

BAR BULLETIN

September 23, 2020 • Volume 59, No. 18



Stones by Norma Alonzo (see page 3)

www.normaalonzo.com

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Meetings

September

23 Natural Resources, Energy and Environmental Law Section Board Noon, teleconference
24 Elder Law Section Board Noon, State Bar Center
24 Trial Practice Section Board Noon, State Bar Center

25 Cannabis Law Section Board 9 a.m., State Bar Center
25 Immigration Law Section Board Noon, teleconference

October

6 Health Law Section Board 9 a.m., teleconference
7 Employment and Labor Law Section Board Noon, teleconference

Workshops and Legal Clinics

October

7 Divorce Options Workshop 6-8 p.m., Video Conference For more details and to register, call 505-797-6022
28 Consumer Debt/Bankruptcy Workshop 6-8 p.m., Video Conference For more details and to register, call 505-797-6094

November

4 Divorce Options Workshop 6-8 p.m., Video Conference For more details and to register, call 505-797-6022
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December

2 Divorce Options Workshop 6-8 p.m., Video Conference For more details and to register, call 505-797-6022
9 Consumer Debt/Bankruptcy Workshop 6-8 p.m., Video Conference For more details and to register, call 505-797-6094

About Cover Image and Artist: Norma Alonzo has always taken her painting life seriously, albeit privately. An extraordinarily accomplished artist, she has been painting for over 25 years. Beginning as a landscape painter, she quickly transitioned to an immersion in all genres to experiment and learn. Through her paintings, Alonzo examines our place, metaphysically and functionally, in the midst of today's fast-paced world. For Alonzo, it has been a year of painting dangerously. Experimentation with the formal elements of line, form, mass and texture are now in play. More importantly, the guiding principle is fearlessness in the use of color and space.

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. Library Hours: Monday-Friday 8 a.m.-noon and 1 p.m.-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Supreme Court of New Mexico

Announcement of Vacancy

A vacancy on the Supreme Court will exist as of Dec. 1 due to the retirement of the Honorable Supreme Court Chief Justice Judith K. Nakamura, effective Dec. 1. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Sergio Pareja, chair of the Supreme 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: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Oct. 13 by 5 p.m. All applications and letters of references are to be emailed to akin@law.unm.edu. Applications received after 5 p.m. 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 New Mexico Supreme Court Judicial Nominating Commission will convene beginning at 9 a.m. on Nov. 19 and will occur exclusively by Zoom. The commission meeting is open

Professionalism Tip

With respect to the courts and other tribunals:

I will be respectful toward and candid with the court.

to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. If you would like the Zoom invitation emailed to you, please contact Beverly Akin by email at akin@law.unm.edu. Alternatively, you may find the Zoom information for this hearing below:

Topic: New Mexico Supreme Court Judicial Nominating Commission Meeting
Time: Nov. 19 at 9 a.m.

Join Zoom Meeting: <https://unm.zoom.us/j/379615447?pwd=M3lSVGxuSEkrSjd4cExlVXYwK3MzQT09>

Meeting ID: 379 615 447

Password: 72146

Second Judicial District Court Notice to Attorneys

Gov. Michelle Lujan Grisham has announced the recent appointment of Clara Marissa Moran to the Second Judicial District Court bench. Effective July 27, Judge Moran was assigned to fill Division XXVIII, the new judgeship created when Gov. Lujan Grisham recently signed into law Senate Bill 185. Judge Moran will be assigned cases from Judge Charles Brown and Chief Judge Stan Whitaker. Individual notices of reassignment was sent out for all active cases. An email notification regarding reassignment of inactive cases and probation violation cases will be sent to the Law Offices of the Public Defender, the District Attorney's Office, and the private defense bar. Pursuant to New Mexico Supreme Court Order 20-8500-0025, peremptory excusals have been temporarily suspended during the COVID-19 Public Health Emergency. Governor Michelle Lujan Grisham has announced the recent appointment of Lucy Solimon to the Second Judicial District Court bench. Effective July 27, Judge Solimon will be assigned to fill Division XXIX, the new judgeship created when Gov. Lujan Grisham recently signed into law Senate Bill 185. Judge Solimon was assigned cases from Judge Cristina Jaramillo. Individual notices of reassignment were sent out for all active cases. An email notification regarding reassignment of inactive cases and probation violation cases will be sent to

the Law Offices of the Public Defender, the District Attorney's Office. Pursuant to New Mexico Supreme Court Order 20-8500-0025, peremptory excusals have been temporarily suspended during the COVID-19 Public Health Emergency.

Notice to Attorneys

In accordance with 1.17.230 NMAC, Section 1.17.230.502, taped proceedings on domestic matters cases in the range of cases filed in 1972 through 1999 will be destroyed. To review a comprehensive list of case numbers and party names or attorneys who have cases with proceedings on tape and wish to have duplicates made should verify tape information with the Special Services Division (505) 841-6717 from 8 a.m.-4 p.m. Monday through Friday. Aforementioned tapes will be destroyed after Oct. 21.

Twelfth Judicial District Court Notice of Mass Case Reassignment

Effective July 15, a mass reassignment of Division I, II, III and IV family law cases, and Division I and Division IV civil and probate/mental health cases were reassigned to the Honorable Ellen Jessen, Division V, pursuant to Rules 23-109 and 1-088.1, NMRA. Pursuant to New Mexico Supreme Court Order 20-8500-0025, peremptory excusals have been temporarily suspended during the COVID-19 Public Health Emergency.

Bernalillo County Metropolitan Court New Landlord-Tenant Settlement Program

A mediation program specifically for people involved in landlord-tenant disputes was launched earlier this month. The Landlord-Tenant Settlement Program will give landlords and tenants the opportunity to work out business agreements beneficial to both sides. To be eligible, participants must have an active landlord-tenant case in the Metropolitan Court. The service is free, and parties in a case will work with a volunteer settlement facilitator specially trained

in housing matters. Many of the facilitators are retired judges and experienced attorneys who will provide services pro bono. Those interested in participating in the Landlord-Tenant Settlement Program or serving as a volunteer settlement facilitator are asked to contact the court's Mediation Division at: 505-841-8167.

Change of Address

Effective July 1, the Bernalillo County Metropolitan Court discontinued the use of its P.O. Box. The court's physical address of: 401 Lomas Blvd. NW, Albuquerque, N.M. 87102 should be used for mail purposes.

Notice of E-Filing

E-filing is now available for attorneys in civil cases in the Metropolitan Court for both initial and subsequent filings. It will become mandatory for attorneys on Oct. 15. Attorneys must add themselves as a Service Contact to each case in which they are counsel of record before Oct. 15 in order to receive eFiled documents from the Court. For more information, please visit: <https://www.nmcourts.gov/e-filing.aspx> or call the Metropolitan Court at: 505-841-8151. For technical assistance, contact Tyler Technologies Monday - Friday, from 8 a.m.-7 p.m. Central Time at 1-800-297-5377 or visit <https://tylertech.egain.cloud/kb/nmh5/content/PROD-3132/Contact-Us-3132>.

STATE BAR NEWS

COVID-19 Pandemic 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 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.

Reopening of Building

The State Bar of New Mexico has reopened to members and the public. Availability is limited pursuant to the

current State health orders. To book a room, call 505-797-6000 or email sbnm@nmbar.org.

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!

Monday Night Support Group

- Oct. 7
- Oct. 14
- Oct. 21

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.

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 N.M. 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>.

— *Featured* —

Member Benefit

ruby

Ruby's friendly, U.S.-based virtual receptionists answer your phone calls, 24/7/365, as a true extension of your firm! Answering with your custom greeting, they're then able to make live transfers, take messages, perform intake, help with calendaring, or even assist with calendaring. Ready to answer all calls or be used as backup, Ruby is the best teammate you never had. State Bar members receive an 8% lifetime discount on all plans!

Call 855-965-4500 or visit www.ruby.com/nmbar

Solo Small Firm Section

October Virtual Lunch Series:

Jerry Pacheco, President of the Border Industrial Association

Jerry Pacheco, President of the Border Industrial Association, will speak at the October Virtual Lunch Series for the Solo and Small Firm Section. Pacheco is also the Executive Director of the International Business Accelerator, the only state-wide international trade counseling program, based in Santa Teresa, NM. He also is an industrial business recruiter based in Santa Teresa, New Mexico, who is responsible for the recruitment and attraction of approximately \$1 billion of investment, and the creation of more than 4,000 jobs to New Mexico's border region. He will present on New Mexico's international trade situation and what is going on at the border. Please join the lunch on Tuesday, Oct. 13 at noon. All Bar members, Bar staff, and their guests are welcome to attend. R.S.V.P to Member Services at memberservices@nmbar.org.

State Bar Sections and Divisions

2021 Boar Election Season

The State Bar Sections and Divisions have begun their election season for 2021 Board of Directors. Each membership group will receive an eBlast indicating how many seats are open for election and the duration of each term. You may also learn about each group at their respective webpages (About Us > Sections/Divisions). Deadline for section applications is Friday, Oct. 2 and applications for divisions are due by Friday, Sept. 25. For further questions, contact Member Services at memberservices@nmbar.org.

Young Lawyers Division Elections Have Begun

The election is now open for positions on the Young Lawyers Division Board. Positions up for election include: a two-year term for Director-at-Large, Position 4; a two-year term for Region 2 Director, consisting of the 1st, 4th, and 8th and 10th judicial districts; a one-year term for Region 3 Director, consisting of the 5th and 9th judicial districts; and a two-year term for Region 4 Director, consisting of the 3rd, 6th, 12th judicial districts and Sierra County. State Bar members who are under the age of 36 or in their first five years of practice are automatically members of the Division and eligible to

participate in the election. All candidates must collect at least 10 signatures from YLD members to become a candidate. Regional director petitions must be signed by at least 10 members whose principle place of practice is within the specified region. To view and download the nominating petition, visit www.nmbar.org/yld > elections. Submit complete petitions, a headshot and a 100-150 word professional biography by Sept. 25 on the YLD Election page.

UNM SCHOOL OF LAW Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty, and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice.

Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at UNMLawLibref@gmail.com or voicemail at 505-277-0935. The Law Library's document delivery policy requires specific citation or document titles. Please visit our Library Guide outlining our Limited Operation Policies at: <https://libguides.law.unm.edu/limitedops>.

OTHER BARS Christian Legal Aid Virtual Training Seminar

New Mexico Christian Legal Aid invites you to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a Virtual Training Seminar on Oct. 2 from 9 a.m.-1 p.m. via Zoom. Join them for free CLE credits and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner christianlegalaids@hotmail.com.

OTHER NEWS Christian Legal Aid Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a training seminar on Nov. 1, from noon-5 p.m. at State Bar of New Mexico, located at 5121 Masthead St NE, Albuquerque. Join them for free lunch, free CLE credits, and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 243-4419 or Jen Meisner at 610-8800 (christianlegalaids@hotmail.com).

**Feeling overwhelmed about the coronavirus?
We can help!**

FREE SERVICE FOR MEMBERS!



Employee Assistance Program

*Get help and support for yourself,
your family and your employees.
FREE service offered by NMJLAP.*

Services include up to four **FREE** counseling sessions/issue/year for ANY mental health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other **FREE** services include management consultation, stress management education, critical incident stress debriefing, video counseling, and 24X7 call center. Providers are located throughout the state.

To access this service call 866-254-3555 and identify with NMJLAP.
All calls are **CONFIDENTIAL**.

Brought to you by the New Mexico Judges and Lawyers Assistance Program
www.nmbar.org/JLAP

To access this service call 855-231-7737 and identify with NMJLAP. All calls are **CONFIDENTIAL**.
Brought to you by the New Mexico Judges and Lawyers Assistance Program
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**The New Mexico
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For our Community

- enhances access to legal services to underserved populations
- provides FREE legal advice and information to thousands of seniors statewide
- sponsors FREE workshops on a variety of legal topics throughout New Mexico
- distributes contributions to legal service programs

For our Members

- helps members meet new clients and accumulate pro bono hours
- provides legal education

The Bar Foundation is the charitable arm of the State Bar, representing the legal community's commitment to serving the people of New Mexico and the profession.

Volunteer, Donate and learn more
about opportunities to support the Bar Foundation by contacting
505-797-6000 or **sbnm@nmbar.org**.



 **NEW MEXICO
STATE BAR FOUNDATION**



A Message from Chief Justice Michael E. Vigil

Dear Colleagues:

The Supreme Court of New Mexico is now seeking applications to fill vacancies on committees, boards, and commissions. Our committees, boards, and commissions play a vital role in assisting the Court with its regulation of the practice and procedures within our courts and the broader legal

community. These panels have a wide range of responsibilities and functions. They regulate the practice of law, oversee continuing legal education for lawyers, administer funds to assist individuals unable to pay for legal services, and advise on long-range planning, just to name a few. Anyone who has ever served on one of the Court's committees, boards, or commissions can attest to how challenging and rewarding this work can be.

In filling these vacancies, the Court strives to appoint attorneys and judges who are able to attend committee meetings regularly and who are committed to generously volunteering

of their time, talent, and energy to this important work. The Court also strives to solicit volunteers from throughout the state who will bring geographical balance and seeks to ensure that each committee, board, and commission contains a balanced representation from the various practice segments of our bar. To achieve these goals, we need volunteers representing the broad spectrum of our bench and bar who come from all corners of this great state.

If you would like to be considered to serve on a committee, board, or commission, please send your letter of interest and resume by October 2, 2020, to Joey Moya, Clerk of Court. The letter of interest should describe your qualifications and prioritize up to three committees of your interest. A complete list of vacancies on committees, boards, and commissions can be found on the Supreme Court's website at <https://supremecourt.nmcourts.gov/current-vacancies.aspx>.

On behalf of the Supreme Court, I extend our sincere appreciation to all of you who volunteer and serve in this important function within our legal system.

Sincerely,
Michael E. Vigil, Chief Justice

New Mexico Supreme Court Committees, Boards, and Commissions Notice of 2020 Year-End Vacancies

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

Board Governing the Recording of Judicial Proceedings
(1 monitor member position)

Board of Bar Examiners (2 general member positions)

Children's Court Rules Committee

(4 general member positions (district judges are encouraged to apply))

Client Protection Fund Commission

(2 general member positions)

Code of Judicial Conduct Committee

(1 district judge position, 1 general member position)

Code of Professional Conduct Committee

(5 general member positions (judges are encouraged to apply))

Disciplinary Board (1 attorney position)

Domestic Relations Rules Committee

(1 general member position)

Rules of Civil Procedure for State Court Committee

(1 general member position, 1 general member position, with metropolitan court experience)

Rules of Evidence Committee (2 general member positions)

Statewide Alternative Dispute Resolution Commission

(1 district judge position, 1 magistrate judge position, 1 general member position, 1 metropolitan court ADR representative)

UJI-Civil Committee (3 general member positions)

UJI-Criminal Committee (4 general member positions)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by sending a letter of interest and resume to Joey D. Moya, Chief Clerk, by email to nmsupremecourtclerk@nmcourts.gov, or by first class mail to P.O. Box 848, Santa Fe, NM 87504. The letter of interest should describe the applicant's qualifications and may prioritize no more than three (3) committees of interest.

The deadline for applications is Friday, Oct. 2, 2020.



Members of the State Bar:



I took this picture last Friday in the State Bar break room – like a moment stuck in time, the calendar still says February and is decked out with a Mardi Gras mask from a time before... everything started to change. Within a few weeks we were engulfed in a global pandemic that has touched us all. The following is a brief update and some highlights from our small corner of the World:

The work of the State Bar along with its Divisions, Sections and Committees continues. The staff transition to remote work locations and the virtual meeting world was completed in short order and while there were a few logistical hurdles to overcome, much of the work continued.

- Our communications department established a central hub of COVID related information on the State Bar website (www.nmbar.org/COVID-19) including orders from the Court, notice from the judicial districts, health and executive orders and relevant resources. A separate page included the rapid series of event cancellations and postponements that became a part of daily life in early March.
- The Judges and Lawyers Assistance Committee (JLAP) and our newly created Wellness Committee began providing health and wellness resources to the membership including Free counseling through the State Bar's EAP program, Webinars on various topics and links to helpful information on managing health and wellness during the pandemic.
- The State Bar established a direct line of communication with the New Mexico Supreme Court's Emergency Response Team to assist members who had questions or concerns regarding the Court's response to the pandemic. We worked with the Court to extend the licensing and MCLE deadlines that were expiring during the chaotic first weeks of the pandemic.
- The State Bar worked with the Bar Foundation to provide free CLE by opening up our on-demand library to the membership for a period of time providing up to four self-study credits for the membership.
- While we initially closed the State Bar building for a period of weeks, under the current health orders we have opened the building in a limited fashion to assist the court with its Constitutional obligations. We are able to schedule depositions, mediations and arbitrations to keep the process moving. All other meetings continue to be held virtually.

While the COVID response was robust, some of the natural work of the State Bar also continued.

- We completed the annual licensing process for all 10,000+ active and inactive members.
- The Board completed a mini strategic planning session and updated our three-year plan adopted last year.
- We began the implementation of a new Association Management Software system that will include a new website and communication tools for members, this system should come online in early 2021
- SBNM is Hear Podcast. We want to hear you and we want you to hear us – that's the impetus behind our new member service podcast program. The podcast launched earlier this summer and has featured important conversations about wellness and advice from leadership. Currently, episodes are launching monthly. Visit www.nmbar.org/podcast to listen.

- In addition to special programming regarding the pandemic, the Sections, Committees, and Divisions have been busy planning their annual CLE institutes. Many of them also recognize excellence in their fields through awards at the end of the year. Visit www.nmbar.org and choose a group under "About Us" to learn more.

New Mexico State Bar Foundation

- Center for Legal Education: Each year the Bar Foundation's Center for Legal Education puts on hundreds of hours worth of quality CLE programming. This year, all end-of-year programming will be virtual in the form of a live webcast, live replays, or teleseminars. You can also choose from our On-Demand library for Self-Study credits. Visit www.nmbar.org/cle to browse.
- LREP: Our Legal Resources for the Elderly Program is a free, statewide helpline for New Mexico residents age 55 and older (no income restrictions). Through its helpline, LREP provides legal advice and brief services to more than 4000 New Mexico seniors annually. I invite you visit www.nmbar.org/lrep and familiarize yourself with the program which can be of service to members of the public and your loved ones or volunteer to become a panel member.
- Workshops: In addition to advanced directives and power of attorney workshops offered through LREP, the Bar Foundation presents monthly Divorce Options Workshops and Consumer Debt/Bankruptcy Workshops. These workshops are free and I encourage you to refer individuals there as needed. Find more information at www.nmbar.org/workshops.

In short, New Mexico attorneys should be proud of the work of our professional staff at the State Bar have accomplished through these interesting and unprecedented times. If I or any member of our staff can be of assistance, please let us know.

Sincerely,



Richard B. Spinello, Esq.
Executive Director, State Bar of New Mexico



My COVID Selfie, 2020

NEW VIDEO HELPING LITIGANTS IN DEBT CASES

Legal Services and Programs Committee Produce
New Video for Helping Litigants in Debt Cases
(Available in English and Spanish)

WHEN YOU'VE
BEEN SUED
TO COLLECT A DEBT

The Legal Services and Programs Committee has recently created a video about debt collection lawsuits. The LSAP Committee was quick to adapt this new virtual world and use their funds and collective knowledge to produce an informational video for New Mexicans.

The LSAP Committee hopes that the video will provide basic information to both debtors and creditors who are representing themselves. Please view and spread the word about the video! It can be found on the State Bar at nmbar.org/lsap. Keep an eye out for videos next year about family law issues, which have a large number of self-represented litigants.



Juan Flores



Beckham Rivera

Special thanks to:

Script writers: Susan Page, Esq. and Deian McBryde, *McBryde Law LLC*

Content and information: Mari Kempton, *New Mexico Legal Aid*; Mike Daniels, Esq.; Eliza Guglielmo, *Guglielmo & Associates PLLC*; and Mark Leachman, *Mark A Leachman PC*

Script translator: Maria Monserrat Zandejas, *Beyond Bilingual*

Video Production: David and Moira Newquist, *The Video People*

LSAP Committee members: Renee Valdez, *Bernalillo County Metropolitan Court* and Aja Brooks, *Second Judicial District Court*

Volunteer attorneys: Beckham Rivera, *Sunshine Legal* and Juan Flores, *Stelzner Winter Warburton Flores & Dawes PA*

Legal Education

September

- | | | |
|---|--|--|
| <p>24 How to Practice Series - Estate Planning (2019)
4.0 G, 2.0 EP
Live Replay Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Understanding and Addressing Unconscious Bias in the Legal Profession
1.5 G
Webcast
ALI-CLE
www.ali-cle.org</p> | <p>30 How to Practice Series: Adult Guardianship (2020)
3.0 G, 3.0 EP
Live Replay Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>24 How to Practice Series: Estate Planning - Taxes, Beneficiary Designations, IRAs/401Ks (2020)
1.0 G
Live Replay Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Trial Preparation and Electronic Discovery
3.0 G
Live Webcast
Paralegal Division
sanders@hurleyfirm.com</p> | <p>29 IPRA and Legal Writing
2.0 G
Webcast
New Mexico Office of the Attorney General
505-717-3506</p> |
| <p>24 Navigating Risks in IP Law Safe Harbors and Clm Seas
2.0 EP
Webcast
CEU Institute
407-324-0500</p> | <p>28 Practice Risk Management Assessment Part 1 and Part 2
2.0 G
Live Program
American Educational Institute
www.aeiseminars.com</p> | <p>29 Legal Writing: a Judges Perspective
1.0 G
Webcast
District of Columbia Bar
www.dcbar.org</p> |
| <p>25 Annual Bench and Bar Conference
7.0 G, 1.0 EP
Webcast
12th Judicial District Bar Association
575-257-1010</p> | <p>28 Spoliation of Evidence: A 50 State Survey
1.0 G
Webcast
CEU Institute
407-234-0500</p> | <p>30 A Judge's Perspective on the Science and Art of Legal Writing
1.0 G
Webcast
Federal Bar Association—New Mexico Chapter
505-268-3999</p> |
| <p>25 2020 Annual Meeting & Member Appreciation Day
2.5 G, 2.0 EP
Live Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Bridge the Gap Mentorship Program CLE (for Civil Attorneys, DAs/PDs)
5.0 G, 1.0 EP (Civil)
3.0 G, 1.0 EP (DA/PDs)
Live Replay Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Legal Writing CLE with Hon. Robert Bacharch U.S. Court of Appeals
1.0 G
Webcast
Federal Bar Association—New Mexico Chapter
505-268-3999</p> |
| <p>25 Emotionally Intelligent Leadership
1.0 G
Webcast
Brownstein Hyatt Farber Schreck LLP
303-223-1304</p> | | |

October

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| <p>1 Annual Review Seminar
12.0 G, 3.0 EP
Live Program
Tennessee Law Institute
800-827-6716</p> | <p>1 Bridge the Gap Mentorship Program CLE (for Government Attorneys)
5.0 G, 1.0 EP
Live Replay Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5 FDCC Corporate Counsel Symposium
6.0 G, 2.0 EP
Webcast
CEU Institute
407-324-0500</p> |
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October

5	Subtenants in Commercial Leasing: How to Protect Your Client 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	7	Outstanding Leadership in Disability Law Symposium 3.5 G Webcast American University Washington College of Law 202-274-4077	16	The Ethics of Bad Facts and Bad Law 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org
6	2020 ALTA One 6.0 G, 1.0 EP Webcast American Land Title Association 202-296-3671	7	Sentencing Guidelines Overview: Immigration Issues at Sentencing and Recent Development 4.5 G Webcast U.S. District Court, District of New Mexico 505-348-2136	19	Governance and Management Agreements for Nonprofit Organizations 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
6	The Ins-and-Outs of Licensing Technology, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	8	Goldfinger: The Business of Pricing 1.0 G Webcast Transportation Lawyers Association 913-222-8652	20	Annual School Law Practice Seminar 14.0 G, 4.0 EP Webcast NSBA Council of School Attorneys www.nsba.org
7	Annual Review Seminar 12.0 G, 3.0 EP Webcast Tennessee Law Institute 800-827-6716	9	2020 Health Law Symposium 4.5 G, 1.5 EP Live Webinar Center for Legal Education of NMSBF www.nmbar.org	20	Contemporary Challenges in Trust Administration 1.5 G Webcast Cannon Financial Institute www.cannonfinancial.com
7	Building Grit and Resiliency with Mindfulness 1.0 G, 0.2 EP Webcast Brownstein Hyatt Farber Schreck LLP 303-223-1304	14	iPhone Forensics: An Update On Capabilities From the Trenches 1.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org	21	Trust Protectors and Directors 1.0 G Webcast Cannon Financial Institute www.cannonfinancial.com
7	The Ins-and-Outs of Licensing Technology, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	15	Recent Trends in Workers' Compensation 1.0 G Webcast CEU Institute 407-324-0500	21	Outlook Power Hour 1.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org
7	"The Tiger King Case" - Murder for Hire: The Prosecution of Joseph Maldonado-Passage 3.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org	15	Juvenile Defender Leadership Summit 12.0 G Webcast National Juvenile Defender Center 202-452-0010	21	Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 1.0 EP Live Webinar Center for Legal Education of NMSBF www.nmbar.org

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October

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|---|---|---|
| <p>22 Revealing Unconscious Prejudice: How You Can Benefit
2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Annual Meeting
17.5 G, 1.0 EP
Webcast
Council on State Taxation
202-484-5220</p> | <p>24 Fall Conference
5.0 G, 3.5 EP
Webcast
Litigation Counsel of America
www.litcounsel.org</p> |
| <p>22 Law and Practice Around the New Mexico Revised Uniform Arbitration Act
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

November

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| <p>3 Rights of First Offer, First Refusal in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Holding Business Interests in Trust
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 The Competency Process in the Criminal Justice System
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>4 Releasing Employees & Drafting Separation Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Essential Asset Protection Planning
1.5 G
Webcast
Cannon Financial Institute
www.cannonfinancial.com</p> | <p>19 Annual Review Seminar
12.0 G, 3.0 EP
Webcast
Tennessee Law Institute
800-827-6716</p> |
| <p>5 Annual Review Seminar
12.0 G, 3.0 EP
Webcast
Tennessee Law Institute
800-827-6716</p> | <p>17 Ethics of Beginning and Ending Client Relationships
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Ethics and Dishonest Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>6 Ethics and Changing Law Firm Affiliation
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Word Master Class on Styles
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Practice Risk Management Assessment Part 1 and Part 2
2.0 G
Webcast
American Educational Institute
www.aeiseminars.com</p> |
| <p>13 2020 Cannabis Law Institute: Wake and Bake – Cannabis Law in New Mexico
5.0 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Document Analysis: How to Read a Will or Trust
1.0 G
Webcast
Cannon Financial Institute
706-389-7645</p> | <p>30 Ethics for Business Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

Opinions

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

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
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Effective August 21, 2020

PUBLISHED OPINIONS

A-1-CA-37411	State v. A Baca	Affirm/Reverse	08/18/2020
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UNPUBLISHED OPINIONS

A-1-CA-37618	State v. F Trujillo	Affirm	08/17/2020
A-1-CA-36229	State v. L Lyster	Affirm	08/18/2020
A-1-CA-38130	A. Sweat v. City of Las Cruces	Affirm	08/18/2020
A-1-CA-38132	City of Farmington v. M Austin	Affirm	08/18/2020
A-1-CA-38350	Embrace Home Loans v. T Serda	Affirm	08/18/2020
A-1-CA-38485	A Stump v. B Minick	Affirm	08/18/2020
A-1-CA-38472	State v. J Martinez	Reverse	08/19/2020
A-1-CA-38498	State v. A Garcia	Affirm	08/19/2020

Effective August 28, 2020

PUBLISHED OPINIONS

A-1-CA-36032	State v. L Costillo	Reverse/Remand	08/27/2020
A-1-CA-37226	State v. A Pamphille	Affirm	08/27/2020
A-1-CA-37917	State v. J Esparza	Reverse/Remand	08/27/2020

UNPUBLISHED OPINIONS

A-1-CA-38324	T Lujan v. L Romero	Affirm	08/25/2020
A-1-CA-38568	State v. C Noriega	Affirm	08/25/2020
A-1-CA-37057	State v. S Enriquez	Affirm	08/26/2020
A-1-CA-37335	C Sitton v. Southwestern Public Service Co.	Affirm	08/27/2020

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

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

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From the Clerk of the New Mexico Supreme Court

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2020-NMSC-001

No: S-1-SC-36764 (filed December 5, 2019)

MARLINA ROMERO,
Plaintiff-Petitioner,

v.

**LOVELACE HEALTH SYSTEM, INC.,
A New Mexico Corporation,**

Defendant-Respondent,
and

WOMEN'S SPECIALISTS OF NEW MEXICO, LTD.,

**a New Mexico Corporation, and
KRISTINA CHONGSIRIWATANA, M.D.,**
Defendants.

ORIGINAL PROCEEDING ON CERTIORARI

Nan G. Nash, District Judge

Released for Publication January 21, 2020.

Kennedy, Hernandez & Associates,
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for Respondent

Opinion

Michael E. Vigil, Justice.

{1} Plaintiff filed an application to the New Mexico Medical Review Commission (MRC) alleging that as a result of medical negligence Plaintiff's pregnancy was aborted. The alleged negligence concerns Lovelace Health System, Inc. (Lovelace) in part. Lovelace is not a qualified provider under the Medical Malpractice Act (MMA), NMSA 1978, §§ 41-5-1 to -29 (1976, as amended through 2015). The narrow issue in this case is whether Plaintiff's application to the MRC tolled the running of the three-year limitations period for filing medical malpractice claims against Lovelace. In an unpublished opinion, our Court of Appeals affirmed the order of the district court which dismissed the complaint against Lovelace on the basis that Plaintiff's application to the MRC was not specific enough in making

allegations against Lovelace to trigger the MMA's tolling provision on Plaintiff's claims against Lovelace. *Romero v. Lovelace Health Sys., Inc.*, A-1-CA-35177, mem. op. ¶¶ 25, 27, 31 (N.M. Ct. App. Oct. 26, 2017) (nonprecedential). We reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

{2} Plaintiff filed a complaint for medical negligence, respondeat superior, and damages, naming Lovelace, Women's Specialists of New Mexico, Ltd. (Women's Specialists), and Kristina Chongsiriwatana, M.D., as defendants. Lovelace filed a motion to dismiss, arguing that Plaintiff's claims against Lovelace were barred by the statute of limitations. Plaintiff responded that her complaint against Lovelace was not barred because prior to filing the complaint she filed an application to the MRC pursuant to the MMA, thereby tolling the statute of limitations. See § 41-5-22 (providing that upon submission of an application to the MRC, "[t]he running of the applicable

limitation period in a malpractice claim shall be tolled"). The parties agreed that although Lovelace is not a qualified provider under the MMA, if Lovelace was named in the MRC application, the running of the limitations period was effectively tolled. See *Grantland v. Lea Regional Hosp.*, 1990-NMSC-076, ¶¶ 4, 9, 110 N.M. 378, 796 P.2d 599 (holding that filing a medical malpractice application to the MRC "tolls the statute of limitations period" as to nonqualified health care providers). However, the parties disagreed on whether Lovelace was actually named in the MRC application, Plaintiff contending that it was and Lovelace contending that it was not.

{3} The MRC application was presented to the district court to resolve the dispute. The MRC application is in the form of a letter from Plaintiff's attorneys that is addressed to the MRC. Beneath the caption, "A. Statement of Facts, Including Dates and Circumstances," the MRC application recites that in the fall of 2010 Plaintiff wanted to become pregnant. In June 2011 Plaintiff tested positive for pregnancy on a home pregnancy test that was confirmed in a June 14, 2011, visit to Women's Specialists. During this visit, Plaintiff reported that she was experiencing abdominal and pelvic pain that started around February 27, 2011. As a result, Plaintiff had an ultrasound, which the radiologist reported "showed no evidence of an ectopic or intrauterine pregnancy."

{4} The MRC application adds that on June 17, 2011, Plaintiff arrived at Lovelace Medical Center complaining of a sharp pain in her lower abdomen and left side pelvic region, together with some vaginal spotting. Doctors at Lovelace Medical Center, which Lovelace operates, examined Plaintiff and ordered hormone studies and ultrasounds. The hormone studies were deemed consistent with being three to four weeks pregnant, and the radiology technician told Plaintiff there were signs of pregnancy. However, the Lovelace Medical Center doctor who signed the ultrasound reports said "endovaginal scans demonstrate a small intrauterine fluid filled structure" which was "probably a pseudogestational sac," and he also noted "a cystic structure within the right ovary with a 'ring of fire.'" After discussing these findings, the Lovelace doctors transferred Plaintiff to Lovelace Women's Hospital in an ambulance. Lovelace also operates Lovelace Women's Hospital.

{5} The MRC application continues that at Lovelace Women's Hospital Dr. Chongsiriwatana performed a diagnostic laparoscopy for a presumed ectopic pregnancy and, finding no sign of an ectopic pregnancy,

made the postoperative diagnosis of a right ovarian cyst. After the laparoscopy and draining of the cyst, and despite having discovered no visible evidence of an ectopic pregnancy, Dr. Chongsiriwatana treated Plaintiff with methotrexate, which carries a high risk of birth defects. Dr. Chongsiriwatana did not obtain Plaintiff's informed consent before administering methotrexate because Plaintiff was heavily medicated.

{6} The MRC application concludes by stating that six days later, on June 23, 2011, when Plaintiff returned to Lovelace Women's Hospital to see Dr. Chongsiriwatana because she was still experiencing pain, Dr. Chongsiriwatana ordered hormone tests and an ultrasound. The ultrasound showed "a saclike structure in the uterus and normal ovaries." Upon receiving the ultrasound results, Dr. Chongsiriwatana told Plaintiff, "I'm sorry. We messed up. You have a normal pregnancy, and because we gave you methotrexate, you must abort it due to possible birth defects." Consequently, Plaintiff's planned pregnancy was aborted. Subsequently Plaintiff suffered severe depression with added adverse effects on her relationships and employment. "[Plaintiff] and her boyfriend broke up, and [Plaintiff] saw a mental health counselor for several months."

{7} Following the foregoing statement of facts in Plaintiff's application to the MRC is the caption, "B. Individuals Involved," and a subheading stating "The names, addresses, and phone numbers of all providers whose care may be germane to the issues are as follows[.]" However, the listing provided does not include Lovelace and Women's Specialists. Instead, the MRC application lists the actual doctors and other persons who treated Plaintiff, by name, address, and phone number. Finally, the MRC application has a third caption, "C. Medical Releases," with Plaintiff's medical releases attached. One of the medical releases is a Lovelace Health System medical release. This single document authorizes the release of Plaintiff's health information from Lovelace Medical Center (Gibson), Lovelace Westside Hospital, Lovelace Medical Center (Downtown), and Lovelace Women's Hospital—to the MRC.

{8} In ruling on Lovelace's motion to dismiss, the district court considered Plaintiff's application to the MRC as well as letters from the MRC requesting medical records from Plaintiff's providers, which the parties attached to their briefs. The district court converted the motion to dismiss into a motion for summary judgment under Rule 1-012(C) NMRA (stating that "if . . . matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one

for summary judgment and disposed of as provided in Rule 1-056 NMRA"). The district court ruled that "Lovelace was not named in the [MRC] application" as required by Section 41-5-15(B)(1), stating that "there are no dates and circumstances suggesting malpractice, negligence, alleged acts or respondeat superior on behalf of Lovelace." The district court therefore concluded that "the statute of limitations was not tolled as to Lovelace" and dismissed Plaintiff's claims against Lovelace.

{9} The Court of Appeals memorandum opinion affirmed the district court. *Romero*, A-1-CA-35177, mem. op. ¶¶ 27, 30-31. The Court of Appeals held that "if a plaintiff wishes to utilize the tolling provision in Section 41-5-22 against particular providers, then he or she must identify the alleged act or acts of malpractice against those particular providers." *Id.* ¶ 25. Concluding that Plaintiff's MRC application failed to meet this standard of pleading, the Court of Appeals agreed with the district court that the tolling provision did not apply and affirmed dismissal of Plaintiff's claims against Lovelace. *Id.* ¶¶ 25, 30-31. We granted Plaintiff's petition for a writ of certiorari, and we now reverse.

II. DISCUSSION

{10} Plaintiff argues that the manner in which its MRC application named Lovelace satisfies the text, structure, and purpose of the MMA and achieves the purpose of tolling the applicable limitations period. Plaintiff also asserts that the MMA does not impose a heightened standard of pleading for naming providers in an MRC application, especially in this case, because the Legislature did not intend for the MMA to protect health care providers such as Lovelace who choose to opt out of the screening requirements of the MMA. Lovelace responds that Plaintiff's MRC application only lists one or another Lovelace facility where Plaintiff received medical care. Lovelace asserts that an MRC application serves the same function that a complaint ordinarily serves to satisfy the statute of limitations. Lovelace argues that to rely on tolling with respect to any provider, an MRC application must give notice to a provider that a medical malpractice claim is being asserted against it. Lovelace further contends that because Plaintiff's application does not articulate what Lovelace did, either directly or indirectly or through an employee or agent, to give Lovelace notice of Plaintiff's claims against it, "the application did not toll the limitation period against Lovelace." For the reasons that follow, we conclude that Plaintiff's arguments prevail.

A. Standard of Review

{11} New Mexico courts disfavor summary judgment, as it is a drastic remedy to be used with great caution. *Romero v. Phil-*

ip Morris, Inc., 2010-NMSC-035, ¶ 8, 148 N.M. 713, 242 P.3d 280 (citing *Pharmaseal Labs., Inc. v. Goffe*, 1977-NMSC-071, ¶ 9, 90 N.M. 753, 568 P.2d 589). "This Court's review of orders granting or denying summary judgment is de novo. Summary judgment is appropriate in the absence of any genuine issues of material fact and where the movant is entitled to judgment as a matter of law." *Cahn v. Berryman*, 2018-NMSC-002, ¶ 12, 408 P.3d 1012 (internal quotation marks and citation omitted). "In reviewing an order on summary judgment, we examine the whole record on review, considering the facts in a light most favorable to the nonmoving party and drawing all reasonable inferences in support of a trial on the merits." *Id.* (internal quotation marks and citation omitted). To the extent we must construe the applicable statutes, our review is de novo. *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M. 397, 89 P.3d 69 ("Statutory interpretation is a question of law, which we review de novo.").

B. Operation of the MMA

{12} New Mexico reformed its medical malpractice laws in 1976 in response to a perceived crisis of increasingly unavailable medical malpractice insurance. See *Cahn*, 2018-NMSC-002, ¶ 13. To achieve its goal of making professional liability insurance available for health care providers in New Mexico, the Legislature adopted the MMA, offering certain "benefits." *Roberts v. Sw. Cmty. Health Servs.*, 1992-NMSC-042, ¶ 13, 114 N.M. 248, 837 P.2d 442. Included in these "benefits" are medical malpractice coverage, see § 41-5-25, limitations on malpractice awards, see § 41-5-6, limitations on personal liability for future medical expenses, see § 41-5-7, and mandatory screening of medical malpractice claims before they can be filed in court, see §§ 41-5-14 to -21. *Id.* However, the Legislature conditioned a health care provider's entitlement to these "benefits" on "qualifying" for the MMA. Section 41-5-5(C). "[Q]ualified" health care providers are those who meet certain financial requirements set forth in Section 41-5-5 and are therefore entitled to all the benefits of the MMA. A health care provider who chooses not to participate is a "non-qualified" health care provider who "shall not have the benefit of any of the provisions of the [MMA] in the event of a malpractice claim against it." Section 41-5-5(C). "Thus, the legislature encouraged health care providers to become qualified by accepting the burdens of qualification, and offered certain benefits in return." *Roberts*, 1992-NMSC-042, ¶ 13.

{13} The "benefit" we consider in this case is the mandatory procedure for reviewing medical malpractice claims. The function of the MRC, created by the

MMA, “is to provide panels to review all malpractice claims against health care providers covered by the [MMA].” Section 41-5-14(A). All medical malpractice claims against qualified health care providers must first be screened by a panel of the MRC: “No malpractice action may be filed in any court against a qualifying health care provider before application is made to the [MRC] and its decision is rendered.” Section 41-5-15(A). Pertinent to the case before us here, the application must include “a brief statement of the facts of the case, naming the persons involved, the dates and the circumstances, so far as they are known, of the alleged . . . malpractice[.]” Section 41-5-15(B)(1). Upon receipt of the application, the MRC is required to serve a copy of the application on the health care providers involved, who are then required to answer the application for review. Section 41-5-16(A), (B). A panel, consisting of members of the state professional society or association of health care providers and members of the state bar association, is then appointed to review the case. Section 41-5-17(A)-(D). Following a hearing, the panel deliberates and decides two questions: “(1) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and (2) whether there is a reasonable medical probability that the patient was injured thereby.” Section 41-5-20(A). Whatever it decides, “[t]he panel’s decisions shall be without administrative or judicial authority and shall not be binding on any party.” Section 41-5-20(F).

{14} One of the additional solutions to the problem of “insurance carriers . . . withdrawing from medical malpractice liability coverage” in New Mexico was to preclude malpractice claims brought more than three years after the act of malpractice. *Cummings v. X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶ 40, 121 N.M. 821, 918 P.2d 1321. The statute of limitations for claims against a qualified health care provider is governed by Section 41-5-13 (stating that the claim must be filed “within three years after the date that the act of malpractice occurred” with an exception for claims of minors under the full age of six). This occurrence-based statute of repose triggers the start of the time period for a patient’s right to action when the malpractice occurs and terminates the period three years later, regardless of whether the injury has manifested itself. *Cummings*, 1996-NMSC-035, ¶¶ 50-51; see also *Cahn*, 2018-NMSC-002, ¶¶ 14-15. The statute of limitations for claims against a nonqualified health care provider, on the other hand, is governed by NMSA 1978, Section 37-1-8 (1976) (providing that actions must be brought “for an injury to the person or reputation

of any person, within three years”). This is discovery-based accrual under which the limitations period “does not begin to run until the patient discovers, or reasonably should discover, the essential facts” of the medical malpractice claim. *Cummings*, 1996-NMSC-035, ¶ 47.

{15} Upon a plaintiff’s submission of an application to the MRC, “the running of the [three-year] limitation period . . . shall be tolled and shall not commence to run again until thirty days after the panel’s final decision is entered in the permanent files of the [MRC] and a copy is served upon the claimant and his attorney by certified mail.” Section 41-5-22. The MRC is required to review medical malpractice claims against qualified providers, but there is no requirement that the MRC review claims against nonqualified providers. See § 41-5-14(A), (C). Nevertheless, we have held that submission of an application to the MRC pursuant to Section 41-5-15(B) tolls the running of the applicable limitations period with respect to both qualified and nonqualified providers. *Grantland*, 1990-NMSC-076, ¶¶ 4, 9; see *Roberts*, 1992-NMSC-042, ¶¶ 1, 14, 16, 19 (concluding that the MMA is consistent with the discovery rule and with Section 37-1-8 governing commencement of the limitations period for nonqualified providers). We must therefore determine whether Plaintiff’s application to the MRC satisfied the requirements of Section 41-5-15(B)(1) concerning Lovelace.

C. Whether Plaintiff’s MRC Application Tolled the Running of the Limitations Period with Respect to Plaintiff’s Claims against Lovelace

{16} Lovelace and its doctors are certainly familiar with the technical medical language in Plaintiff’s MRC application. Herein, we describe what some of the medical terms commonly mean to doctors in this field. A “gestational sac” is a “sac comprising the extraembryonic membranes that envelop the embryo or fetus,” and “pseudogestation” is defined as “false pregnancy.” *Dorland’s Illustrated Medical Dictionary* 1660, 1542 (32nd ed. 2012). Additionally, a “ring of fire” is indicative of an ectopic pregnancy. See Edward P. Lin, M.D., et. al., *Diagnostic Clues to Ectopic Pregnancy*, 28 *Radiographics* 1661, 1665, 1669 (2008).

{17} Stripped of technical medical language, Plaintiff’s MRC application is very detailed and specific in describing what happened. On June 17, 2011, Plaintiff, who was pregnant, went to Lovelace Medical Center with sharp pain in her lower abdomen and left pelvic area, together with vaginal spotting. Hormone studies confirmed Plaintiff’s pregnancy, but after reading an ultrasound, the Lovelace doctors erroneously concluded that the sac

seen in Plaintiff’s uterine cavity was a “false pregnancy” and that Plaintiff had an ectopic pregnancy on the right ovary. Based on these erroneous findings, the doctors sent the Plaintiff to Lovelace Women’s Hospital in an ambulance for treatment. At Lovelace Women’s Hospital, Dr. Chongsiriwatana performed a diagnostic laparoscopy for the presumed ectopic pregnancy on the right ovary. Finding no ectopic pregnancy on the right ovary, Dr. Chongsiriwatana diagnosed the presence of a right ovarian cyst and treated Plaintiff with methotrexate without obtaining Plaintiff’s informed consent. The methotrexate was administered notwithstanding its association with a high risk of birth defects, without first obtaining ultrasounds or other tests to determine whether Plaintiff was in fact pregnant. Plaintiff returned to Lovelace Women’s Hospital six days later because she was still experiencing pain. Belatedly, Dr. Chongsiriwatana ordered hormone tests and an ultrasound, and the ultrasound showed that Plaintiff had a normal pregnancy. Because Plaintiff was treated with methotrexate, Plaintiff’s pregnancy was aborted.

{18} The scenario clearly described in Plaintiff’s MRC application represents what Plaintiff contends is medical malpractice on the part of Lovelace and its doctors. “Pseudogestational sac” refers to fluid (blood or secretions) in the uterine cavity that is occasionally seen in a woman with ectopic pregnancy.” Peter M. Doubilet & Carol B. Benson, *First, Do No Harm . . . to Early Pregnancies*, 29 *J. Ultrasound Med.* 685, 687 (2010). “Administering an embryotoxic agent to, or evacuating the uterus of, a woman with an IUP [a normal intrauterine pregnancy] —which could occur if a gestational sac is *erroneously called a pseudogestational sac* —is a serious error, whereas delaying treatment in a woman with ectopic pregnancy —which could occur if a pseudogestational sac is erroneously called a gestational sac —will often have little effect on outcome if the patient is medically stable.” *Id.* at 685, 688 (emphasis added).

{19} Consistent with Section 41-5-15(B)(1), Plaintiff’s application to the MRC clearly “nam[es]” Lovelace, and the application recites “a brief statement of the facts” describing “the dates and the circumstances, so far as they are known, of the alleged act or acts of malpractice[.]” While the MRC application does not describe specific acts of malpractice directly committed by Lovelace, the application does describe clearly and specifically the acts and omissions of named employees and physicians working in Lovelace hospitals. This is sufficient as a matter of law.

{20} In *Zamora v. St. Vincent Hospital*, 2014-NMSC-035, ¶ 1, 335 P.3d 1243, a



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28	29 Live Replay Webcast: Bridge the Gap Mentorship Program (Civil Attorneys, DAs/PDs)	30 Live Replay Webcast: How to Practice Series: Adult Guardianship		

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12	13 Live Webinar: Family Law Webinar	14 Webinar: iPhone Forensics: An Update on Capabilities from the Trenches	15	16 Live Webinar: Administrative Law Institute Teleseminar: The Ethics of Bad Facts and Bad Law
19 Teleseminar: Governance and Management Agreements for Nonprofit Organizations	20 Live Webinar: Family Law Webinar	21 Live Replay Webcast: Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 Live Webinar: Outlook Power Hour	22 Live Webinars: Revealing Unconscious Prejudice: How You Can Benefit Law and Practice Around the New Mexico Revised Uniform Arbitration Act	23 Live Webinar: Elder Law Institute
26	27 Live Webinars: Appellate Practice Institute Family Law Webinar Teleseminar: Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 1	28 Teleseminar: Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 2	29	30 Live Webinar: Committee on Diversity

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9	10 Live Webinar: Family Law Webinar	11	12 Live Webinar: Probate Institute	13 Live Webinar: Cannabis Law Institute
16 Teleseminar: Holding Business Interests in Trusts	17 Teleseminar: Ethics of Beginning and Ending Client Relationships	18 Live Webinar: Word Master Class on Styles	19 Live Webinars: Animal Law Institute The Competency Process in the Criminal Justice System	20 Teleseminar: Ethics and Dishonest Clients
23	24	25	26	27
30 Teleseminar: Ethics for Business Lawyers				

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7 Teleseminar: Text Message & Litigation: Discovery and Evidentiary Issues	8	9	10 Teleseminar: Guarantees in Real Estate Transactions	11 Live Webinar: Intellectual Property Institute Teleseminar: Employee v. Independent Contractor: Tax and Employment Law Considerations
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medical negligence case, the plaintiff alleged that as a result of a communication failure between a surgeon and a contract radiologist, St. Vincent Hospital failed to tell the plaintiff about his cancer diagnosis. The contract radiologist was not named as a defendant, and the plaintiff did not specifically plead vicarious liability. *Id.* ¶¶ 1, 4. The district court granted St. Vincent summary judgment on the basis that the complaint did not provide notice that the contract radiologist was negligent and that St. Vincent was vicariously liable for his negligence. *Id.* ¶ 6. Although we agreed that the complaint was “rudimentary,” we reversed because the complaint highlighted the relevant key facts and actors, emphasizing the negligent breakdown in communication for which St. Vincent was ultimately responsible. *Id.* ¶ 14. “Because St. Vincent was adequately apprised of the nature of [the plaintiff’s] claim against it that someone in St. Vincent’s sphere of responsibility failed to communicate vital medical information from a radiology report, it was immaterial that the complaint failed to specify which particular agents were negligent or which theory of agency resulted in liability on the part of St. Vincent.” *Id.* ¶ 15. While the complaint failed to name a theory of vicarious liability, “the reality is that New Mexico’s pleading standards require no more detail than [the plaintiff] provided.” *Id.* ¶ 14.

{21} Similar circumstances arose in *Baer v. Regents of Univ. of Cal.*, 1994-NMCA-124, ¶¶ 1, 2, 118 N.M. 685, 884 P.2d 841, where the plaintiff’s employer, the operator of Los Alamos National Laboratory (LANL), required its employees to undergo physical examinations in order to remain employed. Plaintiff’s estate brought a medical malpractice action against LANL, the physician employed by LANL, “and other medical personnel at LANL” alleging negligence “in failing to diagnose a nodule in the lungs of [the plaintiff] as being cancerous.” *Id.* ¶ 5. Of the LANL medical personnel who examined the plaintiff, the last to do so was the physician’s assistant. *Id.* ¶¶ 1, 4. The physician’s assistant did not take x-rays, notwithstanding that prior x-rays showed lesion in the plaintiff’s right lung. *Id.* ¶¶ 3, 5. After the claim against the LANL physician was dismissed because the limitations period had expired, the only claim that remained was against the physician’s assistant as an employee of LANL. *Id.* ¶¶ 9, 10. Ultimately, the question was whether LANL could be held liable under the doctrine of respondeat superior when the complaint did not name the physician’s

assistant as a defendant. *Id.* ¶ 18. Our Court of Appeals concluded that LANL could be held liable because the complaint clearly stated that “medical personnel at LANL” committed the alleged negligence. This was sufficient, the Court concluded, because it gave adequate notice that one of the plaintiff’s theories of the case against LANL was vicarious liability, “and we know of no authority for the proposition that, in order to prove agency, the agent must be joined as a party to the action.” *Id.* ¶ 20.

{22} Lovelace contends that an MRC application “serves the function a complaint ordinarily would serve with respect to satisfying the statute of limitations.” In this regard, Lovelace continues, “an application to the MRC must do what a complaint ordinarily would do: provide the defendant with timely notice of a claim within the limitations period, so that the defendant is not unfairly prejudiced by the passage of time in mounting its defense.” Assuming without deciding that a nonqualified provider is entitled to such notice in an MRC application, we hold that the application submitted by Plaintiff in this case provided that notice in accordance with *Zamora* and *Baer*. The MRC application is detailed and specific in describing what doctors and employees did and did not do in treating Plaintiff at the identified Lovelace hospitals. These facts alone raise the issue of the vicarious liability of Lovelace. See UJI 13-1120A NMRA (setting forth the elements of vicarious liability of a hospital for the negligence of hospital employees); UJI 13-1120B NMRA (setting forth the elements of vicarious liability of a hospital for the negligence of health care providers who, while not hospital employees, are the hospital’s apparent or ostensible agents). Because a corporation such as Lovelace acts through its officers, agents, and employees, we disagree with the Court of Appeals that Plaintiff’s MRC application fails to provide sufficient notice of her claims against Lovelace. In addition, the facts may support claims of negligence against Lovelace for its own conduct. See *Trujillo v. Puro*, 1984-NMCA-050, ¶ 8, 101 N.M. 408, 683 P.2d 963 (holding that it is “not necessary that each of plaintiff’s counts, nor each of his allegations, be presented to the [MRC]”); see also UJI 13-1119A NMRA (setting forth the duty of a hospital in providing patient care).

III. CONCLUSION

{23} We reverse the Court of Appeals, and we remand the case to the district court for further proceedings consistent with this opinion.

{24} IT IS SO ORDERED.
MICHAEL E. VIGIL, Justice

WE CONCUR:
BARBARA J. VIGIL, Justice
C. SHANNON BACON, Justice
DAVID K. THOMSON, Justice

NAKAMURA, Chief Justice (dissenting)
{25} To benefit from the tolling provisions of the MMA one must comply with the legislature’s unambiguous requirement that an application be filed “naming” those involved in the alleged malpractice. Section 41-5-15(B)(1). In recognition of this requirement, Romero submitted an application with the heading “individuals involved” followed by a subheading “names . . . of all providers whose care may be germane to the issues.” Lovelace is not identified, compelling the district court and a unanimous Court of Appeals’ panel to correctly conclude that Lovelace was not named. Because the district court’s decision to dismiss Lovelace should be affirmed, I respectfully dissent.

{26} The Majority contends that there is a way to read Romero’s application as “naming” Lovelace. Our Legislature could not have intended the MRC or this Court to have to engage in creative reading exercises to identify who, precisely, victims of malpractice intend to sue when they submit applications to the MRC.

{27} “When facts relevant to a statute of limitations issue are not in dispute, the standard of review is whether the district court correctly applied the law to the undisputed facts.” *Haas Enters., Inc. v. Davis*, 2003-NMCA-143, ¶ 9, 134 N.M. 675, 82 P.3d 42 (citing *Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 11, 117 N.M. 655 875 P.2d 1086). The facts here, as noted above, are not disputed: Romero failed to name Lovelace in her application as required by Section 41-5-15(B)(1).¹ Having failed to do so, Romero cannot avail herself of the tolling provision in Section 41-5-22 with respect to Lovelace.

{28} There can be no doubt that the Legislature imposed the naming requirement in part to ensure that defendants have notice claimants intend to pursue malpractice actions against them. But other provisions in the MMA make clear that the naming provision has added significance when a claimant intends to pursue vicarious liability claims.

{29} Where the MRC receives an application asserting vicarious liability, it is required to notify certain, specific entities of the existence of the claim. Section 41-5-16(C). The full text of this provision reads as follows:

¹Neither this requirement, nor why the benefits of the MMA extend to Defendant’s suing nonqualified providers, is challenged by the parties.

In instances where applications are received employing the theory of respondeat superior or some other derivative theory of recovery, the director shall forward such applications to the state professional societies, associations or licensing boards of both the individual health care provider whose alleged malpractice caused the application to be filed, and the health care provider named a respondent as employer, master or principal.

Id. The MRC is also required to modify the complexion of the review panel when an application includes vicarious liability claims. Section 41-5-17(E). The full text of this requirement is as follows:

In those cases where the theory of respondeat superior or some other derivative theory of recovery is employed, two of the panel members shall be chosen from the individual health care provider's profession and one panel member shall be chosen from the profession of the health care provider named a respondent employer, master or principal.

Id.

{30} Statutes must be construed "so that no word and no part thereof is rendered surplusage or superfluous." *Stang v. Hertz Corp.*, 1970-NMSC-048, ¶ 13, 81 N.M. 348, 467 P.2d 14. The provisions above must inform this Court's understanding of what it means to "name" the source of an act of alleged malpractice.

{31} The reading of the naming provision that most sensibly accounts for the above provisions is the plain-meaning one: when a plaintiff intends to assert a claim of vicarious liability, he or she must alert the MRC to this fact in clear and express terms. The Court of Appeals' interpretation of Section 41-5-15(B)(1) comports with this plain-meaning construction.

{32} Romero's repeated insistence that requiring her to do what the plain meaning of Section 41-5-15(B)(1) requires imposes upon her "a heightened application standard" is not to be given any credit. Requiring a plaintiff to state in an application to the MRC that they intend to sue a particular health care provider on vicarious liability grounds imposes no "heightened" burden of any kind. She demonstrated quite ably her ability to assert a vicarious liability claim against Lovelace when, only five months after she

submitted her application to the MRC, she filed her complaint doing so. The words "respondeat superior" appears in the title of her complaint. Lovelace is a named party. Count III is identified as a "Respondeat Superior" claim against Lovelace.

{33} No equivalently clear statement appears in Romero's application to the MRC. Why this is we do not know. We do know, however, that the MRC itself did not understand that Romero meant to name Lovelace and assert vicarious liability claims against it. This is evident given that the MRC's letter to Lovelace indicated that Romero's claims "do[] not involve you[.]" {34} Likewise, the district court and all three Court of Appeals judges involved in the opinion below did not think Romero's application named Lovelace or made clear her intentions to assert a vicarious liability claim against Lovelace. In fact, the Court of Appeals unanimously concluded that "there is nothing that clearly states [Romero] believed Lovelace was negligent or that Dr. Chongsiriwatana was an employee or agent of Lovelace." *Romero*, A-1-CA-35177, mem. op. ¶ 23. And even the Majority opinion acknowledges that Romero's "MRC application does not describe specific acts of malpractice directly committed by Lovelace[.]" *Maj. Op.* ¶ 19.

{35} The Majority's answer to the fact that Romero's complaint does not expressly name Lovelace or assert a vicarious liability claim against it is that our rules of civil procedure and notice-pleading standards did not require Romero to do this. They reason that Romero's general averments about Lovelace's involvement in her care were sufficient to satisfy the naming provision and alert both the MRC and Lovelace to the vicarious liability claims she intended to pursue. I cannot agree. The principles upon which this conclusion rests are inapplicable.

{36} This Court is constitutionally empowered to promulgate rules of practice and procedure. *Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, ¶ 10, 89 N.M. 307, 551 P.2d 1354; *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 10, 88 N.M. 244, 539 P.2d 1006. Yet, when the Legislature confers a benefit upon litigants, it can specify the circumstances that must be met to invoke that benefit. See *AFSCME v. Bd. of Cty. Comm'rs of Bernalillo Cty.*, 2016-NMSC-017, ¶ 14, 373 P.3d 989. Statutes of limitations are creatures of legislative making and a permissible and constitutional exercise of legislative power. See *Cummings*, 1996-NMSC-035, ¶ 37. Accordingly, the Legislature's prerogatives—to

the extent we can discern them—must factor into how we are to think about what constitutes compliance with Section 41-5-15(B)(1), not the principles and policies underlying notice pleading.

{37} Rule 1-008 NMRA and Section 41-5-15(B)(1) have little in common. Rule 1-008 includes no special procedures that must be followed when a claimant asserts vicarious liability. As already noted, unless the plaintiff names the parties he or she intends to assert vicarious liability claims against in the application to the MRC, the MRC will have no reason to do what the Legislature expected of them. The two provisions are self-evidently different and those differences must be regarded and given meaning. These thoughts make obvious why *Zamora* and *Baer* are not dispositive here.

{38} *Zamora* focused on Rule 1-008, the policy concerns and principles underlying notice pleading, and the inferences that can be permissibly drawn about pleading and practice in New Mexico given our early adoption of the "simplified notice pleading standard." *Zamora*, 2014-NMSC-035, ¶¶ 10-20. The statement in *Zamora* that civil complaints need not "recite reliance on theories of vicarious liability" does not resolve the issue here. *Id.* ¶ 14.

{39} *Baer* offered generalized pronouncements about pleading standards and vicarious liability claims, pronouncements quite similar to those found in *Zamora*. *Baer*, 1994-NMCA-124, ¶ 20. Like *Zamora*, *Baer* does nothing to illuminate what our Legislature's intentions were when it enacted Section 41-5-15(B)(1).

{40} Expecting Romero to comply with the plain language of Section 41-5-15(B)(1) in no way ensnares her in some procedural "booby trap." Nor is it permissible to describe the expectation that she comply with the plain language of the provision as holding her to some unfair "technicality" or "putting form over substance." The Legislature decided that to receive the tolling provided by Section 41-5-22, Romero had to comply with Section 41-5-15(B)(1). To comply with Section 41-5-15(B)(1), Romero had to "name" Lovelace as having committed an act of malpractice. She did not. To the extent this error foreclosed an avenue of relief or a remedy, Romero has other remedies to right that wrong. She has no remedy in words she did not follow. {41} For these reasons, I respectfully dissent.

JUDITH K. NAKAMURA, Chief Justice

Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-074

No. A-1-CA-36158 (filed September 5, 2019)

MATTHEW HAYGOOD,
Plaintiff-Appellant,

v.

UNITED SERVICES AUTOMOBILE
ASSOCIATION and HEIDI HAWKEN,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

C. SHANNON BACON, District Judge

Released for Publication December 17, 2019.

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Opinion

Jennifer L. Attrep, Judge

{1} Plaintiff Matthew Haygood appeals the district court's grant of summary judgment, dismissing his claims for breach of contract, breach of the implied covenant of good faith and fair dealing, insurance bad faith, unfair insurance practices, and unfair trade practices against insurer United Services Automobile Association (USAA) and claims examiner Heidi Hawken (collectively, Defendants). Haygood initiated the lawsuit after he was denied uninsured motorist coverage by USAA for injuries he sustained during an assault occurring in and around an uninsured motor vehicle parked outside a residence. Applying the coverage test adopted by our Supreme Court in *Britt v. Phoenix Indemnity Insurance Co.*, 1995-NMSC-075, 120 N.M. 813, 907 P.2d 994, to the stipulated facts, the district court determined Haygood's injuries had not arisen from the use of the uninsured motor vehicle. The district court therefore concluded Haygood was not entitled to coverage under the policy and dismissed all of his claims, concluding each was predicated on coverage. We conclude the district court did not err in

determining Haygood was not entitled to coverage, and we accordingly affirm the district court's dismissal of the coverage-based claims. The district court, however, erred in concluding Haygood's bad faith claim depended entirely on the presence of coverage. We accordingly reverse the district court's dismissal of Haygood's bad faith claim premised on Defendants' investigation and evaluation of the claim and remand for further proceedings.

BACKGROUND

{2} We draw the background from the facts stipulated by the parties in the summary judgment briefing. Late one night, Haygood was walking on the sidewalk near the house of the assailant, Kyle Cordova. As Haygood passed Cordova's house, he heard the door slam and saw Cordova running toward him, brandishing a gun. Cordova accused Haygood of breaking into his car and told Haygood he kept drugs in the car. Cordova then "pistol-whipped" Haygood in the face and pushed him into the car. Haygood resisted, but at some point in the scuffle, he was shot in the back. In recounting the course of events, Haygood recalled feeling blood on his face and laying on the ground outside the car by the time he heard the gunshot. But for purposes of summary judgment, the

parties stipulated the shooting occurred while Haygood was actually inside the vehicle. There was no evidence that the car was turned on, running, or driven before, during, or after the assault.

{3} At the time of the assault, Cordova's car was uninsured, and Haygood sought uninsured motorist coverage from USAA, his insurer, for the injuries he sustained. The uninsured motorist portion of his policy provided that the insurer "will pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle" because of injury or damage sustained and/or caused by an accident. The policy further specified that "[t]he owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle."

{4} The initial claims examiner recommended coverage, concluding Haygood's injuries had likely arisen out of use of the car if the shooting occurred inside the vehicle. After the first claims examiner retired, Hawken examined the claim. In-house counsel suggested to Hawken the determination turned on where the shooting had occurred and instructed Hawken to seek more information. Hawken and USAA continued to investigate. Eventually, without uncovering additional evidence of where exactly the shooting had occurred, USAA denied the claim, concluding Haygood's injuries had not arisen out of use of the car. Within the claim file, however, in-house counsel wrote, "I don't know that a jury would award damages to a car thief who is shot while stealing a car. If he was simply outside the car looking in and was shot, then the shooting isn't essential to the use of the vehicle. I recommend informing the attorney that we will need more information about the loss."

{5} Haygood filed a lawsuit, alleging Defendants breached the insurance contract by failing to provide coverage, breached the implied covenant of good faith and fair dealing, engaged in insurance bad faith, violated NMSA 1978, Section 59A-16-20 (1997) of the New Mexico Unfair Insurance Claims Practices Act (UIPA), NMSA 1978, §§ 59A-16-1 to -30 (1984, as amended through 2019), and violated portions of the New Mexico Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019). Defendants moved for summary judgment, contending that, regardless of where the gunshot occurred, Haygood's injuries had not arisen out of use of the uninsured vehicle. The district court agreed, concluding that Cordova's use of the gun constituted an intervening act breaking any causal link between use of the car and

Haygood's injuries and that the use of the car under the circumstances was not the kind of "normal use" required for coverage under relevant case law. The district court then concluded Haygood's claims all depended on the presence of coverage, and, as a result, dismissed each of his claims with prejudice. Haygood brought this appeal.

DISCUSSION

{6} Haygood contends the district court erred in imposing a normal use requirement because New Mexico's statutory provision relating to uninsured motorist insurance, NMSA 1978, § 66-5-301(A) (1983), and the related policy language, impose only a requirement of use for coverage and makes no mention of normal use. Haygood adds that even if normal use is required, the district court erred in concluding the car was not put to a normal use and Cordova's battery was an act of independent significance breaking any causal connection between use of the car and Haygood's injuries. Finally, Haygood argues the district court erred in concluding his claim of bad faith depended entirely on coverage.

I. Standard of Review

{7} We review de novo the question of whether the application of law to undisputed facts supports a summary judgment determination regarding uninsured motorist coverage. *Miera v. State Farm Mut. Auto. Ins. Co.*, 2004-NMCA-059, ¶ 6, 135 N.M. 574, 92 P.3d 20. We view the facts in the light most favorable to a trial on the issues, *id.*, examining the whole record for any evidence generating a dispute as to any material fact, *Rummel v. Lexington Ins. Co.*, 1997-NMSC-041, ¶ 15, 123 N.M. 752, 945 P.2d 970. We review any questions of law de novo. *Martin v. W. Am. Ins. Co.*, 1999-NMCA-158, ¶ 11, 128 N.M. 446, 993 P.2d 763.

II. The Britt Analysis

{8} *Britt* established the framework to determine whether uninsured motorist coverage extends to the victim of an intentional tort, such as Haygood. 1995-NMSC-075, ¶ 1. Examining policy language largely identical to Haygood's and the uninsured motorist statute, Section 66-5-301, *Britt* explained that both require an insurer to "indemnify the insured for damages that arise out of the use of an uninsured motor vehicle," so long as the insured is "legally entitled to recover from the owner or operator of the uninsured vehicle." 1995-NMSC-075, ¶ 9 (internal quotation marks omitted). *Britt* considered whether and when an injury might "arise out of the use of" an uninsured motor vehicle, and we thus direct our attention to this inquiry, as the parties have done. *Id.* (internal quotation marks omitted).

{9} *Britt* involved a situation where one vehicle rear-ended another in a minor collision. *Id.* ¶ 2. After the collision, a

passenger from the rear vehicle exited, approached the forward vehicle, and stabbed a passenger in the forward vehicle through an open window. *Id.* The attacker was never identified and the injured passenger sought uninsured motorist coverage, contending the injuries had arisen from the use of the rear, uninsured vehicle. *Id.* ¶¶ 2-3.

{10} In examining that contention, *Britt* observed that other courts had "developed a method of analysis for determining whether intentional conduct and its resulting harm arises out of the use of an uninsured vehicle." *Id.* ¶ 15. *Britt* adopted that analysis, requiring consideration of the following: (1) whether a sufficient causal connection exists between the use and the harm, which "requires that the vehicle be an active accessory in causing the injury"; (2) "whether an act of independent significance [has] broke[n] the causal link"; and (3) "whether the use to which the vehicle was put was a normal use of that vehicle." *Id.* (internal quotation marks and citation omitted). Only after answering each question favorably for the insured, might a court determine that the causal connection required by statutory and policy language has been established and that coverage exists. *See id.* ¶¶ 15-17 (outlining three-part inquiry, noting "court must consider" normal use, and remanding for examination of question of whether act of independent significance had occurred). Our cases since *Britt* have not modified the *Britt* analysis. *See, e.g., Crespin v. Safeco Ins. Co. of Am.*, 2018-NMCA-068, ¶¶ 1, 17, 33, 429 P.3d 968 (applying *Britt* and affirming lack of coverage for sexual assault occurring in a house some time after vehicle was used to transport the victim to the house); *Miera*, 2004-NMCA-059, ¶ 11 (applying *Britt* and its progeny to wrongful death claim arising from incident between occupants of two vehicles and remanding); *Barncastle v. Am. Nat'l Prop. & Cas. Co.*, 2000-NMCA-095, ¶¶ 2, 6, 129 N.M. 672, 11 P.3d 1234 (applying *Britt* as "controlling authority" to incident involving shooting of driver by passenger of other, uninsured vehicle); *Farmers Ins. Co. of Ariz. v. Sedillo*, 2000-NMCA-094, ¶¶ 2, 4-6, 129 N.M. 674, 11 P.3d 1236 (applying *Britt* as "controlling authority" to incident involving injuries caused by uninsured driver).

III. Britt Concluded "Normal Use" Is Required

{11} Haygood first argues it was error for the district court to consider the "normal use" of the vehicle in its coverage determination. While Haygood acknowledges the *Britt* analysis, he nevertheless devotes substantial attention to the argument that neither our uninsured motorist statute nor the policy language at issue makes mention of normal use. But as noted, *Britt* adopted a three-part analysis to determine whether harm "arise[s] out of the use of an unin-

sured motor vehicle" under the uninsured motorist statute and related policy language. 1995-NMSC-075, ¶ 9 (quoting § 66-5-301). Haygood ignores the fact that *Britt* directs the district court to consider normal use in this determination. *Id.* ¶ 15. Moreover, *Britt* gave no hint that its three-part analysis only applies to particular cases and gave no suggestion the use question was to be evaluated differently in certain circumstances. *See id.* ¶¶ 15-16. We thus have applied the *Britt* analysis and asked the normal use question multiple times since *Britt*. *See, e.g., Miera*, 2004-NMCA-059, ¶¶ 11, 15; *Barncastle*, 2000-NMCA-095, ¶ 11. We remain bound by our Supreme Court's precedent and by its interpretation of the uninsured motorist statute and uninsured motorist policy language identical in relevant respects to that at issue here. *See Alexander v. Delgado*, 1973-NMSC-030, ¶ 10, 84 N.M. 717, 507 P.2d 778 (holding that the Court of Appeals is bound by Supreme Court precedent); *see also GTE Sw. Inc. v. Taxation & Revenue Dep't*, 1992-NMCA-024, ¶ 14, 113 N.M. 610, 830 P.2d 162 ("[W]e are bound by our [S]upreme [C]ourt's interpretation of statutory language."). We therefore conclude the district court did not err in examining whether the use of the vehicle here was a normal use.

IV. The District Court Did Not Err in Determining There Was No Coverage

{12} Haygood next contends that the district court erred in its application of the *Britt* factors in finding no coverage. Because the *Britt* analysis requires that each of its three questions be answered in the insured's favor before coverage may be found, we focus on the use question here as its resolution is largely dispositive. *See Britt*, 1995-NMSC-075, ¶ 16 (concluding two questions may have been answered in the insured's favor but observing third was dispositive and remanding for reconsideration). For the reasons that follow, we conclude the district court did not err in determining Haygood failed to identify a normal use sufficiently causally connected to his injuries and, as such, concluding coverage was not warranted.

{13} Here, Haygood identified two separate uses potentially connected to his injuries and maintains both are normal uses. First, he contends his restraint against and inside the vehicle was a normal use. Second, he argues storage of belongings in a vehicle is a normal use, and Cordova's apparent storage of contraband here may have had some connection to the assault. *Britt* gave limited guidance regarding normal use. Under *Britt*, use for transportation satisfies the requirement, whereas use of a parked car as a platform for an object or weapon does not. *Id.* ¶ 15. The case *Britt* cited for this proposition—*Continental Western Insurance Co. v. Klug*, 415 N.W.2d 876, 878

(Minn. 1987)—offered an even narrower conception of the kind of use required, suggesting coverage might only arise when a car is used for “transportation purposes.” *Britt*, 1995-NMSC-075, ¶ 15; see also *Travelers Indem. Co. v. Auto World of Orangeburg, Inc.*, 511 S.E.2d 692, 699 (S.C. Ct. App. 1999) (“Significantly, neither vehicle was being used for transportation at the time of the attack[.]”). Other courts require use of a car “as a vehicle.” *Travelers Ins. Co. v. LaClair*, 463 S.E.2d 461, 464 (Va. 1995). And others recognize the use requirement may encompass a broader range of uses when a vehicle has a specialized nature or function and is to be used as something more than merely a means of transportation. See *Chavez v. Ariz. Sch. Risk Retention Tr., Inc.*, 258 P.3d 145, 147 (Ariz. Ct. App. 2011) (“[W]hen a vehicle is intended to be used as more than a means of transportation, it is a specialized vehicle and its use may depend on the nature of the owner’s business and the specialized nature and function of the vehicle involved.” (internal quotation marks and citation omitted)).

{14} Haygood devotes the bulk of his argument to his first contention that Cordova used the car to confine him (and shield him from any observers) during the assault and that this was a normal use of the vehicle. In determining whether this use meets the normal use requirement, we note, as *Britt* did, that our “uninsured motorist statute was intended to expand insurance coverage and to protect individual members of the public against the hazard of culpable uninsured motorists.” *Britt*, 1995-NMSC-075, ¶ 11 (internal quotation marks and citation omitted). Nothing in the stipulated facts suggests Cordova was acting as a motorist. See *Klug*, 415 N.W.2d at 878-79 (concluding assailant used vehicle for “motoring purposes” because he “used his car not only to maneuver himself into a position to harm [victim] but also to maneuver [victim] into a position from which [victim] could be harmed”); *Huynh v. Ill. Farmers Ins. Co.*, 421 N.W.2d 390, 392 (Minn. Ct. App. 1988) (concluding parked car in which injury occurred “was not being used as a motor vehicle at the time of the accident”). The stipulated facts do not indicate the confinement here depended on or involved any transportation or other operation of the vehicle. See *Britt*, 1995-NMSC-075, ¶ 15 (observing “transportation would be a normal use”); *Barncastle*, 2000-NMCA-095, ¶ 11 (noting that the car “was put to its normal use” because “[t]he

car was used to drive alongside the victim to assault him” (alteration, internal quotation marks, and citation omitted)); see also *Mason v. Celina Mut. Ins. Co.*, 423 P.2d 24, 25 (Colo. 1967) (en banc) (concluding sitting in car did not meet use requirement); *Chock v. Gov’t Emp’s Ins. Co.*, 81 P.3d 1178, 1183 (Haw. 2003) (“At the time of the shooting, the cars were not being used for transportation purposes, but rather were parked.”). Nor do the stipulated facts support some specialized purpose or feature of the vehicle was involved. See *Chavez*, 258 P.3d at 147 (observing that the qualifying use of a vehicle “may depend on the nature of the owner’s business and the specialized nature and function of the vehicle involved” (internal quotation marks and citation omitted)). Nothing, in short, supports an inference that the kind of injury-facilitating use at issue here, wholly in the absence of some transportation-, motoring, or operation-related purpose, presented the kind of hazard for which our uninsured motorist statute was designed to offer protection. See *Britt*, 1995-NMSC-075, ¶ 15 (noting use of a parked car as a gun rest was not a use contemplated by the uninsured motorist statute). We thus agree with the district court that the use of the car to briefly confine Haygood during the assault was not a normal use that would trigger coverage under the insurance policy.

{15} Haygood next contends that Cordova used the car to store drugs, that using a car to store belongings is clearly a normal use, and that the storage was sufficiently connected to his injuries to satisfy *Britt*’s use requirement. Given the stipulated facts, we have the same concerns about this use as we did with the first—i.e., nothing suggests this use involved or depended on transportation, operation, or a specialized feature of the vehicle, and nothing suggests Cordova was acting as a motorist. We recognize, nonetheless, that motorists frequently store belongings in vehicles, and we recognize that storage, under certain circumstances, may present a qualifying use sufficiently causally connected to an injury to satisfy *Britt*’s use requirement. See, e.g., *State Farm Ins. Co. v. Bell*, 39 F. Supp. 3d 1352, 1354, 1358 (D.N.M. 2014) (concluding a dog bite injury from a dog sitting in a parked car arose while car “was being put to its normal use” because the owner was using the car to transport the dog); *Quarles v. State Farm Mut. Auto. Ins. Co.*, 533 So. 2d 809, 812 (Fla. Dist. Ct. App.

1988) (“The presence of the permanently attached gun rack in [the owner’s] pickup truck established a significant causal connection between the use of the pickup truck and the accidental discharge of the shotgun.”); cf., e.g., *Kern v. Auto Owners Ins. Co.*, 526 N.W.2d 409, 412 (Minn. Ct. App. 1995) (concluding that the use of a truck to transport construction materials was normal use, not merely for storage, even where materials blew from the truck while parked, causing injury to a passerby). {16} Here, however, regardless of whether the storage of drugs presents a qualifying use, the stipulated facts do not permit a determination that the storage was sufficiently connected to Haygood’s injuries. *Britt* guides our conclusion. The Court in *Britt* observed the vehicle’s use for transportation may have been sufficiently causally connected to the injury only if the driver of the rear car were found to have collided with the forward car to facilitate the later attack. 1995-NMSC-075, ¶ 16. On the other hand, had the intent to attack developed independently of the collision, the attack would have severed any connection between the injury and the earlier qualifying use of the vehicle. *Id.* Applying these principles here, nothing in the record suggests the use of the car as storage facilitated Cordova’s assault and nothing suggests Cordova even contemplated the assault in engaging in this use. See *id.* (noting intentional tort will generally sever connection between use and injury unless prior use facilitated tort). Instead, the stipulated facts compel our conclusion that the district court correctly determined Cordova’s assault, coming as it did after and independent of the car’s use for storage, severed any causal connection between the storage and Haygood’s injuries. See *id.*

{17} We conclude neither use identified here constituted a “normal use” sufficiently causally connected to Haygood’s injuries. The district court thus did not err in determining as a matter of law that Haygood’s injuries did not arise from the use of the uninsured vehicle and that Haygood’s uninsured motorist policy did not cover his injuries. As a result, we affirm the district court’s grant of summary judgment on Plaintiff’s uninsured motorist claims for breach of contract and breach of the implied covenant of good faith and fair dealing.¹ Likewise, because Haygood concedes his claims under UIPA

¹The parties agreed in their summary judgment briefing that Haygood’s claim for breach of the implied covenant of good faith and fair dealing depended on the existence of coverage. Defendants reiterated that position at the motions hearing, and Haygood did not object. The district court adopted that reasoning and having found no coverage, dismissed Haygood’s claim for breach of the implied covenant of good faith and fair dealing. The parties on appeal have not addressed whether this claim may have been viable regardless of coverage, and thus we give no consideration to that possibility here. See, e.g., *State v. Garnenez*, 2015-NMCA-022, ¶ 15, 344 P.3d 1054 (“We will not address arguments on appeal that were not raised in the brief in chief and have not been properly developed for review.”).

and UPA were predicated on coverage, we also affirm the grant of summary judgment on these claims.

V. The District Court Erred in Part in Dismissing Haygood's Bad Faith Claim

{18} Haygood finally contends that regardless of whether he was entitled to coverage, he might still have prevailed on his bad faith claim relating to Defendants' investigation and evaluation of his claim. The district court disagreed and granted summary judgment on the bad faith claim, explaining that New Mexico law appeared to foreclose such claims in the absence of coverage. Based on our review of the law, we agree with Haygood on this point.

{19} As a general rule, an insurer may deny coverage without exposure to a claim of bad faith failure to pay as long as it has reasonable grounds for the denial. *Am. Nat'l Prop. & Cas. Co. v. Cleveland*, 2013-NMCA-013, ¶ 13, 293 P.3d 954. Reasonable grounds will generally follow from reasonable investigation, and we have explained that an insurer is justified in taking reasonable time and measures to investigate before determining whether coverage is to be extended. *Id.* The investigation need not be perfect, but it must be "reasonably appropriate under the circumstances." *Id.* (internal quotation marks and citation omitted). Where an insurer fails to make an adequate investigation, its coverage position is unfounded, and it thus may be liable for bad faith denial of a claim. *Id.*; see also UJI 13-1702 NMRA (providing that denial for frivolous or unfounded reasons is bad faith).

{20} At the same time, our Court in *O'Neel v. USAA Insurance Co.*, 2002-NMCA-028, 131 N.M. 630, 41 P.3d 356, explained that a record may "contain[] evidence to support a finding of bad faith . . . based on conduct separate from [the insurer's] refusal to pay[.]" *Id.* ¶ 9. Evidence of an excessive or unnecessarily invasive claim investigation, for example, might give rise to a claim of bad faith investigation regardless of the ultimate coverage determination. See *id.* And while *O'Neel* involved a situation in which the jury awarded the insured's claim in part, contrary to Defendants' contentions, there is nothing in *O'Neel* that appears to limit its bad faith analysis to cases where coverage is established. See *id.* ¶¶ 3, 5-11. Indeed, the jury instructions given in *O'Neel* made that clear. The instructions allowed the insured to establish bad faith by proving

any of the following: the insurer's "reasons for refusing to pay were unfounded or frivolous," the insurer "did not act reasonably . . . to conduct a fair investigation," or the insurer "did not act reasonably . . . to conduct a fair evaluation of [the] claim." *Id.* ¶ 11. We concluded there was ample evidence that allowed the jury to find bad faith, regardless of whether the insured was ultimately justified in refusing to pay the full amount. *Id.* Thus, in *O'Neel*, we established that bad faith claims may be based on conduct other than a refusal to pay. See *id.*; see also *Progressive Cas. Ins. Co. v. Vigil*, 2018-NMSC-014, ¶ 24, 413 P.3d 850 (citing *O'Neel* with approval).

{21} Here, Haygood has advanced two distinct theories of bad faith. His first theory is simply that USAA exhibited bad faith in failing to pay a covered claim. This theory is unavailing because, as Defendants point out, we have regularly recognized that claims of bad faith failure to pay cannot "arise unless there is a contractual duty to pay under the policy[.]" and we have concluded Haygood has not established coverage in this case. *Charter Servs., Inc. v. Principal Mut. Life Ins. Co.*, 1994-NMCA-007, ¶ 17, 117 N.M. 82, 868 P.2d 1307. Thus, to the extent Haygood's bad faith claim depended on the existence of coverage, the district court did not err in dismissing it.

{22} Haygood's second theory of bad faith, however, does not appear to be predicated on coverage. Instead, he contends Defendants "intentionally delayed the coverage decision, intentionally failed to fairly evaluate the claim, and dishonestly handled the claim to [their] advantage."² Haygood presented a variant of this argument to the district court and, as factual support therefor, advanced evidence that USAA's in-house counsel attempted to develop a conflicting account of the events and extended the investigation as a result, had suggested Hawken pursue various unsupported leads, and had eventually concluded USAA should deny coverage because Haygood made for an unsympathetic plaintiff. Defendants accepted these factual allegations as undisputed for purposes of summary judgment, steadfastly maintaining, as they do now on appeal, that Haygood could have no claim for bad faith in the absence of coverage. As we explained in *O'Neel*, however, a bad faith claim need not depend on the existence of coverage. 2002-NMCA-028, ¶ 11 (concluding conduct other than refusal to

pay may support bad faith claim); see also *Vigil*, 2018-NMSC-014, ¶ 24 (citing *O'Neel* with approval for proposition "that a finding of bad faith may be based on conduct separate from refusal to pay").

{23} We note, as we did in *O'Neel*, that Haygood might establish bad faith in a variety of ways—whether by proving Defendants failed to deal fairly in handling the claim, failed to conduct a fair investigation, or failed to fairly evaluate coverage, among other possibilities. See *O'Neel*, 2002-NMCA-028, ¶¶ 10-11 (noting the record supported finding of bad faith where there was evidence that the investigation was untethered to terms of the insurance policy and where the investigation was extended "without justification or support"); see also *Vigil*, 2018-NMSC-014, ¶ 24 (noting absence of fair dealing may support bad faith); UJI 13-1702 (setting forth theories of untimely and unfair investigation, unreasonable delay in notification, timely evaluation, and timely payment, among others). The facts Defendants have conceded here for purposes of summary judgment, coupled with reasonable inferences drawn therefrom, might, given a fuller consideration of the record, support a trial on the merits of Haygood's bad faith claim premised on Defendants' investigation and evaluation. See *Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 9, 335 P.3d 1243 ("drawing all reasonable inferences in support of a trial on the merits" in reviewing grant of summary judgment).

{24} Accordingly, we conclude the district court misinterpreted New Mexico law when it foreclosed entirely Haygood's bad faith claim in the absence of coverage. We, however, do not speculate as to what the district court may have done in the absence of this error. See *Rummel*, 1997-NMSC-041, ¶ 16 ("[W]hen the [district] court's grant of summary judgment is grounded upon an error of law, the case may be remanded so that the issues may be determined under the correct principles of law."); *Archuleta v. Lacuesta*, 1999-NMCA-113, ¶ 17, 128 N.M. 13, 988 P.2d 883 (remanding for reconsideration of summary judgment where the district court had not given "full consideration" to potential independent ground presented by the parties). Such an inquiry is necessarily fact-dependent, which this Court is not well-situated to evaluate in the first instance, particularly in the absence of briefing from Defendants on the matter.

²To support his contention that the district court erred in dismissing the bad faith claim, Haygood additionally relies on the doctrine of "mend the hold"—which provides that a party cannot give a reason for conduct and then "after litigation has begun, put his conduct on another and different consideration"—pointing to the fact that USAA changed its reasons for denying coverage over time. See *Irwin v. Sovereign Camp of Woodmen of the World*, 1910-NMSC-023, ¶ 4, 15 N.M. 365, 110 P. 550. Because we reverse in part the district court's dismissal of Haygood's bad faith claim on other grounds, we need not address the applicability of this doctrine here.

See *Freeman v. Fairchild*, 2018-NMSC-023, ¶ 35, 416 P.3d 264 (counseling against undertaking “fact-dependent inquiry” on appeal); *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (“We will not . . . guess at what a party’s arguments might be.” (alteration, internal quotation marks, and citation omitted)). We therefore remand to the district court for determination of whether Haygood has made a showing sufficient to overcome Defendants’ summary judgment motion on his bad faith claim premised on Defendants’ investigation and evaluation.

CONCLUSION

{25} We affirm the district court’s grant of summary judgment determining Haygood was not entitled to coverage and dismissing Haygood’s claims for breach of contract, breach of the implied covenant of good faith and fair dealing, violations of UIPA and UPA, and bad faith based on failure to pay a covered claim. We reverse the district court’s grant of summary judgment dismissing Haygood’s claim of bad faith premised on Defendants’ investigation and evaluation, and we remand for further proceedings consistent with this opinion.

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

WE CONCUR:
JULIE J. VARGAS, Judge
JAMES J. WECHSLER,
Judge Pro Tempore

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-075

No. A-1-CA-36463 (filed September 23, 2019)

JOHN MARQUEZ, HOPE GUTIERREZ
Y MARQUEZ, GLORIA GUTIERREZ,
and GILBERT GUTIERREZ,
Plaintiffs-Appellants,

v.

BOARD OF TRUSTEES FOR THE
ANTON CHICO LAND GRANT,
CRISTOBAL MARQUEZ, ROBERT
MONDRAGON, MAX SISNEROS,
ROMIE MAESTAS, and STONEY
JARAMILLO, individually and in their
capacity as members of the Board of
Trustees of the Anton Chico Land Grant,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF GUADALUPE COUNTY

KEVIN R. SWEAZEA, District Judge

Released for Publication December 17, 2019.

Egolf + Ferlic + Harwood
KATE FERLIC
KRISTINA CAFFREY
Santa Fe, NM
for Appellants

Padilla Law Firm, P.A.
ERNEST L. PADILLA
Santa Fe, NM
for Appellees

Opinion

Kristina Bogardus, Judge

{1} John Marquez, Hope Gutierrez y Marquez, Gloria Gutierrez, and Gilbert Gutierrez (Plaintiffs) appeal from the district court's order denying their motion for attorney fees and costs. At issue is whether Plaintiffs were the "prevailing party" under 42 U.S.C. § 1988 (2018) in their claim against the Board of Trustees of the Anton Chico Land Grant (the Board). We hold that Plaintiffs were not the prevailing party in the underlying litigation and therefore affirm, although on grounds different from those relied on by the district court.

BACKGROUND

{2} Plaintiffs petitioned the district court for a temporary restraining order and injunctions against the Board on March 29, 2013. They asserted that they were heirs and qualified voting members of the Anton Chico Land Grant. Among other remedies, they sought to postpone an election scheduled for April 1, 2013, of

the land grant's board; Plaintiffs alleged that if the Board conducted the election as planned, the Board would violate the land grant's bylaws and state law and would "deprive[Plaintiffs] of their rights." Specifically, Plaintiffs alleged that the board election process was "rife with illegalities and corruption." In response, the district court issued a temporary restraining order preventing the Board from taking a vote until certain criteria were met.

{3} On April 22, 2013, the Secretary of State filed a motion to intervene in the case. The district court held a hearing on the motion and then granted it on May 8, 2014; in so doing, the court ordered the Secretary of State to investigate the issues raised in Plaintiffs' complaint.

{4} The next day, Plaintiffs filed an amended petition. The amended petition added a claim premised on both the facts alleged in the original petition and on additional, related facts. The new claim asserted violations by the Board of Plaintiffs' rights under the equal protection clauses of the Federal and State Constitutions and

the Voting Rights Act of 1965. Plaintiffs invoked 42 U.S.C. § 1983 (2018), which establishes liability for civil rights violations, and § 1988(b), which provides that a court may award a reasonable attorney fee to the prevailing party in an action to enforce § 1983.

{5} On August 25, 2016, Plaintiffs notified the district court of a partial settlement reached sometime in 2015. Plaintiffs explained that (1) the parties had agreed to changes in the land grant's bylaws on April 29, 2016; (2) the Board had enacted the changes on August 2, 2016; and (3) the parties had agreed to a settlement on liability. Plaintiffs stated that the only outstanding issue in the case was the amount of attorney fees to which Plaintiffs were entitled.

DISCUSSION

{7} As a preliminary matter, we address this Court's jurisdiction to hear this appeal, an issue we instructed the parties to brief. The instruction was based on a possible interpretation of NMSA 1978, Section 1-14-5 (1969), which provides that our Supreme Court has jurisdiction over an appeal "from any judgment or decree entered in" a proceeding over the contest of an election governed by the Election Code, NMSA 1978, §§ 1-1-1 to 1-26-6 (1969, as amended through 2019). Having considered the issue further, we now conclude that Section 1-14-5 does not apply here because, among other reasons, Section 1-14-1 provides in relation to Section 1-14-5 that it is an "unsuccessful candidate for nomination or election to [a] public office" who may contest the election of another candidate, and Plaintiffs are not unsuccessful candidates for nomination or election to a public office. Rather, they are a party seeking an attorney fee award against an already-elected board of trustees of a land grant. This case thus does not fit the criteria our Legislature has established for election-related matters that proceed directly to our Supreme Court on appeal. We therefore conclude that jurisdiction is proper in this Court, and we proceed to the merits.

{8} We generally review a district court's award of attorney fees for an abuse of discretion. *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 6, 127 N.M. 654, 986 P.2d 450. However, this appeal presents one essential question: whether Plaintiffs are entitled to an attorney fee award under § 1988. This question is one of law; accordingly, our review of the district court's order is de novo. *See N.M. Right to Choose/NARAL*, 1999-NMSC-028, ¶ 7.

{9} Plaintiffs argue that the district court erred by denying their request for an attorney fee award under § 1988(b), which, they clarify on appeal, is the sole basis for their attorney fee claim. That statute, part of the Civil Rights Attorney's Fees Award Act of 1976, provides that "[i]n any action or proceeding to enforce a provision of [§ 1983] . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs[.]" § 1988(b).

{10} Plaintiffs maintain on appeal that they were the prevailing party, as that term is used in § 1988(b), in the underlying litigation. Because we conclude otherwise, we do not, as the district court did, reach the attendant question whether land grants are subject to § 1983 liability. That is, we may affirm a district court order on grounds it did not rely on if doing so would neither be unfair to Plaintiffs, see *Rosette, Inc. v. U.S. Dep't of Interior*, 2007-NMCA-136, ¶ 30, 142 N.M. 717, 169 P.3d 704, nor require "look[ing] beyond the factual allegations that were raised and considered below[.]" *Atherton v. Gopin*, 2015-NMCA-003, ¶ 36, 340 P.3d 630 (internal quotation marks and citation omitted). Because the parties addressed the question of whether Plaintiff was a prevailing party both in the district court and now on appeal, and because our consideration of the issue encompasses only those facts previously raised and considered, the applicable criteria are met. Turning to the question of whether Plaintiffs were the prevailing party in the underlying litigation, we look to principles established by federal case law to determine the answer.

{11} The United States Supreme Court considered the status of a plaintiff who pursued a § 1983 claim and whose case was resolved through a settlement enforced by a consent decree in *Maher v. Gagne*, 448 U.S. 122 (1980). Remarking that the plaintiff having prevailed through settlement—not litigation—did not "weaken her claim to fees" and that "[n]othing in the language of § 1988 conditions the [U.S.] District Court's power to award fees . . . on a judicial determination that the plaintiff's rights have been violated[.]" the Court held that the plaintiff was the prevailing party. *Maher*, 448 U.S. at 129, 133. In further support of its position, the U.S. District Court cited text from a Senate report stating that "for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief." *Id.* at 129 (internal quotation marks and citation omitted).

{12} Shortly after *Maher* was decided, the Supreme Court made two statements

introducing the requirement that a party's claim have at least some merit before an award in this context is made. These statements influence our analysis here. First, the Court stated:

[O]nly when a party has prevailed on the merits of at least some of his claims . . . has there been a determination of the substantial rights of the parties, which Congress determined was a necessary foundation for departing from the usual rule in this country that each party is to bear the expense of his own attorney.

Hanrahan v. Hampton, 446 U.S. 754, 758 (1980) (internal quotation marks omitted). Second, it stated that "[r]espect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail." *Hewitt v. Helms*, 482 U.S. 755, 760 (1987).

{13} The Supreme Court further clarified the prerequisites for prevailing party status—and articulated points central to our holding in this case—in *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001). The *Buckhannon* plaintiffs sued the State of West Virginia and others, alleging that a state statutory provision, to which the plaintiffs were subject, violated federal law. *Id.* at 600-01. The West Virginia legislature then amended the statutory provision and the case was dismissed. *Id.* at 601. The plaintiffs sought an attorney fee award under a fee-shifting statute and under a "catalyst theory" of having prevailed: that is, a theory accepting that "a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Id.*

{14} The *Buckhannon* Court, however, rejected the catalyst theory. The Supreme Court denied the award of attorney fees because, in its words, "[w]e cannot agree that the term 'prevailing party' authorizes federal courts to award attorney's fees to a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit (it will never be determined), has reached the sought-after destination without obtaining any judicial relief." *Id.* at 606 (internal quotation marks and citation omitted). The Court clarified *Maher*, stating that such judicial relief can take the form of a consent decree because it "is a court-ordered change in the legal relationship between the [parties]." *Buckhannon*, 532 U.S. at 604 (alterations, internal quotation marks, and citation omitted). The Court reasoned that such a change is distinct from the situation of "[a] defendant's voluntary change in conduct," which, it commented, "lacks the necessary

judicial imprimatur on the change." *Id.* at 605.

{15} Based on principles established by these cases, we reason that, in lawsuits resolved by settlement agreement, prevailing party status for § 1988 purposes is available only when a party secures judicial relief. This relief must take the form of a "material alteration of the legal relationship" between the party and its adversary. *Buckhannon*, 532 U.S. at 604 (internal quotation marks and citation omitted).

{16} Such judicial relief is absent in this case. Here, the parties entered into a settlement agreement, but the agreement was not enforced through a consent decree, as was the settlement in *Maher*. And although there can be a "prevailing party" when judicial enforcement of a settlement takes a form not formally titled "consent decree," see *Bell v. Bd. of Cty. Comm'rs of Jefferson Cty.*, 451 F.3d 1097, 1103 (10th Cir. 2006) ("Most circuits recognize that some settlement agreements, even though not explicitly labeled as a 'consent decree' may confer 'prevailing party' status, if they are sufficiently analogous to a consent decree." (internal quotation marks and citation omitted)), the fact remains that the litigation in this case did not produce the court-ordered change in the legal relationship between Plaintiffs and the Board necessary for Plaintiffs to receive a fee award under § 1988.

{17} Plaintiffs argue that the election-related changes to the land grant's bylaws "materially altered the legal relationship between the parties." But this argument fails because the district court did not order those changes. To the contrary, our review of the record reveals that the court had no substantive involvement in the case from the time it ordered the Secretary of State's investigation until the time the court decided the attorney fee issue. By then, the dispute fueling Plaintiffs' merit-based claims had been resolved by settlement agreement. It was resolved because, much like the West Virginia legislature in *Buckhannon* voluntarily amended the offending law, the Board voluntarily amended its bylaws to Plaintiffs' satisfaction. Such a voluntary change in conduct—even though constituting the change Plaintiffs sought in suing the Board—is insufficient under *Buckhannon* to make Plaintiffs the prevailing party under § 1988(b). Cf. *Sanchez v. Bd. of E. N.M.*, 361 F. App'x 980, 984 (10th Cir. 2010) (holding that the plaintiff who alleged civil rights violations by a college's use of its board election system and who entered into a settlement agreement with the defendants to rectify those alleged violations was not a prevailing party under § 1988(b) because there was no judicial imprimatur on the agreement). Furthermore, Plaintiffs' and the Board's

settlement agreement memorializing the Board's change in conduct never received the judicial imprimatur needed to give rise to prevailing party status. *See generally* Anthony DiSarro, *Six Decrees of Separation: Settlement Agreements & Consent Orders in Federal Civil Litigation*, 60 Am. U. L. Rev. 275, 321-28 (2010) (explaining the difference between an instrument, like a private settlement agreement whose terms are not incorporated into a court order,

and an instrument enforceable through judicial oversight and remarking that the first type of instrument does not produce a "prevailing party").

{18} We conclude that Plaintiffs are not a "prevailing party" and therefore are not entitled to an attorney fee award under § 1988. The district court thus did not err by denying Plaintiffs' request for an attorney fee award.

CONCLUSION

{19} We affirm.

{20} **IT IS SO ORDERED.**
KRISTINA BOGARDUS, Judge

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

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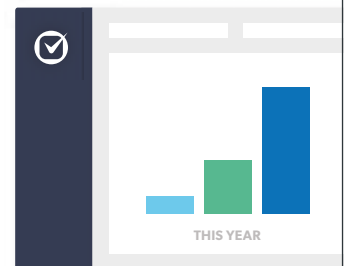
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The Thirteenth Judicial District Attorney's Office is seeking entry level as well as experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area 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 Fajardo kfajardo@da.state.nm.us or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

Associate Attorney

Riley, Shane & Keller, P.A., an AV-rated defense firm formed in 1982 in Albuquerque, seeks an associate attorney for an appellate/research and writing position. We seek a person with appellate experience, an interest in legal writing and strong writing skills. The position is full-time with an off-site work option and flexible schedule. We offer an excellent salary and benefits package. Please submit a resume, references and writing samples to 3880 Osuna Rd., NE, Albuquerque, NM 87109 c/o Office Manager, (fax) 505-883-4362 or mvelasquez@rsk-law.com

Equity Innovator in Creative Non-profit Culture / Legal Director

In-house counsel/legal trainer sought for a small non-profit technical assistance agency working to end sexual violence. .75FTE with full benefits, \$70-\$80K DOE. For details see: <https://nmcsap.org/about-nmcsap/job-postings/>

Attorney

O'Brien & Padilla, P.C., is seeking an energetic attorney to join our growing AV-rated insurance defense law firm. Duties include all aspects of litigation, such as preparing pleadings and motions, taking and defending depositions, participating in mediations and arbitrations, and handling hearings and trials. We handle all types of insurance matters at all stages of the case, but the firm's primary practice areas include defense of bad faith, uninsured motorist, personal injury, and workers' compensation cases. Attorneys with experience in the areas of bad faith and insurance coverage are highly encouraged to apply. We offer a competitive salary and benefits for the right candidate. Please submit your cover letter, resume, references, and writing sample to rpadilla@obrienlawoffice.com.

Attorney

Conklin, Woodcock & Ziegler, P.C. is seeking a full-time experienced attorney with at least three years litigation experience for an associate position with prospects of becoming a shareholder. We are a well-respected seven-attorney civil defense firm that practices in among other areas: labor and employment, construction, personal injury, medical malpractice, commercial litigation, civil rights, professional liability, insurance defense and insurance coverage. We are looking for a team player with a solid work record and a strong work ethic. Our firm is AV-rated by Martindale-Hubbell. Excellent pay and benefits. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to: jobs@conklinfirm.com.

Full-Time and Part-Time Attorney

Jay Goodman and Associates Law Firm, PC is seeking one full-time and one part-time attorney. If you are looking for more fulfilling legal opportunities, read on. Are you passionate about facilitating life changing positive change for your clients while having the flexibility to enjoy your lifestyle? If you are looking for meaningful professional opportunities that provide a healthy balance between your personal and work life, JGA is a great choice. If you are seeking an attorney position at a firm that is committed to your standard of living, and professional development, JGA can provide excellent upward mobile opportunities commensurate with your hopes and ideals. As we are committed to your health, safety, and security during the current health crisis, our offices are fully integrated with cloud based resources and remote access is available during the current Corona Virus Pandemic. Office space and conference facilities are also available at our Albuquerque and Santa Fe Offices. Our ideal candidate must be able to thrive in dynamic team based environment, be highly organized/reliable, possess good judgment/people/communication skills, and have consistent time management abilities. Compensation DOE. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

Associate Attorney

Lastrapes, Spangler & Pacheco, P.A., a Rio Rancho based law firm, seeks an associate attorney. The firm's primary areas of practice include real property; corporate/business law; probate, trust & estate planning; and civil litigation. The firm would consider a part-time or full-time hire, depending upon candidate qualifications. Please submit a resume and writing sample via email to lw@lsplegal.com. All replies kept confidential. Salary commensurate with applicable experience.

Attorney

Want to work in a collegial environment with the opportunity to grow and manage your own cases? Park & Associates, LLC is seeking an attorney with 3 or more years of litigation experience. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. Competitive salary and excellent benefits. Please submit resume, writing sample and salary requirements to: jertsgaard@parklawnm.com

Riley, Shane & Keller, P.A.

New Positions:

Our AV Rated law firm is expanding so we created two (2) new positions. Please come join us for a professional environment, excellent pay, retirement, employee healthcare and other benefits. Paralegal: Full time, work from home position supporting litigation and trials. Five (5) years' experience in insurance defense or civil litigation. We seek a team player with a strong word processing and organizational skills. Candidate should be a member of the Paralegal Division of the State of New Mexico or eligible to join. Construction case experience a plus. Legal Assistant: Full time, in office position supporting shareholders. The position requires five (5) years' experience in insurance defense or civil litigation. Position requires a team player with strong work processing and organizational skills. Send resume to Riley, Shane & Keller, P.A., office manager, 3880 Osuna Road NE, Albuquerque, NM 87109/ mvelasquez@rsk-law.com

Associate Attorneys

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

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. This position will be the procurement attorney for the Purchasing Division. Duties include contract review, contract negotiation, proposal evaluation, assisting end users in drafting requests for procurement and requests for bids, responding to procurement protests and litigating any resulting suits. Must be able to provide legal advice and guidance to City departments, boards, and City Council on complex purchasing transactions. Attention to detail, timeliness, strong writing skills, and client counseling skills are essential. Must be an active member of the State Bar of New Mexico in good standing or be able to attain bar membership within three months of hire. 5+ years of practice preferred. Salary will be based upon experience. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample.

RFP – Firms or Attorneys Interested in Serving as Contract Personnel Hearing Officer

The City of Albuquerque is soliciting responses from qualified firms or attorneys interested in serving as contract Personnel Hearing Officer for personnel hearings under the City's Merit System Ordinances, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994. The hearing officers may also provide services for other miscellaneous hearings under assorted City Ordinances. The full Request for Proposals can be accessed at <https://cabq.bonfirehub.com/portal/?tab=openOpportunities>. Proposals are due no later than January 20, 2021 @ 4:00pm Local Time.

Attorneys

The Office of the New Mexico Attorney General is seeking attorneys with 2 to 7 years' experience for an Assistant Attorney General position in its Open Government Division based in Santa Fe. A copy of the job posting and further details available at www.nmag.gov/human-resources.aspx or by emailing Division Director Sally Malavé at smalave@nmag.gov. Applications reviewed immediately on a rolling basis until positions are filled.

Assistant City Attorney

Assistant City Attorney position available with the City of Albuquerque with a main focus on assisting the City of Albuquerque and the Albuquerque Police Department in achieving operational compliance with the Court Approved Settlement Agreement (CASA). The attorney will provide oral and written legal advice, recommendations, and opinions to a variety of levels of Department personnel and City staff on matters regarding the operations and performance of APD. The attorney will regularly interact with and attend meetings with: the parties and monitor; the Civilian Police Oversight Agency and its Board; community policing councils; amici; other stakeholders and members of the community. Applicant must be admitted to the practice of law in New Mexico and be an active member of the Bar in good standing. Preferred qualifications include: knowledge of state and federal laws regarding constitutional policing and police practices; experience in the practice of local or state government; strong organization skills; strong legal research and writing skills; experience in project development and management; experience in business letter writing; and supervisory experience. Experience in report and proposal preparations, developing curricula, and application of adult educational principles is a plus. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please apply on line at www.cabq.gov/jobs

Attorney – Patient's Compensation Fund

The Office of Superintendent of Insurance is seeking an experienced attorney who will provide high level, complex legal advice to the Superintendent of Insurance and the Patient's Compensation Fund staff. Preferred requirements are thorough knowledge of the Medical Malpractice Act and significant insurance and litigation experience. Applicant must have at least five (5) years of experience in medical malpractice law, insurance law, administrative law, and/or civil litigation experience. Office is in Albuquerque. Salary range is from the mid \$70s to almost \$114,000, commensurate with experience. Benefits include the state's retirement system. For more information and to apply please visit the New Mexico State Personnel Office website at: https://careers.share.state.nm.us/psp/hprdcg/EMPLOYEE/HRMS/c/HRS_HRAM_FL.HRS.CG_SEARCH_FL.GBL?Page=HRS_APP_JBPST_FL&Action=U&FOCUS=Applicant&SiteId=1&JobOpeningId=112193&PostingSeq=1

Attorney

RMH Lawyers, PA seeks an attorney with at least 3 years of experience to join our firm. We are a Martindale AV-rated firm, with a practice focusing on business advice and transactions, commercial litigation, and employment law. We provide sophisticated services to a long-term client base. Our preferred candidate will have excellent academic credentials, strong research and writing skills, and experience with complex litigation or transactional matters. Candidates will be considered for either an associate position or partner/of counsel position, depending on their book of business and experience level. We offer a competitive salary and benefits package, as well as a collegial work environment. Interested parties should submit a resume and letter of interest to offmgr@rmhlawyers.com. All inquiries will be held in strictest confidence.

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

Town Attorney

The Town of Silver City, New Mexico is seeking applicants for the position of Town Attorney. The position calls for an attorney with at least five years of experience in government practice. The applicant must demonstrate working knowledge of administrative, criminal and corporate law. The position will involve dealing with legal concerns associated with city planning, personnel and labor management, law enforcement, public works, water and the broad range of legal issues encountered by the several other departments of the Town. The Town Attorney will provide legal support to the Town Council, Town Manager and to the Town staff, and must be familiar with New Mexico law. Applicants must be proficient in drafting ordinances and interpreting existing local, state and federal law as they apply to New Mexico municipalities. The Town Attorney must possess excellent writing and communication skills and will often be called to issue legal opinions and memoranda of interpretation. It is intended that the successful applicant will interact with attorneys from other public entities and must have the ability to work cooperatively. The Town Attorney will also act as legal counsel for the Town's Planning and Zoning Commission, and the Town's various other committees and commissions. The attorney will work closely with Executive Department staff and is expected to be knowledgeable of personnel and union issues. It is the continuing commitment of the Town to be pro-active in educating its officers and staff so as to minimize exposure to litigation and liabilities occasioned by error or misapprehensions. The Town subscribes to the practice of "preventative law" and is seeking an attorney who is amicable to that philosophy with the skill to implement it. The Town Attorney will be an in-house employee, with access to the generous benefits offered by the Town. Salary will be negotiable based upon experience and skills level. Recognizing the importance of growing relationships, the successful applicant will need to be a resident of Grant County within three months of appointment. The position will be available September 1, 2020 and will close September 30, 2020. Please direct inquiries to 575-534-6359 or personnelofficer@silvercitynm.gov. For complete copy of job description and instructions on submittal of application, go to www.townofsilvercity.org.

Deputy General Counsel, State Ethics Commission

The State Ethics Commission is hiring a Deputy General Counsel. The attorney will provide a wide range of legal services, including litigating agency enforcement actions in state court; handling legal determinations and conducting investigations in agency adjudications; writing agency advisory opinions; assisting with agency rulemakings; providing training and education to government officers, employees, and contractors; and providing legal advice and assistance on a variety of public law matters. Minimum requirements: license to practice law in the courts of the State of New Mexico, and at least 4 years of experience practicing law. The ideal candidate has proven ability in conducting investigations, examining witnesses, and providing general counsel services to a corporate or government organization. This position is covered by the Personnel Act and includes state benefits. Annual salary range: \$66,338.00 to \$106,141.00. For information about the position and to apply, visit <https://sec.state.nm.us/employment-opportunities>. For inquiries, please email walker.boyd@state.nm.us.

Associate Attorney

Stiff, Keith & Garcia is a successful and growing law firm representing national clients, looking for an experienced lawyer to work in the areas of insurance defense and civil litigation. Flexible work environment available. We are looking for an attorney who can handle complex litigation with minimal supervision. We are a congenial and professional firm. Excellent benefits and salary. Great working environment with opportunity for advancement. Send resume to resume01@swcp.com

City of Santa Fe Seeks Hearing Officers:

The City of Santa Fe seeks qualified hearing officers to preside over appeals of land use citations, animal services citations, general enforcement actions, and other administrative matters. Interested attorneys should submit a resume and letter of interest, including proposed hourly rates, as soon as possible to Irene Romero, to ikromero@santafenm.gov. Preferred candidates will have excellent communication and writing abilities, a demonstrated ability to be fair and impartial, and experience in municipal law and administrative law. Candidates must be admitted to practice law in the State of New Mexico. The City intends to make appointments as soon as possible and will retain letters of interest for appointment as needed over the next year.

Associate Attorney

BLEUS & ASSOCIATES, LLC, a personal injury law firm located near the Journal Center, is presently accepting resumes for an associate attorney possessing 5+ years of civil litigation experience to join our legal practice. The position requires passionate advocacy, and a knowledgeable, hardworking, detail oriented person. Our primary areas of practice include all aspects of civil litigation with an emphasis on personal injury; insurance bad faith, and complex tort litigation matters. Trial experience preferred, but not required. We offer a great work environment and competitive salary. Please forward letter of interest and resume to Hiring Partner, 6624 Gulton Court, NE, Albuquerque NM 87109, or email: paralegal3.bleuslaw@gmail.com. All responses will remain confidential

Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Litigation Division. The department's team of attorneys represent the City in litigation matters in New Mexico State and Federal Courts, including trials and appeals, and provide legal advice and guidance to City departments. Attention to detail and strong writing skills are essential. Three (3)+ years' experience is preferred, with additional preference for civil defense litigation experience, and must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please apply on line at www.cabq.gov/jobs

Civil Rights Complainant Advisor

Under the Office of Equal Opportunity, supports and guides students, faculty, and/or staff engaged as respondents or complainants in civil rights proceedings. Advises participants of policies and procedures and accompanies participants to meetings, interviews, and appeals. Bachelor's degree in a directly related field; at least 3 years of experience directly related to the duties and responsibilities specified. Completed degree(s) from an accredited institution that are above the minimum education requirement may be substituted for experience on a year for year basis. The University of New Mexico is an affirmative action, equal opportunity employer. Apply online: <https://unm.csod.com/ux/ats/careersite/18/home/requisition/13542?c=unm>

Supreme Court of New Mexico - Associate Staff Counsel Position

Come work with us in the historic Supreme Court Building in Santa Fe! The Supreme Court seeks to fill an attorney associate position in its staff counsel office. The position is at-will, and the annual salary is \$74,595-\$82,054. The applicant will support the Supreme Court's adjudicative and rulemaking functions; will review cases, perform legal research, evaluation, analysis, and make recommendations to the Court. For a detailed description of the job qualifications, please visit the Careers page on the New Mexico Courts Web Site at <https://www.nmcourts.gov/careers.aspx> To apply, you must submit a completed New Mexico Judicial Branch Application for Employment, a letter of interest, resume, writing sample, and transcripts.

Civil Rights Respondent Advisor

Under the Office of Equal Opportunity, supports and guides students, faculty, and/or staff engaged as respondents or complainants in civil rights proceedings. Advises participants of policies and procedures and accompanies participants to meetings, interviews, and appeals. Bachelor's degree in a directly related field; at least 3 years of experience directly related to the duties and responsibilities specified. Completed degree(s) from an accredited institution that are above the minimum education requirement may be substituted for experience on a year for year basis. The University of New Mexico is an affirmative action, equal opportunity employer. Apply online: <https://unm.csod.com/ux/ats/careersite/18/home/requisition/13501?c=unm>

Hearing Coordinator

Oversees all day-to-day administrative hearing activities on the UNM campus, including its branch campuses, School of Medicine, and School of Law. The Hearing Coordinator reports to the UNM Administrative Hearing Officer with a dotted line to the Title IX Coordinator for providing timely information on cases. The Hearing Coordinator is a non-voting member in an administrative hearing and serves as the central point of contact in resolving complex administrative issues. The administrative hearings will include confidential and difficult subject matter. High school diploma or GED; at least 4 years of experience directly related to the duties and responsibilities specified. Completed degree(s) from an accredited institution that are above the minimum education requirement may be substituted for experience on a year for year basis. The University of New Mexico is an affirmative action, equal opportunity employer. Apply online: <https://unm.csod.com/ux/ats/careersite/18/home/requisition/13143?c=unm>

Experienced Personal Injury Paralegal

Parnall Law Firm (awarded "Top Places to Work" and "Best Places to Work" in Albuquerque) is hiring an experienced Personal Injury Paralegal. Responsible for the handling of files through trial or settlement disbursement. Litigation experience required. Must be organized; detail-oriented; meticulous, but not to the point of distraction; independent/self-directed; able to work on multiple projects; proactive; someone who takes initiative and ownership; courage to be imperfect, and have humility; willing/unafraid to collaborate; willing to tackle the most unpleasant tasks first; willing to help where needed; willing to ask for help. Required to work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others; to give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible; to make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at www.HurtCallBert.com/paralegalcareers. All inquiries are confidential.

Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$20.69 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$21.71 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Legal Assistant

Legal Assistant with minimum of 3-5 years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, online research, is technologically adept and familiar with use of electronic databases and legal-use software. Seeking organized and detail-oriented professional with excellent computer and word processing skills for established commercial civil litigation firm. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Paralegal

Robles, Rael & Anaya, P.C. is seeking an experienced paralegal for its civil defense and local government practice. Practice involves complex litigation, civil rights defense, and general civil representation. Ideal candidate will have 3-5 years' experience in the field of civil litigation. Competitive salary and benefits. Inquiries will be kept confidential. Please e-mail a letter of interest and resume to chelsea@roblesrael.com.

Services

Briefs, Research, Appeals

Leave the writing to me— Experienced, effective, reasonable. cindi.pearlman@gmail.com (505) 281 6797

Legal Writing And Research Services

Please call; (575) 495-9076. Writing samples available upon request. Kenneth C. Detro LLC

Office Space

Office for Rent

820 Second Street NW, office for rent, two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170

110 12th Street NW

Beautiful, 2-story office for rent in Historic Downtown Albuquerque. Formerly Kathy Townsend Court Reporters. Upstairs: four private offices; one bath; small break area with small refrigerator. Downstairs: waiting area with fireplace; large office or open work area; generous breakroom area with large refrigerator; one bath; furnished conference room with table and 8 chairs; newly installed wood vinyl flooring. High ceilings, large windows, modern light fixtures throughout. Functioning basement, onsite parking. \$3,000.00/month. Contact Shane Youtz, (505) 980-1590 for an appointment.

Professional Downtown Location

Executive office suite available on the 5th floor of the prestigious Albuquerque Plaza Building. This Class A office space provides fully furnished offices with IT, dedicated phone line, mail services and full-time receptionist. Parking access and flexible lease terms are available. Please contact Leasing Manager, Cindy Campos at 505-270-4168.

Downtown Office Space For Lease:

1001 Luna Circle. Charming 1500 square ft. home converted to 4 offices, kitchenette and open reception/secretarial area with fireplace and wood floors. Walking distance from courthouses and government buildings. Free parking street-front and in a private lot in back. Security System. \$1500/mo. plus utilities. Call Ken @ 505-238-0324

Sun Valley Executive Office Suites

Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Quick access to Downtown Courthouses. Our all-inclusive executive suites provide simplicity with short term and long-term lease options. Our fully furnished suites offer the best in class in amenities. We offer a move in ready exceptional suite ideal for a small law firm with a secretary station. Visit our website SunValleyABQ.com for more details or call Jaclyn Armijo at 505-343-2016.

Miscellaneous

Want To Purchase

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

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Contact Marcia Ulibarri,
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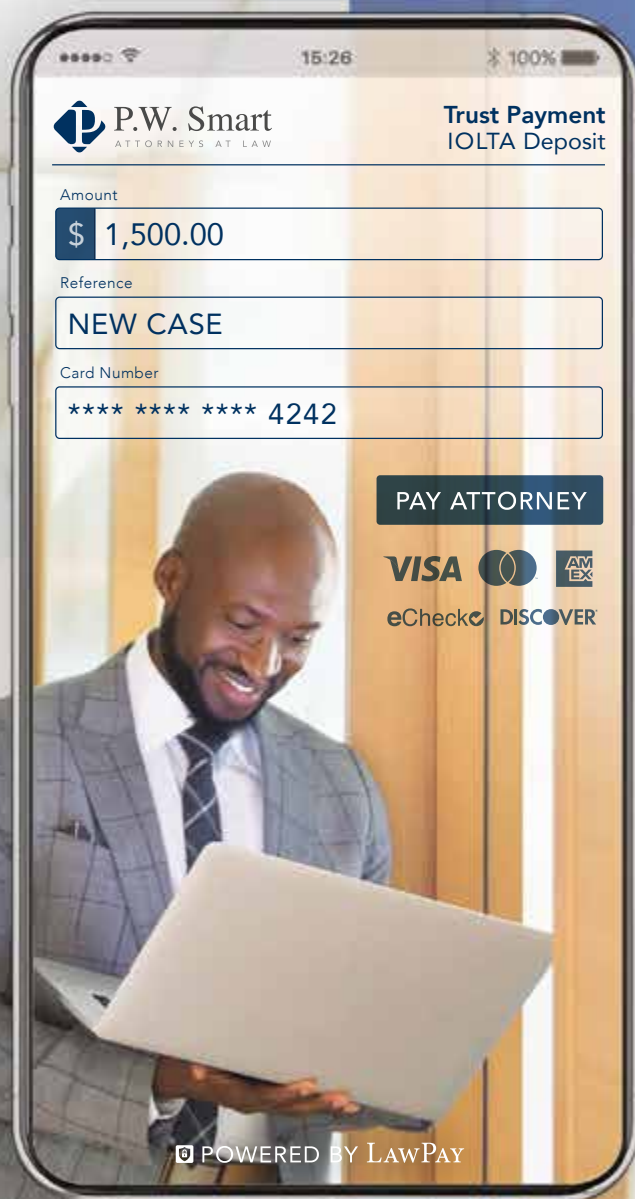
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