

BAR BULLETIN

February 12, 2020 • Volume 59, No. 3



Surveillance, by Natalie Christensen (see page 3)

www.nataliechristensenphoto.com

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CLE Planner

*Upcoming programming
from the
Center for Legal Education*

Stelzner, Winter, Warburton Flores, Sanchez & Dawes, P.A.

We are pleased to announce that effective December 31, 2019 Dan Gershon, Quentin Smith & Eleanor Werenko have joined our firm. Dan, Quentin and Eleanor previously practiced with Sheehan & Sheehan, P.A. and we are delighted they have chosen to join our team!



Dan has been practicing since 1986. Prior to joining the Stelzner firm, Dan was Deputy General Counsel and Acting General Counsel at the New Mexico Department of Transportation and a partner at Sheehan & Sheehan. Dan will continue representing clients on construction matters, bid protests and procurements, claims against utility companies, eminent domain, regulatory takings, water law, quiet title, and torts.

Quentin graduated summa cum laude from the University of New Mexico School of Law in 2003 and served as a law clerk for the Honorable Pamela B. Minzner of the New Mexico Supreme Court. Quentin was an attorney with Gilkey & Stephenson, P.A., and then a shareholder at Sheehan & Sheehan including serving as its Managing Director. Quentin has a wealth of knowledge and experience in all aspects of employment and civil rights law.

Eleanor holds a Bachelor's degree in Spanish Language and Literature from the University of New Mexico and graduated from the University of New Mexico School of Law. She represents business and government clients in general business and commercial law matters. Her practice focuses on contracts, administrative law, real estate, land use and zoning.

Please join us in welcoming them to our firm.

302 8th Street NW, Suite 200 ~ Albuquerque, New Mexico 87102 ~ (505) 938-7770



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Meetings

February

- 12**
Business Law Section Board
4 p.m., teleconference
- 12**
Children's Law Section Board
Noon, Children's Court, Albuquerque
- 12**
Tax Law Section Board
9 a.m., teleconference
- 14**
Prosecutors Section Board
Noon, teleconference
- 18**
Solo and Small Firm Section Board
10:30 a.m., State Bar Center
- 20**
Public Law Section Board
Noon, Legislative Finance Committee, Santa Fe
- 21**
Family Law Section Board
9 a.m., teleconference

Workshops and Legal Clinics

February

- 20**
Common Legal Issues for Senior Citizens
Workshop Presentation 10-11:15 a.m.,
First Baptist Church of Bosque Farms,
Bosque Farms, 1-800-876-6657
- 26**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6094

March

- 4**
Divorce Options Workshop 6-8 p.m.,
State Bar Center, Albuquerque,
505-797-6022
- 25**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., State Bar Center, Albuquerque,
505-797-6094

About Cover Image and Artist: Santa Fe, New Mexico photographer Natalie Christensen's enchanting focus is on banal peripheral settings. Influenced by 25 years as a psychotherapist, her photos favor psychological metaphors. She deconstructs to color fields, geometry and shadow. "Sometimes I get a glimpse of the sublime in these ordinary places." Christensen has exhibited in the U.S. and internationally, and recently was a guest of the United Arab Emirates Embassy on a UAE cultural tour. She led photography workshops at The Royal Photographic Society, London and Meow Wolf, Santa Fe and participated in site-specific projects in the U.S. and U.K. The recipient of several prestigious photography awards, Christensen's work is in the permanent collections of the Fort Wayne Museum of Art, Indiana and the University of Texas, Tyler. Her photography has been featured in noted fine art publications.

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. 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 of New Mexico

Open House for U.S. District Judge Kea W. Riggs

Please join us for an open house hosted by the Federal Bench and Bar of the U.S. District Court for the District of New Mexico for the Honorable Kea W. Riggs and her chambers staff. Judge Riggs was sworn in as a U.S. District Judge for the District of New Mexico on Dec. 31, 2019. An open house will be held on Feb. 18 from 4-6 p.m. at the U.S. Courthouse in Las Cruces, N.M. (100 N. Church Street, Third Floor) and on March 20 from 3-5 p.m. at the Pete V. Domenici United States Courthouse (333 Lomas Blvd NW, Suite 770) in Albuquerque, N.M. All members of the bench and bar are cordially invited to attend either or both events. R.S.V.P., if attending, to Cynthia Gonzales at 505-348-2001, or by email to usdcevents@nmd.uscourts.gov.

New Mexico Court of Appeals Candidate Announcement

The New Mexico Court of Appeals Nominating Commission convened on Jan. 17 at the Court of Appeals located at 2211 Tucker NE, Albuquerque, and completed its evaluation of the six candidates for the one vacancy on the New Mexico Court of Appeals. The Commission recommends the following candidates to Governor Michelle Lujan Grisham:

Professionalism Tip

With respect to opposing parties and their counsel:

I will refrain from excessive and abusive discovery, and I will comply with reasonable discovery requests.

Leander Bergen, Shammara Haley Henderson, Kerry Christopher Kiernan and Jane Bloom Yohalem.

Bernalillo County Metropolitan Court Volunteers are Needed for Legal Clinics

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

First Judicial District Court Notice of Mass Case Reassignment

Effective Jan. 27, a mass reassignment of all Division II Family Court cases previously assigned to Judge Maria Sanchez-Gagne will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. The Honorable Shannon Broderick Bulman has been appointed to Division III of the First Judicial District and will maintain a Family Court Docket. Parties who have not previously exercised their right to challenge or excuse will have ten days from March 11 to challenge or excuse Judge Shannon Broderick Bulman pursuant to Rule 1-088.1. Effective Jan. 27, a mass reassignment of all Division III cases previously assigned to Judge Raymond Z. Ortiz will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. The Honorable Maria Sanchez-Gagne will now maintain a Civil Docket in Division II of the First Judicial District. Parties who have not previously exercised their right to challenge or excuse will have ten days from March 11 to challenge or excuse Judge Maria Sanchez-Gagne pursuant to Rule 1-088.1.

Fifth Judicial District Court Announcement of Applicants

One application was received in the Judicial Selection Office for the Judicial Vacancy in the Fifth Judicial District Court, due to the resignation of the Honorable Kea W. Riggs, effective Dec. 31, 2019. The Fifth Judicial District Court Nominating Commission met on Jan. 30 at the Chaves County Courthouse, 400 N. Virginia, Roswell, to evaluate the applicant for this position. The Commission meeting was open to the public. The name of the applicant: **Jared Kallunki**.

Thirteenth Judicial District Court

Announcement of Applicants

The Thirteenth Judicial District Nominating Commission met on Dec. 16, 2019, and submitted the following 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: Steven Paul Archibeque, James Andrew Noel and Christopher G. Perez. On Dec. 20, 2019, pursuant to her authority to do so, Governor Lujan Grisham requested that the commission submit additional names to her for consideration. Eight applications were received in the Judicial Selection Office for the Judicial Vacancy in the Thirteenth Judicial District Court, by the deadline. The Thirteenth Judicial District Court Nominating Commission will reconvene at 9 a.m., Feb. 3, at the Thirteenth Judicial District Court - Sandoval located at 1500 Idalia Rd, Bernalillo, N.M. 87004, to evaluate the additional applicants for this position. The Commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting. The names of the applicants in alphabetical order: **Cynthia Anne Aragon (Stanaland), Roberta Yvonne Baca, Geenebah Michelle Brown-Yazzie, Catherine Anne Cameron, Michael Vern Davis, Sonya Kay Duke-Noel, Kevin Arthur Graham and Simone M. Seiler.**

Nominating Commission

The Thirteenth Judicial District Court Nominating Commission convened on Jan. 28 at the Thirteenth Judicial District Court - Sandoval located at 1500 Idalia Rd, Bernalillo, N.M. 87004, and completed its evaluation of the eleven candidates for the one vacancy on the Thirteenth Judicial District Court. The Commission recommends the following candidates to Governor Michelle Lujan Grisham: **Geen-ebah Michelle Brown-Yazzie, Michael Vern Davis and Christopher G. Perez.**

STATE BAR NEWS

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

- Feb. 19, noon-1 p.m.
- March 4, noon-1 p.m.
- March 18, 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. 19, 5:30-7 p.m.
- March 4, 5:30-7 p.m.
- March 18, 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! Contact Tenessa Eakins at 505-797-6093 or teakins@nmbar.org for questions.

Attorney Support Groups

Substance Abuse

- Feb 17, 5:30 p.m.
 - March 2, 5:30 p.m.
 - March 9, 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.

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>.

Minimum Continuing Legal Education

Compliance Deadline

Dec. 31 was the last day to complete 2019 Minimum Continuing Legal Education re-

— *Featured* —

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quirements without additional fees. To check your compliance, the schedule of fees and deadlines, and find listings of up-coming, pre-approved courses, visit www.nmbar.org/MCLE. Contact MCLE with questions at 505-797-6054 or mcle@nmbar.org.

Board of Bar Commissioners Client Protection Fund Commission

The Board of Bar Commissioners will make one appointment to the Client Protection Fund Commission for the remainder of an unexpired term through Dec. 31, 2021. Active status attorneys in New Mexico who would like to serve on the Commission should send a letter of interest and brief resume by Feb. 21 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Solo and Small Firm Section February Lunch Series: Bob Huelskamp, Private Nuclear Security Contractor

Bob Huelskamp, career nuclear non-proliferation and security expert, returns as featured speaker for the Feb. 18 luncheon, noon at the State Bar Center, hosted by the Solo and Small Firm Section and open to all members of the bar, including staff and guests. Huelskamp, formerly with

Sandia Labs in this international capacity for 25 years, is now a private contractor. His presentation in Nov. 2018 on legal controls to prevent international nuclear confrontation was widely-acclaimed, and his topic again will be especially timely: "Iran's Nuclear Weapons Ambition: Maintaining the Strategic Balance in a Dangerous World." Lunch is provided free of charge all to section members, including those who join (\$15 annual section fee) at the luncheon, and also available to all registrants, who may purchase lunch for \$15. Please RSVP to Member Services at memberservices@nmbar.org.

Appellate Practice Section Brown Bag Presentation with Jus- tices Bacon and Justice Thomson

You are invited to the first appellate brunch bag luncheon of 2020 where Justices C. Shannon Bacon and David K. Thomson of the New Mexico Supreme Court will be our guest speakers. The luncheon is informal and intended to create an opportunity for appellate practitioners to learn more about Justices Bacon and Thomson and the work of the Court. Those attending are encouraged to bring their own "brown bag" lunch. Please join us on Feb. 19 at the State Bar Center. R.S.V.P. to Jazmine Ruiz at jjr@atlerfirm.com.

Young Lawyers Division Volunteer Attorneys/Paralegals Needed for Bernalillo Wills for Heroes

The Young Lawyers Division will be hosting the first 2020 Wills for Heroes event in Bernalillo County on Saturday, Feb. 29. Wills for Heroes volunteer attorneys provide wills, advance healthcare directives and powers of attorney free of charge to New Mexico first-responders. Volunteer paralegals will serve as witnesses and notaries. For more information and to sign up, please visit nmbar.org/Wills-ForHeroes.

Applications Open for ABA YLD District Representative

The Young Lawyer Division is seeking applications for the American Bar Association's YLD District 23 Representative position! The two-year position begins Sept. 1. To be eligible, applicants must be a member of the ABA Young Lawyers Division for the entire two-year term, have their principal office or residence

in New Mexico, and have attended (or plan to attend) one of the four national ABA meetings in the last year (annual, YLD fall, midyear, YLD spring). This is a partially-funded position, and attendance at a leadership training in June 2020 is strongly encouraged. The deadline to apply is Friday, Feb. 21 and to learn more about the position and application process, visit the YLD elections page: <https://nmbar.org/YLD>

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: 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 nmchristianlegalaids.org or email christianlegalaids@hotmail.com

Albuquerque Bar Association's

2020 Membership Luncheons

- Feb. 13: Karen Moses, executive director of the *Albuquerque Journal*, speak-

ing on journalism in New Mexico

- March 3: Dean Sergio Pareja presenting an update from UNM School of Law
- April 14: Morris Chavez, Esq., presenting a legislative update (1.0 G)

Please join us for the Albuquerque Bar Association's 2020 Membership Luncheons. Lunches will be held at the Embassy Suites, 1000 Woodward Place NE, Albuquerque from 11:30 a.m.–1 p.m. The costs for the lunches are \$30 for members and \$40 for non-members. There will be a \$5 walk-up fee if registration is not received by 5 p.m. on the Friday prior to the Tuesday lunch. To register, please contact the Albuquerque Bar Association's interim executive director, Deborah Chavez at dchavez@vancechavez.com or 505-842-6626. Checks may be mailed to PO Box 40, Albuquerque, N.M. 87103.

OTHER NEWS

Administrative Hearings Office

Santa Fe County Implied Consent Act/MVD Hearing Location Change

On Feb. 17, the Santa Fe Office of the State of New Mexico Administrative Hearings Office will temporarily relocate to Willie Ortiz Building (State Personnel Office), 2600 Cerrillos Road, Santa Fe, N.M. 87505-3258. Effective February 17, 2020, all Santa Fe County Implied Consent Act/MVD/D.W.I. license revocation administrative hearings will occur at this new office location, as will be noted on the notices of hearing and subpoenas issued in the relevant cases. This only impacts cases scheduled to be heard in Santa Fe County, as no other hearing locations across the state other than Santa Fe County are affected by this move. For more information, including a link to a map of this new Santa Fe office location, please visit www.aho.state.nm.us.

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners for the State Bar and the NM State Bar Foundation met on Dec. 11, 2019, at the New Mexico Supreme Court, Santa Fe. Action taken at the meeting follows:

- Approved the Oct. 25, 2019, meeting minutes;
- Accepted the October 2019 financials;
- Received a report on licensing renewals;
- Received the 2020 Budget Disclosure and reported that no challenges to the budget were received;
- Received a request from the Southern Christian Leadership Conference of New Mexico to sponsor the keynote speaker, former American Bar Association President Juan Thomas, for their annual Martin Luther King, Jr. Luncheon and approved a sponsorship in the amount of \$1,000;
- Received the amended three-year Strategic Plan which included statewide and out-of-state member outreach;
- Approved recognition for the ATJ Commission at the Legislature and a reception following in Santa Fe in 2020;
- Appointed Don Schutte to the vacancy on the Board of Bar Commissioners in the Fifth Bar Commissioner District for a one-year term through Dec. 31, 2020;
- Reappointed James C. Martin to the New Mexico Legal Aid Board for a three-year term;
- Appointed the 2020 Board of Bar Commissioners Liaisons to the Supreme Court Boards, Committees and Commissions;
- Signed up commissioners for the 2020 Internal Committees of the Board of Bar Commissioners;
- Approved the creation of a Past Presidents Committee which will be chaired by the immediate past president;
- Pursuant to the State Bar Bylaws regarding the annual review of sections

and committees, the Board received letters requesting continuance from the following: Alternative Dispute Resolution Committee, Board of Editors, Appellate Practice Section, Business Law Section, Intellectual Property Law Section, Real Property, Trust and Estate Section and Trial Practice Section; and approved continuing all of them for another five years;

- The Board went into executive session and approved a three-year contract for the executive director;
- Reported that the Executive Committee met to review and approve the meeting agendas;
- Received a report and recommendations from the Policy and Bylaws Committee, which included providing 30 days' notice of amendments to Article IX, Sections, of the State Bar Bylaws, and approved the Section Bylaws template which staff will begin rolling out to the sections next year;
- Received an update from the Special Committee charged with reviewing the Solo and Small Firm Section's request to become a division; a subcommittee was appointed to meet with the section board, and the section board will be discussing the proposal further before meeting with the subcommittee;
- Received an update from the Regulatory Committee; we have received some feedback on the new Legal Specialization program from current specialists, and staff and committee members will be attending section meetings and holding town hall meetings to explain the program next year; the Board requested the committee to evaluate the feedback received and make a recommendation to the Board; the draft Self-

Study rule that will benefit the NM Medical Review Board and others has been drafted and will be sent to the NMSC before the end of the year;

- Received a report from the Member Service Committee and a presentation on the Member Services Marketing Plan; the committee is going to be exploring the possibility of merging the bar commissioner districts with the judicial districts;
- Received a report from the Public Law Section on their activities;
- Received the election results for the Board of Bar Commissioners: Lucy H. Sinkular was reelected to a three-year term and Tomas J. Garcia was elected to a one-year term in the First Bar Commissioner District; Carolyn A. Wolf was reelected to a three-year term in the Third Bar Commissioner District; and David P. Lutz was reelected and Connie J. Flores was elected to three-year terms in the Seventh Bar Commissioner District;
- Received the 2020 Board meeting dates as follows: Feb. 7, April 17-18, June 18 (Santa Fe, in conjunction with the State Bar Annual Meeting), Sept. 25, and Dec. 9 in Santa Fe;
- Tabled a presentation on CLE Planning and Development to the February meeting; and
- Presented awards to commissioners with terms expiring this year, including: Paralegal Division Liaison Lynette Rocheleau, Sean M. Fitzpatrick from the First Bar Commissioner District, Mick I. R. Gutierrez from the Seventh Bar Commissioner District, and Wesley O. Pool from the Fifth Bar Commissioner District; and presented a token of appreciation to President Dixon for his service as president this year.

REPORT BY DISCIPLINARY COUNSEL

DISCIPLINARY QUARTERLY REPORT

Reporting Period: October 1, 2019 – December 31, 2019

Final Decisions

Final Decisions of the NM Supreme Court 4
Matter of Eric Morrow, Esq., (No. S-1-SC-37923). Pursuant to a Conditional Agreement Admitting the Allegations and Consenting to Discipline, the New Mexico Supreme Court issued an order on October 21, 2019 suspending Respondent from the practice of law for a period of eighteen (18) months, which was deferred, and Respondent was placed on supervised probation for that period of time for violations of Rules 16-101, 16-103, 16-104, 16-115(D), and 16-804(D).

Matter of J. Marcos Perales Pina, Esq., (No. S-1-SC-37402). The New Mexico Supreme Court issued an order on November 6, 2019 permanently disbaring Respondent from the practice of law. This matter was brought before the Court on an Order to Show Cause, Respondent was held in contempt for violating the Court's order of March 8, 2019.

Matter of Rosanna C. Vazquez, Esq., (No. S-1-SC-37896). The New Mexico Supreme Court issued an order on December 9, 2019 permanently disbaring Respondent from the practice of law for violations of Rules 16-801, 16-804(C), and 16-804(D). Respondent was ordered to provide an accounting of all monies received, pay restitution, reimburse the Client Protection Fund, and pay costs to the Disciplinary Board.

Matter of Rafael Padilla, Esq., (No. S-1-SC-37594). The New Mexico Supreme Court issued an Opinion on December 19, 2019 in connection with its July 9, 2019 Order suspending Respondent from the practice of law.

Summary Suspensions

Total number of attorneys summarily suspended 0

Administrative Suspensions

Total number of attorneys administratively suspended 0

Disability Inactive Status

Total number of attorneys removed from disability inactive states 0

Charges Filed 0

Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law 0

Reciprocal Discipline

Total number of attorneys reciprocally disciplined 0

Reinstatement from Probation

Petitions for reinstatement filed 3

Matter of G. Paul Howes, Esq. (S-1-SC-23414) Respondent petitioned for reinstatement on May 7, 2019 to the practice of law from a reciprocal disbarment.

Matter of Joseph M. Tapia, Esq. (S-1-SC-18414) Respondent petitioned for reinstatement on July 27, 2019 to the practice of law from an indefinite suspension.

Matter of Eric D. Dixon, Esq. (S-1-SC-37204) Respondent petitioned for reinstatement on September 11, 2019 to the practice of law from an indefinite suspension.

Formal Reprimands

Total number of attorneys formally reprimanded 2

Matter of Michael Garrett, Esq. (Disciplinary No. 2018-11-4420) a Formal Reprimand was issued at the Disciplinary Board meeting of October 11, 2019, for the violation of Rule 16-101, failing to provide competent representation to the client; Rule 16-107, engaging in representation that presented a concurrent conflict of interest; and Rule 16-804(D), engaging in conduct that is prejudicial to the administration of justice. The Formal Reprimand was published in the State Bar Bulletin issued October 30, 2019.

Matter of Daniel M. Faber, Esq. (Disciplinary No. 2018-12-4421) a Formal Reprimand was issued at the Disciplinary Board meeting of October 11, 2019, for the violation of Rule 16-115(D), by not promptly to a third person funds held under a letter of protection; Rule 16-115(E), not holding the funds received in an IOLTA until the dispute regarding the funds was resolved; and Rule 16-803(C), engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. The Formal Reprimand was published in the State Bar Bulletin issued October 30, 2019.

Informal Admonitions

Total number of attorneys admonished 0

Diversion

Total number of attorneys referred to diversion 3

Letters of Caution

Total number of attorneys cautioned 9

Attorneys were cautioned for the following conduct: (1) Failure to pay on LOP; (2) prosecutorial misconduct; (3) lack of competence; (4) conflict of interest (2 letters of caution issued); (5) disruption of a tribunal; (6) improper statements about Judge's integrity; (7) improper means; and (8) lack of diligence – failure to expedite.

Complaints Received

Allegations.....	No. of Complaints
Trust Account Violations.....	0
Conflict of Interest.....	19
Neglect and/or Incompetence.....	57
Misrepresentation or Fraud.....	9
Relationship with Client or Court.....	31
Fees.....	6
Improper Communications.....	4
Criminal Activity.....	0
Personal Behavior.....	2
Other.....	30
Total number of complaints received.....	158

Legal Education

February

- | | | |
|---|---|--|
| <p>19 Unlocking the Mysteries of Google Scholar
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 The Secrets of Leveraging Your Law Practice: Effective Operations, Efficiency Hacks and Outsourcing for the Modern Law Firm (2019 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Meet John Adams: A Lively and Revolutionary Conversation with America's Second President (2019 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>20 Prosecution in NM: Best Practices in State and Tribal Prosecution, Skills and Practice
11.1 G
Live Seminar
New Mexico Coalition Of Sexual Assault Programs
www.nmcasap.org</p> | <p>21 Reforms in Adult Guardianship (2019 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Ethics and Malpractice Potpourri (2019)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>21 Family Feuds in Trust: How to Anticipate and Avoid
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Responding to Demand Letters: Tone and Substance
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>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</p> |
| <p>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</p> | <p>26 Cornucopia of Law: Practical Application for Paralegals and Lawyers (2019)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>Feb. 28-March 1 Taking and Defending Depositions
31.0 G, 4.5 EP
Live Seminar
UNM School of Law
http://lawschool.unm.edu/cle/live_programs/depositions.html</p> |
| <p>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</p> | <p>26 Clarence Darrow – A One-Man Play Starring Judge Sandy Brooks (2019 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

March

- | | | |
|--|---|--|
| <p>4 Impeach Justice Douglas!
3.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>4 Office Leases: Current Trends & Most Highly Negotiated Provisions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 35th Annual Bankruptcy Year in Review Seminar
6.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
|--|---|--|

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

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|--|---|--|
| <p>6 Live Oak CLE
6.0 G, 1.0 EP
Live Seminar
Live Oak CLE
www.nevadacle.com</p> | <p>24 Ethics and Conflicts with Clients, Part 1
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Regional Seminar
17.2 G, 1.0 EP
Live Seminar
Trial Lawyers College
307-432-4042</p> |
| <p>12 Practical Tech and eDiscovery Advice for the Non-Tech Attorney
1.5 G
Live Seminar
International Litigation Services
888-313-4457</p> | <p>25 Ethics and Conflicts with Clients, Part 2
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27-29 Taking and Defending Depositions
31.0 G, 4.5 EP
Live Seminar
UNM School of Law
http://lawschool.unm.edu/cle/live_programs/depositions.html</p> |
| <p>13 Thurgood Marshall's Coming!
2.5 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 2020 Americans with Disabilities Act Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Business Law 101: Back to Basics (2019)
4.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>13 How to Practice Series: Adult Guardianship
4.0 G, 2.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Who's Your Biggest Critic? Your Boss? A Colleague? Or You?
1.5 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Introduction to Legal Research on Fastcase 7 (2019 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>13 Governance for Nonprofit and Exempt Organizations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Abuse and Neglect Cases in Children's Court (2019)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 The Sandwich Generation: Strategies for Caregivers (2019 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>19 Indemnification & Hold Harmless Agreements in Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Using Metrics and Analytics for Ethical Solo and Small Firm Marketing (2019)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Immigration Law: Updates and Best Practices in Preparing VAWA Applications (2019)
1.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>23 Health Care Issues in Estate Planning
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

2020 President ERNESTINA R. CRUZ *Is Sworn In*



Signing the oath of office



*Carolyn Wolf, Tina Cruz, and
Carla Martinez*

The 2020 officers of the Board of Bar Commissioners were sworn in on Dec. 11, 2019, at the New Mexico Supreme Court in Santa Fe by Chief Justice Judith K. Nakamura. The officers are President Ernestina “Tina” R. Cruz, President-Elect Carla C. Martinez, Secretary-Treasurer Carolyn A. Wolf and Immediate Past President Gerald G. Dixon.

For more photos, visit
www.nmbar.org/photos.

Photos by Cassandra Scott



*Carla Martinez, surrounded by her
family, is sworn in as President-Elect*



*Carolyn Wolf is sworn in as
Secretary-Treasurer*



Holland & Hart LLP is pleased to announce that 15 attorneys have been elected into the firm's partnership, effective Jan. 1. The newly elected partners serve clients in a range of practice areas and industries and work from several offices in the firm's footprint that includes eight states and Washington, D.C. "Each of our new partners has achieved a level of preeminence in their practice areas to earn the trust and respect of clients," said

Chris Balch, firm chair. "They have each demonstrated a commitment to the firm's core values, including teamwork, innovation, excellence, and diversity and inclusion that are critical to the firm's continued success" added Balch. The new Santa Fe-based partner is **Adam Rankin** of Santa Fe, specializing in environmental and natural resources. Rankin counsels clients in the energy industry on environmental and natural resources compliance, permitting, administrative appeals, and complex litigation. He defends clients in a range of environmental actions in state and federal court, including class action royalty claims; and challenges federal royalty assessments before administrative agencies.



Durham, Pittard & Spalding, LLP is pleased to announce that **Caren I. Friedman** has joined the firm as a partner in the Santa Fe office. Friedman served as a judicial clerk to the Honorable Santiago Campos in the U.S. District Court for the District of New Mexico and then went on to clerk for the Honorable Robert Henry in the U.S. Court of Appeals for the Tenth Circuit. After her clerkships, Friedman moved to Washington

D.C. where she practiced in the Appellate Section of the Office of General Counsel at the Equal Employment Opportunity Commission. In that capacity, she briefed and argued federal appeals in circuits throughout the country. As appellate counsel of record in over 50 reported decisions, Friedman joins the firm after 15 years of running a solo appellate practice. During that time, Friedman gained a reputation as one of New Mexico's top appellate attorneys. Friedman joins colleagues Justin Kaufman and Rosalind Bienvenu, who focus on appeals and strategic litigation support at trial, working with trial lawyers and firms around the country and throughout New Mexico in a wide range of personal injury, products liability, toxic tort, medical malpractice, and wrongful death cases. Friedman will add depth to the firm's established expertise and will expand the firm's range through her ongoing work in a broad array of civil and criminal appeals.



Matthew M. Beck was elected to the Board of Directors of the Rodey Law Firm on Jan. 23. Beck is the leader of Rodey's Investigations and Criminal Defense Practice Group. Beck's practice focuses on criminal defense, including white collar crimes, corporate investigations, professional liability defense, and complex and commercial litigation. Prior to joining Rodey, Beck was an assistant U.S. attorney. In 2018, Beck was awarded

the United States Attorney's Award for extraordinary professional achievement for his prosecution of the largest criminal case in New Mexico's history.



Henry M. ("Hank") Bohnhoff was elected to the Board of Directors of the Rodey Law Firm on Jan. 23. Bohnhoff is a member of Rodey's Complex and Commercial Litigation and Appellate Practice Groups, where he represents clients in trials and appeals of complex litigation in both federal and state courts, as well as in arbitrations and before administrative agencies. He focuses his practice on business and real estate litigation, including title, boundary, development and access disputes. In Jan. 2017, the governor appointed Bohnhoff to the New Mexico Court of Appeals where he served before returning to private practice in 2019.



Alison K. Goodwin has joined Sutin, Thayer & Browne as the firm's newest lawyer. She concentrates her practice in health law, commercial litigation, and appellate work. Prior to joining the firm, Goodwin served as a judicial law clerk to New Mexico Court of Appeals Judge M. Monica Zamora. She earned her B.A., *cum laude*, from the University of Oregon where she became a member of the Phi Beta Kappa

Honor Society. Alison earned her J.D. from the UNM School of Law, graduating magna cum laude. In her work as a law student, Goodwin was a research assistant to Professor Robert Schwartz, performing research regarding health law issues and assisting with updating a health law hornbook. She also worked as a law clerk at the UNM Health Sciences Center's Office of University Counsel where she researched and drafted memoranda regarding medical malpractice litigation and legislative issues on healthcare.

Butt Thornton & Baehr welcomed new associate attorneys Holly Armstrong, Jonathan Dominguez, Catherine Gonzalez, Stephanie Schneider and Minal Unruh. **Holly Armstrong** attended UNM and Rutgers University School of Law where she obtained her juris doctorate in 2005. Prior to joining BTB, Armstrong was an attorney and shareholder at another prominent civil defense litigation firm in Albuquerque. Armstrong practices in the areas of complex litigation, medical negligence/medical liability, catastrophic personal injury defense, general liability, construction law, product liability and professional liability. **Jonathan Dominguez** attended UNM and obtained his juris doctorate in 2017. Prior to joining BTB, Dominguez was employed by a well-respected insurance defense firm where he specialized in workers' compensation law and gained experience in personal injury defense and construction defect litigation. **Catherine Gonzalez** attended the University of California and graduated from the University of New Mexico School of Law in 2018. While attending law school, Gonzalez worked for BTB as a law clerk. Gonzalez looks forward to the practice of law and holds interests in the areas of complex civil litigation, general liability, employment litigation, medical negligence/medical liability and trucking and transportation. **Stephanie Schneider** attended UNM and obtained her juris doctorate in 2019. While attending law school, Schneider worked for BT as a law clerk. Schneider looks forward to the practice of law and is interested in the areas of general liability, complex civil litigation construction litigation, real estate and business and commercial transaction. **Minal Unruh** attended the University of Kansas and the University of Kansas School of Law where she obtained her juris doctorate in 2007. Prior to joining BTB, Unruh was an attorney and shareholder at another prominent civil defense litigation firm in Albuquerque. Unruh practices in the areas of general liability, medical negligence/medical liability, construction law, insurance coverage issues, catastrophic personal injury defense, general liability, product liability and trucking and transportation.

John W. Justus, 91, of Albuquerque proceeded to heaven on March 3, 2019. John was born on Jan. 30, 1928 in Honey Grove, Texas to William Oliver Justus and Fannie Smith. He was a remarkable man, known for his solid faith in God. He was a golden glove boxer in the Army, a sharp shooter for the Albuquerque Police Department, a manager in the contract division for Sandia National Laboratories, and a small business owner in New Mexico. He was an example and an inspiration to anyone that met him. He lived his life according to the Lord and would give everything he had expecting nothing in return. He graduated from UNM Law School with a Juris Doctorate. He was a highly awarded employee at Sandia National Laboratories specializing in contractual law. His favorite job was being a role model for his children and grandchildren. He loved sharing his passion for carpentry which he inherited from his step-father, Alfred Chavez, Mayor of Bayard, N.M. John is survived by the love of his life, wife of 70 years, Lois Elaine Justus; and his children, Michael, David, Karen and Sharon; his seven grandchildren and his ten great-grandchildren. He was preceded in death by his mother, Fannie Chavez.

Donald W. Miller. His smile lit up the room, his laugh made you laugh. He loved the law, baseball and golf, but his family was his strength. He was an outstanding high school and college athlete who became his children's baseball and soccer coach. He was a calm, positive and enthusiastic leader with every young athlete who learned from him, and his sons and stepdaughter loved playing for him. He and his childhood best friends played in the Little League World Series as boys, and he was always proud of this achievement. He was an incredible husband, stellar dad, wonderful grandpa and 'baboo'. He was also a true friend to many who stood by him as he battled Parkinson's disease. He was a natural in his role of the steady, level-headed dad to his kids and their friends, but his own close friends knew that his 'buttoned-down' outward appearance concealed a man who once traveled across Europe with a guitar and loved his poker nights with the boys. World travel was his dream and he and Cindi enjoyed trips to Great Britain, Ireland, Italy, and Paris. Don enjoyed working on political campaigns, hosting Christmas parties, and reading his beloved history books in his library. At one time he considered running for state office, but he came to his senses. Don made a difference in hundreds of lives during his years in private law practice in Santa Fe and in Children's Court in Albuquerque. His many friends and colleagues from court often visited him in his retirement, which he very much appreciated and enjoyed. He is survived by Cindi, his wife of 40 years; his son Jeff and wife Christiane, his son Matt and partner Florencia, his stepdaughter April and husband Norm; and grandchildren Nina, Aaron, and Addison. In lieu of remembrances please hug your loved ones. The joy he brought to our lives will be deeply cherished.

Marc (Marcelino) Prelo, an attorney in N.M. for over 40 years, died in Lincoln, Calif. on Dec. 20, 2019. He was 85. One of seven children born to Josephine and Marcelino Prelo, in Alamogordo, N.M., Marc spent much of his youth on and around the Mescalero Apache reservation. Marc served as an officer in the Navy after receiving his BBA from UNM, the only member of his family to complete a college degree. In 1960, he met and married Cecilia Ramos Prelo, the love of his life. In 1963, he returned to UNM to complete his Juris Doctor. As a lawyer, Marc served his community. In conjunction with two other attorneys, he helped establish the first Federal Public Defenders office in N.M.. He was also an associate professor of law at UNM's American Indian Law Center where he taught tribal judges and prosecutors. In his private practice in Albuquerque and Ruidoso, he counseled countless individuals. In 1977, Marc successfully litigated an Indian sovereignty law case before the US Supreme Court. A highlight was when he practiced law with his daughter, Roxanna, who graduated from UNM law school in 1989. In 2009, Governor Bill Richardson appointed Marc to the N.M. Gaming Control Board. He is survived by his wife of 59 years, Cecilia Prelo, and Roxanna and Bill Friedrich, his daughter and son-in-law, two sisters, and numerous nieces and nephews. Marc and Ceci loved to travel the world with family and friends but his love of the people, culture and food of N.M. never faltered. Marc enjoyed playing golf, fishing, hunting, and playing gin rummy or poker. He loved to win! He was a diehard Lobo basketball fan with season tickets since they played at Johnson gym.

Carly Foreback, 35, passed away unexpectedly on Sept. 7, 2019 in Farmington, NM. She was born in Steamboat Springs, Colo. on Jan. 13, 1984. She is survived by her parents, Terence Foreback and Ruth Brennesholtz of Santa Fe; her brother Benjamin Foreback of Helsinki, Finland; by two nephews and one niece; and by many loving aunts, uncles, and cousins. Carly graduated from Gallup High School, the Arizona State University, and received a JD in law from Temple University in Philadelphia.

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 Jan. 10, 2020

UNPUBLISHED OPINIONS

A-1-CA-37383	State v. H Chavez	Affirm	01/06/2020
A-1-CA-38473	State v. Baynes H.	Affirm	01/06/2020
A-1-CA-36722	State v. A Baca	Affirm/Reverse/Remand	01/07/2020
A-1-CA-37569	C Cummings v. J Cummings	Affirm	01/07/2020
A-1-CA-37730	A Sweat III v. J Montoya	Affirm	01/07/2020
A-1-CA-37925	R Cano. C v. K Legoza	Affirm	01/07/2020
A-1-CA-36683	State v. J Lovesee	Affirm	01/08/2020
A-1-CA-37687	P Zamora v. State	Reverse/Remand	01/08/2020
A-1-CA-36664	M Quintana v. Risk Management	Affirm/Remand	01/09/2020
A-1-CA-36741	M Hilley v. M Cadigan	Affirm	01/09/2020
A-1-CA-37117	RABO Agrifinance v. TERRA, et al.,	Affirm	01/09/2020
A-1-CA-37199	Rabo Agrifinance v. S Veigel	Affirm	01/09/2020
A-1-CA-37690	CYFD v. Adrian H.	Affirm	01/09/2020
A-1-CA-37782	State v. C Cain	Affirm	01/09/2020
A-1-CA-38463	CYFD v. Amy B	Affirm	01/09/2020
A-1-CA-36964	R Dobkins v. M Hirschter	Affirm	01/10/2020
A-1-CA-38002	City of Rio Rancho v. G Rougemont	Reverse/Remand	01/10/2020

Effective Jan. 17, 2020

PUBLISHED OPINIONS

A-1-CA-36206	State v. C Salazar	Reverse/Remand	01/15/2020
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UNPUBLISHED OPINIONS

A-1-CA-36392	Philbert P v. Douglas P	Affirm	01/13/2020
A-1-CA-37422	D Garcia v. City of Albuquerque	Dismiss	01/14/2020
A-1-CA-36855	State v. J Keck	Affirm	01/15/2020
A-1-CA-36593	State v. M Sopyn	Affirm	01/16/2020
A-1-CA-37250	State v. T White	Affirm	01/16/2020
A-1-CA-38432	CYFD v. Mack R	Affirm	01/16/2020
A-1-CA-38413	CYFD v. Samuel K.	Affirm	01/17/2020

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

Effective Jan. 24, 2020

UNPUBLISHED OPINIONS

A-1-CA-36327	State v. C Montoya	Affirm	01/21/2020
A-1-CA-36776	L Padilla v. Coreslab Structures	Affirm	01/21/2020
A-1-CA-36471	State v. C Sais	Affirm	01/22/2020
A-1-CA-35932	State v. S Holm	Affirm/Reverse/Remand	01/23/2020
A-1-CA-37906	T Heller-Hine v. D Hine	Affirm	01/23/2020
A-1-CA-38039	M Chavez v. G Chavez	Affirm	01/23/2020
A-1-CA-38454	CYFD v. Kimberly M.	Affirm	01/23/2020
A-1-CA-35471	State v. J Aslin	Affirm	01/24/2020

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

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

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CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective December 31, 2019:

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CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective January 1, 2020:

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IN MEMORIAM

As of May 7, 2019:

Judith A. Bova

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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CLERK'S CERTIFICATE OF ADMISSION

On January 6, 2020:

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CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective January 13, 2020:

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IN MEMORIAM

As of June 9, 2019:

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As of September 29, 2019:

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As of December 19, 2018:

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As of June 1, 2017:

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**CLERK'S CERTIFICATE
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Effective January 13, 2020:

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**CLERK'S CERTIFICATE
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Effective January 1, 2020:

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**CLERK'S CERTIFICATE
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CHANGE**

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**CLERK'S CERTIFICATE
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From the New Mexico Supreme Court

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

IN THE MATTER OF DAVID R. JORDAN, ESQ.

DISCIPLINARY NO. 2019-04-4430

AN ATTORNEY LICENSED TO PRACTICE LAW BEFORE THE COURTS OF THE STATE OF NEW MEXICO

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

In August 2017, CL retained you to file a lawsuit on his, CL's, behalf. CL paid you a \$3,500.00 retainer. On November 8, 2017, you filed a Complaint on behalf of CL in the Navajo Nation District Court ("NNDC") in Crownpoint, New Mexico; CL had by email approved the filing in that Court. However, the NNDC did not issue a summons until April 2018.

In late December 2017, you decided to file on CL's behalf in the Eleventh Judicial District Court of the State of New Mexico ("State Court"). On December 13, 2017, you billed four (4) hours for, in part, finalizing and filing the State Court complaint. However, you did not file any complaint in State Court. In February 2018, you informed CL via email that the NNDC had not issued a summons, and that you were "going to file with the New Mexico state court. . . ." In response, CL emailed you, in part: "At this time, we have lost the initiative so it is imperative that you return our funds promptly." You viewed the email as terminating his representation and so informed CL. Subsequently, CL informed you that he wanted you to continue with the representation.

On or about July 8, 2018, the defendant in the NNDC case was personally served with the NNDC complaint. On August 8, 2018, the defendant's attorney filed a Motion to Dismiss in the NNDC. On August 14, 2018, CL, who did not know about the Motion to Dismiss, asked via email that a motion for default judgment be filed if an Answer was not filed. You replied that day and informed CL that you had been contacted by defense counsel; you wrote: "I imagine an answer will be filed."

On September 6, 2018, CL emailed you for an update on the case. You replied that day, and informed CL for the first time of the Motion to Dismiss, which had been pending since July 8, 2018. You still did not send a copy of the motion to CL. You did not respond to the Motion to Dismiss, and on September 18, 2018, the NNDC granted the motion, and issued an Order dismissing the case with prejudice. Thus, CL's possible claim is likely lost. You did not send the Order to CL.

As you have admitted, your conduct violated the following Rules of Professional Conduct: Rule 16-103, by failing to represent your client diligently; Rule 16-104, by failing to communicate with your client and failing to keep your client informed; Rule 16-302, by failing to expedite litigation; and Rule 16-804(D), by engaging in conduct that was prejudicial to the administration of justice.

Accordingly, you are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. This Formal Reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this Formal Reprimand will be published in the State Bar of New Mexico Bar Bulletin. You have satisfied your obligation to pay costs incurred in these disciplinary proceedings.

January 17, 2019
The Disciplinary Board of the
New Mexico Supreme Court

By
Hon. Cynthia A. Fry
Board Chair

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF THE STATE OF NEW
MEXICO**

IN THE MATTER OF

SHANNON G. PETTUS, ESQ.

DISCIPLINARY NO. 2018-08-4409

**AN ATTORNEY LICENSED TO PRACTICE LAW BEFORE
THE COURTS OF THE STATE OF NEW MEXICO**

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel. GC retained you in October 2014 with regard to a possible claim based on his allegedly excessive detention in prison by the New Mexico Department of Corrections ("DOC"). On August 26, 2014, the Court in GC's criminal case issued a Writ of Habeas Corpus; GC was released from prison on September 20, 2014.

Thus, the two-year statute of limitations on any state law tort claims ran on either August 26, 2016 or September 20, 2016. The statute of limitations for federal civil rights claims is three years, making the limitations period for such a claim August 26, 2017 or September 20, 2017. See *Wilson v. Garcia*, 471 U.S. 261 (1985).

You timely submitted a Tort Claims Notice ("TCN"). However, you failed to submit the TCN to Risk Management Division, as required by § 41-4-16(A), as the DOC is a state agency. You took no other action, and the statute of limitations ran on the state law tort claims. The client terminated your representation before the period ran on any possible civil rights claim. As you have admitted, your conduct violated Rule 16-101, by failing to provide competent representation to a client; Rule 16-103, by failing to represent a client diligently; and Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.

Accordingly, you are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. This Formal Reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this Formal Reprimand will be published in the State Bar of New Mexico Bar Bulletin. Finally, you have agreed to pay costs in the amount of \$511.80.

Dated January 17, 2019
The Disciplinary Board of the
New Mexico Supreme Court

By
Hon. Cynthia A. Fry
Board Chair

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF THE STATE OF NEW
MEXICO**

IN THE MATTER OF DANIEL L. MORRIS, ESQ.

DISCIPLINARY NO. 2018-03-4427

**AN ATTORNEY LICENSED TO PRACTICE LAW BEFORE
THE COURTS OF THE STATE OF NEW MEXICO**

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

CM retained you in May 2015 for a personal injury claim arising from an automobile accident. Your fee agreement that CM signed provides, in part:

The Attorney without Client's approval shall make no settlement; nor shall Client settle without the Attorney's approval, except. . . [:]

Attorneys are hereby granted full authority, including a power of Attorney to endorse all legal instruments, pleadings, drafts, checks, inclusive but not limited to settlement checks, or any other method of payment, authorization and papers as shall be reasonably necessary to conclude this claim.

That provision is improper in two respects: first, the decision whether to settle is solely the client's; the attorney may only recommend. See Rule 16-102(A), cmt. [1]. Second, clients alone must endorse "legal instruments" that require the client's signature.

You proceeded to negotiate two settlements without obtaining approval from your client. First, you settled a claim with the driver's insurer for policy limits. You stated that your office sent to CM a Full Release of All Claims with Indemnity for her signature. However, although CM never signed or returned the document, you settled the claim. The insurer issued a check made out to your law firm and to CM, but CM never saw the check and did not endorse it.

Second, you settled the uninsured/underinsured motorist (UIM) claim, again without CM's approval. Again, although the check was made out to your law office and CM, someone from your office endorsed the check for CM.

Then, despite having the funds from both settlements in your trust account as of the end of 2016, you failed to disburse the funds. In January 2018, CM retained another attorney in her effort to obtain the funds due her. In April 2018, you sent a letter to CM which itemized "the [medical] bills we show on your case," the total of which well exceeded the total amount of the settlement.

Your enumeration of the claimed providers' bills were not all substantiated with records and included items that were not in any of your demand letters to the insurers. In short, your summary of outstanding medical bills was flawed. An attorney must have documentation to support claimed bills, and must take prompt steps to resolve the claims, which you did not do.

Finally, in March 2019, you sent a check from your trust account for the full settlement amounts to CM's attorney, leaving it to that attorney to sort through any legitimate outstanding medical bills.

Throughout your representation of CM, you had no conversations with her; instead, you improperly delegated your responsibilities to keep the client informed to your non-lawyer assistant.

Your conduct violated the following Rules of Professional Conduct: Rule 16-103, by failing to represent your client diligently; Rule 16-104, by failing to communicate with your client and failing to obtain her consent to the settlements; Rule 115-(D), by failing to promptly disburse the settlement funds; and Rule 16-804(D), by engaging in conduct that was prejudicial to the administration of justice.

You cooperated with disciplinary counsel in this matter, and you waived any claim to attorney's fees, both mitigating factors.

Accordingly, you are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. This Formal Reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this Formal Reprimand will be published in the State Bar of New Mexico Bar Bulletin.

Dated January 17, 2020
The Disciplinary Board of the
New Mexico Supreme Court

By
Hon. Cynthia A. Fry
Board Chair

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

IN THE MATTER OF JULIEANNE H. LEONARD, ESQ.

DISC. NOS. 2018-12-4425 AND 2019-07-4435

**AN ATTORNEY LICENSED TO PRACTICE LAW BEFORE
THE COURTS OF THE STATE OF NEW MEXICO**

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel. This Formal Reprimand involves two separate disciplinary proceedings.

In the first proceeding, TM retained you to seek a child custody and visitation modification in his post-decree domestic relations case. On September 27, 2016, the attorney for TM's ex-wife—the Petitioner in the domestic relations case—emailed you to let her know that the ex-wife had retained her (“Opposing Counsel”); in the email, Opposing Counsel defined “the issue before us” as relating to spousal support and matters relating to orders for TM's retirement.

The next day, September 28, 2016, you filed on behalf of TM a Motion to Enforce and Amend Final Decree of Dissolution of Marriage (“Motion”); the Motion alleged that (1) the ex-wife had improperly claimed the parties' children on her income tax return; (2) visitation and timesharing should be amended to give TM primary physical custody of the parties' daughter; and (3) child support should be recalculated. You failed to file a Request for Hearing for the Motion.

The Motion's Certificate of Service indicated that the Motion was served via “Mail on Petitioner pro se. . . .” However, the ex-wife did not receive the Motion; she discovered it herself and on October 12, 2016, faxed it to her attorney. You had not mentioned the Motion or the issues therein to Opposing Counsel. On December 12, 2016, you filed a supplement to the Motion regarding holiday timesharing and after-school care. You still did not request a hearing. You took no further action on the issue of custody or visitation.

On April 19, 2018, Opposing Counsel filed a Request for Hearing on “All Pending Matters.” On July 5, 2018, Opposing Counsel filed a Second Request for Hearing. You had never requested a hearing, despite your outstanding pleadings.

On August 17, 2018, the hearing on all pending matters was scheduled for September 17, 2018. In early September 2018, TM retained new counsel, and you withdrew effective September 14, 2018. Finally, as a result of the Hearing on September 27, 2018 with TM's new counsel, the Court entered a Stipulated Order Nunc Pro Tunc on Outstanding Matters, resolving all pending issues. As you have admitted, your conduct violated Rule 16-101, by failing to provide competent representation to a client; Rule

16-103, by failing to represent a client diligently; Rule 16-302, by failing to expedite litigation; and Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.

In the second disciplinary proceeding, in October 2015, MO retained you to pursue MO's asserted belief that an ailing aunt's caretakers were taking financial advantage of the aunt. On February 24, 2016, you filed in district court on behalf of MO a petition for guardianship/conservatorship. The aunt retained counsel and fought the petition for guardianship/conservatorship.

On December 15, 2016, the aunt died, making the guardianship/conservatorship proceeding moot.

On December 29, 2016, one of the caretakers filed in district court a petition for informal probate (“Probate case”). MO and you received notice of the Probate case. MO disputed the validity of the aunt's most recent Will that was the subject of the Probate case. The aunt's estate had significant assets. You did not file anything in the Probate case on behalf of MO. Instead, on July 6, 2017, you filed a Verified Complaint for Intentional Interference with Expected Inheritance and Undue Influence (“Civil Lawsuit”), in which you named the aunt's caretakers as defendants along with the attorney who had drafted the most recent Will for the aunt; that Will bequeathed assets to the caretakers.

On September 6, 2018, the Court in your Civil Lawsuit granted the defendants' Motion to Dismiss Complaint, on the grounds that the Probate case was the sole means to address the disposition of all disputed assets. On October 20, 2017, the Probate case concluded with an Order of Complete Settlement. You had taken no action in the Probate case. Claims for intentional interference and undue influence are limited to probate proceedings, except where an inter vivos transfer of property depleted the estate and left nothing to be transferred in probate. See *Peralta v. Peralta*, 2006-NMCA-033. To the extent your client's claims had merit, you should have taken action in the Probate case.

As you have admitted, your conduct violated Rule 16-101, by failing to provide competent representation to a client; Rule 16-103, by failing to represent a client diligently; and Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. This Formal Reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this Formal Reprimand will be published in the State Bar of New Mexico Bar Bulletin. You have satisfied your obligation to pay costs incurred in these disciplinary proceedings.

January 17, 2019

The Disciplinary Board of the
New Mexico Supreme Court

By
Hon. Cynthia A. Fry
Board Chair

From the New Mexico Supreme Court

Opinion Number: 2019-NMSC-014

No: S-1-SC-36859 (filed July 18, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.

MANUEL BACA,
Defendant-Appellant.

INTERLOCUTORY APPEAL FROM THE DISTRICT COURT OF SOCORRO COUNTY

MATTHEW G. REYNOLDS, DISTRICT JUDGE

Released for Publication September 24, 2019.

BENNETT J. BAUR,
Chief Public Defender
STEVEN JAMES FORSBERG,
Assistant Appellate Defender
Albuquerque, NM
for Appellant

HECTOR H. BALDERAS,
Attorney General
LAUREN JOSEPH WOLONGEVICZ,
Assistant Attorney General
Santa Fe, NM
for Appellee

Opinion

David K. Thomson, Justice.

{1} The State charged Defendant Manuel Baca with an open count of murder by criminal complaint. The district court found by clear and convincing evidence that Defendant committed first-degree murder and determined that he was dangerous and not competent to stand trial. The district court ordered Defendant detained by the New Mexico Department of Health (Department) pursuant to NMSA 1978, Section 31-9-1.5(D) (1999). Defendant appeals that order, contesting the sufficiency of the evidence. Although Defendant has not been convicted of first-degree murder, Defendant nonetheless faces lifetime detention by the State. We therefore determine that jurisdiction properly lies in this Court, and we affirm the district court.

I. BACKGROUND

{2} Defendant's father Fidel Baca Sr. (Fidel) played guitar at a local funeral near Socorro during the day on January 6, 2016, and on his way home, Fidel stopped by the home of Fidel Baca Jr. (Junior) to retrieve groceries that Junior had picked up for him. Fidel did not stay long. He said that he was tired and wanted to rest but that he might come by later to have a beer and visit if he felt better. Fidel did not return to Junior's home. {3} Later that evening Defendant showed up at Junior's home. Defendant was "aggravated and mad,

agitated" and asked, "Have you seen him?" Junior assumed Defendant meant Fidel. When Junior reached out to pet Fidel's dog, which Defendant had tucked in his sweatshirt, Defendant knocked Junior's hand away and said, "Don't touch the fucking dog." Defendant also asked for keys to Fidel's home. Junior told Defendant to leave and to not come around when he was high, and Junior did not give Defendant the keys. Defendant left and walked down the road to Fidel's mobile home. Junior tried to call Fidel to warn him that Defendant "was acting crazy again" but never got a response. Since Defendant did not have a key, he picked the front lock to get into Fidel's mobile home. A neighbor said he thought about going over to check on Fidel when he noticed in the middle of the night that a light was on in Fidel's living room, which was unusual, but he did not check on Fidel.

{4} The next morning officers from the Socorro Police Department responded to an "unknown medical" call from Fidel's home. A neighbor directed officers to Fidel's mobile home at the end of the road, where Defendant sometimes lived with his father. Defendant answered the door to the mobile home and told the officers, "He's over there." Officers discovered Fidel lying face up on the floor with an almost-four-foot-long, twenty-pound pickaxe stuck in his chest.

{5} The State charged Defendant with an open count of murder by criminal complaint. Before the scheduled preliminary examination the

prosecutor raised the issue of Defendant's competency, and the magistrate court transferred the case to the district court. See NMSA 1978, § 31-9-1 (1993). The district court entered a stipulated order to commit Defendant to the Department for up to nine months of treatment to attain competency to stand trial.

{6} Following the treatment period and a subsequent hearing on the merits, the district court ordered Defendant to be detained by the Department for life and, as required by statute, ordered an evaluation at least every two years to determine "trial competency and dangerousness." See § 31-9-1.5(D) (2), (4) (providing for such criminal commitment up to the "maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding" and for review hearings "at least every two years" where "the court shall enter findings on the issues of trial competency and dangerousness"); see also NMSA 1978, § 30-2-1(A) (1994) (providing that a "willful, deliberate and premeditated killing" is "a capital felony"); NMSA 1978, § 31-18-14 (2009) ("When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole."). Defendant appeals from the order of commitment.

II. DISCUSSION

A. The Appeal of a Lifetime Criminal Commitment Pursuant to Section 31-9-1.5 (Section 1.5) Properly Lies with This Court

{7} In their original filings, neither party addressed jurisdiction. This is understandable given that this Court in *State v. Adonis*, 2008-NMSC-059, ¶¶ 5, 7, 145 N.M. 102, 194 P.3d 717, accepted a transfer from the Court of Appeals of the appeal of a Section 1.5 hearing where the district court had ordered the defendant committed for life. While this Court's acceptance of the transfer determined our jurisdiction in *Adonis*, it did not clarify where jurisdiction properly lies in subsequent cases. Our acceptance of the transfer in *Adonis* constituted a final determination of jurisdiction only for that appeal. See NMSA 1978, § 34-5-10 (1966) ("Any transfer under this section is a final determination of jurisdiction. Whenever either court determines it has jurisdiction in a case filed in that court and proceeds to decide the matter, that determination of jurisdiction is final."). Because we have not clearly addressed the jurisdiction question, we asked the parties to file supplemental briefs on the appropriate mechanism for the review of lifetime commitments pursuant to the New Mexico Mental Illness and Competency Code (MICC), NMSA 1978, §§ 31-9-1 to -2 (1967, as amended through 1999).

{8} When the State charges a defendant with an enumerated violent felony, the district court may conduct a civil hearing pursuant to Section 1.5 if it has determined that the defendant is incompetent to stand trial and that there is not a substantial probability that the defendant will become competent within a reasonable period. See



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1.0 G

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5.0 G 1.0 EP

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§ 31-9-1.4(A). At the Section 1.5 hearing, “[t]he state and the defendant may introduce evidence relevant to the question of the defendant’s guilt of the crime charged.” Section 31-9-1.5(A). If the district court finds by clear and convincing evidence that the defendant committed the crime and is presently incompetent and dangerous, “the defendant shall be detained by the [D]epartment . . . in a secure, locked facility.” Section 31-9-1.5(D)(1). The term of this detention, or criminal commitment, may equal the maximum sentence to which the defendant would have been subject *if convicted* in a criminal proceeding. Section 31-9-1.5(D)(1)-(2).

{9} Although we differentiate a detention ordered pursuant to Section 1.5 from an involuntary civil commitment ordered under the Mental Health and Developmental Disabilities Code, NMSA 1978, §§ 43-1-1 to -25 (1977, as amended through 2016), by calling it a “criminal commitment,” neither order comes from a criminal prosecution.¹ Compare *State v. Rotherham*, 1996-NMSC-048, ¶¶ 53-56, 122 N.M. 246, 923 P.2d 1131 (observing that a finding under Section 1.5 of clear and convincing evidence that an incompetent defendant committed the crime charged justifies further detention for treatment to attain trial competency and to protect the defendant and society in general and that such detention is not punitive), with *State v. Clayton*, 1981-NMCA-018, ¶¶ 9, 18, 36, 95 N.M. 644, 625 P.2d 99 (affirming the residential placement of developmentally disabled adults based on the district court’s finding under Section 43-1-13(E) (1978) of clear and convincing evidence that the residential services are in the adults’ “best interests” and are consistent with the “least drastic means”).

{10} Generally, the Court of Appeals has jurisdiction in appeals from Section 1.5 proceedings. See NMSA 1978, § 34-5-8(A)(1) (1983) (providing appellate jurisdiction in civil actions not specifically reserved for this Court). But unlike the Mental Health Code, which specifically confers jurisdiction over the appeal of a civil commitment to the Court of Appeals, see § 43-1-24, the MICC does not statutorily establish appellate jurisdiction. Before *Adonis*, defendants appealed orders of commitment following a Section 1.5 hearing to the Court of Appeals. See, e.g., *State v. Taylor*, 2000-NMCA-072, ¶¶ 1, 18, 26, 129 N.M. 376, 8 P.3d 863 (reversing the district court’s criminal commitment to detention for the life of an incompetent defendant based on insufficient evidence to support the charge of first-degree murder); *State v. Webb*, 1990-NMCA-077, ¶¶ 8-13, 111 N.M. 78, 801 P.2d 660 (analyzing when a detention under the MICC would trigger the right to appeal and dismissing the appeal for lack of jurisdiction where

the orders of commitment appealed from were not the final orders of the district court).

{11} The question of jurisdiction in this case potentially affects only a limited number of appeals from an order of lifetime commitment under the MICC. But because the deprivation of liberty resulting from a lifetime criminal commitment is equivalent to the deprivation of liberty under a lifetime sentence, we recognize the jurisdiction conferred on this Court by Article VI, Section 2 of the New Mexico Constitution. Lifetime detention is a denial of the right to enjoy life and liberty under Article II, Section 4 of the New Mexico Constitution, regardless of whether the detention results from a criminal or a civil proceeding.

{12} In *Adonis*, this Court relied on the jurisdictional analysis in *State v. Smallwood*, 2007-NMSC-005, ¶ 10, 141 N.M. 178, 152 P.3d 821, in accepting the transfer of a defendant’s appeal of his Section 1.5 criminal commitment for life. See *Adonis*, 2008-NMSC-059, ¶ 7. *Smallwood* held that “the legislature intended for us to have jurisdiction over interlocutory appeals in situations where a defendant may possibly be sentenced to life imprisonment or death.” 2007-NMSC-005, ¶ 11. Nevertheless, the appeal of a commitment pursuant to Section 1.5 is not an interlocutory appeal in a criminal case. See NMSA 1978, § 39-3-3(A) (1972) (establishing specifically when, relative to the district court order appealed from, and how an interlocutory appeal in a criminal case may be taken). In fact, the MICC indefinitely suspends the criminal case for the entire proceeding and criminal commitment. See § 31-9-1 (providing for suspension of the criminal case until the issue of competency is determined); see also § 31-9-1.5(D)(4) (providing for suspension of the criminal case until (a) “the defendant is competent to proceed in [the] criminal case” or (b) “the period of commitment equal[s] the maximum sentence to which the defendant would have been subject”). Although accepting transfer of the appeal resolved the issue in *Adonis*, our reliance on *Smallwood* was unnecessary.

{13} We do not acquire jurisdiction in appeals from Section 1.5 proceedings by analogy to a criminal interlocutory appeal. Instead, the New Mexico Constitution directly establishes our jurisdiction because the potential lifetime deprivation of liberty is equivalent to a life sentence. N.M. Const. art. VI, § 2 (“Appeals from a judgment of the district court imposing a sentence of death or life imprisonment shall be taken directly to the supreme court.”). As the United States Supreme Court explained, “It is clear that ‘commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.’” *Jones v. United States*, 463 U.S. 354, 361 (1983)

(quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)). This Court further acknowledged, “It is indisputable that commitment pursuant to Section 31-9-1.5 results in a loss of liberty.” *Rotherham*, 1996-NMSC-048, ¶ 51. *Rotherham* correctly differentiates a Section 1.5 hearing from a criminal prosecution: A criminal prosecution “establishes criminal liability for purposes of rendering punishment” while a Section 1.5 hearing determines “whether the defendant committed the criminal act” but does not focus on criminal liability.² *Rotherham*, 1996-NMSC-048, ¶ 54. However, as Justice Minzner cautioned, because Section 1.5 potentially provides for the indefinite suspension of the criminal case, the criminal commitment might at some point “amount to punishment.” See *Rotherham*, 1996-NMSC-048, ¶ 79 (Minzner, J., specially concurring) (observing that a potential substantive due process violation arises where a defendant who cannot be treated to competency and does not receive proper treatment to alleviate the defendant’s dangerousness is detained for a life commitment under Section 1.5). If the statute’s release provisions are never triggered, the treatment facility is potentially transformed “into a penitentiary where one could be held indefinitely for no convicted offense.” *Rotherham*, 1996-NMSC-048, ¶ 80 (Minzner, J., specially concurring) (citation omitted); see also *State v. Lopez*, 2009-NMCA-112, ¶ 12, 147 N.M. 279, 219 P.3d 1288 (“The involuntary nature of commitment and the associated loss of liberty is the key aspect of commitment constituting ‘official confinement’ equivalent to a sentence based on a conviction.” (citation omitted)).

{14} The State surmises that although a criminal commitment under Section 1.5 is not a criminal conviction, “it is probable that a defendant . . . will remain detained for life.” The State postulates that the district court finding of dangerousness, along with its determination that Defendant committed the felony, “makes a future finding of a lack of dangerousness unlikely.” We must remain mindful that a prior determination that a defendant *was dangerous* does not establish that a defendant *continues to be dangerous*. Indefinitely holding a pending criminal charge over the head of a defendant “who will never have a chance to prove his innocence” is an inherent denial of due process. *Jackson v. Indiana*, 406 U.S. 715, 740 (1972). The State should not view a criminal commitment as an alternative to criminal prosecution but rather as a means to protect the community from danger and as a commitment for treatment. See *Rotherham*, 1996-NMSC-048, ¶¶ 52-54; see also *id.* ¶ 79 (Minzner, J., specially concurring) (“[A]s a matter of substantive due process, those involuntarily committed under Section 31-9-1.5 have a right to be treated not only for compe-

¹We note that Section 1.5 does not use the term *criminal commitment*. However, prior case law refers to a detention by the Department pursuant to Section 1.5 as a *criminal commitment*, and the term is in common use to distinguish it from *civil commitment*. We use both terms in this opinion.

²*Rotherham* made this distinction when it analyzed the constitutionality of the clear and convincing standard of evidence used as required in Section 1.5 to determine that the defendant committed the crime. See *id.* ¶¶ 49-56 (following *Addington*, 441 U.S. at 432-33 (establishing the constitutional minimum standard for an involuntary commitment proceeding as “greater than the preponderance-of-the-evidence standard applicable to other categories of civil cases”)).

tency, but to alleviate their dangerousness and accompanying mental illness or disability.”).

{15} In addition, the direct appeal from the Section 1.5 hearing is the only time an appellate court would properly review the merits of the evidence presented in that hearing on the crime charged—and the defendant has a constitutional right to such review. *See Webb*, 1990-NMCA-077, ¶¶ 8-9 (observing that a finding of sufficient evidence made in a Section 1.5 hearing satisfies the standard for a determination on the merits for purposes of an appeal); N.M. Const. art. VI, § 2 (providing “that an aggrieved party shall have an absolute right to one appeal”). Any subsequent appeal of a review hearing would not address the merits of the evidence on the suspended charges. *See* § 31-9-1.5(D)(4) (limiting the review hearings required pursuant to a Section 1.5 commitment to issues of the committed defendant’s trial competency and continuing dangerousness). The appeal before us is Defendant’s one appeal of the Section 1.5 district court finding that Defendant committed murder in the first degree.

{16} The question of jurisdiction in this context takes on significance because, as noted above, the suspended-but-pending criminal charge of first-degree murder effectively subjects Defendant to a life sentence from which the *only direct appeal* on the sufficiency of the evidence against Defendant may be from the initial Section 1.5 hearing. *See* N.M. Const. art. VI, § 2 (providing that “an aggrieved party shall have an absolute right to one appeal”); *see also* § 31-9-1.5(D)(2) (providing that the commitment term is “equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding”). Where a defendant may be committed for life, arguing that such a commitment is not equivalent to a judgment imposing a life sentence draws a distinction without a difference.³ Our jurisdiction is proper under Article VI, Section 2 of the New Mexico Constitution.

B. The Evidence Was Sufficient to Establish That the Murder Was Willful, Deliberate, and Premeditated

{17} On appeal, the defense has conceded that Defendant killed Fidel. We review Defendant’s claim that evidence was not sufficient to ensure that substantial evidence supports the district court’s determination that Defendant killed Fidel with the deliberate intention to end his life without lawful justification or excuse. *See Adonis*, 2008-NMSC-059, ¶ 12 (providing that the sufficiency review must ensure that a rational fact finder “could have found . . . the essential facts required” (omission in original)); *see also* § 30-2-1(A)(1) (“Murder in the first degree is the killing of one human being by another without lawful

justification or excuse . . . by any kind of willful, deliberate and premeditated killing.”). A willful, deliberate, and premeditated killing is killing with “the deliberate intention to take away the life of another.” *State v. Garcia*, 1992-NMSC-048, ¶ 17, 114 N.M. 269, 837 P.2d 862 (citation omitted). “Deliberate intent may be inferred from the particular circumstances of the killing as proved by the State through the presentation of physical evidence.” *State v. Duran*, 2006-NMSC-035, ¶ 8, 140 N.M. 94, 140 P.3d 515. “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. “In reviewing the sufficiency of the evidence to support [a] defendant’s commitment for first-degree murder, we must be careful not to substitute our judgment for that of the district court.” *Adonis*, 2008-NMSC-059, ¶ 12.

{18} In order to have the incompetent Defendant criminally committed, the State was required to prove by clear and convincing evidence that Defendant committed the criminal acts charged. Section 31-9-1.5(D). “Clear and convincing evidence is evidence that instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition and the fact finder’s mind is left with an abiding conviction that the evidence is true.” *Adonis*, 2008-NMSC-059, ¶ 11 (alteration in original) (quoting *In re Locatelli*, 2007-NMSC-029, ¶ 7, 141 N.M. 755, 161 P.3d 252). The State was required to establish every element of the crime, including specific intent, to the clear and convincing standard. *Taylor*, 2000-NMCA-072, ¶¶ 17-19.

{19} The State must therefore establish mens rea by clear and convincing evidence, and Defendant in this “Section [1.5] hearing may not attempt to disprove specific intent by relying on a lack of mental capacity to form the intent required to commit the crime.” *Adonis*, 2008-NMSC-059, ¶ 18. As we have stated, a Section 1.5 hearing is not a criminal prosecution. *See Rotherham*, 1996-NMSC-048, ¶¶ 53-54. Instead, a Section 1.5 hearing permits the State to detain a defendant for treatment within the bounds of the federal and state constitutions if that defendant is incompetent and dangerous and has committed an enumerated criminal act. *See State v. Werner*, 1990-NMCA-019, ¶ 11, 110 N.M. 389, 796 P.2d 610. This maintains the balance between competing interests and allows a defendant to utilize defenses of insanity or the lack of mental capacity if the defendant ultimately faces criminal prosecution.

{20} Defendant’s briefing in this appeal primarily presents evidence that because of his “delusional frenzy” Defendant could not have formed specific intent. *See Taylor*, 2000-NMCA-072, ¶ 13

(observing that both parties may offer evidence regarding the defendant’s state of mind regardless of the availability of specific defenses). Defendant “follows the path specifically mapped out in *Taylor*” in arguing that the State failed to prove specific intent by clear and convincing evidence. *See Adonis*, 2008-NMSC-059, ¶ 18. Like *Adonis*, Defendant argues that the State failed to meet its burden to prove deliberation, relying in large part on evidence similar to what Defendant would likely use to argue a lack of mental capacity and to a great extent on witness testimony which, the State has argued, supports deliberation. Defendant cites *Taylor*, 2000-NMCA-072, ¶ 22, to argue that a speculative temporal period between arming himself with the pickaxe and the killing is the only evidence supporting a determination that there was deliberation.

{21} If the temporal period between arming himself and killing Fidel were the only evidence supporting a determination that the killing was deliberate, Defendant would be correct. *See State v. Tafoya*, 2012-NMSC-030, ¶ 49, 285 P.3d 604 (observing that simply establishing “that there was potentially enough time for deliberation” was insufficient in *Garcia*, 1992-NMSC-048, ¶ 30, and in *Adonis*, 2008-NMSC-059, ¶ 22). But the temporal period alone is not dispositive. *See Garcia*, 1992-NMSC-048, ¶ 30. Whether there is evidence that a defendant at some point decided to end the life of the victim and then acted is dispositive. *See id.* ¶¶ 30, 32. The State must establish that when Defendant struck Fidel with the pickaxe he intended the result to be that his father would die. *See id.* Here, the temporal period is not the only evidence of Defendant’s intent.

{22} Defendant minimizes his incriminating statements and argues that the State failed to establish that he deliberated because arming oneself with a weapon is insufficient by itself to establish deliberation. Nevertheless a first responder who knew the family testified that when he arrived at the scene Defendant said to “tell them it wasn’t me” or “that I didn’t do it,” or “something to that effect.” When interviewed by the police, Defendant told officers, “My intestines, you can stretch those suckers from here to the other side of the world.” and “Different channels do different things.” When specifically asked about what happened in Fidel’s mobile home, Defendant said that there was a party, “some kind of a hatchet party.” Defendant also stated, “[Fidel] died in that house, . . . something happened in that house.” and “[Fidel] didn’t move no more, . . . he has a hatchet on his face now.” Defendant indicated where the holes in Fidel’s chest were located. Defendant further told officers that there had been a bunch of kids including Tori Spelling and

³Although it is not necessary to our holding, we observe that the State must credit Defendant for presentence confinement while committed, which informs our analysis and further supports our decision. *See State v. La Badie*, 1975-NMCA-032, ¶¶ 5, 14, 87 N.M. 391, 534 P.2d 483 (holding that an incompetent defendant committed to a mental health facility based on felony charges in a suspended criminal case must be given credit for presentence confinement); *see also Lopez*, 2009-NMCA-112, ¶ 12 (“The involuntary nature of commitment and the associated loss of liberty is the key aspect of commitment constituting ‘official confinement’ equivalent to a sentence based on a conviction within the meaning of [NMSA 1978,] Section 31-20-12 [(1977)]”). “A person held in official confinement on suspicion or charges of the commission of a felony shall, upon conviction of that or a lesser included offense, be given credit for the period spent in presentence confinement against any sentence finally imposed for that offense.” Section 31-20-12.

Kim Kardashian naked and raping in the mobile home and that something bad happened: “Fidel got whacked by somebody . . . [because] he was an asshole sometimes.” When asked whether Fidel did anything to him that evening, Defendant replied, “He was a stiff, . . . he was dead for three days already.” Defendant offered, “I was just going to burn it down, . . . I died in that house more than once.” Later when asked where Fidel was, Defendant said, “Dead, I hope.”

{23} We cannot say as a matter of law that no rational fact finder could find Defendant’s incriminating statements credible and make an inference of deliberative intent. *See State v. Fekete*, 1995-NMSC-049, ¶¶ 2, 11, 18, 120 N.M. 290, 901 P.2d 708 (declining to reverse a conviction for first-degree murder where questionably reliable statements of a paranoid schizophrenic defendant were the primary evidence of intent). And Defendant’s individual statements that sound outlandish do not automatically render all Defendant’s other statements unreliable. *See id.* ¶¶ 17-18 (concluding that there was sufficient evidence of deliberation where the fact finder considered all the statements, including those that supported and those that undermined the credibility of the incriminating statements). Some of Defendant’s statements to the police appear to acknowledge that Fidel’s death was a result of his injuries. The district court was free to reject the version of the facts it found less credible. *Rojo*, 1999-NMSC-001, ¶ 19 (“Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant’s version of the facts”). And the district court was free to make one inference and reject another based on evidence equally consistent with two conflicting inferences. *See State v. Garcia*, 2016-NMSC-034, ¶ 24, 384 P.3d 1076 (reiterating that New Mexico has rejected the “standard of appellate review for sufficiency of the evidence formulated ‘in terms of a hypothesis of innocence’” (citation omitted)). We will not reverse if “‘any rational’ fact finder ‘could have found . . . the essential facts required’” to order a defendant’s commitment. *Adonis*, 2008-NMSC-059, ¶ 12 (omission in original) (citation omitted). Although we note that some of Defendant’s statements may suggest mental instability, we must base our determination upon the statements and evidence a rational fact finder could have relied upon. *See id.*

{24} Defendant also attempts to distinguish this case from cases where we have upheld the factual finding of deliberate intent. But the State introduced evidence—Defendant’s statements and actions before, during, and after the killing including arming himself with the pickaxe—to support an inference of deliberation. *See State v. Flores*, 2010-NMSC-002, ¶¶ 22-23, 147 N.M. 542, 226 P.3d 641 (observing that sufficient evidence of deliberate intent may be established by a defendant’s actions before, during, and after the crime); *State v. Begay*, 1998-NMSC-029, ¶ 45, 125 N.M. 541, 964 P.2d 102 (concluding that sufficient evidence of deliberate intent was established by a defendant’s statements and actions including that the defendant “was carrying a knife”).

{25} Fidel had at least eighteen areas of injury, including at least one “complex area of injury” that penetrated the skull and resulted in nasal bone and orbital bone fractures such that the medical examiner could not establish the exact number of strikes in this area. Any of the wounds to the head could have rendered Fidel unconscious, but the blow that penetrated his brain would have disabled him, and Fidel would not have been able to walk or move after that injury. *See State v. Cunningham*, 2000-NMSC-009, ¶ 28, 128 N.M. 711, 998 P.2d 176 (concluding that there was sufficient evidence of deliberate intent where a defendant fired the fatal shot after the victim was incapacitated and defenseless). Multiple blows penetrated Fidel’s chest, but the final penetrating blow went through the third rib, the left lung, the heart, and the pulmonary artery and into the right lung before the pickaxe came to rest. And any of six wounds could have been the fatal blow. *See Duran*, 2006-NMSC-035, ¶¶ 9, 11 (holding that sufficient evidence of deliberate intent was supported by a large number of wounds, a prolonged struggle, and animus); *see also State v. Smith*, 2016-NMSC-007, ¶¶ 22-23, 367 P.3d 420 (concluding that sufficient evidence of deliberate intent was supported by a large number of wounds, a prolonged attack, and telephone calls revealing that the defendant sought out the victim). Although, the medical examiner could not identify the exact order of all the blows, a rational fact finder could have determined that there was evidence of “overkill.” *State v. Guerra*, 2012-NMSC-027, ¶ 29, 284 P.3d 1076 (concluding that sufficient evidence of deliberate intent was supported by the facts that the victim was unable to defend himself and that the defendant “stabbed the victim thirteen times and that many of the wounds were to vital organs”).

{26} Further, the blood splatter analyst testified that blood flow patterns indicated that Fidel’s body changed position during the attack. Fidel was lying on the floor facing upward when he received his final injuries. Although testimony did not reveal whether Fidel was incapacitated when his body changed position, and thus whether he turned himself or his body was turned over prior to the final blows, Fidel had been facing downward. The blood patterns indicated that (1) some of Fidel’s injuries occurred while he was elevated (not lying on the floor), (2) some of the injuries occurred while he was facing down, and (3) at least two injuries occurred while Fidel was lying on his back. Considering all the facts and circumstances, a rational fact finder could have found that this was a prolonged, sustained attack. *Rojo*, 1999-NMSC-001, ¶ 24 (concluding that sufficient evidence of deliberate intent was supported by the fact that strangulation took minutes to accomplish).

{27} Defendant asks this Court to arrive at inferences different from those made by the district court as fact finder. For example, Defendant asks this Court to infer that he had no motive and that he “rain[ed] blows on Fidel within a frenzied minute, . . . wielding [the pickaxe] more like a hammer.” The district court appears to have made different reasonable inferences, perhaps keying on the evidence that the pickaxe weighed twenty pounds and had an

almost-four-foot-long handle—making it difficult to wield in the manner Defendant suggests—and on Defendant’s statements that he hoped Fidel was dead, that someone probably “whacked” him, and that Fidel was an “asshole.” Defendant asks this Court to infer that by calling for emergency services, Defendant did not try to hide evidence or lay the blame elsewhere. The district court appears to have made different reasonable inferences, perhaps from the evidence that Defendant asked the emergency responder to report that Defendant did not do it, that Defendant talked about burning the place down, that he tried to shift the culpability to someone at a “hatchet party,” and that he waited until he was sure Fidel was dead before calling for emergency services. Defendant’s arguments illustrate his continuing request for this Court to reweigh the evidence, which we decline to do. *See State v. Stephenson*, 2017-NMSC-002, ¶ 17, 389 P.3d 272 (observing that this Court will not reweigh the evidence or substitute its own judgment for the fact finder’s judgment if there is sufficient evidence to support the verdict).

{28} In this case, a rational fact finder could have relied upon the evidence to find that Defendant (1) was embittered against his father Fidel and wanted him dead, (2) was locked out of the mobile home by Fidel, (3) entered the mobile home without Fidel’s knowledge while Fidel was inside the mobile home, (4) armed himself with the pickaxe either in the mobile home, before going into the mobile home, or by going out of the mobile home to the shed to retrieve it, (5) bludgeoned Fidel with the pickaxe in a manner that demonstrated overkill, (6) struck at least one fatal blow after he had incapacitated Fidel with one of the blows to the head, (7) waited until he was sure that Fidel was dead before attempting to reach emergency services, and (8) tried to deceive authorities and evade prosecution. The State thus presented sufficient evidence to establish deliberate, willful, and premeditated intent.

III. CONCLUSION

{29} For the foregoing reasons, we conclude that we have jurisdiction pursuant to Article VI, Section 2 of the New Mexico Constitution to hear appeals from the Section 1.5 hearing where the district court ordered Defendant detained by the Department for a life term. Further, because sufficient evidence supports Defendant’s criminal commitment for life, the time prescribed by Section 31-9-1.5(D)(2), we affirm the district court’s order of commitment.

{30} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

JUDITH K. NAKAMURA,
Chief Justice

BARBARA J. VIGIL, Justice

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-047

No. A-1-CA-36833 (filed February 27, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

HENRY HILDRETH JR.,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY

ROBERT A. ARAGON, DISTRICT JUDGE

Released for Publication September 24, 2019.

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Opinion

Linda M. Vanzi, Judge.

{1} Defendant Henry Hildreth Jr. appeals his misdemeanor and felony convictions for aggravated battery against a household member following a jury trial in which his attorney refused to participate. Defendant raises several arguments. First, Defendant argues, and the State concedes, that Defendant was denied his constitutional right to assistance of counsel. Second, Defendant argues the district court judge's conduct during trial should bar his retrial on double jeopardy grounds. Third, Defendant argues the district court abused its discretion in not granting his motions for a continuance and mistrial. Lastly, Defendant claims the amended judgment convicting him of two counts of aggravated battery against a household member based on a single incident constitutes double jeopardy. We agree that the absence of effective representation deprived Defendant of a fair trial and mandates reversal of his convictions. We disagree that the district judge's conduct bars retrial, and thus remand for retrial. In light of our rulings on these issues, Defendant's remaining arguments are moot.

Background

{2} The parties do not dispute the following facts. Defendant was charged in 2016 with misdemeanor aggravated battery against a household member without great bodily harm, NMSA 1978, § 30-3-16(B) (2008, amended 2018) (Count 1), unlawful

taking of a motor vehicle, NMSA 1978, § 30-16D-1 (2009) (Count 2), and felony aggravated battery against a household member with great bodily harm (Count 3). Section 30-3-16(C). On July 11, 2016, Steven Seeger (Seeger) entered his appearance as defense counsel for Defendant. Seeger appeared with Defendant at his arraignment on October 21, 2016. Three days later, the district court entered a notice of hearing scheduling Defendant's case for a three-day jury trial starting March 14, 2017.

{3} On Friday, March 10, 2017, Seeger filed a motion on behalf of Defendant seeking a continuance of the jury trial on the basis that, among other things, the State had filed its disclosures and witness list late. Specifically, the State had provided discovery the previous day in the form of a CD that Seeger had not yet had the chance to review. Defendant, who by then had not disclosed his own trial witnesses, stated that to "force [Seeger] to go to trial on March 14, 2017 would deny the Defendant effective assistance of counsel and thereby deny him his [Sixth] Amendment [right] to counsel." The parties appeared before the district court judge on the morning of March 10, 2017 for a pretrial conference, at which time the judge denied the motion for continuance. Seeger responded to the ruling by informing the court: "I will not be ready, your honor. I will not participate in the trial. I will be present but [I will] not participate." The judge said, "If that is true, then [Defendant] would have excellent grounds for appeal on incompetency of counsel," to which Seeger responded, "Absolutely.

I will not participate." After the judge pointed out that the trial date had been set for months and that Seeger had ample notice, the following exchange took place:

Judge: Well, Mr. Seeger, I've known you for years. I know you are an extremely competent and diligent attorney and it is precisely because of the potential arisal [sic] of contingencies such as you have just described that notice of trial in these cases [is] sent out far in advance of the date. My schedule cannot accommodate this case being placed number one on next month's docket. It's very simple.
Seeger: I'm not gonna do a C-minus job on the trial on Tuesday.

Judge: Well, then I guess you'll have to do an F-minus job and just sit there. I don't know—I can't tell you how to run your business, Mr. Seeger.

Seeger: That's my plan.

Judge: Well, that's not a good plan.

The district court suggested that Seeger raise any discovery issues by filing motions in limine before trial.

{4} On the morning of trial, Seeger renewed Defendant's motion to continue as well as a motion for sanctions based on the State's late disclosures, which Seeger had filed the day before. Seeger explained that he did not have time to listen to the CD because he spent the weekend attending the wake of a co-worker and facilitating the reassignment of his co-worker's cases to other attorneys. The Stated responded that it did not come into possession of the CD until March 9, 2017, and stated for the first time that it did not intend to use any of the information on the CD at trial. Additionally, the State pointed out that its amended March 9, 2017 witness list did not include any previously undisclosed witnesses. The judge denied Defendant's motions to continue and for sanctions, telling Seeger, despite Seeger himself having no role in the State's decision to provide a CD less than a week prior to trial that had been set months before, that if Seeger felt he was being "deprived of information, [he] should have filed the motion long before this" and that there was no showing of prejudice based on the late disclosures. In response, Seeger reiterated that he was not going to participate in the trial, and as the trial record demonstrates, he remained steadfast in that decision. Indeed, our review of the record confirms that Seeger played the most marginal of roles at trial: he did not participate in jury selection, give a substantive opening statement, cross-examine any of the State's witnesses, call any witnesses on behalf of Defendant, move for a directed verdict, meaningfully participate in the submission of jury instructions, or give a closing argument. As the following summary reflects, Seeger's active involvement during trial was limited and narrowly confined.

{5} Seeger did not ask the venire any questions and replied "No comment" each time the judge asked for his position on striking a potential

juror. After the jury was sworn, Seeger moved for a mistrial, arguing that Defendant had been denied effective assistance of counsel. The district court denied the motion, stating, "He has not been denied effective assistance of counsel. He has been . . . refused *any* assistance of counsel. There's a world of difference there." The judge asked Seeger to confirm "that you are not going to defend this man?" Seeger answered, "Correct. I am not going to participate because I cannot provide effective assistance of counsel." The trial continued and after the State's opening statement, the judge turned to Seeger and said, "I ask you to remember, as an officer of the court, opening statement is reserved to evidence that is going to be presented." After Seeger responded, "I don't know what you mean," the judge explained, "I mean the weight of your heart at the moment is of no consequence whatsoever to the duty the jury is intended to perform today." Despite the court's admonition, Seeger focused his opening statement not on the anticipated evidence, but on the Sixth Amendment of the United States Constitution and his client's right to counsel. The judge told Seeger that his opening statement was improper and that he would not allow him to proceed. Seeger responded, "I have nothing further then." The judge instructed the jury to ignore the "civics lesson that was presumptuously offered by Mr. Seeger."

{6} The State proceeded to call two of its three witnesses during the morning session. Seeger made no objections during the witnesses' direct examinations and conducted no cross-examinations. After the lunch break, Seeger renewed his motion for a mistrial. He argued that he had looked at the State's late-disclosed CD and saw that it contained statements from three witnesses—including the two that had testified that morning—and Defendant. Seeger stated that he did not have time to listen to the CD or have it transcribed for use in cross-examination and voiced a concern that it might contain information useful to his client's defense. Although the State admitted the CD had been in the possession of an agent of the State before March 9, 2017, the district court nevertheless denied the mistrial motion because it did not believe that Defendant had demonstrated prejudice.

{7} The State called one additional witness. During that witness's testimony, Seeger made a single objection to the admission of an item of physical evidence, which the district court sustained. Seeger made no other objections and conducted no cross-examination of the witness. At the close of the State's case, Seeger told the court that he had hoped to call four or five witnesses but that he had neither disclosed nor subpoenaed them. Seeger did not move for a directed verdict or make any other motions. Before releasing the jury for the day, the court informed the jury that the State had the burden of proof; that Defendant was not required to put on any witnesses of his own; and that Defendant would not be calling any witnesses.

{8} During the discussion about jury instructions, Seeger stated he had not prepared any instructions and proceeded to express concern about the judge's bias in the case. The judge responded, "I cannot help that Mr. Seeger. You seem to be troubled by

a number of things, namely your obligation to abide by your oath and defend the people that you take as clients." The judge stated that he resented the accusation of bias and encouraged Seeger to report him to the New Mexico Judicial Standards Commission if he believed he (the judge) was biased. At that point, Seeger indicated that he would not oppose any of the instructions tendered by the State. The discussion on jury instructions continued and Seeger asked about a step-down instruction. The court noted that the charge of misdemeanor aggravated battery on a household member without great bodily harm, § 30-3-16(B) was a lesser included offense of the felony charge of aggravated battery on a household member with great bodily harm, § 30-3-16(C). As a result, the district court ruled that the misdemeanor charge would be given as a step-down instruction rather than a separate count. Besides inquiring about the step-down instruction, Seeger did not participate in the discussion over jury instructions.

{9} The next morning, Seeger again renewed his motion for a mistrial on the basis of ineffective assistance of counsel. The district court again denied the motion. Before closing arguments, the court reminded the jury, "Defendant has chosen not to present a case, and that is his right. . . . Whether or not [Defendant] presents any evidence, the burden always remains on the State[.]" The court also informed the jury that it was optional for the parties to present closing arguments. During the State's closing, Seeger objected once, claiming that the prosecutor was expressing his personal opinion on the evidence. Seeger asked for a curative instruction, which the court gave after sustaining the objection. When the State completed its closing argument, the court asked Seeger if he wanted to "exercise the opportunity to argue the evidence that has been presented." Seeger stood up and began, "I think, given the circumstances, I could not provide effective assistance . . ." at which point the judge stopped him saying, "Alright, that is not evidence, Mr. Seeger. If you don't intend to argue the evidence, please return to your seat." The court then released the jury for deliberations.

{10} The jury acquitted Defendant of unlawful taking of a motor vehicle but found him guilty of aggravated battery against a household member with great bodily harm. See § 30-3-16(C). Although Seeger did participate in the sentencing hearing, he provided no response concerning his position on the order for a pre-sentence report. Defendant was ultimately sentenced to the maximum term of three years in prison, followed by two years of parole. NMSA 1978, § 31-18-15(A)(11) (2016). Seeger did not respond to the request for approval of the judgment and order of commitment, despite having the proposed document provided to him both in person and by email. Seeger timely filed a notice of appeal on Defendant's behalf on October 18, 2017. On November 3, 2017, and despite its earlier ruling that the misdemeanor aggravated battery offense was a lesser included offense the district court entered an amended judgment, adding a conviction for aggravated battery against a household member with no great bodily harm "as charged in Count 1 of the Criminal Information . . .

incorporated into Count 3 by the Court." Seeger approved the amended judgment and sentence without objection.

Discussion

{11} As relevant to our disposition of this appeal, Defendant argues that he was denied his constitutional right to assistance of counsel and that the district judge's conduct during trial should bar his retrial. We address each argument in turn.

Defendant Did Not Receive Effective Assistance of Counsel

{12} As we have noted, the State concedes that Defendant was denied his right to assistance of counsel, and that reversal and remand for a new trial is warranted. Although we are not bound by the State's concession, we conclude that under the circumstance of this case, Defendant's convictions must be reversed. See *State v. Guerra*, 2012-NMSC-027, ¶ 9, 284 P.3d 1076 (stating that an appellate court is not bound by the state's concession of an issue). Our review is de novo. See *State v. Mosley*, 2014-NMCA-094, ¶ 18, 335 P.3d 244 (stating that ineffective assistance of counsel claims are reviewed de novo).

{13} Generally, an ineffective assistance of counsel claim is established when a defendant shows "error by counsel and prejudice resulting from the error." *State v. Grogan*, 2007-NMSC-039, ¶ 11, 142 N.M. 107, 163 P.3d 494. Error is shown if the "attorney's conduct fell below that of a reasonably competent attorney." *Id.* (internal quotation marks and citation omitted). While it is usually a defendant's burden to show both incompetence and prejudice, *id.*, a defendant need not establish prejudice in those cases where "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Id.* ¶ 12 (quoting *United States v. Cronin*, 466 U.S. 648, 658 (1984)). Those circumstances in which prejudice to the defendant can be presumed include: "(1) denial of counsel altogether; (2) defense counsel's failure 'to subject the prosecution's case to meaningful adversarial testing'; and (3) when the accused is 'denied the right of effective cross-examination.'" *Id.* ¶ 12 (citing *Cronin*, 466 U.S. at 659).

{14} Prior to the start of trial in this case, Seeger announced his intention to not participate in the trial proceedings. Staying true to his word, Seeger abdicated his role as an advocate by refusing to engage in jury selection, give an opening statement, present a defense or call any witnesses, subject the State's witnesses to cross-examination, or give a closing argument on behalf of his client. We agree with the district court that this was not a case of ineffective assistance of counsel but rather a case where "[Defendant] has been refused *any* assistance of counsel." After all, Seeger's voluntary posture of determined inaction both precluded any "meaningful adversarial testing" of the State's evidence and denied Defendant the right of effective cross-examination within the meaning of *Grogan*, 2007-NMSC-039, ¶ 12, and *Cronin*, 466 U.S. at 659. In these circumstances, Seeger's conduct rose to the level of a constructive denial of counsel sufficient to create a presumption of prejudice. See *Martin v. Rose*, 744 F.2d 1245, 1250-52 (6th Cir. 1984 (concluding that defense counsel's "bizarre

and irresponsible stratagem” of “abandon[ing] all attempts to defend his client at trial” amounted to “constitutional error even without any showing of prejudice”); see also *United States v. Swanson*, 943 F.2d 1070, 1074 (9th Cir. 1991) (concluding that defense counsel’s concession during summation that there was no reasonable doubt as to any of the disputed factual issues amounted to a failure to subject the prosecution’s case to meaningful adversarial testing and, thus, a failure to provide effective assistance under *Cronic*).

{15} Seeger’s purposeful failure to participate in any meaningful way in Defendant’s trial represents a constitutional violation under both the United States and New Mexico Constitutions. See U.S. Const. amend. VI (guaranteeing a right to assistance of counsel in criminal cases); N.M. Const. art. II, § 14 (same), thus compelling us to vacate Defendant’s convictions and remand for a new trial.

{16} We pause here to address the unusual and unseemly situation occasioned by Seeger’s adamant refusal to provide his client with a defense in a felony trial and the district judge’s decision to proceed with such a trial in circumstances where some form of guilty verdict was not only a near certainty, but had no realistic chance of being upheld on appeal. First, we address Seeger’s refusal to provide his client with a defense, conduct that violated Seeger’s constitutional responsibility to his client and his duty to the tribunal for which, as a licensed attorney, he serves as an officer. Stated simply, attorneys in New Mexico are not empowered with decisional autonomy regarding when trials commence and when they do not commence. District courts are. Second, we feel obliged to provide our district courts with some guidance as to how to respond to situations like this in the future. A district judge is not helpless when faced with an attorney threatening to withdraw from participation in a criminal trial, but has various options to address the situation. For instance, the district court can order new counsel to represent the defendant. See *Sanders v. Rosenberg*, 1997-NMSC-002, ¶ 9, 122 N.M. 692, 930 P.2d 1144 (“If a compelling reason exists that supports the disqualification of counsel, a court may reject that party’s chosen counsel.”). Or it can impose a sanction on the culpable attorney while at the same time granting a continuance to give the defendant and his or her attorney time to prepare for trial. If, in that circumstance, the attorney still refuses to participate in the face of a clear order to do so, the court can invoke its contempt powers against the obstructionist attorney, see *NMSA 1978*, § 34-1-2 (1851). While we understand the district court’s concerns over the efficient administration of its docket, forcing a criminal defendant to go to trial with an attorney who refuses to participate itself hinders, rather than promotes judicial economy by wasting scarce court resources while all but ensuring a violation of the defendant’s constitutional rights. See *Grogan*, 2007-NMSC-039, ¶ 10 (“[I]n cases of obvious ineffective assistance of counsel, the trial judge has the duty to maintain the integrity of the court, and thus inquire into the representation.”).

Retrial is Not Barred in this Case

{17} Defendant argues that the district court judge’s conduct bars retrial “under principles of double

jeopardy.” A double jeopardy challenge is a constitutional question of law, which we review de novo. See *State v. Andazola*, 2003-NMCA-146, ¶ 14, 134 N.M. 710, 82 P.3d 77. The New Mexico Constitution, like the Federal Constitution, prevents any person from being “twice put in jeopardy for the same offense[.]” N.M. Const. art. II, § 15; see U.S. Const. amend. V. Double jeopardy may bar retrial on the basis of official misconduct during the initial trial. See *State v. Breit*, 1996-NMSC-067, ¶ 32, 122 N.M. 655, 930 P.2d 792. Defendant urges us to apply the three-part test announced by our Supreme Court in *Breit*, which bars retrial under Article II, Section 15, of the New Mexico Constitution

when improper official conduct is so unfairly prejudicial to the defendant that it cannot be cured by means short of a mistrial or a motion for a new trial, and if the official knows that the conduct is improper and prejudicial, and if the official either intends to provoke a mistrial or acts in willful disregard of the resulting mistrial, retrial, or reversal.

Breit, 1996-NMSC-067, ¶ 32.

{18} Although Defendant acknowledges that our appellate courts have applied *Breit* only in cases of prosecutorial misconduct, he nonetheless urges this Court to extend *Breit* to the judge’s actions in this matter. Defendant contends that the jurors saw “tense, fraught interactions between [the judge] and Mr. Seeger. Over and over, the jurors saw Mr. Seeger decline to ask questions. The jurors saw Mr. Seeger attempt to address them, and they saw the way [the judge] stopped him.” Further, Defendant asserts, “[b]y making dismissive comments toward the defense in the presence of the jury, [the judge] violated his duty to appear impartial.” And by forcing the parties to continue with the trial in light of Seeger’s declaration of non-participation, Defendant argues, the judge knew Defendant’s rights were being violated and acted in “willful disregard of the reversal that was likely to result.” Defendant contends these actions satisfy all three prongs of the *Breit* test. We disagree.

{19} In *Breit*, our Supreme Court characterized the proceedings as “a trial out of control” resulting from the “pervasive, incessant, and outrageous nature of the prosecutor’s misconduct.” *Id.* ¶¶ 37, 41 (internal quotation marks omitted). From opening statements to closing arguments, the prosecutor’s misconduct was apparent. *Id.* ¶¶ 41-43. He attempted to inflame the jury during opening arguments with irrelevant allegations and exaggerated claims that no evidence could ever support. *Id.* ¶ 41. He reacted with “sarcasm and scorn” toward opposing counsel and the district court whenever objections were raised and sustained. *Id.* Even after being admonished by the court, the prosecutor attempted to solicit irrelevant comments from the defendant. *Id.* ¶ 42. He impliedly threatened opposing counsel and made “belligerent remarks.” *Id.* He displayed “sarcasm, sneering, rolling of eyes and exaggerated expressions” throughout the trial in front of the jury. *Id.* (internal quotation marks omitted). During closing arguments, the prosecutor attacked the defendant’s election to exercise his rights to counsel and to remain silent, and suggested that

opposing counsel had lied and collaborated with the defendant to fabricate a defense. *Id.* ¶ 43. In reversing defendant’s convictions and barring further prosecution of the underlying first-degree murder and related charges, our Supreme Court noted, “As isolated instances, most of these infractions would be unlikely to raise the bar to retrial. But in this case, . . . the misconduct was unrelenting and pervasive. . . . The cumulative effect [of which] was to deny the defendant a fair trial.” *Id.* ¶ 45

{20} *Breit* has no bearing on this case. Even if we were to extend *Breit* to instances of judicial misconduct, the district court judge here acted appropriately and appeared impartial throughout the proceedings. This Court listened to the entire audio recording of the trial, and there was no instance in which the district court judge’s tone of voice sounded inappropriate or improper. The judge did not raise his voice, and he kept his commentary on Seeger’s actions to a minimum in front of the jury. The judge repeatedly gave Seeger the opportunity to change course and actively participate in the trial proceedings by, among other things, asking Seeger if he wished to address the venire during jury selection, inquiring about Seeger’s position regarding potential jurors, giving him an opportunity to make an opening statement, and asking if he wanted to cross-examine witnesses. Seeger declined each of the judge’s invitations, and responded by saying “No comment” during jury selection, improperly commenting on the right to counsel during opening statement, and refusing to participate in cross-examination. When the judge asked Seeger if he wanted to give a closing statement, Seeger again brought up the right to counsel before being stopped. We cannot say that the judge’s comments were “dismissive” or appeared biased. Rather, the judge was responding to Seeger’s repeated attempts to argue that he was ineffective as counsel, a legal matter wholly inappropriate for the jury to consider. Moreover, the judge made an effort to avoid interrupting Seeger by reminding him before opening and closing statements to confine himself to discussing the evidence. Additionally, the judge attempted to mitigate Seeger’s inaction in the eyes of the jury multiple times by reminding them that the State had the burden of proof and that Defendant was not required to put on any witnesses or make a closing argument. Nor did the judge act in “willful disregard” of an obvious reversal. To the contrary, the district court made every attempt to have Seeger participate and defend his client, all to no avail. Given these circumstances, we decline Defendant’s invitation to extend *Breit* to judicial conduct and hold that double jeopardy does not bar retrial in this case.

Conclusion

{21} For the foregoing reasons, we reverse Defendant’s convictions and remand for retrial.

{22} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

J. MILES HANISEE, Judge
BRIANA H. ZAMORA, Judge

Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-048

No. A-1-CA-36122 (filed March 6, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MILO BENALLY,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

JOHN A. DEAN JR., DISTRICT JUDGE

Released for Publication September 9, 2019.

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Opinion

J. Miles Hanisee, Judge.

{1} Defendant appeals from his convictions for two counts of possession of a deadly weapon by a prisoner in violation of NMSA 1978, Section 30-22-16 (1986), for which he was sentenced to consecutive nine-year terms, or a total of eighteen years' incarceration.¹ He contends that neither conviction was supported by substantial evidence and that the separate convictions violate his right to be free from double jeopardy. We reject Defendant's challenge to the legal sufficiency of the evidence, but agree that the two convictions violate the prohibition against double jeopardy.

BACKGROUND

{2} Prison staff received information from an inmate that prompted a "shakedown" of the particular area of the prison where Defendant was housed. This entailed the systematic removal of inmates and an ensuing search for contraband, including the bunk and shower areas of the "pod" that was the subject of concern. The area searched by prison staff was an open, dormitory-style space with approximately six to eight recessed bunk units, each containing about six bunks.

{3} Defendant slept on the bottom mattress of a three-stack bunk, with the middle bunk being

vacant. In Defendant's bunk area were pieces of legal paperwork, mail, and other items that bore only Defendant's name. On an "L" shaped support bar of the vacant, middle bunk at the top of Defendant's bunk area, prison staff found a shaving razor with a playing card folded around it to form a handle (razor weapon). Upon discovering the razor weapon, prison staff removed the mattress from Defendant's bunk and noticed a four- to five-inch slit in its side. They cut open the mattress and found a sharpened piece of the end of a plastic mop handle (mop weapon) concealed within. Approximately eighty feet away in the shower area of the pod, prison staff next found orange plastic shavings that matched the end of a mop handle found in a shower stall and similar residue ground into the concrete lip of the shower pan. After checking a utility closet that contained items used by inmates to clean their cells, prison staff also determined that an end to one of the plastic mop handles had been removed.

{4} Upon discovery of the two makeshift weapons, Deputy Jason Sherman spoke with Defendant but did not inform him of any specifics associated with the discovery of the weapons. Deputy Sherman told Defendant only that he wanted to "speak with him about the incident at the jail today." During the conversation, Defendant expressed feelings of "hate and anger" toward a

particular inmate and stated that he wanted to "cut that guy's head off." Obliquely referring to what was found during the prison search, though not identifying any specific item or object by name, Defendant also stated, "Check this out, Sherman. What if that thing is mine?" Defendant went on to say that (1) the prison staff should be glad they found what they were looking for; (2) had he been asked, he simply would have told the prison staff to "pull all the mattresses and that would have been the end of it"; and (3) some things "could have gone down, but that God was looking out" and pulled Defendant through the situation before he "lost it" and "something . . . [went] down." Despite these statements, when asked to admit the weapons were his, Defendant declared, "I don't believe in statements because I could lie and say it ain't mine and be lying out my ass and still get charged. Or I could say, 'Yes, it's mine,' and still get charged with it."

{5} Defendant was charged with two counts of possession of a deadly weapon or explosive by a prisoner, contrary to Section 30-22-16. At trial, Defendant testified that the razor and mop weapons were not his and he did not know what Deputy Sherman was referring to during their conversation following the discovery of the weapons. The jury returned guilty verdicts on both counts.

DISCUSSION

I. Sufficiency of the Evidence

{6} Defendant argues that his convictions are not supported by substantial evidence. Specifically, he contends that because "[t]he weapons in this case were accessible to anyone in the pod[,] every inmate in the pod could have exercised control over them[.]" thus precluding a finding that Defendant, and not any other inmate, possessed the weapons.

{7} "To determine whether the evidence presented was sufficient to sustain the verdict, we must decide whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Brietag*, 1989-NMCA-019, ¶ 9, 108 N.M. 368, 772 P.2d 898. Substantial evidence consists of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *See State v. Salgado*, 1999-NMSC-008, ¶ 25, 126 N.M. 691, 974 P.2d 661. We view the evidence in the light most favorable to the verdict, "indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. We disregard all evidence and inferences that support a different result. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. "We do not reweigh the evidence and may not substitute our judgment for that of the fact[-]

¹Defendant also received an eight-year habitual offender enhancement for each count of conviction, resulting in a total prison sentence of thirty-four years for the two possession charges.

finder, so long as there is sufficient evidence to support the verdict.” *Brietag*, 1989-NMCA-019, ¶ 9.

{8} In it is entirety Section 30-22-16 provides: Possession of deadly weapon or explosive by prisoner in lawful custody consists of any inmate of a penal institution, reformatory, jail or prison farm or ranch possessing any deadly weapon or explosive substance. Whoever commits possession of deadly weapon or explosive by prisoner is guilty of a second degree felony.

The only element at issue in this appeal is the statutory requirement that the forbidden weapons at issue were *possessed* by Defendant. Because the weapons were not found on Defendant’s person but were discovered concealed above his bunk and within his mattress, this case turns on constructive, not actual, possession. See *State v. Barber*, 2004-NMSC-019, ¶ 22, 135 N.M. 621, 92 P.3d 633 (describing the differences between actual and constructive possession and explaining that “[w]hen actual physical control cannot be directly proven, constructive possession is a legal fiction used to expand possession and include those cases where the inference that there has been possession at one time is exceedingly strong” (internal quotation marks and citation omitted)).

{9} “Constructive possession exists when the accused has knowledge of [the prohibited items] and exercises control over them.” *State v. Phillips*, 2000-NMCA-028, ¶ 8, 128 N.M. 777, 999 P.2d 421. While “the mere presence of the contraband is not enough to support an inference of constructive possession[.]” *id.*, a person can be convicted of possession even “without proof that he [or she] was the exclusive occupant” of the area where the contraband was located. *State v. Muniz*, 1990-NMCA-105, ¶ 15, 110 N.M. 799, 800 P.2d 734. When exclusive control is at issue, “[a]dditional circumstances or incriminating statements are required.” *Phillips*, 2000-NMCA-028, ¶ 8. “The accused’s own conduct may afford sufficient additional circumstances for constructive possession.” *Id.* We “must be able to articulate a reasonable analysis that the fact-finder might have used to determine knowledge and control.” *State v. Garcia*, 2005-NMSC-017, ¶ 13, 138 N.M. 1, 116 P.3d 72 (alteration, internal quotation marks, and citation omitted).

{10} Based on the evidence at trial, we conclude that the jury could have reasonably inferred that Defendant had knowledge of and control over both weapons. To begin, numerous statements were attributed to Defendant that the jury could have taken as evidence that Defendant had knowledge of the weapons. Even though Deputy Sherman did not inform Defendant of the specific items found by prison staff, Defendant posed a question to the deputy—“Check this out, Sherman. What if that thing was mine?”—from which, in context, the jury could reasonably infer that Defendant had knowledge of the contraband found, i.e., the weapons hidden in the bottom bunk area. Significant to our analysis

are Defendant’s expression of hatred and anger toward another inmate, his acknowledgement that he wanted to do harm to that person, and his stated appreciation that prison staff conducted the search when they did, i.e., before Defendant “lost it” and “something . . . [went] down.” These statements, coupled with Defendant’s acknowledgement that had prison staff asked, he would have told them to “pull all the mattresses and that would have been the end of it[.]” provided sufficient evidence from which the jury could infer that Defendant had knowledge of the weapons. See *State v. Jimenez*, 2017-NMCA-039, ¶ 48, 392 P.3d 668 (holding that the state can prove knowledge through circumstantial evidence demonstrating “that the defendant knows of the presence and character of the item possessed” (internal quotation marks and citation omitted)). {11} Further, and with respect to the essential element of control, prison staff discovered numerous items bearing Defendant’s name in the bottom bunk where the weapons were discovered, supporting the conclusion that the bunk was, indeed, Defendant’s. Additionally, both weapons were easily accessible to—and, indeed, only within arm’s reach of—the person occupying that bunk, i.e., Defendant. See *Barber*, 2004-NMCA-019, ¶ 27 (providing that “[e]vidence of control includes the power to produce or dispose of” the contraband). This takes on added import in light of the testimony elicited from a fellow inmate indicating that if one inmate had an issue with another inmate, the first inmate was likely to keep a weapon in his mattress for easy access. {12} Because there is evidence from which the jury could reasonably infer that Defendant had knowledge of and control over the weapons, we conclude that Defendant’s convictions are supported by substantial evidence.

II. Double Jeopardy

{13} Defendant contends that his convictions violate his right to be free from double jeopardy. Whether multiple convictions violate the prohibition against double jeopardy involves “a constitutional question of law which we review de novo.” *State v. Swick*, 2012-NMSC-018, ¶ 10, 279 P.3d 747. “The Double Jeopardy Clause protects criminal defendants against multiple punishments for the same offense.” *State v. Bernard*, 2015-NMCA-089, ¶ 15, 355 P.3d 831 (alteration, internal quotation marks, and citation omitted). There are two types of “multiple punishments” cases: “double description” cases, “in which a defendant’s single course of conduct results in multiple charges under different criminal statutes,” and “unit-of-prosecution” cases, “in which a defendant faces multiple charges under the same criminal statute for the same conduct.” *Id.* ¶ 16. This is a unit-of-prosecution case.

{14} In unit-of-prosecution cases, the “relevant inquiry . . . is whether the [L]egislature intended punishment for the entire course of conduct or for each discrete act.” *Swafford v. State*, 1991-NMSC-043, ¶ 8, 112 N.M. 3, 810 P.2d 1223. To discern the Legislature’s intent, we apply a two-step analysis. See *Bernard*, 2015-NMCA-089, ¶ 17. “First, we review the statutory language for

guidance on the unit of prosecution.” *State v. Bernal*, 2006-NMSC-050, ¶ 14, 140 N.M. 644, 146 P.3d 289. If the plain language of the statute is unclear or ambiguous, “we move to the second step, in which we determine whether a defendant’s acts are separated by sufficient ‘indicia of distinctness’ to justify multiple punishments under the same statute.” *Id.* If the second step of the analysis does not demonstrate sufficient distinctions between the acts, we apply the rule of lenity and presume that the Legislature did not intend to impose multiple punishments where the acts are not sufficiently distinct. See *State v. Tidey*, 2018-NMCA-014, ¶ 16, 409 P.3d 1019 (explaining that “the rule of lenity favors a single unit of prosecution and disfavors multiple units of prosecution” (alterations, internal quotation marks, and citation omitted)); *Bernard*, 2015-NMCA-089, ¶ 17 (explaining that “[t]he rule of lenity requires that we interpret the statute in the defendant’s favor by invoking the presumption that the Legislature did not intend to create separately punishable offenses”).

The Unit of Prosecution in Cases Involving Crimes of Possession

{15} As our Supreme Court recently observed, “the unit of prosecution defines *how many* offenses the defendant has committed.” *State v. Ramirez*, 2018-NMSC-003, ¶ 46, 409 P.3d 902 (internal quotation marks and citation omitted). Ordinarily, the unit of prosecution is defined by “the actus reus, the physical conduct of the defendant.” *Id.* (internal quotation marks and citation omitted). However, when it comes to possession-based crimes, our jurisprudence suggests the unit of prosecution may be defined in two ways: (1) by the physical conduct of the defendant—i.e., the act of possessing contraband as of a specific point in time—or (2) by the individual items possessed. Compare *State v. Olsson*, 2014-NMSC-012, ¶¶ 3, 47, 324 P.3d 1230 (considering whether possession of multiple, distinct images of child pornography were separately punishable acts or “one unitary act of possession[.]” and concluding that the defendants could “only be charged with one count of possession”), and *Tidey*, 2018-NMCA-014, ¶¶ 9, 15 (applying a unit-of-prosecution analysis to determine whether the simultaneous possession of two different types of drug paraphernalia constituted “one unitary act” or separately punishable acts, and concluding that possession of two items of contraband was a single punishable act), with *Bernard*, 2015-NMCA-089, ¶¶ 16, 31 (considering whether the defendant’s possession of four stolen vehicles “constitutes a single course of conduct that is punishable as only one violation” and concluding that the defendant could be punished separately for each stolen vehicle he possessed). The recent cases cited above, addressing double jeopardy challenges to multiple convictions under possession statutes, have all concluded that the statute under consideration was ambiguous as to the unit of prosecution. See *Olsson*, 2014-NMSC-012, ¶ 23 (concluding that the plain meaning as to the proper unit of prosecution under the possession of child pornography statute, NMSA

1978, § 30-6A-3 (2016), is ambiguous); *Tidey*, 2018-NMCA-014, ¶ 10 (same with respect to the possession of drug paraphernalia statute, NMSA 1978, § 30-31-25.1 (2001)); *Bernard*, 2015-NMCA-089, ¶¶ 18-19 (same with respect to the possession of a stolen vehicle statute, NMSA 1978, § 30-16D-4 (2009)).

Section 30-22-16 Is Ambiguous as to the Applicable Unit of Prosecution

{16} Here, the State concedes that the plain language of Section 30-22-16 does not clearly and unambiguously express the applicable unit of prosecution. While we are not bound by the State's concession, *see State v. Caldwell*, 2008-NMCA-049, ¶ 8, 143 N.M. 792, 182 P.3d 775 (refusing to be bound by the state's concession that the defendant's conduct in that case was unitary and undertaking its own analysis after noting that "[t]he public interest in criminal appeals does not permit their disposition by party stipulation" (internal quotation marks and citation omitted)), we agree that Section 30-22-16 does not plainly define the Legislature's intended unit of prosecution for violations of that statute. {17} As noted above, Section 30-22-16 defines the conduct proscribed by its terms in a single sentence: "Possession of deadly weapon or explosive by prisoner in lawful custody consists of any inmate of a penal institution . . . possessing any deadly weapon or explosive substance." *Id.* As with other possession-based statutes, Section 30-22-16 is facially ambiguous as to the unit of prosecution because it can be construed as intending either a single punishment based on the actus reus of "possession," or instead multiple punishments based on each individual deadly weapon possessed. *Cf. Bernard*, 2015-NMCA-089, ¶¶ 18-19 (concluding that the statute criminalizing possession of a stolen vehicle was ambiguous where the statutory language did not "provide clear guidance as to whether the specific type of [item possessed] may constitute the proper unit of prosecution for multiple violations" and was "silent as to whether the number of [items] unlawfully possessed by a defendant may be charged as separate offenses"). Concluding that Section 30-22-16 is ambiguous as to the intended unit of prosecution, we turn next to determining whether, based upon the facts of this case, Defendant's conduct in possessing the razor weapon and the mop weapon "is better characterized as one unitary act, or multiple, distinct acts, consistent with legislative intent." *Tidey*, 2018-NMCA-014, ¶ 9 (internal quotation marks and citation omitted).

"Indicia of Distinctness" Analysis

{18} To determine whether separate convictions are justified under Section 30-22-16 for each of the weapons found in Defendant's possession, we consider whether the convictions were supported by sufficient indicia of distinctness. We may look to "time and space considerations" as well as the "quality and nature of the acts, or the objects or results involved." *Tidey*, 2018-NMCA-014, ¶ 11 (internal quotation marks and citation omitted). {19} As to time and space considerations, the State argues that "the evidence demonstrates

that Defendant's possession of each weapon commenced at a different time—at the distinct moments when Defendant created each weapon[,] thereby allowing separate punishment for "distinct and separate[.] . . . violations of [Section] 30-22-16." Yet the State fails to point to anything in the record establishing—or even supporting the inference—that it was Defendant who created either of the weapons. Granted, Daniel Webb, an officer at the detention center, testified that he found evidence in a shower stall, some eighty feet from Defendant's bunk, suggesting that the mop weapon had been crafted there. However, the State points to no testimony or evidence from which the jury could reasonably infer that Defendant was the person who created either of the weapons, nor does our review of the record reveal any such evidence. Moreover, the State made no claim or showing that the shower area was in Defendant's exclusive control or that Defendant was seen or admitted to creating either weapon. And while the State points out that Defendant made "incriminating statements" to Deputy Sherman—i.e., "What if that thing is mine?" and "I could lie and say 'It ain't mine' . . . [o]r I could say, 'Yes, it's mine'"—those statements merely establish that Defendant had knowledge of the existence of a weapon or weapons, not that he created either of the weapons later found in his possession. In the absence of any such evidence, we reject the State's unsupported contention that Defendant's possession of each weapon was separated in time, thereby allowing separate punishments based on separate acts. *See Chan v. Montoya*, 2011-NMCA-072, ¶ 9, 150 N.M. 44, 256 P.3d 987 (stating that "[t]he mere assertions and arguments of counsel are not evidence" (internal quotation marks and citation omitted)); *see also State v. Dominguez*, 2014-NMCA-064, ¶ 26, 327 P.3d 1092 ("[W]e will not search the record to find facts to support [an] argument").

{20} With respect to space considerations, it bears emphasis that while the weapons were found in two different places in Defendant's bunk area—the razor weapon in the upper support beam above Defendant's sleeping area and the mop weapon inside Defendant's mattress—both were discovered near one another within Defendant's limited bunk space. That the weapons were secreted and found in separate hiding places each within an arm's-length of the other does not reflect possessory conduct sufficiently distinct in nature to support multiple punishments. *See Bernard*, 2015-NMCA-089, ¶ 27 (concluding that time and space considerations failed to establish the distinctness of the defendant's acts of possessing four stolen vehicles even where there was evidence that the defendant may have possessed certain vehicles at different times and in different locations). Indeed, the absence of distinct acts suggested by the weapons' proximity to one another is reflected in both the fact that they were found during the same search and that the discovery led to identical jury instructions with only the name of the weapon differing. *See Tidey*, 2018-NMCA-014, ¶ 13 (concluding that there was "an insignificant indicia of distinctness"

supporting separate punishments where separate items of drug paraphernalia were "simultaneously found" and the jury received the same instruction as to both counts of possession); *Bernard*, 2015-NMCA-089, ¶ 27 (noting that the four stolen vehicles were recovered "from the same location" and that the jury "was not instructed to consider whether [the d]efendant possessed the vehicles at separate times and locations"). Thus, we agree with Defendant that, based on the evidence adduced at trial, the conduct underlying the two possession charges was the single act of possessing two different weapons at the same time, and that neither time nor space considerations support multiple punishments here.

{21} We next consider whether the objects and results involved in this case supply the necessary indicia of distinctness to allow the conclusion that the Legislature intended a prisoner in Defendant's position to be punished separately for each weapon possessed. *See Bernard*, 2015-NMCA-089, ¶ 26 ("If a case cannot be resolved from time and space considerations, then resort must be had to the quality and nature of the acts or to the objects and results involved." (internal quotation marks and citation omitted)). Turning first to the objects involved, the two makeshift weapons found to be in Defendant's possession, the razor weapon and the mop weapon, are more similar than different. The fact that one weapon was designed to inflict harm through slashing and the other designed to injure through stabbing does not provide the differentiation necessary to support separate convictions in this case. That is because our Legislature has defined "deadly weapon" as including, *inter alia*,

any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons[.]

NMSA 1978, § 30-1-12(B) (1963) (emphasis added). Indeed, rather than clarifying whether the Legislature intended separate punishment for possession of each individual weapon meeting the definition of "deadly weapon," the definition of "deadly weapon" only amplifies the lack of clarity regarding the intended unit of prosecution under Section 30-22-16. Because the razor weapon and the mop weapon each qualify as a "deadly weapon" as that term is defined in the Criminal Code, and there being no other reliable indicators of legislative intent, we conclude that the minor differences in functionality between the two prison-made weapons possessed by Defendant does not justify convicting him of separate counts under Section 30-22-16. *See Tidey*, 2018-NMCA-014, ¶ 15 (explaining that "[t]he Legislature specifically included a compre-

hensive list of defined items . . . that constitute drug paraphernalia” and noting that the items at issue in that case—empty baggies and a straw with a burnt end—both fell within the “containers and other objects used” category of drug paraphernalia (internal quotation marks and citation omitted); *cf. Bernard*, 2015-NMCA-089, ¶¶ 28-31 (relying on various legislative enactments contained in both the Motor Vehicle Code and the Criminal Code in concluding that there existed sufficiently distinct indicia of “objects and results” to support multiple punishments). {22} Turning next to the results involved, the only “result” of Defendant’s possession of the razor and mop weapons was the completed act of possession itself, a violation of Section 30-22-16. Indeed, this is neither a case in which a further consequence of possession of a deadly weapon by a prisoner materialized—e.g., where multiple deadly weapons simultaneously possessed are used to inflict multiple injuries on a victim or separate injuries on multiple victims—nor one in which the “results involved” bear the evidentiary capacity to supply the necessary indicia of distinctness to support multiple punishments under Section 30-22-16. *Cf. Bernal*, 2006-NMSC-050, ¶ 20 (concluding that indicia of distinctness supported separate punishment for two attempted robberies where “there were two victims, and most notably, each victim suffered separate and distinct harms at the hands of [the d]efendant”); *State v. Baca*, 1992-NMSC-055, ¶¶ 1-2, 114 N.M. 668, 845 P.2d 762 (involving a case where

the prisoner used a “shank” or “crude jail-made knife” to kill another inmate and was convicted of both first degree murder and possession of a deadly weapon by a prisoner). That Defendant admitted to having feelings of “hate and anger” toward a particular inmate and wanting to “cut that guy’s head off” at most supplies evidence of a *contemplated* and *potential* “result” of Defendant’s possession. Fortuitously, however, no such result ever occurred thanks to the diligence of prison personnel. Thus, on the facts of this case, the “result” of Defendant’s prohibited conduct—i.e., the completed act of possessing deadly weapons—also fails to establish sufficient indicia of distinctness to justify multiple punishments.

{23} As a final matter, we briefly address the State’s argument centering on the “policy considerations” underlying and the “interests protected” by Section 30-22-16, an argument the State advances as part of its “objects and results” discussion and one which reflects a misunderstanding of the focus of this aspect of a unit-of-prosecution analysis. The State argues that the statute evinces the Legislature’s “clear and self-evident policy . . . to prohibit and minimize the availability of deadly weapons to prisoners in a confined place of incarceration.” According to the State, “the Legislature must have intended that there be as few deadly weapons as possible available to inmates.”² With this much, we agree. *See Baca*, 1992-NMSC-055, ¶ 16 (describing a violation of Section 30-22-16 as “a crime closely approaching a strict liability crime” and noting that the

purpose of the statute “is to protect inmates and officers from assaults with dangerous weapons perpetrated by armed prisoners”). However, the relevant inquiry does not involve a determination of the legislative purpose and intent in enacting the statute itself, but rather whether the Legislature intended for multiple punishments to be imposed under the specific facts of a given case. As previously discussed, we cannot say that there are sufficient indicia of distinctness to support Defendant’s separate convictions under Section 30-22-16. Applying the rule of lenity, we hold that Defendant’s convictions for simultaneously possessing two deadly weapons violate his right to be free from double jeopardy. We, therefore, reverse with instructions to the district court to vacate one of Defendant’s convictions.

CONCLUSION

{24} We conclude that sufficient evidence supports Defendant’s convictions under Section 30-22-16. However, because we hold that those convictions violate the prohibition against double jeopardy, we remand to the district court to vacate one of the convictions.

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

WE CONCUR:
MEGAN P. DUFFY, Judge
BRIANNA H. ZAMORA, Judge

²The State cites *Ramirez*, 2018-NMSC-003, ¶ 54, in support of this contention. Notably, however, *Ramirez*’s discussion of “[p]olicy considerations” and what the Legislature “must have intended” informed our Supreme Court’s interpretation of the statute there at issue under the first step of a unit-of-prosecution analysis, i.e., in resolving whether the statute was ambiguous as to the unit of prosecution, not under step two’s “indicia of distinctness” analysis, which focuses on whether the unit of prosecution is discernible vis-à-vis the specific facts of the case.

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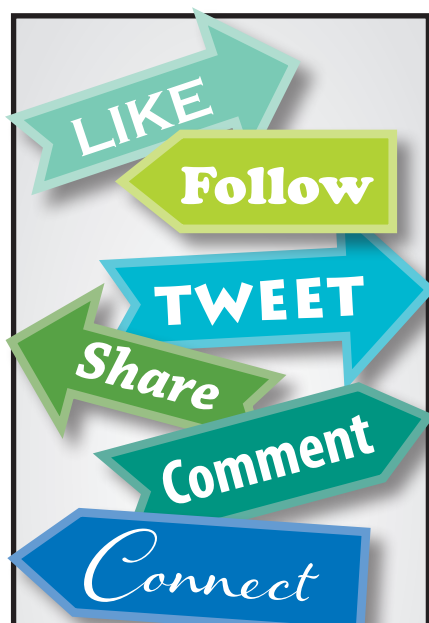
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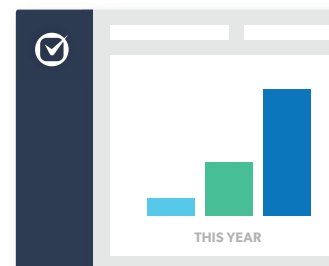
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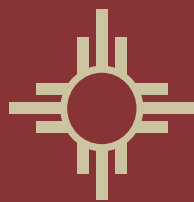
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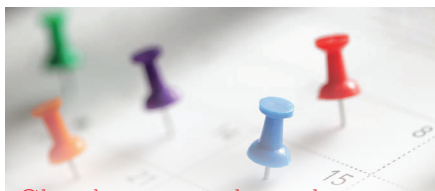
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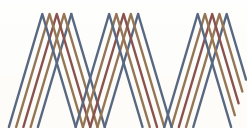
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Associate Attorney

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

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.

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.

Staff Attorney

Disability Rights New Mexico, a statewide non-profit agency serving to protect, promote and expand the rights of persons with disabilities, seeks full-time Staff Attorney primarily to represent agency clients in legal proceedings. The position also involves commenting on proposed regulations and legislation, and other policy advocacy. Must have excellent research and writing skills, and demonstrate competence in a range of legal practice including litigation. Advanced education, work experience or volunteer activities relevant to disability issues preferred. Must be licensed or eligible for license in NM. Persons with disabilities, minorities, and bilingual applicants strongly encouraged. Competitive salary and benefits. Send letter of interest addressing qualifications, resume, and names of three references to DRNM, 3916 Juan Tabo NE, Albuquerque, NM 87111, or by email to mwolfe@DRNM.org. Applicants encouraged to apply ASAP, but no later than 3/2/2020. AA/EEO.

Senior Trial Attorney

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

Procurement 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. This position will be the procurement attorney for the Purchasing division. Duties include contract review, contract negotiation, proposal evaluation, assisting end users in drafting requests for procurement and requests for bids, responding to procurement protests and litigating any resulting suits. Must be able to provide legal advice and guidance to City departments, boards, and City Council on complex purchasing transactions. Attention to detail, strong writing skills, and client counseling skills are essential. Must be an active member of the State Bar of New Mexico in good standing or be able to attain bar membership within three months of hire. 5+ years of practice preferred. 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.

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.

Staff Attorney

The New Mexico Environmental Law Center (NMELC) is seeking applications for a Staff Attorney dedicated to NMELC's mission of working with communities to advance environmental justice and human rights. NMELC works in partnership with community organizations, coalitions and other stakeholders to build multi-strategy campaigns that address the systemic polluting of low-income communities of color and advance community health and sustainability. As Staff Attorney, you will engage in legal, policy, and administrative advocacy, as well as coalition-building and media work. You will work closely with client communities to achieve client-directed priorities. Qualifications: Must be an attorney in good standing and either be licensed to practice law in the State of New Mexico or be eligible for admission to the New Mexico bar at the time of hiring. A minimum of five years of relevant experience in litigation, policy and/or administrative advocacy. Demonstrated commitment to community lawyering and experience in racial or social justice, environmental and/or equitable development work. NMELC offers a competitive salary and generous benefits. NMELC is an Equal Employment Opportunity employer; we strongly encourage people of color, women and LGBTQ+ candidates to apply. Please send cover letter, resume, brief writing sample (3-5 pages) and three references by February 28, 2020, to ejantz@nmelc.org. Visit us to learn more at www.nmelc.org.

First Judicial District Court Child Support Hearing Officer Perm# #00000357-23100

Opening Date: 01/27/2020 – Close Date: 02/27/2020; Job Pay Range: YY; Target Pay Range/Rate \$50.471 per hour (\$104,979.68 annually); The First Judicial District Court is accepting applications for the unclassified (At-Will) full-time, Child Support Hearing Officer Position. Hiring salary is \$50.471 per hour (\$104,979.68 annually). Performs the duties of a hearing officer as set forth in The Child Support Hearing Officer Act; including reviewing petitions; conducting hearings; prepare recommendations for review and final approval by the court; insuring prompt and full payment by obligated parties of child support obligation for dependent children; insuring that support payments are made in compliance with Federal regulations. Carry out the statutory duties of a Child Support Hearing Officer and utilize the procedures as set forth in Rule 1-053.2 NMRA. Supervises, directs, and evaluates staff on work performance. QUALIFICATIONS: Graduate of a law school meeting accreditation of the ABA; possess a license to practice law in the State of New Mexico; Have at least 5 years of experience in the practice of law, 2 of which must be in family law or domestic relations matters; At least two years of supervisory experience; Ability to establish effective working relationships with judges, the legal community, and staff; and to communicate complex rules clearly and concisely, respond with tact and courtesy both orally and in writing; Extensive knowledge of New Mexico and federal case law, constitution and statutes; court rules, policies and procedures; manual and computer legal research and analysis; A work record of dependability and reliability, attention to detail, accuracy, confidentiality, and effective organizational skills; Ability to successfully pass a background check. TO APPLY: A NM Judicial Branch Employment Application or a Resume and Resume Supplemental Form along with a copy of proof of education and license must be received by mail or hand-delivered by 4:00 p.m. Thursday February 27, 2020: First Judicial District Court, Human Resource Office, 225 Montezuma Ave., P.O. Box 2268, Santa Fe, NM 87504. For a job application, visit the judicial website at: www.nmcourts.gov or call 455-8196. EQUAL OPPORTUNITY EMPLOYER

Associate Attorney

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.

Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 38 states, is currently seeking an experienced litigation attorney for an immediate opening in its offices in Albuquerque and Santa Fe, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume with cover letter indicating which office(s) you are interested in to Hamilton Hinton at hhinton@cordellllaw.com

Associate Attorneys

Mynatt Martínez Springer 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.

Attorney

Hunt & Davis, P.C. is seeking an attorney with a strong work ethic to become part of our firm. This firm is well-established and concentrates its practice in real estate transactions and litigation. Hunt & Davis has an excellent client base and represents developers, buyers, sellers, commercial landlords, title companies and homeowners' associations. We are looking for an attorney that would enjoy working in a very fast-paced, busy office. The successful candidate must have strong organization, research, writing, communication and time management skills. Hunt & Davis offers competitive compensation and benefits. Bonus potential and upward mobility is available for the right candidate. Please send a resume and writing sample to firm@huntedavislaw.com.

Associate Attorney

The Santa Fe law firm of Katz Herdman MacGillivray & Fullerton PC is seeking a full-time associate to assist in all areas of our practice, including real estate, water law, estate planning, zoning, business, finance, employment, construction, and related litigation. Please send resumes to ctc@santafelawgroup.com

Attorney

Marinosci Law Group, P.C., a national law firm specializing in all areas of mortgage servicing, is seeking an experienced New Mexico attorney. The ideal candidate will be representing secured creditors, banks and mortgage servicers in all stages of the default process; handling a national portfolio of loans for banks and mortgage servicers; attending hearings, mediations, trials, settlement conferences, and other appearances as necessary. Must possess exceptional organizational and managerial skills including superior attention to detail and self-motivation. Applicant must have 8 - 10 years' experience in the default servicing industry. Must be an active member of the New Mexico Bar in good standings and preferably all the federal districts. Fannie Mae and Freddie Mac approved a plus. Qualified candidates should submit a resume with a cover letter and salary requirements to careers@mlg-defaultlaw.com

Mediation Bureau Chief - Workers' Compensation Administration

This position will provide the daily oversight of the Mediation Bureau and mediate workers' compensation cases to evaluate merits of the claims and produce successful resolutions. The position is responsible for assisting the Director, Executive Deputy Directors and General Counsel in recommending and implementing changes and initiatives as they apply to the Mediation Bureau and the statutes and regulations of the New Mexico Workers' Compensation Act. The position directly manages five staff members (3 Attorneys and 2 Legal Secretary's). Candidate must have a Juris Doctorate degree from an accredited school of law and five (5) years of experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico. Must possess and maintain a valid New Mexico driver's license. At least three (3) years supervisory experience and previous experience working with workers' compensation law preferred. Salary: \$34.18 - \$54.68 / \$71,084 - \$113,734; ALL CANDIDATES MUST APPLY ON-LINE AT: spo.state.nm.us Deadline for submission is February 23, 2020

Compliance Manager

The University of New Mexico's Office of Equal Opportunity (OEO) seeks a highly qualified professional committed to diversity and civil rights for the role of Compliance Manager. Duties include investigating Titles IX and VII, ADA, and other civil rights issues, creating and providing training on all EEO and Affirmative Action initiatives laws, managing four investigators, ensuring data integrity of OEO's case management system, and assisting OEO Director with office oversight. Preferred applicants have a J.D., supervisory experience, civil rights or employment law experience and a demonstrated commitment to diversity, social justice and civil rights. Apply via UNM Jobs. EEO employer.

Assistant Attorneys General I, II, and III

The Office of the New Mexico Attorney General is currently recruiting for Assistant Attorneys General I, II, and III positions in our Consumer and Environmental Protection and Litigation Divisions of Civil Affairs and in our Medicaid Fraud Control and Special Prosecutions Divisions of Criminal Affairs. The job postings and further details are available at www.nmag.gov/human-resources.aspx.

Attorney Position

Small, collegial Santa Fe, New Mexico firm seeks motivated attorney to become part of busy real estate, business and litigation practice. Looking for attorney with 2-7 years' experience, and strong research, writing and people skills. Excellent opportunity to join a well-established practice as well as to build and develop your own areas of interest. Salary commensurate with experience. Please send resume, references and short writing sample to: Hays & Friedman, P.A., 530-B Harkle Road, Santa Fe, New Mexico 87505, or submit information to ameliam@haysfriedmanlaw.com. All inquires will be kept confidential.

Assistant Santa Fe County Attorney

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

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 English @ 715 Tijeras Ave. NW, 87102 or email: holly@lyndalatta.com

Associate Attorney

Do you want to work in a fast-paced, well-established law firm? German * Burnette & Associates, LLC, a small/mid-sized dog-friendly Albuquerque civil defense firm with a state-wide practice representing public entities and others seeks an associate attorney. Experience preferred but not required. Candidate must be willing to travel within the state. Our practice areas include general civil defense, Constitutional law & civil rights, torts, employment and education law. We offer a competitive compensation and benefits package, a relaxed work environment and challenging work. Please send a cover letter describing your current practice and interest in position, your resume, and a writing sample to Lawfirmabq@gmail.com. All applications will remain confidential.

Request For Proposal – Prosecutor Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual practicing attorney to provide prosecutorial legal services for adult criminal or juvenile delinquency cases when there is conflict of interest or unavailability of regular prosecutor. Reply by March 4, 2020. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfqa.aspx

Los Alamos National Laboratory (LANL) Law Firm Solicitation for Pre-Qualification

Los Alamos National Laboratory (LANL) Law Firm Solicitation for Pre-Qualification Is your firm interested in performing work for Los Alamos National Laboratory (LANL), a preeminent research institution engaged in strategic science on behalf of national security? Triad National Security, LLC, the management and operating contractor for LANL, is currently soliciting proposals in an effort to pre-qualify law firms as part of its best practices, and in compliance with the competitive requirements of the Department of Energy/National Nuclear Security Administration (DOE/NNSA) in 10 CFR Part 719. Pre-qualified firms could be considered on a case-by-case basis for future litigation and advisory support in the following subject matter areas: Architectural, Engineering, Design and Construction; Classified or Otherwise Protected Matter; Crisis Management and Public Relations; Employment and Traditional Labor Law; Employment Benefits; Environmental Law; ERISA; Export Control; Federal Government Contracting and Subcontracts; Immigration; Intellectual Property (patent preparation and prosecution, copyrights, trademarks, technology transfer, portfolio management, litigation); Major Fraud Act/False Claim and Qui Tam Proceedings; Privacy and Information/Cyber Security; Tax; Transportation Law; White Collar Criminal Matters. If interested, and to obtain more information regarding proposal requirements, email LFSprocess@lanl.gov by March 11, 2020.

Paralegal

Plaintiff's personal injury law firm in Los Lunas seeks paralegal. Successful candidate must be professional, motivated, organized, energetic and capable of multi-tasking in a fast-paced environment. Excellent written and oral communication skills are a must. Will consider legal assistant with excellent potential and motivation to become a paralegal. All responses kept strictly confidential. Please send your cover letter, resume and references to Office Manager, PO Box 2291, Los Lunas, NM 87031.

Legal Assistant/Paralegal

Looking for intelligent, well rounded individual with a sense of humor and a good work ethic who is a self-starter and critical thinker with attention to detail. Minimum of 3 years' experience in law office or legal profession. You will provide backup support for two legal assistants, paralegal work as assigned, and general office assistance. We are a medium size defense firm which benefits from great people and even better clients. We are a service-oriented law firm and our clients are primarily municipal, private, non-profit, and public entities. We provide an exceptional working environment and excellent benefits. If you're interested please email a resume and cover letter to jd@stelznerlaw.com.

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). Must have experience in obtaining, organizing and summarizing medical records. Insurance Defense experience preferred. 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

Administrative Assistant

Lewis Brisbois is a national law firm with 52 offices throughout the United States and over 1,400 attorneys. Our Albuquerque office is seeking an experienced Administrative Assistant to assist our Office Administrator and Managing Partner with the day to day operations of the office. Candidates should have a minimum of 5 years in a legal setting, excellent verbal and written skills and possess the ability to prioritize work and manage large projects. Duties include but are not limited to providing secretarial support, processing various financial information, maintenance and processing of data related to cases, overseeing the creation and distribution of various reports, handling special projects as requested by management, directing overflow work and coverage plans when employees are absent, ordering supplies, handling facility requests with the building landlord and providing clerical assistance on various tasks as needed. Must be proficient in Microsoft office, especially Word, Excel and Outlook. Leadership skills, professionalism and the ability to maintain confidentiality are a must. Contact: Please submit your resume in Word or PDF format and include a cover letter to phxrecruiter@lewisbrisbois.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@BEStaffJobs.com

Office Space

Open Offices Available/ Virtual Offices

Office Alternatives has all-inclusive executive offices for rent onsite at two locations no leases. Or consider, virtual office packages that allow you to rent office space hourly when you need it and have use of a Professional address as your business address. The virtual telephone package allows you the luxury of a phone receptionist without the overhead of hiring staff. Come in and check us out! Office Alternatives www.officealternatives.com * 505-796-9600

Miscellaneous

Want To Purchase

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

2020–2021

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