

BAR BULLETIN

November 11, 2020 • Volume 59, No. 21



Mammoth Hot Springs by Jeff Corwin (see page 3)

www.jeffcorwinfineart.com

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CLE Planner

*Upcoming programming
from the
Center for Legal Education*

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Rothstein Donatelli LLP was named the Best Lawyers™
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In addition, Rothstein Donatelli LLP lawyers were included
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Criminal Defense: White Collar

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Personal Injury Litigation:
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Criminal Defense: White-Collar

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Meetings

November

- 12**
Business Law Section Board
4 p.m., teleconference
- 13**
Prosecutors Section Board
Noon, teleconference
- 17**
Solo and Small Firm Section Board
10:30 a.m., teleconference
- 18**
Children's Law Section Board
Noon, teleconference
- 19**
Elder Law Section Board
Noon, teleconference
- 19**
Public Law Section Board
Noon, teleconference

Workshops and Legal Clinics

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: Jeff Corwin has taken photos out of a helicopter, in jungles, on oil rigs and an aircraft carrier. Assignments included portraits of famous faces and photos for well-known corporate clients. After 40+ years as a commercial photographer, Corwin has turned his discerning eye to fine art photography, primarily landscape. Trusting his vision is important to Corwin. He has always kept the same approach, discernment and desire to create photographs grounded in design with simplicity, graphic forms, strong lines or repeating configurations. Experience has taught him not to second guess composition or content. Humble shapes, evocative lines. Eliminate clutter. Light when necessary.

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 Applicants

Seven applications have been received in the Judicial Selection Office as of 5 p.m., Oct. 13 due to the retirement of the Honorable Supreme Court 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. The New Mexico Supreme Court Judicial Nominating Commission will convene beginning at 9 a.m. on Thursday, Nov. 19, and will occur exclusively by Zoom. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the applicants 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. The names of the applicants in alphabetical order are: **Judge James Waylon Counts, Judge Jennifer Ellen DeLaney, Frank Victor Crociata, Judge Victor S. Lopez, Steven S. Michel, Judge Julie J. Vargas and Judge Briana Hope Zamora.**

Topic: New Mexico Supreme Court Judicial Nominating Commission Meeting

Time: Nov. 19 at 9 am

Join Zoom Meeting

Professionalism Tip

With respect to the public and to other persons involved in the legal system:
I will keep current in my practice areas, and, when necessary, will associate with or refer my client to other more knowledgeable or experienced counsel.

<https://unm.zoom.us/j/379615447?pwd=M3lSVGxuSEkrSjd4cExlVXYwK3MzQT09>
Meeting ID: 379 615 447
Password: 72146

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

The U.S. District Court for the District of New Mexico will be closed Nov. 26-27, in observance of Thanksgiving. Court will resume on Monday, Nov. 30. After-hours access to CM/ECF will remain available as regularly scheduled. Stay current with the United States District Court for the District of New Mexico by visiting the Court's website at: www.nmd.uscourts.gov.

Fourth Judicial District Court Announcement of Vacancy

A vacancy on the Fourth Judicial District Court will exist on Jan. 1, 2021, to fill the position currently occupied by Judge Flora Gallegos. Inquiries regarding more specific details of this judicial vacancy should be directed to the chief judge or the administrator of the court. 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. The deadline for applications was Nov. 3 at 5 p.m. The Judicial Nominating Committee will meet at 9 a.m. on Thursday, Dec. 3, and will occur exclusively by Zoom. The Commission meeting is open to the public, and anyone who wishes to make comments about any of the candidates will have an opportunity to be heard. Topic: New Mexico Supreme Court Judicial

Nominating Commission Meeting

Time: Dec. 3 at 9 a.m.

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

Meeting ID: 379 615 447

Password: 72146

Fifth Judicial District Court Announcement of Applicants

Four applications were received in the Judicial Selection Office for the Judicial Vacancy in the Fifth Judicial District Court, due to the resignation of the Honorable Raymond Romero, effective, Oct. 16. The Judicial Nominating Commission will meet at 9 a.m. on Thursday, Nov. 12, and will occur exclusively by Zoom. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. 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:

The names of the applicants in alphabetical order: **Nate Banks, Denise A. Madrid Boyea, Ariane R. Gonzales and Eileen P. Riordan.**

Topic: Fifth Judicial District Judicial Nominating Commission Meeting

Time: Nov. 12 at 9 a.m.

Join Zoom Meeting

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

Meeting ID: 379 615 447

Password: 72146

Twelfth Judicial District Court Announcement of Vacancy

A vacancy on the Twelfth Judicial District Court will exist on Nov. 2. Due to the retirement of the Honorable James Waylon Counts, effective Nov. 1. Inquiries regarding more specific details of this judicial vacancy should be directed to the chief judge or 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 applica-

tions has been set for Tuesday, Nov. 17, 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. The Judicial Nominating Commission will meet at 9 a.m. on Wednesday, Nov. 25, and will occur exclusively by Zoom. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. 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: Twelfth Judicial District Judicial Nominating Commission Meeting

Time: Nov. 25 at 9 a.m.

Join Zoom Meeting

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

Meeting ID: 379 615 447

Password: 72146

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 rsinello@nmbar.org.

New Mexico Legal Aid

The Board of Bar Commissioners will make four appointments to the New Mexico Legal Aid Board for three-year terms, with two members from the First and Second Congressional Districts and one member of and recommended by the Indian Law Section. Active status members admitted to practice in New Mexico interested in serving on the Board should send a letter of interest and brief resume by Nov. 25 to Kris Becker at sbnm@nmbar.org.

New Mexico Access to Justice Commission

The Board of Bar Commissioners will make two appointments to the N.M. Access to Justice Commission for three-year terms. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico interested in serving on the Commission should send a letter of interest and brief resume by Nov. 25 to Kris Becker at sbnm@nmbar.org.

State Bar of New Mexico Access to Justice Fund Grant Commission

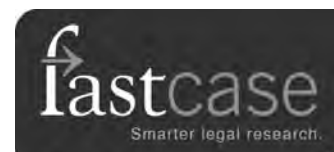
The Board of Bar Commissioners will make one appointment to the State Bar of New Mexico ATJ Fund Grant Commission for a three-year term. The ATJ Fund Grant Commission solicits and reviews grant applications and awards grants to civil legal services organizations consistent with the State Plan for the Provision of Civil Legal Services to Low Income New Mexicans. Active status attorneys in New Mexico, not affiliated with a civil legal service organization which would be eligible for grant funding from the ATJ Fund, interested in serving on the Commission should send a letter of interest and brief resume by Nov. 25 to Kris Becker at sbnm@nmbar.org.

Appointments to Newly Created New Mexico State Bar Foundation Board

The Board of Bar Commissioners of the State Bar of New Mexico will appoint four directors to the newly created New Mexico State Bar Foundation Board, three of which shall be active members of the State Bar and one member of the public who is a non-attorney. The term of the at-large directors shall be established by lot at the first meeting of the new board, with one director having a term of one year, one director having a term of two years, and two directors each having a term of three years. Thereafter, the term of office of at-large directors shall be three years. The New Mexico State Bar Foundation is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the Foundation are to: enhance access to legal services for underserved populations; promote in-

— *Featured* —

Member Benefit



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This service is available through www.nmbar.org. Fastcase also offers free live training webinars. Visit www.fastcase.com/webinars to view current offerings. Reference attorneys will provide assistance from 8 a.m. to 8 p.m. ET, Monday–Friday.

Customer service can be reached at 866-773-2782 or support@fastcase.com. For more information, contact Christopher Lopez, clopez@nmbar.org or 505-797-6018.

novation in the delivery of legal services; and provide legal education to members and the public. Members interested in serving on the Board should submit a letter of interest and a resume to sbnm@nmbar.org by Nov. 25.

Employee Assistance Program Managing Stress Tool for Members

NMJLAP contracts with The Solutions Group, The State Bar's EAP service, to bring you the following: A variety of resources surrounding some of the complex issues we are facing today such as managing conversations when you disagree politically, dealing with challenging people during COVID, civil unrest, Zoom exhaustion and speaking up about physical distancing. All of these can be found under the 'Additional Resources' tab when selecting the EAP option on the Solutions Group Website. Webinars are FREE, and have a wide range of topics such as mindfulness during Covid-19,

bias in the work-place, managing stress, and many more. The Solutions Group offers Work-Life Services. The Work-Life Services is a free, confidential access to professional consultants and online resources. All resources topics, webinars, and the Work-Life Service can be found at www.solutionsbiz.com. The Solutions Group can help with any life situation. Call 505.254.3555, or 866-254-3555 to receive FOUR FREE counseling sessions. Every call is completely confidential and free!

State Bar Sections and Divisions

Sections' Annual Meeting of Membership

The sections of the Bar have begun holding annual meetings for their respective membership. You may find your section's annual meeting date either through an eBlast announcement or through the weekly eNews. Although this year has posed many challenges for us all, all of the voluntary groups have stayed active and continue to give back to their members and community at large. Learn of their accomplishments and what plans they have for next year. For further information, email Member Services at memberservices@nmbar.org.

Natural Resources, Energy and Environment Law Section

Section Nominations Open for 2020 Lawyer of the Year Award

The Natural Resources, Energy and Environmental Law Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 18. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. Award criteria and nomination instructions are available at www.nmbar.org/NREEL. Nominations are due by Nov. 13 to Member Services at memberservices@nmbar.org.

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

New Mexico Black Lawyers Association

Social Justice 101: Lunch and Learn

The New Mexico Black Lawyers Association invites members of the legal community to attend its virtual series of CLEs, "Social Justice 101: Lunch and Learn with the New Mexico Black Lawyers Association." The Lunch and Learns will take place virtually from 11:30 AM until 1:30 PM on Wednesday, Nov. 18 (2.0 G), Thursday, Nov. 19 (1.0 G & 1.0 E/P), and Friday, Nov. 20 (2.0 G). Two 1-hour long, social justice themed CLEs will be presented each day. Registration is \$50 per day for attorneys seeking CLE credit, or \$125 for all 3 days. There is a discounted registration of \$30 per day for NMBLA members, co-sponsors, government attorneys, attorneys not seeking CLE credit, and paralegals, or \$65 for all 3 days. The deadline to request a refund is Nov. 11. For CLE agenda and faculty and to register online, please visit www.newmexicoblacklawyersassociation.org.

New Mexico Women's Bar Association

Announcement of Annual Meeting & Request for Nominations to the Board of Directors

The New Mexico Women's Bar Association announces its 2020 Annual Meeting, which be held remotely Monday, Nov. 16 at noon. All are invited. Please R.S.V.P. to nmwba1990@gmail.com to receive your Zoom invitation and the meeting materials. The Women's Bar also announces four openings on its board of directors; directors will serve two-year terms beginning January 2021. The board invites interested members to apply by sending a short letter of interest and a resume to nmwba1990@gmail.com. Nominations will close Nov. 16. Elections for board members will be held electronically from Nov. 23-30. Directors are expected to attend a retreat in late January (which is generally a weekend, in-person event, but will likely be of shorter duration and via Zoom this year) and also to attend bi-monthly meetings. All members of the board actively participate on one or more committees and support events sponsored by the Women's Bar Association. The New Mexico Women's Bar does not discriminate on the basis of sex or gender and encourages all licensed attorneys to become members and apply to be on the board. For more information about the Women's Bar Association, or to become a member, please go to our website, www.nmwba.org.

OTHER NEWS

The Bar Plan

Free 8-Hour Webinar

The Bar Plan will host a free, eight-hour webinar on Nov. 13. The webinar is approved for 6.0 ethics hours and 2.0 general hours of CLE credit in New Mexico. For the webinar, login opens at 7:30 a.m. and programming begins at 8 a.m. on Nov. 13. To register, call 314-965-3333 or visit www.thebarplan.com.

Legal Education

November

- | | | |
|---|--|--|
| <p>12 2020 Probate Institute
6.8 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Immigration Law Institute: Ethics and Professionalism
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 How to Draft a Rock Solid Indemnification Provision
1.3 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>13 Parenting Coordinator Training
11.5 G, 1.0 EP
Webcast
Comallie-Caplan
575-526-4222</p> | <p>18 Word Master Class on Styles
1.0 G
Live Webinar
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>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 Rock-n-Roll Law Intellectual Property/Copyright Series: The Ethical Issues Representing a Band - Using the Beatles as a Case Study
1.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Animal Law Institute: Ethical Consideration for Animal Lobbyists, Litigators (and Lovers)
3.0 EP
Live Webinar
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>18 Document Analysis: How to Read a Will or Trust
1.0 G
Webcast
Cannon Financial Institute
706-389-7645</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>17 Essential Asset Protection Planning
1.5 G
Webcast
Cannon Financial Institute
www.cannonfinancial.com</p> | <p>18 The US-Mexico-Canada Agreement and New Horizons for North America
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 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> |

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

20 Copyright + Art: Told Th ough Colorful Stories and Original Artwork
2.0 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.nmbar.org

23 Practice Risk Management Assessment Part 1 and Part 2
2.0 G
Webcast
American Educational Institute
www.aeiseminars.com

30 Get Focused! Time & Distraction Management + Digital Detox
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

30 Ethics for Business Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

December

1 Business Divorce, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

1 How to Better Manage Your Workload: Email Management
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

2 Zoom Training for Lawyers and Using It Securely
1.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.nmbar.org

2 Business Divorce, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 How to Better Manage Your Workload: Task, Goal & Deadline Management
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

7 Text Messages & Litigation: Discovery and Evidentiary Issues
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 Basic Practical Regulatory Training for the Gas Industry
26.7 G
Webcast
NMSU Center For Public Utilities
www.business.nmsu.edu

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

8 Get Organized! Fight the Paper – Organize your Digital Matter File!
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

10 Guarantees in Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 Employee v. Independent Contractors: Tax and Employment Law Considerations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 GREAT Adverse Depositions: Principles & Principal Technique
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

15 Ethics and Virtual Law Offices
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 2020 Mock Meeting of the Ethics Advisory Board
2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

15 Keeping Your Tail Covered: Tips on Maintaining Malpractice Coverage When Changing Jobs, Going into Government Work, or Retiring
2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

- | | | |
|--|--|---|
| <p>16 Trust and Estate Planning for Pets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 The world Has Changed. Let's Sort it Out
3.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Lawyer Ethics of Email
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 PowerPoint Power Hour
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Naked and Afraid: A Legal Survival Skills Program
2.0 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 "When There Are Nine" Sexual Bias in the Legal Profession
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>17 Twenty-six Ethical Tips from Hollywood Movies
2.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Advanced Google Search for Lawyers
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 The Ethics of Social Media Research
1.5 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>23 Drafting Client Engagement Letters in Trust and Estate Planning
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Social Media as Investigative Research and Evidence
1.0 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |



Congratulations, Anne L. Taylor! Chief Disciplinary Counsel



After completing a nationwide search, the Disciplinary Board of the New Mexico Supreme Court is pleased to announce the appointment of **ANNE L. TAYLOR** as Chief Disciplinary Counsel effective Nov. 1. Ms. Taylor has worked in the Office of Disciplinary Counsel for the past 18 years, most recently serving as Deputy Disciplinary Counsel, and will replace the current Chief, William Slease, who is retiring from the Office. Congratulations to Ms. Taylor on this well-deserved appointment.

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Inhale, Exhale, Change Your Life.

By Caitlin Dillon

You have 25,000 opportunities per day to improve your baseline of health and well-being. It doesn't require a gym membership, exercise equipment, or counting calories. It's free, accessible 24/7/365, and it's something you have been doing your whole life, likely with little awareness of the profound effects it has on your everyday biological function. This opportunity is your breath. If this seems like an underwhelming answer, you're not alone. You may be asking yourself, *I've been breathing my whole life, why should I change how I breathe or learn how to breathe better?* For starters, COVID-19 is a good motivator. COVID-19 attacks your lungs and respiratory system, inhibiting your ability to breathe. A stronger respiratory system, combined with the use of safety protocols and guidelines may provide an extra line of defense or a quicker recovery, with positive side effects such as lessened feelings of anxiety or stress.¹ But the journey of breathwork is far more powerful than that; adjustments to the way we inhale and exhale have the potential to transform who we are as individuals.

It's hard to know where to start with breathing, since it's more or less an automated function that's controlled by the brain. However, a good place to start is simply by breathing through your nose, day and night. James Nestor, in his new book, *Breath: The New Science of a Lost Art* took a deep dive into breathwork and the history of breathwork, speaking to leading experts on the subject. The nose is designed to breathe, and according to Dr. Jayakar Nayak of the Stanford Department of Otolaryngology Head and Neck Surgery Center, the nose is "the gatekeeper of our bodies, pharmacist to our minds, and weather vane to our emotions" (Nestor, 2020, p. 45). The nose has a complex built-in filtering system that purifies the air that enters our body before it travels to our lungs.

When you breathe, molecules of air enter the nose at five miles per hour, first traveling through the turbinates, or *nasal concha*, that are lined with tissue covered in a mucous membrane. This membrane warms the air to body temperature as it filters out harmful pollutants or particles that could cause issues if they traveled to the lungs. This is effectively our body's first line of defense against infection. The mucus membrane, aided by cilia, moves along at half an inch per minute, moving the irritants down the throat and into the stomach. The cilia keep pushing inward and down at about 16 beats per minute, no matter the position of your nose. (Nestor, 2020, p. 45).

Most importantly, nasal breathing produces minute amounts of nitric oxide. When nitric oxide is inhaled through the nose and travels into the lungs, it helps to increase "arterial oxygen tension," which increases the capacity of the lungs to absorb oxygen. In addition, nitric oxide helps reduce blood pressure, maintain homeostasis, and aids in immune defense.² Each anatomical section of the nose is designed to heat, clean, slow, and pressurize air to allow for more efficient oxygen extraction. This is why nasal breathing is more efficient and healthy for our bodies. Conversely, mouth breathing causes a whole host of issues, including sleep apnea, snoring, fatigue, dental hygiene issues, decreased productivity, and even craniofacial alterations over time.³

Allergies and asthma notoriously alter and affect the way we breathe. Spring in New Mexico is the prime season for off the charts pollen counts and wind storms, exacerbating allergies and asthma. If the nasal cavity becomes congested due to allergies, airflow decreases, and bacteria flourish, leading to infections and colds, and more congestion. It is at this moment, that we switch to mouth breathing, making the problem worse (Nestor, 2020, p. 7). Allergy shots, nasal decongestants, and steroids can provide temporary relief, however, there are ways to unblock your nose through better breathing mechanics.

The Buteyko Method was developed in 1952 by Ukrainian Dr. Konstantin Pavlovich. It is a method designed to improve functional breathing patterns, and prevent chronic over-breathing. The Buteyko Method uses a series of exercises to decongest the nose, and return to nasal breathing, improving your overall health. The method has been revived by Patrick McKeown and his book, *The Oxygen Advantage*, and the Buteyko Method has been effective for individuals with asthma and chronic allergies.⁴ This method retrains the body to breathe in line with its needs. "Functional breathing involves breathing in and out through the nose. The breath is light, regular, effortless with the primary movement from the diaphragm."⁵

Aside from the health benefits, improved breathing mechanics can have a profound impact on athletic performance. The Bohr Effect was discovered in 1904 by Danish physiologist Christian Bohr. Bohr studied respiration; he "knew that oxygen was the cellular fuel and that hemoglobin was the transporter...but Bohr didn't know *why* this exchange

took place” (Nestor, 2020, p. 75). What Bohr discovered was fascinating, and to use a legal analogy, “in some ways, carbon dioxide worked as a kind of divorce lawyer, a go-between to separate oxygen from its ties so it could be free to land another mate” (Nestor, 2020, p. 76). Muscles that produce more carbon dioxide attract more oxygen. Bohr also found that “carbon dioxide had a profound dilating effect on blood vessels, opening these pathways so they could carry more oxygen-rich blood to hungry cells” (Nestor, 2020, p. 75).

When we exercise, we inhale oxygen, and exhale carbon dioxide. Brian Mackenzie and his team at SH//FT have been experimenting with nasal breathing and breath control as a means of improving resilience and enhancing performance for several years. His training programs implement nasal breathing and proper breathing mechanics to increase carbon dioxide tolerance levels, teaching the pulmonary system to operate more efficiently. Heavy breaths through the mouth during exercise causes your body to unload too much carbon dioxide too quickly. This interrupts the flow of blood to the muscles, and decreases efficient delivery of oxygen. In contrast, nasal breathing allows athletes to get the same amount of oxygen without working as hard. Nasal breathing also promotes better functional movement and stability because nasal breathing during exercise demands that you breathe deeper and access the diaphragm, promoting stable functional movement patterns that can decrease injury. Adapting to nasal breathing during exercise is a challenging and humbling task requiring patience and focus, but the practice is well worth the rewards in performance and recovery.⁶

Nasal breathing can have a profound effect on your state, or how you feel at any given moment. When you breathe through your nose you are in a more parasympathetic state, or the rest and digest state. Conversely, when you breathe through your mouth, you activate your sympathetic nervous system, otherwise known as “fight or flight.” It doesn’t matter if you are being chased by a bear or are engaged in intense litigation, the physiological reaction of your body is the same. The sympathetic and parasympathetic signals travel through the body on two branches of the vagus nerve. The parasympathetic and sympathetic sides are operating continually most of the time, but one side may take control depending what situation you find yourself in. Conscious breathwork can act as a wedge, meaning you can manipulate your state through breathwork, unlocking the ability to activate your parasympathetic side in stressful situations.⁷ You can choose your physiological response. Techniques such as the Wim Hof method or Pranayama upregulate your system, while Box Breathing or Alternate Nostril Breathing (Nadi Shodhana) downregulate your system. The ability to consciously control your state is a way to improve your response to stress and increase resilience.

Carbon dioxide is the metabolic stress messenger of the body.⁸ When you downregulate, there are higher levels of carbon dioxide in your blood and pulmonary system. When you upregulate into the sympathetic state, there are lower levels of carbon dioxide. New research suggests that physiological reactivity correlates with emotional reactivity. A recent study conducted by the Health and Human Performance Foundation and California State University Fullerton found that “people with higher carbon dioxide tolerance tests had lower in-the-moment anxiety,

while those with lower carbon dioxide tolerance tests had higher in-the-moment anxiety.”⁹ New treatment programs to address panic disorders focus on reducing terrorizing symptoms by improving breathing to reduce hyperventilation. Hyperventilation is associated with abnormally low levels of carbon dioxide, and this treatment has proven more effective than traditional cognitive behavioral therapy in some instances.¹⁰ Improving your carbon dioxide tolerance makes you more resilient to stress, which allows you to make better decisions in the courtroom and in your life.

Changing habits starts with awareness. Be aware of your breath and how you breathe. Then begin to experiment. Breathe through your nose as much as you can during the day and night, try it while you walk, run, bike, work, and sleep. Be aware of how your breath is affected by your posture and movement. Are there areas where you can move better? Be aware of how your breath affects your state. Are there moments where you should breathe differently? What do you observe when you breathe differently? Slow breathing heals, even when practiced for just five to ten minutes a day. Take the time for yourself. How we breathe matters.

About the Author: Caitlin Dillon is a prosecutor in the State of New Mexico

Endnotes

¹ Coronavirus Recovery: Breathing Exercises. (n.d.). Retrieved September 22, 2020, from <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-recovery-breathing-exercises>.

² McKeown, P. and Macaluso M. (2017, March 9). Mouth Breathing: Physical, Mental and Emotional Consequences. Retrieved September 22, 2020, from <https://www.oralhealthgroup.com/features/mouth-breathing-physical-mental-emotional-consequences/>.

³ McKeown, P. and Macaluso M. (2017, March 9). Mouth Breathing: Physical, Mental and Emotional Consequences. Retrieved September 22, 2020, from <https://www.oralhealthgroup.com/features/mouth-breathing-physical-mental-emotional-consequences/>.

⁴ What is the Buteyko Method? (2020, September 15). Retrieved October 05, 2020, from <https://buteykoclinic.com/the-buteyko-method/>.

⁵ What is the Buteyko Method? (2020, September 15). Retrieved October 05, 2020, from <https://buteykoclinic.com/the-buteyko-method/>.

⁶ Panasevich, J. (2020). Nasal Breathing: The Secret to Optimal Fitness. Retrieved October 05, 2020, from <https://health.usnews.com/health-news/blogs/eat-run/articles/nasal-breathing-the-secret-to-optimal-fitness>

⁷ Carney, S. (2020). Chapter 5: Breathe Out. In *The Wedge: Evolution, Consciousness, Stress, and the Key to Human Resilience*. Denver, CO: Foxtopus Ink.

⁸ Learn about your tolerance to Carbon Dioxide with a simple breath test. (2020, July 09). Retrieved October 05, 2020, from <https://shiftadapt.com/breath-test-calculator/>

⁹ Research - HHP-Foundation. (n.d.). Retrieved October 05, 2020, from <https://www.hhp-foundation.org/research>.

¹⁰ Southern Methodist University. (2010, December 22). New breathing therapy reduces panic and anxiety by reversing hyperventilation. *ScienceDaily*. Retrieved October 5, 2020 from www.sciencedaily.com/releases/2010/12/101220200010.htm

2021 JUDICIAL CLERKSHIP

Applicant Finalists



Justice David Thomson approached the State Bar in late 2019 about developing a program for law students to pursue pathways to the judiciary. Specifically, he wanted the program to focus on underrepresented students, which may include, but is not limited to, students of racial or ethnic minorities, women, identify as LGBTQIA+, students with disabilities, and students who are economically disadvantaged.

Working in collaboration with the New Mexico Supreme Court, Young Lawyers Division and the Committee on Diversity in the Legal Profession, we were proud to create and launch the Judicial Clerkship Program. Congratulations to the following rising 2L students who will participate in the program and receive a summer stipend. They will partner with a member of the YLD for mentorship, participate in a professional development boot camp, and work closely with a Supreme Court Justice and a judge from the Court of Appeals.

Stay tuned for a corresponding episode on the *SBNM is Hear* podcast series! Justice David K. Thomson will be chatting further with Roshanna Toya and the YLD Chair, Allison Block-Chavez about their clerkship experience and the value it has had on their careers!



LAUREN CHAVEZ

“When I was a little girl, my abuela recounted many stories to me about being made to be ashamed to speak Spanish. As a child my abuela was severely punished in school for speaking her first language. With tears in her eyes she told me, “Mijita, I was confused because I did not even know I was speaking Spanish. It was the language my parents spoke and it came as naturally to me as breathing. I want to participate in the 2021 Judicial Clerkship Program because I understand that it is an unparalleled opportunity to work closely with a judge, gain insight into the judicial process, and gain exposure to various areas of the law.”



DENISSE ENRIQUEZ

“I am a first-generation immigrant and the first in my family to graduate college. I worked full time and went to school full time to obtain an Associates in Paralegal Studies and a Bachelor’s in Business Administration with a concentration in human resources. I have balanced my responsibilities as a wife, mother of two extraordinary girls, education, and work because I know that I can and should do more to help my community. Selection to participate in this program would be more than an honor to me. It would provide the opportunity to truly put the research and writing skills I have learned up until this point to use as part of something larger that potentially affects our entire state.”



CODY JEFF

"I am a member of the Navajo Nation from Crownpoint, New Mexico. The reservation is wonderful for its natural beauty, rich culture and history, and above all for its people. I was raised by a resilient and humble community that invested in the education of its youth to ensure the survival of the Navajo people. I appreciate opportunities like a judicial clerkship because it is an investment in the future lawyers of New Mexico, our home. COVID-19 impacted New Mexico and the Navajo Nation in similar ways, and now we must invest and rebuild our state in the coming years. To accomplish this goal will require a generation of professionals who are dedicated to serving our state."



AMBER MORNINGSTAR BYARS

"I possess certain invaluable life-skills that are not taught in law school. These particular skills were honed by a life of poverty and struggle. At age 13 I began bussing tables and by 16 I was waitressing. Eventually, I became a bartender and worked a full-time schedule of five nightshifts per week throughout my four years in undergrad at the Institute of American Indian Arts. It would be a great honor for me to serve as a clerk for the State of New Mexico. I was born at the Santa Fe Indian Hospital and raised in Taos and Albuquerque. I look forward to moving back to New Mexico after I graduate to practice law and give back to the community."



HUONG NGUYEN

"The first and primary reason I chose to become a lawyer is to assist the Vietnamese community in New Mexico. Many of my family members own their own businesses including my parents, and I knew virtually no one in the legal field to assist them with their needs. I am going to be that person in the future. I still carry that motivation with me. The second reason is to accomplish something that has not been accomplished in my family yet: complete graduate school. I will hopefully make my family proud in the end game. As a first-generation, Vietnamese American woman, I decided to apply for the 2021 Judicial Clerkship to contribute to my home state of New Mexico and to further my goal of assisting my community; the opportunity to also work on the judicial side of the legal field is a chance I do not want to waste."



NATALIE SAING

"My personal experiences have profoundly shaped my approach to understanding how racism continues to structure the social order and the law. My parents survived the genocide that gripped Cambodia in the mid-1970s, when millions of Cambodians worked to death in labor camps. They sought asylum in the United States, finding refuge in Portland, Oregon, where I was born and raised. With a judicial clerkship under my belt, I hope to contribute to increasing representation in the judiciary and to continue the fight against institutionalized racism at all levels of the legal profession."

For Justice Ruth Bader Ginsburg, New Mexican at Heart.

By Roberta Cooper Ramo

So much has been written and spoken about the life and the cataclysmic impact of the death of Justice Ruth Bader Ginsburg, that it is fair to wonder what a New Mexico lawyer might have to add. What I know is that New Mexicans all, and especially lawyers and judges mourn her as one of our own, because we saw her love of our State, our people, Our Santa Fe Opera, our values and our skies.

For decades, Justice Ginsburg came to our miraculously beautiful state to refresh and expand her visual, musical and cultural horizons. One of her admirable qualities, was her willingness, with pleasure, to interrupt her vacation days to read to children, speak to groups of all kinds and in one of her last visits here to speak at the State Bar of New Mexico Annual Meeting. Under the leadership of Brent Moore, then President, the State Bar moved its Annual Meeting to August to hear her. To the more than 1000 lawyers, judges, law school professors and their families, especially their daughters, moving that meeting gave them a chance to see one of the most memorable legal icons in the history of the American Democracy. It turned out that while seeing her and hearing her in person was remarkable in every way, the lesson that she taught before she began her interview was a lesson deeply important for this very moment in our nation's fraught history; when we seem to be teetering toward losing our democratic experiment.



Justice Ginsburg taught this lesson by asking to speak first about the death of her friend and colleague at the Court, Justice Scalia. As she walked onto the stage that day, the entire audience rose to their feet to cheer her. This was not just the applause of respect and awe that an Associate Justice of the United States Supreme Court might expect when far from DC. It was a flood of genuine affection and gratitude for what her life at the law had wrought. But rather than take that moment of celebration of her as a personal compliment, she wanted to use our attention to remember her friend Justice Scalia and explain how two people, a man and a woman who came, sometimes it seemed,

from different planets, could have such deep respect and affection for one another. At the same time, it was a primer in how the Supreme Court works and why dissents matter, whether she was the one in dissent to a Scalia Opinion or he in dissent, as in the Virginia Military Institute case to her majority opinion. She also explained about judicial compromise. I wish today, that I could channel her views to those who did not have the luck to be her colleague at that most consequential of American institutions for long enough or at all. I saw in Chief Justice Robert's tear filled eyes as she lay In State in the Court, grief not just for her person, but for her presence in that room of 9.

Perhaps some part of her impact was because she knew what it was like to be discriminated against. Or to be diminished as she tried to do her work. She once said that she had three strikes against her as she started out in law school and then after her graduation; she was a woman, a Jew and married with a child. How could such a person think that she might have a career at the law, filled with men? She could, because she simply refused to let the narrow-minded views of those at the time keep her from doing her brilliant work. She was a warrior for the rights of women, as an advocate and later as a judge. In being that advocate for women, she was also an advocate trying to demolish a legal insistence on gender stereotypes. Later she sought to bring down legal barriers for people who only wanted the right to love and marry whom they wished, who were poor, under represented or the objects of racial or ethnic discrimination. Being all three of those things that she found as barriers to be knocked down, my life was made possible by her work and her example.

She came here, to see her friends Judge Seth and his wife and daughters and fell in love with the Santa Fe Opera and New Mexico. Over the years, she made many friends; lawyers like me or young opera singers or judges she came to know here and respect. Her view of our deep appreciation for the lives and cultures of those different from ourselves validated her efforts to make that so for every American under the law.

So now, it is our time as lawyers, judges, and teachers of law to stand together in her place. Each of us must now, with her quiet civility and determination, fight for liberty for all in the law and in our courts and our offices. We must hear and argue out our differences and find compromises to move our state forward one hard step after the other, but always as friends at the State Bar.

Every time I was lucky enough to talk to Justice Ginsburg whether in person or over the phone, (I once confessed to her that I stood up every time she called, which made her laugh, but I could not help it.) she would ask “How are my New Mexico Skies?” Now she is in them, looking down I feel sure to see how we will honor her life with our actions. We are New Mexicans; we will not let her down.

Roberta Cooper Ramo is a shareholder of Modrall Sperling. She was the first woman to be elected President of the American Bar Association and was also the first woman to be President of The American Law Institute. Roberta was awarded The ABA Medal and was elected into The American Academy of Arts and Sciences. She serves as Chair of the board of ThinkNewMexico and on the Board of The Santa Fe Opera and Albuquerque Economic Development. She is a member of the American College of Trust and Estate Counsel and on panels of The American Arbitration Association. She has also served as the President of the Board of Regents of UNM.



Justice Ruth Bader Ginsburg, keynote speaker at the 2016 State Bar of New Mexico Annual Meeting



2016 President J. Brent Moore and Roberta Cooper Ramo with Justice Ginsburg

Opinions

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

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

Effective October 16, 2020

PUBLISHED OPINIONS

A-1-CA-36398	Southwest Organizing v. Bernalillo County	Affirm	10/15/2020
A-1-CA-37121	J Welch v. Premier Oil & Gas, Inc.	Affirm/Reverse/Remand	10/15/2020

UNPUBLISHED OPINIONS

A-1-CA-37463	State v. Y Amado	Affirm	10/13/2020
A-1-CA-38357	J Savell v. Waste Management of NM	Affirm	10/13/2020
A-1-CA-38766	CYFD v. Halario N	Affirm	10/13/2020
A-1-CA-38772	State v. M Chavez	Affirm	10/13/2020
A-1-CA-38780	State v. B Torres	Affirm	10/13/2020
A-1-CA-37812	State v. R Gonzalez	Affirm	10/14/2020
A-1-CA-38308	State v. M Loope	Reverse/Remand	10/14/2020
A-1-CA-37710	State v. C Okeefe	Affirm/Reverse/Remand	10/15/2020
A-1-CA-38193	State v. R Torres	Affirm	10/15/2020

Effective October 23, 2020

UNPUBLISHED OPINIONS

A-1-CA-33109	A McGregor v. Platinum Bank	Affirm	10/19/2020
A-1-CA-37574	Cradon Energy v. Energy Royalties	Affirm	10/19/2020
A-1-CA-38508	L Sandelin v. G Langworthy	Affirm	10/19/2020
A-1-CA-38844	State v. M Martinez	Reverse/Remand	10/19/2020
A-1-CA-38891	State v. T McCoy	Affirm	10/19/2020
A-1-CA-38892	State v. T Mccoy	Affirm	10/19/2020
A-1-CA-38914	CYFD v. Franklin C	Affirm	10/19/2020
A-1-CA-37506	D Laffoon v. Bank of New York Mellon	Affirm	10/20/2020
A-1-CA-37843	State v. J Brownell	Affirm	10/20/2020
A-1-CA-37912	L Vigil v. B Ludwig-Vigil	Affirm	10/20/2020
A-1-CA-38197	US Bank v. G Khalsa	Affirm	10/20/2020
A-1-CA-38541	R Flowers v. Western Motors	Affirm	10/20/2020
A-1-CA-37410	State v. G. Morris	Affirm	10/21/2020
A-1-CA-38565	State v. C Albright	Affirm	10/21/2020
A-1-CA-39070	State of NM HSD v. M Nassar	Dismiss	10/21/2020
A-1-CA-38819	State v. R Sena	Affirm	10/22/2020

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

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

Rules/Orders

From the New Mexico Supreme Court

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

The Supreme Court of New Mexico Announces 2020 Out-Of-Cycle And Year-End Rule Amendments

Under Rule 23-106.1 NMRA, the Supreme Court adopts most rule changes once per year in the fall. In addition, the Court approved out-of-cycle rule amendments that became or will become effective before December 31, 2020. Because of the large number of out-of-cycle and year-end rule amendments for 2020, the actual text of the rule amendments will not be published in the Bar Bulletin or on the State Bar's website due to space constraints. Instead, what follows is a summary of the rule amendments that the Court recently approved, which will be effective December 31, 2020, and the out-of-cycle amendments which were or will be effective as noted below and in the history note at the end of each approved rule. All rule amendments approved by the Court in 2020 and the related orders are available on the Court's website, <https://supremecourt.nmcourts.gov/2020.aspx>.

Children's Court Rules and Forms

Voluntary relinquishment of parental rights and consent to adoption

[New Forms 10-541 and 10-542 NMRA]

The Supreme Court has approved the Children's Court Rules Committee's recommendation to adopt new Forms 10-541 and 10-542 NMRA to ensure that all legal requirements for relinquishing parental rights are met, and that the respondent's relinquishment and consent are knowing and voluntary.

Civil Forms

Consumer debt litigation in magistrate and metropolitan courts

[Form 4-226 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Form 4-226 NMRA to extend the consumer debt amendments adopted in 2016 for cases pending in the district courts to cases pending in the magistrate and metropolitan courts. As noted below, the Court also approved the Committee's recommendation to amend Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA for the same purpose.

Subpoena forms

[Forms 4-503, 4-504, 4-505, and 4-505A NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Forms 4-503, 4-504, 4-505, and 4-505A NMRA for consistency with the amendments the Committee recommended, and the Court approved, for Rules 1-045, 2-502, and 3-502 NMRA. In addition, the Court approved the Committee's recommendations to make stylistic and structural changes recommended by prior committees that were consolidated into the Rules of Civil Procedure for

State Courts Committee.

Tenant rights in eviction proceedings

[Forms 4-901, 4-901A, and 4-902 NMRA]

The Supreme Court has approved the recommendation to amend Forms 4-901, 4-901A, and 4-902 NMRA to clarify tenants' rights in eviction proceedings. The Court further approved certain modifications suggested by the Rules of Civil Procedure for State Courts Committee to the proposed amendments that were published for comment from August 31, 2020, to September 18, 2020.

Restrictions on use of social media

[Forms 4-963, 4-963A, 4-965, and 4-970 NMRA]

The Supreme Court has approved the Domestic Relations Rules Committee's recommendation to amend Forms 4-963, 4-963A, 4-965, and 4-970 NMRA to allow a court to prohibit a restrained party from posting comments on a protected party's social media accounts.

Form specific to petitioner no longer necessary

[Withdrawn Form 4-971 NMRA]

The Supreme Court has approved the Domestic Relations Rules Committee's recommendation to withdraw Form 4-971 NMRA, stipulated order of protection against petitioner. In 2019, the Supreme Court amended Form 4-970 NMRA, stipulated order of protection, which previously had been for use when the respondent was the restrained party, to be used when either the petitioner or the respondent is the restrained party. With the 2019 amendment to Form 4-970, Form 4-971 is no longer needed.

Rules for Minimum Continuing Legal Education

Self-study credit for participating in approved legal activities

[Rules 18-201 and 18-204 NMRA]

The Supreme Court has approved the recommendation of the Board of Bar Commissioners, in its role as the MCLE Board, to amend Rules 18-201 and 18-204 NMRA to permit the award of self-study credits for participating in various legal activities approved by the Board and to allow for the carry-over of self-study credits for one compliance year.

Withdrawal of Appendix A

[Withdrawn Appendix A to Rule Set 18]

The Supreme Court has approved the withdrawal of Appendix A to Rule Set 18, the Rules for Minimum Continuing Legal Education, as the regulations were outdated and conflicted with other rules implementing continuing education requirements.

Rules Governing Admission to the Bar

Appointment of non-board members to hearing committees [Rule 15-301 NMRA]

The Supreme Court has approved the Board of Bar Examiners' recommendation to amend Rule 15-301 NMRA to allow the board to appoint non-board members to hearing committees. The amendments to Rule 15-301 became effective August 31, 2020.

Rules Governing Discipline

Notifications to pro se parties under Rule 17-212 NMRA [Rule 17-212 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rule 17-212 NMRA to clarify the notification requirements for attorneys who have resigned or who have been suspended or disbarred, so it is clear that the required notice under the rule by such attorneys includes notice to self-represented parties.

Inventorizing attorneys, client files, and trust fund disbursements [Rule 17-213 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rule 17-213 NMRA to add three provisions that would be applicable when an attorney or disciplinary counsel has been charged with inventorizing files and disbursing trust funds of an attorney who is disbarred, suspended, or deceased, becomes incapacitated, or resigns. In addition to other notice requirements already present in the rule, the amendments require inventorizing attorneys to give notice by publication of their appointment. The amendments also authorize disciplinary counsel to give notice by publication prior to the destruction of unclaimed client files. Finally, the amendments authorize an inventorizing attorney to seek an order authorizing the payment of unclaimed trust funds to the New Mexico Client Protection Fund for safeguarding and disbursement to persons entitled to those remaining trust funds.

Electronic copy of transcripts [Rule 17-313 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rule 17-313 NMRA to provide that disciplinary counsel may provide an electronic copy of a transcript of disciplinary proceedings to the respondent attorney upon request.

Rules Governing the New Mexico Bar

Board of Bar Commissioner districts and representation; extension of commissioner terms when a commissioner is elected to the Board of Bar Commissioners [Rule 24-101 NMRA]

The Supreme Court has approved the Board of Bar Commissioners of the State Bar of New Mexico's recommendation to amend Rule 24-101 NMRA to align the Board of Bar Commissioner districts with the state judicial districts and to permit a commissioner who has been elected to the Board of Bar Commissioners to extend the commissioner's term through the completion of the commissioner's term as immediate past president.

Recompilation [Rule 24-101A NMRA, recompiled as Rule 24-101.1 NMRA]

The Supreme Court has approved recompiling Rule 24-101A NMRA as Rule 24-101.1 NMRA, consistent with the Court's preferred numbering system for the New Mexico Rules Annotated.

Rules of Appellate Procedure

Expedited appeals from orders regarding assisted outpatient treatment [New Rule 12-207.1 NMRA]

The Supreme Court has approved the Appellate Rules Committee's recommendation to adopt new Rule 12-207.1 NMRA to provide a procedure for expedited appeals from orders regarding assisted outpatient treatment under NMSA 1978, Section 43-1B-9 (2016).

Rules of Civil Procedure for the District, Magistrate, and Metropolitan Courts

Depositions upon oral examination [Rule 1-030 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend the committee commentary for Rule 1-030 NMRA to clarify that a party may not unilaterally exclude a non-party witness from observing a deposition, but may do so through court order.

Procedures governing subpoenas [Rules 1-045, 2-502, and 3-502 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Rules 1-045, 2-502, and 3-502 NMRA to clarify that a person served with a subpoena may serve written objections on all parties or file a motion to quash the subpoena with the court and further to make stylistic changes recommended by prior committees that were consolidated into the Rules of Civil Procedure for State Courts Committee.

The Court also approved the Committee's recommendation to amend Rule 1-045 to permit service of a subpoena by mail in addition to personal service.

Finally, the Court approved the Committee's recommendation to amend Rules 2-502 and 3-502 to correct the inadvertent omission of language explaining that if a responding party objects to a subpoena, the issuing party may seek a court order to compel production, and further to clarify that a responding party may not answer a subpoena before the expiration of fourteen (14) days after the date of service of the subpoena.

Enforcement of mediated settlement agreements [New Rule 1-106 NMRA]

The Supreme Court has approved the New Mexico Administrative Office of the Court's recommendation to adopt new Rule 1-106 NMRA to address the enforcement of mediated settlement agreements. Rule 1-106 became effective August 31, 2020.

Consumer debt litigation in magistrate and metropolitan courts [Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA to extend the consumer debt amendments adopted in 2016 for cases pending in the district courts to cases pending in the magistrate and metropolitan courts. As noted above, the Court also approved the Committee's recommendation to amend Form 4-226 NMRA for the same purpose.

Electronic filing in Metropolitan Court [Rule 3-205 NMRA]

The Supreme Court has approved the Judicial Information Systems Council's Online Access Subcommittee's recommendation to amend Rule 3-205 NMRA to allow electronic filing in Metropolitan Court. Attorneys were able to register for and begin using the electronic filing system in the Metropolitan Court on a voluntary basis effective August 31, 2020, and electronic filing became mandatory on October 15, 2020.

Rules of Criminal Procedure for the District, Magistrate, and Metropolitan Courts and Rules of Procedure for the Municipal Courts

Timeliness of filing of information; bail bonds [Rules 5-201, 6-202, and 7-202 NMRA]

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's recommendation to amend Rules 5-201, 6-202, and 7-202 NMRA to provide an explicit remedy for a district attorney's failure to timely file an information in the district court and to shorten the time limit for filing an information in circumstances where a defendant is in custody.

The Court also approved the Committee's recommendation to amend Rule 7-202 to correct the inadvertent omission of language explaining that in circumstances where a defendant is not discharged, the metropolitan court shall retain jurisdiction over

the defendant and any bail bond for the shorter of two given time periods, in the same manner that magistrate courts now retain jurisdiction in like circumstances under the parallel provisions of Rule 6-202.

Arrests without a warrant [Rules 5-210, 6-201, 6-206, 7-201, 7-206, 8-201, and 8-205 NMRA]

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's recommendation to amend Rules 5-210, 6-201, 6-206, 7-201, 7-206, 8-201, and 8-205 NMRA for housekeeping purposes and to provide alternative remedies for an insufficiently explained violation of the requirement that a defendant arrested without a warrant be given a copy of the criminal complaint prior to being transferred to the custody of a detention facility.

Pretrial detention procedures [Rules 5-301, 5-401, 5-403, 5-409, 6-409, 6-501, 7-409, and 7-501 NMRA]

The Supreme Court has approved the Ad hoc Committee to Review Pretrial Detention and Release's recommendation to amend Rules 5-301, 5-401, 5-403, 5-409, 6-409, 6-501, 7-409, and 7-501 NMRA to allow magistrate and metropolitan court judges to schedule a pretrial detention hearing and delay entry of conditions of release for up to twenty-four (24) hours from initial appearance without the need for a motion from the prosecutor when certain criteria are met; to set status review hearings for defendants who have been detained pretrial for more than one year; to grant the district court exclusive jurisdiction over a case after a pretrial detention motion has been filed; and to clarify the types of evidence that a district court may consider when ruling on a pretrial detention motion. The amendments to these rules will be effective November 23, 2020.

Non-attorney prosecutions in magistrate and metropolitan courts [Rules 6-108 and 7-108 NMRA]

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's recommendation to amend Rules 6-108 and 7-108 NMRA to allow probation and compliance officers to prosecute probation violation proceedings in magistrate and metropolitan courts, and to make explicit the authority of a district attorney to appoint a special prosecutor in criminal cases that were initiated in those courts by a law enforcement officer or other non-attorney government employee and require a jury trial.

Uniform Jury Instructions - Civil

Instructions relating to common law contracts actions [New UJI 13-834 NMRA; UJI 13-801, 13-808, 13-811, 13-812, 13-816, 13-817, 13-819, 13-825, 13-826, 13-827, 13-828, 13-835, 13-839, 13-841, and 13-861 NMRA; and UJI Chapter 8 Appendices]

The Supreme Court has approved the Uniform Jury Instructions – Civil Committee’s recommendation to adopt new UJI 13-834 NMRA and to amend UJI 13-801, 13-808, 13-811, 13-812, 13-816, 13-817, 13-819, 13-825, 13-826, 13-827, 13-828, 13-835, 13-839, 13-841, and 13-861 NMRA and the UJI Chapter 8 Appendices to address inconsistencies, inaccuracies, and confusing omissions relating to common law contracts actions. The amendments are the second part of a two-part project to amend Chapter 8 of the Uniform Jury Instructions. In the first part of the project, the Supreme Court approved amendments to address inconsistencies, inaccuracies, and confusing omissions relating to contracts for the sale of goods under the Uniform Commercial Code (UCC) by eliminating all provisions in Chapter 8 related to UCC sales.

Uniform Jury Instructions - Criminal

Procedure for instructing on uncharged offenses
[UJI 14-140, 14-1630, 14-1632, 14-1633, 14-1642, 14-1697, 14-2204, 14-2205, 14-2206, 14-2207, 14-2209, 14-2240, 14-2801, 14-2810, 14-2817, 14-2821, 14-5170, 14-5173, and 14-5174 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to amend UJI 14-140 NMRA to clarify the procedure for instructing on uncharged offenses. The Court also approved the Committee’s recommendation to amend the use notes to UJI 14-1630, 14-1632, 14-1633, 14-1642, 14-1697, 14-2204, 14-2205, 14-2206, 14-2207, 14-2209, 14-2240, 14-2801, 14-2810, 14-2817, 14-2821, 14-5170, 14-5173, and 14-5174 NMRA to reference UJI 14-140’s procedure for instructing on uncharged offenses.

Modifications to avoid judicial comment on the evidence
[UJI 14-985, 14-4320, and 14-4321 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to amend UJI 14-985, 14-4320, and 14-4321 to replace the phrase “[e]vidence has been presented that . . .” with the more neutral phrase “[a]n issue in this case is whether . . .” to avoid any comment on the evidence.

Arson; value of damage
[UJI 14-1701 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to amend UJI 14-1701 NMRA to more accurately reflect the language of the

arson statute, NMSA 1978, Section 30-17-5 (2006). As currently written, UJI 14-1701 determines the degree of value based on the “market value” of the damaged property. However, the statute refers to the dollar value of the damage. See § 30-17-5(B)-(F).

Lost, destroyed, or uncollected evidence; adverse inference
[New UJI 14-5062 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to adopt new UJI 14-5062 NMRA to provide a uniform instruction for the adverse inference permitted in *State v. Chouinard*, 1981-NMSC-096, 96 N.M. 658, 634 P.2d 680, and *State v. Ware*, 1994-NMSC-091, 118 N.M. 319, 881 P.2d 679, after a finding that the State breached a duty to preserve evidence as recognized in *Chouinard*, 1981-NMSC-096, ¶¶ 16, 23, or acted in bad faith or with gross negligence by failing to collect material evidence, as recognized in *Ware*, 1994-NMSC-091, ¶¶ 25-26.

Procedure for instructing on lesser-included offenses
[New UJI 14-6002A and 14-6002B NMRA; UJI 14-6012 NMRA; and Withdrawn UJI 14-250, 14-625, and 14-6002 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to adopt new UJI 14-6002A and 14-6002B NMRA, amend UJI 14-6012 NMRA, and withdraw UJI 14-250, 14-625, and 14-6002 NMRA to reflect the procedure for deliberations involving lesser-included offenses as set forth in *State v. Lewis*, 2019-NMSC-001, ¶¶ 22-25, 433 P.3d 276. The amendments create two instructions: one to describe the deliberation process (UJI 14-6002A) and a second to describe the process for returning verdicts (UJI 14-6002B). In addition, the Court approved the Committee’s recommendation to withdraw UJI 14-250 and 14-625 NMRA, specialized step-down instructions for homicide and child abuse resulting in death, because the proposed new UJI 14-6002A and 14-6002B would be adaptable to those offenses.

All rule amendments approved by the Supreme Court and the related orders can be viewed on the Supreme Court’s website at <https://supremecourt.nmcourts.gov/2020.aspx>.

All Supreme Court approved rules and forms can be viewed on New Mexico OneSource, a publicly accessible website at <https://nmonesource.com/nmos/en/nav.do>

Rules/Orders

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

From the New Mexico Supreme Court

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

In the Matter of SHANNON ROBINSON, ESQ.

DISCIPLINARY NO. 2020-01-4443

**An Attorney Licensed to Practice Law before
the Courts of the State of New Mexico**

FORMAL REPRIMAND

You are before the Disciplinary Board in connection with your issuance of Letters of Protection (“Letter” or “Letters”) on behalf of four separate personal injury clients to two related medical providers.

You issued one Letter in June of 2015 and three in May 2018. You settled two of your clients’ claims in December 2018; one in January 2019; and one in October 2019, six months after the disciplinary complaint that led to this proceeding was submitted. However, you failed to promptly notify the providers of the settlements, as required by Rule 16-115(D). Instead, the providers later learned of the settlements, without details, from your clients.

The providers retained counsel to pursue the matter. Beginning in March 2019, and continuing through April 2019, that attorney emailed you numerous times in efforts to learn the status report of the four cases. You never responded.

Finally, in November and December 2019, you made two offers to the medical providers to settle their claims, reduced from the amounts they claimed. Although you contend that their charges were unreasonable, you never communicated that belief to the providers. Also, you failed to raise the Common Fund Doctrine, under which medical providers may be obligated to reduce their charges in proportion to the percentage of attorney’s fees paid from the settlements.

Your conduct violated the following Rules of Professional Conduct: Rule 16-115(D), by failing to promptly notify medical providers of the receipt of funds in which the medical providers have an interest; and 16-804(C), by failing to honor letters of protection. See *In re Rawson*, 1992-NMSC-036, ¶ 18, 113 N.M. 758, 833 P.2d 235.

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

Dated October 9, 2020
The Disciplinary Board of the
New Mexico Supreme Court

By
Hon. Cynthia A. Fry (ret’d)
Board Chair

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9	10	11	12 Live Webinar: 2020 Probate Institute	13 Live Webinar: Cannabis Law Institute: Wake and Bake – Cannabis Law in New Mexico
16 Teleseminar: Holding Business Interests in Trusts	17 Live Webinar: Immigration Law Institute: Ethics and Professionalism Teleseminar: Ethics of Beginning and Ending Client Relationships	18 Live Webinar: Word Master Class on Styles The US-Mexico-Canada Agreement and New Horizons for North America	19 Live Webinars: Animal Law Institute: Ethical Considerations for Animal Lobbyists, Litigators (and Lovers) 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 Live Webinar: Get Focused! Time & Distraction Management + Digital Detox				



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	1 Teleseminar: Business Divorce, Part 1 Live Webinar: How to Better Manage Your Workload: Email Management	2 Teleseminar: Business Divorce, Part 2 Live Webinar: Real Property Institute	3	4 Live Webinar: Paralegal Division CLE
7 Teleseminar: Text Message & Litigation: Discovery and Evidentiary Issues Live Webinar: How to Better Manage Your Workload: Task, Goal & Deadline Management	8 Live Webinar: Get Organized! Fight the Paper – Organize Your Digital Matter File!	9	10 Live Webinar: CWLP and YLD CLE Teleseminar: Guarantees in Real Estate Transactions	11 Live Webinar: Intellectual Property Institute Teleseminar: Employee v. Independent Contractor: Tax and Employment Law Considerations
14 Live Replay Webcast: Bridge the Gap Mentorship Program	15 Live Webinar: 2020 Mock Meeting of the Ethics Advisory Committee Teleseminar: Ethics and Virtual Law Office	16 Teleseminar: Trust and Estate Planning for Pets Live Webinars: PowerPoint Power Hour Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204	17 Live Webinar: Trial Practice Institute	18 Live Webinar: Natural Resources, Energy and Environment Law Section CLE
21	22 Live Webinar: Gain the Edge! Negotiation Strategies for Lawyers	23 Teleseminar: Drafting Client Engagement Letters in Trust and Estate Planning	24	25
28 Live Webinar: Stuart Teicher: The World Has Changed. Let's Sort it Out Stuart Teicher: Naked and Afraid: A Legal Survival Skills Program	29	30 Teleseminar: Lawyer Ethics and Email	31	

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From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-003
No. A-1-CA-36177 (filed October 1, 2019)

STATE OF NEW MEXICO,
Plaintiff Appellee,
v.
JOSEPH A. GRUBB,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
JERRY H. RITTER JR., District Judge

Released for Publication January 21, 2020.

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Chief Public Defender
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Santa Fe, NM
for Appellant

Opinion

M. Monica Zamora,
Chief Judge.

{1} Defendant Joseph Grubb appeals his conviction for escape from jail, arguing that the district court committed fundamental error by instructing the jury using the Uniform Jury Instruction (UJI) that lists the essential elements for the crime of escape from an inmate-release program. Defendant also argues that the evidence was insufficient to support his conviction and that pre-indictment delay violated his due process rights. Because the district court instructed the jury on a crime for which Defendant was never charged, the district court committed fundamental error. Because Defendant's other arguments are without merit, we reverse for a new trial consistent with this opinion.

BACKGROUND

{2} While on probation for a conviction in 2008, Defendant was arrested and charged with drug-related crimes. As a result of those charges, the State sought to revoke Defendant's probation, and after holding a hearing on the matter on December 22, 2011, the district court revoked Defendant's probation, granting him furlough until December 31, 2011, when he was

required to turn himself in to the custody of the Otero County Detention Center. Defendant did not report on December 31, 2011, and instead accumulated additional charges in two new cases under an alias, Deciderio Nieto. While he remained in jail on those other charges, Defendant was indicted on one count of escape from jail, and a jury convicted him. Defendant appeals his conviction for escape from jail.

DISCUSSION

{3} Defendant argues that the district court erred by improperly instructing the jury, that the evidence was insufficient as a matter of law to support a conviction for escape from jail under NMSA 1978, Section 30-22-8 (1963), that the district court improperly admitted testimony regarding other cases, and that the pre-indictment delay in this case violated his due process rights. We begin with Defendant's arguments regarding jury instructions and sufficiency of the evidence. Those arguments being dispositive of the improper testimony argument, we need not address it. *See State v. Mascareñas*, 2000-NMSC-017, ¶ 1, 129 N.M. 230, 4 P.3d 1221 (declining to address appellant's arguments regarding improperly admitted evidence after concluding deficiencies in the jury instructions warranted reversal). Last, we consider Defendant's argument regarding pre-indictment delay.

I. Jury Instructions

A. Escape From Jail and Escape From an Inmate-Release Program

{4} Defendant argues that the district court committed fundamental error by instructing the jury using the UJI for escape from an inmate-release program rather than escape from jail. "Escape from jail consists of any person who shall have been lawfully committed to any jail, escaping or attempting to escape from such jail." Section 30-22-8. The UJI identifies the three essential elements present in Section 30-22-8 as follows:

1. The defendant was committed to jail;
2. The defendant either escaped from, or attempted to escape from[,] jail; and
3. This happened in New Mexico on or about [a specified date].

UJI 14-2221 NMRA. The UJI also provides, in a use note, that "[i]f the escape is from a jail release program, use UJI 14-2228[NMRA,]" which lists the six essential elements for escape from an inmate-release program. UJI 14-2221 use note 1.

{5} Escape from an inmate-release program is a crime established in NMSA 1978, Section 33-2-46 (1980): "Any prisoner whose limits of confinement have been extended, or who have been granted a visitation privilege under the inmate-release program, who willfully fails to return to the designated place of confinement within the time prescribed, with the intent not to return, is guilty of an escape." Under the UJI, escape from an inmate-release program consists of six elements:

- [a.] The defendant was committed to _____ (identify institution);
- [b.] The defendant was released from _____ (identify institution) to (describe purpose for release);
- [c.] The defendant failed to return to confinement within the time fixed for the defendant's return;
- [d.] The defendant's failure to return was willful, without sufficient justification or excuse;
- [e.] The defendant intended not to return within the time fixed;
- [f.] This happened in New Mexico on or about the ____ day of _____, ____.

UJI 14-2228. The use notes to the UJI provide that "[the escape from an inmate-release program] instruction is also to be used for escape from jail." UJI 14-2228 use note 1.

B. Fundamental Error

{6} The State argued to the district court that because this case fell “between certain different kinds of escape,” the jury instruction needed to “be modified to require certain things that maybe just escape from jail would not.” The State therefore sought to instruct the jury using UJI 14-2228, escape from an inmate-release program, because it was “factually closest” to the circumstances of the case. The district court instructed the jury using a modified version of UJI 14-2228. The tendered instruction read as follows:

For you to find [D]efendant guilty of escape from jail, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. [D]efendant was committed to the Otero County Detention Center for transport to the New Mexico Department of Corrections;
2. [D]efendant was released from lawful custody or confinement for furlough purposes;
3. [D]efendant failed to return to lawful custody or confinement within the time fixed for the defendant's return;
4. [D]efendant's failure to return was willful, without sufficient justification or excuse;
5. [D]efendant intended not to return within the time fixed;
6. This happened in New Mexico on or about the 31st day of December, 2011.

Defendant did not object to the district court giving this instruction, and therefore failed to preserve his argument that the district court erred in giving this instruction. *See, e.g., State v. Jimenez*, 2017-NMCA-039, ¶ 54, 392 P.3d 668 (“Because [the d]efendant failed to object to the instructions given at trial, [the d]efendant failed to preserve this issue[.]”).

{7} We review unpreserved assertions of error in a jury instruction for fundamental error. *State v. Stevens*, 2014-NMSC-011, ¶ 42, 323 P.3d 901. In a fundamental error analysis, we begin by considering whether reversible error exists, such that “the jury instructions, taken as a whole, cause juror confusion by failing to provide the jurors with an accurate rendition of the relevant law.” *State v. Suazo*, 2017-NMSC-011, ¶ 15, 390 P.3d 674 (alterations, internal quotation marks, and citations omitted); *see State v. Barber*, 2004-NMSC-019, ¶ 19, 135 N.M. 621, 92 P.3d 633 (noting that fundamental error begins at the same place as our reversible error analysis by considering “whether a reasonable juror would have been confused or misdirected by the jury instruction”). If reversible error exists,

we then review the entire record, “placing the jury instructions in the context of the individual facts and circumstances of the case, to determine whether . . . Defendant's conviction was the result of a plain miscarriage of justice.” *Id.* (internal quotation marks and citation omitted).

{8} It is the district court's duty to instruct the jury upon all questions of law essential for a conviction of any crime with which the defendant is charged. Rule 5-608(A) NMRA; *see, e.g., State v. Lopez*, 1996-NMSC-036, ¶ 10, 122 N.M. 63, 920 P.2d 1017; *Jackson v. State*, 1983-NMSC-098, ¶ 6, 100 N.M. 487, 672 P.2d 660. The failure to instruct the jury on an essential element of the offense charged generally constitutes fundamental error requiring reversal. *Jackson*, 1983-NMSC-098, ¶ 6 (concluding incorrect instruction was fundamental error because it did not contain necessary elements of the crime); *see also State v. Samora*, 2016-NMSC-031, ¶ 29, 387 P.3d 230 (“Fundamental error occurs when jury instructions fail to inform the jurors that the State has the burden of proving an essential element of a crime and we are left with no way of knowing whether the jury found that element beyond a reasonable doubt.” (internal quotation marks and citation omitted)).

{9} Another type of fundamental error is one that takes from the defendant a right that was “essential to his defense and [that] no court could or ought to permit him to waive.” *State v. Davis*, 2009-NMCA-067, ¶ 13, 146 N.M. 550, 212 P.3d 438 (internal quotation marks and citation omitted); *see id.* (reversing conviction where district court instructed jury on negligent and intentional child abuse, but the defendant was not charged with negligent child abuse), *abrogated on other grounds by State v. Montoya*, 2015-NMSC-010, ¶¶ 38, 69, 345 P.3d 1056 (concluding that reckless child abuse was lesser-included offense of intentional child abuse). One such right is the right to due process, which requires that the state “provide reasonable notice of charges against a person and a fair opportunity to defend; rights which may not be ignored or trivialized.” *Davis*, 2009-NMCA-067, ¶ 14 (internal quotation marks and citation omitted). Because “[a] defendant in a criminal case is entitled to know what he is being charged with and to be tried solely on those charges[, i]t is improper to instruct the jury as to a crime not formally charged if that crime is not a lesser-included offense of the crime formally charged.” *Id.* ¶ 8 (internal quotation marks omitted) (citing *State v. Johnson*, 1985-NMCA-074, ¶¶ 25-26, 103 N.M. 364, 707 P.2d 1174 (reversing negligent arson conviction that was charged only as malicious or willful arson)). “Where the district court submits an uncharged crime to the

jury as a basis for conviction, it deprives a defendant of his constitutional right to notice and the opportunity to prepare a defense.” *Davis*, 2009-NMCA-067, ¶ 15. As such, “[a]llowing [a d]efendant's conviction to stand where there is a possibility that he was convicted of a crime for which he was not charged would result in a miscarriage of justice[.]” and a conviction for a crime with which the defendant was not charged therefore constitutes a due process violation that amounts to fundamental error. *Id.* ¶ 16; *see State v. Leal*, 1986-NMCA-075, ¶ 15, 104 N.M. 506, 723 P.2d 977 (“A defendant may not be convicted of a crime for which he was not charged or tried.”); *Johnson*, 1985-NMCA-074, ¶ 26 (noting that a criminal defendant “is entitled to know what he is being charged with and to be tried solely on those charges,” and that “[i]t is improper to instruct the jury as to a crime not formally charged”).

C. The District Court Committed Fundamental Error

{10} Section 30-22-8 and Section 33-2-46 define distinguishable offenses with different essential elements and penalties. *See State v. Trujillo*, 1987-NMCA-141, ¶ 5, 106 N.M. 616, 747 P.2d 262 (explaining that various escape statutes “differ as to the nature of the authority under which the offender is confined” and the place from which escape is made). The distinctions between the essential elements required for each type of escape are clear in a comparison of UJI 14-2221 (escape from jail) and UJI 14-2228 (escape from an inmate-release program). While the first element of UJI 14-2221 is similar to the first element UJI 14-2228 in that both require commitment, either to jail or to an institution, escape from an inmate-release program contains three essential elements that are entirely absent from the essential elements required for escape from jail. UJI 14-2228 requires willfulness and an intent not to return, *see State v. Rosaire*, 1997-NMSC-034, ¶ 15, 123 N.M. 701, 945 P.2d 66 (establishing willfulness as an essential element of escape from an inmate-release program), as well as a reason for the prisoner's release. *See UJI 14-2228 comm. cmt.* (“[T]he essential elements include the specific reasons for the prisoner's release.”). None of these elements are comparable to the escape element required under UJI 14-2221 for escape from jail.

{11} Given the significant differences between essential elements of escape from jail and escape from an inmate-release program, there is a significant probability that the jury convicted Defendant based on a deficient understanding of the law regarding escape from jail under Section 30-22-8. Furthermore, it is clear that the jury, while instructed on release, willfulness, and intent, was never instructed on

escape—an essential element of escape from jail. Finally, the State did not charge Defendant with escape from an inmate-release program and never intended to present escape from an inmate-release program as a lesser-included offense of escape from jail. *See Davis*, 2009-NMCA-067, ¶ 9 (“A defendant is considered to be on notice to defend against uncharged lesser-included offenses.”). Yet, the jury was instructed on that crime. A crime for which he never received notice and was ultimately convicted. It is a basic tenet of criminal law that “the charge must be appropriate and the prosecution must prove each essential element of the crime as defined by statute.” *Trujillo*, 1987-NMCA-141, ¶ 12 (emphasis added); *see id.* ¶ 13 (reversing the defendant’s conviction where he had been charged under inapplicable statute). Defendant’s conviction and sentence, based on the elements of a crime for which he was not charged must therefore be reversed.

D. UJI 14-2221 and UJI 14-2228 Cannot Be Used Interchangeably

{12} On appeal, the State argues that UJI 14-2228 can be used instead of UJI 14-2221 to instruct the jury on escape from jail, relying on the use note to UJI 14-2228 that provides, “[t]his instruction is also to be used for escape from jail” as well. UJI 14-2228 use note 1. To the extent that this issue requires interpretation of the statutes referenced in the Committee Commentary to UJI 14-2228, we apply a *de novo* review. *State v. Marshall*, 2004-NMCA-104, ¶ 6, 136 N.M. 240, 96 P.3d 801.

{13} While the use note allowing for UJI 14-2228 “to be used for escape from jail” contains no conditional language, the use note for UJI 14-2221 allows for the use of UJI 14-2228 only if the escape is from a jail release program. UJI 14-2221 use note 1 (emphasis added). The seemingly contradictory language of these two provisions can be reconciled through a consideration of the Committee Comments to UJI 14-2228, which provide that an escape from custody is governed by Section 30-22-9 (escape from the penitentiary) unless the prisoner is released for “one of the specific purposes set forth in Section 33-2-44 or [NMSA 1978, Section] 33-2-45 [1975].” UJI 14-2228 comm. cmt.; Section 33-2-44 (allowing for release “to work at paid employment in private business or in public employment, or to attend a school”); Section 33-2-45 (allowing for release to contact prospective employers, attend job or school interviews, or for “any other reason consistent with pre-parole analysis

and parole prediction, the inmate-release program and the public interest”).

{14} If the release is for a purpose defined in Section 33-2-44 or Section 33-2-45, the “inmate-release program” requirement is met, and the instruction for escape from an inmate-release program is to be given. UJI 14-2228 comm. cmt. The committee commentary to UJI 14-2228 therefore creates a system by which escape from a penitentiary is the appropriate instruction to be given, unless there are specific facts that would warrant giving the instruction for escape from an inmate-release program.

{15} Escape from jail under UJI 14-2221 follows a similar structure; an escape from jail is analyzed according to the essential elements contained in UJI 14-2221, but when the State can demonstrate the escape was made from a jail-release program, the use notes to UJI 14-2221 indicate UJI 14-2228 should be used to properly instruct on the essential elements of escape from a jail-release program. UJI 14-2221 use note 1 (stating that “[i]f the escape is from a jail[-]release program, use UJI 14-2228”).

{16} Reading the relevant statutes, UJIs, and use notes together as a whole, we conclude that UJI 14-2228 was intended to be used when a prisoner escapes from a release program initiated in a jail rather than a penitentiary. Inherent in our conclusion is the distinction between a penitentiary and a jail, which the Legislature found relevant in creating two separate offenses for escape from jail and escape from a penitentiary, *see State v. Najar*, 1994-NMCA-098, ¶ 6, 118 N.M. 230, 880 P.2d 327 (stating that with regard to jail and penitentiary, “the place or constructive place of incarceration depends on the length of the sentence imposed”), but which the State virtually ignores when arguing that UJI 14-2228 and 14-2221 can be used interchangeably. It makes little sense to allow UJI 14-2228 to supplant UJI 14-2221 in cases involving escape from jail in light of the inapposite elements required by the entirely different statutes. *Compare* Section 33-2-46 (escape from an inmate-release program), *with* Section 30-22-8. Our interpretation also comports with the plain language of Section 33-2-46, which criminalizes an escape from an inmate-release program and identifies the components of an escape from an inmate-release program generally, without specifying whether that offense must arise from a release program originating in a jail or in a penitentiary. Section 33-2-46.

{17} Finally, nothing in the record suggests that the circumstances of Defendant’s alleged “release” rose to the level of an inmate-release

program warranting use of UJI 14-2228. The modified version of UJI 14-2228 that was given to the jury in this case identifies the reason for Defendant’s release as “furlough purposes.” However, furlough is not one of the “specific purposes” for release authorized by statute, and “specific reasons for the prisoner’s release” are an essential element for escape from an inmate-release program. UJI 14-2228 comm. cmt. (“Since this is a specific offense . . . the essential elements include the specific reasons for the prisoner’s release. Unless the prisoner is released for one of the specific purposes set forth in Section 33-2-44 or [Section] 33-2-45[,] an escape from custody by the prisoner is governed by . . . [the] escape from the penitentiary” statute); *see* Section 33-2-44 (listing work at paid employment or school attendance as proper purposes); Section 33-2-45 (listing “contacting prospective employers, attendance at job or school interviews or any other reason consistent with pre-parole analysis and parole prediction, the inmate-release program and the public interest”). Because the State did not assert or demonstrate that Defendant was released pursuant to a designated “release program” during furlough, there is no evidence to support the district court’s decision to instruct the jury on escape from jail using UJI 14-2228 in lieu of 14-2221.

II. Sufficiency of the Evidence

{18} We now turn to Defendant’s argument that the evidence was insufficient to support his conviction in order to ascertain whether double jeopardy protections are implicated by retrying Defendant. *State v. Dowling*, 2011-NMSC-016, ¶ 18, 150 N.M. 110, 257 P.3d 903 (“If we find that sufficient evidence was presented at trial to support a conviction, then retrial is not barred.”). Although Defendant’s sufficiency argument focuses exclusively on the sufficiency of evidence according to UJI 14-2221’s two elements, we must measure the sufficiency of the evidence against the instructions given at trial, even where those instructions were erroneous.¹ *See Dowling*, 2011-NMSC-016, ¶ 18; *see also Rosaire*, 1996-NMCA-115, ¶ 20 (“[Appellate courts] . . . review[] the evidence in light of the defective jury instruction given below[.]”). When reviewing for sufficiency, we consider “whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Comitz*, 2019-NMSC-011, ¶ 16, 443 P.3d 1130 (internal quotation marks and citation omitted). “Substantial evidence is relevant evidence that a reasonable mind

¹Defendant also challenges the propriety of the modifications to UJI 14-2228 that were used in the given instructions, and challenges whether the facts as alleged by the State are sufficient to constitute escape from jail. However, we need not address those arguments because such analysis is unnecessary in light of our discussion of UJI 14-2221 above and because we consider sufficiency in the context of the instructions actually given to the jury. *Dowling*, 2011-NMSC-016, ¶ 18.

might accept as adequate to support a conclusion.” *Id.* We view “the evidence in the light most favorable to the [s]tate, resolving all conflicts and indulging all permissible inferences in favor of the verdict.” *State v. Romero*, 2019-NMSC-007, ¶ 51, 435 P.3d 1231 (internal quotation marks and citation omitted).

{19} The State presented a certified copy of an order, titled “order revoking probation (commitment to the penitentiary),” in which the district court revoked Defendant’s probation, sentenced him to two years and six months incarceration, and granted him furlough until December 31, 2011. Based on this order, the jury could reasonably conclude that Defendant was “committed to the Otero County Detention Center for transport to the New Mexico Department of Corrections” when his probation was revoked and he was sentenced to a term of incarceration and that Defendant was “released from lawful custody or confinement for furlough purposes.”² The State also submitted the bench warrant issued for Defendant’s arrest after he failed to report to the Otero County Detention Center on December 31, 2011, and a motion that the State filed on January 20, 2012, seeking to enforce the probation revocation based on Defendant’s failure to report as ordered on December 31, 2011. Based on this evidence, the jury could reasonably conclude that Defendant “failed to return to lawful custody or confinement within the time fixed” for his return.

{20} During trial, the jury also heard testimony that Defendant had twice been arrested, once under an alias, Deciderio Nieto, and once based on a mistaken belief that he was Deciderio Nieto—a misidentification that Defendant later encouraged.³ The State submitted, as evidence, an order granting the State’s motion to enforce the probation revocation sentence, in which the district court noted that as of November 2014, Defendant was incarcerated as Deciderio Nieto in two other cases. From this evidence, the jury could reasonably infer that Defendant’s use of the alias was intended to deceive law enforcement and prevent them from returning him to custody, thereby satisfying the requirement that the jury find Defendant’s failure to return was done willfully and that Defendant intended not to return within the time fixed. *See, e.g., State v. Nozie*, 2009-NMSC-018, ¶ 32, 146 N.M. 142, 207 P.3d 1119 (acknowledging that “because an individual’s intent is seldom subject to proof by direct evidence, intent may be proved by

circumstantial evidence” (alteration, internal quotation marks, and citation omitted)); *State v. Hutchinson*, 1983-NMSC-029, ¶ 33, 99 N.M. 616, 661 P.2d 1315 (“Intent, as an element of a crime, is seldom susceptible of proof by direct evidence, and it may be inferred from a series of acts, occurrences and circumstances.”). We conclude that the State presented sufficient evidence that, when taken in the light most favorable to the State, adequately supports Defendant’s conviction under the instructions given to the jury.

III. Pre-indictment Delay Did Not Violate Defendant’s Due Process Rights

{21} We next address Defendant’s argument that pre-indictment delay violated his right to due process. *See State v. Akers*, 2010-NMCA-103, ¶ 31, 149 N.M. 53, 243 P.3d 757 (addressing additional argument because, if meritorious, it would give the defendant greater relief); *State v. Lewis*, 1988-NMCA-015, ¶ 10, 107 N.M. 182, 754 P.2d 853 (“The Due Process Clause requires dismissal of the charges if it is shown that the pre[-]indictment delay [violated the defendant’s due process.]”). After Defendant’s failure to report on December 31, 2011, the State filed a motion on January 20, 2012, seeking enforcement of the sentence imposed at the revocation hearing. The State took no further action in the case until October 22, 2014, when it filed an indictment against Defendant. Defendant argues that although the State possessed the necessary evidence to bring charges against him for nearly two years, it withheld charges against him in order to keep him in custody during that time.

{22} In determining whether pre-indictment delay denied a defendant the right to procedural due process, “we conduct an independent review of the record and the law.” *State v. Palmer*, 1998-NMCA-052, ¶ 4, 125 N.M. 86, 957 P.2d 71 (internal quotation marks and citation omitted). To establish the denial of due process through pre-indictment delay, the defendant must show “prejudice to his or her defense as a result of the delay,” and must demonstrate that “the state intentionally caused the delay in order to gain a tactical advantage.” *State v. Fierro*, 2014-NMCA-004, ¶ 27, 315 P.3d 319 (internal quotation marks and citation omitted).

{23} A defendant claiming error as a result of pre-indictment delay “must be able to show definite and not speculative prejudice.” *Gonzales v. State*, 1991-NMSC-015, ¶ 8, 111 N.M. 363, 805 P.2d 630 (internal quotation marks and citation omitted).

Defendant argues that the pre-indictment delay prejudiced his defense by depriving him of the possibility of concurrent sentencing. Defendant relies on *Zurla v. State*, 1990-NMSC-011, ¶ 23, 109 N.M. 640, 789 P.2d 588 which identified the “loss of the possibility of serving concurrent sentences” as an aspect of prejudice in the context of speedy trial. While Defendant’s reliance on *Zurla* is not directly on point, the prejudice prong referenced in *Zurla* has been applicable to our case law concerning delay. *See State v. Lopez*, 2018-NMCA-002, ¶ 13, 410 P.3d 226 (discussing delay in sentencing); *see, e.g., State v. Garcia*, ___-NMCA-___, ¶ 42, ___ P.3d ___ (No. A-1-CA-35812, May 23, 2019) (addressing delay at the appellate stage of a case). Nevertheless, we are unpersuaded by the application of *Zurla* to this case.

{24} Defendant argues that he was prejudiced because “he spent the entire time in State custody, and lost the possibility of [receiving] concurrent sentences.” Even if a lost possibility of serving concurrent sentences amounts to prejudice for purposes of a due process analysis, which we do not decide, Defendant’s argument that he may have been able to prevail upon the district court to run his sentences concurrently is entirely speculative, and is therefore insufficient to establish prejudice here. *See State v. Maddox*, 2008-NMSC-062, ¶ 35, 145 N.M. 242, 195 P.3d 1254 (rejecting claim of prejudice in lost opportunity to serve sentences concurrently “because it is speculative as to how the district court may choose to exercise its discretion in sentencing”), *abrogated on other grounds by State v. Garza*, 2009-NMSC-038, ¶ 47-48, 146 N.M. 499, 212 P.3d 387.

{25} Because Defendant has failed to demonstrate prejudice to his defense, we need not proceed to the second prong of the test and consider whether Defendant made a prima facie showing that the State “knew or should have known delay was working a tactical disadvantage on [D]efendant.” *Gonzales*, 1991-NMSC-015, ¶ 10.

CONCLUSION

{26} We reverse and remand for proceedings consistent with this opinion.

{27} **IT IS SO ORDERED.**
M. MONICA ZAMORA, Chief Judge

WE CONCUR:
JULIE J. VARGAS, Judge
JACQUELINE R. MEDINA, Judge

²The parties do not dispute that these events took place in Otero County, New Mexico. *See* UJI 14-2228 (requiring that events took place in New Mexico); *see generally State v. Carrillo*, 2017-NMSC-023, ¶ 32, 399 P.3d 367 (acknowledging that physical locations are proper subject of judicial notice and collecting cases allowing for judicial notice of geographical locations).

³Although Defendant challenges the admissibility of this testimony, we need not address that argument here because even assuming it was improperly admitted, we include improperly admitted evidence in our analysis of sufficiency. *State v. Cofer*, 2011-NMCA-085, ¶ 20, 150 N.M. 483, 261 P.3d 1115.

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: 2020-NMCA-004

No. A-1-CA-36856 (filed October 17, 2019)

STATE OF NEW MEXICO,

Plaintiff Appellee,

v.

JUAN M. GARCIA, JR.,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

DREW D. TATUM, District Judge

Released for Publication January 21, 2020.

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Opinion

Megan P. Duffy, Judge.

{1} Defendant appeals his conviction for speeding, contrary to NMSA 1978, Section 66-7-301 (2015), arguing that the State failed to present an adequate scientific foundation to establish the reliability of the radar technology used to determine his speed. We conclude that the district court did not abuse its discretion by admitting evidence of Defendant's speed because radar technology has generally been accepted as reliable and the State established a proper foundation for the accuracy of the particular radar unit used in this case. We therefore affirm.

BACKGROUND

{2} Officer Michael Smith with the New Mexico State Police was on patrol in his police vehicle when he observed Defendant's vehicle traveling at "a great rate of speed." Officer Smith measured Defendant's speed twice using a radar device, and both readings showed that Defendant was traveling at seventy-eight miles per hour in a posted sixty-five mile-per-hour speed zone. Officer Smith stopped and cited Defendant for

speeding. Following his trial and conviction in magistrate court, Defendant appealed to the district court for a bench trial de novo. During that trial, Defendant objected to Officer Smith's testimony about the radar device, arguing that "radar has not been determined to be reliable or valid in New Mexico" and that the State is required to present a scientific foundation to prove it as such. Defendant contended Officer Smith was not qualified as an expert and therefore could not lay the proper foundation for the radar evidence. The district court overruled Defendant's objection and admitted the radar speed evidence. Despite the opportunity, Defendant declined to cross-examine Officer Smith on his use of the radar device and did not present evidence of the device's unreliability. The district court found Defendant guilty of speeding. Defendant appeals.

DISCUSSION

{3} We are asked to decide whether the district court erred in admitting radar evidence of the speed of Defendant's vehicle without expert testimony. See generally *State v. Torres*, 1999-NMSC-010, ¶ 26, 127 N.M. 20, 976 P.2d 20 (stating that "in New Mexico, evidentiary reliability is the

hallmark for the admissibility of scientific knowledge"). Defendant argues that radar speed measurements are scientific evidence and that an expert is necessary to establish the reliability of radar technology before evidence of speed obtained by the use of a radar may be admitted at trial.¹ The State responds that expert testimony is unnecessary, given that radar technology is simple, commonly understood, and has long been recognized in many jurisdictions as reliable to accurately measure speed.

{4} "[T]he rule in this [s]tate has consistently been that the admission of expert testimony or other scientific evidence is peculiarly within the sound discretion of the trial court and will not be reversed absent a showing of abuse of that discretion." *State v. Fuentes*, 2010-NMCA-027, ¶ 22, 147 N.M. 761, 228 P.3d 1181 (internal quotation marks and citation omitted). When scientific evidence is presented at trial, New Mexico trial courts act as gatekeepers to ensure "that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993); *State v. Alberico*, 1993-NMSC-047, ¶ 51, 116 N.M. 156, 861 P.2d 192 (adopting *Daubert* factors as a non-exclusive means to assess the validity and reliability of scientific testimony). New Mexico courts traditionally evaluate reliability by considering the factors set forth in *Daubert* and adopted in New Mexico by *Alberico*. See *Torres*, 1999-NMSC-010, ¶ 25. While the "*Alberico-Daubert* standard is not limited to novel scientific theories[.]" *id.* ¶ 29, we have affirmed district courts' discretionary authority to avoid unnecessary reliability proceedings in limited circumstances where the type of science has generally been accepted. *Fuentes*, 2010-NMCA-027, ¶¶ 25-26 (affirming the district court's ruling that "the science underlying the firearm forensic and tool mark analysis techniques . . . was reliable based solely on its finding that this type of science has generally been accepted").

{5} In the case of radar technology, courts across the United States have for over six decades recognized "the general reliability of the radar speedometer as a device for measuring the speed of a moving vehicle, [such] that it will no longer be necessary to require expert testimony in each case as to the nature, function or scientific principles underlying it[.]" *People v. Magri*,

¹Defendant argues on appeal that the device used to measure his speed was "unknown." However, both parties referred to the device as a radar to the district court, as did Officer Smith, and Officer Smith explained that he calibrated the radar using a tuning fork. See, e.g., *State v. Kramer*, 299 N.W.2d 882, 885 (Wis. 1981) (acknowledging that the use of tuning forks is a well-recognized method for determining the accuracy of the radar device). We therefore reject Defendant's argument that the record failed to identify the speed detection device used in this case.

147 N.E.2d 728, 730 (N.Y. 1958); *see, e.g., Everight v. City of Little Rock*, 326 S.W.2d 796, 797 (Ark. 1959) (“We are of the opinion that the usefulness of radar equipment for testing speed of vehicles has now become so well established that the testimony of an expert to prove the reliability of radar in this respect is not necessary.”); *Robles v. State*, 705 N.E.2d 183, 186 (Ind. Ct. App. 1998) (“It is unnecessary for the [s]tate to present expert testimony to explain the proper operation, reliability or maintenance of the [radar] unit.”); *State v. Dantonio*, 115 A.2d 35, 39-40 (N.J. 1955) (commenting that “[s]ince World War II members of the public have become generally aware of the widespread use of radar methods in detecting the presence of objects and their distance and speed; and while they may not fully understand their intricacies they do not question their general accuracy and effectiveness”); *see also* Thomas J. Goger, Annotation, *Proof, by Radar or Other Mechanical or Electronic Devices, of Violation of Speed Regulations*, 47 A.L.R.3d 822 § 2[a] (1973) (providing a compilation of reported cases relating to the admissibility and sufficiency of evidence obtained by speed radar devices and stating, “[a]lthough the early cases involving radar evidence required expert testimony as to the nature and function of a radar speedometer and the scientific principles upon which it was based, it is now generally agreed that the reliability of radar is a proper subject for judicial notice” (footnote omitted)).

{6} We have said that when the reliability of the science in question has long been accepted, the burden is on the defendant to make an “affirmative showing that there is some reason to doubt the reliability of that science before a district court is obligated to require a reliability hearing.” *Fuentes*, 2010-NMCA-027, ¶ 28; *see State v. Montoya*, 2016-NMCA-079, ¶ 16, 382 P.3d 948 (“Given the abundance of appellate case law endorsing the reliability of breath alcohol testing generally, a trial court is justified in presuming such reliability in the absence of an articulated challenge.”). Defendant does not dispute that radar

technology has generally been accepted as reliable, nor does he argue that there is any reason to doubt its reliability here. Because Defendant articulated no challenge, and given the longstanding, widely recognized general acceptance and understanding of radar technology, we conclude that the district court did not abuse its discretion in finding that radar evidence was admissible without requiring expert testimony explaining the principles on which it is founded. *See Fuentes*, 2010-NMCA-027, ¶ 26 (holding that “the district court appropriately exercised its discretionary authority in finding that the reliability of the science in question could properly be taken for granted [because t]he science underlying the firearm forensics and tool mark analysis techniques . . . has long been held reliable in New Mexico”).

{7} Though radar is generally accepted as reliable, the State is still required to lay a proper foundation regarding the accuracy of the particular radar unit before evidence of its measurements may be admitted at trial. *See State v. Martinez*, 2007-NMSC-025, ¶ 9, 141 N.M. 713, 160 P.3d 894 (holding that the state, to satisfy the foundational requirements for the admission of a breath test, must make a “threshold showing that, at the time of the test, the machine was properly calibrated and that it was functioning properly”). The state may introduce testimony from the operating law enforcement officer to show that the radar unit was calibrated and functioning properly at the time it measured the speed of a defendant’s vehicle. *See id.*; *see also Robles*, 705 N.E.2d at 186 (“Before the results of a radar test may be admitted into evidence, the [s]tate must prove that the equipment was properly operated and regularly tested.”); *State v. Calvert*, 682 S.W.2d 474, 477 (Mo. 1984) (en banc) (“The proponent of radar evidence must prove the unit was operating accurately at the time of its use relative to the violation to sustain a speeding conviction.”); *Cromer v. State*, 374 S.W.2d 884, 887 (Tex. Crim. App. 1964) (holding that the testimony of the patrolmen who were trained to operate and test the device was sufficient for the

jury to find the appellant was speeding).

{8} In this case, the State satisfied the foundational requirements through Officer Smith’s testimony. Officer Smith testified that he had sixteen years of experience with the New Mexico State Police and that he was knowledgeable regarding the use and proper functioning of the radar equipment. He testified extensively about the radar system used to determine that Defendant was speeding, including the setup of the radar system, the dual antennas for sensing speed in front of and behind the police car, and how the system can be used in moving or stationary mode. Officer Smith described how he used a tuning fork to make sure the equipment was working properly and stated that he conducts tests before, during, and after every shift to ensure the “speed measuring device is operational as required by our department policies.” Officer Smith further stated that on the day of the incident, when he observed Defendant’s vehicle, he placed the radar device in moving mode and used the front antenna to determine that Defendant was driving at about seventy-eight miles per hour. After Defendant passed him, Officer Smith activated the rear antenna, also in moving mode, and confirmed Defendant was driving seventy-eight miles per hour. He also explained there were no other vehicles around at the time, and as such, he was able to ensure he was testing the correct vehicle. This testimony was sufficient to establish a proper foundation for the admission of the radar’s speed measurement. For the reasons set forth above, we perceive no abuse of discretion by the district court in allowing the State’s evidence of Defendant’s speed.

CONCLUSION

{9} For the foregoing reasons, we affirm Defendant’s speeding conviction.

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

WE CONCUR:
JENNIFER L. ATTREP, Judge
BRIANA H. ZAMORA, Judge

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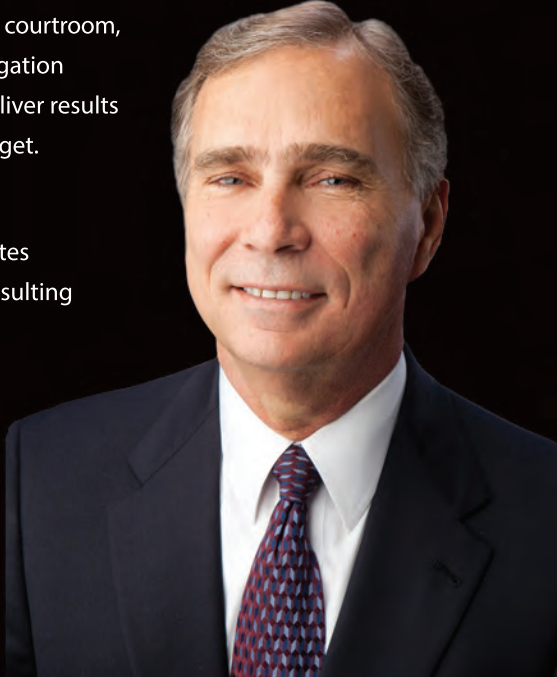
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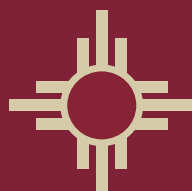
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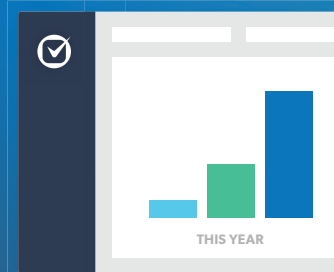


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The Attorneys, staff, clients and friends of Miller Stratvert PA mourn the loss of their beloved partner and friend, **LARRY WHITE**, who died on October 8, 2020, due to a sudden illness. Larry stood for all the good things in our profession: Fairness, Kindness, Excellence in our Courts, Mentorship of young attorneys and Fellowship with other Lawyers. Larry handled his competitiveness with a rarely matched gentlemanly approach. Take a moment and remember him with us.

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Defending Debt Collection Cases

The Second Judicial District Pro Bono Committee and
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The CLE will be presented by

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Assistant District Attorney

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

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.

Associate Attorney

Allen Law Firm, LLC a law firm located in Uptown Albuquerque, is seeking a full-time attorney with 2-3 years' experience in litigation defense. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to Pgrimm@mallen-law.com.

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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 is open for application and will close December 04, 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.

Associate Attorney

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

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

Staff Attorney

Enlace Comunitario is a non-profit organization searching for a full-time staff attorney. Under direction from the Legal Director, the staff attorney would provide legal assistance and representation to low-income victims of domestic violence in family law and domestic matters cases. In addition, the staff attorney prepares legal research, gives legal advice, and provides legal and policy analysis of issues. Salary starting at \$49,746 DOE. Please send resume to jobs@enlacenm.org

Attorney

Jarmie & Rogers, P.C., is hiring an attorney with 2+ years of civil litigation experience to work with us in our busy practice. The position requires strong oral advocacy abilities, including the ability to argue complex motions in state and federal court. Experience taking and defending depositions is preferred, as is experience in employment litigation. Candidates located in either Albuquerque or Las Cruces will be considered. We offer a competitive salary and benefits package, along with significant potential for professional growth. For more information about our firm, please visit our website, www.jarmielaw.com. Please submit resumes to ereeves@jarmielaw.com.

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Water & Environmental Law Attorney

Law & Resource Planning Associates, P.C., ("LRPA"), an AV-rated law firm, is accepting resumes for an experienced, personable Attorney with strong academic and technical credentials to work primarily in the area of natural resource law and environmental and water law. Competitive salary commensurate with experience. Excellent benefits package. All inquiries kept confidential. Please submit a cover letter, resume, transcript(s), and writing samples to Hiring Coordinator, LRPA, P.C., P.O. Box 27209 Alb., NM 87125. E-mail responses may be submitted to J. Brumfield at jb@lrpa-usa.com

Litigation Associate

Mann Morrow, PLLC, a growing litigation firm with offices in Las Cruces, NM and El Paso, TX, seeks a litigation associate attorney to join our Las Cruces team. The ideal candidate will have up to five years experience, and be a team player with excellent communication (written and oral) and legal research skills, a strong work ethic, and a willingness to learn. The firm offers a competitive salary and benefits package, including health insurance and 401K. License to practice law in New Mexico required. Please send letter of interest, resume, references and writing sample to christina.munoz@mannmorrow.com. All responses are confidential.

Associate Attorney

Construction law firm with office in Albuquerque seeks an associate attorney. This candidate must have strong verbal and writing abilities, be detail oriented, and be able to manage priorities and deadlines of an assigned caseload. Having interest or experience in the construction industry is a plus, but not a requirement. This position is perfect for someone looking to gain an abundance of experience in a nuanced subject matter in a short amount of time. Candidate must be an active attorney admitted to practice in New Mexico, able to be admitted to practice in New Mexico, or must be recent law-school graduate seeking admittance to the New Mexico bar. Serious inquiries should email: Jobs@hardhatlaw.net

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

Trial Attorneys

The Ninth Judicial District Attorney's Office is seeking entry level and experienced trial attorneys for our Clovis office. Come join an office that is offering immediate jury trial experience, during the COVID-19 crisis, in a jury trial test jurisdiction. In addition, we offer in depth mentoring and an excellent work environment. Salary commensurate with experience starting at \$54,308/yr. Send resume and references to Steve North, snorth@da.state.nm.us.

Chief Deputy District Attorney Deputy District Attorney Senior Trial Attorney

The Third Judicial District Attorney's Office in Las Cruces is looking for: Chief Deputy District Attorney, Deputy District Attorney, Senior Trial Attorney. Trial Attorney (This is a grant funded position through HIDTA and the position is contingent on continued funds from the grantor). Please see the full position descriptions on our website <http://donaana-countyda.com/>. Interviews will be conducted by the District Attorney Incumbent for 2021. Submit Resume to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us.

Pueblo of Pojoaque General Counsel

The Pueblo of Pojoaque is accepting applications for an attorney to provide legal services under the direct supervision of the Chief General Counsel. Applicant will assume diverse roles while working with the Pueblo people, their government and Pueblo corporations. Position requires a substantial knowledge and understanding of the Pueblo, its departments and businesses and a general understanding of Indian Law and tribal-federal-state relations and the Pueblo of Pojoaque Law and Order Code. A background of federal Indian law is essential. Practice areas include direct legal services, domestic affairs, tribal corporations, water law, litigation, gaming, general civil law, and contracts. Prior Tribal Court and tribal law experience preferred. JD required. Must be capable of being admitted to the Pueblo of Pojoaque Tribal Court and the New Mexico State Bar. Salary is dependent on experience. Position will be filled within 30 days of this posting. Send resumes via email to rfrias@pojoaque.org.

Attorney

RMH Lawyers, PA seeks an associate attorney to join our firm, focusing on business advice and transactions, commercial litigation, and employment law. Although we would welcome a candidate with experience in these areas, we will also consider recent law school graduates who are motivated and sincerely interested in learning to practice business law. We are a Martindale AV-rated firm, and we provide sophisticated services to a long-term client base. Our preferred candidate will have excellent academic credentials, strong research and writing skills, and an enthusiastic attitude. 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.

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.

Litigation Attorney

With 53 offices and over 1,600 attorneys, Lewis Brisbois is one of the largest and most prestigious law firms in the nation. Our Albuquerque office is seeking associates with a minimum of three years litigation defense experience. Candidates must have credentials from ABA approved law school, be actively licensed by the New Mexico state bar, and have excellent writing skills. Duties include but are not limited to independently managing a litigation caseload from beginning to end, communicating with clients and providing timely reporting, appearing at depositions and various court appearances and working closely with other attorneys and Partners on matters. Please submit your resume along with a cover letter and two writing samples to phxrecruiter@lewisbrisbois.com and indicate "New Mexico Litigation Attorney Position". All resumes will remain confidential.

Attorneys

Description: Hartline Barger LLP, a nationally recognized trial law firm specializing in civil litigation defense, is seeking two attorneys with 2 - 6 years of litigation experience to join our growing New Mexico practice in either our Albuquerque or Santa Fe office. The ideal candidate will have significant experience handling personal injury matters and/or construction defect litigation. Requirements: Manage a litigation caseload, working cases from beginning to end with appropriate supervision and training; Work closely with other attorneys on legal projects; Regularly prepare for court appearances and depositions; Communicate with clients and provide status reports. A strong academic background as well as excellent writing and advocacy skills are required. We offer above-market salaries and exceptional benefits in a collaborative and congenial firm culture. Please contact Lanika Doyle at Ldoyle@hartlinebarger.com.

Administrative Office of the Courts Law Clerk

The Sixth Judicial District Court is recruiting for a full-time unclassified Law Clerk position in Deming, NM, #23600-10111880. Target pay rate is \$27.891 hourly. Opening Date: 10/21/2020 – Close Date: 11/23/2020 at 4:00 p.m. The complete job description detailing the qualifications, job duties, competencies/qualifications, work environment and physical demands, a list of benefits, and required forms to apply for the position are at <https://humanresources.nmcourts.gov/career-opportunities.aspx>. Proof of education and writing samples are required. Faxed and/or e-mailed applications will not be accepted. Equal Opportunity Employer.

Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Affairs Division. This attorney will serve as general counsel to the City's Environmental Health Department ("EHD") regarding Air Quality issues throughout Bernalillo County including at federal and state facilities. This attorney will provide a broad range of legal services to EHD including, but not limited to, administrative enforcement actions, litigation and appeals, stationary source permits and "fugitive dust" permits, air quality monitoring and quality assurance, guidance regarding EPA grants, control strategies, work with EHD teams to develop new or amended regulations to be proposed to the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board"), attend and represent EHD staff at rulemaking and adjudicatory hearings, review and draft intergovernmental agreements regarding air quality issues, review and draft legislation regarding air quality. Attention to detail and strong writing skills are essential. Preferences include: Five (5)+ years' experience in Environmental or Air Quality law and a scientific or technical background. Candidate must be an active member of the State Bar of New Mexico in good standing, or be able to become licensed in New Mexico within 3 months of hire. Salary will be based upon experience. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Lawyer Position

Guebert Gentile & Piazza P.C. seeks an attorney with up to five years' experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner Gentile P.C., P.O. Box 93880, Albuquerque, NM 87199-3880, advice1@guebertlaw.com. All replies are kept confidential. No telephone calls please.

Workers' Compensation Chief General Counsel (Exempt position)

The New Mexico Workers' Compensation Administration is seeking to fill its Chief General Counsel position. The Chief General Counsel represents WCA in all legal matters and manages the Office of General Counsel. The position also supervises the Bureau Chiefs of the Enforcement and Compliance bureaus and the Uninsured Employers Fund. Duties include but are not limited to: providing advanced legal counsel to the agency Director and executive staff. The position requires a broad range of legal experience including administrative law, legislative process, New Mexico Inspection of Public Records Act (IPRA), labor and employment law, procurement, contracts and Workers' Compensation law. The position is located in Albuquerque, New Mexico. Current New Mexico licensure is required. Please send resume and cover letter to WCA Deputy Director of Support Services, Leigh Martinez at Leigh.Martinez@state.nm.us.

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

Multiple Positions

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!

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/careers. All inquiries are confidential.

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

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-New Position

Our AV Rated law firm is expanding so we created a new position. Please come join us for a professional environment, excellent pay, retirement, employee healthcare and other benefits. 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

Team Paralegal

DO LAW DIFFERENTLY IN A COLLABORATIVE TEAM SETTING! Fast-paced Albuquerque law firm seeking full-time Paralegal with 3 years+ experience. Proficiency in electronic case, deadline and document management required. Strong organizational, computer and multitasking skills is a must. We offer excellent benefits and working environment. Email resume to lisa@adamscrew.com.

Team Legal Assistant

DO LAW DIFFERENTLY IN A COLLABORATIVE TEAM SETTING! Fast-paced Albuquerque law firm seeking full-time Legal Asst with 3 years+ experience. Proficiency in e-filing, calendaring, electronic case and document management required. Strong organizational, computer and multitasking skills is a must. We offer excellent benefits and working environment. Email resume to lisa@adamscrew.com.

Full Time Legal Assistant

Litigation Law Firm looking for someone with strong written and verbal communication skills, excellent organizational ability, work ethic and team oriented attitude needed to fill a position assisting a fast-paced litigation practice for an attorney based out of the country. While the job needs good writing and proof-reading ability, the firm is willing to train a smart, motivated person who wants to be committed to the long term mission of the firm. A good memory and initiative in seeing through tasks when opposing firms will make that difficult is required. Proficiency in the use of a Mac, Word, and digital office technology is a daily part of the job. Most importantly, only compassionate and considerate people who want to help our clients should apply. We are a truly diverse workplace in every sense of that word, and as trial lawyers we value everyone's opinion. Salary dependent on experience. 5 years of experience required. Please send resumes to steven@curtislawfirm.org

Member Services Coordinator

The State Bar of New Mexico Member Services Department seeks a full-time Member Services Coordinator. The successful applicant must have excellent event planning, organizational, customer service, computer, and communication skills. Must be able to manage multiple projects and deadlines. Minimum high school diploma plus 2 years' experience in event planning is required. Generous benefits package. \$16-18 per hour, depending on experience and qualifications. To be considered, submit a cover letter and resume to hr@nmbar.org. EOE. For details and application instructions visit <https://www.nmbar.org/NmbarDocs/AboutUs/Careers/MS2020.pdf>

Office Space

Professional Offices on Lomas

Well-maintained building on busy Lomas Blvd with professional tenant mix in the building. Suite B at 4401 Lomas Blvd is 2,200 SF with both private offices and a large open area. Close proximity to UNM and only 10 minutes from Downtown and Uptown. Dedicated parking lot for building. \$16.00/SF plus utilities. Contact Ed Anlian at 505-880-7069 or ed.anlian@colliers.com.

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.

Downtown Office for Rent

Converted house on Marquette. Close to the courthouse. Three large offices, two assistant areas, great parking, refrigerated air. \$800.00 a month. Please call 505-243-4541.

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

Miscellaneous

Want To Purchase

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

Quality Office Furniture

Matching oak/walnut assist and executive desks, credenza, and 2 drawer lateral file cabinet. Executive and his client blue leather chairs. Also, 2 heavy duty metal desks and file cabinet. Pics and prices (505) 327-5179.



Everett v. Taves, 298 Va. 25, 833 S.E.2nd 876 (2019)

COMPLEX TAXATION LEADS TO CRUSHING INTERIM SPOUSAL SUPPORT

In December 2012, a trial court in Virginia ordered James Everett to pay his soon to be ex-wife \$13,371 per month in interim spousal support, plus \$46,986 in arrears. While Everett's tax return showed income of \$33,000 per month, Everett claimed his monthly take-home only amounted to \$10,000. A certified public accountant testified as to the veracity of Everett's claim.

How could a court require interim spousal support that largely surpassed Everett's ability to pay?

Everett's tax return, like those of many self-employed business owners and LLC members, reflected gross income that was much higher than the cash distributions he actually received.

Many courts are bound by guidelines requiring them to base support payments on reported gross income, rather than cash flow. In addition, some courts are not necessarily adept at, or open to, interpreting complex finances. That can leave those with non-traditional income at risk for excessive support awards.

After lengthy appeals, Everett eventually prevailed in Virginia's Supreme Court in 2019.

Learn more about taxable income & support on our blog at www.wbmh.law/caselaw

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