

BAR BULLETIN

December 22, 2021 • Volume 60, No. 24



Snow Fox, by Joan Kelly (see page 5)

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NEW MEXICO
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Cannabis Law Section

—SPECIAL INSERT—
YLD in Brief

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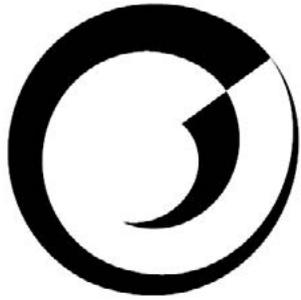


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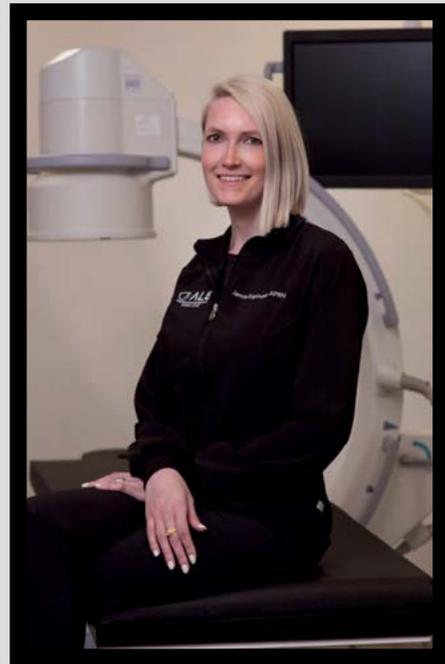
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*Happy
New Year*

from the
State Bar of New Mexico!



State Bar *of*
New Mexico

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**State Bar of
New Mexico**
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The *Bar Bulletin* (ISSN 1062-6611) is published twice a month by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

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Meetings

January

4
Health Law Section
9 a.m., virtual

5
Employment and Labor Law Section
noon, virtual

6
Business Law Section
noon, virtual

7
Committee on Diversity in the Legal Profession
noon, virtual

7
Legal Services and Programs Committee
10 a.m., virtual

11
Appellate Practice Section
noon, virtual

11
Bankruptcy Law Section
noon, U.S. Bankruptcy Court

12
Animal Law Section
noon, virtual

12
Tax Section
9 a.m., virtual

13
Children's Law Section
noon , virtual

Workshops and Legal Clinics

January

27
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

February

3
Divorce Options Workshops
6-8 p.m., virtual

24
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

March

3
Divorce Options Workshops
6-8 p.m., virtual

24
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

April

7
Divorce Options Workshops
6-8 p.m., virtual

28
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

May

5
Divorce Options Workshops
6-8 p.m., virtual

About Cover Image and Artist: Artist Joan Kelly paints in watercolors and acrylics and her preferred subject matter is in animals. She seeks to capture the peacefulness and joy she experiences in the company of animals and in the natural world. Kelly recently moved to Santa Fe where she plans to happily live and paint. More of her artwork can be viewed at www.joansart.com.

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 1-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Third Judicial District Court Announcement of Vacancy

A vacancy on the Third Judicial District Court will exist as of Jan. 1, 2022, due to the retirement of Judge Marci Beyer effective Dec. 31, 2021. Applications were due Dec. 20, 2021. The Third Judicial District Court Judicial Nominating Commission will meet at 9 a.m. on Jan. 19, 2022, to interview applicants for the position at the Third Judicial District Court, 201 W. Picacho Ave., Las Cruces, NM 88005. 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. Consistent with the governor's recent mask mandate, all attendees of the meeting of the Third Judicial District Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Proposed Changes to the Rules Governing Judicial Nominating Commissions

The New Mexico Supreme Court's Equity and Justice Commission's subcommittee on judicial nominations has proposed changes to the Rules Governing New Mexico Judicial Nominating Commissions. These proposed changes will be discussed and voted on during the upcoming meeting of the Third Judicial District Court Judicial Nominating Commission

Professionalism Tip

With respect to my clients:

I will advise my client against tactics that will delay resolution or which harass or drain the financial resources of the opposing party.

at 9 a.m. on Jan. 19, 2022, at the Third Judicial District courthouse 201 W. Picacho Ave., Las Cruces, NM 88005. Email Beverly Akin at akin@law.unm.edu for a copy of the proposed changes. Consistent with the governor's recent mask mandate, all attendees of the meeting of the Third Judicial District Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Bernalillo County Metropolitan Court-Criminal Division Announcement of Vacancy

A vacancy on the Bernalillo County Metropolitan Court – Criminal Division will exist as of Jan. 1, 2022, due to the retirement of Judge Henry A. Alaniz effective Dec. 31, 2021. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applications were due Dec. 15. The Bernalillo County Metropolitan Court Nominating Commission will meet at 9 a.m. on Jan. 25, 2022, to interview applicants for the position at the Metropolitan Courthouse, 401 Lomas NE, Albuquerque, NM. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. Consistent with the governor's recent mask mandate, all attendees of the meeting of the Bernalillo County Metropolitan Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Judicial Nominating Commission Proposed Changes to the Rules Governing Judicial Nominating Commissions

The New Mexico Supreme Court's Equity and Justice Commission's subcommittee on judicial nominations has proposed changes to the Rules Governing New Mexico Judicial Nominating Commissions. These proposed changes will be discussed and voted on during the upcoming meet-

ing of the Bernalillo County Metropolitan Court Judicial Nominating Commission at 9 a.m. on Jan. 25, 2022, at the Metropolitan Courthouse, 401 Lomas NE, Albuquerque, NM. Email Beverly Akin at akin@law.unm.edu for a copy of the proposed changes. Consistent with the governor's recent mask mandate, all attendees of the meeting of the Bernalillo County Metropolitan Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

U.S. District Court, District of New Mexico Public Notices Concerning Reappointments

The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. The duties of a magistrate judge in this court include the following: (1) conducting most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) conducting various pretrial matters and evidentiary proceedings on delegation from a district judge, and (4) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to MJMSP@nmcourt.fed.us. Questions or issues may be directed to Monique Apodaca, 575-528-1439. Comments must be received by Feb. 8, 2022.

Reappointment of Incumbent U.S. Magistrate Judge

The current term of office of full-time U.S. Magistrate Judge Carmen E. Garza is due to expire on Aug. 22, 2022.

Reappointment of Incumbent U.S. Magistrate Judge

The current term of office of Full-Time U.S. Magistrate Judge Kirtan Khalsa is due to expire on Sep. 7, 2022.

Reappointment of Incumbent U.S. Magistrate Judge

The current term of office of Part-Time U.S. Magistrate Judge Barbara Smith Evans is due to expire on Sep. 10, 2022.

STATE BAR NEWS License Renewal and MCLE Compliance—Due Feb. 1, 2022

State Bar of New Mexico licensing certifications and fees and Minimum Continuing Legal Education requirements are due Feb. 1, 2022. The Supreme Court of New Mexico recently revised the rules relating to attorney licensing and MCLE (see NMSC Order NO. 21-8300-030). For more information, visit www.sbnm.org/compliance

To complete your licensing certifications and fees and verify your MCLE compliance, visit www.sbnm.org and click “My Dashboard” in the top right corner. If you have not logged into our website recently, you will need to choose “Forgot Password.” For questions about licensing and MCLE compliance, email mcle@sbnm.org or call 505-797-6054. For technical assistance accessing your account, email techsupport@sbnm.org or call 505-797-6018.

New Mexico Judges and Lawyers Assistance Program Defenders in Recovery

Defenders in Recovery meets every Wednesday night at 5:30 p.m. The first Wednesday of the month is an AA meeting and discussion. The second is a NA meeting and discussion. The third is a book study, including the AA Big Book, additional AA and NA literature including the Blue Book, Living Clean, 12x12 and more. The fourth Wednesday features a recovery speaker and monthly birthday celebration. These meetings are open to all who seek recovery. We are a group of defenders supporting each other, sharing in each other's recovery. We are an anonymous group and not affiliated with any agency or business. Anonymity is the foundation of all of our traditions. Who we see in this meeting, what we say in this meeting, stays in this meeting. For the meeting link, send an email to defendersinrecovery@gmail.com or call Jen at 575-288-7958.

Employee Assistance Program

NMJLAP contracts with The Solutions Group, The State Bar's EAP service, to bring you the following: FOUR FREE

counseling sessions per issue, per year. This EAP service is designed to support you and your direct family members by offering free, confidential counseling services. Check out the MyStress Tools which is an online suite of stress management and resilience-building resources. Visit www.sbnm.org/EAP or call 866-254-3555. All resources are available to members, their families, and their staff. Every call is completely confidential and free.

Free Well-Being Webinars

The State Bar of New Mexico contracts with The Solutions Group to provide a free employee assistance program to members, their staff, and their families. Contact the solutions group for resources, education and free counseling. Each month in 2022, The Solutions Group will unveil a new webinar on a different topic. In January, focus on getting into the right frame of mind for the new year. Starting Jan. 18, check out “Reframing Your Way Through 2022” which teaches practical steps to use positive reframing strategies and guide your way through 2022. February's topic is honoring grief and loss. Starting Feb. 17, 2022, watch “Navigating Through Grief and Loss,” covering ways to say goodbye as well as navigating the five stages of grief in a healthy way. View all webinars at www.solutionsbiz.com or call 866-254-3555.

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. on Mondays by Zoom. 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 Moore at pmoore@sbnm.org or Briggs Cheney at BCheney@DSCLAW.com for the Zoom link.

NMJLAP Committee Meetings

The NMJLAP Committee will meet at 10 a.m. on Jan. 8, April 2, and July 9, 2022. The NMJLAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. Over the years the NMJLAP Committee has

— *Featured* —

Member Benefit



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Learn more at landing.clio.com/nmbar.

expanded their scope to include issues of depression, anxiety and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Judges and Lawyers Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

UNM SCHOOL OF LAW Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at

UNMLawLibref@gmail.com or voice-mail 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>.

Women's Law Caucus Nominations For The Annual Justice Mary Walters Award

The Women's Law Caucus organizes and hosts the annual Justice Mary Walters Award and Dinner. This award honors the pioneering spirit and legacy of Justice Mary Walters, the first female Justice of the New Mexico Supreme Court, by recognizing two women who represent Justice Walter's constant courage, strong ethics, leadership, and mentorship in the legal field. The Women's Law Caucus invites nominations. Submit the name of the nominee, a small blurb about why they should win the award, and a suggestion for who would introduce them if they

win. Send nominations to johnstone@law.unm.edu by Feb. 28, 2022. The Justice Mary Walters Dinner and Award will be held on the evening of April 22, 2022.

OTHER BARS Institute for Well-Being In Law 2022 Virtual Conference Open for Registration

Join hundreds of legal professionals for the Institute for Well-Being In Law 2022 Conference: Redesigning The Legal Profession for a Better Future, happening Jan. 19–21, 2022. The virtual annual conference will be an education and innovation event focused on redesigning the legal profession to support individual, organizational, and institutional thriving. Education tracks will include: individual well-being, workplace well-being, law school well-being and leading law firm well-being. Register and learn more at <https://lawyerwellbeing.net/conference-2022-schedule/>.

OTHER NEWS Gene Franchini N.M. High School Mock Trial Competition

Judge Registration is Open

Mock trial is an innovative, hands-on experience in the law for high school students of all ages and abilities. Every year, hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying, and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people. To register to judge, visit <https://registration.civicvalues.org/mock-trial/registration/judge-volunteer-registration>. The competition is scheduled to be in person, but will be online if necessary. The qualifier tournament will be Feb. 18–19, 2022, in Albuquerque and Las Cruces and the state final competition will be March 11–12, 2022. For more information, contact Kristen at the Center for Civic Values at 505-764-9417 or Kristen@civicvalues.org.



State Bar of
New Mexico

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License Renewal and MCLE Compliance



State Bar of New Mexico licensing certifications and fees and Minimum Continuing Legal Education requirements are due Feb. 1, 2022*

- ✓ 2022 Licensing certifications and fees
- ✓ 2021 MCLE requirements

*The Supreme Court of New Mexico recently revised the rules relating to attorney licensing and MCLE rules (see NMSC Order No. 21-8300-030).

To complete annual licensing and MCLE requirements, visit www.sbnm.org

and click **My Dashboard** in the top right corner.

For questions, email mcle@sbnm.org.



A Message from State Bar President Carla Martinez

Dear Members of the State Bar of New Mexico,

It is hard to believe that another year is coming to a close. Although it was a challenging and nontraditional year, I truly enjoyed serving as your president. The beginning of the year began very similar to 2020 with many activities limited and remote. As the state started to reopen, I was enthused to know that we would be able to meet in person especially for the State Bar Annual Meeting and Member Appreciation Event. However, as this event was approaching, I was unexpectedly confronted with a personal situation that required my attention and has kept me away from many State Bar activities, including the State Bar Annual Meeting and Member Appreciation Event. I want to personally thank President-Elect, Carolyn Wolf, Secretary-Treasurer Benjamin Sherman and Erinna Atkins for stepping in to host the Annual Meeting and Member Appreciation Event in October 2021. The event provided 5 free CLE credits and over 1,000 State Bar members took advantage of the free programming, which included topics on well-being, diversity and access to justice.

Additionally, I would like to thank Past President Ernestina Cruz for her unwavering support, encouragement and advice throughout the year. It was comforting knowing she was in my corner cheering me on and I will miss her on the Board of Bar Commissioners. I am also thankful for the members of the Board of Bar Commissioners who gave tirelessly of themselves this year to make the legal profession a better place for all of us. I am truly honored to serve with them and will cherish their friendship. Moreover, I am grateful to the dedicated staff at the State Bar who work quietly behind the scenes. I appreciate the friendly greetings I always received from Cecilia Webb while visiting the State Bar Center. In my mind, she and Kris Becker are the epitome of customer service.

Below are a few highlights of State Bar activities this year:

In March, the State Bar launched its new association management system which replaced the old website. This update has provided an improved user experience for members. You can now renew your licensing certifications and complete minimum continuing legal education requirements in one place with one set of login credentials. The State Bar will continue to make updates to the system and will introduce more features that will assist you in your professional lives and practice management. Please visit the new State Bar website at www.sbnm.org.

In January of 2020, I chaired the first Well Being Committee of the State Bar. The committee was created to focus on and improve the overall well-being of New Mexico judges, lawyers and law students. This year's Co-Chairs, Bonnie Stepleton and Sean Fitzpatrick, continued to advance well-being for the legal community through their ongoing committee work. Furthermore, retired Senior Justice Barbara Vigil led the initiative to advance well-being for judges in New Mexico. Her work included creating round-table discussions, regular emails to judges on well-being topics and a mentorship program for judges. It is also through retired Senior Justice Vigil's work that the State Bar hired an employee to focus on well-being initiatives for the New Mexico judiciary. It is also because of retired Senior Justice Vigil's passion and dedication to well-being that I awarded her the State Bar President's Award. I am so honored to have worked with her in many capacities this past year. I would also like to acknowledge the Well Being Committee members who wrote many articles on well-being for the Bar Bulletin and launched and participated in a podcast series called Legal Well-Being in Action. The inaugural podcast consisted of 11 episodes, was streamed over 1,200 times and was listened to across 26 states and 9 countries. Lastly, I would like to thank state bar employees Pamela Moore and Tenessa Eakins whose hard work and support made it possible for the Well-Being Committee to be successful in advancing wellness for New Mexico's legal community.

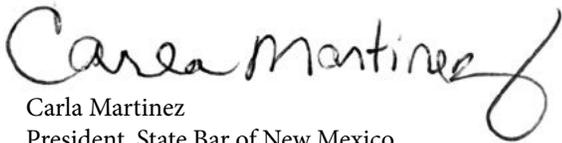
In 2020, Justice David Thomson, Ernestina Cruz and many dedicated state bar members created the Judicial Clerkship Program to give underrepresented law students the opportunity to participate in judicial clerkships within the New Mexico Supreme Court and Court of Appeals. Due to the program's success, in 2022, the program will expand to other courts within New Mexico. I am hopeful the Judicial Clerkship Program will lead many of the applicants to pursue careers in the judiciary. On a related note, as president, I participated in the Judicial Compensation Commission (JCC), which is chaired by Dean Sergio Pareja of the University Of New Mexico School Of Law. The JCC met various times this year in collaboration with Chief Justice Michael Vigil and the Administrative Office of the Courts to suggest higher salaries to the legislature to retain and recruit diverse candidates to the New Mexico Judiciary.

Additionally, in my role as president, I chaired the "Balancing Committee", which provides attorney names to the Judicial Nominating Commission. There were at least 9 Judicial Nominating Commissions this year, which included filling vacancies on the New Mexico Supreme Court and the Court of Appeals. I am grateful to the Supreme Court Justices, Court of Appeal Judges, District Court Judges and Metropolitan Court Judges I worked with on the various "Balancing Committees". I am also grateful to Dean Sergio Pareja and Beverly Akin's cooperation and assistance with the process and State Bar General Counsel Stormy Ralstin for her legal guidance. And lastly, I am especially thankful to State Bar staff member, Kris Becker, who carried a large load in ensuring the "Balancing Committee" met and provided the requisite names to Dean Pareja and Ms. Akin throughout the year.

In the State Bar's continued spirit of equity and inclusion, the Committee on Diversity in the Legal Profession published its decennial Report on Minorities in the Legal Profession during 2020. Similarly, the Committee on Women and the Legal Profession also updated their Report on Gender in the Legal Profession during 2020. Both reports included detailed recommendations, which have been shared with the Board of Bar Commissioners. Earlier this fall, the State Bar hired an Equity in Justice Program Manager to help the State Bar respond to and assist in diversity initiatives for the New Mexico legal community.

It has been my pleasure and honor to serve as your 2021 State Bar President. I enjoyed working with so many judges, lawyers, law students and State Bar staff who I may not have met except for this wonderful opportunity. On December 8, 2021, Justice Shannon Bacon swore in Carolyn Wolf as the 2022 State Bar President and Erinna Atkins as Secretary-Treasurer. Incoming President-Elect Benjamin Sherman was unable to attend the ceremony, so he will be sworn-in early next year. Each of them are dedicated attorneys and leaders and I know the State Bar will continue to thrive under their leadership. I hope you and your loved ones enjoy a wonderful holiday season and a prosperous new year.

Sincerely,

A handwritten signature in black ink that reads "Carla Martinez". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Carla Martinez
President, State Bar of New Mexico

THANK

You

The State Bar of New Mexico would like to express its appreciation and gratitude to the following attorneys that participate in the **DIVORCE OPTIONS WORKSHOP**. Thank you for your professionalism, time and service to the community in New Mexico.

Gretchen Walther
Tiffany Oliver Leigh
Meredith Johnstone
Linda Helen Bennett

Maria Montoya-Chavez
Allison Pieroni
Lucy Sinkular

THANK

You

The State Bar of New Mexico would like to express its appreciation and gratitude to the following attorneys that participate in the **CONSUMER DEBT BANKRUPTCY WORKSHOP**.

Thank you for your professionalism, time and service to the community in New Mexico.

Ron Holmes
Mike Daniels

Arun Melwani
Mike Lash
Matthew Gandert

Wayne McCook
Leslie Maxwell



Pauline Archuleta has been promoted to litigation paralegal, the firm of Sutin, Thayer & Browne where she supports wrongful death and other insurance defense cases by reviewing medical records, preparing medical chronologies, and drafting pleadings. She brings nearly 20 years' legal experience, including significant work in healthcare law, to her role at Sutin, where she has been employed since 2018. Archuleta earned her Associate's Degree in Paralegal Studies from Albuquerque Technical Vocation Institute, now CNM, in 2004.



Elizabeth A. Ashton, a former N.M. assistant attorney general, has joined the Albuquerque office of Pregoner, Baysinger, Wideman, & Sale, PC. Ashton brings strong trial, divorce and family law experience. In addition to family law, she will be representing clients in the areas of guardianship, probate and estate planning.



Noe Astorga-Corral, an associate attorney with Sutin, Thayer & Browne, has become licensed to practice in the Navajo Nation. The Nation encompasses a large and important area of service to Sutin's clients, and Astorga's accomplishment confirms his in-depth knowledge of Navajo law and policies. His practice centers on employment, bankruptcy, insurance defense, and commercial litigation. Astorga also heads the Firm's Committee on Equality, which works to tangibly empower marginalized communities in New Mexico.



Tony D. Dalton has been promoted to associate attorney at Pregoner, Baysinger, Wideman, & Sale, PC (PBWS Law). Mr. Dalton graduated Summa Cum Laude from Carroll College as a member of the Psi Chi Honor Society and earned his Juris Doctor from the University of New Mexico School of Law, graduating Cum Laude, with admission to the New Mexico Bar shortly after. While in law school, he participated in the New Mexico Law Review and received the

Hugh B. Muir Award for Academic Excellence in Tax Law. Mr. Dalton is proficient in Spanish and his primary areas of practice are taxation, estate planning, probate, trust administration, fiduciary services, business management and planning, and special needs planning.

Phyllis A. Dominguez has been selected by the State of New Mexico Judicial Standards Commission to be its next executive director and general counsel, effective Jan.1, 2022. Dominguez has worked for the state agency since January 2012, having served as deputy director for several years. Dominguez is also an elected board member of the Association of Judicial Disciplinary Counsel—the professional association of judicial disciplinary agency directors, prosecutors, investigators, and commission counsel in the United States and Canada. Dominguez received her undergraduate degree in education in 1993, and her law degree in 2003 both from the University of New Mexico.



Mingjie Hoemmen has joined Sutin, Thayer & Browne as an associate attorney. As a member of the firm's litigation group, she practices in the areas of employment law and civil rights, collections, bankruptcy, and creditors' rights. She earned her J.D. from the University of New Mexico School of Law. Fluent in Mandarin Chinese, Mingjie was an interpreter at the 2017 U.S.-China Business Matchmaking Summit, designed to bring Chinese business to New Mexico.



Samantha Maestas has been promoted to lead legal assistant and paralegal, a position that was created within the firm of Sutin, Thayer & Browne. She will be responsible for training and development of the firm's legal assistants, as well as providing coaching throughout the various stages of their careers with Sutin. Maestas joined the firm in 2016 and is an experienced litigation paralegal with a background in creditor rights, foreclosure, bankruptcy, garnishments, collections, replevins, and Navajo law.

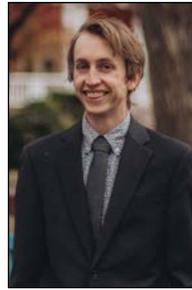


Angela R. Minefee has joined Sutin, Thayer & Browne as a paralegal in the firm's commercial group where her focus is in public finance and corporate law. Angela has been working in the legal industry since 2014. She currently serves as the chair of the Paralegal Division of the State Bar of New Mexico. Angela earned her Associate's Degree in Paralegal Studies from Central New Mexico Community College in 2017.



Cole Wilson has joined Bardacke Allison LLP as an associate attorney. Wilson represents clients in a variety of commercial disputes, focusing his practice on copyright and trademark litigation. He joined the firm from the Office of the New Mexico Attorney General, where he served as an Assistant Attorney General in the Criminal Appeals Division. After Wilson graduated from law school, he moved overseas to The Hague, Netherlands, to work on cases involving

humanitarian and ethnic conflicts in the former Yugoslavia, Rwanda, and Sierra Leone.



Michael Woods has joined Bardacke Allison LLP as an associate attorney. Woods joined the firm after graduating *summa cum laude* from the University of New Mexico School of Law. He works with clients ranging from authors and artists to Fortune 100 companies in matters related to intellectual property and commercial litigation. While in law school, Michael earned honors as a member of the Economic Justice Clinic, where he served local clients in forming non-profits and representing them in unemployment appeals.

In Memoriam



The **Honorable Lyndy Dean Bennett** passed away on Aug. 21 following a long and valiant battle with cancer. Judge Bennett served as a District Judge at the Eleventh Judicial District Court in Gallup from January, 2015 until cancer forced his retirement in March of 2020. Judge Bennett was a police officer for 21 years before serving the people of San Juan and McKinley Counties as a prosecutor beginning in 1998, including serving as District Attorney of San Juan

County from 2004 to 2008, and Chief Deputy District Attorney in McKinley County from 2013 until his appointment to the District Court bench. He was a graduate of Sonoma State University and the Golden State University School of Law. Judge Bennett was devoted to the pursuit of justice, whether in a sprint or for the long haul. Said one of his clerks, "Anything and everything he did, he did with perfection. He brought the people around him up to his level." He was gracious, and took the time to explain the legal process to staff and litigants in a way that they could understand. When litigants left the courtroom, they did so knowing they had been heard, whether the case went their way or not. Upon his retirement from the District Court, Judge Bennett told the Gallup Independent, "I hold this position in such high regard. I'll tell you, of all the things that cancer has stolen from me, this is one of the worst." The people who knew and worked with Judge Bennett held him in equally high regard, and appreciated his razor sharp wit and tremendous compassion, as well as his fashion sense and love for classic cars. Judge Bennett brought honor and integrity to the bench and will be truly missed.



Mother, daughter, sister and much-loved friend to many, **Julia Clark Downs**, 43, passed away on Oct. 5 in Taos after her car was struck by another motorist at high speed. Downs was born May 25, 1978, in Evanston, Ill., to Emilie and Clark Downs. She grew up in Chevy Chase, Md. She attended The National Presbyterian School and was a graduate of the Holton-Arms School, where she was a member of the It's

Academic Team and played soccer. Julia spent many summers as a camper and counselor at Camp Alleghany in Greenbrier County, West Virginia. Julia studied English literature and Spanish language at the University of Maryland at College Park. She also studied in Budapest while at Maryland, beginning her broad international travels. After she received her bachelor's degree, Downs worked at The Institute of International Education and the Landmine Survivors Network, which had her travel to El Salvador and Bosnia-Herzegovina and ignited her passion to make the world a better place for all. Julia served her country as a Peace Corps Volunteer in Panama. Living alone in a cinder block house in the rural area to which she was initially assigned as a Sustainable Agricultural coach, Julia, characteristically, developed her own portfolio. Julia's preliminary assessment of her community indicated significant environmental damage resulting from slash and burn methods, use of pesticides, hunting of endangered species and a culture dominated by machismo. Julia's analysis identified malnutrition, adolescent pregnancy, sexual abuse, domestic violence and ignorance concerning health challenges as issues vexing her Panamanian community. In response, Julia commenced a campaign to enhance the awareness of other Peace Corps volunteers about issues of self-esteem, HIV/AIDS, sexual health and gender equality. Julia spoke widely throughout Panama, giving charlas addressing such matters. In her own community, Julia held open forums on and spoke to school faculty about sexual abuse and appropriate relations between teachers and students. Within months of these conversations, the community called in local officials and two teachers in the middle school were arrested for sexual abuse of students. After returning from Panama, Downs pursued a law degree at the University of New Mexico in Albuquerque. After passing the Bar, she spent seven years as an assistant district attorney in Valencia County, New Mexico. Julia resigned from that position in order to be more present for her son's care. She continued her law practice serving private clients and assisting other lawyers and serving as a public defender for the Isleta Pueblo. Recently, following the shooting death of her longtime partner, Julia relocated to Taos where she joined the District Attorney's office as a senior assistant. Julia was an avid runner, skier, soccer player and overall outdoor enthusiast. She was a creative cook, who could create great dishes without any sort of recipe. Julia was a feminist and a courageous advocate for the underdog. Most important, she was the loving and devoted

In Memoriam

mother of her 12-year-old son Gavin. She was preceded in death by her partner Karl Jurisson, her maternal grandparents, Betty and Bill Hartnett, and her paternal grandparents, Josephine and Willis Downs. She is survived by her son, Gavin; her parents, Emilie and Clark; her sister, Morgan O'Donnell; her brother-in-law, Sean O'Donnell, and many aunts, uncles, cousins, and friends.



Alfonso G. Sanchez, beloved husband, father and grandpa, 93, went to be with his Lord on Sept. 20 in Albuquerque. Alfonso was born on Feb. 23, 1928, in Belen to Ernesto and Anita Sanchez. He was one of 10 children. Alfonso joined the military the day after he graduated from high school, serving in the United States Army Air Corp during WWII. With the help of the GI Bill, he began college and joined the enlisted reserves. He was activated and served in the United States

Air Force during the Korean War for another two years. Upon his return from the war, Sanchez completed his law degree at the University of New Mexico (1957). He served as Assistant District Attorney and later District Attorney of the First Judicial District. Alfonso served as DA during the time of the Tierra Amarilla Court House raid in 1967. Alfonso helped organized SER Jobs for Progress which helped educate and train young Chicanos and match them with employers. He also organized Respect for Law program in schools in the First Judicial District to try to motivate children to grow up with respect for the law. Alfonso was active with the GI Forum and many other community organizations. He helped organize DeVargas Savings and Loan Association of Santa Fe as a response to what he felt were discriminatory loan practices in local banks. He began his private law practice and served for over 60 years as an attorney in Santa Fe. Alfonso led a life of service to his Lord, his country, his state and his family. He was a man of honor and courage and always worked to help those in need. Alfonso leaves behind his loving wife of 59 years, Cecilia, 3 daughters Alicia, Arlene and Peggy, 6 grandchildren Devin, Jordan, Seneca, Hunter, Dustyn and Jaziah, sisters Frances Chisolm and Anita Sanchez, many nieces and nephews, other family and friend. He is preceded in death by his son Tommy, brothers Ernest and Juven and sisters Fannie, Priscilla, Maclovina, Celina and Vicki.



Thomas Nance Jones, dedicated dad, fisherman, and attorney-at-law, passed away in the comfort of his home in Albuquerque on Nov. 10, 2021. Tom was born on Feb. 22, 1950 in Marshalltown, IA, to Dorothealee "Lee" Nance and Norman "Nick" Jones and grew up in Lima, OH. He is survived by his wife, Patty Schoonover Jones, who he

married June 11, 1977; three children, Alex Jones, Mally Jones, and Nash Jones, and their partners Marcella Jones, Ben Price, and Abigail McNamara; two grandchildren, Pearl Jones and Arlo Price-Jones; and his sister, Janet Jones, of Kalamazoo, MI. Tom earned a Bachelor's degree at DePauw University in Greencastle, IN, where he was a member of the Beta Theta Pi fraternity. He moved to Albuquerque in 1972 to attend graduate school at the University of New Mexico. He was a dissertation short of earning a PhD in Psychology when he interned at the New Mexico State

Penitentiary and realized he'd rather work to keep people out of the prison system than work within it. He graduated from UNM Law in 1978 and worked as a private practice attorney first in criminal defense and then civil litigation until retirement. He told Patty of why he chose private practice: "If I ask the boss if I can go fishing, he always says yes." Tom's favorite pastime was trolling for salmon on Navajo Lake with his buddies, who even named an area there "Jones Cove" after him. His other favorite place was Puerto Vallarta, Mexico, where he often visited and tried to convince Patty to move to when their kids were grown. He was a gardener and renowned for his home-grown chile powder, "Ass in the Tub Killer Mix." He had beloved and remarkably-trained canine companions through the years who never left his side, including Cisco, Mancha and Wylie. As a young man he was a Boy Scout and an athlete, taking the Lima Senior Spartans to the semi-finals of 1968 state basketball tournament. He went on to coach his kids in the game, turning the lights off in the garage so they'd learn to dribble without looking at the ball. The pinnacle of his coaching career was winning the 1999 AYBL championship. Tom and Patty were also longtime UNM Lobos season ticket-holders. Tom balanced his athleticism with staggering intellect. He learned to speed read as a boy at the YMCA in Lima and devoured books until the end of his life. He had a wealth of knowledge a jack of all trades, a master of none and never lost a game of Jeopardy! from behind his desk at home. His kids will miss having him to turn to for answers and advice as they navigate the world. In lieu of flowers, contributions in his name may be made to Roadrunner Food Bank.



Born on December 8, 1974, **Harry Jesse Jacobus III** was the only child born to Dorothy Griego and Jesse Harps (dec.). He was raised by his lovely grandmother, Beatrice Anaya who preceded him in death. Lovingly known as Jesse, he would grow to become a man of much valor and charm. He was brilliant, sarcastic, witty, and full of love for all who knew him. Irreverent, yet charming. Gregarious, yet contemplative.

Stubborn, yet full of love. Jesse was a man who meant so much to so many – a loving husband, father of three, an only son, cousin, nephew, brother in arms, colleague, opposing counsel, and friend. Jesse passed away on Nov. 13, 2021, at the age of 46 after a valiant battle with cancer. Born and raised in Albuquerque, Jesse led a full life that saw no boundaries. Upon graduating from Rio Grande High School in 1993, Jesse joined the U.S. Marine Corps, where he completed boot camp at Marine Corps Recruit Depot in California, Marine Aviation Logistics Squadron Ordnance School in Tennessee, his first orders in Okinawa, Japan, and a three-year tour in Arizona, where he ended his enlistment in 1997. No matter where life took him, New Mexico was always home. After his time in the Marine Corps, Jesse attended the University of New Mexico where he was a walk-on member of the UNM Varsity Football team. He graduated with a Bachelor of Business Administration in international business in 2000. He then set his sights on becoming a lawyer. In 2003, he attained his Juris Doctor from Chicago-Kent School of Law. Illinois was not only the breeding ground for his future successful legal career, but also the birthplace of the love story for his future marriage. In the words of his friend, while

finishing law school “Jesse met the love of his life, Torri” and “found his life partner and somebody that was strong enough to keep him honest and love him the way he deserved to be loved.” The couple married on May 6, 2005, and returned to New Mexico once again, where their legal careers and family would soon blossom. Jesse had an extensive and successful career as a civil litigation and employment attorney. Regarded as one of the best trial lawyers in the state, Jesse tried many cases to verdict in New Mexico state and federal courts. Following law school, Jesse served as a judicial law clerk at the New Mexico Court of Appeals under the Honorable James J. Wechsler. Jesse then broke barriers by becoming the first African American shareholder at the Modrall Sperling Law Firm. Jesse went on to be a shareholder at multiple firms, finishing his distinguished career as a shareholder at Freedman Boyd Hollander Goldberg Urias & Ward, P.A. An accomplished practitioner, Jesse was named as one of the Top 10 Personal Injury Attorneys Under Age 40 in New Mexico by the National Academy of Personal Injury Attorneys, was recognized as a Southwest Rising Star by Southwest Super Lawyers® and a Future Star by Benchmark Litigation. Despite his “effective and aggressive litigation approach,” Jesse’s peers revered him, so much so that Jesse was awarded the “Excellent” rating through Avvo and the AV® rating from Martindale-Hubbell, the highest possible peer review rating. Fluent in Spanish, Jesse was committed to his Black and Hispanic heritage and to his native New Mexico community. He was a member of both the Albuquerque Bar Association and Hispanic Bar Association; member of the New Mexico Black Lawyers Association, New Mexico Defense Lawyers’ Association, and New Mexico Trial Lawyers Association; and past board member and past board chairman for Planned Parenthood of New Mexico. His love for practicing law was no match compared to his most important job as husband and father. Perhaps his greatest accomplishments were his three children – Alex (16), Sebastian (12), and Camille (10). A friend noted “We’d talk about how our kids have made us both smarter people and how our wives have made us better men.” Jesse celebrated his children’s achievements, participated in their favorite activities like karate, mock trial, and creating legendary costumes, and never shied away from sharing proud moments and stories about his children with friends and loved ones. He instilled values from his culture and experiences with his children, poured all of himself into them, and encouraged them to be their best and pursue their dreams. Widely known for his wit, Jesse was notorious for making people laugh, whether in his written word or one-on-one conversations. Friends and colleagues adored him as one of the funniest and best writers ever, with some of his most memorable compositions punctuated with an occasional four-letter word. He liked fast cars, boats (despite living in the desert), and the Chicago Bears. He loved fiercely and considered his friends to be family. His dutiful service to his country, his tenacious and competitive spirit, his passionate love for his family, and his kind, gentle smile truly made him a remarkable BMF and a one-of-a-kind treasure. Jesse was preceded in death by his daughter Jaeda Halle Brazfield Jacobus in 2001. Jesse is survived by his wife, Torri; children, Alex, Sebastian, and Camille; mother, Dorothy Griego; many cousins, nieces, and nephews, and numerous “brothers”, law partners, extended family, and friends.

Lester Clinton Cannain, age 79, was born on Aug. 13, 1941, and passed away unexpectedly on Jan. 2. Preceding him in death were his parents, Mary and Donald Cannain, and his brother Donnie. Survivors include his wife of 51 years, Carolyn Scott Cannain, their three sons Sean Patrick, Ryan Scott, and Daniel Logan, as well as his cherished Dachshund Koa. Relatives include his two sisters Darlene Sauer and Carol Piecewicz and families of NY; Scott relatives include Diane S. Miller, Robert B. Scott, and William G. Scott and their respective families. Having grown up in Utica, NY, Les was a proud Eagle Scout, a graduate of Utica College, Syracuse University of Law (1966), and a Master of Law from George Washington University (1973). He spent 20 years in the USAF and retired as a Major in 1986. Afterwards, he practiced primarily contract law, in Albuquerque for 15 years. He was active in the Masonic Lodge, Shepherd of the Valley Presbyterian Church as an elder, deacon and member of the choir. He was also a faithful follower of Alcoholics Anonymous for nearly 30 years. A family memorial service was held on January 8 at the Columbarium of Shepherd of the Valley, followed by a moving ceremony by the military Honor Guard. Les was a beloved husband, father, relative and friend, all of whom enjoyed his off-the-cuff humor. He will be nearly missed and forever loved.

Luis B. Juarez passed away on July 15. Juarez lived a fulfilling and purposeful life: field worker-cotton, US Navy Veteran, NMHU graduate, Teacher, Activist with Cesar Chavez, Vista/HeadStart Administrator, UNM/DU Law Schools, Attorney in NM and TX, Peace Corps (Peru), Law Consultant for Czechoslovakia, Assistant DA and later District Attorney of the Tri-County, Harvard speaker, Federal Public Defender, and Head of Public Defender's Office in Carlsbad, NM. At 90 years young, “LB” never retired. No services will take place at his request. Raise a glass, toast to a life well lived, and celebrate his spirit.

Paul Douglas Vaughan, 81, of Las Cruces, New Mexico passed away Oct. 18 in Las Cruces. Paul was born to Willard “Bill” Beryl Williamson Vaughan and Dorsey “Jack” Ward Vaughan on Aug. 17, 1940, in Alexandria, Louisiana. After he graduated from high school in Colfax, Louisiana in 1958, Paul enlisted in the US Navy and served three years as an electronics technician at the U. S. Naval Air Facility in China Lake, California. After he was discharged, Paul worked as a radio announcer and disc jockey, air traffic controller, and truck driver. He earned his B.A. degree in Business Administration from Prairie View A & M University and graduated from the University of Denver College of Law in 1986. Paul worked briefly in private practice in Colorado and New Mexico but found his true calling when he joined the Department of the Public Defender in Las Cruces. Paul was committed to helping people, and he was appreciated and deeply respected as a lawyer. In addition to defending in more than 200 jury trials, Paul helped set up courts dedicated to rehabilitating defendants rather than punishing them. In collaboration with the Hon. Silvia Cano-Garcia and the Hon. Susana Chaparro, he helped establish the first Domestic Violence Court in the state of New Mexico. Paul was also instrumental in establishing the local Veterans Treatment Court in 2018. The VTC operates out of Judge James Martin's courtroom in the Third Judicial District Court in Las Cruces and has successfully graduated a number of veterans who were considered high-risk and in need of rehabilitation. Paul was passionate about sports of all kinds, both as a spectator and

a referee. For 53 years, he officiated high school games across Texas, Colorado and New Mexico in soccer, volleyball, basketball, football and hockey. He also loved model airplanes, model railroads, and travel. Paul was preceded in death by his parents and his brother. He is survived by his wife, Sara Ellen Kay MD, daughters Andrea Vaughan and Sara Vaughan, and grandsons Johnathan and Quentin. Memorial contributions may be given to First Presbyterian Church, 200 E. Boutz Street, Las Cruces, New Mexico 88005 and Southern Christian Leadership Conference, 320 Auburn Avenue, Atlanta, Georgia 30303.

John Kenneth Silver passed away in his Santa Fe home on the morning of September 9th. Born on July 30, 1952 to Abe Silver Jr. and Marian Petchesky Silver, John was a fourth generation Santa Fean who proudly shared his family's commitment to community service. After attending Wood Gormley Elementary and Santa Fe High School, John graduated from Colorado College in 1974 and went on to earn his law degree at the University of New Mexico. He practiced at several law firms before starting his own in his family's building on the Santa Fe Plaza, where he helped clients for over 30 years with law partner, Joe McClaugherty. John's lifelong love of sports was cultivated at a young age. He became the first tennis professional at the Sangre de Cristo Racquet Club, where he continued to play and compete for the rest of his life. Along with being a goaltender for the Colorado College Tigers, he was a decorated member of the university's tennis team. He also imparted his love of the sport onto his children, Thomas and Johanna, early on and continued to coach them throughout their years at Santa Fe High School. John's passion for tennis led to countless friendships and adventures spanning from Florence to the West Indies. John showed as much devotion to philanthropy and service as he did his tennis game. Among the inexhaustible contributions to his community, John worked with Santa Fe

Children's Museum, the Museum of New Mexico Foundation, the Santa Fe Festival Theater, and the Richardson Center for Global Engagement. He created the St. Vincent Hospital Foundation, with proceeds from the popular tennis tournament he organized with his pro football player clients. As its Executive Director, John helmed the Allene and Jerome Lapidés Foundation, giving numerous charitable donations toward animal welfare, youth development, and the environment. This led to a close friendship with primatologist Jane Goodall, whose many missions he helped advance over the years. With the help of friend and colleague David Douglas, John also garnered bipartisan support for the Great American Outdoors Act, a landmark piece of legislation benefiting national parks and public land. Always eager to explore new interests and share them with loved ones, John dabbled in everything from fine art to fly fishing. He performed and helped stage ballet performances with Gloria, his beloved wife of 37 years, grew ribbon-winning turban squash, backed band members on the tambourine, and traveled around the world. He also had a famous fervor for wine and spirits, which he shared with other "wine snobs" and fellow members of the Confrérie des Chevaliers du Tastevin. Above all of his contributions and accomplishments, loved ones will remember John for who he was. A loving husband, father, and friend. A problem solver who was of service to anyone who needed him. A charismatic epicurean who celebrated good food, wine, and company. A generous benefactor who wanted to make the world better for everyone. A brilliant Springsteen-blasting, bourbon-loving athlete, attorney, and Santa Fe fixture. A man with unlimited energy for the people he loved. An incredible individual who made the lives of those who knew him rich, rewarding, and sweet. John is survived by mother Marian Silver, wife Gloria Silver, children Thomas and Johanna Silver, sisters Carolyn Silver and Margaret Silver Jones, niece Alyson Silver Jones and her fiancé Max Hendrix.

Legal Education

December

- | | | |
|---|---|--|
| <p>27 REPLAY: Minimizing Cultural Errors in Professional Practice (2020)
1.5 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 Ethics Lessons from a Jersey Guy
0.5 G, 2.5 EP
In Person and Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 REPLAY: Revealing Unconscious Prejudice: How You Can Benefit (2020)
2.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>28 Ethics Lessons from a Jersey Guy with Stuart Teicher
0.5 G, 2.5 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 2021 Ethics Update, Part 1
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>30 2021 Ethics in Civil Litigation Update, Part 1
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>28 Ethical Issues Representing a Band: Using the Beatles
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 2021 Ethics Update, Part 2
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>31 2021 Ethics in Civil Litigation Update, Part 2
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>28 An Afternoon of Legal Writing with Stuart Teicher
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 Marketing Ethics 101
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | |

January 2022

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|---|---|---|
| <p>11 2022 Uniform Commercial Code Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>13 Exit Rights in Business Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>19 Using Free Public Records and Publicly Available Information for Investigative Research
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>13 Deal or No Deal: Ethics on Trial
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>14 Practical and Budget-Friendly Cybersecurity for Lawyers
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>20 Ethics of Working with Witnesses
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

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

Opinions

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

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

Effective November 26, 2021

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

A-1-CA-38110	State v. A Fernandez	Affirm	11/15/2021
A-1-CA-38161	State v. H Anderson	Affirm	11/15/2021
A-1-CA-38276	The J and A Miller Revocable Trust v. Eldorado Area Water	Affirm	11/15/2021
A-1-CA-38279	State v. J Gonzales	Affirm/Reverse/Remand	11/16/2021
A-1-CA-39616	F Valenzuela v. A Snyder	Affirm	11/16/2021
A-1-CA-39094	K Haynes v. S Wade	Affirm	11/17/2021
A-1-CA-39678	State v. E Ibarra	Affirm	11/17/2021
A-1-CA-37148	Matrix Financial v. C Maes	Affirm	11/18/2021
A-1-CA-37621	State v. E Ayers	Affirm/Remand	11/18/2021
A-1-CA-37959	State v. E Notah	Affirm	11/18/2021
A-1-CA-38309	State v. C Owens	Affirm	11/18/2021
A-1-CA-38991	State v. J Mitchell	Affirm	11/18/2021
A-1-CA-39502	State v. J Branham	Reverse/Remand	11/18/2021
A-1-CA-39579	A Herrera v. APS	Affirm	11/18/2021
A-1-CA-39465	State v. T McKnight	Affirm	11/22/2021
A-1-CA-39484	US Bank v. M Khalsa	Affirm	11/22/2021
A-1-CA-39194	State v. A Martinez	Reverse	11/23/2021
A-1-CA-39254	P Mueller v. B Parnall	Affirm	11/23/2021
A-1-CA-39404	S Martin v. Josefo Martinez	Affirm	11/23/2021
A-1-CA-39647	E Nguyen v. K Bui	Reverse/Remand	11/23/2021
A-1-CA-39834	J Felps v. M Felps	Affirm	11/23/2021

Effective December 3, 2021

PUBLISHED OPINIONS

A-1-CA-38063	State v. L Godinez	Reverse/Remand	12/01/2021
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UNPUBLISHED OPINIONS

A-1-CA-37344	State v. M Chavez	Affirm	11/30/2021
A-1-CA-38799	State v. D Padilla	Affirm	11/30/2021
A-1-CA-37513	G Martinez v. City of Grants	Affirm	12/01/2021
A-1-CA-38017	State v. L Sisneros	Affirm	12/01/2021
A-1-CA-38241	Citizens Bank v. E Burnworth	Reverse/Remand	12/01/2021
A-1-CA-39222	P Brenner v. N Koluncich	Affirm	12/01/2021
A-1-CA-39764	State v. J Salazar	Affirm	12/01/2021
A-1-CA-39000	State v. D Roberts	Reverse/Remand	12/02/2021
A-1-CA-39103	G Griego v. F Bufano	Affirm	12/02/2021

Slip Opinions for Published Opinions may be read on the Court's website: <http://coa.nmcourts.gov/documents/index.htm>

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF LIMITED ADMISSION

On November 23, 2021
Amber Monique Castro
Office of the Third Judicial
District Attorney
845 N. Motel Blvd., 2nd Floor,
Suite D
Las Cruces, NM 88007
575-524-6370
acastro@da.state.nm.us

On November 18, 2021:
Daniela Tamarova
Office of the Second Judicial
District Attorney
520 Lomas Blvd., N.W.
Albuquerque, NM 87102
505-222-1079
505-241-1000 (fax)
daniela.tamarova@da2nd.
state.nm.us

On November 23, 2021
India Trummer
Office of the Second Judicial
District Attorney
520 Lomas Blvd., N.W.
Albuquerque, NM 87102
505-222-1079
505-241-1000 (fax)
india.trummer@da2nd.state.
nm.us

CLERK'S CERTIFICATE OF AMENDED LIMITED ADMISSION

On September 11, 2017:
Franz Michael von Hoffmann
Office of the Sixth Judicial
District Attorney
P.O. Box 1025
201 N. Cooper Street (88061)
Silver City, NM 88062
575-388-1941
575-388-5184 (fax)
fvonhoffman@da.state.nm.us

Effective May 17, 2021:
Hannah Rosenstein
Office of the First Judicial
District Attorney
P.O. Box 2041
327 Sandoval Street (87501)
Santa Fe, NM 87504
505-827-5000
505-827-5076 (fax)
hrosenstein@da.state.nm.us

CLERK'S CERTIFICATE OF NAME CHANGE

As of July 12, 2021, **Stephanie L. Latimer Davis f/k/a Stephanie L. Latimer**
New Mexico Court of Appeals
2211 Tucker Avenue, N.E.
Albuquerque, NM 87106
505-841-4617
505-841-4614 (fax)
coasll@nmcourts.gov

As of August 30, 2021, **Julia Yvette Parsons f/k/a Julia Yvette Mares:**
Stiff, Keith & Garcia, LLC
500 Marquette Avenue, N.W.,
Suite 1400
Albuquerque, NM 87102
505-243-5755
505-243-5855 (fax)
juliaymares@stiffllaw.com

As of August 30, 2021, **Annie W. Stone f/k/a Annie Y. Wan:**
Arizona State University
Sandra Day O'Connor College
of Law
111 E. Taylor Street
Phoenix, AZ 85004
480-727-5392
annie.stone@asu.edu

CLERK'S CERTIFICATE OF ADMISSION

On November 18, 2021:
Renee E. Lewis
Law Offices of Darlene Gomez, LLC
1412 Lomas Blvd., N.W.
Albuquerque, NM 87104
505-842-0392
505-842-0686 (fax)
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On November 18, 2021:
Stephanie A. Tucker
120 E. Grand Street
Clovis, NM 88101
832-603-3802
stephanie.tucker01@outlook.
com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective July 9, 2021:
Regina Holyan
P.O. Box 162
Rehoboth, NM 87322

Effective July 12, 2021:
George Anna Mallory
11836 Native Dancer, S.E.
Albuquerque, NM 87123

Effective July 26, 2021:
Rae Ann Shanley
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Austin, TX 78737

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Effective August 2, 2021:
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Effective August 6, 2021:
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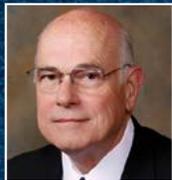
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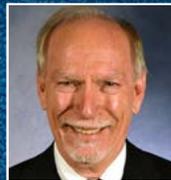
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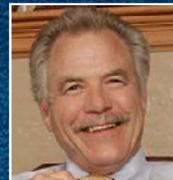
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WHAT A LONG STRANGE TRIP IT'S BEEN¹

By Carlos N. Martinez



Once upon a time, back in the late 1900's, New Mexico's cannabis scene was an underground, unspoken fraternity of consumers ranging from the weekend recreational consumer to the full-time medicinal user. As time passed, cannabis evolved from Reefer Madness into an acceptance and recognition for its numerous benefits outside of recreational use. Now in 2021, we have an adult-use recreational cannabis law on the books, and unless you've been living under a rock for the last couple of years, you may have missed some important news as it relates to New Mexico's cannabis industry. In June of this year, the Land of Enchantment's brand new Cannabis Regulation Act now allows New Mexican residents to grow six mature cannabis plants per person and up to 12 mature cannabis plants per household.² Although maturity is often defined differently in various cultures, New Mexico defines it as a "female cannabis plant in the flowering stage."³ Additionally, no later than April 1, 2022, you'll be able to purchase "two ounces of cannabis, 16 grams of cannabis extract and 800 milligrams of edible cannabis at one time."⁴ The times they are a changin'.⁵

History of New Mexico's Cannabis Programs

New Mexico was the first state in the nation to enact a medical cannabis law via legislature in 1978, the Controlled Substances Therapeutic Research Act,⁶ later renamed in 2007 in honor of Lynn Pierson and Erin Armstrong; the Lynn and Erin Compassionate Use Act.⁷ The program's initial rules and regulations were promulgated in 2010 with the first set of medical cannabis licenses⁸ being issued that same year. In 2015, the rules were revised for the first time, with a second set of medical cannabis licenses being issued. In 2019, Senate Bill 406⁹ revised and amended language in the Lynn and Erin Compassionate Use Act, while adding 15 additional qualifying debilitating medical conditions. Under New Mexico's medical cannabis program, a qualified patient¹⁰ has to be diagnosed by a practitioner as having a debilitating medical condition in order to obtain a medical cannabis card, and patients were limited to approximately eight ounces of cannabis flower in a three-month time-period.¹¹

Under the statutory and regulatory language, a debilitating medical condition could be any of the following: (1) cancer; (2) glaucoma; (3) multiple sclerosis; (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity; (5) seizure disorder, including epilepsy; (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome; (7) admitted into hospice care in accordance with rules promulgated by the department; (8) amyotrophic lateral sclerosis; (9) Crohn's disease; (10) hepatitis C infection; (11) Huntington's disease; (12) inclusion body myositis; (13) inflammatory autoimmune-mediated arthritis; (14) intractable nausea or vomiting; (15) obstructive sleep apnea; (16) painful peripheral neuropathy; (17) Parkinson's disease; (18) posttraumatic stress disorder; (19) severe chronic pain; (20) severe anorexia or cachexia; (21) spasmodic torticollis; (22)

ulcerative colitis; (23) autism spectrum disorder; (24) Friedreich's ataxia; (25) Lewy body disease; (26) spinal muscular atrophy; (27) Alzheimer's disease; (28) opioid use disorder; or (29) any other medical condition, medical treatment or disease as approved by the department.¹²

As the medical cannabis program began to expand, efforts began to be made to bring a recreational adult-use cannabis program to New Mexico. In 2020, there was a failed attempt at passing a recreational cannabis bill¹³ but in 2021, with the assistance of a special session, New Mexico was able to pass the Cannabis Regulation Act¹⁴, and light a metaphorical match to the proverbial powder keg that is the New Mexico Recreational Cannabis industry.

New Mexico's Recreational Cannabis Program

Under the Cannabis Regulation Act, responsibility falls on the Regulation and Licensing Department's Cannabis Control Division to administer its provisions as well as the provisions of the Lynn and Erin Compassionate Use Act. Under the Cannabis Regulation Act, a potential licensee will have the option to apply for a number of license types: 1. Cannabis Producer License; 2. Cannabis Producer Microbusiness License; 3. Manufacturing License; 4. Vertically Integrated Cannabis Establishment License; 5. Retailer License; 6. Cannabis Consumption Area License; 7. Courier's License; 8. Cannabis Testing Laboratory License; 9. Cannabis Research License; and 10. Integrated Cannabis Microbusiness License.¹⁵



The Cannabis Control Division was also tasked with creating the Cannabis Regulatory Advisory Committee (CRAC) to advise the division on the development of the licensing rules and regulations for the Cannabis Regulation Act. It is comprised of 17 individuals, none of which are cannabis law experts, and only one member having any current and direct experience in New Mexico's medical cannabis program as a licensed non-profit producer. As luck would have it, license requirements were developed and released for cannabis producers and cannabis producer microbusinesses on August 24, 2021, a mere 14 days after the CRAC team's first meeting; a meeting in which four members failed to attend.¹⁶ The cannabis producer microbusiness license allows the holder to grow up to 200 mature cannabis plants, while the cannabis producer license allows the holder to grow and cultivate up to 8,000 mature cannabis plants, and in no event more than 10,000 mature cannabis plants. Both licenses also come with the associated privileges of having unprocessed cannabis products tested by a laboratory, transportation of cannabis products to other cannabis establishments, or selling cannabis products wholesale.¹⁷

The annual fees associated with obtaining a cannabis producer microbusiness license depends on the number of mature cannabis plants one intends on growing: 100 mature plants or less will cost \$500 annually, and 101-200 plants will cost \$1,000 annually.¹⁸ The annual fee for the cannabis producer license is \$2,500 and an additional \$1,000 per additional licensed premises. Further, there are "per plant" fees associated with the cannabis producer licenses. The division mandates a per plant fee of \$10 per commercial cannabis plant, and \$5 per medical cannabis plant.¹⁹

In addition to the licensing fees, numerous requirements must be adhered to in order to have a full and complete application for a cannabis license. The department requires license applicants to provide complete contact information for all controlling persons of the business (those with 10% or more financial or voting interest²⁰), proof of age (must be more than 21 years old), and complete contact and location information of the actual cannabis establishment. The department further requires diagrams of businesses, permissions from land owners, proof of legal water rights, energy and water reduction plans, business licenses, inspections, and a host of certifications and attestations. Additionally, the department directs all business applicants to maintain numerous standard operating procedures and policies covering topics that range from wastage and disposal procedures of unusable cannabis, to employee manuals and safe transportation of cannabis and cannabis products.²¹

In contrast to the department's rules and regulations, the cannabis control division's online portal only requires a fraction of the information to be submitted for review. Although the department requires that all information provided by the licensee to be accurate and truthful, the department does not guarantee that the submission

of an application will be accepted as complete. However, once an application has been deemed complete, the department then has 90 days in which to grant or deny the license; but it is still not guaranteed that a complete application will result in the department granting the license!²²

Business Considerations, Issues, and Problems

Along with the task of navigating the murky waters of the license application process, there are intangible business considerations one should address and understand before applying for a cannabis license. Long gone are the days where companies were forced to incorporate as non-profit entities, and be subject to arbitrary board compositions or consumption limits.²³ The Cannabis Regulation Act does not mandate a specific type of legal entity to be utilized in order to own and operate a recreational cannabis license. The question then becomes, which is the best legal entity to choose? Well, it depends; how many owners are there? Do they all own the same amount of equity in the business? Do you prefer the structure of a board of directors, or do you prefer a simpler set up in terms of management and ownership? The most popular legal entity choice seems to favor limited liability companies, however there are multiple applicants

utilizing a more traditional corporate formation, with shareholders, a board of directors, and officers. Whichever entity is decided, it is important to ensure bylaws or operating agreements are drafted to sufficiently protect the interests of the owners of the business, as well as plan for future unforeseen contingencies, mergers or acquisitions.

Additionally, initial startup capital needed for real estate and infrastructure could be an insurmountable task for some entrepreneurs, which is an unfortunate reality that

discourages applicants from entering the industry. Granted, if one were to operate a farm with the capacity to grow 8,000 mature plants, exclusive of mother plants, clones, or immature plants, one would need an exponential amount more space, infrastructure and capital than a farm that grows up to 100 plants. However, under the Cannabis Regulation Act there is not a minimum number of plants that must be grown, and therefore, there is in fact room for a small business owner to enter the space at a lower initial startup cost, while still generating large revenues. Assuming a licensee operates a 50-plant farm, and is able to yield one pound of cannabis flower per plant, per growth cycle,²⁴ it is reasonable to project revenues north of \$200,000 per growth cycle, based off of a \$10/gram figure.²⁵ Nonetheless, once it has been determined that a space has been identified for the farm, one would need to double check with the local authorities and jurisdictions to determine whether or not the farm was properly zoned.

Within the Cannabis Regulation Act, there are explicit provisions providing that local jurisdictions throughout the state have the ability to regulate time, place, manner and density of license restrictions.²⁶ Further, local jurisdictions have their own zoning rules and regulations. This batch of additional rules and regulations oftentimes gives business owners fits, as they are wholly ignorant of



It is extremely hard to gauge what the anticipated demand will be, and whether or not New Mexico's budding cannabis industry will be able to meet the same.

the fact that they must deal with local zoning boards and commissions. Compounding this issue is the very real fact that not all local jurisdictions are completely ready to develop and implement new zoning rules and regulations that comply with the Cannabis Regulation Act. This delay in getting the requisite zoning approval forces business owners to “wait and see,” and these delays hold up much needed inspections, permissions, and other necessary approvals needed in order to provide a complete application packet to the cannabis control division.

The division’s application also requires that the licensee demonstrate that they have a legal right to use the water for their respective farms, which can be proven in one of two ways: 1. Provide documentation from the respective water provider indicating that the applicant has the right to use the water from the provider, and that the use is compliant with the water provider’s rules; or 2. Provide documentation from the office of the state engineer’s office “showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment.”²⁷ Obtaining this documentation has proven problematic, specifically for the fact that up until now, no water authority has had to provide this type of correspondence in the past. Additionally, it will be interesting to see how these water issues continue to develop in the future, especially as they relate to usage. As the industry grows, an increase in cannabis plants will be needed; and the more cannabis plants that are grown, the more business owners will have to squeeze water out of the desert.

Lastly, accompanying this monumental task of instituting the provisions of the Cannabis Regulation Act, the Cannabis Control Division now faces serious realities as they relate to basic concepts of supply and demand; at the time of the writing of this article, the medical cannabis program had 122,801 active patients.²⁸ To address this anticipated shortage of medical cannabis, the division may require licensees to ensure that 10% of its inventory is set aside for qualified patients, primary caregivers and reciprocal participants, or the division may also incentivize increased production of cannabis plants for medical users. After exhausting measures to increase production, the division may even exclude commercial cannabis activity for up to 6 months, and require licensees to produce a specified quota of mature cannabis plants for the medical program.²⁹

Conclusion

As recent judicial orders have indicated, there may be an increase in the purchase limits for medicinal patients, caregivers and reciprocal patients, and added to this, the beginning of the recreational adult use program. It is extremely hard to gauge what the anticipated demand will be, and whether or not New Mexico’s budding cannabis industry will be able to meet the same. However, the medicinal and adult-use markets have huge potential to provide an immensely positive impact for the State of New Mexico and its residents, as well as multiple opportunities for large and small business owners. The Cannabis Regulation Act further encourages those to participate who have been disproportionately harmed by previous cannabis prohibitions through arrest or enforcement, which is a part of the social equity built into the law.³⁰ Be positive, be open-minded, and

be excellent to each other.³¹ Embrace the change, it’d be a lot cooler if you did.³² ■

Carlos N. Martinez is a cannabis law attorney at Legal Solutions of New Mexico, LLC. He is the founder of the Cannabis Law Section and currently serves on the board of directors as Chairperson of the section. He also practices in family law and is a member of the Family Law Section’s board of directors. He holds degrees in accounting and finance, an M.B.A. in international business, and a juris doctorate.

Endnotes

¹ *What a Long Strange Trip It’s Been*; Grateful Dead, Warner Bros. Records; August 18, 1977

² NMSA 1978, § 26-2C-25(A)(9)

³ 16.8.8.8(B) NMAC

⁴ NMSA 1978, § 26-2C-3(B)(4)(a); a person who is twenty-one years old or older

⁵ *The Times They Are a-Changin’*; Bob Dylan, Columbia Records; January 13, 1964.

⁶ NMSA 1978, § 26-2A-1 to 26-2A-7

⁷ NMSA 1978, § 26-2B-1 to 26-2B-10

⁸ Non-profit producers, 7.34.4.8 NMAC; Manufacturers, 7.34.4.14 NMAC; Testing Laboratories, 7.34.4.17 NMAC; Couriers, 7.34.4.20 NMAC;

Personal Production Licenses, 7.34.4.21

⁹ 2019 Regular Session-SB 406; <https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0406.pdf>

¹⁰ NMSA 1978, § 26-2B-3(N)

¹¹ NMAC 7.34.3.9, et seq.; However, see Case No. D-202-CV-2021-04058

¹² NMSA 1978, § 26-2C-1, et seq.;

¹³ 2020 Regular Session-SB 115; <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legtype=B&legno=115&year=20>

¹⁴ NMSA 1978, § 26-2C-1 to 26-2C-42

¹⁵ NMSA 1978, § 26-2C-6(B)

¹⁶ <https://ccd.rld.state.nm.us/wp-content/uploads/2021/09/08.010.2021-C-RAC-Minutes-EK-signature.pdf>

¹⁷ NMSA 1978, § 26-2C-2(I); NMAC 16.8.8.9(A)-(F)

¹⁸ NMAC 16.8.11.9(H)

¹⁹ NMAC 16.8.11.9(D); NMAC 16.8.11.11

²⁰ NMSA 1978, § 26-2C-2(U)

²¹ NMAC 16.8.2.21 et seq.

²² NMAC 16.8.2.8(G)

²³ NMAC 7.34.4.8(J)

²⁴ NMAC 16.8.8.8(A)

²⁵ Sofis, M. S. P. D., & Slade, M. S. M. P. H. (2021, June). Cannabis Public Policy Consulting: Estimating Cannabis Demand in New Mexico.

https://ccd.rld.state.nm.us/wp-content/uploads/2021/07/FINAL_Estimating-Cannabis-Demand_DOH_June23.pdf; 50lbs=22,679.6 Grams*\$10.05 per gram=\$227,929.98

²⁶ NMSA 1978, § 26-2C-12 et seq.

²⁷ NMAC 16.8.2.22(A)(5)

²⁸ Medical Cannabis Program Patient Statistics August 2021. (2021, August). <https://www.nmhealth.org/publication/view/report/6871/>

²⁹ NMSA 1978, § 26-2C-6(L); NMAC 16.8.8.11

³⁰ NMSA 1978, § 26-2C-3(B)(7) and (9)

³¹ Ted “Theodore” Logan; *Bill and Ted’s Excellent Adventure* (1989)

³² Wooderson; *Dazed and Confused*, (1993).

Advertising and Marketing Cannabis

By Joel Krukar, Tina Muscarella Gooch, and Christy Lucky

Well before New Mexico passed the Cannabis Regulation Act, NMSA 1978, § 26-2C-1, *et seq.*, brand development and marketing within the cannabis industry has had its own unique legal requirements and challenges. For example, each state that has legalized medical and/or recreational cannabis has its own unique laws and regulations. Still, no matter the market, there are some commonalities across each state. Even with some common laws, regulators in each state may apply laws differently. This article discusses New Mexico law regarding advertising cannabis, as well as shared experiences regarding marketing cannabis, through the Mountaintop Extract TerpKey.

The New Mexico Cannabis Regulation Act (CRA)

New Mexico recently legalized recreational cannabis use through the passage of the Cannabis Regulation Act (CRA), NMSA 1978, § 26-2C-1, *et seq.* Among the many things included in the CRA, this law created a new division under the New Mexico Regulation and Licensing Department which must, by next Jan. 1, 2022, promulgate rules for the marketing and sale of cannabis, in consultation with several agencies and the newly appointed cannabis advisory committee. NMSA 1978, § 26-2C-3(B)(5).

The CRA provides various advertising and marketing restrictions.

A. prohibit the advertisement and marketing of cannabis products:

- (1) on radio, television or other broadcast media, internet pop-ups and mass transit vehicles; provided that the division shall not prohibit advertising and marketing to:
 - (a) subscribers of subscription-based radio, television or other broadcast media who are twenty one years of age or older; or
 - (b) persons twenty-one years of age or older who have solicited the advertising or marketing;
- (2) that are false, deceptive or misleading, including making unproven health benefit claims;
- (3) that are on billboards, posters, handbills or other visual media that are located or can be viewed within three hundred feet of a school, daycare center or church;
- (4) that depict consumption by children or other persons who appear to be younger than twenty-one years of age;
- (5) that use predatory marketing and advertising practices targeting minors; or
- (6) that are designed using cartoon characters or to mimic any other product brand; and

B. require:

- (1) all advertisements and marketing to accurately and legibly identify all persons responsible for its content; and
- (2) advertisements in print and digital communications to be placed only where the audience is reasonably expected to be twenty-one years of age or older as determined by reliable, current audience composition data.

NMSA 1978, § 26-2C-20.

It remains to be seen how these CRA requirements appear in regulations and how those regulations are interpreted and enforced. Regardless, the TerpKey demonstrates how to provide esthetically pleasing marketing that complies with the CRA. It not only includes accurate information about terpenes, it also includes a useful tool for consumers to use in selecting cannabis. Further, in trying to estimate how New Mexico will address cannabis marketing and advertising, it is helpful to know more about how other states have addressed these issues, as well as experiences of others in the cannabis industry.

What to expect based on shared experiences throughout the cannabis industry

Do not develop a brand appealing to children

In general, this just means not to use cartoon characters, or any type of whimsical branding that can be interpreted as appealing to children. Color schemes that are neon and pop highly can also be risky. Black market branded cannabis edibles will sometimes be reiterations of famous candies that are now infused with cannabis. Regardless of the regulations that will be issued, it is certain that there will be prohibitions on branding that appeal to minors.

280E, the cannabis industries targeted tax clause

Section 280E of the Internal Revenue Code is a unique clause which disallows businesses that derive income from Schedule 1 Controlled Substances, this includes cannabis, from deducting typical business expenses except for cost of goods sold. And further, it excludes expenses related to advertising and marketing.

For dispensaries, this means their only deduction is the cost they paid for goods (plus delivery) to resell. For a producer or manufacturer, under tax code 471, this means they may include additional expenses that are “incident to and necessary for production or manufacturing operations or processes” (by way of using accrual and cost absorption accounting). This definition excludes marketing and advertising, but does include packaging. For brand development and marketing, that means every dollar spent is considered taxable profit. With a federal tax rate of 21%, purchasing an ad in a cannabis magazine for \$1,000 actually costs \$1,210 to the cannabis business.

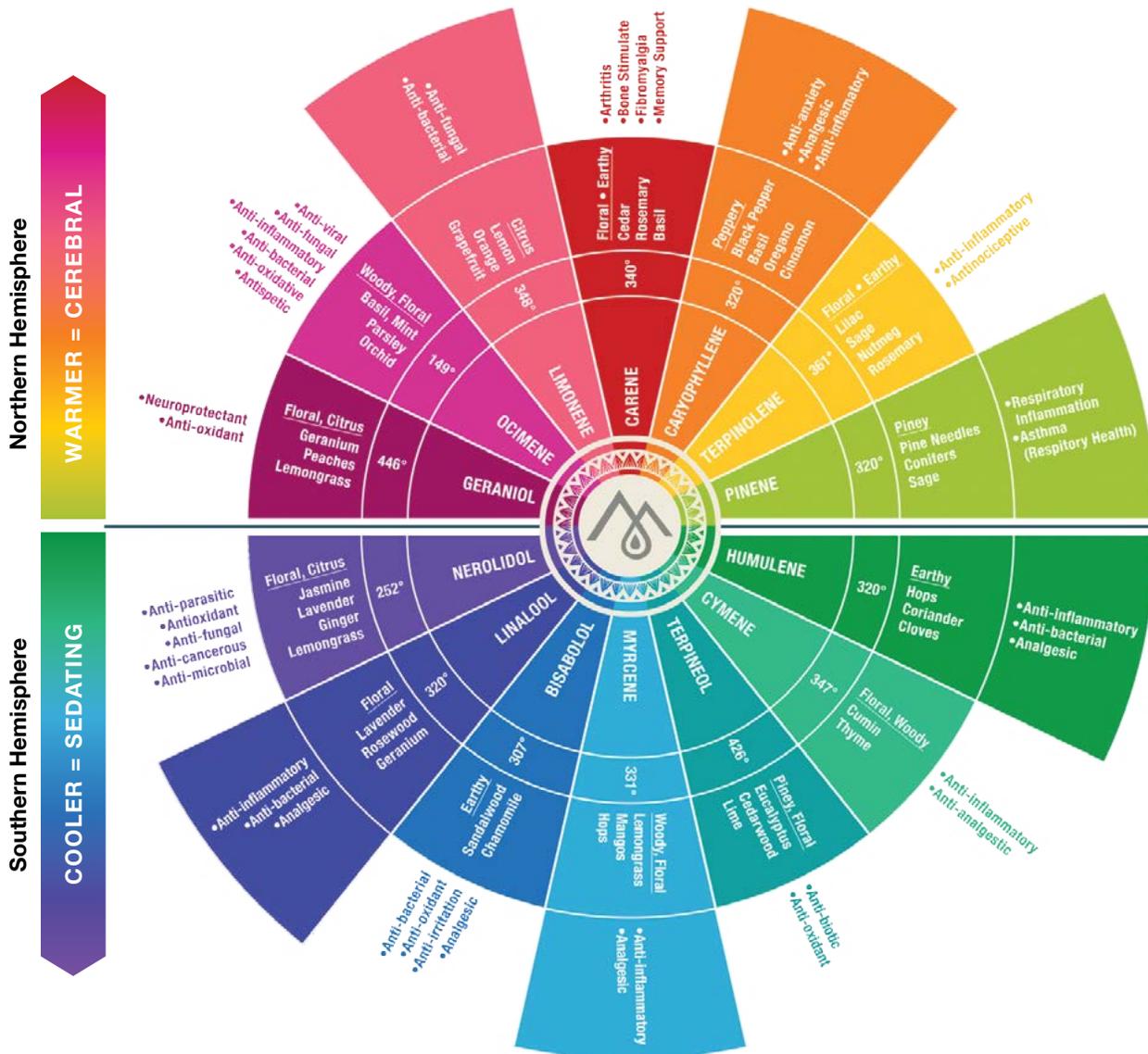
Since the condition of 280E only allows for tax deductions related to the cost of goods for the creation of the product, focus is best placed on creating strong packaging that can strongly appeal to the potential customer from off the shelf. Expensive packaging with strong appeal may be costly per unit, but it is a deductible costs when operating a cannabis business. Since a cannabis product can only be sold through a dispensary, appeal from inside the store is critical.

Budtenders are some of the most influential people when recommending a cannabis product

Unlike a normal retailer, you cannot walk into a dispensary, grab

TerpKey: Decoding Cannabis

Learn more about the Mountaintop Extracts TerpKey at www.sbnm.org/cannabisNML.



what you want, then leave. In the cannabis industry, you are almost always expected to talk to a “buddtender,” or a customer service agent at a dispensary. During these interactions, your purchasing habits change and you engage in a dialogue for what you are looking for and want. In this environment, a product recommended by the buddtender is significantly more likely to translate to a sale. Events to promote popularity of cannabis products amongst buddtenders are successful and a thoughtful way to consider marketing in this industry.

Mountaintop Extract TerpKey:

Mountaintop Extracts, in following guidelines for marketing and communication that are moral and legal, has begun to utilize a new system of consumer transparency called TerpKey.

Terpenes are the critical part of any cannabis profile that distinguishes different strains from one another. One terpene

combination can be excellent for rest, while another is best for daytime use. Each person has a unique experience from cannabis, and understanding the terpenes gives insight into what one may experience. Without making any claims to health and benefits, TerpKey simply shows the elements that exist within the cannabis strain. The TerpKey wheel shows what benefits have been shown to exist with each individual terpene.

To help educate and empower consumers, the TerpKey wheel is designed to highlight different terpene combinations in each cannabis strain. Over time, an individual can begin to recognize patterns for what they enjoy most in different cannabis profiles. Through this marketing effort, Mountaintop Extracts is not only ensuring it is staying within the guidelines of marketing within the cannabis industry but also hoping to help cannabis users understand more about the products they are purchasing.

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Human Health

and the Importance of the

Endocannabinoid System

By Terence L. Jones

The Cannabis Training Institute of the Southwest's educational programming not only ensures that students, patients, consumers, industry staff and professionals as well as health professionals have accurate and reliable information about cannabinoid medicine, but also ensures they understand the laws.

The overarching objective of the CTISW programming is to train and educate those interested in botanical cannabinoid medicine. The program is not only about providing someone with a base level of knowledge to intelligently speak and safely sell the product.”

Cannabis is a more complicated product. The education curve is going to be steeper. Therefore, it only makes sense that you need the person selling you the product to be able to speak about it intelligently.

The training/education program CTISW provides also addresses concerns that New Mexicans have had, prior to and since legalization took place, which includes but is not limited to that of people driving while inebriated. The course makes sure that all who partake and educate about cannabinoids can recognize if someone is already under the influence when they come into a dispensary. Industry staff are not allowed to sell cannabis to a person if they appear to be a client/customer who is already intoxicated in some way.

The initial course curriculum has a specific focus: basic biology, policy and law and cannabis as medicine. It also includes information related to the history of the botanical medicine of cannabis as well as the state's medical cannabis program, the compassionate use act, and the cannabis regulation act for adult recreational use.



As educators, we can continually explore expanding the CTISW program. HB2 opens the doors to broader curricula for health professionals and other people/occupations interested in the industry.

The first step in developing a rigorous program of education is to comply with state regulations and mandates as they apply to cannabis education. Moreover, to provide interested participants with the knowledge and understanding of cannabis as medicine and its' evolution and ethnobotany plus the regulations and laws that inform us.

To understand cannabis as medicine let us begin with an understanding of the role of the human body's Endocannabinoid system. The ECS is a biological regulatory system responsible for maintaining homeostasis—or equilibrium—throughout the body. Sleep, memory, appetite, stress response, and immunity are some of the essential functions that the ECS plays a role in modulating.¹ The ECS functions through the interaction of molecules called endocannabinoids (Anandamide, AEA the bliss molecule, and 2AG) with special protein structures called cannabinoid receptors. (CB1/CB2)²

One simple analogy is that cannabinoid receptors function like a lock, while the endocannabinoids that bind to these receptors function like a key. This exchange acts as a mechanism of complex inter-cellular communication that regulates numerous physiological responses. Cannabinoid receptors are found throughout the body and appear to play an extremely important role in physiology. For example, in animal research studies where the ECS has been genetically altered researchers noticed the subjects display many adverse effects including a disruption in pain sensitivity, increased depressive behaviors, and abnormal immune function.^{3,4}

While a thorough understanding of the ECS is still emerging, its dysfunction has been implicated in numerous medical conditions in humans such as migraine, fibromyalgia, irritable bowel syndrome, and depression.^{5,6}

One example of a disease condition that may result from the disruption of ECS balance is the seizure disorder, epilepsy. Seizures occur when neurons (brain cells) become overexcited and do not receive appropriate regulatory signals. The endocannabinoid system is responsible for a regulatory process that calms the overexcitation.⁷

This regulatory input from the ECS can be compared to turning down the temperature on a thermostat when it gets too hot. Certain molecules from outside the body, including many of those produced by cannabis plants, (Phyto cannabinoids, namely THC/CBD) can also interact with the ECS due to their chemical similarity to endocannabinoids.

The discovery of the ECS was ground-breaking for revealing that our bodies produce molecules like those found in cannabis plants. (Anandamide (arachidonoyl ethanolamide, AEA) and 2-arachidonoyl glycerol (2AG) are physiologically occurring, biologically active compounds on CB (1) and CB (2) receptors with multiple physiological functions. This relationship begins to explain, for instance, how cannabis stimulates appetite and sleep, since these are two functions known to be influenced by the endocannabinoid system.

As potential modulators of the ECS, cannabinoids hold exceptional promise as novel treatments for a variety of medical conditions. Despite the apparent importance of the ECS in health and disease, most clinicians are poorly educated on its function. Most medical school deans admit that the teaching of cannabinoid medicine in any aspect is limited to no more than 9% of medical schools nationwide. Although pharmacy, nursing and some medical schools are increasing their interests in the topic overall.

It is essential that clinicians are educated on ECS function, and that research continues to explore the physiological effects of all medical modalities, including cannabis, on the ECS. It should be noted that US research is limited due to the schedule I classification by the Federal government. This classification denotes there is no value medically for cannabis at all. This is contrary to research done outside the US including with our neighbor to the north, Canada.

Researchers point out that the most effective means of using cannabis medicine requires its ingestion via the use of the entire flower rather than a single synthesized isolate. "It's a mixture of CBD, cannabidiol, THC and the phytochemicals, the terpenoids," says Harvard Professor, Dr. Lester Grinspoon. "You need all three of them to get the best therapeutic effect."

But Dr. Grinspoon says that the entourage effect, the broad-based experience cannabis users have when they consume marijuana containing all three components, is improperly named,

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Grinspoon told listeners of the *Planet Green Trees Radio Show* on March 10. He prefers the term “therapeutic ensemble.”

“I think that the ensemble is a better idea than entourage, because the word ‘entourage’ implies one item moving in this direction – and it has company,” Dr. Grinspoon explained, “and it is [the item] that is responsible for that activity, and the others just go along. That is entourage. “The word ‘ensemble’” he continued, “means that these are the three things that are required for the best therapeutic effect, but you can manipulate the percentage of two of them.”

Those are THC and CBD, explained Dr. Grinspoon. “The phytochemicals, the terpenoids, they come with it, as long as it is derived from the plant and not from some oil where all the phytochemicals have been distilled out. As long as you are getting it from the plant you can manipulate by mixing strains.”

One method used to illustrate the advantage of the therapeutic ensemble, and the effect seen when it is absent: “Cannabidiol is a non-psychoactive cannabinoid, which in fact opposes tetrahydrocannabinol, the psychoactive element. In general, if you take a large dose of CBD for therapy during the day and you try to use THC at night you will not get the desired high. On the other hand, you can make the THC high compared to the CBD, the ratio is reversed, and you will get a high. If you have the two of them, and the phytochemicals, the terpenoids, you will get a therapeutic effect.” ■

Terence L. Jones, PhD, the science/legal consultant for the Cannabis Training Institute of the Southwest, is an epidemiologist and board member of the State Bar Cannabis Law Section.

Endnotes

¹ John M. McPartland et al., Evolutionary origins of the endocannabinoid system, *Gene*, Mar. 2006, at 64-74.

² Vincenzo Di Marzo & Fabiana Piscitelli, The Endocannabinoid System and its Modulation by Phyto cannabinoids, *12 Neurotherapeutics* 692-98 (2015).

³ O. Valverde et al., Analysis of the endocannabinoid system by using CB1 cannabinoid receptor knockout mice, *168 Handbook of Experimental Pharmacology* 117-45 (2005).

⁴ Anna Maria Malfitano et al., What we know and do not know about the cannabinoid receptor 2 (CB2), *26 Seminars in Immunology* 369-79 (2014). (5) Ethan B. Russo, Clinical endocannabinoid deficiency (CECD): can this concept explain therapeutic benefits of cannabis in migraine, fibromyalgia, irritable bowel syndrome and other treatment-resistant conditions?

⁵ *25 Neuro Endocrinology Letters* 31-39 (2004). 23 M. N. Hill & B. B. Gorzalka, Is there a role for the endocannabinoid system in the etiology and treatment of melancholic depression?

⁶ *Behavioral Pharmacology* 333-52 (2005).

⁷ Keith A. Kwan Cheung et al., The Interplay between the Endocannabinoid System, Epilepsy and Cannabinoids, *International Journal of Molecular Sciences*, Dec. 2019.

Advertising and Marketing Cannabis

continued from page 6

Conclusion

If you are providing legal advice regarding cannabis marketing and advertising you must keep the CRA's prohibitions and limitations in mind. Running afoul of these could be disastrous to cannabis licensees. While New Mexico is just starting out its recreational cannabis industry, it has had a medical program for many years that should help guide the marketing and advertising regulations to be promulgated under the CRA. This history, coupled with the CRA language, and the shared experience of those in the cannabis industry should make the transition to marketing and advertising recreational cannabis flawless. ■

Joel Krukar leads business development and marketing for Mountaintop Extracts. Cannabis education has been crucial for Mountaintop Extracts

to make cannabis a more approachable medicine. He continues to support new business growth and is actively preparing for legalization in New Mexico. He is a board member of the Cannabis Law section of the State Bar of New Mexico

Tina Muscarella Gooch is an attorney at Sutin, Thayer & Browne, who has legal experience, representing clients in areas such as cannabis law, employment law, construction law, and complex commercial litigation. She is a board member of the Cannabis Law section of the State Bar of New Mexico.

Christy Lucky, CPA and sole proprietor of Lucky's Numbers, She brings her background of non-profit accountant/ CFO, non-profit Senior Auditor, AICPA member, QB specialist, and DOPE CFO trained cannabis accountant and 25+ years accounting experience in helping small and large businesses develop processes and implement compliance.

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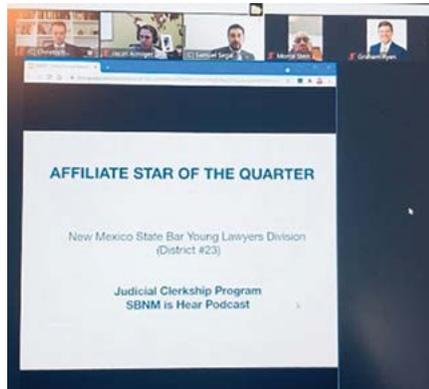
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YLD *in brief*

WINTER
2021

The Official Newsletter of the
State Bar of New Mexico Young Lawyers Division

2021 Affiliate Start of the Quarter



The New Mexico Young Lawyers Division brought home not one, but two awards from the ABA this year! NM YLD was recognized as a 2021 Affiliate Star of the Quarter in recognition of our EMBRACING Diversity Award-winning Judicial Clerkship Program and involvement in the Legal Well-Being in Action Podcasts series on “What I Wish I Knew”, run by the great team at the State Bar of New Mexico!

– *Lauren Riley*



SBNM is Hear

Way to Represent!



The current chair of the New Mexico Young Lawyers Division, **Shasta Inman**, has been elected the ABA Young Lawyers Division 2021-2022 Clerk! At this year’s ABA Annual Conference, Shasta also received a Start of the Year Award for her tremendous contributions to the ABA YLD this past year! Please join us in congratulating Shasta!

– *Lauren Riley*

Program Updates

2021 Western States Regional Summit of ABA YLD Affiliates



The 2021 Western States Regional Summit of ABA YLD Affiliates was a great success! The conference was a long time coming. With the onset of the COVID-19 pandemic in early 2020, area affiliate leaders were forced to cancel the 6th Annual Summit (planned for Lake Tahoe, Nevada). This Santa Fe hosting was also delayed: rescheduled from an initial April 2021 setting to November 2021.

We had 65 attendees from eight (8) different states attend! The summit included CLE credits, including hot topics in the legal realm (cannabis law, #FreeBritney, and entertainment streaming

issues), ethics & professionalism sessions, and an entire afternoon of interactive diversity, equity, and inclusion programming. We were also honored to feature a judicial “What I Wish I Knew” panel of judges and justices from Colorado and New Mexico.

Sprinkled around our CLE sessions, attendees participated in a New Mexico Supreme Court tour, wellness walk around the Plaza, dine-arounds with new friends & colleagues, an outing to MeowWolf, and a photo scavenger hunt!

A huge thank you goes out to all of our business and co-affiliate sponsors! This event would not have been nearly successful without you all!

Probably the biggest thanks goes to Lauren Riley, a director for the SBNM YLD and our ABA YLD District Representative, who has been an absolute rockstar and my literal rock throughout this whole process.

Thank you to all who attended as well! It was a wonderful to see colleagues in person again!

-Shasta Inman

Ask-a-Lawyer Call-in Program



Law Day Call In

On May 1, 2021, the Young Lawyers Division of the State Bar held “Ask-a-Lawyer” Law Day Call- In. Attorneys from all over New Mexico volunteered in person and over the phone to provide free legal advice. Approximately 80 people called in with legal issues including family

law, land-lord tenant, employment, and various others. The Young Lawyers Division of the State Bar would like to thank all of our volunteers, we cannot do these programs without them.

-Mariah McKay



Wills for Heroes

The YLD The YLD organized four Wills for Heroes events across the state. In April and June, although still at a high peak of the pandemic, we worked with the Bernalillo County Fire Department to provide much needed legal documents to its officers and their spouses. YLD and paralegal volunteers advised clients and prepared 40 wills and powers of attorneys. In July, YLD program chairs traversed to Farmington with computers and printers in tow. YLD and paralegal volunteers prepared another 24 wills and powers of attorney. The final event was in November in Santa Fe. Held in conjunction with the YLD Regional Summit, 20 wills and powers of attorneys were provided for the Santa Fe Fire Department and Santa Fe Police Department.

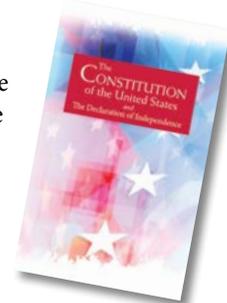
For volunteers participating at a Wills for Heroes event is a rewarding pro bono experience. First responders are always very appreciative of volunteers spending their Saturday morning helping them to put their estate and legal affairs in order in the event that tragedy hits. If you are interested in 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. We hope to see you next year!

- **Damon Hudson**

Constitution Day

During the week of September 13- September 17, 2021, attorneys paired with 5th grade classrooms around the State of New Mexico to bring the spirit of the United State's Constitution to life. Constitution day presentations were held virtually and in person. Students, teachers, and volunteer attorneys were enthusiastic to discuss and learn. We cannot thank our volunteers and participating schools enough. Without them, this program would be impossible. Thank you.



- **Mariah McKay**



Fit2Practice

In November 2020, YLD partnered with the Well-Being Committee to host a Virtual Turkey Trot Lawyers across our state participated and two lucky lawyers won a pair of Airpod Pros. Check your inbox this November for more details about how to participate in this year's virtual 5K and how to enter this year's raffle!

We were excited to resume our annual Chips and Salsa 5K this year! On September 11, YLD members came out to Albuquerque's North Valley to run the Chips and Salsa 5K and 10K, sponsored by the YLD. Look out for this great event again this year!

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

- **Lindsay Cutler**



EMBRACING Diversity Challenge

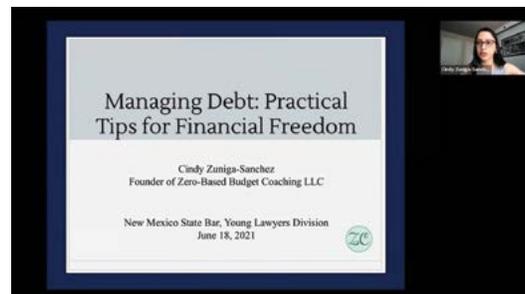
The State Bar of New Mexico's Young Lawyers Division's Judicial Clerkship Program was awarded first place in this year's American Bar Association's ENBRACING Diversity Challenge! The purpose of the Judicial Clerkship Program is to provide opportunities to students who are members of traditionally underrepresented groups in the legal profession, particularly within the judiciary. We were honored to receive this generous award which will help support growth of the program and support the participants throughout the clerkship!

- **Lauren Riley**

Student Loans

The YLD also hosted Cindy Zuniga-Sanchez, the founder of Zero-Based Budget and a nationally-renowned expert on managing student loan debt for lawyers. Ms. Zuniga-Sanchez led a brown bag virtual presentation on managing and paying off your student loans. If you missed her presentations, but find yourself wondering about strategies for your own student loan debt, the recorded presentation is available on the State Bar website, <https://www.sbnm.org/Leadership/Divisions/Young-Lawyers/Initiatives/Student-Loan-Debt>

You can learn more about our speaker on Instagram @zerobasedbudget or on her website zero-basedbudget.com



- **Lindsay Cutler**

Mentorship Program update

This year, with events slowly starting to go back to being in-person, the YLD mentorship program was no exception. Our mentorship kickoff BBQ picnic at the law school was able to be conducted in-person, hosted on the UNM School of Law's back patio. This kickoff event saw an outstanding 82 RSVPs to the event and the mentorship program itself managed to succeed in another record-breaking year of 68 students and 62 mentors signing up.

As part of our mentorship kickoff event, mentorship participants received their YLD Work Hard – Study Hard – Play Hard swag bags to support that home-office lifestyle we've gotten so used to seeing in these times. As always, we are beyond grateful for everyone who signs up to be a mentor and the YLD would like to thank every one of our participants. If you're interested in becoming a volunteer mentor to a UNM School of Law student, or if you're interested in volunteering for our mock interview or resume review programs, please feel free to reach out!

– Jessica Perez

Veteran's Legal Clinic



The YLD continued to partner with the Veterans Justice Outreach Program to take the Veteran's Legal Clinic virtual in 2021! We co-hosted four virtual clinics this year. 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 who make this clinic possible. We look forward to continuing this program in the future!

– Lindsay Cutler



SBNM is Hear

SEASON 1

1.1 Personal Inventory: COVID – A Forced Life Transition For Some

1.2 Part 1 Tools of the Trade with Young Lawyers Division: What I Wish I Knew with Ernestina Cruz

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

1.3 Tools of the Trade with Young Lawyers Division: What I Wish I Knew with Tomas Garcia

1.4 Hear All About It: COVID-19 and Evictions in New Mexico

1.5 Hear All About It: COVID-19 and Unemployment Insurance in New Mexico

1.6 Tools of the Trade with the Young Lawyers Division: What I Wish I Knew with Aja Brooks

1.7 Let's Talk About Leveraging Culture in a Solo or Small Firm

1.8 Let's Talk About Your Client Funnel in a Solo or Small Firm

1.9 Grieving, Coping, and Healing Regarding Suicides in Our Legal Community

1.10 Hear All About It: Judicial Clerkships with NM Justice David K. Thomson

1.11 Hear All About It: History of ADR in New Mexico

SEASON 2

2.1 Hear All About It: 2020 Reflections and 2021 Plans with Chief Justice Vigil

2.2 Personal Inventory: Get Out and Move!

2.3 Hear All About It: Family Law Court with Judge Jane Levy

2.4 Hear All About It: Recreational Cannabis in New Mexico

2.5 Hear All About It: Family Law Court with Judge Sylvia LaMar

2.6 Let's Talk About Avoiding Professional Heartburn

2.7 Meet and Greet Judge Baca-Miller and Judge Fox with the NMCCLA

2.8 Meet and Greet Judge Montano and Judge Wernersbach with the NMCCLA

2.9 Meet and Greet Cory Muscara, 2021 Annual Meeting Featured Speaker

2.10 Let's Talk About the Professional Practice Program

2.11 What I Wish I Knew with Carla Martinez

2.12 Let's Hear about Cannabis Licensing with Superintendent Trujillo



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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-045

Nos. A-1-CA-36096, A-1-CA-37270, A-1-CA-37585
and A-1-CA-38283 (filed May 29, 2020)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
DAVID GUTIERREZ,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

ANGIE K. SCHNEIDER, District Judge
and
STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
FRANCESCA ESTEVEZ,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY

DOUGLAS R. DRIGGERS, District Judge
and
STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
CONNIE LEE JOHNSTON,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

LOUIS E. DEPAULI, Jr., District Judge
and
STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
DEMESIA PADILLA,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

MARY MARLOWE SOMMER, District Judge

Certiorari Granted, September 8, 2020, Nos. S-1-SC-38367 and S-1-SC-38368; Cross-Petition Granted, September 8, 2020,
Nos. S-1-SC-38367 and S-1-SC-38368. Released for Publication October 6, 2020.

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State Ethics Commission

JEREMY FARRIS
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Opinion

Julie J. Vargas, Judge.

{1} Does a government official who fails to abide by the ethical principles imposed by the Legislature commit a crime under the Governmental Conduct Act (GCA), NMSA 1978, §§ 10-16-1 to 18 (1967, as amended through 2019)? This is the question we are called upon to answer in each of these four separate cases.

{2} The State appeals four district court orders dismissing charges against Defendants David Gutierrez, Francesca Estevez, Connie Lee Johnston, and Demesia Padilla under the GCA in four separate and unrelated cases. The district court dismissed the charges against each Defendant under the GCA on different grounds. The charges against one Defendant were dismissed on the ground that Subsections 10-16-3(A)-(C) do not provide for criminal offenses. Those against a second Defendant were dismissed on the ground that Subsections (A)-(C) are too ambiguous to apply. Charges against a third were dismissed on the ground that the statute is unconstitutionally vague. Finally, charges against a fourth Defendant were dismissed on grounds that the statute is both unconstitutionally vague and overbroad. Because these cases raise several identical issues, we consolidate them for decision. See Rule 12-317(B) NMRA. Concluding that the Legislature intended for knowing and willful violations of Subsections 10-16-3(A)-(C) to be punishable as misdemeanors, we reverse the district courts' decisions dismissing charges brought under Subsection 10-16-3(A), but affirm the district courts' decisions dismissing charges brought under Subsections 10-16-3(B) and (C) on the ground of vagueness.

BACKGROUND

{3} These four cases came to us with very different facts and a varying procedural backgrounds, but they share a common thread: each case arises from an allegation of misconduct by a government official.

We therefore begin by setting forth the relevant factual and procedural background for each case leading up to consolidation.

Defendant David Gutierrez

{4} The State charged Defendant Gutierrez with violating Subsections 10-16-3(A)-(C) of the GCA, alleging he pursued an unwanted sexual relationship with one of his employees during the course of his work as county treasurer by repeatedly commenting on her physical appearance and offering to give her money and use his authority as treasurer to expunge a prior disciplinary write-up in exchange for sex. Defendant Gutierrez filed three motions, which included a motion in limine, a motion to dismiss, and a motion pursuant to *State v. Foulentfont*, 1995-NMCA-028, ¶ 6, 119 N.M. 788, 895 P.2d 1329 (authorizing dismissal of a case in lieu of an evidentiary hearing or a trial on the merits where a case raises a purely legal issue). These motions made largely the same assertion—that the provisions of Subsections 10-16-3(A)-(C) do not define or create criminal offenses, but instead are ethical principles intended to guide the behavior of public officials.

{5} The district court granted Defendant Gutierrez's motions and dismissed the indictment, reasoning that violations of Subsections 10-16-3(A)-(C) were not crimes but “ethical considerations,” and that the grand jury indictment, therefore, “failed to allege the commission of a criminal offense.” The State appealed the dismissal of Defendant Gutierrez's charges.

Defendant Francesca Estevez

{6} The State charged Defendant Estevez, in relevant part, with violating Subsections 10-16-3(A) and (B) of the GCA, alleging she attempted to use her position as district attorney to manipulate or intimidate officers who were investigating allegations that she improperly used a state vehicle for personal use. Defendant Estevez filed a motion to dismiss these counts, arguing the GCA was unconstitutionally vague. The district court concluded that although Section 10-16-3 establishes “advisory guideposts setting forth standards of ethical conduct[.]” insurmountable ambiguities existed regarding its intended scope and the applicability of Section 10-16-17's provision for criminal penalties. As a result, the district court applied the rule of lenity and dismissed the charges. The State appealed the dismissal of Defendant Estevez's charges.

Defendant Connie Lee Johnston

{7} The State charged Defendant Johnston, in relevant part, with violating Subsections 10-16-3(A) and (B) based on allegations that, while acting in her capacity as a magistrate judge, Defendant Johnston unlawfully recorded the commu-

nications of her colleagues and coworkers in secure areas within the Aztec Magistrate Court Building. Defendant Johnston filed a motion to dismiss these charges, arguing that the subsections at issue set forth “aspirational provisions” rather than criminal offenses and are unconstitutionally vague. The district court dismissed the charges, concluding that even if Subsections (A) and (B) provided for criminal offenses, they were nevertheless void for vagueness. The State appealed the dismissal of Defendant Johnston's charges.

Defendant Demesia Padilla

{8} The State charged Defendant Padilla, in relevant part, with violating Subsections 10-16-3(B) and (C), alleging she used her position as the Secretary of the New Mexico Taxation and Revenue Department to access the tax records of the accounting firm at which she worked prior to her appointment as well as the records of her former clients. Defendant Padilla filed motions to dismiss these charges, arguing the subsections at issue were unconstitutionally vague and overbroad. The district court granted Defendant Padilla's motions and dismissed these charges. The State appealed.

DISCUSSION

{9} On appeal, the parties ask us to consider two issues. First, we are called on to decide whether violations of Subsections 10-16-3(A)-(C) are criminal offenses. In the event we conclude the violation of those subsections can be prosecuted as crimes, we are next asked to consider whether they are ambiguous or unconstitutionally vague. Defendant Padilla also asks us to consider whether Subsections (B) and (C) are overbroad. We conclude that Subsections (A)-(C) set out criminal offenses, that Subsection (A) is not unconstitutionally vague, and that Subsections (B) and (C) are unconstitutionally vague. As our void-for-vagueness discussion is dispositive for the charges brought under Subsections (B) and (C), we need not reach the issue of overbreadth raised by Defendant Padilla.

I. Applicability of Section 10-16-17 to Subsections 10-16-3(A)-(C)

{10} The State contends that the district court erred when it concluded the provisions of Subsections 10-16-3(A)-(C) set out only “ethical considerations” rather than crimes. In support of its argument, the State contends that the plain language of Section 10-16-17 renders any knowing and willful violation of Subsections 10-16-3(A)-(C) a misdemeanor, “[u]nless specified otherwise [in the GCA.]” The State also argues that the Legislature's use of mandatory language in Subsections (A)-(C) makes clear its intent that violations of those subsections are punishable as misdemeanors.

{11} In response to the State, Defendants first contend that the plain language of Subsections (A)-(C) supports the conclusion that the violation of those subsections are not crimes. Second, pointing to other statutory provisions within the GCA mandating certain ministerial and reporting duties, Defendants contend that it would be absurd to conclude that the Legislature intended that all provision of the GCA containing mandatory language trigger criminal liability if violated. Third, Defendants contend that violations of Subsection (C) may result in only civil, not criminal, penalties. Fourth, Defendants argue that Subsections (A)-(C) are so ambiguous that the rule of lenity requires that we construe them as not providing for criminal offenses.

A. Statutory Interpretation

{12} The parties' arguments require that we interpret Subsections 10-16-3(A)-(C), in conjunction with Section 10-16-17. Statutory interpretation is an issue of law we review de novo. See *Badilla v. Wal-Mart Stores E. Inc.*, 2015-NMSC-029, ¶ 12, 357 P.3d 936 ("Interpretation of a statute is an issue of law which we review de novo." (alteration, omissions, internal quotation marks, and citation omitted)). When interpreting statutes, we must determine and give effect to the Legislature's intent, which requires that "we look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended." *Chatterjee v. King*, 2012-NMSC-019, ¶ 11, 280 P.3d 283 (alteration, internal quotation marks, and citation omitted). "[I]f the meaning of a statute is truly clear—not vague, uncertain, ambiguous, or otherwise doubtful—it is of course the responsibility of the judiciary to apply the statute as written and not to second-guess the [L]egislature's selection from among competing policies or adoption of one of perhaps several ways of effectuating a particular legislative objective." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 22, 117 N.M. 346, 871 P.2d 1352. We therefore first consider whether the language of the statutes at issue is clear, or whether we must look further before applying the statutes to the facts of these cases.

{13} While the parties focus their analysis on the provisions of Subsections 10-16-3(A)-(C), we begin with a review of Section 10-16-17, which establishes the parameters of criminal conduct under the GCA. Section 10-16-17 provides:

Unless specified otherwise in the [GCA], any person who knowingly and willfully violates any of the provisions of [the GCA] is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars

(\$1,000) or by imprisonment for not more than one year or both. Nothing in the [GCA] shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

(Emphasis added.) Before a defendant is guilty of a misdemeanor under Section 10-16-17, three requirements must be satisfied. First, a defendant must have violated a provision of the GCA. Second, the violation must have been knowing and willful. And, third, the violation must not be subject to treatment otherwise specified in the GCA.

{14} Without addressing the specific requirements of Section 10-16-17 that trigger misdemeanor criminal liability, Defendants maintain that the Legislature did not intend for Section 10-16-17 to apply to violations of Section 10-16-3. Section 10-16-3 provides:

Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of [NMSA 1978,] Section 31-18-15 [(2019)].

In support of their argument, Defendants point to the heading of Section 10-16-3—"Ethical principles of public service; certain acts prohibited; penalty"—claiming the heading evidences a legislative intent contrary to the plain meaning of Section 10-16-17 for two reasons. First, Defendants contend the heading indicates that compliance with Subsections (A)-(C) is merely aspirational and, therefore, any violations of those provisions are not crimes. Second, Defendants claim the heading demonstrates that criminal penalties are limited to the activities set out in Subsection (D).

{15} Initially we note that when discerning the Legislature's intent, we may look to a section's heading, "and ordinarily it may be considered as a part of the act if necessary to its construction." *Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 2012-NMSC-039, ¶ 18, 289 P.3d 1232 (internal quotation marks and citation omitted); see also NMSA 1978, § 12-2A-13 (1997) ("Headings and titles may not be used in construing a statute or rule unless they are contained in the enrolled and engrossed bill or rule as adopted."). We may not use a section's heading, however, "to produce an ambiguity in a statute which is otherwise clearly drafted[.]" *Serrano v. State, Dep't of Alcoholic Beverage Control*, 1992-NMCA-015, ¶ 12, 113 N.M. 444, 827 P.2d 159. Any such ambiguity must derive from the body, not the heading, of the statute. See *State v. Ellenberger*, 1981-NMSC-056, ¶ 6, 96 N.M. 287, 629 P.2d 1216 (concluding that "the ambiguity which justifies a resort to the title must arise in the body of the act; an ambiguity arising from the title is not sufficient" (internal quotation marks and citation omitted)). The heading of a section "cannot limit the plain [meaning] of the text." *Id.* (internal quotation marks and citation omitted); see 73 Am. Jur. 2d *Statutes* § 100 (2020) (explaining that although a section's heading is a tool "for the resolution of doubt about the meaning of a statute[.]" the heading "is only a short-hand reference to the general subject matter involved in that statutory section and cannot limit the plain meaning of the text" (footnotes omitted)).

{16} Here, Defendants rely on the heading of Section 10-16-3 to establish a limitation that is not contained in the text of the statute—that compliance with Subsections (A)-(C) is merely aspirational and not subject to the criminal penalty set out in Section 10-16-17. We understand Defendants' argument to be that the Legislature's use of the word "principles," rather than "standards," in Section 10-16-3's heading indicates that the Legislature did not intend to require legislators, public officials, and public employees to comply

with Subsections (A)-(C)'s provisions. Defendants reason that because "standards" is defined at Section 10-16-2(J) as "conduct required by the [GCA]," and the Legislature chose not to use "standards" in the heading to Section 10-16-3, it did not intend to require compliance and therefore did not intend for violations of Subsections (A)-(C) to be subject to criminal penalty. (Emphasis added.)

{17} While we agree that the word "standards" does not appear in the heading or text of Section 10-16-3, Defendants' argument fails to explain how Subsections (A)-(C) are extracted from the express language of Section 10-16-17 that a knowing and willful violation of any provision of the GCA, unless specified otherwise, is a misdemeanor. We therefore decline to read into Section 10-16-3 an ambiguity based entirely upon the section's heading when the plain meaning of the text, read together with Section 10-16-17, indicates a legislative intent that a violation, if knowing and willful, is subject to criminal penalty. See *Serrano*, 1992-NMCA-015, ¶ 12; see also *State ex rel. Children, Youth & Families Dep't v. Djamila B.*, 2014-NMCA-045, ¶ 10, 322 P.3d 444 ("The statute or statutes, whose construction is in question, are to be read in connection with other statutes concerning the same subject matter." (alteration, internal quotation marks, and citation omitted)).

{18} Second, Defendants argue the section's heading demonstrates that only certain official acts described in Section 10-16-3 are prohibited and therefore subject to a penalty. Those prohibited acts, Defendants contend, are set out in Subsection (D). Subsections (A)-(C), by contrast, are merely general ethical principles and therefore, do not set out crimes. Insofar as Defendants contend the order and structure of the heading is indicative of the Legislature's intent to limit the prohibition and criminalization to those acts described in Subsection 10-16-3(D), we reiterate that the heading of a section cannot limit the plain meaning of the section's text. See *Ellenberger*, 1981-NMSC-056, ¶ 6. In light of our conclusion that the plain meaning of Sections 10-16-3 and -17 indicates a legislative intent to provide for a misdemeanor penalty for a knowing and willful violation of Subsections 10-16-3(A)-(C), we reject Defendants' argument that the section's heading instructs otherwise.

{19} To the extent the district court that dismissed Defendant Gutierrez's charges concluded that the language of Subsection 10-16-3(D), making it a

felony to knowingly and willfully violate that subsection, removed Section 10-16-3 from the applicability of Section 10-16-17 in its entirety,¹ we disagree. The interplay between Sections 10-16-3 and -17 demonstrates that Subsection 10-16-3(D) does not serve to exclude Subsections 10-16-3(A)-(C) from the applicability of Section 10-16-17. Subsection (D) specifically provides for a fourth-degree felony penalty for knowing and willful violations and limits the application of its felony penalty to violations of "the provisions of *this subsection*[]" Section 10-16-3(D) (emphasis added). The plain meaning of Section 10-16-17's introductory proviso ("Unless specified otherwise in the [GCA] . . .") makes clear that the heightened criminal penalty in Subsection (D) is an exception to the general misdemeanor penalty established by Section 10-16-17 for violations of "any of the provisions of [the GCA]," which necessarily includes those found within Subsections (A)-(C). Cf. *State v. Santillanes*, 2001-NMSC-018, ¶ 7, 130 N.M. 464, 27 P.3d 456 (characterizing the "general/specific statute rule" as a tool of statutory construction, in which a "specific statute operates as an exception to the general statute").

{20} This conclusion, however, does not end our inquiry. Indeed, as Justice Montgomery warned in *Helman*, "courts must exercise caution in applying the plain meaning rule. Its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning. In such a case, it can rarely be said that the legislation is indeed free from all ambiguity and is crystal clear in its meaning." 1994-NMSC-023, ¶ 23.

{21} Here, Defendant Padilla argues application of the plain language of Section 10-16-17 would lead to an absurd result. "If adherence to the plain meaning of a statute would lead to absurdity, we must reject that meaning and construe the statute according to the obvious intent of the [L]egislature." *State v. Maestas*, 2007-NMSC-001, ¶ 16, 140 N.M. 836, 149 P.3d 933; see *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 14, 453 P.3d 434 ("The plain meaning rule must yield when equity, legislative history, or other sources demonstrate that applying the plain meaning would result in a construction contrary to the spirit of the statute." (internal quotation marks and citation omitted)).

{22} Defendant Padilla, however, fails to explain how the strict adherence to the plain meaning of Section 10-16-17's general misdemeanor penalty results in an absurdity if applied to Subsections 10-16-3(A)-(C). Instead, she points to sections not at issue in the cases at bar. See, e.g., §§ 10-16-4.2 (requiring public officers and employees to disclose all outside employment); -8(D) ("For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked."); -9(B) (prohibiting—with exceptions for attorneys or other professionals—legislators from representing or assisting another person in a matter before a state agency for pay); -11(B) (requiring officers and employees be provided with and review codes of conduct); -11(E) (requiring legislators to attend continuing education and training in ethics).

{23} While we understand Defendant Padilla's point to be that it would be absurd to criminally punish a legislator, public officer, or public employee for his or her failure to comply with certain mandatory ministerial or reporting activities required by the GCA, we note that the GCA provides a broad spectrum of enforcement mechanisms, described below in Section I(B). These enforcement mechanisms take into account the culpability of the actor, which may be relevant to Defendant Padilla's argument regarding these other provisions. Nevertheless, we need not pass judgment on the applicability of the criminal penalty set out in Section 10-16-17 to the violations of other sections of the GCA, as those violations are not before us today. More importantly, Defendant Padilla fails to explain why it would be absurd for us to interpret a violation of Subsections 10-16-3(A)-(C), done in a knowing and willful manner as required by Section 10-16-17, to be a misdemeanor in accordance with the plain language of that statute. See *State v. Fuentes*, 2010-NMCA-027, ¶ 29, 147 N.M. 761, 228 P.3d 1181 (observing that "we do not review unclear or undeveloped arguments which require us to guess at what parties' arguments might be"). Even if we were to harbor a personal opinion that the Legislature may have desired to include Subsections (A)-(C) as nothing more than aspirational guidelines, we cannot avoid the clear language of Section 10-16-17.

¹The district court stated: Both of those statutes [Sections 10-16-3 and 10-16-4], there is one paragraph that articulates . . . those acts as a fourth degree felony . . . those are the only two in the whole Act that are specified differently than the others. So that pulls those two out from [Section] 10-16-17. So I'm not reading [Sections] 10-16-3 or 10-16-4 . . . under the Act, to outline misdemeanor charges.

{24} Indeed, the legislative history of Section 10-16-3 and Section 10-16-17 bolsters our conclusion that adherence to the plain meaning rule under the facts of this case does not produce a result contrary to the spirit of the GCA. First, we note that the Legislature enacted Sections 10-16-3 and -17 in the same bill in 1993. *See* 1993 N.M. Laws, ch. 46, §§ 28, 37. We presume that when it enacted these statutes together, it intended that a knowing and willful violation of Subsections 10-16-3(A)-(C) give rise to the misdemeanor criminal penalty called for in Section 10-16-17. Since its enactment in 1993, the Legislature has taken the opportunity to add and amend other sections in the GCA on six separate occasions, yet it has never amended Section 10-16-17, suggesting its continued intent to impose the criminal penalty set out in that section. *See* 1995 N.M. Laws, ch. 153, § 23; 2003 N.M. Laws, ch. 33, § 1; 2007 N.M. Laws, ch. 362, §§ 1-11; 2009 N.M. Laws, ch. 66, § 11; 2011 N.M. Laws, ch. 138, §§ 1-13; 2019 N.M. Laws, ch. 86, §§ 23-26. Importantly, Defendants have failed to point us to any evidence, and we have found none, clearly indicating the Legislature's intent to exclude Subsections 10-16-3(A)-(C) from Section 10-16-17's general misdemeanor provision.² *See State v. Davis*, 2003-NMCS-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064 (“The legislative history of the statute, including historical amendments, and whether it is part of a more comprehensive act, is instructive when searching for the spirit and reason the Legislature utilized in enacting the statute[.]” (citation omitted)); *see also Maestas*, 2007-NMCS-001, ¶ 22 (“Although we give effect to legislative intent by construing statutes to avoid absurd results, we must assume the [L]egislature chose its words advisedly to express its meaning unless the contrary intent clearly appears.” (alterations, internal quotation marks, and citations omitted)). Absent evidence of such legislative intent, we must “apply the statute as written” and refrain from “second-guess[ing] the [L]egislature’s [chosen manner] . . . of effectuating [its] legislative objective.” *Helman*, 1994-NMCS-023, ¶ 22; *see also, N.M. Petroleum Marketers Ass’n v. N.M.*

Envtl. Improvement Bd., 2007-NMCA-060, ¶ 11, 141 N.M. 678, 160 P.3d 587 (applying the plain meaning rule when “[a]ppellants have not convinced us that adherence to the literal meaning of the broad language employed by . . . the Legislature would lead to injustice, absurdity, or internal contradiction”).

B. Penalties for Violations of Subsection 10-16-3(C)

{25} Without citing any particular statutory provision or other authority, Defendant Gutierrez argues the penalty for a violation of Subsection 10-16-3(C) is limited to civil sanctions or penalties. *See State v. Smith*, 2019-NMCA-027, ¶ 9, 458 P.3d 613 (explaining that when a party fails to cite supporting authority, we may assume no such authority exists), *cert. denied*, 2019-NMCERT-____ (No. S-1-SC-37596, May 1, 2019). We note that the GCA does provide for both civil and criminal penalties. In instances of violations of the GCA that were unintentional or for good cause, the state ethics commission has the authority to seek voluntary compliance with the provisions of the GCA by correcting the violation within ten days of receiving notice. Section 10-16-13.1(B). The state ethics commission also has the authority to either institute a civil action or refer the matter to the attorney general or a district attorney to institute a civil action “if a violation has occurred or to prevent a violation of any provision of the [GCA].” Section 10-16-18(B); *see also* § 10-16-13.1(B) (providing that referrals for civil enforcement “shall be pursued only after efforts to secure voluntary compliance with [the GCA] have failed”). Alternatively, “[i]f the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the [GCA],” it “may refer the matter to the attorney general or a district attorney for enforcement.” Section 10-16-18(A); *see also* § 10-16-14(A) (authorizing the state ethics commission to “investigate suspected violations of the [GCA] and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement”). In instances of know-

ing and willful violations of the GCA, the attorney general or a district attorney is authorized to bring criminal charges. *See* §§ 10-16-3(D), -4(A), -17 (designating as a felony or misdemeanor the knowing and willful violation of the provisions of the GCA).

{26} The only provision limiting the ability of the attorney general or a district attorney from enforcing the GCA is Section 10-16-14(E), which prohibits a district attorney from enforcing the GCA “as regards legislators, state employees or statewide elected officials.” Apart from Section 10-16-14(E), nothing in the statutory framework of the GCA limits the discretion of the attorney general or a district attorney to prosecute a knowing and willful violation of the GCA. We therefore reject Defendant Gutierrez’s argument that penalties for violations of Subsections 10-16-3(A)-(C) are limited to civil penalties and sanctions. *See Chatterjee*, 2012-NMSC-019, ¶ 11 (“When attempting to determine the Legislature’s intent, we look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.” (alteration, internal quotation marks, and citation omitted)).

C. The Rule of Lenity

{27} The parties also contest whether the rule of lenity requires that we construe Subsections 10-16-3(A)-(C) as failing to provide for criminal offenses. “The rule of lenity counsels that criminal statutes should be interpreted in the defendant’s favor when insurmountable ambiguity persists regarding the intended scope of a criminal statute[.]” *State v. Tajoya*, 2010-NMCS-019, ¶ 23, 148 N.M. 391, 237 P.3d 693 (internal quotation marks and citation omitted), or “when we are unable to discern legislative intent.” *State v. Yazzie*, 2018-NMCA-001, ¶ 15, 410 P.3d 220 (internal quotation marks and citation omitted). Lenity, however, “is reserved for those situations in which a reasonable doubt persists about a statute’s intended scope even after resort to the language and structure, legislative history, and motivating policies of the statute.” *State v. Ogden*,

²Defendants rely on the Attorney General’s GCA Compliance Guide as support for their argument that Subsections (A), (B), and (C) are not intended to provide for criminal offenses. *See* N.M. Atty Gen., *Governmental Conduct Act Compliance Guide (Compliance Guide)* at 10 (2d ed. 2015) (explaining under Subsections (A) and (B) that “[t]his part of the GCA summarizes why we have ethics laws: to help ensure the public’s trust in the honesty of our elected and appointed public officials”); *Compliance Guide, supra*, at 17 (explaining that Subsection 10-16-3(C) and Section 10-16-4 “strongly warn all public officials and employees . . . against using their public authority to benefit their private financial interests”; and noting the possible criminal penalty for violation of Section 10-16-4, but making no such commentary for Subsection 10-16-3(C)); *Compliance Guide, supra*, at 18 (including Subsection 10-16-3(C)’s “guiding principle” of full disclosure in the GCA’s “ethical principles”). Notwithstanding the persuasive weight accompanying an “interpretation of a statute by the administrative body charged with enforcing it,” *Las Cruces Prof’l Fire Fighters v. City of Las Cruces*, 1997-NMCA-031, ¶ 9, 123 N.M. 239, 938 P.2d 1384, the extent to which the Compliance Guide undercuts our statutory analysis is ultimately inconsequential in light of the plain language of the statute. *See Chatterjee*, 2012-NMSC-019, ¶ 11 (explaining that when determining the legislative intent, our task is to “look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended” (internal quotation marks and citation omitted)).

1994-NMSC-029, ¶ 26, 118 N.M. 234, 880 P.2d 845 (internal quotation marks and citation omitted). As we have concluded that the plain language of Section 10-16-17 evidences the Legislature's intent that knowing and willful violations of Subsections 10-16-3(A)-(C) be punished as crimes and not treated merely as ethical considerations, we decline to apply the rule of lenity to this effect. We now turn to Defendants' argument that Subsections (A)-(C) are unconstitutionally vague.

II. Vagueness

{28} Defendants argue that, in the event we conclude the Legislature intended to impose criminal liability for violations of Subsections (A)-(C), then the subsections are nonetheless void for vagueness. "We review a vagueness challenge de novo." *State v. Duttie*, 2017-NMCA-001, ¶ 13, 387 P.3d 885 (internal quotation marks and citation omitted). "A strong presumption of constitutionality underlies each legislative enactment, and the party challenging constitutionality has the burden of proving a statute is unconstitutional beyond all reasonable doubt." *Id.* (internal quotation marks and citation omitted). "Appellate courts have a duty to construe a statute in such a manner that it is not void for vagueness if a reasonable and practical construction can be given to its language." *Id.* (internal quotation marks and citation omitted). To the extent the parties' arguments involve not only a facial vagueness analysis but also an as-applied vagueness analysis, we must first address the extent to which an as-applied vagueness analysis is proper given the procedural posture of the cases at bar.

A. As-Applied Vagueness vs. Facial Vagueness

{29} Before discussing whether consideration of an as-applied challenge was appropriate under the circumstances in the present cases, we first note the distinction between facial and as-applied vagueness challenges. "In a facial challenge to [a statute], we consider only the text of the [statute] itself, not its application; whereas, in an as-applied challenge, we consider the facts of the case to determine whether application of the [statute] even if facially valid deprive[s] the challenger of a protected right." *Vill. of Ruidoso v. Warner*, 2012-NMCA-035, ¶ 5, 274 P.3d 791. Whereas "the facts of [the challenging party's] particular case do not affect our review" of facial challenges, the facts of the challenging party's particular case are relevant in an as-applied challenge because "the challenging party contests only how

the statute . . . was applied against him or her within a particular context[.]" *Jackson v. City of Chi.*, 2012 IL App (1st) 111044, ¶ 27; see *Bounds v. State ex rel. D'Antonio*, 2013-NMSC-037, ¶ 14 n.2, 306 P.3d 457 (quoting *Jackson* for the proposition relevant to facial challenges). The "particular context" depends on factual determinations which no jury has yet made in any of these cases. The district court's consideration of an as-applied challenge in the absence of a trial was premature. See *State v. Muraida*, 2014-NMCA-060, ¶ 12, 326 P.3d 1113 (explaining that dismissal of charges under *Foulenfont* "can only be granted if such charges can be disposed of solely by deciding a question of law"); *State v. LaPietra*, 2010-NMCA-009, ¶ 7, 147 N.M. 569, 226 P.3d 668 ("Questions of fact . . . are the unique purview of the jury and, as such, should be decided by the jury alone."). We therefore decline to further consider an as-applied challenge on appeal, and we turn now to an examination of whether the statute is facially vague.

B. Defendants' Facial Vagueness

Claims

{30} To support a facial vagueness challenge, Defendants must demonstrate "that the statute is void in all its applications; or, stated another way, if [their] own conduct is clearly proscribed under the statute, [they] cannot assert that the statute is unconstitutionally vague as it might be applied to the conduct of others." *State ex rel. Children, Youth & Families Dep't v. Patricia N.*, 2000-NMCA-035, ¶ 15, 128 N.M. 813, 999 P.2d 1045 (internal quotation marks and citation omitted). *But see Johnson v. United States*, ___ U.S. ___, ___, 135 S. Ct. 2551, 2561 (2015) (noting that the United States Supreme Court's "holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp" (emphasis omitted)). A statute is unconstitutionally vague if it "(1) fails to provide persons of ordinary intelligence using ordinary common sense a fair opportunity to determine whether their conduct is prohibited, or (2) fails to create minimum guidelines for enforcement and thus encourages subjective and ad hoc application of the law." *Duttie*, 2017-NMCA-001, ¶ 13 (omissions, internal quotation marks, and citation omitted). Upon examination of Subsections 10-16-3(A)-(C), we conclude that unlike Subsection (A), Subsections (B) and (C) are unconstitutionally vague.³

1. Subsection (A)

{31} Determining whether Subsection (A) is vague requires that we interpret the statute and identify the prohibited conduct, which we review de novo. See *Duttie*, 2017-NMCA-001, ¶ 14 ("In determining the prohibited conduct, we review questions of statutory interpretation de novo."). Subsection (A) begins by identifying those who are subject to its requirements and describing certain proscribed conduct, stating, "[a] legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust." Section 10-16-3(A). This sentence appears to be intended as merely a prefatory illustration of the general principle to which the identified officials should aspire. The Legislature continued, explaining the conduct required to treat a government position as a public trust: "The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests." *Id.* Because the terms "public interest," "personal benefits," and "private interests" are not defined in the subsection and do not appear elsewhere within the GCA, leaving us unable to rely on other statutory provisions to help discern their plain meaning, we must construe these terms, giving them "their ordinary meaning absent clear and express legislative intention to the contrary." *State v. Tsosie*, 2011-NMCA-115, ¶ 19, 150 N.M. 754, 266 P.3d 34 (internal quotation marks and citation omitted).

{32} Neither this Court, nor our Supreme Court has taken the opportunity to define "public interest" in a context similar to that of Subsection 10-16-3(A). However, "public interest" is generally defined as "[t]he general welfare of a populace considered as warranting recognition and protection"; and "[s]omething in which the public as a whole has a stake; [especially], an interest that justifies governmental regulation," *Public Interest*, Black's Law Dictionary (11th ed. 2019), or "the general welfare and rights of the public that are to be recognized, protected and advanced"; and "a specific public benefit or stake in something," *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/interest#legalDictionary> (last visited on April 21, 2020); see also *Battishill v. Farmers All. Ins. Co.*, 2006-NMSC-004, ¶ 8, 139 N.M. 24, 127 P.3d 1111 (relying on a dictionary definition to determine a term's ordinary meaning when it is not defined in the statute).

³We note that in A-1-CA-38283 (Defendant Padilla's case), the state ethics commission's amicus brief highlights the potential that voiding Section 10-16-3 for vagueness will have unforeseen ramifications in other, non-criminal applications of the statute. Given the facts and circumstances of these cases, we leave for another day an examination of the extent to which our holding affects the non-criminal applications of Section 10-16-3.

{33} Aided by the ordinary meaning of “public interest,” as well as its context within Subsection (A) as something other than obtaining “personal benefits” and “private interests,” we conclude this subsection (1) mandates the use of the powers and resources of a legislator’s, public officer’s, or public employee’s public office only for the benefit of the people of New Mexico, and (2) prohibits legislators, public officers, and public employees from exploiting their powers and resources for private gain. *See* NMSA 1978, § 12-2A-2 (1997) (“Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage.”). In arriving at our conclusion, we are aided by the legislative history of Subsection 10-16-3(A). In 2011, the Legislature amended the subsection to replace the qualification that a legislator’s, public officer’s, or public employee’s powers and resources shall not be used “to obtain personal benefits or pursue private interests incompatible with the public interest[.]” § 10-16-3(A) (2007) (emphasis added), with the more stringent requirement that “the powers and resources of public office” be used “only to advance the public interest and not to obtain personal benefits or pursue private interests.” § 10-16-3(A) (2011) (emphasis added). *See* 2011 N.M. Laws, ch. 138, § 3. This amendment makes clear the Legislature’s intent that those subject to the provisions of Subsection 10-16-3(A) cannot use their powers and resources to obtain personal benefits or pursue private interests, even if they are not incompatible with the public interest, removing the need to consider whether the interests are incompatible because those powers and resources can only be used to advance the public interest.

{34} To the extent the application of Subsection (A) requires a qualitative determination of what constitutes a public versus private interest, we note that, as a general rule, “the application of a qualitative standard . . . to real-world conduct” does not render a statute unconstitutionally vague. *Johnson*, ___ U.S. at ___, 135 S. Ct. at 2561; *see Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (“Condemned to the use of words, we can never expect mathematical certainty from our language.”). We also recognize the mitigating effect of the scienter requirement found in Section 10-16-17 (criminalizing the *knowing and willful* violation of any provision of the GCA) on any potential vagueness in Subsection 10-16-3(A). *See Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982) (“[T]he [United

States Supreme] Court has recognized that a scienter requirement may mitigate a law’s vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed.”). We, therefore, conclude Subsection 10-16-3(A) provides a fair opportunity for persons of ordinary intelligence to determine whether his or her conduct is prohibited, as well as sufficient guidance for enforcement of the law such that it neither permits nor encourages subjective or ad hoc application.

{35} Defendant Padilla argues that if we find the statute is not vague, the State is precluded from applying our “novel construction” to support its criminal prosecution in these instances, citing *United States v. Lanier*, 520 U.S. 259, 266 (1997). *Lanier* held that, “although clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute, due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope[.]” *Id.* (citations omitted). “The test in determining whether . . . an interpretation and retroactive application of a statute offends due process is whether the construction actually given the statute was foreseeable.” *State v. Johnson*, 2001-NMSC-001, ¶ 14 n.4, 130 N.M. 6, 15 P.3d 1233. A court “engages in an impermissible interpretation of a statute when the interpretation is so unexpected, and so outlandish, that no reasonable person could have expected it.” *Id.* (alteration, internal quotation marks, and citation omitted).

{36} Our holding with respect to Subsection 10-16-3(A) rests on neither an unexpected nor unforeseeable judicial construction, but on the ordinary meaning and context of the terms used in the statute. *See Lanier*, 520 U.S. at 267 (“[T]he touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant’s conduct was criminal.”). This construction of Subsection (A) neither alters a preexisting interpretation by an appellate court in New Mexico nor enlarges the range of conduct covered under the subsection. *See State v. Myers*, 2011-NMSC-028, ¶¶ 13, 16, 150 N.M. 1, 256 P.3d 13 (recognizing that a judicial construction is unforeseeable when it either “contradicts binding precedent on the same question, upon which the accused could have relied[.]” or it expands the scope of otherwise “narrow and precise” statutory language (internal quotation marks and citation omitted)). Moreover, although this is the

first time an appellate court in New Mexico has construed Subsection 10-16-3(A), “the mere absence of judicial authority on a point of law is hardly the test for a[n] . . . ‘unexpected and indefensible’ interpretation of a criminal statute.” *Myers*, 2011-NMSC-028, ¶ 24; *see State v. Lovato*, 2011-NMCA-065, ¶ 16, 150 N.M. 39, 256 P.3d 982 (explaining that the fact that an opinion is the first to interpret a statute “is of little consequence” because when a court “engages in the judicial construction of a statute[.] it is explaining its understanding of what the statute has meant continuously since the date when it became law” (internal quotation marks and citation omitted)). Therefore, we conclude there is no facial due process violation with regard to the applicability of Subsection (A) to Defendants charged with violations of that subsection.

2. Subsection (B)

{37} We cannot reach the same conclusion with regard to Subsection 10-16-3(B). Subsection (B) provides, “Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.” Section 10-16-3(B). Although this subsection describes behavior to which the listed officials should aspire, it does not follow—as Subsection (A) does—with a definition or clarification of the conduct that is required to comply.⁴ To the extent the phrases “conduct themselves in a manner that justifies the confidence placed in them by the people,” “maintaining the integrity,” and “discharging ethically” were intended to require or prohibit certain conduct, we are nevertheless unable to ascertain with any reasonable degree of certainty the conduct the Legislature intended to prohibit. *See Johnson*, ___ U.S. at ___, 135 S. Ct. at 2561 (“Because the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect, this abstract inquiry offers significantly less predictability than one that deals with the actual, not with an imaginary condition other than the facts.”) (alteration, internal quotation marks, and citation omitted); *Tsosie*, 2011-NMCA-115, ¶ 32 (“A statute may be void for vagueness if its meaning is so uncertain that the court is unable, by the application of known and accepted rules of construction, to determine what the Legislature intended with any reasonable degree of certainty.” (internal quotation marks and citation omitted)). *But cf. Grayned*, 408 U.S. at 110 (recognizing that words do not provide mathematical certainty and sometimes require the application of a

⁴*But see, e.g.,* Colo. Rev. Stat. Ann. § 24-18-103 (West 1988) (establishing that “[t]he holding of public office or employment is a public trust” and that public officers, members of the general assembly, local government officials, or employees “shall carry out [their] duties for the benefit of the people of the state,” and shall not engage in conduct that “departs from [their] fiduciary duty”; Colo. Rev. Stat. Ann. §§ 24-18-104 (West 2012), -106 (West 2010), -108 (West 1991), -108.5 (West 1991), and -109 (West 2017) (enumerating acts, the commission of which constitute breaches of the actor’s fiduciary duty and the public trust).

qualitative standard). Even after resort to a construction of these terms—which are undefined in Subsection 10-16-3(B) or the GCA as a whole—we are unable to discern what conduct is prohibited and made subject to criminal prosecution. See *Duttie*, 2017-NMCA-001, ¶ 13 (explaining that we must “construe a statute in such a manner that it is not void for vagueness if a reasonable and practical construction can be given to its language” (internal quotation marks and citation omitted)).

{38} We, therefore, conclude Subsection (B) not only fails to provide persons of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited, but also fails to provide minimum guidance that would preclude subjective and ad hoc application of the law. See *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971) (concluding that when “no standard of conduct is specified at all” the law is unconstitutionally vague in that “men of common intelligence must necessarily guess at its meaning” (internal quotation marks and citation omitted)); *State v. Smile*, 2009-NMCA-064, ¶ 20, 146 N.M. 525, 212 P.3d 413 (“In order to fall within the arbitrary and discriminatory prong of the vagueness test, the statute must have no standards or guidelines and therefore allow, if not encourage, subjective and ad hoc application.” (alterations, internal quotation marks, and citation omitted)). Accordingly, Subsection (B) is vague and cannot form the basis for criminal charges under Section 10-16-17.

3. Subsection (C)

{39} Finally, Subsection 10-16-3(C) provides: “Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.” Although we generally must first determine the prohibited conduct in order to determine whether the statute itself is void for vagueness, we need not discuss the conduct the subsection purports to prohibit or require because the subsection does not provide adequate guidance as to whom its requirements apply.

{40} The GCA governs the conduct of various actors: legislators, public officers and employees, former public officers and employees, state agencies, private citizens,

and businesses that contract with state and local government agencies. See, e.g., §§ 10-16-3(D) (prohibiting certain activities by legislators, public officers and employees, and any “person”); -8(B) (prohibiting certain conduct by former public officers and employees); -9(A) (prohibiting certain conduct by state agencies); 13.3(A) (prohibiting certain conduct by businesses that contract with state or local government agencies to provide financial services). While this issue was not specifically raised on appeal, we note that generally, the GCAs sections identify the actors subject to their prohibitions and requirements. Indeed, Subsections (A), (B), and (D) of Section 10-16-3 limit the applicability of their requirements to specific classes of persons. See §§ 10-16-3(A) (“A legislator or public officer or employee shall . . .”); -3(B) (“Legislators and public officers and employees shall . . .”); 3(D) (“No legislator or public officer or employee may . . .” and “no person may . . .”). Subsection (C) contains no explanation of the actors to whom it applies.⁵

{41} When read together with Section 10-16-3’s heading (“Ethical principles of public services; certain official acts prohibited; penalty”), the plain language of Subsection (C) suggests that the subsection was not intended to apply to former public officers and employees, private citizens, or businesses. See *Tri-State Generation & Transmission Ass’n, Inc.*, 2012-NMSC-039, ¶ 18 (explaining that we may look to a section’s heading, “and ordinarily it may be considered as a part of the act if necessary to its construction” (internal quotation marks and citation omitted)); 73 Am. Jur. 2d *Statutes* § 100 (explaining that a section’s heading is a tool “for the resolution of doubt about the meaning of a statute”). Nonetheless, we are still unable to glean the Legislature’s intent concerning the class of persons subject to the requirements or prohibitions of Subsection (C). Moreover, our task in discerning such intent is complicated by the Legislature’s inclusion of specific classes of persons in the surrounding subsections, but its omission from Subsection (C). See *State v. Ramos*, 2013-NMSC-031, ¶ 15, 305 P.3d 921 (observing that when the Legislature knew how to include something, and did not, we assume the choice was deliberate); *Hubble*, 2009-NMSC-014, ¶ 10 (noting that

“[w]e will not read into a statute language which is not there”). Although our task on appeal is “to construe a statute in such a manner that it is not void for vagueness if a reasonable and practical construction can be given to its language[.]” *Duttie*, 2017-NMCA-001, ¶ 13 (internal quotation marks and citation omitted), and “to read related statutes in harmony so as to give effect to all provisions[.]” *Benavides v. E. N.M. Med. Ctr.*, 2014-NMSC-037, ¶ 24, 338 P.3d 1265 (internal quotation marks and citation omitted), the diversity of classes of persons specified in not only Section 10-16-3 but also among and within the remaining sections of the GCA renders Subsection (C) devoid of the minimum guidance necessary to ward off a due process violation.

{42} The lack of any minimum guidance with regard to the class of persons whose conduct is governed by Subsection (C) renders it vague in two respects: (1) it fails to give people of ordinary intelligence a reasonable opportunity to know whether their conduct is prohibited because they have no notice as to whether they are a member of the class of persons contemplated under Subsection (C); and (2) it invites subjective and ad hoc application of the law because law enforcement officials have no guidance as to the class of persons subject to the requirements of the subsection. See *Duttie*, 2017-NMCA-001, ¶ 13. In the absence of any such guidance, we conclude Subsection (C) is vague on its face and cannot form the basis of a criminal charge under Section 10-16-17.

CONCLUSION

{43} We reverse the district courts’ dismissals of the counts charging Defendants under Subsection 10-16-3(A) and affirm the dismissals of the counts charging Defendants under Subsections 10-16-3(B)-(C). We therefore remand to the district courts for reinstatement of the Subsection 10-16-3(A) charges against Defendants Gutierrez, Estevez, and Johnston.

{44} IT IS SO ORDERED.
JULIE J. VARGAS, Judge

WE CONCUR:
RICHARD C. BOSSON, Judge Pro Tempore
MICHAEL D. BUSTAMANTE, Judge Pro Tempore

⁵The state ethics commission’s amicus brief attempts to resolve any ambiguity with regard to the class of persons governed by Subsection 10-16-3(C) by arguing that rather than functioning independently, this subsection “combine[s]” with Subsection 10-16-3(B) “to impose a duty on legislators, public officers, and public employees to disclose real or potential conflicts of interest.” In other words, the state ethics commission argues, Subsection (B) details to whom the duty applies while Subsection (C) details what conduct is required under that duty. Notwithstanding the general rule that “[a] statutory subsection may not be considered in a vacuum, but must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter[.]” *State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022, we reject the state ethics commission’s argument because Section 10-16-3 is devoid of any language that would support such a conclusion. See *Chatterjee*, 2012-NMSC-019, ¶ 11 (providing the plain language rule); *State v. Hubble*, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579 (noting that “[w]e will not read into a statute language which is not there”).



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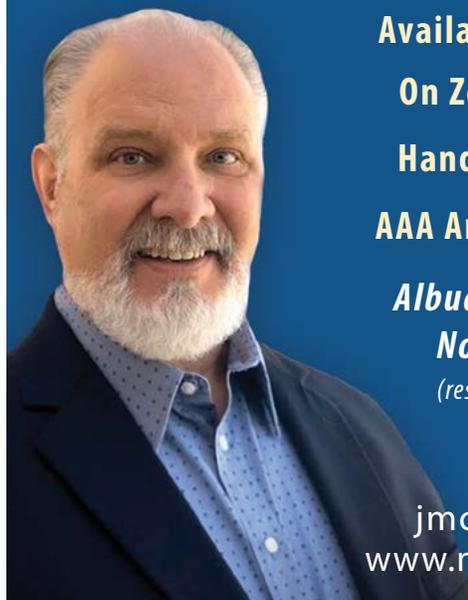
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2. Must be an active member in good standing of the bar in a US State or Territory, or the District of Columbia;
3. Experienced in criminal investigation;
4. Proven track record of effective management experience.

ADDITIONAL REQUIREMENTS: 1. Possession of a valid New Mexico Driver's License, or the ability to obtain by date of hire; 2. Possession of a City Operator's Permit (COP) within 6 months from date of hire; 3. Must undergo and pass background check; 4. May require working non-traditional hours, including being on-call.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad and Hobbs 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). There is also an opening for a prosecutor with at least 2 years of Trial Experience for a HIDTA Attorney position in the Roswell office, with starting salary of (\$ 70,000.00) 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.

Chief Deputy District Attorney

The Third Judicial District Attorney's Office in Las Cruces is seeking a Chief Deputy District Attorney, Deputy District Attorneys, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys. You will enjoy the convenience of working in a metropolitan area while gaining valuable trial experience along side experienced Attorney's. Please see the full position descriptions on our website [http://donaanacountyda.com/SubmitCoverLetter, Resume, and references](http://donaanacountyda.com/SubmitCoverLetter,Resume,andreferences) to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us.

Assistant General Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney - APD Compliance; Assistant City Attorney - Employment/Labor. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

Full-time and Part-time Attorney

Jay Goodman and Associates Law Firm, PC is seeking one full-time and one part-time attorney, licensed/good standing in NM with at least 3 years of experience in Family Law, Probate, Real Estate and Civil Litigation. If you are looking for meaningful professional opportunities that provide a healthy balance between your personal and work life, JGA is a great choice. If you are seeking an attorney position at a firm that is committed to your standard of living, and professional development, JGA can provide excellent upward mobile opportunities commensurate with your hopes and ideals. As we are committed to your health, safety, and security during the current health crisis, our offices are fully integrated with cloud based resources and remote access is available during the current Corona Virus Pandemic. Office space and conference facilities are also available at our Albuquerque and Santa Fe Offices. Our ideal candidate must be able to thrive in dynamic team based environment, be highly organized/reliable, possess good judgement/people/communication skills, and have consistent time management abilities. Compensation DOE. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

Associate Attorneys

Mynatt Martínez Springer P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking two associate attorneys to join our team. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, and government representation. Applicants with 0-5 years of experience will be considered for full-time employment. If it is the right fit, the firm will also consider applications for part-time employment from attorneys with more than 5 years of experience. Associates are a critical component of the firm's practice and are required to conduct legal research; provide legal analysis; advise clients; draft legal reviews, pleadings, and motions; propound and review pretrial discovery; and prepare for, attend, and participate in client meetings, depositions, administrative and judicial hearings, civil jury trials, and appeals. Successful candidates must have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. The firm will consider applicants who desire to work remotely. Offers of employment will include salary commensurate with experience and a generous benefits package. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@mmslawpc.com.

City of Albuquerque – Contract Attorney

The City of Albuquerque, through the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board"), is seeking a qualified attorney to contract with to provide legal representation and general legal services to the Air Board. This position is an independent contractor, and is not an employee of the City of Albuquerque. Applicant must be admitted to the practice of law by the New Mexico Supreme Court and be an active member of the Bar in good standing. A successful candidate will attend all Air Board meetings, have strong communication skills, knowledge of board governance and Robert's Rules of Order, The NM Open Meetings Act, and knowledge of environmental rules and regulations including the Clean Air Act. Prior experience with, or advising, board and commissions is preferred. Please submit a resume to the attention of "Air Board General Counsel Application"; c/o Angela Aragon; Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or amaragon@cabq.gov. Application deadline is December 31, 2021.

8th Judicial District Attorney's Office Assistant Trial — Senior Trial

The 8th Judicial District Attorney Office is accepting applications for a full-time Assistant Trial Attorney/ Senior Trial Attorney in Taos, NM. Requirements: Assistant Trial Attorney: Attorney licensed to practice law in New Mexico plus a minimum of one (1) year relevant prosecution experience. Senior Trial Attorney: Attorney licensed to practice law in New Mexico plus a minimum of five (5) years relevant prosecution experience. Work performed: Incumbent will prosecute all cases, including high level and high profile cases. As experience allows, applicants should possess expertise in one or more areas of criminal prosecution; lead special prosecutions assigned by the District Attorney; supervises and mentors other attorneys and staff. Applicant may alternatively be a division/bureau head in a main or satellite office who handles cases as well as substantial administrative duties and tasks. Can act on behalf of the District Attorney as directed. Salary will be based upon experience, position applied for, and the current District Attorney Personnel and Compensation Plan. \$55,000 to \$70,000. Please submit resumes/letters of interest to Suzanne Valerio, District Office Manager by mail to 105 Albright Street Suite L, Taos, NM 87571 or by email to svalerio@da.state.nm.us no later than November 30, 2021

Deputy Director

You are invited to join the AOC team in the challenging and rewarding work done by the New Mexico Judiciary! The New Mexico Judicial Branch is recruiting for a Deputy Director for the Administrative Office of the Courts (AOC) to oversee statewide judiciary operations. The Deputy Director works closely with the Director under the guidance of the New Mexico Supreme Court to manage all aspects of court operations. AOC responsibilities include oversight of court budgets that exceed \$200 million annually, personnel rules and actions statewide, court services and programs, and technology that include a statewide case management system and electronic filing. Duties include frequent contacts with executive and legislative agencies as well as active involvement with legislative initiatives before and during the annual legislative session. The New Mexico Judiciary is unified, giving the Director and Deputy Director significant, broad involvement in all aspects of court operations statewide. Serving as the Deputy Director provides the opportunity to play a vital role in developing and implementing policies and programs throughout the state. This position would serve as the AOC representative staffed to and supporting many judicial committees that develop and administer judicial policies. The office is located in Santa Fe, NM, the state capitol with a diverse culture, beautiful high desert mountains, and abundant museums, restaurants, and outdoor recreation opportunities. The AOC has additional offices in Albuquerque and occasional statewide travel. The salary range is \$90,000 to \$145,000. For more information or to apply to go to the Judicial Branch web page at www.nmcourts.gov under Career Opportunities or 505/827-4810. Equal Opportunity Employer

Senior Counsel (In-house)

New Mexico Mutual has an immediate opening for a trusted advisor and experienced attorney proficient in litigation and appellate work. Primary responsibility is to support the company's subsidiary, Integriom Group, Inc., in administering the Patient Compensation Fund (PCF). This includes general counsel to the PCF custodian and administrator; filing and prosecuting complaints for intervention, declaratory judgement or other legal proceedings; filing or defending appeals impacting or involving the PCF; and managing outside counsel. Senior Counsel will also work with the General Counsel on corporate compliance, regulatory matters, and other areas affecting the company. Salary commensurate with the skills and experience required. Generous benefits package. Please apply online at newmexicomutual.com or send resume and letter of interest to humanresources@newmexicomutual.com.

Executive Director – New Mexico Board of Bar Examiners

The Executive Director of the New Mexico Board of Bar Examiners fills a high-level strategic, administrative, legal, and supervisory position overseeing all aspects of the administration of the New Mexico Bar Examination. The Executive Director works under the supervision of the Board of Bar Examiners, which is responsible for assessing the minimum legal competency and character and fitness of all applicants, as well as any other eligibility factors for admission to the bar in New Mexico; eligibility for admission also includes reinstatement, Uniform Bar Exam (UBE) transfer, and limited license applications. This is a hands-on role for a legal professional who is prepared to be involved in and responsible for every aspect of the bar admissions process and administration. The Executive Director manages the day-to-day operations of the office of the Board of Bar Examiners, including management of operations, oversight of Board accounts in matters of budget and other financial areas essential to the operation of the Board. The Director hires and supervises office staff and contractors. The Executive Director evaluates applicant submissions, identifies and oversees the review and resolution of applicant character and fitness issues, and serves as the Board's expert in the administration of the Rules Governing Admission to the Bar. The Executive Director represents the Board in matters with the New Mexico Supreme Court and nationally with the National Conference of Bar Examiners, as needed, and works directly with Board committees in development of strategic direction for the Board. The Executive Director should have extensive experience in managing operations to include finance, budget and staffing in a legal setting as well as experience communicating and collaborating with multiple stakeholders. Additionally, the Executive Director should have experience drafting motions and findings of fact and conclusions of law, as well as managing legal proceedings in court or in administrative proceedings. The position is located in Albuquerque, NM. Starting salary range is \$102,000 to \$135,000, depending on experience, plus a benefits package. Transmit resume and cover letter by e-mail to info@nmexam.org. Deadline to apply is January 31, 2022. For a full description of the position, go to: <https://nmexam.org/employment/>. The Board of Bar Examiners is an equal opportunity employer. Skills and Abilities: Demonstrated excellent oral and written communications skills; Demonstrated leadership skills, to include strategic thinking, sound decision making, problem solving, and interpersonal skills. Ability to deal with numerous diverse stakeholders in a professional manner is essential skill; Ability to develop, implement, and adjust, as necessary, short and long term plans for bar admissions, set priorities for the office, and manage multiple ac-

tivities simultaneously and within deadlines; Demonstrated experience in supervising staff and contractors, to include development of goals for staff and a regular evaluation process to document growth. Contractors should have clear deliverables and timelines documented and overseen by the Executive Director; Strong organizational ability and attention to detail; Ability to interpret and apply Supreme Court Rules and other applicable laws; Working knowledge of a wide range of business technology and software. Ability to learn customized database and other software applications as needed; Ability to understand complex grading principles and statistical interpretations. Required qualifications: J.D. from an ABA-accredited law school; Bar licensure in one or more U.S. states and, if not already licensed in New Mexico, licensure in New Mexico within one year from hiring; Demonstrated experience in managing a group or organization, including operations, staffing, and financial management; Experience in litigating civil, criminal, and/or administrative matters.

Associate Attorney

Busy medical malpractice defense firm seeking a motivated attorney who desires to move into the position of a trial attorney. Must have strong, proficient research and writing skills as well as superior attention to detail. We are open to candidates of all levels of experience. Pay dependent on experience. Position includes outstanding benefits package. To apply, please provide your resume with references, salary requirements, and a writing sample to kbarnett@lady-justice.us.

Attorney

Butt Thornton & Baehr PC seeks an attorney with at least 5 years' legal experience. BTB is in its 63rd year of practice. We seek an attorney who will continue our tradition of excellence, hard work, and commitment to the enjoyment of the profession. Please send letter of interest, resume, and writing samples to Ryan T. Sanders at rtsanders@btblaw.com.

Law Clerk

New Mexico Court of Appeals Law Clerk Court of Appeals Judge Shammara H. Henderson is accepting applications for a five-month term law clerk position to begin in April 2022. Law clerks work closely with their judge to write opinions and resolve cases involving all areas of the law. Outstanding legal research and writing skills are necessary. Law school graduation by the time employment begins is required. One or more years of experience as a judicial law clerk or employment in the practice of law is preferred. To apply, please send a cover letter, resume, writing sample, and transcript by email to Judge Henderson's chambers, coaajp@nmcourts.gov, and indicate "Term Law Clerk Application" in the subject line.

Tribal Court Judge

Taos Pueblo Tribal Court, Taos, New Mexico is seeking qualified applicants for a Tribal Court Judge. Under the direction of Taos Pueblo Governor and Tribal Programs Administrator. Accomplishes the Tribal Court's objective adjudicating cases and preparing decisions. Plans, coordinates, supervises, and directs the activities of the court. The Tribal Judge position requires a Juris Doctorate plus seven (7) years progressively responsible experience in the legal profession. Familiarity with Tribal Law required. Member in good standing of the State Bar of New Mexico. If you feel that you have the necessary skills, experience, the motivation, please prepare a detailed letter of introduction, a complete resume, and three professional references who can attest as to your skills and abilities. Please submit application/resume to Taos Pueblo Human Resources at PO Box 1846 or 1075 Veterans Hwy, Taos, NM 87571, Fax: 575-758-7308 or via email: apply@taospueblo.com.

Law Student Externship

The New Mexico Regulation and Licensing Department is currently hiring law clerks to assist in its legal and regulatory operations. The Department is one of the state's largest market and business regulatory actors, overseeing more than 500,000 individuals and businesses in 35 industries, professions and trades. This oversight is divided between the Financial, Securities, Construction, Alcohol, and Cannabis Industries Divisions, as well as the Board and Commissions Division. The Regulation and Licensing Department is itself overseen by the Office of the Superintendent, the Deputy Superintendent, and the Office of the General Counsel. The Department is now currently seeking one law clerk to serve in the Office of the Superintendent and one law clerk to serve in the Cannabis Control Division for separate externships in the Spring, Summer, and Fall semesters of 2022. This engagement with law clerks is expected to grow with other Industry Divisions (such as Financial Industries and Securities) at the Regulation and Licensing Department in the near future. The ideal candidate will have a high attention to detail, an interest in business regulation and market analysis, and a commitment to serving the communities of New Mexico. The law clerks will gain first-hand experience in legislative affairs and drafting, the creation and promulgation of regulatory rules, and policy matters as they apply to markets and businesses across the entire state. Work will occur in Santa Fe, Albuquerque, and remotely. A resume, cover letter, and writing sample are required for an application. Please contact Patrick Schaefer, General Counsel, at patrick.schaefer@state.nm.us for more information.

Senior Trial and Deputy District Attorneys

The 6th Judicial District Attorney's Office has an opening for a Senior Trial District Attorney and a Deputy District Attorney position in Silver City. Must have experience in criminal prosecution. Salary DOE. Send letter of interest, resume, and three current professional references to MRenteria@da.state.nm.us.

Associate Attorney And Paralegal

Peak Legal Group, LLC has immediate openings for an associate/litigation attorney and two paralegals for our growing family law formation and reformation legal practice. Our Westside law firm practices in all areas of Family Law, in addition to adoptions, assisted reproductive technology and foster parent representation. Experience or a defined interest in these areas is preferable, but not mandatory. We are looking for hard working, dedicated team members who would enjoy working in a family-oriented law firm that works hard and plays hard. We offer a great work environment, a competitive salary and a generous benefits package. Send your resume, cover letter and list of references to sheryl@pklegalgrp.com

Attorney (PED 21425)

The New Mexico Public Education Department (NMPED) is seeking an attorney to work in the area of special education. The primary duties will include investigating and drafting complaint resolution reports as part of the dispute resolution system required by the Individuals with Disabilities Education Act and providing legal support and advice on matters arising under the Act. The ideal candidate will be a team player with an interest in public service, and will have knowledge of and interest in special education law. Strong writing and interpersonal skills are essential. For information, please contact Debra Poulin at debra.poulin@state.nm.us. To apply for this position, please fill out an application at <http://www.spo.state.nm.us>.

Associate Litigation Attorney

Sandoval Firm is seeking an associate litigation attorney with up to five years of experience. This is a unique opportunity to join a small and successful Plaintiff's firm where you will be appreciated and welcomed as part of our team. We offer a competitive salary with bonuses, medical and dental insurance. Our office represents plaintiffs in medical malpractice and civil rights litigation. While this is an excellent learning opportunity, the successful applicant must have strong research and writing skills. Santa Fe location is available for interested candidates. Please submit a resume and writing sample for prompt consideration to rick@sandovalfirm.com Job Type: Full-time

Alternative Dispute Resolution Coordinator (PED 21418)

The New Mexico Public Education Department is seeking an Alternative Dispute Resolution Coordinator to work in the area of special education. The primary duties are related to the dispute resolution system for special education cases arising under the Individuals with Disabilities Education Act, including processing requests for mediation, state complaints and due process hearing requests, communicating with contractors and parties regarding requests, providing information on IDEA dispute resolution options to the public, and maintaining data bases and records for the dispute resolution system. In addition, the duties will include providing assistance to attorneys assigned to special education in the form of setting up and maintaining a calendar with deadlines, research, and development of materials. The ideal candidate will be a team player and have excellent organizational and communication skills, proficiency with Outlook and Excel and other databases, and an interest in public service. For information, please contact Debra Poulin at debra.poulin@state.nm.us. To apply for this position, please fill out an application at <http://www.spo.state.nm.us>.

Eleventh Judicial District Attorney's Office, Div II

The Eleventh Judicial District Attorney's Office, Division II, Gallup, New Mexico is seeking qualified applicants for Trial Attorney. The Trial Attorney position requires advanced knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure, trial skills, computer skills, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to re-search/analyze information and situations. New Mexico State Bar license preferred. The McKinley County District Attorney's Office provides a supportive and collegial work environment. Salary is negotiable. Submit a letter of interest and resume to District Attorney Bernadine Martin, Office of the District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us. Position will remain opened until filled.

Experienced Legal Secretary

Peifer, Hanson, Mullins & Baker, P.A. is hiring a full time experienced legal secretary. The successful candidate must be a detail-oriented team player with strong organization and motivational skills. Salary DOE. Profit-sharing, health insurance, three weeks leave per year, and overtime available. Please send resume, references and salary requirements to Shannon Hidalgo, Firm Administrator, P.O. Box 25245, Albuquerque, NM 87125 or via email shidalgo@peiferlaw.com. No phone calls please.

Legal Resources for the Elderly Program (LREP) Intake Coordinator

The New Mexico State Bar Foundation Legal Resources for the Elderly Program (LREP) seeks a full-time Intake Coordinator to answer incoming calls, conduct and complete intakes, and establish case files in the LREP electronic case management system. This position also provides clerical assistance and support to other LREP staff as required. The successful applicant must have excellent communication, customer service, and organizational skills. Minimum high school diploma required. Generous benefits package. \$15-\$16 per hour, depending on experience and qualifications. To be considered, submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

Paralegal Position

Exciting opportunity to work on meaningful industry and professional regulatory projects in the Office of the General Counsel. This paralegal will be assigned to assist the newly created Cannabis Control Division. Provides general legal research and litigation support to the General Counsel, Deputy General Counsel and the Office of the Superintendent, with an emphasis on Inspection of Public Record Act (IPRA) compliance and legal support for boards/commissions directly under the authority of the Superintendent. Please refer to the position announcement for more information. https://careers.share.state.nm.us/psc/hprdcg/EMPLOYEE/HRMS/c/HRS_HRAM_FL.HRS_CG_SEARCH_FL.GBL?Page=HRS_APP_JBPST_FL&Action=U&FOCUS=Applicant&SiteId=1&JobOpeningId=118850&PostingSeq=1

Paralegal/Legal Assistant

The New Mexico Prison & Jail Project (NMPJP) is a new legal organization that advocates to protect the rights of incarcerated people in New Mexico by bringing civil rights lawsuits and other legal actions on their behalf. NMPJP has a position available for a part-time (20 hours per week) paralegal or legal assistant. Pay is \$24 per hour, and the job has the potential to evolve into a full-time position. Work will be primarily remote with daily coordination of activities occurring with NMPJP's Director via Zoom, email, texts and calls, and with at least one in-person meeting per week at the NMPJP office in Albuquerque. The ideal candidate will have a passion for advocating for the rights of people who are incarcerated. We also seek candidates with a proficiency in online legal research and document review; excellent written, verbal and interpersonal communication skills; and experience with federal and New Mexico state court filings and procedures. Email a letter of interest and resume to the selection committee at info@nmpjp.org.

Legal Assistant

Dixon Scholl Carrillo PA is seeking a full time legal assistant with a minimum of 5 years experience in Litigation support. Must be self-motivated have strong writing, organizational, calendaring and multitasking skills. Knowledge of Office 365, and WordPerfect. We offer excellent benefits and great work environment. Competitive Salary. Submit your resume to Michaela O'Malley at momalley@dsc-law.com

Legal Secretary

The City of Albuquerque Legal Department (Litigation Division) is seeking a Legal Secretary to assist assigned attorneys in performing a variety of legal secretarial/administrative duties, which include but are not limited to: preparing and reviewing legal documents; creating and maintaining case files; calendaring; provide information and assistance, within an area of assignment, to the general public, other departments and governmental agencies. Please apply at <https://www.governmentjobs.com/careers/cabq>.

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 \$21.31 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$22.36 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Paralegal/Legal Assistant Talent Sought

Regional AV rated civil defense firm seeks an experienced litigation support professional for its uptown Albuquerque office. Ideal candidates should have a minimum of three years of experience, understand NM civil procedure and be able to work well in an often fast-paced environment with a large case load. We offer a competitive salary and full benefits, and all the perks of a friendly, supportive office setting. Please submit a resume and any other application materials to Cristina at cray@raylaw.com.

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Purpose-built law office for lease. Modern office. 6 professional offices and 10 staff workstations. Stunning conference room, reception, kitchen. Fully furnished. Lots of file storage. Phones and copier available. 1011 Las Lomas Road NE, Albuquerque. Available immediately. Inquiries: admin@kienzlelaw.com.

Miscellaneous

Want To Purchase

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

2022 Bar Bulletin Publishing and Submission Schedule

The Bar Bulletin publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, three weeks prior to publication.**

**For more advertising information, contact:
Marcia C. Ulbarri at
505-797-6058 or email
mulbarri@sbnm.org**

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Susan Feil & Alicia Feil
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Elias Medina
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Diane Diaz
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Diana Griego
505-238-6478



Deb Redford
505-328-3423



Debbie Baca
505-814-3500



Courtney Byrd
505-410-2447



Charlotte Trone
505-350-0099



Cecilia Chavez
505-463-5650



Cassandra Morrison
505-480-8035



J Gilmore Daniels & K Gilmore Mosley
505-259-0502 / 505-463-0680



Carol Bouloy
505-450-2574



Carlyn & Alexandra Chiedo
505-991-5206 / 920-5346



Brittany Love
505-720-4105



Annie Smidt
505-235-8143



Ann Taylor
505-379-7774



Amy Neal
505-681-6202



Alicia Rucker
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505-967-9408



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Fidelity National Title
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Green Light Real Estate Svcs 505-280-2062 | Keller Williams Realty 505-897-1100; 505-271-8200 | La Puerta Real Estate Serv LLC 505-867-3388 | Lisa Hebenstreit Realty 505-242-2272
The Maez Group 505-718-4980 | NM Home Team Real Estate 505-450-3779 | Platinum Properties & Invest. 505-269-6997 | Q Realty 505-750-0059 | Re/Max Select 505-798-1000; 505-265-5111; 505-433-5600
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We only do one thing — fight for people — and we do it well. And we need your help. The Spence Law Firm New Mexico, LLC, is growing: this is your chance to join our team in Albuquerque and make a difference out there!

Must be ready to hit the ground running — you will be part of a team working integrally on high-level plaintiff's cases. Full-spectrum plaintiff's work. Drafting pleadings, discovery, taking depositions, settlement work; and trying cases to juries. Must be motivated; good with people; read, write, and think critically. Litigation experience preferred; good soul, confidence, a sharp mind, and the right attitude, required. Comp. salary, strong benefits, opportunity of a lifetime. Looking for superstars, please.

Is this you? Email letter of interest, resume, references to:

recruiting@spencelawyers.com

