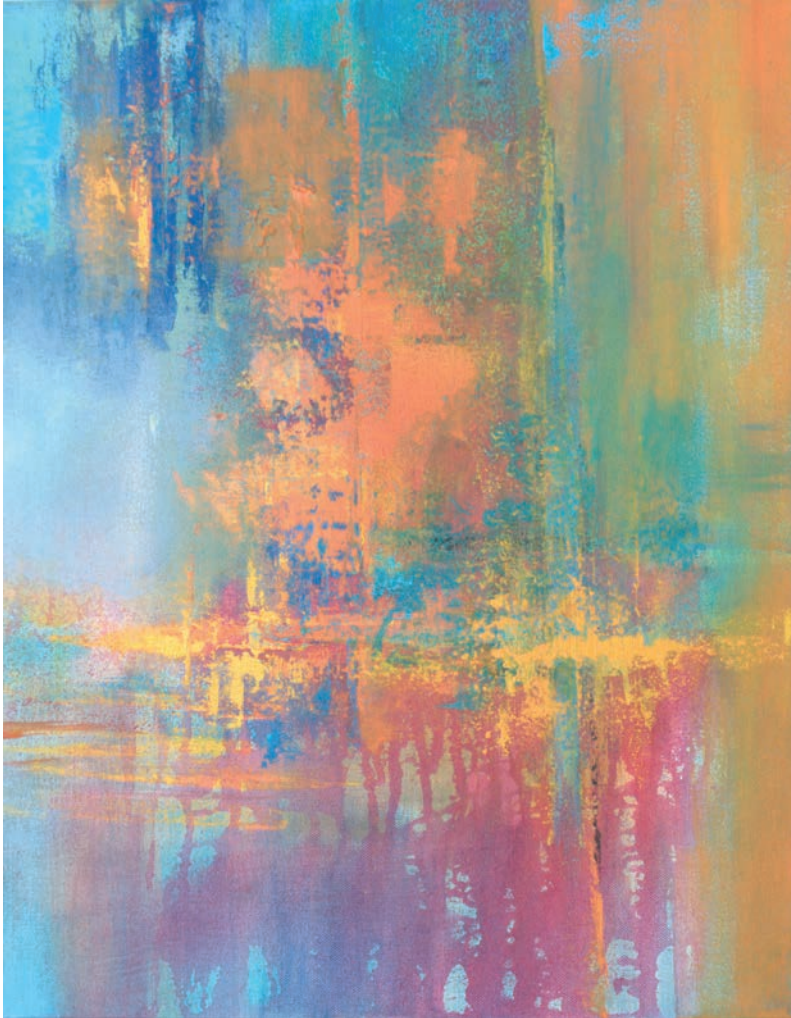


# BAR BULLETIN

May 13, 2020 • Volume 59, No. 9



*Kismet*, by Linda Holland

[www.lindahollandstudio.com](http://www.lindahollandstudio.com)

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**Updates, Information, and Event Cancellations Due to the Coronavirus Situation:** The State Bar of New Mexico is committed to helping New Mexico lawyers respond optimally to the developing COVID-19 coronavirus situation. To view updates and information about the rapidly developing situation, visit [www.nmbar.org/covid-19](http://www.nmbar.org/covid-19). For a list of events that have changed or been cancelled due to the coronavirus situation, visit [www.nmbar.org/eventchanges](http://www.nmbar.org/eventchanges) or contact the event organizer.



CLE programming from the Center for Legal Education

Register online at [www.nmbar.org/CLE](http://www.nmbar.org/CLE) or call 505-797-6020.

## Live Replay Webcasts

### How to Practice Series: Probate and Non-Probate Transfers

Wednesday, May 27 • 9 a.m.–3:55 p.m.

4.0 G 2.0 EP

\$251 Replay Fee

### Animal Cruelty Issues: What Juvenile and Family Court Judges and Practitioners Need to Know (2019)

Thursday, May 28 • 9–11 a.m.

2.0 G

\$98 Replay Fee

### Grandparents Raising Grandchildren: Critical Legal and Social Issues (2019)

Thursday, May 28 • 11:30 a.m.–1 p.m.

1.5 G

\$73 Replay Fee

### JLAP Town Hall: Are You Scared S\*\*\*tless? Let's Talk! (2019)

Thursday, May 28 • 2–3:30 p.m.

1.5 EP

\$73 Replay Fee

### Surviving White Collar Cases: Prosecution and Defense Perspectives (2019)

Friday, May 29 • 8:30 a.m.–4:15 p.m.

5.5 G 1.5 EP

\$278 Replay Fee

## Upcoming Webinar

### The Paperless Law Firm—A Digital Dream

Wednesday, May 27 • 11 a.m.–Noon

1.0 G

\$89 Standard Fee

## Upcoming Teleseminars

### Drafting Waiver of Conflicts of Interest

Thursday, May 21 • 11 a.m.–Noon

1.0 EP

\$79 Standard Fee

### Escrow Agreements in Real Estate Transactions

Friday, May 22 • 11 a.m. - Noon

1.0 G

\$79 Standard Fee

### Valuation of Closely Held Companies

Friday, May 29 • 11 a.m.–Noon

1.0 G

\$79 Standard Fee

### Special Issues in Small Trusts

Monday, June 8 • 11 a.m. - Noon

1.0 G

\$79 Standard Fee

### Text Messages & Litigation: Discovery and Evidentiary Issues

Tuesday, June 9 • 11 a.m.–Noon

1.0 G

\$79 Standard Fee



505-797-6020 • [www.nmbar.org/cle](http://www.nmbar.org/cle)

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### Meetings

#### May

- 13**  
**Business Law Section Board**  
 4 p.m., teleconference
- 13**  
**Children's Law Section Board**  
 Noon, teleconference
- 13**  
**Tax Section Board**  
 9 a.m., teleconference
- 15**  
**Family Law Section Board**  
 9 a.m., teleconference
- 15**  
**Indian Law Section Board**  
 Noon, teleconference
- 19**  
**Solo and Small Firm Section Board**  
 10:30 a.m., teleconference
- 21**  
**Public Law Section Board**  
 Noon, teleconference

### Workshops and Legal Clinics

#### May

- 27**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., Video Conference  
 For more details and to register, call  
 505-797-6094

#### June

- 3**  
**Divorce Options Workshop** 6-8 p.m.,  
 State Bar Center, Albuquerque,  
 505-797-6022
- 24**  
**Consumer Debt/Bankruptcy Workshop**  
 6-9 p.m., State Bar Center, Albuquerque,  
 505-797-6094

#### July

- 15**  
**Divorce Options Workshop** 6-8 p.m.,  
 State Bar Center, Albuquerque,  
 505-797-6022

**About Cover Image and Artist:** Linda Holland layers and blends color, intuitively responding to shades and textures which evoke patinas of urban and natural realms. Gesture and motion flow from martial arts and musical rhythms. Her abstract sculptures and paintings have been featured in numerous solo and two-person shows in New Mexico as well as juried regional group exhibits. In addition to corporate and private collections, several of her works have been selected for state, municipal and university art collections. Other paintings can be viewed at [www.lindahollandstudio.com](http://www.lindahollandstudio.com) or Weyrich Gallery.

# 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 and circulation hours: Monday-Friday 8 a.m.-4:45 p.m. For more information call: 505-827-4850, email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### New Mexico Court of Appeals Announcement of Vacancy

One vacancy on the New Mexico Court of Appeals will exist on May 30 due to the retirement of the Honorable Judge Linda M. Vanzi effective May 29. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. Sergio Pareja, chair of the Appellate Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website, <http://lawschool.unm.edu/judsel/application.php>, or emailed to you by emailing the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for May 21 at 5 p.m. Applications received after that time will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Appellate Court Judicial Nominating Commission will begin at 9 a.m. on June 29 to interview applicants for the position at the Supreme Court Building, 237 Don Gaspar Avenue in Santa Fe, NM. The commission meeting is open to the public and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard.

## Professionalism Tip

### With respect to the courts and other tribunals:

I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation.

### Notice of Possible Event Cancellations or Changes:

Due to the rapidly changing coronavirus situation, some events listed in this issue of the *Bar Bulletin* may have changed or been cancelled after the issue went to press. Please contact event providers or visit [www.nmbar.org/eventchanges](http://www.nmbar.org/eventchanges) for updates.

### Third Judicial District Court Announcement of Vacancy

A vacancy on the Third Judicial District Court will exist in Las Cruces as of May 20 due to the creation of an additional judgeship by the legislature. Third Judicial District Court anticipates that the new judgeship may be assigned a docket of some combination of criminal, civil and/or domestic cases. There will also be an assignment to specialty courts as deemed necessary. Inquiries regarding additional details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. Sergio Pareja, chair of the Judicial Nominating Commission, solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Constitution. Applications may be obtained from the judicial selection website: <http://lawschool.unm.edu/judsel/application.php>, or emailed to you by emailing Beverly Akin at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for May 8 at 5 p.m. Applications received after that date will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Committee will meet beginning at 9 a.m. on June 10 at the Third Judicial District Courthouse, 201 W Picacho Ave, Las Cruces, N.M. 88005, to evaluate the applicants for this position. The committee meeting is open to the public.

### STATE BAR NEWS Coronavirus Updates

The State Bar of New Mexico is committed to helping New Mexico lawyers respond optimally to the developing COVID-19 coronavirus situation. Visit [www.nmbar.org/covid-19](http://www.nmbar.org/covid-19) for a compilation of resources from national and local health

agencies, canceled events and frequently asked questions. This page will be updated regularly during this rapidly evolving situation. Please check back often for the latest information from the State Bar of New Mexico. If you have additional questions or suggestions about the State Bar's response to the coronavirus situation, please email Executive Director Richard Spinello at [rspinello@nmbar.org](mailto:rspinello@nmbar.org).

### Board of Bar Commissioners ABA House of Delegates

The Board of Bar Commissioners will make one appointment to the American Bar Association House of Delegates for a two-year term, which will expire at the conclusion of the 2022 ABA Annual Meeting. The delegate must be willing to attend meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; however, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings. Members wishing to serve on the board must be a current ABA member in good standing and should send a letter of interest and brief resume by May 15 to Kris Becker at [kbecker@nmbar.org](mailto:kbecker@nmbar.org) or fax to 505-828-3765.

### 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 May 15 to Kris Becker at [kbecker@nmbar.org](mailto:kbecker@nmbar.org) or fax to 505-828-3765.

### Judicial Standards Commission

The Board of Bar Commissioners will make one appointment to the Judicial Standards Commission for a four-year term.

The time commitment for service on this Commission is substantial and the workload is voluminous. Receiving, reviewing, and analyzing substantial quantities of electronic documents are necessary to prepare for Commission matters. Strict adherence to constitutional, statutory, and regulatory authority governing the Commission is mandatory, expressly including but not limited to confidentiality. Commissioners meet at least six times per year for approximately three hours per meeting. A substantial amount of reading and preparation is required for every meeting. In addition to regular meetings, the Commission schedules at least three weeklong trailing dockets of trials. Additional trials, hearings, or other events may be scheduled on special settings. Additionally, mandatory in-house training sessions may periodically take place. Unless properly recused or excused from a matter, all Commissioners are required to faithfully attend all meetings and participate in all trials and hearings. Appointees should come to the Commission with limited conflicts of interest and must continually avoid, limit, or eliminate conflicts of interest with the Commission's cases, Commission members, Commission staff, and with all others involved in Commission matters. Members wishing to serve on the Commission should send a letter of interest and brief resume by May 15 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

### **Fifth Bar Commissioner District Vacancy**

A vacancy exists in the Fifth Bar Commissioner District (Curry, DeBaca, Quay and Roosevelt counties). The appointment will be made by the Board of Bar Commissioners to fill the vacancy until the next regular election of Commissioners, and the term will run through Dec. 31. Active status members with a principal place of practice located in the Fifth Bar Commissioner District are eligible to apply. The remainder of the 2020 Board meetings are scheduled for June 18-19, Sept. 25, and Dec. 9. Members interested in serving on the Board should submit a letter of interest and resume to Kris Becker, at kbecker@nmbar.org or fax to 505-828-3765, by May 15.

### **New Mexico Legal Aid**

The Board of Bar Commissioners will make one appointment to the New Mexico Legal Aid Board for the remainder of a three-year term through Dec. 31; this vacancy is to be filled by a member of the Indian Law

Section. Members wishing to serve on the NMLA Board should send a letter of interest and brief resume by May 15 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

### **New Mexico Judges and Lawyers Assistance Program**

*We're now on Facebook! Search "New Mexico Judges and Lawyers Assistance Program" to see the latest research, stories, events and trainings on legal well-being!*

### **Recovery Possibilities - Canceled Until Further Notice**

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, Santa Fe. For more information, contact Victoria at 505-620-7056.

### **People with Wisdom - Canceled Until Further Notice**

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. You are not required to sign up in advance, so feel free to just show up! The group meets at 320 Osuna Rd, NE, #A, Albuquerque and is led by Janice Gjertson, LPCC. Contact Tenessa Eakins at 505-797-6093 or teakins@nmbar.org for questions.

### **Monday Night Support Group**

- May 18
- June 1
- June 8

As of March 30, this group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam at pmoore@nmbar.org or Briggs Cheney at BCheney@DSC-LAW.com and you will receive an email back with the Zoom link.

— *Featured* —

## **Member Benefit**

# **LAWPAY®**

AN AFFINIPAY SOLUTION

LawPay is proud to be the preferred payment solution of more than 50,000 lawyers. LawPay is designed specifically for the legal industry. LawPay provides attorneys with a simple, secure way to accept online credit card and eCheck payments in their practice.

**To learn more, call  
866-376-0950 or visit our  
[www.lawpay.com/nmbar](http://www.lawpay.com/nmbar).**

### **Employee Assistance Program Managing Stress Tool for Members**

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. 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>.

### **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.
Reference	
Monday–Friday	9 a.m.–6 p.m.

## 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: June 4 at noon at Japanese Kitchen; and Aug. 12 at 7 a.m. at Stripes at Wyoming and Academy. For more information, visit [nmchristianlegallaid.org](http://nmchristianlegallaid.org) or email [christianlegallaid@hotmail.com](mailto:christianlegallaid@hotmail.com)

## Albuquerque Bar Association's

### 2020 Membership Luncheons

- June 9: Damon Ely, Bill Slease, and Jerry Dixon presenting on malpractice an insurance issues (1.0 EP)
  - July 7: Judge Shannon Bacon (1.0 G)
  - Sept. 15: Douglas Brown presenting on a small/family business 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](mailto:dchavez@vancechavez.com) or 505-842-6626. Checks may be mailed to PO Box 40, Albuquerque, NM 87103.

## National Conference of Bar Examiners

### Testing Task Force Phases 1 and 2 Reports are Available

The National Conference of Bar Examiners' (NCBE's) Testing Task Force (TTF) is undertaking a comprehensive, future-focused study to ensure that the bar examination continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in a changing legal profession. The collaborative study involves input from stakeholders at multiple phases and considers the content, format, timing, and delivery method for NCBE's current tests, which make up all or part of the bar examination in most U.S. jurisdictions: the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT). The study also includes the Multistate Professional Responsibility Examination (MPRE), which is administered by NCBE and required for admission in most U.S. jurisdictions. The reports are available at <https://testingtaskforce.org/research/>.

## Othmer Summer Fellowship 2020 RECIPIENT ANNA TRILLO



The Public Law Section congratulates Anna Trillo as the 2020 recipient of the Othmer Fellowship. Trillo is a second year law student at UNM. This summer Anna will be working in a Human Trafficking summer internship at the New Mexico Immigrant Law Center where she will be responsible for conducting outreach and training partners on how to screen and refer potential human-trafficking survivors to NMILC. The internship focuses on building relationships with community organizations and health clinics throughout rural New Mexico. Anna will also represent human-trafficking survivors in their T-Visa applications and in other processes involved in seeking immigration relief."

*Each year, the Association of Public Interest Law at the UNM School of Law chooses a law student to receive the Othmer Summer Fellowship. In memory of her late husband Craig Othmer, the fellowship is funded by the Public Law Section and matched by the Othmer family to provide for a law student's internship in public service.*



# CALL FOR NOMINATIONS

## STATE BAR OF NEW MEXICO

### 2020 ANNUAL AWARDS

Nominations are being accepted for the 2020 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. Due to the COVID-19 crisis, we have canceled the Annual Meeting, but will be holding an event in the fall and will present the annual awards at that time; details about that event will be announced at a later date. **The deadline for nominations has been extended to June 5.** Previous recipients for the past three years are listed below. To view the full list of previous recipients, visit [www.nmbar.org/Awards](http://www.nmbar.org/Awards).

#### { Judge Sarah M. Singleton\* Distinguished Service Award }

Recognizes attorneys who have provided valuable service and contributions to the legal profession, the State Bar of New Mexico and the public over a significant period of time.

*Previous recipients: John P. Burton, Ruth O. Pregenzer, Scott M. Curtis*

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\*This award was renamed in 2019 in memory of Judge Singleton (1949-2019) for her tireless commitment to access to justice and the provision of civil legal services to low-income New Mexicans. She also had a distinguished legal career over four decades as an attorney and judge.

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#### { Distinguished Bar Service Award–Nonlawyer }

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

*Previous recipients: Tiffany Corn, Jim Jackson, Cathy Ansheles*

#### { Justice Pamela B. Minzner\* Professionalism Award }

Recognizes attorneys and/or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

*Previous recipients: Hon. Stan Whitaker, Charles J. Vigil, Hon. Elizabeth E. Whitefield*

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\*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994–2007.

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#### { Outstanding Legal Organization or Program Award }

Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

*Previous recipients: Second Judicial District Court Judicial Supervision and Diversion Program, Family Support Services Program, Young Lawyers Division Wills for Heroes Program*

### { Outstanding Young Lawyer of the Year Award }

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

*Previous recipients: Rebekah Reyes, Shammara Haley Henderson, Spencer L. Edelman*

### { Robert H. LaFollette\* Pro Bono Award }

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

*Previous recipients: Robert J. Andreotti, Susan E. Page, Stephen C. M. Long*

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\*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

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### { Justice Seth D. Montgomery\* Distinguished Judicial Service Award }

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and the bar; generally given to judges who have or soon will be retiring.

*Previous recipients: Judge Nan G. Nash, Justice Charles W. Daniels,  
Judge Michael D. Bustamante*

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\*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

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A letter of nomination for each nominee should be sent to Kris Becker, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email [kbecker@nmbar.org](mailto:kbecker@nmbar.org). Nominations may also be submitted through the following link: <https://form.jotform.com/sbnm/2020amawards>. The link to the Jotform can also be found on the Annual Awards page on the State Bar website at [www.nmbar.org/AnnualMeeting](http://www.nmbar.org/AnnualMeeting).

We will be preparing a video about the award recipients, which will be presented at the State Bar of New Mexico Annual Meeting in Santa Fe. Please include in the nomination letter the names and contact information of three or four individuals who would be willing to participate in the video project.

### Deadline for Nominations: June 5

For more information or questions, please contact Kris Becker at 505-797-6038 or [kbecker@nmbar.org](mailto:kbecker@nmbar.org).



# REPORT BY DISCIPLINARY COUNSEL

## DISCIPLINARY QUARTERLY REPORT

Reporting Period: January 1, 2020 – March 31, 2020

### Final Decisions

Final Decisions of the NM Supreme Court ..... 2  
*Matter of G. Paul Howes, Esq.*, (No. S-1-SC-23414). The New Mexico Supreme Court issued an order on January 13, 2020 reinstating Respondent to the practice of law.

*Matter of Eric D. Dixon, Esq.*, (No. S-1-SC-37204). The New Mexico Supreme Court issued an order on January 13, 2020 reinstating Respondent to 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

Charges were filed against an attorney for allegedly failing to keep a client reasonably informed about the status of a matter; failing to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding representation; representing a client when the respondent was materially limited by Respondent's own personal interest; failing to maintain complete records of all client funds; failing to maintain client's funds in trust; failing to hold client funds separate from the lawyers' own property; engaging in conduct involving dishonesty, fraud, deceit and/or misrepresentation; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to competently represent a client; failing to act with reasonable diligence and promptness in representing a client; failing to keep the client reasonably informed about the status of a matter; settling a claim with an unrepresented client or former client without first advising that client in writing of seeking the advice of independent counsel; failing to make reasonable efforts to expedite litigation consistent with the interests of a client; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly making a false statement of material fact in the course of a disciplinary proceeding and failing to honor letters of protection.

Charges were filed against an attorney for allegedly failing to act with reasonable diligence and promptness in representing a client; failing to communicate with the client; charging an unreasonable fee; failing to explain the basis and rate of fees in writing to the client; failing to give full cooperation in a disciplinary proceeding; and engaging in conduct prejudicial to the administration of justice.

### Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law ..... 1

*Matter of Amy Lovell* (Supreme Court No. S-1-SC-36439). A Motion For Order to Show Cause was filed against a non-lawyer for violation of a Supreme Court order date December 18, 2017 for violating the Rules Governing the Unauthorized Practice of Law. The Supreme Court found Respondent in Civil Contempt of Court for the violation of their Order dated December 18, 2017 and fined Respondent, ordered release of documents to disciplinary counsel, and ordered Respondent to pay costs to the Disciplinary Board.

### Reciprocal Discipline

Total number of attorneys reciprocally disciplined ..... 1

*Matter of Tametha D'Lyn les Pina, Esq.* (No. S-1-SC-38061). The New Mexico Supreme Court issued an order on February 5, 2020, suspending Respondent from the practice of law effective nunc pro tunc November 18, 2019 for a period of three (3) years.

### Reinstatement from Probation

Petitions for reinstatement filed ..... 1

*Matter of* ..... (Sealed matter) The Disciplinary Board entered an order reinstating Respondent from probationary status to fully reinstated on January 27, 2020.

### Formal Reprimands

Total number of attorneys formally reprimanded ..... 4

*Matter of Shannon G. Pettus, Esq.* (Disciplinary No. 2018-08-4409) a Formal Reprimand was issued at the Disciplinary Board meeting of January 17, 2020, for the violation of Rule 16-101, failing to provide competent representation to a client; Rule 16-103, failing to represent a client diligently; and Rule 16-804(D), engaging in conduct prejudicial to the administration of justice. The Formal Reprimand was published in the State Bar Bulletin issued February 12, 2020.

*Matter of Julieanne H. Leonard, Esq.* (Disciplinary No. 2018-12-4425 and 2019-07-4435) a Formal Reprimand was issued at the Disciplinary Board meeting of January 17, 2020, for the violation of Rule 16-101, failing to provide competent representation to a client; Rule 16-103, failing to represent a client diligently; and Rule 16-804(D), engaging in conduct prejudicial to the administration of justice. The Formal Reprimand was published in the State Bar Bulletin issued February 12, 2020.

*Matter of Daniel L. Morris, Esq.* (Disciplinary No. 2018-03-4427) a Formal Reprimand was issued at the Disciplinary Board meeting of January 17, 2020, for the violation of Rule 16-103, failing to represent a client diligently; Rule 16-104, failing to communicate with the client and failing to obtain consent on the settlements; Rule 16-115(D), failing to promptly disburse the settlement funds; and Rule 16-804(D), engaging in conduct prejudicial to the administration of justice. The Formal Reprimand was published in the State Bar Bulletin issued February 12, 2020.

*Matter of David R. Jordan, Esq.* (Disciplinary No. 2019-04-4430) a Formal Reprimand was issued at the Disciplinary Board meeting of January 17, 2020, for the violation of Rule 16-103, failing to represent a client diligently; Rule 16-104, failing to communicate with the client and failing to keep the client informed; Rule 16-302, failing to expedite litigation; and Rule 16-804(D), engaging in conduct prejudicial to the administration of justice. The Formal Reprimand was published in the State Bar Bulletin issued February 12, 2020.

#### **Informal Admonitions**

Total number of attorneys admonished ..... 1

An attorney was informally admonished for failing to provide competent representation to a client, failing to represent a client diligently, and failing to expedite litigation in violation of Rule 16-101, Rule 16-103, and Rule 16-302 of the Rules of Professional Conduct.

#### **Diversions**

Total number of attorneys referred to diversion ..... 0

#### **Letters of Caution**

Total number of attorneys cautioned ..... 7

Attorneys were cautioned for the following conduct: (1) ex parte contact with a represented party; (2) lack of diligence; (3) lack of competence (4 letters of caution issued); and (4) trust account violation.

#### ***Complaints Received***

<b>Allegations.....</b>	<b>No. of Complaints</b>
Trust Account Violations.....	1
Conflict of Interest.....	3
Neglect and/or Incompetence.....	74
Misrepresentation or Fraud.....	12
Relationship with Client or Court.....	39
Fees.....	8
Improper Communications.....	2
Criminal Activity.....	2
Personal Behavior.....	1
Other.....	29
Total number of complaints received.....	171



Pregenzer, Baysinger, Wideman & Sale, P.C., is pleased to announce **Nell Graham Sale** has been selected to the 2020 Southwest Super Lawyers list for Estate Planning and Probate. This marks the 13th year Sale has been selected by her peers for inclusion in the Southwest Super Lawyers.



Twenty-eight Rodey lawyers have been selected as Southwest Super Lawyers for their expertise and experience in particular areas of law. Only five percent of the total lawyers in New Mexico were selected for this honor. **Leslie McCarthy Apodaca**, Business Litigation; **Rick Beitler**, Medical Malpractice Defense; **Perry E. Bendicksen III**, Mergers & Acquisitions; **David P. Buch-**

**holtz**, Securities and Corporate Finance; **David W. Bunting**, Business Litigation; **John P. Burton**, Real Estate; **Denise M. Chanez**, Medical Malpractice Defense; **Jeffrey M. Croasdell**, Personal Injury Defense: Products; **Jocelyn C. Drennan**, Appellate; **Nelson Franse**, Professional Liability: Defense; **Catherine T. Goldberg**, Real Estate; **Scott D. Gordon**, Employment and Labor; **Bruce D. Hall**, Alternative Dispute Resolution; **Paul R. Koller**, Personal Injury Defense: General; **Jeffrey L. Lowry**, Employment and Labor; **W. Mark Mowery**, Medical Malpractice Defense; **Theresa W. Parrish**, Employment and Labor; **Charles (Kip) Purcell**, Appellate; **Debora E. Ramirez**, Business/Corporate; **Edward R. Ricco**, Appellate; **Brenda M. Saiz**, Medical Malpractice Defense; **Andrew G. Schultz**, Business Litigation; **Seth L. Sparks**, Transportation/Maritime; **Thomas L. Stahl**, Employment and Labor; and **Charles J. Vigil**, Employment and Labor. Southwest Super Lawyers has designated these Rodey lawyers as Rising Stars: **Cristina A. Adams**; **Tyler M. Cuff**; and **Shannon M. Sherrell**. The designation of Rising Star is given to only the top 2.5 percent of lawyers in New Mexico who are either 40 years old or younger or in practice for ten years or less. Inclusion in Southwest Super Lawyers is based on a very strict, multi-step selection process, which includes, among other things, research on background and experience, as well as stringent peer review.



The **Honorable Michelle Frechette** has been re-elected as the Corrales Municipal Judge in the March election. She has been in the part-time judicial seat since February of 2016 and enjoys her opportunity to serve the community. She has expanded the use of restorative programs during her time on the bench and the court is open full time. She continues to practice law at Frechette &

Associates, P.C. as well. She has been in criminal private practice since 1993 and has been licensed since 1990.



The New Mexico Criminal Defense Lawyers Association is pleased to announce that **Paul Haidle** has been selected as the organization's next executive director. Haidle will take over for Cathy Ansheles, who leaves the organization after more than 25 years as the association's first and only executive director. "Paul brings his passion, vision and excellent collaboration skills to this community. I am

delighted Paul has been selected for the position and feel very certain that NMCDLA is well-set for future success" said Ansheles. Haidle has experience both as a criminal defense attorney and leading advocacy and organizing campaigns to reform the criminal legal system. Prior to joining NMCDLA, Haidle served as the senior policy strategist at the ACLU of New Mexico where he led that organization's criminal justice advocacy since 2016. "NMCDLA fights tirelessly for the rights of the accused," said Haidle. "I'm excited to be a part of this tradition and to support the work of defense lawyers across New Mexico. A strong defense bar is critical not only for the protection of Constitutional rights, but also to advocate for a more fair and just criminal legal system for all." Haidle has partnered with community serving organizations, including NMCDLA, to pass smart criminal justice legislation and promote police accountability. He has significant experience addressing the collateral consequences of arrests and convictions and has served as an expert witness on several legislative efforts including expungement, Ban the Box, and occupational licensing reform. During his tenure at the ACLU, Haidle worked hard to prioritize the leadership and involvement of people who have been directly impacted by the criminal legal system and he helped found the Justice Advisory Board, a network of crime survivors, formerly incarcerated people, and their families. Haidle brings a passion for racial and social justice and he served as co-chair of the ACLU's task force on diversity, equity and inclusion. Prior to joining the ACLU, Haidle served as the supervising attorney at Cabrini Green Legal Aid in Chicago where he successfully secured executive clemency for dozens of clients. Haidle also supervised the Second Chance project, a pro bono campaign to assist low income Chicagoans by removing stigma and legal barriers resulting from a criminal record. "We are confident that Paul's grassroots experience with members of the defense team will help NMCDLA continue to understand and address the issues directly impacting the criminal defense practice," said NMCDLA President Richard Pugh. As executive director of NMCDLA, Haidle will continue to build on the legacy that Cathy Ansheles and others have created. Haidle believes NMCDLA is uniquely positioned to fight for the rights of those accused of crime, and he will work closely with NMCDLA's Board of Directors and its members to strengthen the organization for challenges that lie ahead.

Publisher Chambers & Partners recognized **Brownstein Hyatt Farber Schreck** in its annual Chambers USA Guide as a top New Mexico litigation: general commercial practice. Chambers recognized Eric. R. Burris, chair of the firm's Litigation Department, with a ranking in the litigation: general commercial category. Burris has more than 30 years of experience in complex civil litigation, primarily as defense counsel in matters that include commercial litigation issues, economic torts, intellectual property, employment and labor issues, complex/mass torts, products liability and other personal injury disputes. Elsewhere nationwide, lawyers in Brownstein's California, Colorado, Nevada, New Jersey and Washington, D.C. offices landed top spots in the 2020 Chambers USA Guide. In total, the firm received 16 practice rankings and 35 leading individual rankings from six offices, each recognized for excelling in their respective practice areas. Chambers & Partners has a staff of more than 100 full-time researchers who develop rankings of lawyers and practices based on written submissions provided by law firms, telephone interviews with clients and lawyers, and other resources. Inclusion in the guide is based solely on the research team's findings.

The International Association of Defense Counsel has announced that **Curtis J. Busby**, a partner at Bowman and Brooke LLP in Phoenix, has accepted an invitation to join the IADC, the pre-eminent invitation-only global legal organization for attorneys who represent corporate and insurance interests. "I am excited to become acquainted with such a talented group of attorneys that make up the IADC's membership," Busby said. Busby focuses his practice on defending manufacturers in product liability claims throughout the Southwestern United States including Arizona, Nevada, Utah, and New Mexico. Having defended large corporations in very technical and complex claims involving catastrophic injury and wrongful death, Busby has extensive experience in litigation for nearly every major vehicle manufacturer. In addition, he has worked extensively representing manufacturers of household appliances and products in consumer products litigation. He also has experience in the energy industry. Busby received his J.D. from the Brigham Young University J. Reuben Clark Law School and his Bachelor of Arts (cum laude) from Brigham Young University. He is licensed to practice in Arizona, Nevada, New Mexico, and Utah.

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To access this service call 855-231-7737 and identify with NMJLAP. All calls are **CONFIDENTIAL**.  
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**www.nmbar.org/JLAP**

**Erin Lee Dailey** was born on Nov. 3, 1966 in Clovis. She passed away on March 16 in Nokomis, Fla. She spent her formative years in Albuquerque. Erin graduated *summa cum laude* from University of California Santa Barbara and then earned a CPA designation. She graduated from Suffolk Law School and clerked for the Supreme Court of Massachusetts. She practiced law in Massachusetts, New Mexico, and Florida. Erin was a caring and generous person who took pride in her work for Guardian Ad Litem cases. Erin enjoyed being with friends and family, as well as time spent golfing, skiing and traveling. Her fondest memories were of trips with her daughter. She is survived by her beloved daughter, Brooke Picazio and her mother, Jeanne Dailey. She also leaves behind a brother, Charlie Dailey (Stephanie) and nieces Tera and Rebecca. She was predeceased by her father Jack and brother Patrick.

Born March 16, 1965, **Charles Edgar “Chuck” Moran** is the son of Bonnie Moran and the late Bob Moran. He died suddenly but peacefully at home in Midland, Texas, on March 6. At age 54, he is gone much too soon. Chuck grew up in Hobbs and is a 1983 graduate of Hobbs High School. He earned a bachelor’s degree in accounting from St. Edward’s University in Austin, Texas, and a law degree from The University of Tulsa, where he was editor of the *Law Review*. He enjoyed a long career as part of the Yates Petroleum family in Artesia, N.M. and upon its sale, he relocated to Midland, Texas, with EOG Resources. Those left to cherish his memory include his mother, Bonnie Moran; his sisters, brothers, and their spouses, Trish and Terry Jones, Kathy Moran, Andy Moran, Kevin and Deborah Moran, Ellen and David Arvayo, Tim and Elizabeth Moran; his beloved nieces and nephew, Megan Jones, Erin Jones, Katherine “Katie-Belle” Moran, and Robert Arvayo; and his large extended family of cousins and godchildren. He also will be deeply missed by his many great friends from childhood, high school, Yates, EOG, colleagues in the oil and gas industry, politics, and especially his hunting brothers of more than 40 years. He joins in eternal rest his father Bob, his infant brother Christopher, and grandparents, Mabel and Charlie Coogan and Marjorie and Edgar Moran. A true son of the Permian Basin, Chuck was active in numerous organizations promoting the oil and gas industry. He served as president of the Independent Petroleum Association of New Mexico in 2005 and was an active member of New Mexico Oil and Gas Association. He volunteered with the New Mexico Republican party at both the county and state level and served on several boards. His deep passion for serving the people and causes he believed in was his hallmark; the dividends of his devotion to family, work, and community will be felt for many years to come.

**Clyde Frank Worthen**, born Feb. 7, 1950 in Logan, Utah to J Frank and Mary Worthen, passed away on Wednesday, March 11. He spent most of his growing up years in Price, Utah where he graduated from Carbon High School. He married Barbara Nielson on May 27, 1972. Clyde and Barbara have six biological children and too many “adopted” children and grandchildren to count. After high school, Clyde served a two year mission for the Church of Jesus Christ of Latter-day Saints in the South Korea Mission. He served in many capacities in the church, including service as a bishop and fifteen years of teaching early morning religion classes to high school students. Clyde graduated from Brigham Young University and received a juris doctorate from the J. Reuben Clark Law School. Highlights of the beginning of his professional career began with an internship for Congressman Wayne Owens in Washington D.C., a clerkship for Justice H. Vern Payne of the New Mexico Supreme Court and a clerkship for Justice Howard C. Bratton of the Federal District Court of New Mexico. He spent the rest of his career, 40 years, at the law firm of Keleher & McLeod where he became a preeminent attorney in utility law in the state of New Mexico. He served as the managing partner of Keleher & McLeod for a number of years. Clyde will be missed for his quick wit, his many lawyer jokes, sage wisdom, book recommendations and Cougar sports chats. He was known for his good nature, kindness, positive attitude, and perseverance. He was always willing to provide counsel to those who asked and to serve those in need. He was an amazing father and grandfather who loved, cared for and provided for his children and grandchildren. He is survived by his wife, Barbara; five children, Nicole (David) Paulson, Michelle (Jed) Colovich, Camille (Kelly) Quinton, Chad (Darbie) Worthen and Erin Worthen; 15 grandchildren; and three siblings, Marsha Atwood, Karen (Mark) Spear and Kevin (Peggy) Worthen. He was preceded in death by a son, Andrew; his parents; and a brother-in-law, Jim Atwood. Many thanks to Dr. Fidel Barrantes and Dr. James Trotter and many other healthcare professionals who have cared for Clyde so compassionately and diligently for many years.

**Sandra Eileen Rotruck**, age 58, passed away on March 5 attended by her loving husband, Gary Bar-Hirsh. Sandra is survived by her husband; Gary’s sons, Guy and Gal Hirsh; her mother, Lura Rotruck; brother, Michael Rotruck (Sandra Ann); sister, Janice Johnson (Randy); and numerous nieces, nephews, great-nieces and nephews; and extended family. She was predeceased by her father, Allen R. Rotruck; and her oldest sister, Vicky Jeanne Bolton. A native of Albuquerque and graduate of Del Norte High School, Sandra graduated with a BA from NMSU and eventually her law degree from UNM. She practiced law first with the Santa Fe District Attorney’s office, moving on to Los Alamos County and eventually as an Albuquerque Family Law Attorney. Retiring as an attorney after 30 years, she was presently a Family Court Facilitator in the 12th Judicial District in Alamosa, CO. Since there is great concern at this time about the coronavirus, Gary and the family have chosen to only have graveside services and friends are invited. Sandra would be the first one to say to you, “do what you have to do in order to protect yourself and your family.”

Longtime Albuquerque resident **Marcia Lincoln** died on April 15. Born in Arizona on Feb. 28, 1935, she attended the University of California at Berkeley, where she studied English, and UNM School of Law. She was the proud and loving mother of two daughters, Miriam Komaromy of Boston, MA, and Valerie Huaco of Kensington, CA. She practiced law for two decades in Albuquerque. She had a lifelong love affair with the English language, and reading was an enormous source of pleasure and comfort for her. She spent many happy years married to her second husband, Joe Lawson, who pre-deceased her by 12 years. Marcia and Joe had a lively circle of friends, and loved to travel, garden, host dinner parties, and camp. Marcia died from complications of infection with COVID 19.

**Patricia Taylor**, age 72, beloved wife and mother passed away on March 6 from complications due to type I diabetes. An attorney by profession, Pat's most memorable legal work involved acting as guardian ad litem representing children at risk in New Mexico. Pat enjoyed many social activities with her children and their friends. She was known for her love of gardening, puzzles, and card games, particularly the game of Bridge. Later in life, her social activities centered on Bridge as a participant in both Party Bridge and Duplicate Bridge events. She is survived by her husband Paul, daughter Jennifer Schwartz, son Todd (Tammira), and loving grandson Hudson Paul.

# Legal Education

## May

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|--|--|---|
| <p><b>13 How Ethics Rules Apply to Lawyers Outside of Law Practice</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                 | <p><b>22 Escrow Agreements in Real Estate Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>  | <p><b>28 Grandparents Raising Grandchildren: Critical Legal and Social Issues (2019)</b><br/>1.5 G<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>       |
| <p><b>15 Closely Held Stock Options, Restricted Stock, Etc.</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                         | <p><b>27 The Paperless Law Firm – A Digital Dream</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>  | <p><b>28 JLAP Town Hall: Are You Scared S**tless? Let's Talk! (2019)</b><br/>1.5 EP<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                      |
| <p><b>19 Basics of Trust Accounting: How to Comply with Disciplinary Board 17-204</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>27 How to Practice Series: Probate and Non-Probate Transfers</b><br/>4.0 G, 2.0 EP<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                  | <p><b>29 Surviving White Collar Cases: Prosecution and Defense Perspectives (2019)</b><br/>5.5 G, 1.5 EP<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |
| <p><b>21 Drafting Waivers of Conflicts of Interest</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                 | <p><b>28 Animal Cruelty Issues: What Juvenile and Family Court Judges and Practitioners Need to Know (2019)</b><br/>2.0 G<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>29 Valuation of Closely Held Companies</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>   |

### Notice of Possible Event Cancellations or Changes:

Due to the rapidly changing coronavirus situation, some events listed in this issue of the Bar Bulletin may have changed or been cancelled after the issue went to press. Please contact event providers or visit [www.nmbar.org/eventchanges](http://www.nmbar.org/eventchanges) for updates.

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](mailto:notices@nmbar.org). Include course title, credits, location/course type, course provider and registration instructions.

## June

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| <p><b>3 Bridge the Gap Mentorship Program CLE (Civil Attorneys, DAs/PDs)</b><br/>5.0 G, 1.0 EP<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>8 Special Issues in Small Trusts</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                   | <p><b>23 The Ethics of Bad Facts and Bad Law</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>5 Bridge the Gap Mentorship Program CLE (Government Attorneys)</b><br/>5.0 G, 1.0 EP<br/>Live Replay Webcast<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>     | <p><b>9 Text Messages &amp; Litigation: Discovery and Evidentiary Issues</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |   |

## July

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|---|---|---|
| <p><b>8 Selection and Preparation of Expert Witnesses in Litigation</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>17 2020 Family and Medical Leave Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>     | <p><b>30 Charitable Giving Planning in Trusts and Estates, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>9 Drafting Employment Agreements, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                      | <p><b>28 Lawyer Ethics and Disputes with Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>31 Charitable Giving Planning in Trusts and Estates, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>10 Drafting Employment Agreements, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                     |   |   |

# Opinions

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

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

## Effective April 10, 2020

### PUBLISHED OPINIONS

A-1-CA-37194	C Dollens v. Wells Fargo Bank	Reverse/Remand	04/06/2020
A-1-CA-37066	State v. D Rael	Affirm	04/07/2020

### UNPUBLISHED OPINIONS

A-1-CA-37469	State v. J Kanizar	Affirm	04/06/2020
A-1-CA-37682	L Pozen v. R Fickler	Reverse/Remand	04/06/2020
A-1-CA-37929	State v. P Otero	Affirm	04/06/2020
A-1-CA-38491	CYFD v. Jennifer G	Affirm	04/06/2020
A-1-CA-37137	State v. X Nelson	Affirm	04/07/2020
A-1-CA-36973	Mora Federation v. Board of Education	Affirm	04/08/2020
A-1-CA-36071	G Billy v. Curry County Comm	Reverse/Remand	04/09/2020
A-1-CA-37957	State v. R Baca	Affirm	04/09/2020

## Effective April 17, 2020

### UNPUBLISHED OPINIONS

A-1-CA-36674	State v. R Owsley	Affirm	04/13/2020
A-1-CA-36848	State Engineer v. S Faykus	Affirm	04/13/2020
A-1-CA-37131	S Madden v. D Smith	Affirm	04/13/2020
A-1-CA-37592	State v. J Romero	Affirm	04/13/2020
A-1-CA-37643	State v. O Valdez	Affirm	04/13/2020
A-1-CA-37783	State v. L Roberts	Affirm/Reverse/Remand	04/13/2020
A-1-CA-36578	State v. D Davila	Affirm	04/14/2020
A-1-CA-37188	State v. E Quezada	Affirm	04/14/2020
A-1-CA-37737	Wildearth Guardians v. T Blaine	Affirm	04/15/2020
A-1-CA-37767	State v. K Canuto	Affirm	04/15/2020
A-1-CA-37568	State v. J Tavarez	Affirm	04/16/2020

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

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

## Effective April 24, 2020

### PUBLISHED OPINIONS

A-1-CA-37135	J Reynolds v. D Bishop	Affirm	04/21/2020
A-1-CA-37836	State v. J Grubb	Reverse/Remand	04/21/2020

### UNPUBLISHED OPINIONS

A-1-CA-36987	Protest of Golden Services v. Tax & Rev	Reverse	04/20/2020
A-1-CA-37830	D Torrez v. A Rojas	Reverse/Remand	04/20/2020
A-1-CA-38209	R Cano C v. City of Albuquerque Risk Management	Affirm	04/20/2020
A-1-CA-37437	State v. M Anker-Unnever	Affirm	04/21/2020
A-1-CA-38122	State v. L Howland	Affirm	04/21/2020
A-1-CA-37580	High Desert Bicycles v. New Mexico Tax and Rev	Affirm	04/22/2020
A-1-CA-37029	L Ridlington v. B Contreras	Affirm	04/23/2020
A-1-CA-37337	State v. R Brown	Affirm	04/23/2020
A-1-CA-38238	State v. J Gallegos	Affirm/Reverse/Remand	04/23/2020
A-1-CA-38590	CYFD v. Derek L.	Affirm	04/23/2020

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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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2019-NMSC-016**

No: S-1-SC-37393 (filed September 23, 2019)

**IN THE MATTER OF  
JENNIE DEDEN BEHLES**

An Attorney Disbarred from  
the Practice of Law Before the Courts  
of the State of New Mexico

Released for Publication November 5, 2019.

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for Respondent

## Opinion

**Barbara J. Vigil, Justice.**

### I. INTRODUCTION

{1} In this opinion we address the failure of Jennie Deden Behles (Behles) to comply with the Rules of Professional Conduct and Rules Governing Discipline related to client trust accounts and reasonable fees. Though Behles has led a long career as a member of the New Mexico bar, this failure and her past disciplinary record demand her disbarment. The Court reviewed Behles's conduct on the recommendation of the Disciplinary Board (the Board) to sustain charges and impose discipline for violations of Rule 16-105 NMRA (fees), Rule 16-115 NMRA (safekeeping property), and Rule 16-804(D) NMRA (engaging in conduct prejudicial to the administration of justice).

{2} The Board adopted the hearing committee's findings of fact that Behles expended client funds she had been ordered to hold in trust, failed to maintain complete records of her client trust account, failed to keep client money separate from her own, and unreasonably charged a contingent fee on the return of her client's court bond. These findings supported the Board's ultimate conclusion that Behles violated the aforementioned rules. Specifically noting that Behles's conduct met a host of aggravating factors—including "prior discipline, a dishonest and selfish motive, a pattern of misconduct, com-

mission of multiple offenses, refusal to acknowledge the wrongful nature of her conduct, and substantial experience in the practice of law"—the Board recommended that this Court disbar Behles.

{3} The Court adopted the Board's findings of fact and conclusions of law in their entirety. Accepting the Board's recommended discipline, the Court permanently disbarred Behles.<sup>1</sup> See Rule 17-206(A)(1) NMRA. Additionally, the Court ordered Behles to pay restitution in the amount of \$19,239.00, plus interest at the statutory judgment rate, to her client, Dubalouche, LLC (Dubalouche), see Rule 17-206(C), as well as to pay costs to the Board for these disciplinary proceedings.

{4} We write to emphasize the longstanding principle that "stealing client funds is perhaps the most egregious violation of a lawyer's ethical responsibilities[.]" *In re Zamora*, 2001-NMSC-011, ¶ 12, 130 N.M. 161, 21 P.3d 30 (per curiam) (quoting *In re Kelly*, 1995-NMSC-038, ¶ 8, 119 N.M. 807, 896 P.2d 487 (per curiam)). This Court will not condone misconduct that irreparably erodes the sacred bond of trust shared between attorney and client.

### II. BACKGROUND

{5} Behles has been licensed to practice law in New Mexico for nearly fifty years. Her practice at the Behles Law Firm (BLF) focused largely on bankruptcy and construction law. This is the second time Behles has been subject to discipline from this Court for her failure to properly manage her client trust account.

{6} In 2006, Behles consented to discipline for violating Rule 16-115 (safekeeping property) and Rule 17-204 NMRA (trust accounting). As a result, the Court indefinitely suspended Behles for a minimum of three years. That suspension was deferred so long as Behles complied with certain probationary requirements. The probationary requirements mandated that she meet with a supervising accountant at least once per month to receive instruction on correct record keeping and management of her trust account. Before being reinstated, Behles was required to prove that (1) her trust account was in compliance with Rules 16-115 and 17-204, (2) she understood the requirements of those rules, (3) she adequately supervised all transactions to and from her trust account, and (4) she maintained the required records for her trust account. Having met these requirements, Behles was eventually reinstated, but her conduct underlying these proceedings demonstrates that the lessons once learned were not indelible.

### A. Behles's Representation of Dubalouche

{7} Dubalouche owned and leased out an expensive commercial property in Albuquerque. Dubalouche's tenant hired a general contractor, AIC General Construction, Inc. (AIC), to renovate the building. In turn, AIC hired Precision Service Electric, LLC (Precision) and Floorshield, LLC (Floorshield) as subcontractors. When none of these contractors were paid in full by the tenant, each company filed liens on Dubalouche's property.

{8} Dubalouche sought Behles's legal assistance because Dubalouche intended to sell the building and therefore needed to evict the tenants and remove the liens. Moreover, Dubalouche contended that one or all of the contractors had damaged the building's foundation, devaluing the property. In December 2014, Behles agreed to represent Dubalouche.

{9} Behles's misconduct that brings her before the Court arises from two fee agreements she had with her client Dubalouche and her commingling of client money paid under those fee agreements, as well as her improper accounting and retention of client resources with respect to a settlement.

### 1. First fee agreement and the \$7,500.00 retainer

{10} Under the original fee agreement, Dubalouche agreed to pay Behles \$7,500.00 as "collateral to secure payment of fees." Behles agreed to charge on an hourly basis and to draw against

<sup>1</sup>The Court originally set the effective date of disbarment for March 31, 2019 but extended that date to April 30, 2019 by granting Behles's motion for extension.

the retainer only if Dubalouche defaulted on payments. This agreement also provided Behles an attorney's charging lien and a retaining lien "against any funds . . . which [are] recovered, preserved, maintained, released, awarded as a result of Attorneys' efforts." Chad Aldawood paid the full amount of the retainer on December 22, 2014. Though it was client money paid in advance, Behles did not account for this payment in her trust account ledger. Instead, Behles deposited the \$7,500.00 check directly into the BLF operating account. There is no evidence in the record that Behles sent Dubalouche invoices reflecting fees earned in the time between the ratification of the fee agreement and the date she deposited the retainer in her operating account. According to Behles's transaction listing for Dubalouche, Behles did not bill Dubalouche for services until February 6, 2015.

## **2. Dubalouche debts and the \$25,000.00 flat fee under the second fee agreement**

{11} On July 5, 2015, Behles notified intent to assert an attorney's charging lien and retaining lien in Dubalouche's lawsuit against the contractors to cancel the liens on the property. At the time she gave notice of her intent to assert the liens, Behles claimed Dubalouche owed \$28,176.47. Behles sought to attach a charging lien to "[a]ll accounts, residuals, proceeds, issues, profits, and money payable to, awarded to, or secured by Dubalouche, LLC, by virtue of any claim or settlement agreements or judgments entered with respect" to the lawsuit.

{12} Following Behles's assertion of the liens, Dubalouche made several payments to BLF. By July 13, 2015, Dubalouche had paid a total of \$27,600.00 to BLF, leaving an owing balance of \$576.47. That same day, Behles billed Dubalouche for an additional \$7,834.39. On July 31, 2015, Dubalouche paid Behles \$8,000.00, bringing the owing balance to \$410.86. On August 3, 2015, Behles billed Dubalouche for \$16,535.70. At this point, it would appear that Dubalouche owed a total of \$16,946.56 to BLF. Dubalouche did not make another payment until after the ratification of a second fee agreement.

{13} On September 9, 2015, Behles and Dubalouche entered into a second fee agreement, in which Dubalouche agreed

to pay BLF a flat fee of \$25,000.00 that would cover "all work to be performed from the date of September 9, 2015 forward." On September 14, 2015, Behles informed Dubalouche's out-of-state counsel that the outstanding amounts owed by Dubalouche were "included/forgiven" within the flat fee. On September 16, 2015, the \$25,000.00 flat fee payment was deposited directly into the BLF operating account. Behles's trust account ledger does not account for Dubalouche's payment of the flat fee, even though the payment was explicitly designated for future work under the second fee agreement.

## **3. Disbursement of a portion of Dubalouche's court bond**

{14} In order to remove the contractors' liens from the building, Dubalouche was required to deposit a bond with the district court to secure the amounts claimed to be owed. Precision claimed it was owed \$9,084.00; Floorshield claimed it was owed \$18,450.00; and AIC claimed it was owed a total of \$185,639.28, which included the amounts owed to its subcontractors, Precision and Floorshield. The district court ordered Dubalouche to deposit a \$151,889.57 bond with the court registry to secure all three liens. From this amount, \$20,812.00 was credited to secure Precision's lien, and \$30,926.00 was credited to secure Floorshield's lien, for a total of \$51,738.00 credited to secure both subcontractors' liens.

{15} In December 2015, Dubalouche, Precision, and Floorshield entered into a settlement agreement in which Dubalouche agreed to pay Precision and Floorshield a combined total of \$32,500.00 to satisfy their respective liens. Under the settlement agreement, Dubalouche, Precision, and Floorshield released all claims or potential claims against each other. This release included Dubalouche's potential counterclaims for the alleged damage to the building. The district court approved the settlement and directed the registry to disburse \$32,500.00 to the trust account of the Moses Law Firm, which represented Precision and Floorshield. The district court ordered that the remaining \$19,239.00 (of the \$51,738.00 credited to secure both liens) be disbursed "to Behles Law Firm Trust Account for Dubalouche, LLC."<sup>2</sup> The balance of Dubalouche's total court

bond remained with the court registry pending resolution of the claims between Dubalouche and AIC.

## **4. Behles's accounting and retention of the \$19,239.00 disbursement**

{16} On January 11, 2016, Behles's paralegal deposited the \$19,239.00 check from the court registry into the BLF client trust account. Throughout the remainder of January, Behles transferred amounts exceeding the \$19,239.00 disbursement from the trust account to the BLF operating account. According to the January bank statement for the BLF trust account, on January 12, Behles transferred \$6,500.00 from the trust account to the operating account. On January 13, she transferred \$4,500.00. On January 15, she transferred \$6,000.00. On January 19, she transferred \$1,000.00. On January 20, she transferred \$1,200.00. On January 26, she transferred another \$1,000.00. Finally, on January 29, she transferred \$175.00. It is important to note that Behles did not have invoices for work performed for Dubalouche to support the transfer of these amounts.

{17} Behles claimed to have sent Aldawood a billing letter on January 21, 2016, along with a check for the funds issued from the court registry. In her letter, Behles did not state the amount of the check she was sending, and there is no copy of this check in the record. Aldawood claimed that he never received the January 21 letter nor the check from Behles. One month later, Dubalouche's out-of-state counsel asked Behles about the disbursement from the court registry. In response to this inquiry, Behles wrote, "Got me we will check- I know it has not come back." On March 2, 2016, Behles wrote to Aldawood that she was holding Dubalouche's portion of the \$19,239.00 "on hand." On two more occasions, in another letter to Aldawood and in her response to the disciplinary complaint filed by Aldawood, Behles claimed that she had issued Dubalouche a check for its share of the \$19,239.00 disbursement, minus costs she had incurred since the date of the settlement order. Behles's trust account records do not indicate that she ever issued a check to Dubalouche as she had claimed on several occasions.

{18} Behles's trust ledger for Dubalouche was created *after* the initiation of the Board's investigation. The trust ledger shows that Behles retained the entire \$19,239.00 disbursement from the court registry for herself, which she accounted

<sup>2</sup>The district court order contains an error in the amount of the disbursement to BLF for Dubalouche. The correct remainder of Dubalouche's \$51,738.00 court bond after settling payment to the subcontractors is \$19,238.00. This correct amount is reflected in the language of the district court's order, but the parenthetical numerical value is incorrect by one dollar. The order states that "an additional Nineteen Thousand Two Hundred Thirty-Eight and No/100 Dollars (\$19,239.00) should be disbursed." Ultimately, the district court disbursed the incorrect amount of \$19,239.00.

No/100 Dollars (\$19,239.00) should be disbursed." Ultimately, the district court disbursed the incorrect amount of \$19,239.00.

for as follows: \$8,555.29 as her 40% contingent fee, \$2,113.89 for some costs advanced, and \$8,569.82 for a portion of the flat fee that she considered outstanding even after Dubalouche had transmitted the check for \$25,000.00.

{19} Behles's claim to a 40% contingent fee on the \$19,239.00 disbursement arises from the second fee agreement. Under that agreement, Behles would receive a 40% contingent fee on any "amount recovered" on Dubalouche's counterclaim against AIC, Floorshield, and Precision for building damage. As we will explain, we adopt the Board's determination that Behles did not secure a recovery on behalf of Dubalouche and therefore was not entitled to any contingent fee.

{20} Aldawood filed a disciplinary complaint against Behles in May 2017 alleging that Behles was "improperly holding funds that the [district c]ourt authorized be paid to Dubalouche[.]" Following an investigation, disciplinary counsel filed a specification of charges against Behles claiming the following violations of the Rules of Professional Conduct: charging an unreasonable fee in violation of Rule 16-105, failing to hold client money separate from her own and failing to keep complete records of her trust account in violation of Rule 16-115, "knowingly making a false statement of material fact in a disciplinary matter" in violation of Rule 16-801, "engaging in conduct involving fraud, deceit or misrepresentation" in violation of Rule 16-804(C), and "engaging in conduct that is prejudicial to the administration of justice" in violation of Rule 16-804(D).

{21} Following two days of testimony, the hearing committee made findings of fact and concluded that Behles violated Rules 16-105, 16-115, and 16-804(D). As discipline, the hearing committee recommended suspending Behles for a period of six months, requiring Behles to make full restitution to Dubalouche in the amount of \$19,239.00 plus interest, requiring Behles to attend five hours of continuing legal education in "law office management and trust account management[.]" and upon conclusion of her suspension, placing Behles on a twelve-month supervised probation period and assigning her a supervising attorney to monitor her records and management of her trust account.

{22} Upon review, the Board adopted the hearing committee's findings of fact and conclusions of law that Behles violated Rules 16-105, 16-115, and 16-804(D). The Board recommended a modification and increase of the recommended discipline based on the type of violations at issue, numerous aggravating factors, and the lack of any mitigating factors found by the hearing committee. Citing this Court's precedent instructing that disbarment is

appropriate when an attorney violates the Rules of Professional Conduct mandating safekeeping of client property and proper trust accounting, the Board recommended that Behles be disbarred. *See, e.g., In re Kelly*, 1995-NMSC-038, ¶ 8; *In re Rawson*, 1992-NMSC-036, ¶¶ 1, 9, 24, 113 N.M. 758, 833 P.2d 235 (per curiam).

{23} We consider the recommendations of the Board and assess Behles's misconduct in the following instances. First, we consider whether Behles violated Rule 16-115 when she (1) deposited the \$7,500.00 retainer directly into her operating account, (2) deposited the \$25,000.00 flat fee directly into her operating account, and (3) transferred funds in an amount exceeding that of the \$19,239.00 disbursement from her trust account to her operating account absent any invoices to Dubalouche reflecting work performed. Next, we consider whether Behles violated Rule 16-105 when she charged a 40% contingent fee on the return of Dubalouche's court bond in the form of the \$19,239.00 disbursement. Finally, we consider whether Behles's misconduct was prejudicial to the administration of justice in violation of Rule 16-804(D).

### III. DISCUSSION

{24} In reviewing the disciplinary proceedings before the Board and imposing the discipline it recommends, we view the evidence in the light most favorable to the Board's findings of fact. *See In re Bristol*, 2006-NMSC-041, ¶ 28, 140 N.M. 317, 142 P.3d 905 (per curiam). We review the Board's conclusions of law de novo. *See id.* ¶ 18. In doing so, we adopt the Board's findings of fact and conclusions of law in their entirety.

#### A. Behles Was Afforded Due Process of Law Throughout the Disciplinary Proceedings

{25} Before the hearing committee, the Board, and this Court, Behles argued that her right to due process was violated when the Board made findings of fact and recommendations for discipline based on her failure to hold in trust the \$7,500.00 retainer and the \$25,000.00 flat fee. She asserted that neither payment was identified in the specification of charges to support the charge that she violated the rules of proper trust accounting. For this reason, she argued that she was not given adequate notice of the charge or an opportunity to defend herself in regard to her handling of the \$7,500.00 retainer and \$25,000.00 flat fee.

{26} Attorneys facing discipline are "entitled to procedural due process, which includes fair notice of the charge." *In re Ruffalo*, 390 U.S. 544, 550 (1968).

The specific requirements of procedural due process depend on the facts of each case, and could

encompass any number of the following components: (1) notice of the basis for the government action; (2) a neutral decision maker; (3) the opportunity to orally present a case against the state; (4) the opportunity to present evidence and witnesses against the state; (5) the opportunity to cross-examine witnesses; (6) the right to have an attorney present at the hearing; and (7) a decision based on the evidence presented at the hearing accompanied by an explanation of the decision.

*Mills v. N.M. State Bd. of Psychologist Exam'rs*, 1997-NMSC-028, ¶ 14, 123 N.M. 421, 941 P.2d 502.

{27} Behles's argument that she was denied due process is not persuasive because the specification of charges clearly identified Behles's mishandling of her trust account as one basis for discipline. This encompassed her failure to deposit the \$7,500.00 retainer and \$25,000.00 flat fee into her trust account. Before neutral decision makers at each level of the disciplinary proceedings, Behles's counsel presented evidence, including witness testimony, refuting the charge that Behles mismanaged her trust account. We adopt the Board's finding that Behles "defended all issues with respect to her trust account including, but not limited to, an advance payment of \$7,500.00 . . . and a flat fee payment of \$25,000.00 paid by Dubalouche." We note that the findings of fact regarding Behles's trust accounting violations are based in part on the account records that Behles herself provided. We conclude that the specification of charges adequately alerted Behles that her trust account records were under investigation, and Behles was afforded due process of law.

#### B. Behles's Professional Misconduct

{28} Behles's continued habit of ignoring the Rules of Professional Conduct and Rules Governing Discipline related to trust accounting and fees is intolerable. In her representation of Dubalouche, Behles violated the rules regarding trust accounting in several instances. Behles's trust account records, where present, are abysmal. Not only did she demonstrate, in the words of the Board, "a fundamental lack of understanding regarding trust accounts and her obligations" under Rules 16-115 and 17-204, she also unreasonably charged her client a contingent fee on the return of the client's own money in violation of Rule 16-105. These instances of misconduct amount to a violation of Rule 16-804(D).

**1. Behles commingled client property with her own and failed to keep complete records of her trust account in violation of Rules 16-115 and 17-204(A)**

{29} The mandate of Rule 16-115 is clear: lawyers must hold client money in a separate trust account and maintain complete records of that account. Rule 16-115(A). “Any retainer or flat fee not yet earned” is client money that “must be safely kept and held in trust for the client, separately from the lawyer’s own property.” *In re Montclare*, 2016-NMSC-023, ¶ 19, 376 P.3d 811.

In order for lawyers and their clients to know what portion of a flat fee or retainer may properly be withdrawn from trust, lawyers must inform their new clients of the basis upon which they will compute the amount of fee earned and maintain records that will enable them to determine the ongoing status of the fee, even when the fee arrangement is for a flat fee[.]

*In re Dawson*, 2000-NMSC-024, ¶ 12, 129 N.M. 369, 8 P.3d 856 (per curiam) (citation omitted). Complete records of a client trust account consist of account balances, reconciliations, bank documents, fee agreements, invoices, and statements detailing all transactions to and from the trust account. Rule 17-204(A).

{30} Behles did not keep complete records of her trust account in violation of Rule 17-204(A). First, Behles’s trust account ledger does not list the \$7,500.00 retainer nor the \$25,000.00 flat fee, both of which were unearned fees at the time they were received. Second, the record is devoid of any invoices corresponding to the seven transfers Behles made from the trust account in January 2016. This dearth of accounting records is a clear violation of Rule 17-204(A).

{31} Behles violated Rule 16-115(A) on three separate occasions when she commingled Dubalouche’s money with that of her firm’s operating account. The initial retainer, flat fee payment, and \$19,239.00 court disbursement was client money when it was received by BLF. Accordingly, it was to be held in trust and properly recorded. *See* Rule 16-115(A); Rule 17-204(A). This was not done.

{32} Behles’s handling of the \$7,500.00 retainer, the \$25,000.00 flat fee, and the \$19,239.00 disbursement amount to specific violations of Rule 16-115(C)-(E). We address each instance of misconduct in turn.

**a. Behles violated Rule 16-115(C) when she deposited the \$7,500.00 retainer directly into her operating account**

{33} All client money that is paid to the lawyer in advance must be deposited into the client trust account “to be withdrawn by the lawyer *only* as fees are earned or expenses incurred.” Rule 16-115(C) (emphasis added). Under the initial fee agreement between Behles and Dubalouche,

the \$7,500.00 retainer was collateral to secure Dubalouche’s payment of fees. The agreement stated that Behles would not draw upon the funds unless Dubalouche was in default. Therefore, the \$7,500.00 retainer was client money paid in advance and should have been deposited in Behles’s trust account pursuant to Rule 16-115(C). Behles violated Rule 16-115(C) when she deposited the \$7,500.00 retainer directly into her operating account.

{34} Behles argued that it was permissible for the retainer to be deposited into her operating account because “this work had already been done[.]” This assertion is unsupported by evidence as Behles failed to produce a client invoice to show she had completed work for Dubalouche at the time she deposited the retainer in her operating account. Her transaction record for the Dubalouche account does not list an invoice until February 6, 2015, more than one month after Behles deposited the initial retainer in her operating account. Behles’s failure to deposit the \$7,500.00 retainer into her trust account is her first violation of Rule 16-115(C) in this disciplinary case.

**b. Behles violated Rule 16-115(C) when she deposited the \$25,000.00 flat fee directly into her operating account**

{35} Behles violated Rule 16-115(C) a second time when she failed to deposit Dubalouche’s flat fee payment under the second fee agreement into her trust account. “[A] flat fee for future legal services cannot be considered as earned when paid and must be held in trust until earned.” *In re Yalkut*, 2008-NMSC-009, ¶ 26, 143 N.M. 387, 176 P.3d 1119 (per curiam). Under the second fee agreement, Dubalouche agreed to pay a \$25,000.00 flat fee for work to be performed from the date of the agreement forward. Behles did not provide an invoice for services between the date of the agreement and the date she deposited the flat fee payment into her operating account. This means that Dubalouche’s payment of \$25,000.00 was an unearned fee at the time Behles improperly deposited it into her operating account.

{36} Behles argued that she did not violate Rule 16-115(C) in this instance because Dubalouche’s check for \$25,000.00, received shortly after the execution of the second fee agreement, was not the flat fee payment but was instead meant to satisfy the August 3, 2015 bill for \$16,535.70. She claimed that once the August 3, 2015 bill was satisfied, the remainder of the \$25,000.00 was partial payment of the flat fee under the second fee agreement.

{37} This argument fails for two reasons. First, we adopt the Board’s finding that Behles was paid in full for her representation of Dubalouche once she accepted the \$25,000.00 flat fee. Two days before

the \$25,000.00 was deposited into her operating account, Behles informed Dubalouche’s out-of-state counsel that the outstanding amounts due to BLF were “forgiven/included” in the \$25,000.00 flat fee under the second fee agreement. Therefore, the August 3, 2015 bill of \$16,235.70 was forgiven when Dubalouche paid the flat fee on September 16, 2015. Behles should not have credited any amount of the \$25,000.00 flat fee to the August 3, 2015 bill. Second, even if we accepted her argument that part of the \$25,000.00 was meant to satisfy the August 3, 2015 bill, Behles did not deposit the remainder of the flat fee payment into her trust account. That remainder was unquestionably an unearned fee when paid. It should have been held in trust until Behles could account for how it was earned. *See In re Dawson*, 2000-NMSC-024, ¶ 12. Because she did not deposit the payment of the \$25,000.00 flat fee into her trust account, Behles violated Rule 16-115(C).

**c. Behles violated Rule 16-115(D) when she failed to account for and deliver the \$19,239.00 court disbursement to Dubalouche**

{38} When a lawyer receives funds belonging to a client (i.e., proceeds from a settlement or recovery) the lawyer must “promptly notify the client” of the receipt, “promptly deliver” the funds to the client, and upon request by the client, render a “full accounting.” Rule 16-115(D). Behles violated Rule 16-115(D) when she failed to account for and deliver the \$19,239.00 court disbursement to her client.

{39} The \$19,239.00 disbursement was a return of Dubalouche’s own money. It was the remainder of Dubalouche’s \$51,738.00 court bond following the \$32,500.00 payment to Precision and Floorshield pursuant to the settlement agreement. The district court ordered Behles to hold the \$19,239.00 disbursement in trust for Dubalouche. Despite this order and the requirements of Rule 16-115(D), Behles failed to deliver the \$19,239.00 disbursement to Dubalouche.

{40} Though she repeatedly stated that she was holding the funds from the disbursement on hand and planned to remit payment, Behles’s bank records bely those assertions. Behles had transferred the full \$19,239.00 out of the client trust account and into the BLF operating account by January 26, 2016. She did so absent concurrent documentation that she earned any amount from the disbursement. Because Behles was required to account for and deliver the funds to which her client was entitled, we conclude that she violated Rule 16-115(D).

{41} Behles believed she was owed the full amount of the disbursement in fees and costs and argued that her assertion of

an attorney charging lien and a retaining lien gave her the right to recover those fees and costs out of the \$19,239.00 disbursement. We disagree. Charging and retaining liens only attach to a client's property when the client has failed to pay the attorney for legal services. See *In re Venie*, 2017-NMSC-018, ¶ 39, 395 P.3d 516; *Computer One, Inc. v. Grisham & Lawless, P.A.*, 2008-NMSC-038, ¶ 12, 144 N.M. 424, 188 P.3d 1175. As we have explained, Behles was paid in full for her representation of Dubalouche when she received the \$25,000.00 flat fee payment on September 16, 2015. Since Dubalouche was not in default, no charging or retaining liens attached to the disbursement from the court registry.

**d. Behles violated Rule 16-115(E) when she failed to maintain the \$19,239.00 court disbursement in trust despite her client's claims to the funds**

{42} Should any dispute arise between the lawyer and client regarding each party's interest in certain funds, the lawyer is required to keep the funds separate "until the dispute is resolved." Rule 16-115(E). Behles violated Rule 16-115(E) when she unilaterally transferred the \$19,239.00 out of the trust account despite Dubalouche's claim to the full amount of the disbursement. Clearly there was a dispute between Dubalouche and Behles regarding their interests in the disbursement from the court registry. The appropriate response would have been for Behles to hold the funds in trust until the dispute was resolved. See *id.* However, Behles paid no heed to this requirement and took from her client what she felt she deserved.

{43} For the foregoing reasons, we conclude that Behles commingled client property and failed to keep complete trust account records in violation of Rules 16-115 and 17-204(A).

**2. Behles violated Rule 16-105 when she charged an unreasonable contingent fee on the return of Dubalouche's court bond**

{44} Rule 16-105(A) mandates that lawyers "shall not . . . charge or collect an unreasonable fee." Under the second fee agreement, Behles was entitled to a 40% contingent fee on the "amount recovered" on Dubalouche's counterclaims against AIC, Precision, and Floorshield for alleged damage to the building. Dubalouche received money back under the settlement agreement with Precision and Floorshield, but that money was not a recovery on its counterclaims.

{45} Behles argued she was owed a 40% contingent fee because Dubalouche recovered \$19,239.00 pursuant to the settlement agreement and subsequent court disbursement. She claimed \$19,239.00 was a recovery because it was a sum of money

she "got back or regained for the benefit of Dubalouche." We disagree with Behles's characterization and adopt the Board's findings that Behles was not entitled to a contingent fee because Dubalouche did not recover any amount on its counterclaims.

{46} The following supports the Board's finding that there was no recovery for which Behles could charge a contingent fee. First, the settlement agreement did not specify that the subcontractors paid any damages on Dubalouche's counterclaims. Second, as we have explained, the \$19,239.00 disbursement was a return of the remainder of Dubalouche's court bond following the settlement with the subcontractors. The fact that Dubalouche deposited a bond in a greater amount than was ultimately used to settle the litigation does not mean that Dubalouche recovered \$19,239.00. The \$19,239.00 disbursement was a return to Dubalouche of the balance of the court bond that it had paid to secure the release of liens. As such, it was not a recovery.

{47} Behles argued that the \$19,239.00 was a recovery because she was able to leverage Dubalouche's potential counterclaims to reduce the amount Precision and Floorshield claimed they were owed during the settlement negotiation. The record does not support this argument. Precision's and Floorshield's liens on the property totaled \$27,534.00. Under the settlement, Dubalouche agreed to pay Precision and Floorshield \$32,500.00 to satisfy the liens and secure a mutual release of claims. Ultimately, Dubalouche paid approximately \$5,000.00 more than the initial amount of the subcontractors' liens. Behles's own testimony before the hearing committee is the only evidence in the record to support her claim that Precision and Floorshield settled for a lesser amount than their initial demand in exchange for Dubalouche's release of its counterclaims. This specific bargain is not memorialized in the settlement agreement. {48} Because we view the evidence in the light most favorable to the Board's findings, we adopt the finding that Dubalouche did not recover on the counterclaims. We conclude that it was unreasonable and a violation of Rule 16-105 for Behles to charge a contingent fee on the \$19,239.00 disbursement from the court registry.

**3. Behles's misconduct is prejudicial to the administration of justice in violation of Rule 16-804(D)**

{49} "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice[.]" Rule 16-804(D). Misconduct involving "dishonesty [and] breach of trust" fall into the category of offenses that "reflect adversely on fitness to practice law." Rule 16-804 Comm.

commentary [2]. Behles's misconduct is an affront to the legal profession. She has repeatedly engaged in professional practices riddled with deceit to the detriment of her client, as well as the reputation of all lawyers in this state. Lawyers play an integral role in the justice system, granting their clients access to the law's remedies and protections. When the integrity of one lawyer is put into question, the integrity of the entire justice system is put into question. This will not stand. Because she failed to deliver the \$19,239.00 disbursement to Dubalouche while misrepresenting that she was holding that money in trust, Behles has engaged in conduct prejudicial to the administration of justice in violation of Rule 16-804(D).

**C. Behles's Misconduct Requires Her Disbarment From the Practice of Law**

{50} In our order of March 5, 2019, we adopted the Board's recommendation for discipline and permanently disbarred Behles from the practice of law. In dispensing discipline, we are guided by our prior decisions regarding similar misconduct and the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards). *In re Key*, 2005-NMSC-014, ¶ 5, 137 N.M. 517, 113 P.3d 340 (per curiam).

{51} The presumptive form of discipline for knowingly misappropriating client funds is disbarment. See *In re Reynolds*, 2002-NMSC-002, ¶¶ 13-14, 131 N.M. 471, 39 P.3d 136 (per curiam). "A lawyer's trust account should be held sacred; willfully taking funds from a trust account cannot and will not be tolerated by this Court." *In re Zamora*, 2001-NMSC-011, ¶ 12 (quoting *In re Kelly*, 1995-NMSC-038, ¶ 8). Our view is consistent with ABA Standard 4.11, which provides that disbarment is appropriate when attorneys knowingly or intentionally misappropriate client property, causing their client injury. See Am. Bar Ass'n, *Annotated Standards for Imposing Lawyer Sanctions*, Standard 4.11, Annotation, at 132 (2015) (explaining that courts focus on "deliberate conduct" when determining whether disbarment for misappropriation is warranted).

{52} We conclude that Behles knowingly commingled her client's property with her own when she (1) deposited the \$7,500.00 retainer into her operating account, (2) deposited the \$25,000.00 flat fee into her operating account and (3) transferred \$19,239.00 of her client's money out of the trust account and into her firm's operating account. Without any concurrent invoices demonstrating that she earned fees from these amounts, Behles took for herself the \$7,500.00 retainer, the \$25,000.00 flat fee, and the \$19,239.00 disbursement. This conduct caused her client undeniable injury.

Adding insult thereto, Behles repeatedly misrepresented to her client that she had maintained the \$19,239.00 disbursement in trust and planned to remit payment.

{53} In addition to her serious failure to conform to the Rules of Professional Conduct at issue in this case, there are many aggravating factors we consider in our imposition of discipline. In particular, Behles's prior discipline for similar misconduct, her substantial experience in law, and her refusal to acknowledge the wrongfulness of her behavior lead us to

conclude that disbarment is the only way to protect the public from the grave consequences of Behles's transgressions. See Rule 17-Preface NMRA ("The purpose of discipline of lawyers is the protection of the public, the profession[,] and the administration of justice[.]").

#### CONCLUSION

{54} We adopt the Board's findings of fact and conclusions of law in this case and permanently disbar Behles from the practice of law, effective April 30, 2019. In addition, we order her to pay costs to

the Board in the amount of \$3,127.93 and to pay restitution to Dubalouche in the amount of \$19,239.00 consistent with our March 5, 2019 order.

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

**BARBARA J. VIGIL, Justice**

**WE CONCUR:**

**JUDITH K. NAKAMURA, Chief Justice**

**C. SHANNON BACON, Justice**

**DAVID K. THOMSON, Justice**

From the New Mexico Court of Appeals

**Opinion Number: 2019-NMCA-065**

No. A-1-CA-35731 (filed July 11, 2019)

VALERIE RODRIGUEZ, as Parent  
and Next Friend of BILLY JOE

RODARTE, JR., a minor,  
Plaintiff-Appellant,

v.

DENNIS T. SANCHEZ, ESQ.,  
Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**

JEFF F. MCELROY, District Judge

Released for Publication November 5, 2019.

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for Appellee

## Opinion

### J. Miles Hanisee, Judge.

{1} Plaintiff appeals the district court's order denying her motion to reconsider the district court's dismissal of her case with prejudice under Rule 1-041(E)(1) NMRA for failure to prosecute. Concluding that the district court erred in dismissing Plaintiff's complaint, we reverse.

#### BACKGROUND

{2} In July 2012 Plaintiff brought a legal malpractice case against Defendant related to Defendant's representation of Plaintiff in a wrongful death action on behalf of her minor son in 2005. On June 25, 2015, the district court dismissed Plaintiff's malpractice case without prejudice for lack of prosecution under Rule 1-041(E)(2). The same day, Plaintiff moved to reinstate her case, and the district court granted the motion on July 8, 2015. On July 10, 2015, Defendant filed a motion to dismiss Plaintiff's case with prejudice under Rule 1-041(E)(1) based on allegations that Plaintiff had failed to take significant action to bring the action to a conclusion. Plaintiff filed a response to Defendant's motion on July 26, 2015, and the next day filed a request

for a scheduling conference hearing. On July 30, 2015, the district court conducted a hearing on Defendant's motion to dismiss and at the conclusion of the hearing, denied the motion.

{3} On September 2, 2015, the district court entered a joint Rule 1-016(B) NMRA scheduling order that had been agreed to and submitted by the parties. The order set deadlines for filing lay witness, expert witness, and exhibit lists, completing discovery, and filing dispositive motions. It also set a pretrial conference date and a date for trial to commence. In accordance with the scheduling order, Plaintiff filed her preliminary witness list and preliminary exhibit list on October 1, 2015. On October 7, 2015, Plaintiff filed an amended notice to take the deposition of one of her expected fact witnesses. And on October 31, 2015, Plaintiff filed her expert witnesses list, disclosing the expert witness she indicated she may call to testify at trial.

{4} On October 9, 2015, Defendant filed a motion to reconsider the district court's denial of his July 10, 2015, motion to dismiss. The district court held a hearing on Defendant's motion for reconsideration on November 30, 2015. After taking the matter under advisement for several months, the

district court granted Defendant's motion to reconsider and issued an order of dismissal with prejudice on February 11, 2016. In its order, the district court found that "Plaintiff took no significant action to prosecute this matter for a two[-]year period from June 5, 2013 until July 8, 2015." It further found that while it had entered a Rule 1-016(B) scheduling order on September 9, 2015, the order "was not entered until . . . significantly after . . . Defendant filed his original [m]otion to [d]ismiss[.]" It therefore concluded that it "was wrong to have denied the [m]otion to [d]ismiss . . . in July."

{5} Plaintiff moved for reconsideration, noting the discovery she had sent on April 3, 2013, the depositions taken on September 26, 2013, and all of the actions she had taken "after the case was reinstated" on July 8, 2015, that "show that [Plaintiff] is ready and able to bring this case to resolution on the merits." Plaintiff also contended that she was in compliance with the Rule 1-016(B) scheduling order, which Plaintiff argued should prevent dismissal of her case. Plaintiff urged the court to consider all of Plaintiff's activities aimed at bringing her case to final disposition—including those she took in the years following the filing of her complaint and those she took after Defendant filed his motion to dismiss—and not focus exclusively on the two-year period of inactivity immediately preceding Defendant's motion to dismiss as Defendant argued the court should do.

{6} The district court denied Plaintiff's motion for reconsideration. In its order, the district court stated that it "will not consider Plaintiff's activities after . . . Defendant filed his [m]otion to [d]ismiss . . . on July 10, 2015." It further specified that "[i]n deciding whether . . . Defendant is entitled to a dismissal with prejudice, the [c]ourt looks solely to the activity that occurred between June 5, 2013 and July 8, 2015[,] when the [c]ourt entered its [o]rder of [r]einstatement." The court concluded, "The case is dismissed based on where the case stood prior to July 8, 2015. At that time there was no significant activity taken by . . . Plaintiff to bring the matter to conclusion." From that order, Plaintiff appeals.

#### DISCUSSION

{7} Rule 1-041(E)(1) provides:

Any party may move to dismiss the action, or any counterclaim, cross-claim or third-party claim with prejudice if the party asserting the claim has failed to take any significant action to bring such claim to trial or other final disposition within two (2) years from the filing of such action or claim. *An action or claim shall not be dismissed if*

*the party opposing the motion is in compliance with an order entered pursuant to Rule 1-016 . . . or with any written stipulation approved by the court.*

(Emphasis added.)

{8} Plaintiff argues that under the plain language of Rule 1-041(E)(1), the district court was without discretion to dismiss her action because she was in compliance with the Rule 1-016(B) scheduling order entered by the district court before it decided Defendant's motion to dismiss. Plaintiff specifically relies on our Supreme Court's opinion in *Cottonwood Enterprises v. McAlpin* (Cottonwood), 1989-NMSC-064, 109 N.M. 78, 781 P.2d 1156, which she contends "acknowledged that a scheduling order with trial date acted as a sort of safe harbor from Rule 1-041(E) dismissal[.]" Plaintiff additionally advances myriad other arguments on appeal, including that the district court erred by (1) refusing to consider her activity both in the two years following the filing of her complaint and after Defendant moved to dismiss her case, and (2) failing to hold an evidentiary hearing prior to dismissing her case.

{9} Defendant argues that Rule 1-041(E)(1) does not preclude the possibility of a dismissal in this case and that the district court properly exercised its discretion in dismissing Plaintiff's case after considering only Plaintiff's activities in the two years immediately preceding the filing of Defendant's motion to dismiss. Defendant specifically contends that because the Rule 1-016(B) scheduling order was requested and entered after Defendant moved for dismissal, this case is distinguishable from *Cottonwood*. Defendant alternatively argues that we should affirm the district court's dismissal because the district court lacked subject matter jurisdiction over Plaintiff's action.

{10} We first consider whether the district court had discretion to dismiss Plaintiff's case after it entered the Rule 1-016(B) scheduling order and in the absence of a finding that Plaintiff was not in compliance with that order. Concluding that it did not and, therefore, that dismissal was improper, we next address Defendant's arguments—raised for the first time on appeal—that the district court lacked jurisdiction over Plaintiff's case in the first instance, necessitating dismissal in any event.

#### **I. The District Court Abused its Discretion in Dismissing Plaintiff's Case Under Rule 1-041(E)(1)**

##### **A. Standard of Review and Applicable Rules of Interpretation**

{11} On appeal from a dismissal under Rule 1-041(E)(1), we will reverse a district court's decision to dismiss for inactivity if we determine that the district court abused its discretion. See *Cottonwood*, 1989-NMSC-064, ¶ 6. "[E]ven when we review for an abuse of discretion, our review of the appli-

cation of the law to the facts is conducted de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law." *Harrison v. Bd. of Regents of the Univ. of N.M.*, 2013-NMCA-105, ¶ 14, 311 P.3d 1236 (internal quotation marks and citations omitted). A district court abuses its discretion when it applies an incorrect standard or incorrect substantive law. *Aragon v. Brown*, 2003-NMCA-126, ¶ 9, 134 N.M. 459, 78 P.3d 913. "We review a district court's answers to questions of law, including those that interpret Rules of Civil Procedure, de novo." *N.M. Uninsured Emp'rs Fund v. Gallegos* (Gallegos), 2017-NMCA-044, ¶ 15, 395 P.3d 533.

{12} In interpreting procedural rules, "we apply the same canons of construction as applied to statutes and, therefore, interpret the rules in accordance with their plain meaning." *Id.* (internal quotation marks and citation omitted). "We first look to the language of the rule[, and i]f the rule is unambiguous, we give effect to its language and refrain from further interpretation." *Id.* (internal quotation marks and citation omitted). Additionally, "[w]hen dealing with a statute or rule which has been amended, the amended language must be read within the context of the previously existing language, and the old and new language, taken as a whole, comprise the intent and purpose of the statute or rule." *Vigil v. Thriftway Mktg. Corp.*, 1994-NMCA-009, ¶ 15, 117 N.M. 176, 870 P.2d 138. When the Supreme Court amends its rules, we presume it is aware of this Court's and its own existing interpretations of the rules and that it intends to change or clarify existing law governing procedural practice in state courts. *Cf. Alarcon v. Albuquerque Pub. Schs. Bd. of Educ.*, 2018-NMCA-021, ¶ 5, 413 P.3d 507 ("When the Legislature amends a statute, we presume the Legislature is aware of existing law, including opinions of our appellate courts, and we normally presume it intends to change existing law."), 2018-NMCERT-\_\_\_\_, (No. S-1-SC-36811, Jan. 23, 2018).

##### **B. Rule 1-041(E)(1)**

{13} Rule 1-041(E)(1) provides in pertinent part that "[a]n action or claim shall not be dismissed if the party opposing the motion is in compliance with an order entered pursuant to Rule 1-016[.]" There is nothing ambiguous about this provision. By its plain language, it prohibits a district court from dismissing a party's action or claim on an opposing party's motion to dismiss for failure to prosecute if the party opposing dismissal is in compliance with an order entered under Rule 1-016. Rule 1-041(E)(1) says nothing about whether the request for or granting of the scheduling order preceded or followed the filing of the Rule 1-041(E)(1) motion to dismiss.

{14} The parties'—and the district court's—preoccupation with the timing of the district court's entry of the Rule 1-016(B) scheduling order in this case stems from their reliance on outdated cases from this Court and our Supreme Court that held that the timing of a plaintiff's request for a trial setting had to be considered by the district court and could, in some instances but not all, be dispositive of whether dismissal could be granted. See *Cottonwood*, 1989-NMSC-064, ¶ 8 (holding that because the plaintiff "had filed for and been granted a trial date prior to the district court's grant of the motion to dismiss, [the plaintiff] had been actively pursuing a final determination, and therefore the district court abused its discretion" in dismissing the plaintiff's case); *Jones v. Montgomery Ward & Co.*, 1985-NMSC-062, ¶¶ 12-13, 16, 103 N.M. 45, 702 P.2d 990 (holding that under the facts of that case—i.e., where significant discovery had occurred, where the plaintiff responded to the motion to dismiss by submitting "a written request for an immediate jury trial[.]" and where the district court had set a tentative trial date—dismissal was improper); *Martin v. Leonard Motor-El Paso*, 1965-NMSC-060, ¶¶ 9, 12, 75 N.M. 219, 402 P.2d 954 (stating that "it cannot be denied that the [plaintiff's] filing of the motion for a trial setting on the merits amounted to action by the plaintiff to bring the case to its final determination, and that such action came before the defendant elected to invoke his right to dismissal[.]" and, therefore, reversing the district court's dismissal of the plaintiff's complaint); *Stoll v. Dow*, 1986-NMCA-134, ¶¶ 4-5, 8-9, 12, 105 N.M. 316, 731 P.2d 1360 (rejecting the plaintiff's contention that his motion requesting a trial setting—made but never granted more than ten years prior to the defendant's motion to dismiss—"indefinitely tolled the [three-year] time period" for bringing his case to final disposition, and stating that "the fact that [the] plaintiff had filed a request for trial setting . . . in 1973 is no obstacle to the granting of a [Rule 1-041(E)] motion to dismiss in 1984"); *Sewell v. Wilson*, 1982-NMCA-017, ¶¶ 6, 36, 97 N.M. 523, 641 P.2d 1070 (noting that the plaintiff in that case "moved for a trial setting" after the defendants filed their motion to dismiss but more than one year before the district court granted the motion, and holding that the plaintiff's request for a trial setting should "be considered in determining the propriety of the dismissal"). But those cases all predate our Supreme Court's 1990 amendment of Rule 1-041(E), an amendment that added the express prohibition against dismissing an action where the party is in compliance with a scheduling order, something that neither the parties nor the district court acknowledged or addressed. We explain.

**The Pre-1990 Rule**

{15} Under Rule 1-041(e)(1) NMRA (Supp. 1979) (referred to as the “former rule”) (current version at Rule 1-041(E)(1)), a party could seek to have an action dismissed with prejudice if it was “made to appear to the court that the plaintiff therein or any defendant filing a cross-complaint therein has failed to take any action to bring such action . . . to its final determination for a period of at least three years[.]” Rule 1-041(e)(1) (Supp. 1979). The former rule provided an exception for cases where “a written stipulation signed by all parties to said action . . . has been filed suspending or postponing final action therein beyond three years[.]” *Id.* It did not expressly prohibit dismissal where a party had either requested or been granted a trial setting or was in compliance with a scheduling order.

{16} In *Martin*, our Supreme Court declared with respect to the former rule, “[the Court] make[s] no attempt to fix a standard of what action is sufficient to satisfy the requirement of the rule, for each case must be determined upon its own particular facts and circumstances.” 1965-NMSC-060, ¶ 7. Thus, courts deciding cases under the former rule had to determine on a case-by-case basis whether a plaintiff’s activities—including his or her request for a trial setting—constituted sufficient action to bring the case to a final determination, thereby allowing the plaintiff to avoid dismissal. District courts were instructed to consider: “(1) all written and oral communications between the court and counsel; (2) actual hearings by the court on motions; (3) negotiations and other actions between counsel looking toward the early conclusion of the case; (4) all discovery proceedings; and (5) any other matters which arise and the actions taken by counsel in concluding litigation.” *Jones*, 1985-NMSC-062, ¶ 10.

{17} Beginning with *Martin* and ending with *Cottonwood*, numerous cases raised the question of what effect a plaintiff’s request for trial setting should have on a district court’s dismissal determination. In nearly every case where the plaintiff had moved for a trial setting either before or shortly after a motion to dismiss was filed, this Court and our Supreme Court reversed the district court’s dismissal of the action. *Cottonwood*, 1989-NMSC-064, ¶ 8; *Jones*, 1985-NMSC-062, ¶¶ 13, 16; *Martin*, 1965-NMSC-060, ¶¶ 4, 9; *Sewell*, 1982-NMCA-017, ¶¶ 6, 36-37. *But see Stoll*, 1986-NMCA-134, ¶¶ 8-9 (affirming the district court’s dismissal in 1984 when the plaintiff had moved for a trial setting in 1973). In those cases, the plaintiff’s willingness to set a trial date was considered—either on its own or coupled with other activities—a sufficient indication that the plaintiff was ready and able to bring his or her case to a final determination on the merits, which New Mexico prefers. *See also*

*State ex rel. Reynolds v. Molybdenum Corp. of Am.*, 1972-NMSC-027, ¶ 7, 83 N.M. 690, 496 P.2d 1086 (expressing concern that the then-extant application of the former rule disregarded our Supreme Court’s “often stated concerns for the rights of litigants to have their day in court and their cases decided on the merits and not on trivial technicalities” (internal quotation marks and citation omitted)). *Compare Cottonwood*, 1989-NMSC-064, ¶¶ 7-8 (explaining that it was unnecessary to consider whether the plaintiff’s various actions “constituted adequate activity” to avoid dismissal under Rule 1-041(E) because the fact that the plaintiff had filed for and been granted a trial date was dispositive), *with Jones*, 1985-NMSC-062, ¶¶ 12-13, 16 (considering the totality of facts and circumstances, including the plaintiff’s activities throughout litigation, in determining the propriety of dismissal). Nevertheless, because “[w]hat constitutes activity bringing a case to a final determination must be decided considering the facts of each case[.]” the rule remained that “the filing for a trial date does not per se mandate that the [Rule] 1-041[(E)] motion must be denied.” *Cottonwood*, 1989-NMSC-064, ¶ 10 (emphasis added). However, in *Cottonwood*, our Supreme Court concluded that the policy underlying Rule 1-041(E)—“to expedite the prosecution of litigation in our courts”—was “achieved through the granting of a trial setting.” *Cottonwood*, 1989-NMSC-064, ¶ 11 (emphasis added). *Cottonwood*, thus, prior to the 1990 amendment, effectively established a per se mandate against granting a Rule 1-041(E) motion to dismiss after the district court has granted a trial setting.

**The 1990 Amendment**

{18} Our Supreme Court’s 1990 amendment of Rule 1-041(E), which took effect shortly after *Cottonwood* was decided, codified the newly announced common law rule. The 1990 amendment, in addition to reducing the presumptive time for bringing an action or claim to final disposition from three years to two, added that “[a]n action or claim shall not be dismissed if the party opposing the motion is in compliance with an order entered pursuant to Rule 1-016 or with any written stipulation approved by the court.” *Compare* Rule 1-041(E)(1) NMRA (1990), *with* Rule 1-041(e)(1) (Supp. 1979). Considered in light of the foregoing discussion, the Supreme Court’s addition of this provision can be understood as establishing at least one per se “standard of what action is sufficient” to avoid dismissal under the rule. *Martin*, 1965-NMSC-060, ¶ 7. Thus, following the 1990 amendment, the rule is that if the district court has entered an order under Rule 1-016, and if the party against whom dismissal is sought is in compliance with that order as of the time the district court rules on the motion to dismiss, dismissal may not be had. *See Jones*, 1985-NMSC-062, ¶ 15

(noting that it was “examining the status” of the litigation in that case at the time the defendant’s motion to dismiss was *considered*, not filed).

{19} For our purposes, it is also important to note that the 1990 amendment not only changed, but also expanded upon the former rule. Where the former rule provided only for dismissal of an action with prejudice upon the motion of a party, the 1990 amendment added a provision allowing district courts to dismiss an action *without* prejudice either sua sponte or upon the motion of a party. Rule 1-041(E)(2) (1990). Rule 1-041(E)(2), initially employed by the district court in this case, was “intended to provide a standardized procedure for trial courts to evaluate the intentions of [the] parties and their counsel and to rid their dockets of cases that should not be carried as active cases.” *Vigil*, 1994-NMCA-009, ¶ 15. Under Rule 1-041(E)(2) an action or claim may be dismissed without prejudice “if the party filing the action or asserting the claim has failed to take any significant action in connection with the action or claim within the previous one hundred and eighty (180) days.” However, if the district court has entered a pretrial scheduling order in accordance with Rule 1-016, a case is not subject to dismissal under Rule 1-041(E)(2). *Id.* Notably, if an action or claim is dismissed under Rule 1-041(E)(2), “any party may move for reinstatement of the case” within thirty days, and “[u]pon good cause shown, the court shall reinstate the case *and shall enter a pretrial scheduling order pursuant to Rule 1-016[.]*” Rule 1-041(E)(2) (emphasis added).

{20} Understood together, Subsection (E)(1) and Subsection (E)(2) create a complementary system for ensuring that cases do not languish on either counsel’s desk or court dockets and that the prosecution of actions is expedited to ensure the overarching goal of providing litigants with their day in court, i.e., for achieving Rule 1-041(E)’s underlying purpose. That the 1990 amendment coupled both provisions of Rule 1-041(E) with Rule 1-016, a rule similarly geared toward managing and expediting civil litigation to a final disposition, was no accident. Nor is it something that parties and district courts may disregard.

**C. The District Court****Misapprehended Rule 1-041(E)(1) and (2)**

{21} As previously noted, the district court dismissed Plaintiff’s case without prejudice under Rule 1-041(E)(2) on June 25, 2015. That same day, Plaintiff filed a motion to reinstate her case in which she identified as grounds for the motion that she “is continuing to attempt to locate witnesses and assets of [D]efendant.” Before the time for Defen-

dant to file a response ended, the district court granted Plaintiff's motion.<sup>1</sup> Defendant did not seek reconsideration of the district court's reinstatement or otherwise challenge the reinstatement, e.g., by contending that Plaintiff had failed to show good cause for reinstatement. Instead, Defendant effectively conceded the propriety of the reinstatement and elected, alternatively, to seek dismissal of Plaintiff's reinstated complaint under Rule 1-041(E)(1).

{22} Under Rule 1-041(E)(2), then, the district court, having reinstated the complaint, was required to "enter a pretrial scheduling order pursuant to Rule 1-016." Rule 1-041(E)(2). Initially, it did not. However, after denying Defendant's ensuing motion to dismiss under Rule 1-041(E)(1), and upon the parties' submission of a joint Rule 1-016(B) scheduling order, the district court entered the required pretrial scheduling order. From that point forward, under both Rule 1-041(E)(1) and (E)(2), the district court was without discretion to dismiss Plaintiff's complaint unless it first found that Plaintiff was not in compliance with the scheduling order. *Id.*

{23} By granting Plaintiff's motion to reinstate and thereafter entering a scheduling order contemplated by the rule, the district court—in its discretion—effectively curtailed its discretion. Despite later expressing its belief that it "should not have reinstated the case on June 25, 2015[.]"<sup>2</sup> the district court could not un-ring that bell, particularly not when Defendant had not challenged the reinstatement in any way. The district court's entry of the Rule 1-016(B) scheduling order and Plaintiff's demonstrated compliance therewith achieved the purpose of expediting Plaintiff's litigation to a final determination such that the district court's dismissal of Plaintiff's case on February 11, 2016, was improper.<sup>3</sup>

## II. The District Court Had Jurisdiction Over Plaintiff's Complaint Throughout the Proceedings

{24} Defendant argues that we should affirm the district court's dismissal because Plaintiff's case was either (1) time-barred at the outset, which Defendant contends deprived the district court of jurisdiction

to hear the case; or (2) deemed to be time-barred following the district court's dismissal without prejudice, thereby depriving the district court of jurisdiction to reinstate Plaintiff's complaint. We disagree and briefly explain why.

### A. Defendant's Statute of Limitations Argument is Not Preserved for This Appeal

{25} Although Defendant raised the statute of limitations as an affirmative defense in his answer to Plaintiff's complaint, he admits that the parties did not litigate the issue in the district court and never invoked a ruling from that court on the matter. On appeal, the parties raise factual arguments regarding the date Plaintiff's cause of action accrued based on the discovery rule. "As a general rule, issues as to whether a claim has been timely filed or whether good cause exists for delay in filing an action are questions of fact, and such issues only become issues of law when the facts are undisputed." *Yurcic v. City of Gallup*, 2013-NMCA-039, ¶ 10, 298 P.3d 500 (internal quotation marks and citation omitted). "On appeal, this Court will not assume the role of the trial court and delve into such a fact-dependent inquiry[.]" *Pinnell v. Bd. of Cty. Comm'rs of Santa Fe Cty.*, 1999-NMCA-074, ¶ 14, 127 N.M. 452, 982 P.2d 503.

{26} Moreover, we disagree with Defendant that the statute of limitations is jurisdictional in this case. As our Supreme Court noted, "defenses based on statutes of limitation typically are waived if not raised in the pleadings, [but] our cases have indicated that time limitations contained in statutes which establish a 'condition precedent to the right to maintain the action' are jurisdictional and not subject to waiver." *Wilson v. Denver*, 1998-NMSC-016, ¶ 9, 125 N.M. 308, 961 P.2d 153 (internal quotation marks and citation omitted). The cases cited by Defendant are all cases like *Wilson* in which a statute establishes a time limitation as a condition precedent to maintain an action. See, e.g., *Citizens for Los Alamos, Inc. v. Inc. Cty. of Los Alamos*, 1986-NMSC-063, ¶ 6, 104 N.M. 571, 725 P.2d 250 (discussing the thirty-day time limitation for appeals from a decision of the zoning authority set forth in NMSA 1978, Section 3-21-1(A) (2008)); *In re Estate*

*of Mayfield*, 1989-NMSC-016, 108 N.M. 246, 771 P.2d 179 (discussing time limitation set forth in the probate code for bringing a claim against an estate). A cause of action for legal malpractice, however, is subject only to the general four-year limitations period provided in NMSA 1978, Section 37-1-4 (1880), and Defendant cites no authority for the proposition that our general limitations statutes are similarly jurisdictional. Defendant has thus failed to establish that we can review the matter on the merits for the first time on appeal, pursuant to Rule 12-321(B)(1) NMRA (stating that "[s]ubject matter jurisdiction . . . may be raised at any time"), or that there is any basis to affirm the district court as "right for any reason" on appeal.

### B. The District Court Had Jurisdiction to Reinstate Plaintiff's Case

{27} Defendant next argues that Plaintiff's complaint should be deemed to be time-barred based on Plaintiff's failure to prosecute her case and that the district court was, therefore, without jurisdiction to reinstate her case. Defendant contends that when the district court first dismissed Plaintiff's case without prejudice for failure to prosecute on June 25, 2015, the dismissal operated as a dismissal with prejudice because by then, the statute of limitations had run. Defendant relies on our Supreme Court's decision in *King v. Lujan*, 1982-NMSC-063, 98 N.M. 179, 646 P.3d 1243, to support his contentions. Defendant's reliance is misplaced.

{28} In *King*, our Supreme Court held that "a dismissal without prejudice operates to leave the parties as if no action had been brought at all." *Id.* ¶ 7. Under the version of Rule 1-041 that existed at the time, if a case was dismissed for failure to prosecute, the plaintiff had to file a new complaint in order to revive his or her claims. See *Wershaw v. Dimas*, 1996-NMCA-118, ¶ 4, 122 N.M. 592, 929 P.2d 984. Therefore, *King* held that "[w] here the period of limitations has run, a dismissal without prejudice is tantamount to a dismissal with prejudice." 1982-NMSC-063, ¶ 9. However, Rule 1-041 was later amended to "allow for the reinstatement of a case that has been dismissed without prejudice for lack of prosecution upon a showing of

<sup>1</sup>Plaintiff filed her motion to reinstate on June 25, 2015. Under Rule 1-007.1(D) NMRA, Defendant had fifteen days, or until July 10, 2015, to respond. See *id.* (providing, generally, fifteen days to respond to a motion and that "[i]f a party fails to file a response within the prescribed time period the court may rule with or without a hearing"). The district court granted Plaintiff's motion to reinstate on July 8, 2015.

<sup>2</sup>The district court believed that it should not have reinstated the case "as there was no significant activity taken by Plaintiff to bring the case to a conclusion as reflected in the [c]ourt file and docket." But that is not the standard for reinstating a case. The standard for reinstating a case under Rule 1-041(E)(2) is "good cause shown," and the movant's ability to establish "good cause" is not limited to what is included within the court's file and docket. See *Vigil*, 1994-NMCA-009, ¶ 18 (providing that under Rule 1-041(E)(2)'s "good cause" standard, "a trial judge should reinstate a claim previously dismissed sua sponte if a party can demonstrate to the court that he is ready, willing, and able to proceed with the prosecution of his claim and that the delay in the prosecution is not wholly without justification" (internal quotation marks and citation omitted)).

<sup>3</sup>Because our conclusion on this issue is dispositive, we do not address Plaintiff's other arguments regarding the district court's failure to consider all of the evidence before it and to hold an evidentiary hearing.

good cause.” *Wershaw*, 1996-NMCA-118, ¶ 4 (emphasis added). As this Court held in *Wershaw*, “[b]ecause a new complaint is not filed and the case is simply reactivated, there is no problem with the running of the statute of limitations.” *Id.* Our Supreme Court has since directly considered *Wershaw*’s holding and declined to disturb it. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 16, 128 N.M. 536, 994 P.2d 1154. Moreover, we have also considered the matter and have explained, “under Rule 1-041(E)(2), a reinstatement reactivates the case at the same point in the proceedings where it was dismissed, and the plaintiff need not be concerned about the statute of limitations.” *Bankers Tr. Co. of Cal., N.S. v. Baca*, 2007-NMCA-019, ¶ 7, 141 N.M. 127, 151 P.3d 88 (internal quotation marks and citation omitted).

{29} Defendant acknowledges *Wershaw* and *Meiboom* but argues that “*King*’s holding applies unless a plaintiff timely files a motion showing good cause to reinstate[,] pursuant to the holding in *Wershaw*.” Defendant concedes that Plaintiff’s motion to reinstate was timely but argues that Plaintiff failed to establish good cause to reinstate her case. According to Defendant, Plaintiff’s mo-

tion to reinstate “merely asserted, without explanation, that she was ‘continuing to attempt to locate witnesses and assets of [D]efendant,’ and it failed to address whether the previous delay was justified.” Defendant contends that this was insufficient to satisfy the “good cause” standard for reinstating a case articulated in *Vigil*, 1994-NMCA-009, ¶ 16 (“To show ‘good cause,’ the party filing the motion to defer dismissal must demonstrate to the court that he is ready, willing, and able to proceed with the prosecution of his claim and that the delay in prosecution is not wholly without justification.” (internal quotation marks and citation omitted)). As such, Defendant reasons, Plaintiff “should not be entitled to the benefit of *Wershaw*’s holding.”

{30} The threshold and dispositive problem with Defendant’s argument is that he failed to raise it in the district court, meaning this argument is unpreserved for our review. *See* Rule 12-321(A) (“To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.”). As noted previously, Defendant neither argued to the district court that Plaintiff had failed to show good cause nor challenged the district court’s reinstatement of Plaintiff’s

complaint. Under these circumstances, we decline to consider Defendant’s unpreserved argument that Plaintiff failed to demonstrate good cause any further. *See Consol. Freightways, Inc. v. Subsequent Injury Fund*, 1990-NMCA-058, ¶ 12, 110 N.M. 201, 793 P.2d 1354 (“Where the record does not indicate that a contention was presented below, it will not be considered on appeal unless it is jurisdictional in nature.”). The district court had jurisdiction to reinstate Plaintiff’s case following its dismissal without prejudice despite the running of the statute of limitations. *See Wershaw*, 1996-NMCA-118, ¶ 4.

## CONCLUSION

{31} For the foregoing reasons, we reverse the district court’s order dismissing Plaintiff’s complaint with prejudice and remand for further proceedings consistent with this opinion.

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

**WE CONCUR:**  
**MEGAN P. DUFFY, Judge**  
**JAMES J. WECHSLER,**  
**Judge Pro Tempore**

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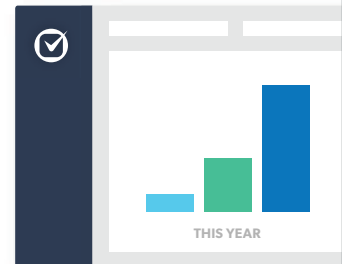
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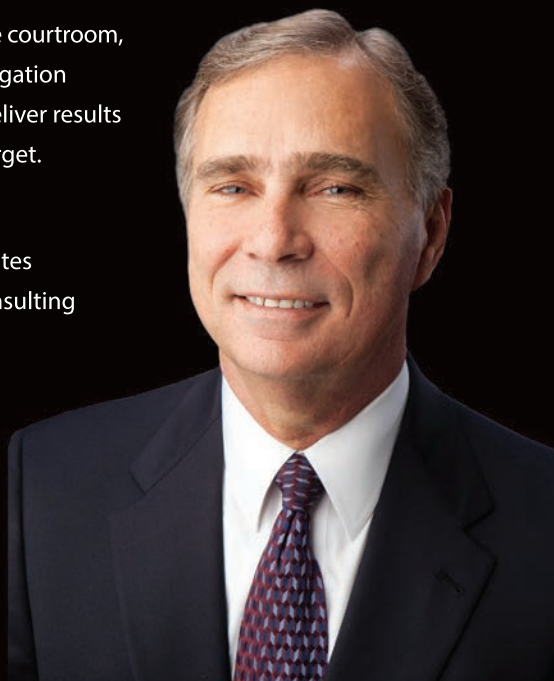
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### Positions

#### Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney position in the Property and Finance division of the City Attorney's Office. The position will administer the traffic arraignment program, approximately 20 hours per week, requiring the attorney to review, approve and negotiate agreements concerning traffic law violations. The attorney will also assist in areas of real estate and land use, governmental affairs, regulatory law, procurement, general commercial transaction issues, and civil litigation. The department's team of attorneys provide legal advice and guidance to City departments and boards, as well as represent the City and City Council on matters before administrative tribunals and in New Mexico State and Federal courts. This is an excellent position for newly licensed attorneys seeking to establish themselves within the legal field of governmental affairs, or for more experienced attorneys desiring to provide public service. Attention to detail and strong writing skills are essential. Applicant must be an active member of the State Bar of New Mexico in good standing or able to attain bar membership within three months of hire. Salary will be based upon experience. Please submit a cover letter, 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.

#### Attorney

Insurance defense firm seeks attorney to assist with all aspects of litigation. 2-4 years of experience preferred. Possibility for partnership/partial ownership considered for the right candidate. Send resume and letter of interest to James Barrett c/o the Eaton Law Office, PO Box 25305, Albuquerque 87125 or email to jbarrett@eatonlaw-nm.com.

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Jay Goodman and Associates Law Firm, PC is seeking one full-time and one part-time attorney to represent clients at our Albuquerque and Santa Fe Offices. Candidates must be licensed in New Mexico and have 4 or more years' experience with Family Law and Civil Litigation. Compensation DOE, benefits include, health insurance, 401k, flexible hours, PTO. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please email resume to jay@gaygoodman.com

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#### Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney to provide legal services to the City's Department of Municipal Development ("DMD"). The primary area of focus is public works construction law. The work includes, but is not limited to: contract drafting, analysis, and negotiations; regulatory law; procurement; general commercial transaction issues; intergovernmental agreements; dispute resolution; and civil litigation. Attention to detail and strong writing skills are essential. Five (5)+ years' experience is preferred and must be an active member of the State Bar of New Mexico, in good standing. Please submit resume and writing sample to attention of "Legal Department DMD Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

#### Litigation Attorney

With 52 offices and over 1,500 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.

### Assistant Trial Attorney

The Office of the Second Judicial District Attorney improves the quality of life of the citizens of Bernalillo County by reducing crime through thoughtful enforcement of the law and the development of a criminal justice system. The Office is an Equal Employment Opportunity Employer and is seeking applicants for Assistant Trial Attorney positions. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. Please submit all resumes to <https://berncoda.com/careers/> \* Knowledge, Skills, and Abilities: This position requires basic knowledge and skills in the areas of criminal prosecution; rules of evidence and rules of criminal procedure; public relations; organization; basic computer skills; effective trial skills; research and drafting legal documents; ability to work effectively with other criminal justice agencies; mentor and guide less experienced attorneys; communicate effectively; analyze information and situations. This position works independently and makes decisions within guidelines which include decisions to dismiss, proceed to trial or negotiate plea agreements. Successful candidate seeks guidance from assigned supervisor and/or higher level attorneys. \* Requirements: J.D degree and a current license to practice law in New Mexico or another State with a New Mexico limited license. \* Preferred Qualifications: Legal experience totaling up to at least one (1) year. \* Working Conditions: Work is performed in office, courtroom, and community environments. Physical effort and travel may be required. Incumbent may be required to work under stressful situations and/or conditions. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. This advertisement will remain open until filled. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a Disability. Please submit all resumes to <https://berncoda.com/careers/>

### Multiple Trial Attorney Positions Available in the Albuquerque Area

The Thirteenth Judicial District Attorney's Office is seeking entry level as well as experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Saavedra [kfajardo@da.state.nm.us](mailto:kfajardo@da.state.nm.us) or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

### Senior Trial Attorney

The Office of the Second Judicial District Attorney improves the quality of life of the citizens of Bernalillo County by reducing crime through thoughtful enforcement of the law and the development of a criminal justice system. The Office is an Equal Employment Opportunity Employer and is seeking applicants for a Senior Trial Attorney position. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. Please submit all resumes to <https://berncoda.com/careers/> \* Knowledge, Skills, and Abilities: This position requires comprehensive and current knowledge and skills in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations; organization and supervision; basic computer skills including working knowledge of office systems; fully effective trial skills; ability to draft legal documents; ability to work effectively with other criminal agencies; ability to communicate effectively; ability to research/analyze information and situations. Works independently with minimal consultation with supervisors (except for higher profile or complex cases). Significant prosecutorial discretion on cases within assigned case load. \* Requirements: Licensed attorney to practice law in good standing either in New Mexico or another state with a New Mexico limited license, plus a minimum of four (4) years as a practicing attorney in criminal law or three (3) years as a prosecuting attorney. \* Preferred Qualifications: Five (5) to seven (7) years or more of relevant prosecution experience. \* Working Conditions: Work is performed in office, courtroom and community environments. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and/or conditions. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. This advertisement will remain open until filled. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a Disability. Please submit all resumes to <https://berncoda.com/careers/>

### Assistant District Attorney

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

### Trial Attorney

The Office of the Second Judicial District Attorney improves the quality of life of the citizens of Bernalillo County by reducing crime through thoughtful enforcement of the law and the development of a criminal justice system. The Office is an Equal Employment Opportunity Employer and is seeking applicants for Trial Attorney positions. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. Please submit all resumes to <https://berncoda.com/careers/> \* Knowledge, Skills, and Abilities: Position requires advanced knowledge and skills in the areas of criminal prosecution; rules of evidence and rules of criminal procedure; public relations; organization; basic computer skills including working knowledge of office systems; effective trial skills; ability to research and draft legal documents; work effectively with other criminal justice agencies; mentor and guide less experienced attorneys; communicate effectively; analyze information and situations. Works independently, makes decisions within guidelines and is responsible for case screening and initiation, approving/disapproving charges, case preparation, in-court activities and post-case activity including closing. \* Requirements: Licensed attorney in New Mexico or another State with a New Mexico limited license, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. \* Preferred Qualifications: Five (5) to seven (7) years or more of relevant prosecution experience. \* Working Conditions: Work is performed in office, courtroom, and community environments. Physical effort and travel may be required. Incumbent may be required to work under stressful situations and/or conditions. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. This advertisement will remain open until filled. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a Disability. Please submit all resumes to <https://berncoda.com/careers/>

### Staff Attorney

The Law Office of Adam Oakey, LLC is seeking a full time Staff Attorney to represent clients in our Albuquerque office, as well as clients around the State of New Mexico. The candidate must be self-motivated and work well with a team, as well as have strong writing, analytical and research skills. The candidate must be licensed in New Mexico, have 3-5 years of experience, in Family and Criminal Litigation, Personal Injury experience and Bilingual, is a plus but not required. Salary DOE. Please send resumes, cover letter and writing sample to [info@oakeylawoffice.com](mailto:info@oakeylawoffice.com).

### Deputy Director of Policy

The City Attorney's Office seeks an individual to work on the evaluation, development and execution of the City's public policy initiatives. The work requires strong writing, analytical and advocacy skills. The successful applicant will work closely with constituents and community agencies with a broad range of interests and positions to shape priorities to positively impact the residents of Albuquerque. The position serves as a liaison to our external partners (which may include governments and nonprofit organizations) and ensures that our advocacy outcomes are effectively identified and achieved. This person will track project status, timelines, deliverables, and project requirements. This role is heavily involved in outreach and works closely with the Chief Administrative Officer and City Attorney to ensure the City continues to address the needs and priorities of Albuquerque communities on an on-going basis. Requirements: Experience with underserved or vulnerable populations. Master's Degree in related field or Juris Doctor. Juris Doctor strongly preferred. If attorney, must be licensed in New Mexico within six months of hire. In-depth understanding of city, state, and federal legislative and budget processes and grant application, administration, and compliance. Strong commitment to social justice, policy advocacy and research. Salary DOE. Please apply on line at the City of Albuquerque's website [www.cabq.gov/jobs](http://www.cabq.gov/jobs)

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The State of New Mexico seeks to hire an Associate General Counsel for the Office of the Governor. The successful candidate will possess top-notch writing abilities, superior advocacy skills, and be able to produce high quality work under tight deadlines. Minimum qualifications include a Juris Doctorate degree from an accredited school of law and two years of experience in the practice of law. Litigation experience preferred. Please submit a cover letter explaining your interest in the position, a resume, a writing sample, and three references to [vanessa.kennedy@state.nm.us](mailto:vanessa.kennedy@state.nm.us).

### Assistant City Attorney City of Santa Fe

The Santa Fe City Attorney's Office seeks a full-time lawyer to advise and represent the City in a variety of matters. The selected candidate will advise the City's Police Department and be lead counsel in IPRA matters, in addition to other assigned clients and roles, such as enforcement of the City's living wage and serving as counsel to boards and commissions. The City Attorney's Office seeks applicants with good people skills, strong academic credentials, excellent written and verbal communications skills, and an interest in public service. Experience in government general counsel work, litigation, appellate practice, and related law, particularly in the public context, is preferred. Evening meetings may be required up to a few times a month. The pay and benefits package are excellent and are partially dependent on experience. The position is based in downtown Santa Fe at City Hall and reports to the City Attorney. The position is exempt and open until filled. Qualified applicants are invited to apply online at [https://www.santafenm.gov/job\\_opportunities](https://www.santafenm.gov/job_opportunities).

### Contract Counsel

The New Mexico Public Defender Department (LOPD) provides legal services to qualified adult and juvenile criminal clients in a professional and skilled manner in accordance with the Sixth Amendment to United States Constitution, Art. II., Section 14 of the New Mexico State Constitution, *Gideon v. Wainwright*, 372 U.S. 335 (1963), the LOPD Performance Standards for Criminal Defense Representation, the NM Rules of Professional Conduct, and the applicable case law. Contract Counsel Legal Services (CCLS) is seeking qualified applicants to represent indigent clients throughout New Mexico, as Contract Counsel. The LOPD, by and through CCLS, will be accepting Proposals for the November 1, 2020 – October 31, 2021 contract period. All interested attorneys must submit a Proposal by June 29, 2020 at 4:00 p.m. to be considered. For additional information, attorneys are encouraged to search the LOPD website (<http://www.lopdnm.us>) to download the Request for Proposals, as well as other required documents. Confirmation of receipt of the Request for Proposals must be received by email ([ccls\\_RFP\\_mail@ccls.lopdnm.us](mailto:ccls_RFP_mail@ccls.lopdnm.us)) no later than midnight (MDT) on May 27, 2020.

### Assistant Federal Public Defender- Las Cruces 2020-04

The Federal Public Defender for the District of New Mexico is seeking a full time, experienced trial attorney for the branch office in Las Cruces. More than one vacancy may be filled from this announcement. Federal salary and benefits apply. Applicant must have one year minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. ' 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender, [FDNM-HR@fd.org](mailto:FDNM-HR@fd.org). Reference 2020-04 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by June 5th, 2020. Positions will remain open until filled and are subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

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**For more advertising information, contact:  
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## Forensic Accounting

Reconstruction of accounting records for probate and other litigated matters

Pre-litigation case analysis, discovery assistance and analysis of financial records

Partnership dissolution and other business disputes

Complex and high net-worth divorce cases & collaborative divorce

Kovel accounting and assistance with tax controversy cases

Source of funds/income analysis for attorney to determine your risk of fee claw-back

Assisting attorneys with IOLTA trust accounting issues

## Investigations

Investigating allegations of fraud, embezzlement or financial discrepancies

Investigation of securities fraud cases

Investigating allegations of discrimination, harassment or hostile work environment

Investigations into allegations of retaliation and whistleblower *Qui Tam* cases

Employment and policy investigations

Accounting or professional malpractice investigations

Preparing of proof of loss for insurance claims due to employee theft or fraud

Asset tracing in complex, high-value cases

Tracing of funds in white collar cases

## Expert Witness Testimony

Appointed or agreed-upon Neutral expert

Testifying expert

Consulting expert a non-testifying expert as a strategic member of your legal team

Accounting and professional malpractice cases

Calculation of actual and/or intended loss for sentencing

Calculation of restitution and damages

Expert consulting and testimony in police procedures, practices and misconduct cases

Consulting and expert testimony in police oversight cases

## Professional Education & Other Services

Public speaking

CPE professional training for CPAs, CFEs and other professionals

CLE training for lawyers and legal professionals

Certified training for law enforcement

eLearning for professionals

eLearning - AML/Title 31 training for gaming employees

Management consulting, performance improvement evaluations, and econometric studies

Fraud risk assessment studies

Fraud prevention studies

Training for boards and commissions

