authority, considering *Brosseau*, which abolished judicially created sovereign immunity from quiet title actions in 1978, and the Legislature's enactment in 1979 of Section 42-11-1, which provides the State and its political subdivisions with statutory immunity in any lawsuit "involving a claim of title to or interest in real property." The Nashes urge us to construe Section 42-11-1 in a manner consistent with *Brosseau*, relying on the principle of statutory construction that "[w]e presume that the [L]egislature knew about the existing law and did not intend to enact a law inconsis-

[1]This statute was formerly compiled as NMSA 1941, Section 25-1312, and NMSA 1953, Section 22-14-12. It was recompiled as Section 42-6-12 without alteration.

tent with any existing law." *Doe v. State ex rel. Governor's Organized Crime Prevention Comm'n*, 1992-NMSC-022, ¶ 12, 114 N.M. 78, 835 P.2d 76. This principle, however, is inapplicable in circumstances where the "legislation directly and clearly conflicts with the common law[.]" *Sims v. Sims*, 1996-NMSC-078, ¶ 23, 122 N.M. 618, 930 P.2d 153. When a direct conflict exists, our Supreme Court has made clear that "the legislation will control because it is the most recent statement of the law." *Id.*; *Beals*, 1919-NMSC-067, ¶ 36 (stating that when a statute is counter to the common law, the common law gives way insofar as the statute conflicts with its principles). Section 42-11-1 is addressed to the same subject matter as *Brosseau* and directly conflicts with its holding. Consequently, *Brosseau* must yield. *See Sims*, 1996-NMSC-078, ¶ 23 (holding that legislation controls when it "directly and clearly conflicts with the common law"). Section 42-11-1 controls and acts as a bar to quiet title suits against the state and its political subdivisions unless specifically authorized by law.

{11} In light of the incongruity between *Brosseau* and Section 42-11-1, the Counties question the ongoing effect of Section 42-6-12. Plaintiffs, in contrast, argue that Section 42-6-12 should be construed broadly to waive immunity for all quiet title suits against the state and its political subdivisions. Section 42-6-12 was not amended or abolished when the Legislature reinstated immunity in property actions by enacting Section 42-11-1, and, as noted, Section 42-6-12 remains in effect today. *See PNM Gas Servs. v. N.M. Pub. Util. Comm'n (In re Petition of N.M. Gas Servs.)*, 2000-NMSC-012, ¶ 73, 129 N.M. 1, 1 P.3d 383 ("We presume that the Legislature [i]s aware of existing law. . . at the time it enact[s new law]."). Regardless, we are bound by our Supreme Court's interpretation of Section 42-6-12 in *Maes*, which limits the state's consent to be sued to circumstances where "the [s]tate has acquired an interest in the mortgaged property and [the mortgagee] is unable to pass a marketable title to the purchaser at a foreclosure sale unless the state can be joined in the foreclosure suit." 1958-NMSC-115, ¶ 10; *see State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 22, 135 N.M. 375, 89 P.3d 47 ("[W]hile the Court of Appeals is bound by Supreme Court precedent, the Court is invited to explain any reservations it might harbor over its application of [Supreme Court] precedent so that [the Supreme Court] will be in a more informed position to decide whether to reassess prior case law[.]"). Because these circumstances are not present in either suit, we follow *Maes* and hold that the waiver of immunity set forth in Section 42-6-12 does not authorize Plaintiffs' quiet title suits.

{12} We reach our holding with some uncertainty about the effect of *Brosseau* on *Maes*. We note that when the *Hicks* Court abolished sovereign immunity in tort actions, it expressly overruled all prior cases in which "governmental immunity from tort liability was recognized," but that the *Brosseau* Court did not make any similar expression. *Hicks*, 1975-NMSC-056, ¶ 15; *Brosseau*, 1978-NMSC-098. Nevertheless, we question whether, by abolishing the common law foundation that underlies *Maes*, the *Brosseau* Court also intended to part company with the rationale provided in *Maes* for construing Section 42-6-12 in the manner that it did. *Compare Maes*, 1958-NMSC-115, ¶ 11 ("Lest any doubt remain, it must be kept in mind that statutes authorizing suits against the state are in derogation of sovereignty and must be strictly construed."), *with* NMSA 1978, § 12-2A-18(C) (1997) ("The presumption that a civil statute in derogation of the common law is construed strictly does not apply to a statute of this state."). In today's landscape, immunity is predicated on the interplay of the two statutes discussed herein and presents a matter of statutory construction—an analysis we do not engage in given our conclusion that *Maes* still controls.

Plaintiffs' Due Process Arguments

{13} As a final matter, both the School Board and the Nashes raise due process arguments on appeal, arguing that their inability to bring quiet title suits amounts to an unconstitutional taking and that no other remedy is available under these circumstances. We decline to address the Nashes' argument following our review of the record, as the Nashes failed to raise this argument to the district court in the Catron County suit and thus failed to preserve it for appeal. *See Crutchfield v. N.M. Dep't of Taxation & Revenue*, 2005-NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 (determining constitutional issue was not preserved where party failed to invoke a ruling of the district court on the issue). After reviewing the School District's constitutional argument, we find it insufficiently developed for consideration on the merits. The School District states that "[t]he taking of property without compensation, as [Valencia] County seeks to do here, is a violation of both state and federal constitutional rights," but has failed to demonstrate that the Takings Clause is applicable in a case involving public lands or that other remedies, such as inverse condemnation proceedings, are unavailable. *See State v. Guerra*, 2012-NMSC-014, ¶ 21, 278 P.3d 1031 (stating that the appellate courts are under no obligation to review unclear or undeveloped arguments). Given the record and arguments before us, we decline to address the School District's undeveloped due process argument.

CONCLUSION

{14} For the foregoing reasons, in the Valencia County suit, we reverse the district court's order denying Valencia County's motion to dismiss School District's quiet title complaint and remand for entry of an order dismissing the action against Valencia County. In the Catron County suit, we affirm the district court's order dismissing the quiet title complaint against Catron County.

{15} IT IS SO ORDERED.
MEGAN P. DUFFY, Judge

WE CONCUR:
JENNIFER L. ATTREP, Judge
KRISTINA BOGARDUS, Judge

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-045

No. A-1-CA-35912 (filed May 30, 2019)

STATE OF NEW MEXICO and
COUNTY OF BERNALILLO,
Plaintiffs-Appellees,
and
FRANK FOY and JOHN CASEY,
Qui Tam Plaintiffs-Appellants,
v.
OPPENHEIMER & CO., INC.; BOSC, INC.; PATRICK PADILLA; ROYCE O. SIMPSON; THOMAS WAYNE HAYES; JOHN DOES 1 through 9; and JOHN DOES 10 through 19,
Defendants.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Victor S. Lopez, District Judge

Released for Publication September 17, 2019.

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JOSEPH M. DWORAK,
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Victor R. Marshall & Associates, P.C.
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Albuquerque, NM

Opinion

J. Miles Hanisee, Judge.

{1} Qui tam plaintiffs Frank Foy and John Casey (Qui Tam Plaintiffs) appeal from the district court's order dismissing their complaint (Complaint) brought pursuant to the Fraud Against Taxpayers Act (FATA), NMSA 1978, §§ 44-9-1 to - 14 (2007, as amended through 2015). Qui Tam Plaintiffs contend that the district court erred in granting the State of New Mexico and County of Bernalillo's joint motion to dismiss the Complaint. We disagree and affirm.

BACKGROUND

{2} In August 2015 Qui Tam Plaintiffs filed a qui tam action[1] under Section 44-9-5 of FATA against former Bernalillo County Treasurer Patrick Padilla, two investment brokers and the brokerage firms for which they worked, and nineteen unnamed "John Doe" defendants (collectively, "Defendants") alleging that Defendants had "conspired . . . to defraud the County." In accordance with FATA's requirements, Qui Tam Plaintiffs filed their Complaint under seal and served the State and County with a copy on the day it was filed. After requesting and receiving two extensions of time to investigate the Complaint's allegations, the State and County filed a motion to unseal the case as well as a notice of declination to exercise their statutory right to intervene in the action. Two days later, the State and County jointly moved to dismiss Qui Tam Plaintiffs' Complaint with prejudice, contending that it was "absolutely barred" under either of two provisions of FATA: (1) Section 44-9-9(C), which provides that actions "based on allegations or transactions that are the subject of a . . . civil . . . proceeding in which the state or political subdivision is a party" are barred unless the attorney general or political subdivision "determines and certifies in writing that the action is in the interest of the state or political subdivision"; or (2) Section 44-9-9(D), which provides that "[u]pon motion of the attorney general or political subdivision, a court may, in its discretion, dismiss [a qui tam] action . . . if the elements of the alleged false or fraudulent claim have been publicly disclosed[.]" According to the State and County, the Complaint was subject to dismissal under Section 44-9-9(C) because the allegations and transactions at issue in the Complaint were already the subject of a lawsuit filed by the County against the same investors and brokerage firms just one month before the Complaint was filed. Alternatively, the State and County argued that the Complaint was subject to dismissal under Section 44-9-9(D) because the alleged fraudulent conduct underlying Qui Tam Plaintiffs' FATA claims had been publicly disseminated through the media and in a governmental report in November 2014.

{3} The district court granted the State and County's dismissal motion under Section 44-9-9(D), upon finding that the elements of false or fraudulent claims in the Complaint had been publicly disclosed in news stories and the County's earlier-filed complaint and that the Complaint's allegations "mirror" and were "duplicative" of those made by the County in its lawsuit. Qui Tam Plaintiffs appeal from the district court's order of dismissal.

DISCUSSION

{4} The only issue we address in this case is whether the district court erred in dismissing Qui Tam Plaintiffs' Complaint under Section 44-9-9(D).

> Section 44-9-9(D) provides in full:
> Upon motion of the attorney general or political subdivision, a court may, in its discretion, dismiss an action brought pursuant to Section 44-9-5 . . . if the elements of the alleged false or fraudulent claim have been publicly disclosed in the news media or in a publicly disseminated governmental report at the time the complaint is filed.

By its plain language, Section 44-9-9(D) allows, but does not require, a district court to dismiss a qui tam action based on a motion brought under that section if (1) the motion is made by the government, and (2) the district court finds that the elements of the qui tam action's false or fraudulent claims have been publicly disclosed prior to the action being brought. *Id.*; *cf.* § 44-9-9(A)-(C) (providing no limitation as to who may move to bar an action from proceeding); *State ex rel. Foy*

[1]A "qui tam action" is "an action that allows a private person to sue for a penalty, part of which the government will receive." *N.M. State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 7, 382 P.3d 923 (alteration, omission, internal quotation marks, and citation omitted).

v. Austin Capital Mgmt., Ltd., 2015-NMSC-025, ¶ 6, 355 P.3d 1 (considering a defendant's attempt to apply Section 44-9-9(B)'s bar).

{5} Qui Tam Plaintiffs do not challenge the district court's finding that the "elements of the alleged false or fraudulent claims presented in [Qui Tam Plaintiffs'] Complaint had been publicly disclosed in the news media and in a publicly available governmental report in the [County's c]omplaint at the time [Qui Tam Plaintiffs'] Complaint was filed." Instead, Qui Tam Plaintiffs argue that the district court erred by (1) interpreting Section 44-9-9(D) as an "absolute bar" to their lawsuit; (2) failing to take into account the best interests of the parties and the public purposes behind FATA; (3) dismissing the action without requiring the State and County to first intervene in the action, show good cause as to why dismissal should be granted, and present evidence to support their motion; and (4) "overlooking" Section 44-9-7, which Qui Tam Plaintiffs argue provides a possible award to a qui tam plaintiff whose action is based primarily on information that has been publicly disclosed. While not entirely clear, Qui Tam Plaintiffs appear to argue that any of the foregoing errors alone, but certainly considered together, constituted an abuse of discretion by the district court, requiring reversal of the district court's order of dismissal and reinstatement of their Complaint.

Standard of Review

{6} As we have noted, Section 44-9-9(D) allows a district court to dismiss a FATA action "in its discretion" if certain elements are met. We review discretionary decisions for an abuse of discretion. *In re N.M. Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 6, 140 NM. 879, 149 P.3d 976. "We cannot say the district court abused its discretion by its ruling unless we can characterize the ruling as clearly untenable or not justified by reason." *Valerio v. San Mateo Enters., Inc.*, 2017-NMCA-059, ¶ 16, 400 P.3d 275 (alterations, internal quotation marks, and citation omitted). "When reasons both supporting and detracting from a decision exist, there is no abuse of discretion." *In re Camino Real Envtl. Ctr., Inc.*, 2010-NMCA-057, ¶ 23, 148 N.M. 776, 242 P.3d 343. A district court abuses its discretion "when it applies an incorrect standard, incorrect substantive law, or its discretionary decision is premised on a misapprehension of the law." *Aragon v. Brown*, 2003-NMCA-126, ¶ 9, 134 N.M. 459, 78 P.3d 913. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law." *Harrison v. Bd. of Regents of the Univ. of N.M.*, 2013-NMCA-105, ¶ 14, 311 P.3d 1236 (internal quotation marks and citations omitted).

I. Whether the District Court Interpreted Section 44-9-9(D) as an "Absolute Bar" to Qui Tam Plaintiffs' Lawsuit

{7} Qui Tam Plaintiffs first argue that "[t]he district court construed FATA as an absolute bar to [Qui Tam Plaintiffs'] lawsuit because [their] lawsuit incorporated some facts which had already been publicly reported." We understand Qui Tam Plaintiffs' argument to be that the district court misapprehended the discretionary aspect of its decision under Section 44-9-9(D) by adopting the arguments advanced by the State and County below, i.e., that Section 44-9-9(D) "preclude[s] the [district c]ourt's jurisdiction in this case" and "requires dismissal" if the district court found, as it did, that the elements of Qui Tam Plaintiffs' claims had been publicly disclosed. If, in fact, the district court interpreted Section 44-9-9(D) as an "absolute bar" to Qui Tam Plaintiffs' Complaint because the elements of fraud contained therein had been publicly disclosed, its dismissal would constitute an abuse of discretion. *See Aragon*, 2003-NMCA-126, ¶ 9 (noting that the district court's misapprehension of the law constitutes an abuse of discretion). However, for the reasons that follow, we disagree with Qui Tam Plaintiffs' characterization of the district court's order.

{8} Qui Tam Plaintiffs contend that the district court "agreed with the [State and County's] argument that [Qui Tam Plaintiffs'] lawsuit . . . is absolutely barred under the applicable provisions of [FATA.]" In support of this assertion, Qui Tam Plaintiffs cite paragraph eleven of the district court's order. That paragraph merely quotes language from the State and County's motion to dismiss stating that Qui Tam Plaintiffs' Complaint "is absolutely barred under [FATA]." Nothing in the district court's findings and conclusions indicate that the court agreed with the statement or that it applied Section 44-9-9(D) as an absolute bar to Qui Tam Plaintiffs' suit. Indeed, the district court's order cites, in full, Section 44-9-9(D), including that portion providing that "a court may, in its discretion, dismiss an action." In our view, this indicates the district court's awareness that any decision to grant or deny the State and County's motion would involve an exercise of discretion. On appeal, "there is a presumption of correctness in the rulings and decisions of the [district] court[,] and the party claiming error must clearly show error." *Best v. Marino*, 2017-NMCA-073, ¶ 42, 404 P.3d 450 (internal quotation marks and citation omitted). We do not presume a district court applied an incorrect standard, particularly in the absence of any evidence in the record tending to support an appellant's bald assertion that it did. *Cf. Robertson v. Carmel Builders Real Estate*, 2004-NMCA-056, ¶ 25, 135 N.M. 641, 92 P.3d 653 (refusing to presume error on the part of the district court where the appellant had failed to show that the district court applied the wrong standard of proof). Here, Qui Tam Plaintiffs have pointed to nothing in the record indicating that the district court misapprehended the discretionary nature of a dismissal under Section 44-9-9(D). We, therefore, reject Qui Tam Plaintiffs' contention that the district court erred by interpreting Section 44-9-9(D) as an absolute bar.

II. Whether the District Court Erred by Failing to Take Into Account the "Best Interests of the Parties and the Public Purposes Behind FATA"

{9} Qui Tam Plaintiffs next contend that the district court failed to "comply with" Section 44-9-5(A) when it dismissed their Complaint under Section 44-9-9(D). Section 44-9-5(A) states that "[o]nce filed, [a qui tam] action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind [FATA]." According to Qui Tam Plaintiffs, the district court "dismissed the case without taking into account the best interests of the parties involved . . . and the public purposes of the statute, such as exposing corruption by public officials like Mr. Padilla." The record does not support Qui Tam Plaintiffs' contention but rather demonstrates that the district court considered—and rejected—the "multiple advantages" that Qui Tam Plaintiffs' claimed their lawsuit afforded over the action previously brought by the County. We explain.

{10} Qui Tam Plaintiffs contended that the district court should not grant the motion to dismiss because their Complaint (1) offered numerous litigation advantages over the County's approach to recovering its $17 million loss, and/or (2) sought to expose public corruption and hold those engaged in public corruption accountable where the County's lawsuit did not. In urging the district court not to dismiss their Complaint, Qui Tam Plaintiffs argued that they had "brought to the table . . . a new theory, a better theory" that was "worth three times as much" as the County's lawsuit based on FATA's treble damages provision. Regarding the first contention, Qui Tam Plaintiffs argued that the multiple "advantages" offered in their FATA suit included that: Qui Tam Plaintiffs' FATA Complaint was neither removable to federal court nor subject to arbitration; Defendants were subject to treble damages, joint and several liability, attorney fees, and a civil penalty of between $5,000 and $10,000 per violation; and the FATA claims had to be proven only by a preponderance of the evidence rather than clear and convincing evidence. As to the second contention, Qui Tam Plaintiffs noted that their lawsuit brought claims under FATA and against Padilla individually, neither of which was included in the County's lawsuit. Qui Tam Plaintiffs claimed that they "brought . . . some additional information about Mr. Padilla[,]" which should allow their FATA claims to proceed. For those two reasons, Qui Tam Plaintiffs asked the district court to deny the motion to dismiss "or hold it in abeyance and require the County and the State to take reasonable steps to preserve th[e FATA] claims, in case the [County's lawsuit] doesn't work out."

{11} The record indicates that the district court considered each of Qui Tam Plaintiffs' arguments but ultimately was not persuaded that it should either hold the motion in abeyance or allow Qui Tam Plaintiffs' action to proceed under the facts and circumstances presented to it. The district court initially appeared receptive to Qui Tam Plaintiffs' arguments that it was in the "best interests of the public, . . . [the] County and the State" to allow their Complaint to proceed because of the financial and strategic advantages offered by FATA, particularly with respect to Qui Tam Plaintiffs' claim that their FATA lawsuit had

a potential recovery of $51 million compared to a recovery of only $17 million in the County's lawsuit. On this score, the district court inquired into the damages available in the County's lawsuit and ordered the parties to submit additional briefing to "better inform[]" the court regarding what the County's lawsuit "is likely to result in" and what its "limitations are." The district court wished to be so informed to "make sure that the public interest is going to be protected and served." The State and County's supplemental brief stated that the County was pursuing not only treble damages through its Unfair Practices Act claims,[2] but also punitive damages through its common law claims. Qui Tam Plaintiffs, on the other hand, continued to assert in their supplemental brief that the County's recovery in its lawsuit was limited to $17 million while recoverable damages would be $51 million under FATA. Based on all of the information, the district court ultimately found that the County's lawsuit "was substantially similar" to Qui Tam Plaintiffs' qui tam action and concluded that the County was already pursuing the claims related to the County's $17 million loss that was also the subject of Qui Tam Plaintiffs' action.

{12} Addressing the "additional information about Mr. Padilla" that Qui Tam Plaintiffs "brought" in support of their FATA claims, the district court noted that the "additional information" consisted of nothing more than allegations related to a single lunch meeting that Foy—at the relevant time, the vice president of finance at Security Federal Savings and Loan Association—claimed he had with Padilla somewhere between 1989 and 1992 (i.e., during Padilla's first term as Bernalillo County Treasurer) during which Padilla allegedly made an improper demand of Foy for a loan for a relative of Padilla.[3] The district court found that Qui Tam Plaintiffs "fail[ed] to explain how the 23[-]year[-]old allegations have any bearing to the present case, or to the present Defendants." The court further found that with the exception of the lunch-meeting-related allegations, all of the allegations of fraud in Qui Tam Plaintiffs' Complaint "mirror[ed]" those that had already been publicly disclosed. In other words, "taking into account the . . . public purposes behind [FATA]," the district court found the "additional information" brought by Qui Tam Plaintiffs insufficient to counsel in favor of allowing the action to proceed. Section 44-9-5(A).

{13} From the foregoing, it is clear that Qui Tam Plaintiffs' contention that the district court merely "rubber stamp[ed]" the State and County's motion to dismiss without regard for FATA's purpose is without merit. The fact that the district court was ultimately unconvinced by Qui Tam Plaintiffs' arguments that the best interest of the parties and the public purposes behind FATA weigh against dismissal of their Complaint and, therefore, exercised its discretion in the State and County's favor does not, without more, constitute an abuse of discretion. *See In re Camino Real Envtl. Ctr., Inc.*, 2010-NMCA-057, ¶ 23 ("When reasons both supporting and detracting from a decision exist, there is no abuse of discretion."). We, therefore, reject Qui Tam Plaintiffs' contention that the district court erred by failing to properly consider the parties' best interests or FATA's public purposes.

III. Whether the State and County Were Required to Intervene, Show Good Cause, and Present Evidence to Support Their Motion for the District Court to be Able to Consider and Grant the Motion to Dismiss Under Section 44-9-9(D)

{14} Qui Tam Plaintiffs also argue that FATA allows the government to seek dismissal of qui tam actions "only if they (A) file a motion to intervene, (B) with a showing of good cause, [and] (C) with admissible evidentiary proof, rather than unsupported and conclusory statements[.]" Qui Tam Plaintiffs rely on Section 44-9-6 to support their contention that when the government moves for dismissal under Section 44-9-9(D), it must first satisfy other FATA provisions—in particular, Section 44-9-6(B) and (F)—before the district court may grant dismissal. Section 44-9-6 provides in pertinent part:

> B. The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and to present evidence at a hearing.
>
> . . . .
>
> F. If the state or political subdivision elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the attorney general or political subdivision so requests, the qui tam plaintiff shall serve the attorney general or political subdivision with copies of all pleadings filed in the action and all deposition transcripts in the case, at the state's or political subdivision's expense. When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the attorney general or political subdivision to intervene at a later date upon a showing of good cause.

Qui Tam Plaintiffs attempt to import Section 44-9-6's procedural requirements and "good cause" standards into Section 44-9-9(D), contending that dismissals under Section 44-9-9(D) must satisfy the requirements of Section 44-9-6 in addition to Section 44-9-9(D)'s specific dismissal requirements.[4] Qui Tam Plaintiffs' argument runs afoul of well-established rules of statutory construction. **{15}** "The first guiding principle in statutory construction dictates that we look to the wording of the statute and attempt to apply the plain meaning rule, recognizing that when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 9, 148 N.M. 426, 237 P.3d 728 (alteration, internal quotation marks, and citation omitted). We are mindful that we must "exercise caution in applying the plain meaning rule" because "[i]ts beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. Particularly when construing an individual statutory section within a comprehensive act, we must "examine the overall structure of the act and consider each section's function within the comprehensive legislative scheme." *Britton v. Office of the Attorney Gen.*, 2019-NMCA-002, ¶ 27, 433 P.3d 320. However, even in doing so, "[w]e will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions." *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236. "In the absence of some statutory construction consideration that requires us to do so, we do not read

[2] *See* NMSA 1978, § 57-12-10(B) (2005) (providing that "[w]here the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars ($300), whichever is greater, to the party complaining of the practice").

[3] Qui Tam Plaintiffs alleged that, "During the lunch, after some pleasantries, Mr. Padilla stated that the reason he wanted a lending officer at the meeting was because Security Federal had refused to make a loan to Mr. Padilla's brother or brother-in-law. (Mr. Foy does not recall which, but it was a relative of Mr. Padilla's.) Mr. Padilla suggested that Security Federal should reconsider its refusal to make a loan to his relative. Mr. Padilla said that if Security Federal made the loan, he would make sure that [the] County invested money in Security Federal CDs."

[4] We note that Qui Tam Plaintiffs' assertion that the government is required to support any motion to dismiss a FATA action with "admissible evidentiary proof" rests on a misreading of Section 44-9-6(B). That Section 44-9-6(B) affords qui tam plaintiffs "an opportunity to . . . present evidence" does not somehow impose on the government a corresponding obligation to present evidence in support of its motion to dismiss under Section 44-9-9(D). We note, however, that the State and County indeed offered "evidence" in the way of the 2014 news articles, of which the district court took judicial notice, to establish Section 44-9-9(D)'s threshold requirement to dismissal: that the elements of Qui Tam Plaintiffs' Complaint had been publicly disclosed.

into a statute language . . . that the Legislature has not included." *Provisional Gov't of Santa Teresa v. Doña Ana Cty. Bd. of Cty. Comm'rs*, 2018-NMCA-070, ¶ 17, 429 P.3d 981; *see Regents of the Univ. of N.M.*, 1998-NMSC-020, ¶ 28 (explaining that appellate courts "will not read into a statute . . . language which is not there, particularly if it makes sense as written" (internal quotation marks and citation omitted)). Finally, "when the Legislature includes a particular word in one portion of a statute and omits it from another portion of that statute, such omission is presumed to be intentional." *State v. Jade G.*, 2007-NMSC-010, ¶ 28, 141 N.M. 284, 154 P.3d 659.

{16} As previously stated, Section 44-9-9(D), the section at issue here, provides:

> Upon motion of the attorney general or political subdivision, a court may, in its discretion, dismiss an action brought pursuant to Section 44-9-5 . . . if the elements of the alleged false or fraudulent claim have been publicly disclosed in the news media or in a publicly disseminated governmental report at the time the complaint is filed.

Plainly, Section 44-9-9(D) as written does not contain as prerequisites to dismissal that the government intervene in the action, establish good cause for dismissal, and present evidence to support its request. Qui Tam Plaintiffs would have us read into Section 44-9-9(D) requirements not only that are not there but also that we must presume the Legislature intentionally omitted. *See Jade G.*, 2007-NMSC-010, ¶ 28 (explaining that "when the Legislature includes a particular word in one portion of a statute and omits it from another portion of that statute, such omission is presumed to be intentional"). Qui Tam Plaintiffs do so without suggesting, much less demonstrating, that Section 44-9-9(D) does not make sense as written nor do they identify a statutory construction consideration (e.g., the need to resolve an ambiguity or a conflict between provisions) that would permit us to look to—and import—any other FATA provision(s) in order to effectuate Section 44-9-9(D)'s intent.

{17} FATA, while a comprehensive act whose sections are to be construed harmoniously, sets forth separate provisions that cannot be indiscriminately interchanged and imported across statutory sections as Qui Tam Plaintiffs attempt to do. Section 44-9-9(D) is a stand-alone proviso, allowing the district court, "in its discretion," to dismiss a qui tam plaintiff's FATA action if the government moves for dismissal and establishes that the elements of the qui tam plaintiff's fraud claims have been publicly disclosed. *Id.* The district court did not err by granting the State and County's motion to dismiss without first requiring the State and County to comply with Section 44-9-6's standards and requirements.

IV. The District Court Did Not Err By "Overlooking" Section 44-9-7 in Determining Whether to Dismiss Qui Tam Plaintiffs' Complaint

{18} Qui Tam Plaintiffs additionally invoke another of FATA's provisions—Section 44-9-7—to support its argument that the district court erred in granting dismissal. As Qui Tam Plaintiffs frame their argument, Section 44-9-7 "deals with the present situation, where [a] qui tam plaintiff files a complaint that is based on (a) some facts that are known to the news media or government, and (b) some facts and theories that were not known." Qui Tam Plaintiffs assert that under circumstances such as those presented here, "FATA's solution is to authorize a possible reduction in the qui tam[plaintiff]s' statutory share" rather than bar the action from proceeding. Thus, they argue, the district court "overlooked" Section 44-9-7, leading it to misinterpret Section 44-9-9(D) and erroneously dismiss their action. Again, Qui Tam Plaintiffs offer a strained construction of FATA, this time reflecting a misunderstanding of the interplay between Section 44-9-7 and Section 44-9-9(D).

{19} Section 44-9-7 governs the manner in which proceeds recovered through qui tam actions are to be distributed between the qui tam plaintiff and the government. Section 44-9-7(A)(1) provides that when the government litigates the action, the qui tam plaintiff shall receive between fifteen and twenty-five percent of the proceeds recovered, "depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action[.]" Section 44-9-7(A)(2) reduces the qui tam plaintiff's share to no more than ten percent of proceeds recovered in cases where "the court finds that the action was based primarily on disclosures of specific information, not provided by the qui tam plaintiff, relating to allegations or transactions . . . from the news media[.]" According to Qui Tam Plaintiffs, "Section 44-9-7 anticipates there will be cases where qui tam plaintiffs incorporate some public facts into their complaints." With this much, we agree. However, we do not agree with the conclusion Qui Tam Plaintiffs draw from this mere possibility: that the Legislature enacted Section 44-9-7's "sliding scale of rewards[,]" as they describe it, as an alternative to "barring such actions absolutely[.]" To read Section 44-9-7 as Qui Tam Plaintiffs do—i.e., as a "solution" to the "problem" of qui tam actions whose claims are based on publicly disclosed information—renders Section 44-9-9(D) superfluous. If the Legislature intended to allow all actions that incorporate publicly disclosed information to proceed and to merely limit the qui tam plaintiff's recovery in those cases, it would not have enacted Section 44-9-9(D).

{20} We must read Section 44-9-7 and Section 44-9-9(D) in a manner that gives effect to both provisions, which Qui Tam Plaintiffs' construction does not. *See Diamond v. Diamond*, 2012-NMSC-022, ¶ 25, 283 P.3d 260 ("When interpreting a statute, all sections of the statute must be read together so that all parts are given effect." (internal quotation marks and citation omitted)); *Blue Canyon Well Ass'n v. Jevne*, 2018-NMCA-004, ¶ 9, 410 P.3d 251 ("We interpret statutes to avoid rendering the Legislature's language superfluous." (internal quotation marks and citation omitted)). The proper way to understand Section 44-9-7 in relation to Section 44-9-9(D) is that in cases where a district court exercises its discretion under Section 44-9-9(D) and allows a qui tam action to proceed, Section 44-9-7 may serve to limit the potential recovery of the qui tam plaintiff. Section 44-9-7 in no way prohibits the district court from granting a motion to dismiss under Section 44-9-9(D).

V. Qui Tam Plaintiffs Have Failed to Demonstrate That the District Court Abused Its Discretion in Dismissing Their Complaint

{21} In the absence of any indication that the district court misapprehended the applicable sections of FATA in exercising its discretion and dismissing the Complaint, we need only resolve whether the appealed ruling "exceeds the bounds of all reason or is arbitrary, fanciful, or unreasonable." *Kilgore v. Fuji Heavy Indus. Ltd.*, 2009-NMCA-078, ¶ 39, 146 N.M. 698, 213 P.3d 1127 (internal quotation marks and citation omitted). Qui Tam Plaintiffs' points on appeal fail to supply justification for reversal under this governing review standard. After conceding that the elements of their allegations of false and fraudulent claims were based on publicly disclosed information—a concession which, under the plain language of Section 44-9-9(D), triggered a dismissal option at the district court's discretion—Qui Tam Plaintiffs proffered myriad arguments below as to why the district court should allow their action to continue. The record establishes that the court simply did not find any of Qui Tam Plaintiffs' arguments persuasive. Our jurisprudence makes clear that a district court's exercise of its discretion is ill-suited for second-guessing by an appellate tribunal. Qui Tam Plaintiffs nevertheless continue to make the same arguments to this Court and ask us to reach a different conclusion. We decline to do so. *See State v. United Bonding Ins. Co.*, 1970-NMSC-017, ¶ 22, 81 N.M. 154, 464 P.2d 884 ("Absent a clear abuse of discretion, [an appellate] court cannot interpose a different result even should it have a different view of the matter.").

{22} The fact that the district court's ruling is one that involves matters of public interest does not compel or justify our departure from the standards that guide our review of discretionary rulings and the fact-finding that underpins them. On the record and arguments before us, we cannot say that the district court's decision to grant the motion to dismiss was clearly untenable or not justified by reason. We, therefore, affirm the district court's ruling in this instance.

CONCLUSION

{23} For the foregoing reasons, we affirm the district court's order of dismissal.

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

WE CONCUR:
LINDA M. VANZI, Judge
JULIE J. VARGAS, Judge

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-046

No. A-1-CA-36622 (filed June 6, 2019)

KARIM SALEHPOOR,
Plaintiff-Appellee,
v.
NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY,
Defendant-Appellant,
and
WARREN OSTERGREN, DR. TOM ENGLER, BOARD OF REGENTS OF THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY, and DANIEL LOPEZ,
Defendants.

APPEAL FROM THE DISTRICT COURT OF SOCCORO COUNTY
Matthew G. Reynolds, District Judge

Released for Publication September 17, 2019.

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Opinion

Zachary A. Ives, Judge.

{1} Plaintiff Karim Salehpoor sued his former employer, Defendant New Mexico Institute of Mining and Technology, claiming, among other things, that Defendant wrongfully discharged him in violation of his employment contract. Defendant moved for summary judgment based on two theories of sovereign immunity under NMSA 1978, Section 37-1-23 (1976): (1) that Plaintiff's claim was time-barred and (2) that his claim was not based on a valid written contract. The district court denied the motion. We granted Defendant's petition for a writ of error pursuant to Rule 12-503 NMRA to review the nonfinal order. We affirm.

FACTS AND PROCEDURAL HISTORY

{2} Beginning in January 2008, Defendant employed Plaintiff as a tenure-track mechanical engineering professor under a series of written one-year employment contracts, the most recent of which covered the 2011/2012 academic year from August 8, 2011, through May 11, 2012. On April 2, 2012, Defendant's Vice President of Academic Affairs sent Plaintiff a memorandum informing him that Defendant would not enter into a new employment contract with him and directing him to "surrender all [of Defendant's] property[,] including keys[,]" by May 11, 2012. Plaintiff continued working for Defendant through that date.

{3} Plaintiff commenced this lawsuit on May 12, 2014, alleging that Defendant had breached their contract by wrongfully terminating him in violation of "the total employment agreement."[1] *See generally Garcia v. Middle Rio Grande Conservancy Dist.*, 1996-NMSC-029, 121 N.M. 728, 918 P.2d 7 (holding that an implied employment contract based on a written personnel policy is a "written contract" for purposes of Section 37-1-23(A)); *Whittington v. State Dep't of Pub. Safety*, 2004-NMCA-124, 136 N.M. 503, 100 P.3d 209 (making clear that the implied employment contract doctrine is applicable beyond the context of at-will employment and contractual terms relating to termination). Plaintiff alleged that his employment had ended on May 11, 2012,[2] when Defendant "breached [the] employment contract. . . by terminating [him,]" and that Defendant also breached the employment contract "[o]n or about April 2012" when it gave "notice of the impending termination of Plaintiff." Plaintiff alleged that his contract with Defendant "was reinforced and amplified by certain written personnel practices, memoranda, policies, and procedures . . . based upon which Plaintiff had a reasonable expectation of continued employment with discharge only for good cause proven." The complaint specified that Defendant's

> written policies and procedures and actual practices included a program of "progressive discipline" through which [Defendant] created self-imposed limitations on any discharge or discipline of an employee. These written policies and actual practices expressly limited the grounds for discharge and created self[-]imposed mandatory pre-termination steps and procedures.

{4} Defendant moved for summary judgment on Plaintiff's wrongful discharge claim based on two theories of sovereign immunity under Section 37-1-23. Defendant argued first that Section 37-1-23(B) barred Plaintiff's claim for wrongful discharge based on breach of contract because Plaintiff filed his complaint more than two years after his claim accrued. The parties did not dispute that Defendant gave Plaintiff notice of his termination on April 2, 2012, that Plaintiffs' employment terminated May 11, 2012, or that Plaintiff filed his complaint on May 12, 2014. Whether summary judgment was appropriate hinged on whether Plaintiff brought his claim "within two years from the time of accrual." Section 37-1-23(B). Plaintiff argued that his claim accrued from the date of his termination, May 11, 2012, while Defendant argued that Plaintiff's claim accrued on April 2, 2012, when Defendant gave Plaintiff the notice of nonrenewal.

{5} As an additional basis for summary judgment, Defendant argued that Section 37-1-23(A) barred Plaintiff's claim because it was not based on a valid written contract. This was so, according to Defendant, because Plaintiff had failed to allege that Defendant had breached a specific contractual term of any policy, employment manual, or other document. In response, Plaintiff pointed to his interrogatory answers and affidavit, which referenced a document, titled "Regulations Governing Academic Freedom and Tenure" (the Regulations), purportedly issued

[1]Plaintiff's complaint also included a claim for wrongful termination in violation of public policy, which the district court dismissed, and a claim for defamation, on which the district court granted Defendant's motion for summary judgment. Neither claim is part of this appeal.

[2]Due to an apparent typographical error, the complaint alleged that Plaintiff's "employment continued until May 11, 2013." The surrounding allegations make clear that Plaintiff meant to allege that his employment ended in 2012, and all of the evidence before us is to that effect.

by Defendant. In his affidavit, Plaintiff alleged that Defendant violated various provisions of the Regulations, including the procedure for providing notice of termination to employees and the prohibition against retaliatory termination. Defendant replied, claiming that Plaintiff had failed to produce in discovery or in response to the summary judgment motion any document that included the implied contract terms Defendant had allegedly breached.

{6} During the hearing on the summary judgment motion, Plaintiff's counsel read a document that he identified as the Regulations into the record. Defendant objected on the ground that Plaintiff had failed to produce the document in discovery and asserted that it was therefore unable to identify the document from which Plaintiff's counsel had read. The district court ordered supplemental briefing and directed Plaintiff to produce the document he had read from during the hearing. Plaintiff attached the Regulations to his supplemental brief along with responses to requests for production that identified the Regulations. In response, Defendant complained once again that Plaintiff had never produced the Regulations in discovery and argued that Plaintiff had failed to authenticate the Regulations.

{7} The district court denied Defendant's summary judgment motion. We granted Defendant's petition for a writ of error to review the district court's order.

DISCUSSION

I. Statute of Limitations

{8} Defendant first argues that the district court erroneously denied Defendant's motion for summary judgment based on the two-year statute of limitations in Section 37-1-23(B). Defendant contends Plaintiff's claim for wrongful discharge by breach of contract accrued on April 2, 2012, when Defendant notified Plaintiff that it had decided not to renew Plaintiff's contract.

{9} Because the parties do not dispute when Defendant gave Plaintiff notice of his termination, when Plaintiff's employment actually terminated, or when Plaintiff filed his complaint, our review is limited to whether the district court correctly applied the governing law to the undisputed facts. *See Haas Enters. v. Davis*, 2003-NMCA-143, ¶ 9, 134 N.M. 675, 82 P.3d 42. ("When facts relevant to a statute of limitations issue are not in dispute, the standard of review is whether the district court correctly applied the law to the undisputed facts."). We review this issue de novo. *Id.*

{10} Section 37-1-23(B) provides that claims for breach of a valid written contract against governmental entities "shall be forever barred unless brought within two years from the time of accrual." A claim accrues when all of the elements of the claim are present—when the claim "come[s] into existence as an enforceable claim or right[.]" *Accrue*, Black's Law Dictionary (10th ed. 2014); *see also* 1 Calvin W. Corman, *Limitation of Actions* § 6.1, at 370 (1991) ("It would clearly be unfair to charge [a] plaintiff with the expiration of any time before the plaintiff's cause of action could be prosecuted to a successful conclusion."). Plaintiff's wrongful discharge claim is based on Defendant's alleged breach of an implied contractual term, as described above. A breach of contract claim accrues at the time of breach. Corman, *supra*, § 7.2.1, at 482. Accordingly, "[t]he statute of limitations on a breach of contract claim runs from the date the contract is breached." *Nashan v. Nashan*, 1995-NMCA-021, ¶ 29, 119 N.M. 625, 894 P.2d 402. To determine whether Section 37-1-23(B) bars Plaintiff's claims, we must therefore identify the alleged breach.

{11} We begin with the basic premise that, because "[t]he law of contract is the law of promises[,]" 10 John E. Murray, Jr., *Corbin on Contracts* § 54.1, at 112 (rev. ed. 2014), an action for breach of contract is an action on a broken promise.[3] Ordinarily, a breach occurs when a party "fail[s] to perform a contractual obligation when that performance is called for[,]" UJI 13-822 NMRA—in other words, when the party fails to perform as promised. When an implied term of an employment agreement obligates the employer to follow specified termination procedures or to terminate the employee only for specified reasons, nonperformance occurs when the employer actually terminates the employee without following those procedures or for reasons other than those specified. *See* UJI 13-2302 NMRA ("[I]f [the employee's] discharge violated [the implied] agreement, then the discharge was wrongful."); UJI 13-2303 NMRA (same); *see also Gormley v. Coca-Cola Enters.*, 2004-NMCA-021, ¶ 12, 135 N.M. 128, 85 P.3d 252 (discussing "the termination element of a claim of breach of implied contract to terminate for just cause only").

{12} Applying these principles, we conclude that Defendant did not fail to perform its obligations under any implied agreement by providing Plaintiff with the April 2, 2012, notice of nonrenewal. If Plaintiff is correct that an implied agreement required Defendant to refrain from terminating Plaintiff unless Defendant used specific procedures or had specific reasons for termination, Defendant could only breach the agreement by actually terminating Plaintiff in a manner inconsistent with the agreement's terms. We therefore hold that Plaintiff's cause of action accrued when Plaintiff's employment terminated, and that the time for bringing his wrongful discharge claim under Section 37-1-23(B) began to run only then. Because Plaintiff filed his complaint on May 12, 2014—exactly two years from the accrual of his claim—the district court correctly concluded that Plaintiff's claim was timely.

{13} Defendant does not claim that any breach by nonperformance occurred before May 11, 2012. Instead, citing UJI 13-822, Defendant contends that the breach at issue occurred, if at all, on April 2, 2012, when it notified Plaintiff that his contract would not be renewed. We disagree.

{14} UJI 13-822 and UJI 13-824 NMRA address the doctrine of anticipatory repudiation. UJI 13-822 states that "[a] person may breach a contract by . . . announcing ahead of time that he or she will not perform a contractual obligation when the time for that performance comes due[.]" And UJI 13-824 provides that "[i]t is a breach of contract if, before performance became due, [the promisor] announce[s] or otherwise demonstrate[s the promisor's] intention not to perform a contractual obligation[.]" Neither these instructions nor other authorities addressing anticipatory repudiation support Defendant's requested holding. The doctrine of anticipatory repudiation is an exception to the general rule that only a party's failure to perform as promised constitutes a breach. It allows a party to a contract to treat the contract as breached upon learning of the other party's repudiation of its contractual obligations—its "distinct, unequivocal, and absolute refusal to perform according to the terms of the agreement." *Gilmore v. Duderstadt*, 1998-NMCA-086, ¶ 15, 125 N.M. 330, 961 P.2d 175 (internal quotation marks and citation omitted). The doctrine protects a non-breaching party's expectation, not only that the other party will perform, but also that the other party will refrain from "substantially . . . impair[ing]" that expectation of performance by allowing the nonrepudiating party to file suit immediately after communication of the repudiation. Restatement (Second) of Contracts ch. 10, topic 3, intro. note (1981). *See generally* Murray, *supra*, §§ 54.1, 54.2.

{15} Critically, however, an anticipatory repudiation "is not automatically" a breach of contract; a repudiation does not operate as a breach unless "it [is] treated as such *at the election of the promisee*." UJI 13-824 Committee Commentary (emphasis added). Because the decision to treat a repudiation as a breach is the non-breaching party's to make, repudiation does not start the statute of limitations clock unless and until the non-repudiating party makes that decision. *E.g.*, Murray, *supra*, § 54.31, at 333 ("There is no necessity for making the statutory period of limitation begin to run against the plaintiff until the day fixed by the contract for the rendition of performance, at least unless the plaintiff definitely elects to regard the anticipatory repudiation as a final breach."); Corman, *supra*, § 7.2.1, at 488 ("The aggrieved party is entitled to sue either when the anticipatory repudiation occurs or at the later time for performance under the contract. The time of accrual consequently depends on whether the injured party chooses to treat the anticipatory repudiation as a present breach."); 4

[3]Because of the "imbalance of power" inherent in the employer-employee relationship and the need to protect the "reasonable expectations employers create in their employees," employment contracts "represent a unique body of law." *Campos de Suenos, Ltd. v. Cty. of Bernalillo*, 2001-NMCA-043, ¶ 26, 130 N.M. 563, 28 P.3d 1104. While these and similar public policy considerations may require departure from ordinary principles of contract law when those principles do not square with the realities of modern employment, *see, e.g.*, *Hartbarger v. Frank Paxton Co.*, 1993-NMSC-029, ¶¶ 7-12, 115 N.M. 665, 857 P.2d 776, neither party has persuaded us that such departure is necessary to decide this appeal.

Arthur Linton Corbin, *Corbin on Contracts* § 989, at 967 (1951); Restatement (First) of Contracts § 322 (1932); *cf. Gibbs v. Whelan*, 1952-NMSC-005, ¶ 10, 56 N.M. 38, 239 P.2d 727 ("A party to a contract cannot take advantage of his own act or omission to escape liability thereon.").

{16} Defendant invokes the general principle that an anticipatory repudiation may operate as a breach, but does not argue that Plaintiff elected to treat the notice of April 2, 2012, as a breach before his employment terminated. We are under no obligation to review undeveloped arguments, *see Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076, and we will not scour the record for facts that might support Defendant's position. The undisputed record evidence suggests that Plaintiff did not treat the notice as a breach. He continued to work for Defendant until his termination in May 2012, and he did not file suit until after that time. Absent evidentiary support for a finding that Plaintiff elected to treat the notice as a breach, we conclude that, even if Defendant's notice of nonrenewal rose to the level of an anticipatory repudiation, it did not start the statute of limitations clock.

{17} Defendant cites *Tull v. City of Albuquerque*, 1995-NMCA-123, 120 N.M. 829, 907 P.2d 1010, for the proposition that "'[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action[.]'" *Id.* ¶ 8 (quoting *Del. State Coll. v. Ricks*, 449 U.S. 250, 257 (1980)). Neither this metaphor nor any other aspect of *Tull* persuades us that the district court erred. In *Tull*, we rejected the plaintiffs' argument that a continuing-wrong theory extended the time in which to bring contractual failure-to-promote claims under NMSA 1978, Section 37-1-24 (1941). *Tull*, 1995-NMCA-123, ¶ 11. The plaintiffs were city employees who alleged that they had been promised an increase in pay to reflect increased job responsibilities they had assumed. *Id.* ¶¶ 2, 4. The plaintiffs claimed that a new wrong in the form of a breach of contract occurred each time they received a paycheck that did not reflect the allegedly promised levels of compensation. *Id.* ¶ 4. According to the plaintiffs, each deficient paycheck restarted the limitations clock for purposes of Section 37-1-24. *Tull*, 1995-NMCA-123, ¶ 4. We disagreed, concluding that "[t]he only actionable wrong alleged . . . [was] the [c]ity's initial refusal to increase laintiffs' salaries"—its breach of a "promise [to provide] a pay raise *as of the time* [*the plaintiffs*] *assumed increased job responsibilities*." *Id.* ¶¶ 10-11 (emphasis added). Accordingly, we held that because "the actual breach of contract" at issue was the failure to pay increased wages, the "continuing consequences [of that breach] in the form of lower paychecks . . . d[id] not extend the life of Plaintiffs' breach of contract cause of action[.]" *Id.* ¶ 11.

{18} *Tull* has no bearing on this appeal, the outcome of which does not depend on whether the alleged wrong was single or continuing. The issue before us is when Plaintiff's claim "accru[ed]" under Section 37-1-23(B), and, as we have explained, that did not occur under the facts presented until the actual termination of Plaintiff's employment. The metaphor we used in *Tull* does not fit here. The continuation of Plaintiff's employment did not prolong the life of his wrongful termination claim. It delayed the birth of that claim.[4]

II. Valid Written Contract

{19} Defendant also argues that the district court erred by denying its motion for summary judgment because Defendant is immune from Plaintiff's suit. Defendant seeks refuge in Section 37-1-23(A), which grants "[g]overnmental entities . . . immunity from actions based on contract, except actions based on a valid written contract."

{20} Our process for reviewing an order denying summary judgment involving immunity from suit "is more complex than a review of ordinary summary judgment decisions." *Campos de Suenos, Ltd. v. County of Bernalillo*, 2001-NMCA-043, ¶ 9, 130 N.M. 563, 28 P.3d 1104. "[A] party losing its immunity from suit in an adverse summary judgment decision may file a writ of error seeking immediate review of that decision in order to protect its right not to stand trial. *Id.* Nevertheless, "not every challenge to a denial of immunity is appropriate for immediate, collateral review because some assertions of immunity are inseparable from the merits of the case." *Id.* We generally limit the scope of our review of immunity decisions under the collateral order doctrine to "abstract issues of law," but review evidentiary issues that arise as we would in any summary judgment case, by viewing the evidence "in the light most favorable to the party opposing the motion." *Id.* ¶¶ 9-10 (internal quotation marks and citation omitted). We then "determine whether the opposing party has presented sufficient evidence to overcome an assertion of immunity from suit," which "is a legal question that we review de novo." *Id.* ¶ 10.

{21} Applying this standard, we conclude that the district court did not err in denying Defendant's summary judgment motion. It is undisputed that Defendant and Plaintiff executed a written employment contract in May 2011 covering Plaintiff's employment between August 8, 2011, and May 11, 2012. When a written employment contract exists, "our courts have been particularly sensitive to an employee's reliance upon extrinsic evidence to aid in interpreting an existing employment relationship evidenced by a writing." *Univ. of N.M. Police Officer's Ass'n v. Univ. of N.M.*, 2005-NMSC-030, ¶ 18, 138 N.M. 360, 120 P.3d 442. "[T]hat extrinsic evidence has usually been in the form of other writings, such as a personnel manual or written memoranda regarding a written contract." *Id.*; *see, e.g.*, *Garcia*, 1996-NMSC-029, ¶¶ 12-13. "Whether an employer's words and conduct support a reasonable expectation on the part of employees that they will be dismissed only in accordance with specified procedures or for specified reasons generally is a question of fact for the jury." *Mealand v. E. N.M. Med. Ctr.*, 2001-NMCA-089, ¶ 9, 131 N.M. 65, 33 P.3d 285. The employer's "promissory statement [must be] sufficiently explicit to support a jury finding that this statement established a norm of conduct." *Id.* ¶ 14 (alteration, internal quotation marks, and citation omitted).

{22} Plaintiff's wrongful discharge theory rests on these precedents. Plaintiff claims that the contract for the 2011/2012 academic year does not state all of the terms of the parties' employment agreement, that other documents memorialize additional terms, and that Defendant breached those additional terms. In response to Defendant's summary judgment motion, Plaintiff relied on the Regulations Governing Academic Freedom and Tenure. Plaintiff's counsel pointed to Subsection II(D), which is titled "Non-reappointment and Termination of Appointments by the Institute." Counsel contended that Defendant had violated Subsection II(D) by terminating Plaintiff without giving him sufficient advance notice. Defendant does not argue on appeal that the content of the Regulations is insufficient, as a matter of law, to support Plaintiff's claim that Defendant had contractually restricted its power to terminate him.

{23} Instead, Defendant argues that the district court's reliance on the Regulations in denying its summary judgment motion was improper for two apparently separate reasons. First, Defendant argues that Plaintiff failed to present evidence that the Regulations were in effect at the time his employment terminated. Defendant appears to claim that if the Regulations were not in effect during the relevant time period, then they were not part of the "written contract," and Plaintiff's claim could not be "based on" them for purposes of Section 37-1-23(A). If, however, it is reasonable to infer from the record that the Regulations were in effect during the relevant time period, we cannot reverse the district court. *See Madrid v. Brinker Rest. Corp.*, 2016-NMSC-003, ¶ 16, 363 P.3d 1197 (internal quotation marks and citation omitted) ("We resolve all reasonable inferences in favor of the party opposing summary judgment[.]"). The Regulations state that they were "[a]pproved by the Board of Regents of New Mexico Institute of Mining and Technology 1 April 1985." On their face, the Regulations are evidence that Defendant adopted them before Plaintiff joined Defendant's faculty.[5] Defendant

[4]Both parties urge us to borrow from opinions issued by courts in other jurisdictions that address how those jurisdictions' time-bar statutes apply to various types of employment claims under those jurisdictions' laws. Because New Mexico law and established principles of contract law dictate the outcome of this appeal, we have no need to rely on, or even discuss, the out-of-jurisdiction cases the parties have cited. *Cf. In re Adoption of Francisco A.*, 1993-NMCA-144, ¶ 67, 116 N.M. 708, 866 P.2d 1175 (Hartz, J., specially concurring) (recognizing that New Mexico is unique and that discussing out-of-jurisdiction authorities is no substitute for analyzing pertinent New Mexico law).

presented no evidence that the Regulations did not remain in effect at the end of Plaintiff's employment. On this record, the district court could have reasonably inferred that the Regulations were still in effect at the time Plaintiff contends he was terminated. The district court could only have granted summary judgment for Defendant by assuming that Defendant had rescinded, replaced, or amended the Regulations in a manner and at a time that precluded them from serving as implied terms of the parties' contract. But summary judgment decisions must rest on evidence, not assumptions. The district court did not err by rejecting Defendant's argument about effective dates.

{24} Defendant also argues that Plaintiff failed to establish that the Regulations are authentic under our rules of evidence. Had this been the only argument in Defendant's petition for a writ of error, we would have denied the petition. A district court's discretionary ruling about whether a particular document is authentic, *see State v. Trujillo*, 2002-NMSC-005, ¶ 15, 131 N.M. 709, 42 P.3d 814, does not cry out for immediate review under a writ of error, even when that document is pertinent to an immunity issue. As our Supreme Court has recognized, "considerations of delay, comparative expertise of trial and appellate courts, and wise use of appellate resources" weigh in favor of limiting collateral review to cases presenting abstract issues of law. *Handmaker v. Henney*, 1999-NMSC-043, ¶ 16, 128 N.M. 328, 992 P.2d 879 (internal quotation marks and citation omitted); *see also Campos de Suenos, Ltd.*, 2001-NMCA-043, ¶ 17 (noting that we generally reserve writ of error review for discrete legal issues). If we routinely used writs of error to review discretionary rulings on the admissibility of evidence, we would expand the collateral order doctrine beyond appropriate bounds, producing an excessive number of piecemeal appeals. *See Carrillo v. Rostro*, 1992-NMSC-054, ¶ 23, 114 N.M. 607, 845 P.2d 130 (noting that if the collateral order doctrine is applied in too many contexts, it will "allow interruption of trial court proceedings by any party claiming hardship because of postponement of review[,]" and "piecemeal appeals . . . will become the order of the day").

{25} We nevertheless exercise our discretion to decide the merits of the authentication issue because, under the unusual facts of this case, declining to review the issue at this juncture would not advance the interests underlying the collateral order doctrine. Because we have granted the writ of error to review other issues that are properly before us, our simultaneous review of the related authentication question does not increase delay and involves minimal expenditure of appellate resources.

{26} Where, as here, a party has raised a timely objection to evidence submitted in summary judgment proceedings, the proponent of the evidence must "set forth facts as would be admissible in evidence[.]" *Mealand*, 2001-NMCA-089, ¶ 23 (internal quotation marks and citation omitted). A district court's evidentiary rulings, including rulings on the authenticity of evidence, "will not be disturbed absent a clear abuse of discretion." *Trujillo*, 2002-NMSC-005, ¶ 15 (internal quotation marks and citations omitted); *State v. Mora*, 1997-NMSC-060, ¶ 53, 124 N.M. 346, 950 P.2d 789 (reviewing ruling on authenticity of documents for abuse of discretion), *abrogated on other grounds by State v. Frazier*, 2007-NMSC-032, 142 N.M. 120, 164 P.3d 1. We will not presume that the district court abused its discretion, *State v. Bonilla*, 2000-NMSC-037, ¶ 6, 130 N.M. 1, 15 P.3d 491, but will instead presume the "rectitude and regularity" of the proceedings, *State v. Gonzales*, 1986-NMCA-050, ¶ 28, 105 N.M. 238, 731 P.2d 381, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110. The party challenging an evidentiary ruling bears the burden of establishing that it "was obviously erroneous, arbitrary or unwarranted." *Trujillo*, 2002-NMSC-005, ¶ 15 (internal quotation marks and citations omitted).

{27} When authentication is at issue, "[t]here is no abuse of discretion when the evidence is shown by a preponderance of the evidence to be what it purports to be." *State v. Jackson*, 2018-NMCA-066, ¶ 13, 429 P.3d 674 (internal quotation marks and citation omitted). Rule 11-901(A) NMRA states: "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Rule 11-901(B) provides a non-exhaustive list of examples of evidence that satisfy the authentication requirement. One example is evidence that has "[d]istinctive characteristics and the like." Rule 11-901(B)(4). An item of evidence may be authenticated based on distinctive characteristics when "[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances" support a finding that the item is what it purports to be. *Id.*

{28} The district court did not abuse its discretion because various distinctive characteristics of the Regulations provided it with a sufficient basis for concluding that they were more likely than not authentic. The first page of the document includes a distinctive logo that features the school's nickname (New Mexico Tech), a graphic representation of three mountains, and the words "SCIENCE," "ENGINEERING," "RESEARCH," and "UNIVERSITY." This same logo appears on two other key documents that the court and the parties treated as authentic: the parties' contract for the 2011/2012 academic year and the memorandum notifying Plaintiff of Defendant's decision to terminate him. The first page of the Regulations also includes an appropriate title, the formal name of the school, and the school's location. The second page includes a table of contents with many headings, all of which describe subject matter appropriate for regulations on academic freedom and tenure. The second page also states that the Regulations were "[a]pproved by the Board of Regents of New Mexico Institute of Mining and Technology" in 1985. The remaining ten pages of the document include text that addresses, in the order indicated, the same topics listed in the table of contents. The "appearance, contents, substance, [and] internal patterns," Rule 11-901(B)(4), of the Regulations sufficiently supported the district court's conclusion that they were authentic.[6] Its decision to consider the Regulations therefore was not "obviously erroneous, arbitrary or unwarranted." *Trujillo*, 2002-NMSC-005, ¶ 15 (internal quotation marks and citations omitted).

CONCLUSION

{29} We affirm the district court's order denying Defendant's motion for summary judgment and remand for further proceedings consistent with this opinion.

{30} IT IS SO ORDERED.
ZACHARY A. IVES, Judge

WE CONCUR:
JULIE J. VARGAS, Judge
KRISTINA BOGARDUS, Judge

[5]During the summary judgment hearing, the district court suggested that it would grant the motion if it concluded, after reviewing the parties' supplemental briefs, that the Regulations went into effect *after* the 2011/2012 academic year. Plaintiff's supplemental brief included the Regulations, which indicate that Defendant adopted them long before Plaintiff's employment began.

[6]We express no opinion about whether Rule 11-901(B)(4) was the only proper vehicle for authenticating the Regulations.

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Sheryl L. Saavedra has represented family law clients for over 25 years in Litigation and Collaboratively in Divorce, Custody, Child Support, Guardianships, Adoptions and Guardian ad Litem representation of children. She is an executive board member for the University of New Mexico School of Law Alumni Board and is the Public Image Chair for Rotary District 5520.

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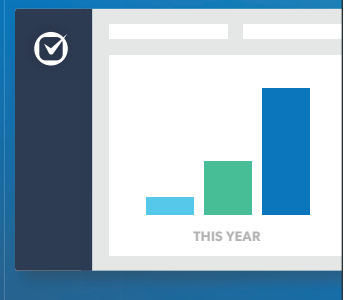

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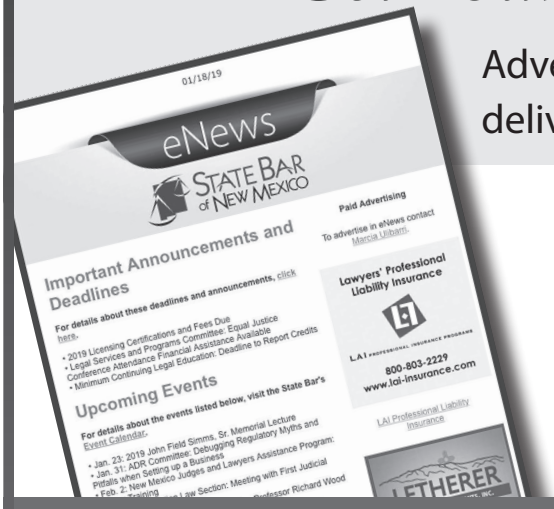

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at 505-797-6058 or email mulibarri@nmbar.org

Linda Rockwell, Hon. Tommy Jewell (Ret.), and **Hon. Angela J. Jewell (Ret.)** are pleased to welcome **Hon. Deborah Davis Walker (Ret.)** into their shared office suite to continue her family law settlement facilitation and mediation practice. All four are available for mediation, settlement facilitation, and related matters. Linda Rockwell and Tommy Jewell continue in their law practices at the same location.

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Albuquerque, NM 87102

Telephone:
Rockwell: (505) 247-3700 ◆ **Jewell:** (505) 247-7426 ◆ **Walker:** (505) 247-7426

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Members of the Catholic Legal Community
Join us on Thursday, February 6, 2020
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At Sacred Heart Parish, 309 Stover Avenue SW, 87102

9:00 a.m. Mass for the Preservation of Peace and Justice (Church)
10:00 a.m. Gathering Members of the Catholic Legal Community with Casual Brunch (Hall)

Join us for the Mass or Gathering or both.

Please let us know you are attending.
Call: 505-831-8194 or email: aflores@archdiosf.org by February 3, 2020

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2020 *Bar Bulletin* Publishing and Submission Schedule

Starting in January, the *Bar Bulletin* will publish twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

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.

—Mediation—
John B. Pound

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

Classified

Positions

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.

Personal Injury Attorney

Get paid more for your great work. Salary plus incentives paid twice a month. Great benefits. Outstanding office team culture. Learn more at www.HurtCallBert.com/attorneycareers

Assistant Attorney General

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.

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.

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.

NM Children, Youth and Families Department-Assistant General Counsel

The New Mexico Children, Youth and Families Department (CYFD) is hiring for the position of Assistant General Counsel. CYFD is dedicated to improving the lives of children and provides an array of prevention, intervention, rehabilitative and after-care services to New Mexico children and their families. CYFD is focused on rebuilding New Mexico's access to community based mental health services for children, implementing new initiatives like extended foster care, and continuing to improve as a youth-centered, trauma responsive system. Working in the Office of the Counsel (OGC) this positions will be responsible for representing the Department in administrative law hearings, and in a limited number of court proceedings as well as other matters as assigned by the General Counsel. The position will also be responsible for reviewing and participating in the finalization of policies and procedures and reviewing documents pursuant to the Inspection of Public Records Act. Additionally, the position will advise staff and senior management regarding legal and public policy issues; represent the OGC in internal and external public meetings, communications with outside entities and individuals, research and writing clear and concise legal memoranda, correspondence, rules, proposed litigation and contracts. Attorneys with experience representing children, foster parents, protecting the rights of children and showing commitment to public service highly encouraged to apply. Strong research, writing, and legal analysis skills are required. An ability to complete projects with multiple moving parts while meeting deadlines is also required. The attorney in this position will be expected to work independently when necessary and work collaboratively to achieve the best results for CYFD. Benefits include medical, dental, vision, paid vacation, and retirement package. Interested attorneys need to apply through the State Personnel Office website Job Order # 104730 and may submit resumes directly to Lisa Fitting at LisaM.Fitting@state.nm.us

Attorney

Seeking an attorney who is able to thrive in a productive fast-paced environment. Must be organized, independent and willing to collaborate. Our firm specializes in providing aggressive and compassionate representation to workplace victims. We offer competitive salary and great benefits in a great team-based work environment. Please email resume and writing sample to benfurth64@yahoo.com.

Assistant District Attorney

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

Associate Attorney

Immediate opportunity in downtown Albuquerque for an Associate Attorney. Practice area is Real Estate. Litigation and transactional experience are required. Experience with Home Owners Associations is a plus WordPerfect knowledge and experience is highly desirable. Send resume and writing sample to: Steven@BEStstaffJobs.com

Alternative Dispute Resolution Mediators and Facilitators

The New Mexico Public Education Department (NMPED), Special Education Bureau, is seeking Mediators and Facilitators to resolve disputes between parents/third parties and school districts under the Individuals with Disabilities Education Act (IDEA). Contracts will be awarded for a four-year period, from March 16, 2020 through June 30, 2024, renewable annually. Applicants must be experienced Mediators and/or Facilitators with knowledge of special education related issues. The Request for Applications for Mediators and Facilitators is available on the Special Education Bureau website at http://ped.state.nm.us/ped/SEB_index.html. The deadline to submit separate applications for Mediator and/or Facilitator is February 5, 2020.

Assistant City Attorney for Litigation Division

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Litigation Division. The department's team of attorneys represent the City in litigation matters in New Mexico State and Federal Courts, including trials and appeals, and provide legal advice and guidance to City departments. Attention to detail and strong writing skills are essential. Three (3)+ years' experience is preferred, with additional preference for civil defense litigation experience, and must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Associate Attorney

Doughty Alcaraz, P.A., a law firm located in downtown Albuquerque, is seeking a full-time attorney with 1-4 years experience in civil litigation. Excellent benefits. All replies will be kept confidential. Send cover letter, resume and a writing sample to Heather@doughtyalcaraz.com.

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.

New Mexico Court of Appeals Law Clerks and Senior Law Clerks in Albuquerque

Judges Jacqueline Medina and Briana Zamora of the N.M. Court of Appeals are each seeking a law clerk and senior law clerk to begin in September 2020. Law clerks work closely with judges to write opinions and resolve cases involving all areas of the law. Outstanding legal research and writing skills are necessary. Law clerk positions require one year of experience performing legal research, analysis and writing while employed or as a student and graduation from an ABA accredited law school by the time you begin employment. Current annual salary is $61,247. Senior law clerk positions require four years of experience in the practice of law or as an appellate law clerk and a New Mexico law license. Current annual salary is $69,222. Please send resume, cover letter, writing sample and law school transcript to: Anna Box, Court Manager, coaamb@nmcourts.gov, 2211 Tucker Avenue, Albuquerque NM, 87106.

New Mexico Public Education Department – Attorney Position

The New Mexico Public Education Department (NMPED) is seeking an attorney for its Office of General Counsel. In addition to practicing education law, the attorney may be relied on for advice on matters relating to contracts, procurement, employment, public records, federal and state government funding, and/or other governmental agency matters. Strong writing and interpersonal skills are essential. More details about positions and how to apply are provided on the State Personnel Office website at http://www.spo.state.nm.us/. Please check the website periodically for updates to the list of available positions.

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.

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

Associate

Robles Rael & Anaya, P.C. is seeking an associate with a minimum of 3 years of experience. Candidates must possess strong research and writing skills and have experience with a broad range of litigation matters. The successful candidate will represent clients in all phases of litigation proceedings, whether in federal or state court, arbitration, or administrative law forums. Competitive salary, benefits, 401k and bonus plan. Inquiries will be kept confidential. Please e-mail a letter of interest and resume to chelsea@roblesrael.com.

Senior Children's Court Attorney Positions

The Children, Youth and Families Department is seeking to fill a vacant Children's Court Attorney position that is housed in offices in Gallup and Grants, New Mexico. Salary range is $58,480 to $93,384 annually, depending on experience and qualifications. The position will represent the Department in abuse/neglect and termination of parental rights proceedings and related matters in McKinley and Cibola counties. The ideal candidate will have experience in the practice of law totaling at least four years and New Mexico licensure is required. Benefits include medical, dental, vision, paid vacation, and a retirement package. For information, please contact; David Brainerd, Managing Attorney, at (505) 327-5316 ext. 1114. To apply for this position, go to www.state.nm.us/spo/. The State of New Mexico is an EOE.

Associate Attorneys

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.

Court of Appeals Judge Jennifer L. Attrep Senior Law Clerk in Santa Fe

Judge Jennifer L. Attrep of the New Mexico Court of Appeals is hiring for a Senior Law Clerk in Santa Fe. The Senior Law Clerk will work closely with the Judge to draft opinions and resolve cases involving all areas of the law. Outstanding legal research and writing skills are necessary. Four years of legal practice or clerking experience and a New Mexico law license are required. Current annual salary is $69,222. Please send cover letter, resume, law school and undergraduate transcripts, and writing sample to: AOC, Attn: Nathan Hale, aocneh@nmcourts.gov, 237 Don Gaspar, Room 25, Santa Fe, NM 87501.

Commercial Liability Defense, Coverage Litigation Attorney P/T maybe F/T

Our well-established, regional, law practice seeks a contract or possibly full time attorney with considerable litigation experience, including familiarity with details of pleading, motion practice, and of course legal research and writing. We work in the are of insurance law, defense of tort claims, regulatory matters, and business and corporate support. A successful candidate will have excellent academics and five or more years of experience in these or highly similar areas of practice. Intimate familiarity with state and federal rule of civil procedure. Admission to the NM bar a must; admission to CO, UT, WY a plus. Apply with a resume, salary history, and five-page legal writing sample. Work may be part time 20+ hours per week moving to full time with firm benefits as case load develops. We are open to "of counsel" relationships with independent solo practitioners. We are open to attorneys working from our offices in Durango, CO, or in ABQ or SAF or nearby. Compensation for billable hours at hourly rate to be agreed, generally in the range of $45 - $65 per hour. Attorneys with significant seniority and experience may earn more. F/T accrues benefits. Apply with resume, 5-10p legal writing example to revans@evanslawfirm.com with "NM Attorney applicant" in the subject line.

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 1/31/20 to andree@batleypowers.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.

Attorney

PT and FT attorney positions available in our Santa Fe NM offices. All replies confidential. Please send resumes to xc87505@gmail.com.

Assistant City Attorney for the Municipal Development Department, Real Property Division

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Development Department, Real Property Division. The position represents the City in all aspects of real property needs. Responsibilities include negotiating, drafting, reviewing, advising and approving commercial contracts for the sale/purchase, lease/rent, license, use, exchange, grants of easements and donation of real property. This position will represent the City in any related litigation. Advises on implementation of federal, state and city rules and regulations concerning telecoms, property management, right-of-way acquisitions and relocations. Prosecute condemnation, quiet title, eviction and foreclosure actions. Attention to detail and strong writing skills are essential. Preferences include: five years as an attorney experience; with at least two years of real property experience. Candidate must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Due Process Hearing Officers

The Public Education Department, Special Education Bureau, is seeking licensed New Mexico attorneys to serve as due process hearing officers for disputes between parents and school districts or charter schools under the Individuals with Disabilities Education Act (IDEA). Applicants must have at least five years of current or prior experience in the active practice of law, preferably with a strong emphasis in administrative law or representation of governmental agencies. Knowledge or experience in special education or disability law is highly desirable, as is experience adjudicating contested cases as a hearing officer, special master, administrative review officer or arbitrator, or as an attorney or advocate appearing before such tribunals. The ability to analyze complex legal issues and express clear legal reasoning in written decisions is required. Residents outside the Albuquerque-Santa Fe areas are invited to participate (for a statewide pool). One-year contracts will be awarded, renewable at the Public Education Department's option in one-year increments for three additional years. The Request for Applications (RFA) is available on the Special Education Bureau website at http://ped.state.nm.us/ped/SEB_index.html. Applications must be submitted by U.S. mail or courier service to the Procurement Manager, Special Education Bureau, by 5:00 p.m. (MT) on February 5, 2020.

New Mexico Corrections Department seeks General Counsel

The New Mexico Corrections Department is hiring for the position of General Counsel (NMCD). NMCD's mission is Strengthen New Mexico Communities through effective community supervision, creating safe and professional institutional environments and, providing those entrusted to our care with opportunities for positive personal growth and self-development. The General Counsel represents the Department in legal matters that involve many divisions including the office of the Cabinet Secretary, the Adult Prisons Division, Probation and Parole Division, Training Academy, Corrections Industries, and Administrative Services Division. Preferred applicants will have a commitment to public service and significant legal practice experience in public law. The successful candidate will have familiarity with or the ability to master the following areas: Legislative drafting and interpretation; policy making and revision; public records inspection and retention; representation of public bodies; administrative adjudications, appeals, and rulemakings; negotiation and preparation of contracts; federal and state grant programs; joint powers agreements; civil litigation; employment law; public finance, bond issuances, and bond refunding's; local government taxes and finances; civil litigation, appeals, and records management. This list is not exhaustive and conveys NMCD General Counsel's diverse practice. Successful applicants must have strong analytic, research, communication and interpersonal skills. The salary range is from $85,000 to $100,000 per year. Interested attorneys may submit an application to Matt Garcia, General Counsel to the Governor, directed to Vanessa.Kennedy@state.nm.us. Learn more about NMCD at www.cd.nm.gov

IT Manager

The State Bar of New Mexico is seeking an in-house IT Manager for a full-time, exempt position. The State Bar is membership organization of approximately 10,000 members and has a staff of 35 employees. The successful candidate will serve two functions within the State Bar. First, he/she will coordinate between the State Bar and external vendors/contractors regarding IT-related infrastructure and development. Second, the IT Manager will handle IT issues for State Bar staff and IT support of internal IT systems. The successful candidate will possess a working knowledge of database and website technology along with a solid understanding of Microsoft Office and Enterprise applications. Excellent benefits, salary dependent on experience and qualifications. EOE. Visit https://www.nmbar.org/NmbarDocs/AboutUs/Careers/ITPM.pdf for details and application instructions.

Paralegal

The law firm of Butt Thornton & Baehr PC has an opening for an experienced litigation Paralegal (4+ years). Excellent organization, computer and word processing skills required. Must have the ability to work independently. Generous benefit package. Salary DOE. Please send letter of interest and resume to, Gale Johnson, gejohnson@btblaw.com

Legal Assistant/Paralegal

Part-time (with the potential to become full-time) Legal Assistant/Paralegal needed for busy Northeast Heights law office. Litigation legal experience required, preferably in the area of probate and estate law. Ideal candidate will be committed to exceptional client service and be personable, friendly, diligent, flexible, reasonable, an independent thinker and a self-starter. Must have exceptional typing/word processing and proofreading skills. Responsibilities primarily include proofreading, filing documents with the courts, document drafting and occasional file upkeep and client interaction. Please email resume to abqlawfirmjob@gmail.com.

Bookkeeper

Immediate opportunity in a busy downtown Albuquerque Law Firm for a PT Bookkeeper. Monday – Friday from ~12:30 to 5:30pm. Proficiency with QuickBooks is required. Routine functions include AP/AR, Payroll, Banking, Taxes, GL, Reporting, etc. Experience with Trust Accounts is highly desirable. Send resume to: Steven@BEStstaffJobs.com

Paralegal

F/T paralegal needed for fast paced family law office. Excellent computer skills, ability to multitask and being a good team player are all required. Spanish speaking preferred. Pay DOE. Fax resume: 242-3125 or mail: Law Offices of Lynda Latta, 715 Tijeras Ave. NW, 87102 or email: holly@lyndalatta.com No calls.

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.

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Uptown Attorney Office in single story office building shared by sole practitioners and small law firm with centrally staffed reception area, two conference rooms, law library, and kitchen. Office has large windows with natural light, security system, ample parking and access to freeway. $750 month. Phone, internet, copier, postage, and secretarial bays available for additional fee. Call 266-8787 or email manager@ABQlawNM.com.

Miscellaneous

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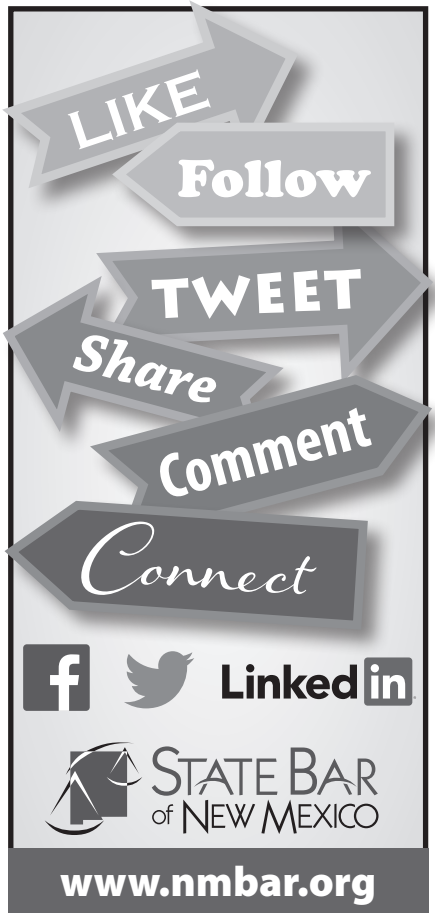
Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201



ARTURO L. JARAMILLO

Summer Law Clerk Program

- ☑ **Does your firm or business want to be part of an ABA Awarded program? It's the only one of its kind in the country!**
- ☑ **Do you want to help ignite first year law students' passion in your field of law?**
- ☑ **Are you committed to promoting diversity and inclusion through the membership of the State Bar?**

If you answered yes to one or all of these questions, then participating in the **Arturo Jaramillo Clerkship Program** can help accomplish these goals! Arturo L. Jaramillo, the first Hispanic president of the State Bar of New Mexico, developed the Summer Law Clerk Program ("Program") in 1993 to offer first year law students of diverse backgrounds the opportunity to clerk in legal settings that provide a foundation for the students' law careers and to promote equal employment opportunities for persons who have historically been under-represented in the legal profession. The Program creates employment opportunities in medium and large law firms, state and local public agencies, and corporate law departments in New Mexico by providing a summer law clerk experience for motivated and deserving law students who meet the programs eligibility criteria.

To learn more, please contact the organizers of the program!

lhoward@aclu-nm.org

DChanez@rodey.com

mo@saucedochavez.com

STATE BAR of NEW MEXICO

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&

New Mexico Judicial Conclave

June 17-20, 2020 ✧ Santa Fe

Join the State Bar of New Mexico and the New Mexico Judiciary for this historic event!

State Bar of New Mexico

JEC
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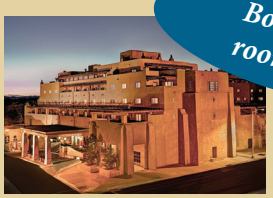

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