

# BAR BULLETIN

December 9, 2020 • Volume 59, No. 23



## 2021 Licensing Notification

2021 State Bar licensing certifications and fees are now due. Please submit by Feb. 1, 2021 to avoid late fees.

To complete annual licensing requirements visit  
**[www.nmbar.org/licenser renewal](http://www.nmbar.org/licenser renewal)**.  
For questions, email [license@nmbar.org](mailto:license@nmbar.org).

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—SPECIAL INSERT—  
**YLD in Brief**

# Last chance for 2020 course offerings!



## CLE programming from the Center for Legal Education

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

### Upcoming Webinars

**First Annual Women in the Law Symposium:  
Where We've Been. Where We Are. Where We're Going.  
A Forty Year Retrospective of Women and the Legal  
Profession in New Mexico**

Thursday, Dec. 10 • 8:30 a.m.–4:45 p.m.

5.2 G 2.0 EP

\$290 Standard Fee

**2020 Intellectual Property Law Institute**

Friday, Dec. 11 • 9 a.m.–3:15 p.m.

5.0 G

\$215 Standard Fee

**GREAT Adverse Depositions:  
Principles & Principal Techniques**

Friday, Dec. 11 • 11 a.m.–1 p.m.

1.0 G

\$139.66 Standard Fee

**Keeping Your Tail Covered: Tips on Maintaining Malpractice  
Coverage When Changing Jobs, Going into Government Work,  
or Retiring**

Tuesday, Dec. 15 • 10 a.m. - Noon

2.0 EP

\$98 Standard Fee

**2020 Mock Meeting of the Ethics Advisory Board**

Tuesday, Dec. 15 • 1–3 p.m.

2.0 EP

\$98 Standard Fee

**PowerPoint Power Hour**

Wednesday, Dec. 16 • Noon–1 p.m.

1.0 G

\$49 Standard Fee

**Basics of Trust Accounting: How to Comply  
with Disciplinary Board Rule 17-204**

Wednesday, Dec. 16 • 3:30–4:30 p.m.

1.0 EP

\$49 Standard Fee

**Zooming in on New Mexico Energy &  
Natural Resources Law**

Friday, Dec. 18 • 8:30 a.m.–4:20 p.m.

4.0 G 1.0 EP

\$215 Standard Fee

**Gain the Edge! Negotiation Strategies for Lawyers**

Tuesday, Dec. 22 • 9 a.m.–4:30 p.m.

5.0 G 1.0 EP

\$258 Standard Fee

**The World Has Changed. Let's Sort it Out**

Monday, Dec. 28 • 8:30–11:45 a.m.

3.0 EP

\$141 Standard Fee

**Naked and Afraid: A Legal Survival Skills Program**

Monday, Dec. 28 • 1–4:15 p.m.

2.0 G 1.0 EP

\$141 Standard Fee

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chance  
to take in  
2020!

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## Meetings

### December

- 9**  
**Business Law Section Board**  
 4 p.m., teleconference
- 9**  
**Children's Law Section Board**  
 Noon, teleconference
- 9**  
**Tax Section Board**  
 9 a.m., teleconference
- 11**  
**Prosecutors Section Board**  
 Noon, teleconference
- 15**  
**Solo and Small Firm Section Board**  
 10:30 a.m., teleconference
- 16**  
**Natural Resources, Energy and Environmental Law Section Board**  
 Noon, teleconference
- 17**  
**Public Law Section Board**  
 Noon, teleconference
- 17**  
**Trial Practice Section Board**  
 Noon, teleconference
- 18**  
**Cannabis Law Section Board**  
 9 a.m., teleconference

## Workshops and Legal Clinics

### December

- 9**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., Video Conference  
 For more details and to register, call  
 505-797-6094
- 9**  
**Common Legal Issues for Senior Citizens Workshop**  
 11 a.m.-noon, Video Conference  
 For more details and to register, call  
 505-797-6005

# 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](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### New Mexico Supreme Court Candidate Announcement

The New Mexico Supreme Court Judicial Nominating Commission convened on Nov. 19 via Zoom, and completed its evaluation of the seven candidates for the one vacancy on the New Mexico Supreme Court due to the retirement of the Honorable Supreme Court Justice Judith K. Nakamura, effective Dec. 1. The Commission recommends the following candidates to Governor Michelle Lujan Grisham: **Judge James Waylon Counts, Judge Jennifer Ellen DeLaney, Judge Julie J. Vargas and Judge Briana Hope Zamora.**

### Second Judicial District Court - Criminal Announcement of Vacancies

Four vacancies on the Second Judicial District Court will exist as of Jan. 1, 2021, due to the retirement of Judge Charles Brown and Judge Carl Butkus, effective Dec. 31 and due to the outcome of the retention vote with respect to Judge Christina Argyres and Judge Jacqueline Flores. Inquiries regarding additional details or assignment of this judicial vacancy should be directed to the Chief Judge or the Administrator of the court. Because Judge Daniel Ramczyk is transferring to the Civil Division, all four vacancies will be in the Criminal Division. Sergio Pareja, chair of the Supreme Court Judicial Nominating Commission, invites applications for these four positions from

## Professionalism Tip

**With respect to the public and to other persons involved in the legal system:**  
I will strive to set a high standard of professional conduct for others to follow.

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](mailto:akin@law.unm.edu). The deadline for applications has been set for Nov. 30, by 5 p.m. All applications and letters of references are to be emailed to [akin@law.unm.edu](mailto:akin@law.unm.edu). Applications received after 5 p.m. will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Second Judicial District-Criminal Division Judicial Nominating Commission will convene beginning at 9 a.m. on Monday, Dec. 14, and the meeting 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](mailto:akin@law.unm.edu). Alternatively, you may find the Zoom information for this hearing below:  
Topic: Second Judicial District Court – Criminal Judicial Nominating Commission Meeting  
Time: Dec. 14 at 9 a.m.  
Join Zoom Meeting  
<https://unm.zoom.us/j/379615447?pwd=M3lSVGxUSEkrSjd4cExlVXYwK3MzQT09>  
Meeting ID: 379 615 447  
Password: 72146

### Second Judicial District Court – Children's Court Announcement of Vacancies

Two vacancies on the Second Judicial District Court – Children's Court will exist as of Jan. 1, 2021, due to the retirement of Judge Cristina T. Jaramillo and Judge John J. Romero Jr. effective Dec. 31. Inquiries regarding additional details or assignment of this judicial vacancy should be directed to the chief judge or the Administrator of the court. Sergio Pareja, chair of the Second Judicial District Court – Children's Court 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](mailto:akin@law.unm.edu). The deadline for applications has been set for Dec. 1, by 5 p.m. All applications and letters of references are to be emailed to [akin@law.unm.edu](mailto:akin@law.unm.edu). Applications received after 5 p.m. will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Second Judicial District Court – Children's Court will convene beginning at 9 a.m. on Dec. 17, 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](mailto:akin@law.unm.edu). Alternatively, you may find the Zoom information for this hearing below:

Topic: Second Judicial District Court – Children's Judicial Nominating Commission Meeting  
Time: Dec. 17 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

Two applications were received in the Judicial Selection Office for the judicial vacancy in the Twelfth Judicial District Court due to the retirement of the Honorable James Waylon Counts, effective Nov. 1. The Judicial Nominating Commission will meet at 9 a.m. on 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](mailto:akin@law.unm.edu).

Alternatively, you may find the Zoom information for this hearing below. The names of the applicants in alphabetical order: Ellen Rattigan Jessen and Matthew Russell Wade. Please change your Zoom Screen Name to your full name to be admitted.

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

## Administrative Office of the Courts

### Notice of Online Dispute Resolution Training

The Judiciary is upgrading Online Dispute Resolution (ODR) starting Dec. 14. Training will be offered to attorneys on Dec. 9, 4-5 p.m., and Dec. 16, noon-1 p.m., by the Administrative Office of the Courts and its Judicial Information Division. Under Supreme Court Order No. 20-8500-036, participation in ODR is mandatory for plaintiffs in debt and money due cases as well as landlord-tenant actions involving collection of money due. Cases will be automatically referred to ODR upon service of the defendant. Either the plaintiff or defendant can make an initial settlement offer. New features of the web-based ODR platform include a chat function allowing the parties to text and chat in real time with mediators and each other. If no agreement is reached after 30 days in ODR, cases will move forward in court. For more information and to sign up for the training, visit the Judiciary's ODR website at this link: <https://adr.nmcourts.gov/odr.aspx>.

## 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](http://www.nmbar.org/covid-19) for a compilation of resources from national and local health agencies, canceled events and frequently asked questions. This page will be updated regularly during this rapidly evolving situation. Please check back often for the latest information from the State Bar of New Mexico. If you have additional questions or suggestions about the State Bar's response to the corona-

virus situation, please email Executive Director Richard Spinello at [rspinello@nmbar.org](mailto:rspinello@nmbar.org).

## Board of Bar Commissioners 2020 Election Results

The nomination period has ended for the 2020 election for the Board of Bar Commissioners and there were no contested districts. The following individuals have been elected by acclamation to three-year terms: Elizabeth J. Travis in the First Judicial District; Aja N. Brooks in the Second Judicial District; Robert Lara in the Third and Sixth Judicial Districts, Mitchell Mender in the Ninth and Tenth Judicial Districts, and Erinna M. "Erin" Atkins in the Twelfth Judicial District. No nomination petitions were received for a vacancy in the Second Judicial District, two vacancies in the Seventh and Thirteenth Judicial Districts, or the Out-of-State District position. A notice for those vacancies is included in this Bar Bulletin and the Board will make those appointments at their Feb. 5 meeting.

## Minimum Continuing Legal Education Compliance Deadline Approaching

Dec. 31, 2020 is the last day to complete 2020 Minimum Continuing Legal Education requirements. For a list of upcoming MCLE approved courses, visit [www.nmbar.org/MCLE](http://www.nmbar.org/MCLE). Contact MCLE with questions at 505-797-6054 or [mcle@nmbar.org](mailto:mcle@nmbar.org).

## State Bar of New Mexico Licensing Certifications and Fees Due by Feb. 1, 2021

Submit by Feb. 1, 2021, to avoid late fees. To complete your annual licensing certifications and pay your fees by credit card, visit [www.nmbar.org/licensere-newal](http://www.nmbar.org/licensere-newal). To request a PDF copy of the license renewal form or for questions regarding your renewal, email [license@nmbar.org](mailto:license@nmbar.org). For technical support, email [techsupport@nmbar.org](mailto:techsupport@nmbar.org).

## Commissioner Vacancies in the Second, Seventh and Thirteenth Judicial Districts and Out-of-State District

Rule 24-101 (C) and (D) NMRA have been amended by the Supreme Court to reflect that the Bar Commissioner

— *Featured* —

## Member Benefit



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[sales@meetingbridge.com](mailto:sales@meetingbridge.com) or visit  
[meetingbridge.com/371](http://meetingbridge.com/371).**

Districts shall follow the established State Judicial Districts. On Jan. 1, there will be four vacancies on the Board of Bar Commissioners as follows: One vacancy in the Second Judicial District, two vacancies in the Seventh and Thirteenth Judicial Districts, and one vacancy for an Out-of-State District position. The appointments will be made by the Board of Bar Commissioners at the Feb. 5 meeting to fill the vacancies until the next regular election of Commissioners, and the terms will run through Dec. 31, 2021. Active status members with a principal place of practice (address of record) in the Districts with vacancies are eligible to apply. The remainder of the 2021 Board meetings are scheduled for: April 16, June 11, Oct. 7, and Dec. 8 or 9 (TBD); depending on the COVID-19 situation, at least a couple of the meetings may be held virtually. Members interested in serving on the board should submit a letter of interest and resume to [sbnm@nmbar.org](mailto:sbnm@nmbar.org) by Jan. 15 COB.

## New Mexico Judges and Lawyers Assistance Program

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

*Notices continued on page 13.*



# “ME”

## I am broken, we are all broken

*By Briggs Cheney*

Is there a lesson in a Pandemic? Will that lesson stick, or will the storm be weathered and it will be back to my life as it has always been? Is it too late in my life to change course?

“There is a crack in everything. That’s how the light gets in.” Those are Leonard Cohen’s words in his album Anthem. For me, the last nine months have revealed, once again, that crack in my life. I have seen the light shine through the crack before and I have tried to learn the lesson, but I have always ended up ignoring the light.

That crack is one of my greatest character defects – I have forgotten “me”. I have put “me” last.

Don’t misunderstand. When I say I have put “me” last, I am not saying I have put everyone ahead of me, or that I have dedicated myself to others, forgetting myself. That is not what I am saying. I have been selfish and self-centered, and I have sought and surrounded myself with material things and all the trappings of success I could gather up. No doubt, part of the problem.

Then what am I saying? As I compose this article – in these first few paragraphs – I am not exactly sure. If I have been selfish and self-centered. If I have acquired all the things I thought I needed or deserved. How have I ignored “me”? who is this “me”?

“Me” is that eight-year old boy who watched out his window as the other boys in the neighborhood gathered on the corner across the street from my house to go play baseball at the park, and they didn’t call me.” “Me” was that little boy being alone, not understanding,

trying to face that fear of not knowing what to do.

The crack in “me” was how I dealt with feeling alone - feeling being the operative word.

It has been a long time since I was eight-years old, and I have done okay. More than okay. But it is how I got there – got to today - that is part of that crack. Where I could go from here?

Both my parents were alcoholics. I know they loved me, but it is so hard to love when you struggle with the disease of addiction. I learned how to survive on my own – alone.

My middle school counselor – God, I wish I could remember his name – gave me a crash course in social skills – “Keep your mouth shut. Just listen. They will start to like you.” He was right. It worked. I had friends, I was voted best looking in my high school class and went off to college, and here I am, a lawyer.

Along the way, like my parents, the disease of addiction caught up with me. And like them, I was an alcoholic. And like my parents, I put my family through what I had suffered through as a child. My greatest regret.

Many know my story and it is not one I am ashamed of, but a story for another day, other than to say that today I am in recovery, and have been, for going on twenty-four years. In those years, I have learned a lot about myself, some of it hard to face.

That lesson I learned in middle school was so simple and so quickly reinforced it became part of “me.” I need to say again, because it is important to me personally, while I know

my parents loved me, that love was hard to find and I had to find support outside of my family – through friends, by doing what was expected of me and receiving reinforcement and learning that working hard and being dedicated resulted in reward. It became part of “me.”

For those who know me well, there is another side of “me” that is inconsistent with my middle school counselor’s advice – “keep your mouth shut and just listen.” I can be a renegade. I can buck authority. I can take a stand when I may be the lone – or next to lone – voice. Perhaps, just maybe, that is where the hope for fixing my crack resides in “me”.

On those occasions when the renegade comes out, when I do what seems foolish or against the odds, when I don’t “keep my mouth shut and just listen”, I feel alive, I feel purpose, I feel “me”.

Fifteen days after 911, my first best friend in this world, Bill Giese, dropped dead of a massive heart attack. Bill was 27 days my senior – he was 54 years old. Bill was a Captain for Southwest Airlines, a long-distance runner, a specimen of fitness, and he dropped dead.

Bill was not my first friend or colleague to leave life prematurely, but Bill was my first best friend in life and his passing stunned me. As most of us do on those occasions, we search our souls and vow to re-evaluate our priorities. I promised myself that things would change for “me” and here I am – 19 years later – writing that I am still broken.

So, who is this “me” that I suppressed so many years ago? This “me” who every once in a while has escaped the cave and stepped out into the sunshine and experienced life beyond “keep your mouth shut and just

listen”? I am not sure who “me” is or could be.

In this last nine months, life has slowed down and I have felt like I have been treading water – waiting. We have all had to adjust our personal and professional lives and it has not been easy for any of us. Into this vacuum, there has been no shortage of podcasts, advice and tools made available to help us. Cosh knows, my writing this personal piece about “me” is part of that effort. Of course, I hope it helps someone, but what I do know as I get to the last paragraph is that volunteering to share my own personal story has helped me. So, I thank you for the chance to help me find “me”.

It is probably fair to say that we are all broken in one way or another. We all have cracks and every once in a while the light shines in and we have a chance, we have a moment to make a change in our lives. Can I seize that moment, will I seize that moment and follow the light? Yes, I am broken, but is this my chance to be broken better?

#### **About the Author:**

Not by design but happenstance, Briggs’ career in the law has been that of being a lawyer’s lawyer.

Following graduation from law school at UNM and for the better part of his 48 years of practice, Briggs has had the honor of helping lawyers throughout New Mexico - defending them in the civil arena and guiding them through the disciplinary process. Briggs has been recognized for his legal skills in representing lawyers and he has been a leader in local, state and national bars. He has tirelessly helped the struggling and suffering lawyer as others helped him.

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**Lawyers and Law Students:** Call 505-228-1948 or 800-860-4914



# Ask-a-Lawyer Law Day Call-in Program

The Young Lawyers Division would like to express its sincerest gratitude to the volunteer attorneys who volunteered for this year's Ask-a-Lawyer Law Day Call-in Program, many of whom have been dedicated volunteers of the program for a number of years. Without volunteer participation this program could not be a success.

Annually the program fields roughly 250 calls from New Mexico residents eager to receive brief answers to their legal questions. Even with all the challenges of 2020, over 150 calls were received from across the state. The public continues to be appreciative of the event and the YLD is proud to have been able to provide this resource in such a unique year.

**Thank you, Ask-a-Lawyer Call-in Program volunteers!**

Saba Ahmed  
Allison Block-Chavez  
Morris Chavez  
Krista Garcia  
Don Guerra  
Thomas Guerra

Shasta Inman  
Ryan Jerman  
Victoria Lucero  
David Lutz  
Deian McBryde  
Mariah McKay

Pamela Munoz  
Joseph Petrelli  
Penelope Quintero  
Trace Rabern  
Matthew Rowland  
Kate Rubi

Sheryl Saavedra  
Sherrie Sanchez  
Cady Sartorius  
Constance Tatham  
Dominique Work

Thank you also to the State Bar staff and Barking Dog Communications LLC for their help with intake during the program and ensuring calls were smoothly transferred across the state!

Jerry Miller

Chris Lopez

Morgan Pettit

Greg Snover







**C**ongratulations to the following attorneys who have achieved 50 years of practice! Those listed received their Juris Doctorates at the end of 1969 and throughout 1970. The turning point of this decade held many landmarks in American history. From the first man walking on the moon, to the debut of the Boeing 747, and even to The Beatles formally disbanding, looking back at all that has happened allows us to appreciate your significant length of service as a special occasion for the legal profession. Your careers are a testimony of your dedication and loyalty to the legal community, your clients and the State Bar.

### **Robert J. Baca**

Robert J. Baca was born on May 13, 1941. He received his BA from the University of Maryland and his JD from Catholic University in Washington, DC.

Baca's extensive career includes serving as legislative and administrative assistant to U.S. Senator Joseph Montoya, where he served as the senator's liaison to Senate Watergate Committee. He worked in the Civil Rights Division of the United States Department of Health, Education and Welfare.

In New Mexico, he served as assistant U. S. attorney for the Criminal Division District. Baca also served as assistant attorney general for the state of New Mexico. When he was director of Medicaid Fraud Division, which was cross-designated with US Attorney's office to AUSAs, he, Mary Higgins and Edwin Winstead successfully prosecuted twenty million-dollar Medicaid fraud case against Mega Oxygen, N.M.

Baca still maintains an active status with the State Bar of New Mexico and is married to Frances.



### **Richard A. Bachand**

New Mexico was not Mr. Bachand's first bar. Mr. Bachand went to law school at the University of Tulsa, where he was then admitted to the Oklahoma State Bar. Since then, he became a member of five additional bars. But Mr. Bachand has always considered New Mexico

his home. He grew up in Albuquerque and lived there off and on until his family had to move to lower altitude. Mr. Bachand had the honor to know and learn from some of the finest lawyers, not only in New Mexico, but all around the world. But he also had opportunities to live, travel, and practice in exotic places, like Tokyo, Japan, Hong Kong, San Diego, California, Dallas, Texas (well, some are maybe not so exotic). Being a lawyer has been the journey of a lifetime, and if he could start over, he would do it exactly the same way.

### **Arthur O. Beach**

A native New Mexican, Beach was born in Albuquerque and raised in Belen, where he graduated from high school. Beach attended UNM both undergraduate (BBA '67) and law school (JD '70). After passing the bar, he joined the Albuquerque firm of Smith, Ransom & Deaton as an associate, which he considered a fantastic experience. After three and a half years, he joined Keleher & McLeod where he practiced for the next 44 years. Over the years, Beach was primarily engaged in a civil trial practice. Beach was honored by the UNM School of Law Alumni Association with its Distinguished Achievement Award in 2006. He was also honored to be included in Best Lawyers in America and Southwest Super Law-

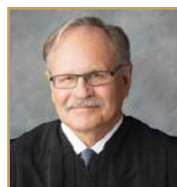
yers for many years. This year, Beach is also celebrating 50 years of marriage to my lovely wife, Alex. Their son, Eric, is an Albuquerque real estate broker.



### **Daniel J. Behles**

Dan Behles was born and grew up in Chicago and obtained his undergraduate degree from the University of Notre Dame. He started law school at Loyola Law in Chicago in 1967, and moved to New Mexico in 1969, obtaining his law degree from UNM in 1970. His law practice

has been concentrated in bankruptcy for over 40 years. He is of Counsel to the bankruptcy firm of Askew & White in Albuquerque. He represents debtors, creditors, trustees and committees, and has been both a Chapter 7 and Chapter 11 Trustee. He was certified as a specialist in both business and consumer bankruptcy by the State Bar of New Mexico and by the American Board of Certification. He has been active in State Bar activities, serving on the Board of Bar Commissioners, the Board of the Senior Lawyers Division, the Bankruptcy Law section, and the Specialization Board. He's been a Southwest Superlawyer for more than 10 years. Behles lives in Los Ranchos with his partner Dr. LuAnn Papile, and has one daughter, Jessica Behles.



### **Hon. Richard Bosson**

Hon. Bosson was admitted to the State Bar of New Mexico in 1970. He served for five years with the Legal Aid Society of Albuquerque. Hon. Bosson served for three years as the Assistant Attorney General and as the Director of the Civil Division of the AGs office as well.

He practiced for 15 years in Santa Fe then then went on to serve as Judge for the New Mexico Court of Appeals from 1994-2002, including two years as Chief Judge. Hon. Bosson was then appointed to the New Mexico Supreme Court from 2003-2015 Justice, including two as Chief Justice. Hon. Bosson has been retired as of 2015.



### **Hon. John A. Darden, III**

Hon. Darden was born during WWII returning to Albuquerque to the home of his maternal grandparents until his father returned from the War. When his father graduated from University of Virginia Law School, his family moved to Las Cruces. Hon. Darden graduated

from Las Cruces High and then went to attend West Point and University of Arizona Law School. Hon. Darden was law clerk for Chief Justice ME Noble on the New Mexico Supreme Court. Thereafter, he worked as an assistant attorney general, trial and transaction lawyer, United States magistrate judge (16.5 years), and

now an arbitrator for FINRA, the American Arbitration Association, and Construction Disputes Resolution Services.

His service to the profession includes past chairman for the Real Property, Trust and Estate Section, president Dona Ana County Bar Association, state chairman for ACTEC, former member of Senior Lawyers Division, and various ACTEC committees.

His service to his community includes past president of Greater Las Cruces Chamber of Commerce, Catholic Diocese Board of Directors, The Whole Enchilada Fiesta, Sunshine District of Boy Scouts, and of Salvation Army Advisory Board. Hon. Darden currently serves chairman on the Las Cruces Airport Board.



### Joseph M. Fine

After tiring of New Your City, Joseph M. Fine hitch-hiked out west in search of both America and employment. He was hired by Smith & Ransom, a personal injury firm. Fine eventually opened his own office and has practiced in the fields of criminal law, civil rights and personal injury, especially medical malpractice. In addition, he has

been a mediator in approximately 1,500 cases.

Fine has found the legal profession to be intellectually challenging and a wonderful opportunity to help people in need. He has met so many well-motivated, helpful, ethical lawyers and has truly enjoyed practicing with other lawyers in his firm, including his children. While the practice of law does have severe “ups and downs,” he feels privileged and lucky to be a part of the legal profession.

The greatest example of jurisprudence that he has witnessed was provided by the late Justice Gene Francini, who, in chambers, politely asked him and opposing counsel to summarize our rather petty dispute. Justice Francini listened knowingly, paused, looked at both of us, and decreed, “I am going to the bathroom, and by the time I flush, you two idiots better have this case settled.” And they did.



### Joseph Erwin Gant, III

Joseph Erwin Gant, III was born on March 17, 1940 in Carlsbad. His parents were the late Senator Joseph Erwin Gant, Jr. and Opal Martin Gant. He has one sister, Mary Martin Gant. He graduated from Carlsbad High School in 1958, then attended UNM where he received his BA in 1965 and his JD in Law in 1968.

From 1968 to 1969 Gant was a law clerk for Judge Joe Wood of the Court of Appeals in Santa Fe; 1969 to 1970 he was a law clerk for Marron and McKinnon of Albuquerque; 1970 to 1971 he was an associate with Howden & Turpen of Albuquerque; 1971-1972 assistant district attorney for the 13th Judicial District; 1973-1974 associate for Glascock & McKim of Gallup; February 1974 to present, Gant has been self-employed as an attorney in Carlsbad.

Gant married Beverly in Carlsbad. They have three children: Carla, Mark and Joseph IV. They have eleven grandchildren and six great grandchildren. Sadly, Beverly passed away in 2017. Gant spends his time with family, lunching with friends, reading and watching sports.

### William L. Lutz

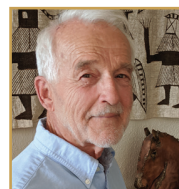
Mr. Lutz graduated law school from University of Texas in 1969. He was in the firm of Garland, Martin & Martin and successor firms from 1969 to 1982. Mr. Lutz was President of the Dona Ana Country Bar Association in 1975 and was on the Supreme Court's Rules of Evidence Committee from 1972 to 1982. In 1982, he was appointed by President Regan, United State Attorney for New Mexico, and served until 1991. He was on the Advisory Committee of the 10th Circuit from 1987 to 1991. Mr. Lutz served as chairman of the Southwest Border Subcommittee of the Attorney General's Advisory Committee of U.S. Attorneys from 1989 to 1991. When he left the US Attorney's Office, he returned to private practice in Las Cruces with the law firm Martin & Lutz. Mr. Lutz practices with his son, David Lutz, who is a current member of the Border of Bar Commission. Mr. Lutz also served on the BBC from 1976 to 1976, and then again from 1995 to 1997. He was President of the National Association of Former United State Attorneys from 2011-2012. Mr. Lutz is married to Jeannie Lutz and they celebrated our 50th anniversary this last Christmas. He has two sons, William Jr., who works for state government in Texas, and David.



Ralph H. Scheuer



Hon. Alan C. Torgerson



### Thomas P. Whelan, Jr.

Thomas P. Whelan, Jr. grew up in a small town in northwestern Illinois, graduated from Notre Dame in 1964, and after a stint in the Peace Corps of Chile, obtained his law degree from the University of Chicago in 1970. Whelan moved to New Mexico that summer and studied for the Bar exam in Albuquerque.

Whelan might have stayed in the midwest but for the fact that he spent the last summer of his law school years working on the Navajo Reservation with a BIA lawyer who was a U of C graduate. He finished that summer with a trip through northern New Mexico that changed his post-graduation plans.

Whelan's law career began in the New Mexico Attorney General's office where he spent a total of six years, after which he started a modest solo practitioner's general civil practice and continue with through the present. What he has enjoyed most about the practice and what keeps him going is that it has been and continues to be a learning experience almost on a daily basis. His teachers have been experienced lawyers in the AG's office, colleagues and friends in private practice, and opposing counsel who have taught him lessons in cases they have litigated. Whelan is grateful for all that learning, even when it was not easy.

*While some recipients provided photos and biographies,  
we want all those who have achieved this milestone to be recognized.*

Paul G. Bardacke  
Bruce Boynton, III  
James H. Bozarth  
Michael B. Browde  
James A. Burroughs  
Bill Chappell, Jr.

David F. Cunningham  
Charles T. DuMars  
George A. Dubois  
Robert A. Engel  
W. Peyton George  
Joseph Goldberg

Tandy L. Hunt  
Thomas E. Luebben  
Wilfred T. Martin, Jr.  
L. Michael Messina  
Robert Dale Morrison  
Robert E. Poulson

Bryan L. Query  
Charles W. Rogers  
Filmore E. Rose  
Hon. Patricio M. Serna  
Lee Lanny Sigler  
Robert S. Simon

Robert A. Skipworth  
Robert M. Strumor  
Alan R. Taradash  
Ronald T. Taylor  
Ray Twohig



Congratulations to the following additional attorneys who have achieved 25 years of practice! The anniversary of your significant length of service, especially as serving as a judge during your legal tenure, is a special occasion for the legal profession as it is a testimony of your dedication and loyalty to the legal community, your clients, and the State Bar.

Hon. Rosemarie Lazcano Allred  
Hon. Floripa Gallegos  
Hon. Brett R. Loveless

Hon. David Peter Reeb, Jr.  
Hon. Linda M. Vanzi

## Resource Deskbook and Member Listing

For many years, the State Bar of New Mexico has provided a printed directory listing to members. But the *Bench & Bar Directory* has always been so much more than that. It includes information on State Bar services and programs, court contact information, civil legal services providers, and so much more.

**This year, you will receive the Directory in two parts.**

- **Resource Deskbook:** Includes important information about the State Bar of New Mexico, Courts, and the legal community. We hope this full color publication will have a permanent place on your desk and you use it for reference often.
- **Active Member Listing:** The online member lookup is always available at [www.nmbar.org/findanattorney](http://www.nmbar.org/findanattorney). For those that prefer to physically look up a member's information, we have continued to provide this. The inactive and geographic listing are available digitally at [www.nmbar.org/resourcedeskbook](http://www.nmbar.org/resourcedeskbook).

### There's more to be excited for!

In early 2021, the State Bar will be launching our new association management system (database) and website. This AMS will provide a much improved online experience for members. Among its many features, the new website will have an improved online member look up. We hope you will begin to rely on this feature in your office, in court, or on the go.

We hope you will find these publications useful and informative. If you have any comments or questions, email me at [notices@nmbar.org](mailto:notices@nmbar.org).







## ARTURO L. JARAMILLO

### *Summer Law Clerk Program*

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

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

*To learn more, please contact the organizer of the event!*



mo@saucedochavez.com



*Notices continued from page 5.*

### **Monday Night Support Group**

- Dec. 14
- Dec. 21
- Dec. 28

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

### **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](http://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!

## **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](mailto: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>.

### **Spanish for Lawyers II**

This course will take place Thursdays from 4:30-6:30 p.m. from Jan. 14-April 22, 2021. This course will give the practitioner an understanding of the legal framework in Spanish-speaking civil system traditions, along with legal terminology used in a variety of practice settings, with an emphasis in practical aspects of language usage, trial practice, and procedure, at a more advanced level than Spanish for Lawyers I. Active participation is required. Lawyers must be conversant in Spanish, as the course is taught entirely in Spanish. All students will be tested prior to the start of class. This course has been approved by New Mexico MLCE for 20 general CLE credits. Community enrollment is limited to four, so register now for this valuable opportunity to learn to better assist Spanish-speaking clients in criminal law, domestic relations, and minor civil disputes! UNM tuition remission is available for UNM faculty & staff. Contact Emmalee Johnston at [ejohnstone@law.unm.edu](mailto:ejohnstone@law.unm.edu) for more information. For online registration visit [https://secure.touchnet.com/C21597\\_ustores/web/product\\_detail.jsp?PRODUCTID=254&SINGLESTORE=true](https://secure.touchnet.com/C21597_ustores/web/product_detail.jsp?PRODUCTID=254&SINGLESTORE=true).

# Legal Education

## December

- |   |  |   |
|---|--|---|
| <p><b>9 A Primer On Jury Selection</b><br/>1.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   | <p><b>10 Sex Ethics and Common Sense</b><br/>2.0 EP<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   | <p><b>11 GREAT Adverse Depositions: Principles &amp; Principal Technique</b><br/>2.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>     |
| <p><b>9 Avoiding Pitfalls That Can Lead to Disciplinary Action</b><br/>1.0 EP<br/>Live Webinar<br/>Attorney Protective<br/>www.attorneyprotective.com</p> | <p><b>10 Ethics in Labor and Employment Law</b><br/>2.0 EP<br/>Live Webinar<br/>National Employment Law Institute<br/>www.neli.org</p>   | <p><b>11 2020 Intellectual Property Law Institute</b><br/>5.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                            |
| <p><b>9 High Tech and Legal Ethics</b><br/>2.0 EP<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>  | <p><b>10 Guarantees in Real Estate Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>12 Persuasive Visual Evidence</b><br/>2.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>  |
| <p><b>9 Preparing Your Client Before Trial</b><br/>1.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   | <p><b>10 First Annual Women in the Law Symposium: Where We've Been. Where We Are. Where We're Going. A Forty Year Retrospective of Women and the Legal Profession in New Mexico</b><br/>5.2 G, 2.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>14 The Sixth Amendment Right To Counsel</b><br/>2.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>  |
| <p><b>9 Substance Abuse Prevention</b><br/>1.0 EP<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>  | <p><b>11 Discrimination Investigations In The Workplace</b><br/>2.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   | <p><b>14 Bridge the Gap Mentorship Program (Government Attorneys)</b><br/>3.5 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>     |
| <p><b>10 WCA Winter Seminar</b><br/>5.0 G, 2.0 EP<br/>Live Webinar<br/>Workers Compensation Association of New Mexico<br/>www.wcaofnm.com</p>             | <p><b>11 Employee v. Independent Contractors: Tax and Employment Law Considerations</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>14 Bridge the Gap Mentorship Program (Civil Attorneys, DAs/PDs)</b><br/>3.5 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>10 Mob Rules The First Amendment and Mass Protests</b><br/>1.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>                                 |  | <p><b>15 Conflicts of Interest Issues Facing Estate Planning Professionals</b><br/>1.5 EP<br/>Live Webinar<br/>Cannon Financial Institute<br/>www.cannonfinancial.com</p> |
| <p><b>10 Navigating Risks in IP Law Safe Harbors and Clm Seas</b><br/>2.0 EP<br/>Live Webinar<br/>CEU Institute<br/>407-324-0500</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](mailto:notices@nmbar.org). Include course title, credits, location/course type, course provider and registration instructions.



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| <p><b>15 Keeping Your Tail Covered: Tips on Maintaining Malpractice Coverage When Changing Jobs, Going into Government Work, or Retiring</b><br/>2.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>16 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>28 The World Has Changed. Let's Sort it Out</b><br/>3.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                  |
| <p><b>15 Ethics and Virtual Law Offices</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>16 Trust and Estate Planning for Pets</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>28 Naked and Afraid: A Legal Survival Skills Program</b><br/>2.0 G, 1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>15 2020 Mock Meeting of the Ethics Advisory Board</b><br/>2.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>16 PowerPoint Power Hour</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>29 Advanced Google Search for Lawyers</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                         |
| <p><b>15 Everyday Cyber Security and Data Privacy For Attorneys</b><br/>2.0 G<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   | <p><b>17 Twenty-six Ethical Tips from Hollywood Movies</b><br/>2.0 EP<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                          | <p><b>29 Social Media as Investigative Research and Evidence</b><br/>1.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>15 Professionalism Not Just Antonym For Unprofessionalism</b><br/>2.0 EP<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>  | <p><b>18 Zooming in on New Mexico Energy &amp; Natural Resources</b><br/>4.0 G, 1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                | <p><b>30 Lawyer Ethics of Email</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                     |
| <p><b>15 Prosecutorial Misconduct Is Not Yet The Norm But...</b><br/>2.0 EP<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   | <p><b>22 Gain the Edge! Negotiation Strategies for Lawyers</b><br/>5.0 G, 1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                      | <p><b>30 "When there are Nine" Sexual Bias in the Legal Profession</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>16 Discretionary Distributions</b><br/>1.0 G<br/>Live Webinar<br/>Cannon Financial Institute<br/>www.cannonfinancial.com</p>   | <p><b>23 Drafting Client Engagement Letters in Trust and Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                 | <p><b>30 The Ethics of Social Media Research</b><br/>1.5 EP<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                |
| <p><b>16 Attorney Addiction and Ethical Concerns</b><br/>2.0 EP<br/>Teleseminar<br/>TRT CLE<br/>www.trtcle.com</p>   |  |  |

# Opinions

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

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

**Effective November 20, 2020**

## UNPUBLISHED OPINIONS

A-1-CA-37984	State v. J Chavez	Affirm	11/16/2020
A-1-CA-37063	Deutsche Bank v. S Lozoya	Reverse	11/17/2020
A-1-CA-38108	Cloud Country West Units v. C Hardgrave	Affirm	11/17/2020
A-1-CA-38634	City of Hobbs v. J Shorter	Affirm	11/17/2020
A-1-CA-39075	State v. J Kesterson	Affirm	11/17/2020

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

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

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On October 8, 2020:  
**Carlos Lorca Armendariz**  
Law Offices of the Public  
Defender  
505 S. Main Street,  
Suite 121  
Las Cruces, NM 88001  
575-541-3193  
carlos.armendariz@lopdmn.  
us

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective October 1, 2020:  
**Lyndy Bennett**  
4200 Vista Pinon  
Farmington, NM 87401

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## CLERK'S CERTIFICATE OF NAME CHANGE

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As of October 13, 2020:  
**Niva J. Elgin**  
Law Office of Dorene A.  
Kuffer, PC  
500 Fourth Street, NW,  
Suite 250  
Albuquerque, NM 87102  
505-924-1000  
505-672-7768 (fax)  
niva@kufferlaw.com

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On October 7, 2020:  
**Elise C. Funke**  
Law Offices of the Public  
Defender  
505 Marquette Avenue, NW,  
Suite 120  
Albuquerque, NM 87102  
505-369-3601  
elise.funke@lopdmn.us

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On October 22, 2020:  
**Gary Genovese**  
Office of the Attorney General  
PO Box 1508  
408 Galisteo Street (87501)  
Santa Fe, NM 87504  
505-490-4060  
505-490-4883 (fax)  
ggenovese@nmag.gov

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## CLERK'S CERTIFICATE OF NAME CHANGE

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As of October 16, 2020:  
**Debora Gerads**  
Office of the Fifth Judicial  
District Attorney  
102 N. Canal Street,  
Suite 200  
Carlsbad, NM 88220  
575-885-8822  
dgerads@da.state.nm.us

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## CLERK'S CERTIFICATE OF NAME CHANGE

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As of September 23, 2020:  
**Alexa-Rae Gist**  
Cotton, Bledsoe, Tighe &  
Dawson, PC  
500 W. Illinois Avenue,  
Suite 300  
Midland, TX 79701  
432-684-5782  
432-684-3178 (fax)  
agist@cbtd.com

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On October 7, 2020:  
**Sainath Iyer**  
Law Offices of the Public  
Defender  
505 Marquette Avenue, NW,  
Suite 102  
Albuquerque, NM 87102  
505-369-3600  
sai.iyer@lopdmn.us

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective October 21, 2020:  
**Charlotte Rich Joseph**  
Jackson Law LLC  
1121 Fourth Street, NW,  
Suite 1A  
Albuquerque, NM 87102  
505-881-7676  
charlotte@legalactionnm.com

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS AND CHANGE OF ADDRESS

---

Effective October 21, 2020:  
**William David Snead**  
cPanel, LLC  
223 N. Guadalupe Street,  
PMB #715  
Santa Fe, NM 87501  
202-251-2708  
d.snead@cpanel.net

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective October 21, 2020:  
**William Nathaniel Weiss**  
8521 E. Cornell Drive  
Denver, CO 80231  
505-690-9809  
wweiss@weisslawoffice.us

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On October 7, 2020:  
**Anthony J. Wilburn**  
Law Offices of the Public  
Defender  
211 N. Canal Street  
Carlsbad, NM 88220  
575-887-0224  
anthony.wilburn@lopdmn.us

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2020-NMSC-002**

No: S-1-SC-37723 (filed December 19, 2019)

**STATE OF NEW MEXICO ex rel.,  
JOHN P. SUGG, DIANNA LUCE,  
FRANCESCA MARTINEZ-ESTEVEZ,  
CLINT WELLBORN, DONALD  
GALLEGOS, ANDREA REEB,  
PAULA PAKKALA, and  
LEMUEL L. MARTINEZ,**  
Petitioners,

v.

**MAGGIE TOULOUSE OLIVER,  
Secretary of State for the  
State of New Mexico,**  
Respondent.

## **ORIGINAL PROCEEDING**

Released for Publication February 11, 2020.

JOHN P. SUGG,  
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for Petitioners

InAccord, P.C.  
DANIEL A. IVEY-SOTO  
Albuquerque, NM

HECTOR H. BALDERAS,  
Attorney General  
OLGA SERAFIMOVA,  
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for Respondent

Walsh Gallegos Trevino Russo &  
Kyle, P.C.  
LINDA MAY TRUJILLO  
Albuquerque, NM  
for Amicus Curiae Legislative  
Sponsors

and

No. S-1-SC-37785

**STATE OF NEW MEXICO ex rel.,  
HON. MARY MARLOWE SOMMER,  
HON. NANCY JEAN FRANCHINI,  
HON. CONRAD FREDERICK PEREA,  
HON. ABIGAIL ARAGON,  
HON. WILLIAM G.W. SHOOBRIDGE,  
HON. JENNIFER E. DELANEY,  
HON. SHANNON MURDOCK,  
HON. JEFF MCELROY,  
HON. FRED TRAVIS VAN SOELEN,  
HON. ALBERT J. MITCHELL, JR.,  
HON. DAYLENE MARSH,  
HON. DANIEL A. BRYANT,  
HON. CINDY M. MERCER,**

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Deian McBryde, Sean Wang, Allison Block-Chavez



## Message from the YLD Chair

2020 has been a challenging year to say the least. The global Covid-19 pandemic has changed our lives, our work, and how we interact with our clients and our community. The senseless deaths of George Floyd and many other black and brown men and women have revealed the many flaws in our justice system.

We are challenged even more in our profession to uphold the constitution and ensure that our democracy and justice system work fairly for all people. Even through these difficult times, the YLD continues to be committed to you and is here to support you as you develop as young lawyers.

Mental and physical health continue to be important issues that the YLD concentrates on. Our already stressful and challenging profession requires that we maintain our mental and physical health. If you are struggling emotionally, please reach out to JLAP for help. JLAP provides a confidential helpline for a range of mental health issues. It also provides a free Employee Assistance Program that provides free counseling services for State Bar members. Know that we are not alone during the pandemic or in our profession.

To address lawyers' mental and physical well-being issues, the YLD has joined the State Bar's Well-Being Committee. The Well-Being Committee is working on programming to address well-being issues during the Covid-19 pandemic and over the long-term. Additionally, the YLD continues to host its #Fit2Practice events, including virtual yoga and a virtual 5k. Show us how you are staying healthy by tagging @NewMexicoYLD or using #Fit2Practice in your social media posts.

Furthermore, the YLD continues its regular events and programs through new mediums. The YLD's shift from in-person events to virtual events has allowed us to reach members in all four corners of the state and members outside of state. We have produced three episodes of our podcast, What I Wish I Knew, that talks about the challenges experienced lawyers faced when they were inexperienced and how they addressed them. The YLD's mentorship program with the UNM School of Law held its annual kick off event via Zoom. Chair-Elect Shasta Inman and board member Jess Perez coordinated over 70 attorneys and law students in separate Zoom rooms to network and connect. If you missed our virtual Lunch with Judges, you can watch it via NMBar.org or on Youtube.

As my term as Chair expires, I want to thank a few people who supported me and made my chair year a success. First, I want to give a big thank you to Tina Cruz, the State Bar president. She has been a tireless supporter and advocate for the YLD and me personally. As a mentor, she has demonstrated to me the epitome of a poised, thoughtful, and effective leader for the State Bar. I am fortunate to have served in a leadership role along side of her.

Second, I want to thank the YLD board, especially Sean Fitzpatrick and Shasta Inman, for their work this year. Sean served an extra year to ensure that the YLD and its programs continued to thrive during a difficult transition in 2019. Shasta Inman kept the board (and me) on track and organized. I have no doubt that she will continue to capably serve the YLD as its chair in 2021.

*continued on page 4*





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## Fit2Practice

Like everything in 2020, the Fit2Practice program looked a little different this year! The Fit2Practice program worked with the Well Being Committee of the State Bar to hold outdoor virtual yoga events with instructor Anne Kennedy. In response to growing interest and participation, we hope to host more virtual yoga in the new year!



In November, #Fit2Practice and the Well Being Committee are hosting a virtual 5K where participants can enter to win a paid of AirPods Pros! Check in your inbox for more details and remember to hashtag #Fit2Practice in any social media of you participating in these events!

If you have an idea for a virtual Fit2Practice event, please let the YLD know!

-Lindsay Cutler

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## Veteran's Legal Clinic



The YLD partnered with the Veterans Justice Outreach Program to provide a free civil legal clinic at the New Mexico Veterans Memorial. We were able to hold two civil legal clinics in January and early March. Through these clinics, veterans are able to meet one-on-one with experienced attorneys for consultations on a variety of legal issues. Thanks to partnerships with New Mexico's many civil legal services providers, volunteer attorneys are often able to refer veterans to additional legal services. Thank you to the dedicated volunteer attorneys and paralegals who make this clinic possible. We look forward to continuing this program in the future!

-Lindsay Cutler

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## Volunteer Attorney Program

New Mexico Legal Aid's Volunteer Attorney Program also partnered with the YLD in August to host a civil legal teleclinic. Justice Bacon and Judge Levy introduced the new teleclinic and provide legal consultations to over a dozen clients. The YLD is grateful to the Volunteer Attorney Program for the incredible work that they are doing to adapt to the realities of the Coronavirus pandemic and put on teleclinics to provide legal consultations and resources to New Mexicans during this difficult time.



-Lindsay Cutler

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## Ask-a-Lawyer Call-in Program



## Law Day Call In

On October 24, 2020, the Young Lawyers Division hosted Ask a Lawyer Call-In Day. Attorneys from around the State volunteered to give general legal advice. Attorneys advised people on a variety of issues including employment law, family law, personal injury, landlord/tenant, and estate planning. Over

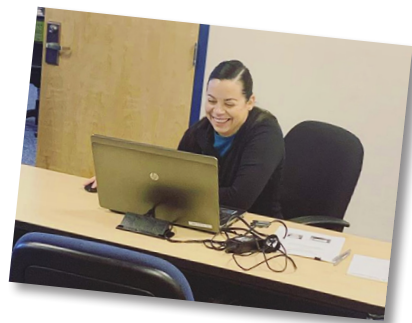
150 people called in seeking advice from the volunteer attorneys. The Young Lawyers Division would like to thank each of the volunteers. This program would not be possible without their help. We look forward to continuing the program in 2021.

-Mariah McKay

## Wills For Heroes

Like many of the in person programming events, the Wills for Heroes program has not held any events since the beginning of the Covid 19 pandemic. However, prior to that, the YLD held a successful wills for heroes program on February 29th at the Bernalillo County Fire department. We look forward to holding another Wills for Heroes event in spring of 2021. First responders are always very appreciative of volunteers spending their Saturday morning helping them to put their estate and legal affairs in order in the event that tragedy hits. If you are interested in participating, volunteering requires only a Saturday morning and program coordinators are onsite to guide and support volunteers. The YLD provides computers with software pre-loaded to prepare the documents and breakfast. Contact us to volunteer!

-Sean FitzPatrick



### Message from the YLD Chair *Continued from cover*

Third, none of the YLD's successes would be possible without Morgan Pettit. Morgan Pettit is the State Bar employee who supports and works with the YLD with its events and programs. I cannot thank Morgan enough for her tireless work and commitment to the YLD.

As we close out the year, please remember that the YLD is here for you and we want to support you as you grow as an attorney. I encourage you to get involved, participate an event or program, or reach out to one of the YLD board members.

Finally, it has been an honor to serve our New Mexico YLD and an honor to work with so many exceptional members of the State Bar. I will carry the relationships and things that I've learned with me into the future.



## SBNM is Hear

**Episode 1** • Personal Inventory: COVID – A Forced Life Transition For Some

**Episode 2: Part 1** • Tools of the Trade with Young Lawyers Division: What I Wish I Knew with Ernesatina Cruz

**Episode 2: Part 2** • Tools of the Trade with Young Lawyers Division: What I Wish I Knew with Ernestina Cruz

**Episode 3** • Tools of the Trade with Young Lawyers Division: What I Wish I Knew with Tomas Garcia

**Episode 4** • Hear All About It: COVID-19 and Evictions in New Mexico

**Episode 5** • Hear All About It: COVID-19 and Unemployment Insurance in New Mexico

**Episode 6** • Tools of the Trade with the Young Lawyers Division: What I Wish I Knew with Aja Brooks

**Episode 7** • Let's Talk About Leveraging Culture in a Solo or Small Firm

**Episode 8** • Let's Talk About Your Client Funnel in a Solo or Small Firm

**Episode 9** • Grieving, Coping, and Healing Regarding Suicides in Our Legal Community

**Episode 10** • Hear All About It: Judicial Clerkships with NM Justice David K. Thomson

Listen at [www.nmbar.org/podcast](http://www.nmbar.org/podcast)



**As New Mexico State District Court Judges  
and Citizens of New Mexico,  
DISTRICT METROPOLITAN COURT  
JUDGES' ASSOCIATION, INC.,  
HON. VICTOR EDMUND VALDEZ, As a  
Metropolitan Court Judge and  
Citizen of the State of New Mexico,**  
Petitioners,  
v.  
**MAGGIE TOULOUSE OLIVER,  
Secretary of State for the  
State of New Mexico,**  
Respondent.

**ORIGINAL PROCEEDING**

The Vargas Law Firm, LLC  
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OLGA SERAFIMOVA,  
Assistant Attorney General  
Santa Fe, NM  
for Respondent

Walsh Gallegos Trevino Russo  
& Kyle, P.C.  
LINDA MAY TRUJILLO  
Albuquerque, NM  
for Amicus Curiae Legislative  
Sponsors

and

**No. S-1-SC-37789  
STATE OF NEW MEXICO ex. rel.,  
NEW MEXICO ASSOCIATION OF  
COUNTIES, MARK CAGE and  
BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF OTERO,**  
Petitioners,  
v.  
**MAGGIE TOULOUSE OLIVER,  
Secretary of State for the  
State of New Mexico,**  
Respondent.

**ORIGINAL PROCEEDING**

New Mexico Association of  
Counties

STEVEN KOPELMAN

GRACE PHILIPS

PATRICK F. TRUJILLO

Santa Fe, NM

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Walsh Gallegos Trevino Russo &  
Kyle, P.C.

LINDA MAY TRUJILLO

Albuquerque, NM

for Amicus Curiae

Legislative Sponsors

## Opinion

### Michael E. Vigil, Justice.

{1} These separate, but related mandamus proceedings challenge the constitutionality of House Bill 407 (HB 407), 54th Leg., 1st Sess. (N.M. 2019), to the extent it postpones the times of election and extends the terms of certain public offices. 2019 N.M. Laws, ch. 212. Petitioners are among the class of public officers who would be affected by the election deferral provisions of HB 407; the petitioning groups represent district attorneys, district and metropolitan court judges, and county public officers. Petitioners' arguments, though variously framed, each turn in part upon the premise that HB 407 is unconstitutional insofar as it purports to extend their constitutionally mandated terms of office. This Court assumed original jurisdiction over the petitions under Article VI, Section 3 of the New Mexico Constitution. Concluding that the application of HB 407 would result in an unconstitutional alteration to the terms of office of all three petitioning groups, we issued writs of mandamus in each case directing Respondent, as Secretary of State (the Secretary), to refrain from implementing the affected provisions. In this opinion, we explain the reasoning and rationale underlying our issuance of writs of mandamus.

#### I. STATUTORY BACKDROP

{2} The enactment of HB 407 accomplished a major overhaul of this state's Election Code, NMSA 1978 §§ 1-1-1 to -26 (1969, as amended through 2019). The challenged provisions of HB 407 were motivated by what its legislative sponsors (the Sponsors) describe in their amicus briefs as an intent "to standardize the election dates for certain [county] offices[.]" "level" or "balance out the number of county officers on the ballot in any given election year," and "stagger

the retention [elections]" of district and metropolitan court judges. To this end, the Legislature brought about what the Sponsors characterize as a "one-time realignment" of the ballot and term provisions governing certain elected offices.

{3} With respect to the petitioning judges and county officers, the Legislature devised different two-tiered frameworks to effectuate its intended "staggered" election and "leveled" ballot goals. As to the county offices, the Legislature repealed the then existing version of NMSA 1978, Section 1-10-8 (2015), in favor of a new version of the statute. Subsection (A) of the amended version of Section 1-10-8 (2019) specifies the county clerk, county treasurer, and "county commission districts and positions with odd-numbered designations" as among the elected offices to be voted on in presidential election years, 2019 N.M. Laws, ch. 212, § 103(A)(13)-(15), while subsection (B) specifies the county sheriff, county assessor, probate judge, and "county commission districts and positions with even-numbered designations" as among the elected offices required to be on the ballot in gubernatorial election years. *Id.* § 103(B)(20)-(23). In tandem with the amendments made to NMSA 1978, Section 1-10-8, the Legislature also enacted a temporary provision designed to extend the terms of county offices as follows:

The secretary of state shall provide a process to renumber district numbers so that offices are aligned with the offices listed for election in Section 1-10-8 NMSA 1978 and, where necessary, *shall provide for an extended term* to the general election in 2022 or 2024 only as required to align offices and positions to the offices listed for election in Section 1-10-8 NMSA 1978; provided that where one member of a local governing body must

receive an extended term pursuant to this section, the secretary of state shall have the members whose terms expire the same year draw lots to make the determination.

2019 N.M. Laws, ch. 212, § 281 (emphasis added). Thus, HB 407, by express terms, calls for the postponement of elections for certain county offices in 2020, while expressly "extend[ing]" the terms of the incumbent office holders. *See id.* It appears that the practical impact of these provisions, if enforced, would extend the terms of office of nineteen county commissioners, three probate judges, two county clerks and sheriffs, one county treasurer, and either one or two county assessors.

{4} The Legislature enacted a similarly intricate set of amendments to accomplish its stated goal of staggering the retention elections of district and metropolitan court judges. In this regard, the Legislature began by creating a new chapter of the Election Code, denominated as the Nonpartisan Judicial Retention Act, NMSA 1978, §§ 1-26-1 to -6 (2019). 2019 N.M. Laws, ch. 212, §§ 172 to -77. As here relevant, Chapter 212 Section 176(A) of the New Mexico Laws of 2019 calls for a retention election to be held for each eligible district court judge "at the general election in the last year of the six-year term of office for the position in which the judge is serving[.]" while Section 176(B)(2)-(3) provides that the terms of office for district court positions "shall be staggered" so that "the term of office for division 2 and for every third division number thereafter shall expire in 2022 and every six years thereafter[.]" and that "the term of office for division 3 and for every third division number thereafter shall expire in 2024 and every six years thereafter." The term-staggering provision covering metropolitan court judgeships is laid out in Section 177. Subsection (A) of that section requires eligible metropolitan court judges to face a retention election "in the last year of the four-year term of office for the position in which the judge is serving[.]" and Subsection (B)(2) provides that "the term of office for division 2 and for every second division number thereafter shall expire in 2024 and every four years thereafter."

{5} Mirroring the approach it used in connection with county offices, the Legislature enacted temporary provisions addressed to district and metropolitan court judges, extending their terms of office so as to phase-in a new staggered election system. By these provisions, the terms of incumbent metropolitan court judges that were set to expire at the end of 2022 were extended for a two-year period, 2019 N.M. Laws, ch. 212, § 280, while the terms of incumbent district judges, each set to expire at the end of 2020, were extended for a two-year or four-year period depending on the particular judicial division involved. 2019 N.M. Laws, ch. 212,

§ 279(A)-(B). These term extensions were made “subject to the provisions of the Non-partisan Judicial Retention Act and Article 6 of the [C]onstitution of New Mexico.” *Id.* §§ 279(A)-(B), 280. Again, HB 407, by its terms, changes the election cycle for certain offices, this time district and metropolitan court judgeships, while expressly pushing back the expiration of sitting incumbents’ terms.

{6} A different legislative landscape is presented with respect to HB 407’s treatment of the election cycle for district attorneys. Even though district attorneys have appeared on the ballot in *presidential* election years since the dawn of New Mexico’s statehood, these state officers were included among the list of officials slated to face election in *gubernatorial* election years. 2019 N.M. Laws, ch. 212, § 103(B)(17). This is so notwithstanding the absence from the house bill of any separate transitional provision addressing any change in election cycles. As the Sponsors now acknowledge, this situation was created by a scrivener’s error stemming from the “inadvertent[ ] place[ment]” of the district attorneys “in the incorrect column” of Section 103 during the legislative drafting process. Accepting the Sponsors’ representation that this change in election cycles was unintentional, its practical effect was nonetheless to remove the district attorneys from the 2020 ballot and place them instead on the 2022 ballot.

## II. DISCUSSION

### A. Mandamus Jurisdiction is Proper

{7} Before addressing Petitioners’ constitutional claims, we explain the basis of our exercise of original mandamus jurisdiction in these matters. In determining whether to exercise our original jurisdiction in mandamus, this Court applies a multi-factor test under which we will assume jurisdiction

when the petitioner presents a purely legal issue concerning the non-discretionary duty of a government official that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3) calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal.

*State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 21, 149 N.M. 330, 248 P.3d 878 (internal quotation marks and citation omitted); see also N.M. Const. art. VI, § 3 (“The supreme court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions . . .”); NMSA 1978, § 44-2-5 (1884) (“The writ shall not issue in any case where there is a plain, speedy and adequate remedy in the ordinary course of law.”). Although relief by mandamus is most often applied “to compel

the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law,” *Rainaldi v. Pub. Emps. Ret. Bd.*, 1993-NMSC-028, ¶ 6, 115 N.M. 650, 857 P.2d 761 (internal quotation marks and citation omitted), the writ may also be used in appropriate circumstances “in a prohibitory manner to prohibit unconstitutional official action.” *AFSCME v. Martinez*, 2011-NMSC-018, ¶ 4, 150 N.M. 132, 257 P.3d 952. For example, prohibitory mandamus has been invoked to enjoin a secretary of state from undertaking a ballot-related action that is beyond her authority, see *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 1, 438 P.3d 343, or submitting to the voters an unconstitutional initiative proposal, see *McFadden v. Jordan*, 196 P.2d 787 (Cal. 1948) (in bank) (cited approvingly in *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 19, 120 N.M. 562, 904 P.2d 11).

{8} In view of the legal nature and public importance of the election issues raised herein, the need for an expeditious resolution of those issues in the face of stringent ballot access requirements, and the unavailability of an adequate alternate remedy, we conclude that Petitioners’ claims call for the use of prohibitory mandamus. Notably, the Secretary, far from objecting to the exercise of our original jurisdiction, seemingly endorses it, urging us to provide an “early resolution” of the constitutional questions raised in the petitions. As a general rule, this would preclude the Sponsors, in their role as amici curiae, from raising any such objection on their own behalf. See *St. Vincent Hosp. v. Salazar*, 1980-NMSC-124, ¶ 9, 95 N.M. 147, 619 P.2d 823 (“Amicus must accept the case on the issues as raised by the parties, and cannot assume the functions of a party.” (internal quotation marks and citation omitted)). That rule is not absolute, however, and may give way in circumstances where, as here, a case presents issues of a purely legal nature that are of widespread impact and importance. See *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶¶ 24-27, 365 Mont. 92, 278 P.3d 455 (reaffirming but departing from the general rule in considering a judicial recusal question of significant importance that was raised in a legislative amicus brief but not by the parties themselves); *Fisher v. City of Berkeley*, 693 P.2d 264, 270-72 (Cal. 1984) (in bank) (considering an amicus argument in support of invalidating a rent control ordinance).

{9} In addressing the Sponsors’ arguments opposing mandamus review, we remain convinced that mandamus is the appropriate remedy in these cases. It is clear that the electoral timing and term of office provisions of HB 407—postponing the elections for and extending the terms of a number of vital public offices—present issues of the utmost public importance. These issues implicate our citizens’ fundamental right to vote, see

*State ex rel. League of Woman Voters v. Herrera*, 2009-NMSC-003, ¶ 8, 145 N.M. 563, 203 P.3d 94 (reiterating “the longstanding and fundamental principle that the right to vote is of paramount importance[.]” and encouraging courts to “guard against voter disenfranchisement whenever possible”), and bear on the accountability of our elected officials. See Christopher R. Berry & Jacob E. Gersen, *The Timing of Elections*, 77 U. Chi. L. Rev. 37, 40 & n.9 (“[T]he frequency of elections or, equivalently, the duration for which a selected politician is able to stay in office without reelection may effect government accountability and the legitimacy of public policy.”). That being so, the satellite issue addressed by the parties as to whether Petitioners would be subject to removal by way of a writ of quo warranto during their extended terms is not determinative of our decision to entertain Petitioners’ writ applications. We note, nonetheless, that the Sponsors’ stated position on the issue—that quo warranto will lie only where the party proceeded against has committed an act that works a forfeiture of his or her office—too narrowly states the parameters of the writ. To the contrary, quo warranto has long been recognized under New Mexico law as an appropriate vehicle to “ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment,” *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 16, 88 N.M. 244, 539 P.2d 1006, and this irrespective of any active fault or wrongdoing on the office holder’s part. See *Clark v. Mitchell*, 2016-NMSC-005, ¶¶ 8-9, 363 P.3d 1213 (stating the above-quoted principle in entertaining but rejecting a private petitioner’s claim that the respondent district judge was not constitutionally authorized to be appointed to the district court following his nonretention in the previous general election); see NMSA 1978, § 44-3-4(A) (1919) (authorizing an action for a writ of quo warranto “when any person shall usurp, intrude into or unlawfully hold or exercise any public office . . . within this state” (emphasis added)).

{10} We turn next to the Sponsors’ contention, directed solely to the district attorneys’ petition, that issuance of a writ of mandamus is unnecessary at this juncture given the Sponsors’ stated “motiv[ation]” to remedy the drafting “misplacement” error at the upcoming legislative session, a remedy which they characterize as “a doable proposition.” The Sponsors’ assurances about the potential passage of an amendment to HB 407 at the next legislative session remain subject to the uncertainties of the political process. As such, these assurances, while no doubt sincere, provide an insufficient basis for us to withhold exercise of original jurisdiction over the district attorneys’ writ petition. See *Howell v. McAuliffe*, 788 S.E.2d 706, 724 n.17 (Va. 2016) (stating that an alternate

remedy is sufficient to displace the need for mandamus relief where, among other things, it “secure[s] the whole right of the party in a perfect manner, at the present time and in the future” (emphasis added) (internal quotation marks and citation omitted)). *But see Denish v. Johnson*, 1996-NMSC-005, ¶ 57, 121 N.M. 280, 910 P.2d 914 (concluding that a writ of mandamus was unnecessary where the respondent Governor had “agreed to the act in question—appointing the successors to [the petitioners] in accordance with the State Constitution”). Having determined that prohibitory mandamus is an appropriate means of addressing Petitioners’ constitutional claims, we proceed to analyze those claims.

## B. The Constitutionality of Election Deferral Statutes

{11} The challenged portions of HB 407, whether by design or oversight, all share a common feature, i.e., they postpone the time of election of certain public offices by either two or four years, thus extending their terms of office. The election deferral aspect of HB 407 is raised in each of the underlying mandamus proceedings, with Petitioners questioning the constitutionality of HB 407 to the extent it alters the term duration requirements of their respective offices. *See* N. M. Const. art. X, § 2(A) (mandating that the ordinary term for a county official is four years); *id.* art. VI, § 24 (providing that a district attorney “shall be elected for a term of four years”); *id.* art. VI, § 33(C)-(D) (stating that each district and metropolitan court judge “shall be subject to retention or rejection in like manner at the general election” every sixth and fourth year, respectively). The narrow but important question we need address, then, is whether the challenged provisions of HB 407, in delaying Petitioners’ election cycles and extending—either expressly or, in the case of the office of the district attorney, by necessary implication—their term limits, exceeded the Legislature’s authority. *See generally State ex rel. Sandel v. N.M. Pub. Util. Comm’n*, 1999-NMSC-019, ¶ 11, 127 N.M. 272, 980 P.2d 55 (limiting the issues presented by the parties in exercising our mandamus authority). For reasons that follow, we answer that question in the affirmative and thus abide by our decision striking down the offending provisions, i.e., 2019 N.M. Laws, ch. 212, Sections 103(A) (13)-(15), 103(B)(17), 103(B)(20)-(23), 176(B), 177(B), and 279 to -81.

### 1. The proper “level of scrutiny” to be applied in evaluating Petitioners’ constitutional challenges to HB 407

{12} As a preliminary matter, the Sponsors raise concerns over the appropriate “level of scrutiny” that we should apply in evaluating Petitioners’ constitutional challenges to HB 407. They cite as guideposts this Court’s decisions in *Crum v. Duran*, 2017-NMSC-013, ¶ 10, 390 P.3d 971 (applying the balancing

test articulated in *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992), in determining whether the state’s interests outweighed the burdens imposed on voters by certain preelection registration requirements), and *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 9, 358 P.3d 249 (recognizing that governmental restrictions on the “right to candidacy and the right to vote are subjected to differing levels of scrutiny”). The cited portions of these two cases, however, focus on the merits of challenges to restrictions on access to the electoral process and not, as involved here, threshold claims addressing the Legislature’s constitutional authority to act in the first instance. The controlling inquiry in these latter circumstances poses the more elemental question of whether the reviewing court is “satisfied beyond all reasonable doubt that the Legislature went outside the Constitution in enacting the challenged legislation.” *Espanola Hous. Auth. v. Atencio*, 1977-NMSC-074, ¶ 3, 90 N.M. 787, 568 P.2d 1233. In determining this discrete issue, the Court does not “inquire into the wisdom, the policy or the justness” of the legislative act under review. *Id.*

### 2. The relevant authorities

{13} We begin our substantive analysis by affirming the time-worn principle that a legislative body cannot generally “extend the term of the incumbent of an elective office where the term is fixed by the constitution[.]” and the corollary that the altering of a constitutional term of office may be accomplished only by “the vote of the people ratifying a constitutional amendment[.]” 63C Am. Jur. 2d Public Officers and Employees § 138 (2009). These precepts have been widely applied by courts nationwide. *See, e.g., In re Advisory Op. to the Governor—Terms of Cty. Court Judges*, 750 So.2d 610, 613-14 (Fla. 1999) (recognizing that “the right of selecting officers for fixed terms belongs to the people, and the legislature is not permitted to defeat this right by changing the length of term of office after an officer has been elected” (internal quotation marks and citation omitted)); *In re Munnely v. Newkirk*, 692 N.Y.S.2d 195, 198 (N.Y. App. Div. 1999) (per curiam) (concluding that “the statutory provision for biennial, odd-numbered-year town elections for town officers [and] the common practice of staggering the terms of town justices” were insufficient to “override[] the constitutional four-year term” of those justices found in the “plain language” of the state constitution. (citation omitted), *aff’d* 716 N.E.2d 182 (N.Y. 1999)); *People ex rel. Bua v. Powell*, 234 N.E.2d 801, 804 (Ill. 1968) (stating that the General Assembly “had no more power to continue the judges in office by . . . means [inconsistent with the state constitution] than [it] would have had to provide that no election should be thereafter held, so as to continue the incumbents of the offices therein during their

lives” (internal quotation marks and citation omitted)). Notably, neither the Secretary nor the Sponsors directly question the efficacy or application of these precepts here.

{14} The constitutional waters become muddled, however, in situations where the terms of public officers are impliedly extended as a result of statutes which serve to defer the time of an election. *See* R.P. Davis, Annotation, *Power of Legislature to Extend Term of Public Office*, 97 A.L.R. 1428, § VI, at 1448 (1935) (“[I]t is impossible to state any general rule governing the question whether the legislature may, incidentally to postponing the time for an election, extend the term of an incumbent of an office”). Constitutional review of such statutes often turns on the proper interpretation of a constitutional or statutory provision allowing public officers to hold office until their successors have been qualified, a so-called holdover provision of the type found in Article XX, Section 2 of the New Mexico Constitution. No New Mexico case has dealt with this type of statute, and the out-of-state decisions on the subject yield no firm rule, a circumstance due in part to the dependence of those decisions on the particular language of the constitutional and statutory provisions there under review. *See* Davis, Annotation, 97 A.L.R. 1428, § VI, at 1448-57.

{15} Broadly speaking, the jurisdictions that have weighed in on the constitutionality of election deferral statutes are divided into two camps. Courts that uphold legislative acts which delay elections for offices with constitutionally mandated term lengths generally draw a distinction between an impermissible extension of terms and what has been described variously as an interim, hiatus, interval, or interregnum separating terms. In urging us to uphold the constitutionality of HB 407, the Sponsors rely on two such cases, *State ex rel. Martin v. Preston*, 385 S.E.2d 473 (N.C. 1989), and *Murray v. Payne*, 21 P.2d 333 (Kan. 1933). In *Preston*, the North Carolina Supreme Court explained and upheld the statutory election regime there under review as follows:

[T]he legislature eliminated staggered terms within multi-seat judicial districts by creating a one-time interim or hiatus between certain terms of office. *The current terms were not extended*; they expire at the end of their eight-year duration. The next eight-year terms do not commence immediately upon the expiration of the old terms, however, but are instead made to commence two years, or in one case four years, later. Since no successors will be elected and qualified at the expiration of the old terms, the incumbent judges



will continue to serve. Our [c]onstitution anticipates such “hold over” situations by providing that elected judges remain in office “until their successors are elected and qualified.” N.C. Const. art. IV, § 16.

*Preston*, 385 S.E.2d at 480 (emphasis added). While acknowledging that the “distinction between extended terms and an interim or hiatus separating terms may appear artificial at first,” the *Preston* Court ultimately adhered to this distinction, placing strong reliance on the premise that it was the state constitutional “hold over” provision, not the legislative act, that allowed the judges to remain in office. *Id.* at 480, 482. *See id.* at 482 (“Where, as here, the incumbents’ terms end without successors having been elected and qualified, and new terms of office have not begun, the [c]onstitution’s ‘hold over’ provision operates and allows the incumbents to continue serving in the interim.”).

{16} Of a similar mind was the majority of the Kansas Supreme Court in *Murray*, whose views on the issue the *Preston* Court adopted as “persuasive.” *Preston*, 385 S.E.2d at 481. The Depression-era special legislation under consideration in *Murray*, largely intended as a cost-saving measure to “avoid[] expense of unnecessary elections,” dispensed with biennial elections in cities of a certain population for, among other offices, the commissioner of parks and public property whose regular term was four years, and provided for quadrennial elections in the future. *Murray*, 21 P.2d at 333-34. The court in *Murray* easily and unanimously rejected the plaintiff’s narrow challenge to the election deferral aspect of the statute based on the legislature’s “undoubted power” to determine the frequency of elections in order to serve “the public interest and welfare.” *Id.* at 335. Although that limited holding disposed of the plaintiff’s central claim, the *Murray* majority, in dicta specifically intended to forestall future lawsuits, and over a two-member dissent, went on to address the “incidental and collateral” issue of whether any incumbent officers could legally hold over beyond their four-year term limits during the “interval” created by the statute. *Id.* at 335-36. Endorsing such a “provisional” holdover arrangement so long as the postponement of elections is “reasonable” in duration, *id.* at 336, the majority in *Murray* stated as follows, in language quoted approvingly in *Preston*, 385 S.E.2d at 481:

When there is an interval between the end of a term and the beginning of another, the public business must go on without interruption. Some one must do the business in the capacity of a public officer . . . The prevailing rule in the United States is that in the absence of a constitutional or statutory provi-

sion to the contrary, express or implied, an officer is entitled to hold until his successor is chosen and has qualified.

*Murray*, 21 P.2d at 335.

{17} Other courts view the issue differently, taking the position that “the legislature cannot, by an act postponing the election to an office, the term of which is limited by the [c]onstitution, extend the incumbent’s term beyond the period so limited.” Davis, Annotation, 97 A.L.R. 1428, § VI, at 1448. Illustrative of this approach are two Indiana cases, *Robinson v. Moser*, 179 N.E. 270 (Ind. 1931), and *Gemmer v. State ex rel. Stephens*, 71 N.E. 478 (Ind. 1904). In each case, the Indiana Supreme Court struck down the election deferral statute under review as unconstitutional. In *Robinson*, the court concluded that the legislature was “without power to dispense with the election of prosecuting attorneys” for a two-year period extending beyond their two-year constitutional term of office. 179 N.E. at 274. In *Gemmer*, the court similarly determined that the legislature “cannot arbitrarily delay” the election of successors to the county treasurer office and “thereby render the incumbents of the offices eligible to hold over” past the expiration of their constitutionally prescribed two-year term. 71 N.E. at 483. Significantly, in both *Robinson* and *Gemmer*, Indiana’s high court rejected the use of the state’s constitutional holdover provision as a means to extend constitutional offices beyond the term for which they were elected. *Robinson*, 179 N.E. at 276 (Myers, J., concurring); *Gemmer*, 71 N.E. at 482-83. Other aspects of these two cases also cast doubt on the viability of the *Preston/Murray* doctrine in New Mexico, as will be addressed in Section II (B)(4), *infra*.

### 3. The plain terms of HB 407 establish that the Legislature exceeded its authority in extending the terms of office of the petitioning judges and county officers

{18} HB 407, as written, appears to mix apples and oranges in combining two divergent elements: the election deferral provisions at the center of the *Preston/Robinson* judicial divide, alongside express term extension language of the kind typically struck down as unconstitutional. This approach—readily acknowledged by the Sponsors to be “novel”—precludes our adoption of the *Preston/Murray* line of cases in assessing the constitutionality of HB 407.

{19} As previously indicated, the Legislature, in enacting HB 407, expressly extended the terms of office of certain district and metropolitan court judgeships, *see* 2019 N.M. Laws, ch. 212, §§ 279 to -80, and authorized the Secretary to “provide for an extended term to the general election in 2022 or 2024” of certain county offices. *Id.* § 281. It is these explicit term extension provisions that are a dominant feature of

HB 407 and that markedly differentiate the house bill from the election deferral statute upheld as constitutional by the North Carolina Supreme Court in *Preston*, under which “[t]he current terms [of certain superior court judges] were not extended[.]” 385 S.E.2d at 480 (emphasis added), and the similar statute upheld by the Kansas Supreme Court in *Murray*, whose provisions created “an interval between the end of a term and the beginning of another[.]” 21 P.2d at 335 (emphasis added). Given these major conceptual differences, it is difficult, if not impossible, to reconcile our Legislature’s clear statutory intent to extend the terms of certain judgeships and county offices, as expressed by the plain language it chose in HB 407, with the “hiatus” and “interval” concepts applied in *Preston* and *Murray*, concepts premised on the ending of an incumbent’s term of office. To adopt the *Preston/Murray* approach in reviewing and upholding the constitutionality of HB 407, as the Sponsors now ask us to do, would require this Court, under the guise of judicial interpretation, to rewrite the provisions of HB 407 by excising its unambiguous term extension provisions. This we cannot do. *See State v. Frawley*, 2007-NMSC-057, ¶ 30, 143 N.M. 7, 172 P.3d 144, superseded by statute, NMSA 1978, § 31-18-15.1 (as amended 2009) (“It is a fundamental principle that we cannot rewrite or add language to a statute in order to make it constitutional.” (citing *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 479 & n.26 (1995)); *see also In re Gach*, 889 N.W.2d 707, 717 (Mich. Ct. App. 2016) (refusing to “judicially effect a substantial revision of [a] statute to salvage its constitutionality”).

### 4. The *Preston/Murray* approach is incompatible with our state constitution

{20} Even had HB 407 been devised and drawn as a pure election deferral statute, unencumbered by any express term extension provisions, the end result would be the same, for the “hiatus” and “interval” constructs underlying the *Preston/Murray* line of cases are inconsistent with the purpose and effect of the relevant provisions of our state constitution. Put differently, had the Legislature omitted from HB 407 any explicit references to term extensions, it is not altogether clear by what mechanism it could create an election deferral statute sufficient to both accomplish its stated goals and pass constitutional muster. As indicated, examination of the constitutional provisions at play in a particular case generally provides the point of departure in evaluating the constitutionality of an election deferral statute. *See, e.g., Preston*, 385 S.E.2d at 481 (distinguishing and declining to follow *Gemmer*, 71 N.E. 478, based on the differences between the constitutional provisions governing those cases). As to the petitioning

judges and district attorneys, the Legislature's attempts to modify their election cycles contravened clear and unambiguous constitutional mandates. Specifically, in requiring district and metropolitan court judges to face "retention or rejection" at general elections every sixth and fourth year, respectively, *see* N.M. Const. art. VI, § 33(C)-(D), the framers of our Constitution evinced a clear intent to establish outer time limits by which retention elections for these classes of judges must be held. *Compare Gemmer*, 71 N.E. at 482 (invalidating legislation intended to modify a constitutional election schedule which, among other provisions, required elections for the county office in dispute every two years), *with Preston*, 385 S.E.2d at 481 (noting the absence from North Carolina's constitution of an election schedule for judges and the inclusion into its constitution of election schedules for other public offices, and concluding that the disparity "evidences a constitutional intent for flexibility in setting the times for holding judicial elections"). Because eligible district and metropolitan court judges most recently faced retention elections at the 2014 and 2018 general elections, respectively, our constitution demands that they again face the voters at the 2020 and 2022 general elections, respectively.

{21} The situation presented by HB 407's inadvertent postponement of the anticipated 2020 elections for district attorneys also involves the modification of a constitutionally prescribed election schedule, one established by the combined effect of two provisions of our state constitution, i.e., Article VI, Section 24 (creating the office of district attorney in each judicial district and requiring that a district attorney "be elected for a term of four years"), and Article XXII, Section 22 (providing that the term of office of all state officers elected at the initial statewide election "shall commence on the date of their qualification and shall expire at the same time as if they had been elected on the Tuesday next after the first Monday of November in the year nineteen hundred and twelve"). *See also State ex rel. Ward v. Romero*, 1912-NMSC-011, ¶ 35, 17 N.M. 88, 125 P. 617 (recognizing that "the district attorney under the [c]onstitution[] is a [s]tate officer"). In *Robinson*, the Indiana Supreme Court was presented with analogous circumstances and similar constitutional language, including provisions that a prosecuting attorney "shall be elected in each judicial circuit by the voters thereof . . . [and] shall hold his office for two years[,] and that the first election for prosecuting at-

torney was to be held "at the general election in the year one thousand eight hundred and fifty-two . . ." 179 N.E. at 271. The majority in *Robinson* invalidated the election deferral statute there under review, with the principal opinion concluding that "the mandate" of its state constitution was to elect prosecuting attorneys biennially, consistent with the office's constitutionally prescribed two-year term of office. *Id.* at 272. The concurring opinion added that this was so even in the absence of any "express constitutional provision requiring that prosecuting attorneys be elected at any fixed time," reasoning that the constitutional requirement that prosecuting attorneys hold office for two years itself "serves to inhibit the [l]egislature from passing any law that would prevent the voters [from] electing prosecuting attorneys at each biennial general election, thereby avoiding extending a constitutionally fixed term or the creating of a vacancy." *Id.* at 275-76 (Myers, J., concurring). Applying these principles, and considering that district attorneys last appeared on the ballot in New Mexico in 2016, our Legislature was without authority to dispense with their elections in 2020, and thereby extend their constitutional four-year terms of office.

{22} Finally, we reject the notion that the holdover provision set out in Article XX, Section 2 of the New Mexico Constitution—requiring public officers, unless removed, to hold office until successors are "duly qualified"—can properly be construed to furnish a constitutional safe haven for election deferral statutes of the type endorsed in the *Preston/Murray* line of authority. First, as the Secretary appropriately acknowledges, it cannot be said that the term of office "hiatus" and "interval" constructs applied in those cases fit, neatly or otherwise, within the contours of our constitutional holdover provision as interpreted by this Court. *See Denish*, 1996-NMSC-005, ¶ 51 (recognizing in a different but related context that, with respect to electoral systems involving staggered terms, our constitutional holdover provision "is not a simple extension of the expired term[, but] . . . an intrusion of the term following"). Our stated view in *Denish* of a holdover period as an "intrusion" into the ensuing term leaves little room to adopt the "interval between terms" theory embraced in *Preston* and *Murray*, at least with respect to staggered election systems. Even putting aside the analytic differences, there is an inconsistency from a policy perspective as well. It appears plain that the purpose of Article XX, Section 2 is to ensure continuity in governmental opera-

tions during unexpected times of transition when there is no successor to fill a vacancy in office, and not to facilitate a delay in election cycles—even for well-intended reasons—in the normal course of affairs. *See generally* N.M. Att'y Gen. Op. 23-3687, at \*35 (1923) (recognizing that holdover provisions of the type set forth in Article XX, Section 2 are not designed to give an incumbent office holder "two terms in case his successor die[s] before qualifying[,] but rather "simply to prevent a hiatus in the office in case the new officer for any reasons fail[s] to qualify" (internal quotation marks and citation omitted)). The language used by the Indiana Supreme Court in *Gemmer* in explaining the purpose of that state's counterpart holdover provision rings true and carries the day here:

The [holdover] provision was intended to prevent vacancies in the public offices to which it applies. It cannot be understood to confer on the [l]egislature the power to unnecessarily postpone the election of a successor to the office, and thereby create a condition authorizing the incumbent to hold over after the expiration of his term. The mischiefs which would result from this construction of the [c]onstitution and the recognition of this authority in the [l]egislature are too evident to require discussion. By the adoption of measures of this character the legislative department could appropriate to itself an extensive and dangerous power and influence over a great number of offices and officers.

71 N.E. at 483.

### III. CONCLUSION

{23} We hold that the challenged provisions of HB 407 impermissibly alter the constitutionally prescribed terms of office of the three petitioning groups. In reaching this conclusion, we are of course mindful that the Legislature is vested with broad authority to regulate the timing, process, and conduct of elections. *See* N.M. Const. art. VII, § 1(B). That authority, despite its breadth, must be exercised within constitutional limits, *Unite N.M.*, 2019-NMSC-009, ¶ 6, a requirement clearly not met here. Assuming, as appears to be the case, that the Legislature wishes to pursue the election-related policy goals sought to be effectuated through the portions of HB 407 that we strike down today, it is its prerogative to propose, and the voters to adopt, a constitutional amendment to that end.

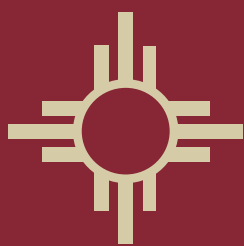
{24} IT IS SO ORDERED.

BARBARA J. VIGIL, Justice

WE CONCUR:

JUDITH K. NAKAMURA, Chief Justice

MICHAEL E. VIGIL, Justice



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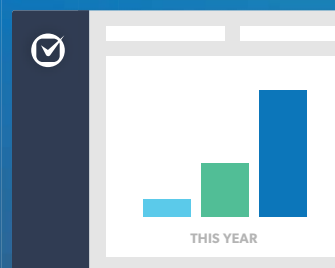
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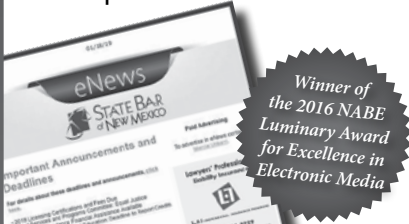
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### Positions

#### Full-Time Associate Attorney in Albuquerque Office

Cuddy & McCarthy, LLP, one of the oldest law firms in New Mexico, with 23 attorneys, and offices located in Albuquerque and Santa Fe, has an immediate opening in our Albuquerque office for a full-time Associate Attorney. This is a great opportunity to work in the firm's general civil practice, handling a caseload pertaining to litigation, school law, insurance defense, labor & employment matters, real estate, trust & probate, as well as other areas of law. Candidates must have 3-4 years of relevant attorney experience. Our ideal candidate will be responsible, organized, a team player, possess strong people skills, as well as excellent time management skills. Strong research, writing, and oral communication skills are required. Candidates must be committed to serving the diverse needs of our clients. Salary based upon qualifications and experience. Please send cover letter, resume, law school transcript and a writing sample to our Executive Director at: [agarcia@cuddymccarthy.com](mailto:agarcia@cuddymccarthy.com). All submissions will be kept confidential.

#### Personal Injury Attorney

Get paid more for your great work. Make a difference in the lives of others. Salary plus incentives paid twice a month. Great benefits. Outstanding office team culture. Learn more at [www.HurtCallBert.com/attorneycareers](http://www.HurtCallBert.com/attorneycareers). Or apply by email to [Greg@ParnallLaw.com](mailto:Greg@ParnallLaw.com) and [Bert@ParnallLaw.com](mailto:Bert@ParnallLaw.com). Write "Apples" in the subject line.

#### 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](http://www.cabq.gov/jobs)

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

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

#### Associate Attorney

The Albuquerque, NM office of Rothstein Donatelli LLP is seeking an associate attorney for its civil rights practice group. The Firm is looking for a New Mexico licensed attorney with at least 2 years or more of litigation experience. The candidate should possess a demonstrated commitment to the welfare of individual clients and include the highest quality of legal practice, especially legal research and writing skills. The ideal candidate will have experience litigating civil rights cases and/or representing survivors of sexual abuse. The associate must be skilled in managing complex litigation and providing staff direction. Rothstein Donatelli has offices in Albuquerque and Santa Fe, New Mexico, as well as in Tempe, Arizona. The Rothstein Donatelli LLP practice areas include civil rights and discrimination law, representation of survivors of sexual abuse, criminal defense, complex civil litigation, appeals and post-conviction work, and Indian law. Rothstein Donatelli is committed to social justice and vigorously protecting the rights of its clients. Interested candidates should send a resume, references, and writing sample to [Manya.Snyder@rothsteinlaw.com](mailto:Manya.Snyder@rothsteinlaw.com)

### **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.

### **Attorney Position**

The Santa Fe office of Hinkle Shanor LLP is looking for an attorney to join its employment and civil rights defense practice. Hinkle Shanor's employment/civil rights defense practice has a large volume of work and is looking for an attorney who can help us continue to build our practice group. We are passionate about our work and clients and would love to find someone who has the same excitement for litigation. The attorney's job duties will be focused on contributing to the employment group's federal and appellate practice, including, but not limited to, legal research and writing, motions practice and discovery, communicating with clients, court and deposition appearances, and working closely with other attorneys. Experience in the areas of employment/labor/civil rights is preferred, and candidates should have a strong academic background, excellent research and writing skills, and the ability to work independently. While applicants in Santa Fe are preferred, we are open to teleworking at this point in time. Eventually, the individual must live in or be willing to relocate to Santa Fe as in-person hearings and depositions will commence at some point in time. Please send resume, law school transcript, and writing sample to Hinkle Shanor LLP's office manager, Gilbert Romero, at [gromero@hinklelawfirm.com](mailto:gromero@hinklelawfirm.com).

### **Senior Trial Attorney 1st Judicial District Attorney**

The First Judicial District Attorney's Office is seeking an experienced attorney in the Espanola Office. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to [1stDA@da.state.nm.us](mailto:1stDA@da.state.nm.us).

### **Attorneys – 3 – 5 Years Licensed**

Walsh Gallegos Treviño Russo & Kyle PC is a law firm devoted to serving public education. Since 1983, we have worked in partnership with leaders in public education, and we strive to make a difference in the boardroom, the courtroom, and most importantly, the classroom. Our Albuquerque office is currently seeking an attorney(s) licensed 3 – 5 years in New Mexico to help us continue our work. The position involves the representation of public school districts and other educational institutions and governmental entities in the areas of facilities and business transactions, real estate, and employment, including civil litigation in these areas. Attention to detail and excellent research and writing skills are required. Public speaking experience, strong interpersonal skills, litigation experience, and experience with school districts or other governmental entities is preferred. In addition to fulltime positions, the firm will consider candidates seeking contract or short term assignments with the possibility of developing into a full time position. Please send resume and writing sample to [jobs@wabsa.com](mailto:jobs@wabsa.com). Because we sometimes have openings in multiple offices, please indicate the city in the subject line of your email.

### **Deputy Director of Policy**

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

### **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](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### **Litigation Attorney**

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 37 states, is currently seeking an experienced litigation attorney for an immediate opening in its offices in Albuquerque and Santa Fe, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers a significant signing bonus, 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume with cover letter indicating which office(s) you are interested in to Hamilton Hinton at [hhinton@cordellllaw.com](mailto:hhinton@cordellllaw.com)

### 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](mailto:phxrecruiter@lewisbrisbois.com) and indicate "New Mexico Litigation Attorney Position". All resumes will remain confidential.

### 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](mailto:advice1@guebertlaw.com). All replies are kept confidential. No telephone calls please.

### 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](mailto:5thDA@da.state.nm.us).

### Associate Attorney

Hatcher Law Group, P.A. seeks an associate attorney preferably with three or more years of legal experience for our downtown Santa Fe office. We are looking for an individual motivated to excel at the practice of law in a litigation-focused practice. Hatcher Law Group defends individuals, state and local governments and institutional clients in the areas of insurance defense, coverage, workers compensation, employment and civil rights. We offer a great work environment, competitive salary and opportunities for future growth. Send your cover letter, resume and a writing sample via email to [juliez@hatcherlawgroupnm.com](mailto:juliez@hatcherlawgroupnm.com).

### Administrative Office of the Courts

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 (Extended): 12/21/2020 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.

### Managing Attorney

The Law Offices of the Public Defender has a great opportunity for the right attorney! Are you the one? This person can step immediately into a Managing Attorney position in the Hobbs, New Mexico, LOPD office. In addition to supervising the office, the Managing Attorney will carry a caseload and provide professional level services representing juvenile and adult indigent clients, handle highly complex appeals or serve as lead counsel for serious violent felony or appeals and other highly complex litigation cases. For more information and to apply for this position, go to <https://www.governmentjobs.com/careers/lopdm>.

### Associate Attorney

Associate attorney position open for researcher/writer for a personal injury law firm. Our word warrior position is part time or full time, social conscience and writing skills required. Submit inquiries to [will@fergusonlaw.com](mailto:will@fergusonlaw.com)

### 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](http://www.cabq.gov/jobs)

### 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](http://www.cabq.gov/jobs) and include a resume and writing sample.

### 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](mailto:kfajardo@da.state.nm.us) or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

### Legal Counsel

The City of Santa Fe seeks legal counsel in the area of Health Law to update the City's HIPAA and HITECH policies; answer related questions and provide training on HIPAA, HITECH, and other health law matters, for impacted City staff. Interested counsel should submit a resume and letter of interest to [asalar@santafenm.gov](mailto:asalar@ santafenm.gov) by December 31, 2020.

### Office Assistant

Matthews Fox, P.C. is a two-lawyer firm concentrating on education and administrative law. We seek a reliable, organized, detail-oriented person to administer our Santa Fe office on a part-time basis. Successful candidate must be skilled in Timeslips, QuickBooks, Microsoft Office 2013 (Word, Outlook, Excel), and Adobe Acrobat. Fundamental bookkeeping abilities required. Sense of humor and positive attitude a must! We offer competitive compensation and benefits. Email letter of interest and resume with references to [sfox@matthewsfox.com](mailto:sfox@matthewsfox.com), and include "Office Assistant" in the subject line.

### Paralegal/Legal Assistant

Small bustling lone provider practice specializing in Family Court Special Master work (by court order) is seeking a ½ to ¾ time contractor Paralegal or Administrative Legal Assistant with experience in family court work. Experience w/ Microsoft Office, Outlook, Gmail is necessary. The work includes case management, scheduling, billing, phone, email, Our Family Wizard platform, and direct interface with the courts. Contracted hourly rate is negotiable depending on experience. No public interaction other than phone and email. Office environment is comfortable and not accessible to the public. Please call Bob at 505.239.3748. All inquiries are completely confidential.

### Paralegal

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

### Paralegal/Legal Advocate

Enlace Comunitario is a non-profit organization searching for a full-time paralegal. Under supervision, will assist in coordinating the case load of Enlace Comunitario's Legal Department. Will be responsible for involvement in all phases of Enlace Comunitario's civil domestic violence proceedings, as well as domestic matters cases such as custody, child support, and divorce. MINIMUM POSITION QUALIFICATIONS: Associate's Degree or equivalent coursework related to the field described on the job description plus 2 years of relevant experience. Combination of education and experience acceptable (4 years). Bilingual (English-Spanish) written and verbal required. Salary starting at \$16.44-20.13 per hour DOE. Please send resume to [jobs@enlacenm.org](mailto:jobs@enlacenm.org)

### 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>.

## Office Space

### Office for Rent

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

### Office Condo For Sale

4,013 SF Office Condo for Sale|Albuquerque Walking distance to Courthouses. Contact Shelly or Martha, NAI Maestas & Ward (505) 878-0001

### Office Space

2,500 sq. ft. office space, located on 4th St between Candelaria and Menaul. It is an ideal law firm setting, with approximately eight individual offices, waiting area and conference room. There is a full kitchen for staff, adequate parking and security. Space is shared with a local IT firm. For more information, call Mollie at 505-504-0025.

### Lawyer-Owned Office Building in Old Town (Albuquerque)

SEEKING NEW TENANT IN JANUARY, 2021. Two lawyers retiring at year-end have office space in their Old Town Law Office building in Albuquerque. 2,700 sq. ft., including 3 lawyer offices, 2 conference rooms and open area for staff. \$16.00 psf, plus utilities. Includes parking. See [www.oldtownlawoffice.com](http://www.oldtownlawoffice.com) for more information. Or email Jason Kent ([jkent@nmlex.com](mailto:jkent@nmlex.com)) or Murray Thayer ([mthayer@swcp.com](mailto:mthayer@swcp.com)).

### Santa Fe – Two adjacent Offices

Two adjacent offices in attractive professional suite conveniently located on St Francis Drive. Ample parking. Appropriate for attorney or accountant, \$900/month for both offices 505-795-0077

## Miscellaneous

### Want To Purchase

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





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Denise E. Ready



Jon A. Feder



# WHAT A YEAR!

While COVID-19 keeps us all ***socially distant*** from one another, we wish our colleagues, clients and friends the very best this Holiday Season! We are continuing our safe and remote work for clients in their family law matters across New Mexico, but certainly look forward to reestablishing direct contact with you when the pandemic is over. We wish everyone a safe and prosperous **2021!**

~ The Attorneys & Staff at Atkinson & Kelsey, PA

Thomas C. Montoya



Lucy H. Sinkular



2155 Louisiana NE, Albuquerque, NM 87110 | Suite 2000

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