

# BAR BULLETIN

February 24, 2021 • Volume 60, No. 4



*Beautiful Landscape*, by Louise Sackett

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

## Inside This Issue

Notices .....	4
State Bar of New Mexico Bankruptcy Law Section 36th Annual Year in Review .....	5
Hearsay/In Memoriam .....	6
New Mexico Access to Justice Commission A Message from ATJC Co-Chairs.....	7
Commission Announces "Know Your Rights" Campaign.....	8
<i>Trial by Video</i> By Richard Cravens .....	10
Disciplinary Quarterly Report .....	12
From the New Mexico Supreme Court 2020-NMSC-004: State v. Aslin.....	19
2020-NMSC-005: State v. Martinez.....	22
2020-NMSC-006: Mendoza v. Isleta Resort and Casino.....	26
From the New Mexico Court of Appeals 2020-NMCA-013: State v. Dyke.....	32



## CLE programming from the Center for Legal Education

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

### Upcoming Teleseminars



#### February 24

##### **How to Fix a Broken Trust: Decanting, Reformation, and Other Tools**

1.0 G  
11 a.m.–Noon  
\$79 Standard Fee

#### February 25

##### **LLC/Partnerships Interests: Collateral, Pledges, and Security Interests**

1.0 G  
11 a.m.–Noon  
\$79 Standard Fee

#### February 26

##### **Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice and More**

1.0 EP  
11 a.m.–Noon  
\$79 Standard Fee

#### March 2

##### **Trust & Estate Planning for Religious Beliefs**

1.0 G  
11 a.m.–Noon  
\$79 Standard Fee

#### March 4

##### **Drafting Legal Holds in Civil Litigation**

1.0 G  
11 a.m.–Noon  
\$79 Standard Fee

#### March 9

##### **Drafting Sales Agreements: UCC Issues and More**

1.0 G  
11 a.m.–Noon  
\$79 Standard Fee

### Upcoming Webinar



#### March 12

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

1.0 EP  
Noon–1 p.m.  
\$55 Standard Fee



505-797-6020 • [www.nmbar.org/cle](http://www.nmbar.org/cle)  
5121 Masthead NE • PO Box 92860, Albuquerque, NM 87199



**Officers, Board of Bar Commissioners**

Carla C. Martinez, President  
 Carolyn A. Wolf, President-elect  
 Benjamin I. Sherman, Secretary Treasurer  
 Ernestina R. Cruz, Immediate Past President

**Board of Editors**

Gabrielle Dorian Gregory B. Dawkins  
 Michael Eshleman Debora K. Gerads  
 James Kalm Anne E. Minard  
 Matthew Ramirez Constance Tatham

**State Bar Staff**

Executive Director Richard Spinello  
 Director of Communications and Member Services, Evann Laird  
 Graphic Designer Julie Sandoval  
 jsandoval@nmbar.org  
 Account Executive Marcia C. Ulibarri  
 505-797-6058 • mulibarri@nmbar.org  
 Communications Coordinator Cassandra Scott  
 505-797-6040 • notices@nmbar.org

©2021, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at [www.nmbar.org](http://www.nmbar.org).

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.

505-797-6000 • 800-876-6227 • Fax: 505-828-3765  
 address@nmbar.org • [www.nmbar.org](http://www.nmbar.org)

February 24, 2021 • Vol. 60, No. 4

# Table of Contents

Notices ..... 4  
 Hearsay/In Memoriam ..... 6  
 New Mexico Access to Justice Commission  
     A Message from ATJC Co-Chairs ..... 7  
     Commission Announces "Know Your Rights" Campaign ..... 8  
*Trial by Video* By Richard Cravens ..... 10  
 Disciplinary Quarterly Report ..... 12  
 Calendar of Legal Education ..... 13  
 Court of Appeals Opinions List ..... 15  
 Clerk's Certificates ..... 16

**From the New Mexico Supreme Court**

2020-NMSC-004: State v. Aslin ..... 19  
 2020-NMSC-005: State v. Martinez ..... 22  
 2020-NMSC-006: Mendoza v. Isleta Resort and Casino ..... 26

**From the New Mexico Court of Appeals**

2020-NMCA-0013: State v. Dyke ..... 32  
 Advertising ..... 37

## Meetings

### February

- 24**  
**Natural Resources, Energy and Environmental Law Section Board**  
 Noon, teleconference
- 25**  
**Trial Practice Section Board**  
 Noon, teleconference
- 26**  
**Cannabis Law Section Board**  
 9 a.m., teleconference

- 26**  
**Immigration Law Section Board**  
 Noon, teleconference

### March

- 2**  
**Health Law Section Board**  
 9 a.m., teleconference
- 3**  
**Employment and Labor Law Section Board**  
 Noon, teleconference

## Workshops and Legal Clinics

### March

- 3**  
**Divorce Options Workshop**  
 6-8 p.m., Video Conference  
 For more details and to register, call 505-797-6022
- 24**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., Video Conference  
 For more details and to register, call 505-797-6094
- 30**  
**Common Legal Issues for Senior Citizens Workshop**  
 11 a.m.-noon, Video Conference  
 For more details and to register, call 505-797-6005

### April

- 27**  
**Common Legal Issues for Senior Citizens Workshop**  
 11 a.m.-noon, Video Conference  
 For more details and to register, call 505-797-6005

**About Cover Image and Artist:** Louise Sackett is a New Mexico oil painter, specializing in plein air. She is a product rural New England and California. She holds multiple degrees in art and an MSIT in visual training. With a BA from San Diego, she worked as a trainer/artist and training flight crew for the Navy. Sackett started painting plein air in California. She showed her work as a member of various art groups in the SoCal area. She won the Plein Air Competition in Temecula, Calif. the year she participated and won the purchase prize and people's choice in the Plein Air competition in Silver City in 2017. In 2018 she won the PAPNM plein air competition at Wild Rivers in Questa. Sackett teaches one workshop a year in plein air in October. Her work is shown in Silver City at Encore, and at River's Edge Gallery in Kerrville, Texas, and has shown at Wilder Nightingale Gallery in Taos. Her work can be seen online at [www.louisesackettfinart.com](http://www.louisesackettfinart.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 p.m.-5 p.m. For more information call: 505-827-4850, email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### U.S. District Court for the District of New Mexico Notice to Federal Bench & Bar Association Members

Effective Feb. 16, the attorney admission process will be completed online through PACER.gov. To request admission to practice in the District of New Mexico, you must first have an upgraded or individual PACER account. Instructions for petitioning to practice in the District of New Mexico are available on the "Attorney Admissions" page on the Court's website at <https://www.nmd.uscourts.gov/admissions>.

### New Mexico Court Of Appeals Announcement Of Applicants

Eleven applications have been received in the Judicial Selection Office as of 5 p.m., Wednesday, Feb. 3, due to the resignation of Honorable Judge Julie Vargas effective Jan. 23. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Chief Judge or the Administrator of the court. The Judicial Nominating Commission will meet at 9 a.m. on Wednesday, Feb. 17, and the meeting will occur exclusively by Zoom. The commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. If you would like

## Professionalism Tip

### With respect to parties, lawyers, jurors, and witnesses:

I will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications.

the Zoom invitation emailed to you, please contact Beverly Akin by email at [akin@law.unm.edu](mailto:akin@law.unm.edu). Alternatively, you may find the Zoom information for this meeting below.

The names of the applicants in alphabetical order: **Rosemary Cosgrove-Aguilar, Aletheia V.P. Allen, Gerald Edward Baca, Casey Bruce Fitch, Michael Philip Fricke, Walter M. Hart, III, Megan Kalm, Olga Margaritova Serafimova, Nicholas Mark Sydow, Howard Ralph Thomas and Katherine Anne Wray.** Please change your zoom screen to your first, last name and title (if applicable) to be admitted.

Topic: New Mexico Court of Appeals Nominating Commission Meeting  
Time: Wednesday, Feb. 17, at 9 a.m.

Join Zoom Meeting

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

Meeting ID: 379 615 447

Password: 72146

### Second Judicial District Court Notice To Attorneys

Effective Feb. 8, four new judges will be joining the Criminal Division of the Second Judicial District Court. Judge Bruce Fox will be assigned to Division X. Judge Jennifer J. Wernersbach will be assigned to Division XVI. Judge Britt Marie Baca-Miller will be assigned to Division XX. Judge Joseph Anthony Montano will be assigned to Division XXVI. Individual notices of judge reassignment will be sent to private attorneys in active cases; a list of active case reassignments will be emailed to the Law Offices of the Public Defender, the District Attorney's Office, and the Attorney General's Office in lieu of individual notices of reassignment. An email notification regarding the reassignment of inactive cases and probation violation cases will be sent to the Law Offices of the Public Defender, the District Attorney's Office, the Attorney General's Office, and the private defense bar. You will be afforded an opportunity to exercise a peremptory challenge of the newly appointed judicial officer in accordance with the Rules of Criminal Procedure, NMRA 5-106 and Second Judicial District Court Local Rule 2-308 (Case Management Order) for all

cases filed on or after Jan. 1, in accordance with New Mexico Supreme Court Order No. 20-8500-042, Emergency Court Protocol 3(E).

### Notice Of Mass Reassignment

Pursuant to the Constitution of the State of New Mexico, Judge Alma Cristina Roberson has been appointed to Division VII of the Second Judicial District Court by Governor Michelle Lujan Grisham. Effective Feb. 8, Judge Alma Cristina Roberson will be assigned Children's Court cases previously assigned to Judge John J. Romero, Division VII. You will be afforded an opportunity to exercise a peremptory challenge of the newly appointed judicial officer in accordance with the Children's Court Rules of Procedure, NMRA 10-162 for all cases filed on or after Jan. 1, 2021, in accordance with New Mexico Supreme Court Order No. 20-8500-042, Emergency Court Protocol 3(E).

### Notice of Mass Reassignment:

Pursuant to the Constitution of the State of New Mexico, Judge Catherine A. Begaye has been appointed to Division VIII of the Second Judicial District Court by Governor Michelle Lujan Grisham. Effective Feb. 1, Judge Catherine A. Begaye will be assigned Children's Court cases previously assigned to Judge Cristina T. Jaramillo, Division VIII. You will be afforded an opportunity to exercise a peremptory challenge of the newly appointed judicial officer in accordance with the Children's Court Rules of Procedure, NMRA 10-162 for all cases filed on or after Jan. 1, in accordance with New Mexico Supreme Court Order No. 20-8500-042, Emergency Court Protocol 3(E).

## STATE BAR NEWS COVID-19 Pandemic Updates

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

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

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

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

#### **Monday Night Support Group**

- March 1
- March 8
- March 15

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

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

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

and many more. The Solutions Group offers Work-Life Services. The Work-Life Services is a free, confidential access to professional consultants and online resources. All resources topics, webinars, and the Work-Life Service can be found at [www.solutionsbiz.com](http://www.solutionsbiz.com) The Solutions Group can help with any life situation. Call 505-254-3555, or 866-254-3555 to receive FOUR FREE counseling sessions. Every call is completely confidential and free!

### **State Bar of New Mexico Bankruptcy Law Section 36th Annual Year in Review**

The State Bar of New Mexico Bankruptcy Law Section will be hosting their signature event, the 36th Annual Year in Review. Registration is now open for the Zoom event to take place on March 5 from 9 a.m.-5 p.m. We're moving the event out of the State Bar Center this year and going virtual. This event will be worth 6 general credits and 1 ethics credit. To register, please visit <https://www.eventbrite.com/e/36th-annual-bankruptcy-year-in-review-seminar-tickets-133256839795>. For questions or for more information, please email [imaxwell@maxwellgilchrist.com](mailto:imaxwell@maxwellgilchrist.com) or call 505-999-1182.

### **UNM SCHOOL OF LAW Law Library Hours**

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

— *Featured* —

## **Member Benefit**



Fastcase is a free member service that includes cases, statutes, regulations, court rules and constitutions.

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

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

**Donald Arthur Peterson** died peacefully on Dec. 31, 2020 at the age of 85, and is deeply loved as a husband, father, grandfather, and friend. He was born Dec. 8, 1935 to Arthur and Geneva (Holmes) Peterson in River Forest, Ill. He received his B.A. in Economics from Miami of Ohio University, and an M.A. in City Planning from the University of Pennsylvania. He met his wife and lifelong love Gwendolyn (Entz) Peterson while working as a City Planner in Denver, Colo. They married on Sept. 27, 1963, and immediately left to honeymoon and work for six months in Mannheim, Germany, followed by five months of travel around the world. They then returned to Illinois where Don worked as a City Planner for Lake County, then moved to Albuquerque, N.M. in 1968. He worked for the City of Albuquerque as an assistant planning director, zoning administrator & zoning hearing officer until 1980. He received a J.D. from the University of New Mexico in 1979 and then transitioned to work as a senior policy analyst for the city council until 1994. In 1995 he opened a private practice focused on land use law, and taught at the UNM School of Architecture and Planning, until

retirement in 2005. Don was a committed Christian, and was active in his church throughout his life, serving as a deacon, elder, and an appointee of the general assembly council for his denomination. And he never missed an opportunity for adventure; he and his wife traveled to all seven continents during his lifetime, finishing with Antarctica. He loved hiking, skiing, and square dancing, and in his later years picked up backpacking and camping with the Meadow Muffins hiking group. In 2012 Don was diagnosed with Alzheimer's disease, but even in the throes of the disease never lost his easy smile and sense of humor. His family is grateful for the skillful care he received through the end of his life at The Retreat Alzheimer's Specialty Care. He is survived by his wife Gwendolyn, brother Robert (Suzanne), daughters Nicole (John) and Cecily (David), and grandchildren Elizabeth, Christina, Anya, and Aaron.

**Charles "Chuck" Barth**, age 68, current chief deputy district attorney and retired federal prosecutor, passed away on Jan. 6 surrounded by his family. A celebration of his life will be held a later date when COVID-19 restrictions lift.

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

**FREE SERVICE FOR MEMBERS!**

## Employee Assistance Program

*Get help and support for yourself, your family and your employees.*

**FREE** service offered by NMJLAP.



**The  
Solutions  
Group**

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

To access this service call 855-231-7737 and identify with NMJLAP. All calls are **CONFIDENTIAL**.

*Brought to you by the New Mexico Judges and Lawyers Assistance Program*

**www.nmbar.org/JLAP**

A MESSAGE FROM THE  
**Access to Justice Commission Co-chairs**



Judge Erin B. O'Connell



Ernestina R. Cruz, Esq.

Dear Members of the New Mexico Legal Community:

As Co-chairs of the New Mexico Access to Justice Commission (“ATJ Commission”), we write to share information with you regarding civil legal services in New Mexico. The ATJ Commission was established in 2004 by the New Mexico Supreme Court. The mission of the Commission is to provide every New Mexican, regardless of income level, with access to justice under our system of civil law. A key priority is providing civil legal services to those who are most in need due to limited economic resources. Goals of the commission include expanding resources for civil legal assistance to New Mexicans living in poverty, increasing public awareness of the need for civil legal assistance and expanding pro bono opportunities for lawyers.

The ATJ Commission evaluates the civil legal needs of low and middle-income people from across the state and makes a statewide plan that identifies the priorities for civil legal service providers. We also assist year-round to troubleshoot and address civil legal service issues that are brought to our attention by civil legal service providers, attorneys, the public, the courts, or from world events, e.g., COVID-19.

The ATJ Commission was initially chaired by Justice Petra Maes and Judge Sarah Singleton, who worked tirelessly in advancing New Mexico’s effort to ensure civil legal services are provided to the citizens of New Mexico. More recently, Judge Nan Nash and Elizabeth McGrath chaired the commission and led the effort to develop New Mexico’s Justice for All Plan, which Justice Shannon Bacon discusses in the companion article found in this edition of the *Bar Bulletin*. On behalf of the ATJ Commission, we would like to thank Judge Nash and Ms. McGrath for their diligence in moving the cause for access to justice forward in the state of New Mexico. While we certainly have big shoes to fill as we transition into leadership positions with the ATJ Commission, we look forward to working collaboratively with the other ATJ Commission members, the civil legal service providers throughout the state, and others in New Mexico’s legal community to ensure civil legal services are made available to those in need of such assistance.

In the years ahead, the ATJ Commission will communicate regularly with you through the *Bar Bulletin* and other resources. We will share with you various opportunities to participate in access to justice related activities to include pro bono work, CLEs, and other community-based programs. We hope that you will join us in being part of the solution to ensure that the civil legal service needs are met for members of the public in our state.

Should you have any ideas or suggestions to share with the ATJ Commission, please contact Grace Spulak, Director of the ATJ Commission, at [aocgs@nmcourts.gov](mailto:aocgs@nmcourts.gov). We look forward to being of service in the years ahead!

Sincerely,

A handwritten signature in black ink, appearing to read "Erin O'Connell".

Judge Erin B. O'Connell  
Second Judicial District Court &  
Co-Chair, ATJ Commission

A handwritten signature in black ink, appearing to read "Ernestina R. Cruz".

Ernestina R. Cruz, Esq.  
Immediate Past President of the SBNM &  
Co-Chair, ATJ Commission

# ...And Justice Civil Legal Help For Everyone **For All**

## Know Your Rights

### New Mexico Commission on Access to Justice Launches “Know Your Rights During Covid-19” Campaign

*By Justice C. Shannon Bacon, Supreme Court of New Mexico*

As part of its ongoing Justice for All initiative, the New Mexico Commission on Access to Justice (ATJ) in January rolled out a series of Public Service Announcements to educate New Mexicans about their civil legal rights during the COVID-19 pandemic. The PSAs were created by Carroll Strategies.

NMC Know Your Rights 30  
<http://youtu.be/meODpxQMyvw>

NMC Eviction 15  
<http://youtu.be/zrEAbIIVKmQ>

NMC Employment Rights 15  
<http://youtu.be/nSDNfKVJigU>

In addition to the PSAs, the Commission provided op-eds to news outlets around the state. The op-eds offer more detail on civil legal services available to New Mexicans in cases involving issues such as housing, unemployment benefits, and domestic violence.

Justice for All is an ambitious plan to expand the reach of civil legal resources in the state. The product of a two-year effort by 60 attorneys, community members and court officials from around the state, the plan not only addresses long-term civil legal needs but is well-timed to help low- and middle-income New Mexicans address civil legal needs during the COVID-19 pandemic.

Approved by the Supreme Court in 2019, the Justice for All Plan seeks to identify and remove barriers to legal services in civil cases ranging from safe housing and work environments to health care and financial issues.

Growing numbers of New Mexicans are representing themselves in complicated civil cases because of barriers to securing legal help. Civil legal service providers were able to represent 16,000 New Mexicans in court proceedings in 2018, but an estimated 64,000 were left out.

Many self-represented litigants have never been to court before and have no idea what to do inside a courtroom. Yet about half of all newly-filed civil cases in state district courts in fiscal year 2019 had at least one self-represented party. That is up from 36 percent in the 2011 fiscal year.<sup>1</sup>

Barriers include the cost of legal help, a lack of available attorneys in many areas of New Mexico, and systemic issues such as racism that interfere with access.

A recent report reveals that twenty-one percent of New Mexico’s counties have five or fewer lawyers, and two counties have no attorneys at all. These legal deserts, a huge access to justice barrier, compel the state civil justice system to look for possible solutions.<sup>2</sup>



*In January 2020, Supreme Court Justice C. Shannon Bacon testified before the House Judiciary Committee on civil legal services needs. Photo courtesy of the Administrative Office of the Courts.*



Additionally, many people, understandably, do not recognize their problems as legal in nature. Unaddressed legal issues can lead to serious consequences, such as losing one's home, losing custody of one's children, or being deprived of one's civil rights.

**The Justice for All Plan proposes the following measures:**

- Expand full-service representation so that more people have attorneys, which includes expanding funding for the civil legal services programs.
- Expand self-help legal resources, including creating instructional videos that explain procedures for different types of legal matters such as changing child custody, dealing with an eviction and preparing for a court hearing.
- Explore creating a statewide online self-help service center that people could access by videoconferencing, an online chat system, text messaging and web co-browsing.
- Develop more “plain language” court forms for people who represent themselves in a lawsuit.
- Expand the online Guide & File service offered by courts to assist people prepare documents. The free service is available now only for divorce and domestic violence cases. The web-based application works much like software for preparation of tax returns.
- Develop legal practice guides for attorneys to help them offer free legal assistance on types of cases that are outside of their area of expertise.

During the pandemic demand has increased for help with specific civil legal issues such as evictions, foreclosures, access to medical care, unemployment, and obtaining federal stimulus payments. The Access to Justice Commission worked with Metro Court and the City of Albuquerque to develop a settlement facilitation program to help landlords and tenants in stayed eviction cases. The Commission also recommended that the Supreme Court stay evictions during the pandemic.

With regard to remote court hearings, the Commission has advocated remedies such as free Wi-Fi hotspots and court procedures to ensure self-represented litigants do not receive defaults if technology challenges prevent them from connecting to hearings.

Commission staff has provided technical help to court self-help centers around the state for remote service delivery, including telephone legal clinics.

In a related move, the New Mexico Supreme Court in 2020 formed three work groups to investigate ideas for improving legal access.

One group is working with Access to Justice Commission members on a Court Navigators program for specially-trained, supervised personnel to assist people who do not have an attorney.

A second group is addressing the lack of representation in rural New Mexico, and a third group, in response to an Access to Justice initiative, is evaluating a program that allows nonlawyer “limited license legal technicians” to provide civil legal services to people unable to find, let alone afford, a licensed attorney.

The Justice for All concept was developed in 2015 when the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) unanimously resolved to support a goal of 100 percent access to effective assistance for essential civil legal needs and urged state ATJ Commissions to provide leadership.

The central assertion of the CCJ-COSCA resolution is that “The promise of equal justice is not realized for individuals and families who have no meaningful access to the justice system.”<sup>3</sup>

***For more information on the New Mexico Justice for All initiative:***  
<https://accesstojustice.nmcourts.gov/justice-for-all-initiative.aspx>

**Endnotes:**

<sup>1</sup> Administrative Office of the Courts. District Civil Cases Counts with Pro Se Attorneys and Percentage of New Cases FY11 through FY19.

<sup>2</sup> Vogt, RJ. Legal Deserts Push NM To Consider Nonlawyer Services. Law 360, June 2, 2019.

<sup>3</sup> CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS RESOLUTION 5 Reaffirming the Commitment to Meaningful Access to Justice for All, 2015. [https://ccj.ncsc.org/\\_\\_data/assets/pdf\\_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf](https://ccj.ncsc.org/__data/assets/pdf_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf)



*By Richard Cravens*

Jury trials are an integral part of our process. The Supreme Court recently vacated all jury trials until 2021 due to the current COVID 19 pandemic. At this time it appears that the plan is to resume some form of in person jury trials in February 2021. However, plans are fluid because safety is a moving target. Until there is general distribution of the vaccines currently in production, it is not clear when it will be safe to conduct in person jury trials.

However, that does not mean we cannot safely conduct trial by video. In fact, that is the only way to 100% guarantee personal safety in the judicial process during the pandemic. While we do our best with questionnaires and thermometers, we still rely on the honor system and the only way to absolutely guarantee safety is to not be in the same room.

I have family members who cannot get COVID and we have essentially been in quarantine since March 2020. I do not plan on stepping foot in a courtroom again until we are all vaccinated. I have not been able to conduct a trial, hearing, deposition or mediation in person during this time. That does not mean I have not been busy. In addition to numerous mediations and depositions by Zoom, I have already conducted two bench trials by video and there are good reasons to do the same with jury trials.

I seldom need to touch, taste, or smell a person or evidence, and I can see the judge and jury better on my monitors than I can 20 feet away in a courtroom. I don't have to wear a mask on video, but I do in person. I only need one set of exhibits for everyone on video, as opposed to a separate set for everyone in person because we cannot pass objects to each other. I do not have to rely on whether everyone in the room adhered to best COVID practices. I can continue to do business even if I have been exposed and am actively quarantined, without worrying that I will expose others.

I began thinking about the logistics of video trials in March when we first started to face the current reality. One of my first concerns was how to keep honest jurors honest. Fortunately, we have had compliance software in other contexts for many years and most of the bugs are already worked out.

For example, my oldest daughter is currently going to school in Oregon, from our home here in Albuquerque. She takes a full load of classes including science and math courses, some of which require proctored exams. The exam process is designed to ensure remote-controlled compliance. When taking a test the student is not allowed certain materials depending on the class. The student's proctoring software shuts off access to the rest of her computer and the student is required to physically pick up the computer, scan the camera around the room and show the test environment to the proctors when the exam starts. During the test students are required to do the same at random intervals. My daughter described one of her cats walking in front of the camera during a test and less than a minute later she was instructed by a proctor to scan the room again.

The Court can control the hardware and software used much like Albuquerque Public Schools does for its remote learning process during the pandemic. When the decision was made to conduct classes by video all of the students at my youngest daughter's school were required to pick up a Chromebook, which was provided by the school, so that the tech, software and security were standardized and controlled.

APS, which is not known for speed, got that together within weeks. If we can find a way to keep educating our kids in the midst of this mess, we should be able to find a way to conduct jury trials.

It is not feasible to postpone jury trials until we can meet face to face and we really don't know when that will be. There is no reason we cannot accomplish a fair and successful jury trial by video, just as we are doing right now with bench trials.

On May 4, 2020 I had my first bench trial by video in a civil matter in the Second Judicial District. During the proceeding, my entire file was at my fingertips; all of my exhibits were electronic and cued up on one of my monitors. The judge in our case was fairly adept with the technology and provided counsel with an opportunity to practice using Google Meet at the Pretrial Conference a week before the day of trial. We admitted most of the exhibits at the Pretrial Conference, which streamlined the process significantly. We started at 8:30 and finished at 5:15. My two witnesses, of which one was our

expert, appeared by Google Meet. My opposing counsel had witnesses appear by video and by phone.

We got the job done. We presented evidence, we questioned witnesses, and we made arguments, all by video. I presented rebuttal exhibits on screen and had highlighted demonstrative exhibits, which were easy to share electronically. While my on-screen presence showed a jacket and tie, my lower half was in cargo shorts and flip flops.

I was truly a convert on September 14, 2020 when I had a dispositive motion hearing in ABQ at 11 am and a bench trial in Taos at 1:15 that afternoon and still had time for a leisurely lunch and coffee. I did not put myself in harm's way by driving, which until COVID 19 was the most dangerous activity I conducted on a daily basis. Now it is shopping.

Safety first, of course. Social distancing is lot easier when we sit in different buildings, sometimes in different states. The current health orders make it impossible to have more than five persons gathered and there is no reason to do so when there is software that is easy to use and the actual product is better in some ways than being there.

Sitting in a courtroom will mean wearing masks. Jurys already think we hide stuff and covering our faces will not help our credibility, depending on the face. CLE's have taught us for years that younger juries increasingly learn by video and it is an effective way to communicate with persons who are conditioned to getting their information by screen.

Allowing jurors, witnesses, parties and counsel to attend by video will promote access to the Courts, which is a primary goal of our justice system. If we continue the practice beyond the current crisis we encourage jury participation, which is notoriously viewed as onerous. Working parents, small business owners, and others may more freely participate in the process when actually getting to and being in the Courthouse would otherwise constitute a hardship.

Wheelchair access is not a problem while attending electronically, and my older clients can hear proceedings better on their electronic devices than they can with the glitchy headphones provided by the Court. Translation services will

be more accessible across a broader range of languages. We can make the jury trial process more user friendly.

COVID 19 has already affected court personnel, whose jobs have evolved into requiring more tech and video expertise. Job opportunities will emerge. Security would be enhanced. Judges will be safer. Everyone will be safer.

New Mexicans would benefit from remote attendance as we are a rural state and our outlying counties are underserved. This would present more opportunities for rural clients to obtain the counsel of their choice and allow rural attorneys to participate in larger markets.

Technology has significantly evolved the practice of law in the relatively short time that I have had my license. I remember going to libraries and looking in books for statutes, cases and ordinances. When I needed to learn a new area of law, I used hard bound legal encyclopedias to get started. Updating cases involved a laborious process called shepherding, which meant going from book to book in an arcane system ostensibly designed to frustrate. I spent a lot of time in libraries. Now it seems that the law library is primarily a place for the public to use free computers preloaded with Westlaw and Lexis Nexis.

It would likely be malpractice to depend on paper books and the University of New Mexico Law Library removed Shepherd's Citations from circulation years ago. With Westlaw and Lexis Nexis I have all those libraries in my laptop, and more. We are more productive attorneys now than we were before.

Ordinarily it would take a great force, or a great catalyst to change fundamental practices. COVID 19 is both and we are forced to adapt. We have all of the technological tools; we just need to adapt them to our specific uses.

Courts were not operating at a leisurely pace before the pandemic and things have not improved since. As we must find a way forward despite the difficulties, let's find all the silver linings we can. Jury trials by video will allow us to continue to get the job done while it is difficult, and help us to be more productive and efficient when we get past the current crisis.

### Resources Shared by Mr. Cravens:

**IT Help:** If you need tech help with any remote platforms, Stephen Money is a trusted source and has worked for attorneys for many years. He understands our needs and is willing to help out the NM legal community.

**Contact information:** Stephen Money, 702-813-2286, [stephen@setmohelpdesk.com](mailto:stephen@setmohelpdesk.com)

#### Zoom Support Page:

<https://support.zoom.us/hc/en-us>

#### GoToMeeting Support Page:

<https://support.goto.com/meeting>

#### Google Meet Video Support Page:

<https://support.google.com/meet/?hl=en#topic=7306097>

*Richard Cravens graduated from the University of New Mexico School of Law at the age of 46. Richard initially practiced as an insurance defense attorney until he opened his own law firm on April 1, 2014. Richard's practice primarily focuses on personal injury and complex litigation; however, he also represents homeowners in the foreclosure process. Richard has been a volunteer member of the Judges and Lawyers' Assistance Program and the University of New Mexico Health Sciences Center Biomedical Ethics Committee since he was a second-year law student.*

# REPORT BY DISCIPLINARY COUNSEL

# DISCIPLINARY QUARTERLY REPORT

Reporting Period: October 1, 2020 – December 31, 2020

## Final Decisions

Final Decisions of the NM Supreme Court ..... 0

## Summary Suspensions

Total number of attorneys summarily suspended ..... 0

## Administrative Suspensions

Total number of attorneys administratively suspended..... 1

## Disability Inactive Status

Total number of attorneys removed from disability inactive states ..... 0

## Charges Filed

Charges were filed against an attorney for allegedly failing to competently represent a client; failing to diligently represent a client; engaging in conduct intended to disrupt a tribunal; and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly knowingly making a false statement in connection with a disciplinary proceeding; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct that is prejudicial to the administration of justice.

## Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law ..... 0

## Reciprocal Discipline

Total number of attorneys reciprocally disciplined ..... 0

## Reinstatement from Probation

Petitions for reinstatement filed ..... 1

## Formal Reprimands

Total number of attorneys formally reprimanded ..... 1

## Informal Admonitions

Total number of attorneys admonished ..... 2

## Letters of Caution

Total number of attorneys cautioned ..... 4

Attorneys were cautioned for the following conduct: (1) conflict of interest; (2) harassment; (3) contact or threats to opposing party, and (3) dishonesty, fraud and deceit.

### *Complaints Received*

<b>Allegations.....</b>	<b>No. of Complaints</b>
Trust Account Violations.....	3
Conflict of Interest.....	3
Neglect and/or Incompetence.....	17
Misrepresentation or Fraud.....	14
Relationship with Client or Court.....	2
Fees.....	3
Improper Communications.....	1
Criminal Activity.....	0
Personal Behavior.....	1
Other.....	26
Total number of complaints received.....	91

# Legal Education

## February

- |   |  |   |
|---|--|---|
| <p>24 <b>Do I have a Problem? The Law Profession's Struggle with Substance Abuse</b><br/>1.0 EP<br/>Live Webinar<br/>Attorney Protective<br/>attorneyprotective.com</p> | <p>24 <b>How to Fix a Broken Trust: Decanting, Reformation &amp; Other Tools</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p>25 <b>LLC/Partnerships Interests: Collateral, Pledges, and Security Interests</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>26 <b>Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice &amp; More</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
|---|--|---|

## March

- |  |  |  |
|--|--|--|
| <p>2 <b>Trust &amp; Estate Planning for Religious and Philosophical Beliefs</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>2 <b>AILA Virtual Midwinter Conference</b><br/>6.0 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p> <p>3 <b>Google Scholar: Unlock the Mysteries of Searching its Free Case Law and Articles Database</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>4 <b>Drafting Legal Holds in Civil Litigation</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p>5 <b>36th Annual Year in Review</b><br/>6.0 G, 1.0 EP<br/>Live Webinar<br/>State Bar of New Mexico<br/>Bankruptcy Law Section<br/>505-999-1182</p> <p>9 <b>Drafting Sales Agreements: UCC Issues and More</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>10 <b>Top 10 Music Copyright Cases of All Time</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>10 <b>Bridge the Gap Mentorship Program CLE For Government Attorneys</b><br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p>11 <b>Bridge the Gap Mentorship Program CLE For For Civil Attorneys and DA/PDs</b><br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>12 <b>Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>12 <b>Counseling the Client Regarding Form I-9 Compliance and Discrimination</b><br/>1.5 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> <p>12-14 <b>Taking and Defending Depositions</b><br/>31.0 G, 4.5 EP<br/>Live Webinar<br/>UNM School of Law<br/>505-277-0609</p> |
|--|--|--|

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

- |  |   |   |
|--|---|---|
| <p><b>16 Franchise Agreements: What You Need to Know Before Your Clients Signs, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>23 Mother Nature &amp; Leases: Drafting Issues to Protect Against Storm &amp; Other Damage</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>26 Staying Out of the News: How To Avoid Making the Techno-Ethical Mistakes that Put You on the Front Page</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>17 Franchise Agreements: What You Need to Know Before Your Clients Signs, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>24 How Mindfulness Can Help You Avoid Legal Burnout, Continue to Competently Perform Legal Services, and Remain Ethically Compliant</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>26-28 Taking and Defending Depositions</b><br/>31.0 G, 4.5 EP<br/>Live Webinar<br/>UNM School of Law<br/>505-277-0609</p>   |
| <p><b>19 Changing Minds Inside and Out of the Courtroom</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                              | <p><b>25 Ethics for Transactional Lawyers</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>30 Undue Influence and Duress in Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>22 Destination CLE 2020</b><br/>1.0 G<br/>Live Webinar<br/>Destination CLEs<br/>907-231-2111</p>   | <p><b>25 Nonprofits and Commercial Real Estate</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>30 Avoiding Malpractice and Staying Ethically Compliant: The Good, The Bad And The Ugly Of Legal Technology</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |

## April

- |   |  |   |
|---|--|---|
| <p><b>9 Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>14 E-Discovery for Small Cases</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>16 Deepfakes Audios and Videos: What Lawyers Need to Know</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
|---|--|---|

# Opinions

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

---

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

## Effective January 29, 2021

### PUBLISHED OPINIONS

A-1-CA-36745	J Chavez-Neal v. S Kennedy	Reverse/Remand	01/25/2021
--------------	----------------------------	----------------	------------

### UNPUBLISHED OPINIONS

A-1-CA-38697	State v. C Ferrier	Affirm	01/25/2021
A-1-CA-36340	F Salas v. Clark Equipment	Affirm/Reverse/Remand	01/26/2021
A-1-CA-38596	State v. J Taylor	Affirm	01/26/2021
A-1-CA-38881	State v. T Quattlander	Affirm	01/26/2021
A-1-CA-37439	High Country Landscapes v. H McDonald	Affirm/Reverse/Remand	01/28/2021
A-1-CA-38553	State v. B Jackson	Affirm	01/28/2021
A-1-CA-38941	State v. S Lee	Affirm	01/28/2021
A-1-CA-39212	E Huerta v. J Martinez	Affirm	01/28/2021
A-1-CA-37795	Nationstar Mortgage v. L Martinez	Reverse	01/29/2021
A-1-CA-38064	M Rodriguez v. A Tapia	Affirm/Reverse	01/29/2021
A-1-CA-38224	G Hinojos v. City of Elephant Butte	Affirm	01/29/2021
A-1-CA-38669	In the Matter of J. A. Herrmann & J. Herrmann Revocable Trust	Affirm	01/29/2021

## Effective February 5, 2021

### PUBLISHED OPINIONS

A-1-CA-36967	State v. J Aguilar	Affirm/Reverse/Remand	02/02/2021
A-1-CA-38071	State v. A Sena	Reverse/Remand	02/04/2021

### UNPUBLISHED OPINIONS

A-1-CA-36701	Khalsa v. Puri	Affirm/Remand	02/02/2021
A-1-CA-38598	CYFD v. Angela C	Affirm	02/03/2021
A-1-CA-38965	CYFD v. Tyyarri L.	Affirm	02/03/2021
A-1-CA-37405	City of Rio Rancho v. W. Lundy	Affirm	02/04/2021
A-1-CA-38139	J Aguirre v. Leprino Foods	Affirm	02/04/2021
A-1-CA-38403	G Moreschini v. M Grover	Affirm	02/04/2021
A-1-CA-38458	C Moya v. G Baca	Affirm	02/04/2021
A-1-CA-38999	State v. R Aguirre	Affirm	02/04/2021

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 REINSTATEMENT TO ACTIVE STATUS AND CHANGE OF ADDRESS

---

Effective December 16, 2020:  
**Charles William Aldrete**  
445 Recoleta Road  
San Antonio, TX 78126  
210-387-7227  
cwaldrete@gmail.com

---

## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

---

Effective December 29, 2020:  
**Denise L. Amanatidis**  
The Hartford  
1838 E. Claremont Street  
Phoenix, AZ 85016  
480-203-1570  
dlsieg123@gmail.com

---

## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

---

Effective January 1, 2021:  
**Lauren Marie Ammerman**  
10803 San Francisco Road,  
NE  
Albuquerque, NM 87122

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**Arthur O'Neal Beach**  
5008 Grey Hawk Court, NW  
Albuquerque, NM 87120

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**Gordon E. Berman**  
6121 Justin Lane  
Las Cruces, NM 88007

---

## CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

---

Effective January 25, 2021,  
and has a new address:  
**Frances P. Brummett**  
c/o Law Office of William R.  
Brummett  
PO Box 14504  
Albuquerque, NM 87191

---

## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

---

Effective December 11, 2020:  
**Carolyn Callaway**  
1428 Catron Avenue, SE  
Albuquerque, NM 87123  
505-291-9774  
ccwes@aol.com

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**Shannon Laurie Donahue**  
208 Princessa Lane  
Pismo Beach, CA 93449

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**Juliana M. Fong**  
7800 SW Linden Road  
Portland, OR 97225

---

## CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

---

Effective January 25, 2021,  
and has a new address:  
**Norman Samuel Fulton III**  
387 E. Allen Street #35  
Castle Rock, CO 80108

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**Joseph Erwin Gant III**  
PO Box DD  
Carlsbad, NM 88220

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective December 31, 2020:  
**B. Reid Haltom**  
570 Black Bear Road, NE  
Albuquerque, NM 87122

---

## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

---

Effective December 10, 2020:  
**Steven A. Harrell**  
7400 San Pedro Drive, NE,  
#1021  
Albuquerque, NM 87109  
Placitas, NM 87043  
505-363-6239  
crmarler77@gmail.com

---

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

---

Effective December 16, 2020:  
**Onawa L. Haynes**  
9940 Savannah Marie Avenue  
Las Vegas, NV 89149  
505-702-9934  
onawalacy@gmail.com

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**Tyler Holyfield**  
845 W. Page Avenue  
Gilbert, AZ 85233

---

## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

---

Effective December 16, 2020:  
**Luis Brijido Juarez**  
Amparo Legal Services LLC  
721 Fifth Street, NW  
Albuquerque, NM 87102  
505-429-4177  
lbjuarez@cybermesa.com

---

## CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

---

Effective January 25, 2021:  
**Julie R. Kipp**  
700 Fifth Avenue,  
Suite 2700  
Seattle, WA 98104

---

## CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

---

Effective January 25, 2021:  
**Rita Kreymer**  
192 W. Los Arboles Drive  
Tempe, AZ 85284

---

## CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

---

Effective January 25, 2021:  
**Christine Michelle  
Kulumani**  
901 Fourth Street, NW  
Washington, DC 20001

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective January 25, 2021:  
**George Levine**  
4605 S. 3rd Street #2  
Louisville, KY 40214



**CLERK'S CERTIFICATE  
OF NAME CHANGE**

As of December 7, 2020:  
**AnneMarie C. Lewis**  
 f/k/a AnneMarie Cherokee  
**Peterson**  
 Office of the Fifth Judicial  
 District Attorney  
 102 N. Canal Street,  
 Suite 200  
 Carlsbad, NM 88220  
 575-885-8822  
 575-887-3616 (fax)  
 alewis@da.state.nm.us

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective January 25, 2021:  
**Renaë Nanna**  
 1144 15th Street,  
 Suite 3300  
 Denver, CO 80202

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 16, 2020:  
**John Nelson**  
 23014 Fairway Bridge  
 San Antonio, TX 78258

**CLERK'S CERTIFICATE  
OF LIMITED  
ADMISSION**

On December 17, 2020:  
**Michael John Pannitto**  
 Law Offices of the Public  
 Defender  
 505 S. Main Street,  
 Suite 121  
 Las Cruces, NM 88001  
 575-541-3193  
 michael.pannitto@lopdnm.us

**CLERK'S CERTIFICATE  
OF WITHDRAWAL AND  
CHANGE OF ADDRESS**

Effective December 16, 2020:  
**Deborah J. Raines**  
 PO Box 1027  
 Cedar Crest, NM 87008

**CLERK'S CERTIFICATE  
OF WITHDRAWAL AND  
CHANGE OF ADDRESS**

Effective December 16, 2020:  
**David F. Richards**  
 328 N. Keaton Court  
 Lawrence, KS 66049

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 16, 2020:  
**Lucinda Scarlet**  
 PO Box 90652  
 Albuquerque, NM 87199

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

Effective December 29, 2020:  
**Gregory E. Sopkin**  
 Wilkinson Barker Knauer,  
 LLP  
 2138 W. 32nd Avenue,  
 Suite 300  
 Denver, CO 80211  
 303-626-2327  
 gsopkin@wbkllaw.com

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 16, 2020:  
**Jonathan Evan Sperber**  
 PO Box 771  
 Truro, MA 02666

**CLERK'S CERTIFICATE  
OF REINSTATEMENT  
TO ACTIVE STATUS**

Effective December 16, 2020:  
**David A. Stevens**  
 3101 Old Pecos Trail #151  
 Santa Fe, NM 87505  
 505-670-9038  
 davidalanstevens@gmail.com

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective January 25, 2021:  
**Kody J. Thurgood**  
 2020 S. McClintock Drive,  
 Suite 107  
 Tempe, AZ 85282

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 31, 2020:  
**Steven Lee Tucker**  
 369 Montezuma Avenue,  
 Suite 326  
 Santa Fe, NM 87501

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective January 25, 2021:  
**Stephen Joseph Vogel**  
 1203 Morningside Drive, NE  
 Albuquerque, NM 87110

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 16, 2020:  
**Jana C. Werner**  
 641 N. Woodlawn Street #42  
 Wichita, KS 67208

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 16, 2020:  
**Julia Victoria Gregory White**  
 301 W. Jefferson Street  
 Phoenix, AZ 85003

**CLERK'S CERTIFICATE  
OF WITHDRAWAL**

Effective December 16, 2020:  
**Michael N. Zachary**  
 701 El Camino Road  
 Redwood City, CA 94063

**CLERK'S CERTIFICATE  
OF ADMISSION**

On January 25, 2021:  
**Malerie Tenille Anderson**  
 Craddock Davis Krause LLP  
 3100 Monticello Avenue,  
 Suite 550  
 Dallas, TX 75205  
 214-750-3557  
 manderson@cdkllawfirm.com

**Matthew Justin Badders**  
 Drought, Drought & Bobbitt  
 LLP  
 2632 Broadway, Suite 401-S  
 San Antonio, TX 78215  
 210-225-4031  
 210-222-0586 (fax)  
 mjb@ddb-law.com

**Kacie Moravec Bevers**  
 Steptoe and Johnson PLLC  
 1780 Hughes Landing Blvd.,  
 Suite 750  
 The Woodlands, TX 77380  
 281-203-5770  
 kacie.bevers@  
 steptoe-johnson.com

**Bradley W. Bowen**  
 1531 Creekview Cove  
 Cottonwood Heights, UT  
 84121  
 801-971-7801  
 bradley0306@gmail.com

**Katherine M. Boyd**  
 Steed Barker Boyd  
 8323 Barberr Branch Street  
 Houston, TX 77055  
 832-586-6573  
 kboyd@steadbarkerlaw.com

**Robert Blake Brunkenhoefer**  
 Brunkenhoefer PC  
 500 N. Shoreline Blvd.,  
 Suite 1100  
 Corpus Christi, TX 78401  
 361-888-8808  
 361-888-5855 (fax)  
 bbrunk@brunklaw.com

**Mizael Carrera**  
 4518 N. Kedzie Avenue  
 Chicago, IL 60625  
 630-962-0600  
 mizaelcarreraus@gmail.com

**Heather Ann Cornwell**  
 Lerner & Rowe  
 2701 E. Camelback Road,  
 Suite 130  
 Phoenix, AZ 85016  
 602-977-1900  
 623-231-3834 (fax)  
 hcornwell@gmail.com

**Shaina N. Corpodian**  
 LM Construction Co., LLC  
 6020 Yellowstone Avenue  
 Las Vegas, NV 89156  
 702-371-3028  
 scorpodian@gmail.com

**Justin M. Ferris**  
 Faber and Brand, LLC  
 PO Box 10110  
 Columbia, MO 65205  
 888-233-3141  
 justinferris@faberandbrand.  
 com

**Kelsey Brennan Guiot**  
5606 SMU Blvd., Box 600429  
Dallas, TX 75360  
617-807-0364  
kelsbguiot@gmail.com

**Radha Inguva**  
Stateside Associates  
10337 Planter Box Street  
Las Vegas, NV 89178  
702-682-2859  
radha.inguva@me.com

**Jacob Jones**  
419 W. Cain Street  
Hobbs, NM 88240  
575-263-2272  
jacob.jones@lopdm.us

**Kevin A. Kornegay**  
Chad Jones Law, PC  
2811 S. Earl Rudder Fwy.  
College Station, TX 77845  
979-595-5000  
kevin@chadjoneslaw.com

**Illya P. Kulish**  
Ernst & Young  
121 Stout Court  
Hercules, CA 94547  
415-412-5121  
illyakulish@gmail.com

**James Benjamin Martin**  
Beatty & Wozniak, PC  
216 16th Street, Suite 1100  
Denver, CO 80202  
303-407-4499  
800-886-6566 (fax)  
jmartin@bwenergylaw.com

**Lou E. Metsu**  
West African Community  
Council  
19435 68th Avenue S.,  
Suite S-105  
Kent, WA 98032  
206-779-5429  
loum@waccofseattle.org

**Amy Wilkens Mohr**  
Lorber Greenfield & Polito  
LLP  
820 Second Street, NW  
Albuquerque, NM 87102  
505-307-4332  
505-213-0144 (fax)  
awilkens@lorberlaw.com

**David James Moraine**  
Moraine & Associates, P.LLC  
60 Village Lane,  
Suite 110  
Colleyville, TX 76034  
469-990-3626  
817-755-6079 (fax)  
service@texcourts.com

**Melissa K. O'Rourke**  
1450 S. Cooper Road #2120  
Chandler, AZ 85286  
703-508-2792  
melissakorourke@gmail.com

**James P. Parrot**  
Beatty & Wozniak  
216 16th Street,  
Suite 1100  
Denver, CO 80202  
303-407-4458  
jparrot@bwenergylaw.com

**Nicole Perry**  
Office of the Twelfth Judicial  
District Attorney  
300 Central Avenue  
Carrizozo, NM 88310  
575-443-2614  
nperry@da12th.state.nm.us

**Grant E. Singleton**  
PO Box 79036  
Saginaw, TX 76179  
817-996-0609  
grantsingleton7@gmail.com

**Dana L. Strueby**  
Shook, Hardy & Bacon LLP  
2555 Grand Blvd.  
Kansas City, MO 64108  
816-559-2749  
dstrueby@shb.com

**Ryan William Vetter**  
5225 Paseo Panorama  
Yorba Linda, CA 92887  
714-305-8038  
ryanwvetter@gmail.com

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2020-NMSC-004**

No: S-1-SC-36999 (filed December 12, 2019)

STATE OF NEW MEXICO,  
Plaintiff-Petitioner,  
v.  
JEFFREY ASLIN,  
Defendant-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI**

T. GLENN ELLINGTON, District Judge

Released for Publication February 18, 2020.

HECTOR H. BALDERAS,  
Attorney General  
MARKO DAVID HANANEL,  
Assistant Attorney General  
Santa Fe, NM  
for Petitioner

BENNETT J. BAUR,  
Chief Public Defender  
MATTHEW J. EDGE,  
Assistant Appellate Defender  
Santa Fe, NM  
for Respondent

## Opinion

**Michael E. Vigil, Justice.**

{1} Rule 5-805(C) NMRA allows each judicial district to establish a technical violation program (TVP) by local rules whereby probationers can agree to automatic sanctions for technical violations of probation. In the case of Defendant Jeffrey Aslin, the district court ruled that Defendant's probation violation was not a technical violation under the First Judicial District's temporary TVP, and the court revoked Defendant's probation. On direct appeal the Court of Appeals reversed, holding that the definition of a technical violation in the First Judicial District's temporary TVP conflicted with the definition of a technical violation in Rule 5-805(C). *State v. Aslin*, 2018-NMCA-043, 421 P.3d 843, cert. granted (S-1-SC-36999, June 25, 2018). On certiorari, the State contends that the Court of Appeals misinterpreted Rule 5-805(C). We agree.

### BACKGROUND

{2} Rule 5-805(C) permits a judicial district to establish a TVP by local rule. A TVP is "a program for sanctions for probationers who agree to automatic sanctions for a technical violation of the conditions of probation." *Id.* However, all local rules

proposed for the district courts must receive Supreme Court approval pursuant to Rule 5-102(A)(1) NMRA. When we adopted Rule 5-805(C), we recognized that the approval process could unreasonably delay the ability of a judicial district to establish a TVP, and we authorized each judicial district to establish a temporary TVP under a provisional administrative order, to remain effective until final Supreme Court approval of a judicial district's local rule. Following this procedure, the First Judicial District established its temporary TVP in 2012. The local rule, LR1-306 NMRA, which establishes the permanent TVP in the First Judicial District, was approved for all cases filed in the district courts of the First Judicial District on or after December 31, 2016. Because the temporary TVP was in effect in December 2014 when the district court placed Defendant in the TVP and because the probation violations occurred in 2014 and 2015, LR1-306 does not apply, and the temporary TVP governs. For ease of reference we hereinafter refer to the temporary TVP simply as the TVP.

{3} Under the TVP, a probationer who was in the program and committed a technical violation of probation waived the procedural rights provided for in Rule 5-805 and was subject to a progressive disciplinary scheme. A first violation

allowed a sanction of up to three days in jail, a second violation allowed up to seven days in jail, a third violation allowed up to fourteen days in jail, and a fourth violation allowed up to twenty-one days in jail. The TVP in pertinent part defined "technical violations" of a probation agreement as

- (1) having a positive urine or breath test or other scientific means of detection for drugs or alcohol;
- (2) possessing alcohol;
- (3) missing a counseling appointment;
- (4) missing a community service appointment;
- (5) missing an educational appointment; or
- (6) the failure to comply with any term of, or to complete, any treatment program or any other program required by the court or probation.

{4} Pursuant to a plea and disposition agreement, Defendant had pleaded guilty to trafficking a controlled substance (methamphetamine) by distribution. On September 3, 2014, Defendant was sentenced to nine years of incarceration, all of which was suspended with three years of supervised probation. Defendant then signed a standard order setting conditions of probation, and he agreed to comply with its terms. Three months later, on December 15, 2014, Defendant admitted to violating probation after he tested positive for consuming alcohol. Under the TVP, "[t]he court, in its discretion, with the knowing and voluntary consent of the probationer, may order placement of a probationer into the TVP at any time during that person's period of supervised probation." The district court reinstated Defendant's probation and placed Defendant into the TVP.

{5} While in the TVP, Defendant committed first and second technical violations when he tested positive for methamphetamine in June and again in August 2015. In accordance with the TVP, Defendant served three days and then seven days in jail for these violations. Upon his release from the seven-day jail sentence, Defendant's probation officer instructed Defendant to enter, participate in, and successfully complete the Community Corrections Program.

{6} On October 6, 2015, Defendant was arrested on new criminal charges of possessing a stolen vehicle, NMSA 1978, § 30-16D-4 (2009), and altering or changing a motor vehicle engine number or other number, NMSA 1978, § 30-16D-6 (2009). The State thereupon filed a petition

to revoke probation on two grounds: (1) Defendant had committed new criminal offenses, and (2) Defendant failed to enter a drug treatment program as ordered. Filing the petition to revoke probation triggered the normal probation revocation procedures under Rule 5-805(D)-(L), and the district court held an evidentiary hearing on the alleged new offenses. We do not discuss the first allegation because the district court found the evidence that Defendant committed new criminal offenses to be insufficient. In support of the second allegation, Defendant's probation officer testified that Defendant failed to enter an outpatient drug treatment program as she had instructed him to do multiple times between September 1, 2015, and Defendant's arrest on the new charges. Based on this evidence, the district court found "to a reasonable certainty" that "Defendant violated his conditions of probation by failing to enroll in treatment as ordered by probation." The district court also found that this was "not a mere technical violation." At the hearing, the district court rejected Defendant's argument that this was a technical violation under the TVP, stating that "failing to find a program and enter is not the same thing as testing positive. It is more than a mere technical violation." The district court therefore revoked Defendant's probation and ordered that he serve his remaining sentence of two years, seven months, and seven days in the custody of the New Mexico Department of Corrections followed by a specified period of probation.

{7} Defendant appealed to the Court of Appeals, raising two issues: (1) There was insufficient evidence to support a finding that Defendant willfully violated his probation, and (2) the district court erred in ruling that the violation was not a technical violation under the TVP. *Aslin*, 2018-NMCA-043, ¶¶ 1, 7. On the first issue, the Court of Appeals affirmed the district court. *Id.* ¶¶ 1, 10-11. However, the Court of Appeals did not address the second issue as Defendant had presented it. Instead, the Court of Appeals determined that the definition of a "technical violation" in the TVP impermissibly conflicted with the definition of a "technical violation" in Rule 5-805(C). *Aslin*, 2018-NMCA-043, ¶ 16. Because the district court found insufficient evidence that Defendant violated conditions of probation by committing new offenses and because "the plain language of Rule 5-805(C) provides that a technical violation is limited to violations that do not involve new criminal charges," the Court of Appeals held that Defendant's failure to enter and complete outpatient drug treatment "must therefore be construed as a 'technical violation' under Rule 5-805(C)." *Aslin*, 2018-NMCA-043, ¶ 17.

Accordingly the Court of Appeals reversed the district court's finding that Defendant's violation was not a technical violation under the TVP, vacated the district court order revoking Defendant's probation, and remanded the case for imposition of the sanction for a third technical violation under the TVP (up to fourteen days in jail). *Id.* ¶¶ 17-18.

{8} We granted the State's petition for certiorari to review the opinion of the Court of Appeals. Our review is limited to the question presented by the State's petition. *See* Rule 12-502(C)(2)(b) NMRA. The State contends the "Court of Appeals [m]isinterpreted Rule 5-805(C)" in "determin[ing] that all probation violations that do not consist of new charges must be subject to an automatic sanction according to the [TVP] schedule."

## II. DISCUSSION

### A. Standard of Review

{9} This case requires us to interpret Rule 5-805(C). As such, we are presented with a question of law subject to de novo review. *Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806 ("The proper interpretation of our Rules of Criminal Procedure is a question of law that we review de novo."). "When construing our procedural rules, we use the same rules of construction applicable to the interpretation of statutes." *Kipnis v. Jusbsache*, 2017-NMSC-006, ¶ 10, 388 P.3d 654 (internal quotation marks and citation omitted). "We begin by examining the plain language of the rule as well as the context in which it was promulgated, including the history of the rule and the object and purpose." *Id.* ¶ 11 (brackets, ellipsis, internal quotation marks, and citation omitted).

### B. Analysis

{10} Rule 5-805(C) provides,

A judicial district may by local rule approved by the Supreme Court in the manner provided by Rule 5-102 NMRA, establish a program for sanctions for probationers who agree to automatic sanctions for a technical violation of the conditions of probation. Under the program a probationer may agree: (1) not to contest the alleged violation of probation; (2) to submit to sanctions in accordance with the local rule; and (3) to waive the provisions of Paragraphs D through L of this rule. *For purposes of this rule, a "technical violation" means any violation that does not involve new criminal charges.*

(Emphasis added.)

{11} The language at issue is the last sentence of Rule 5-805(C). Admittedly, the sentence in isolation is ambiguous.

One reading of the sentence in isolation supports the Court of Appeals interpretation of Rule 5-805(C), "any violation that does not involve new criminal charges" is "a technical violation." *Aslin*, 2018-NMCA-043, ¶ 16 (quoting Rule 5-805(C) (3)). However, the State correctly points out that the Court of Appeals failed to consider the remaining language of the rule. Considering Rule 5-805(C) in its entirety, it is apparent that the rule gives a judicial district discretion to establish a local program suitable to the district. Thus, probationers may agree to waive the due process procedures in Rule 5-805 and incur automatic sanctions for what the district defines for itself as technical violations of probation. In this context Rule 5-805(C)(3) adds that "a 'technical violation' means any violation that does not involve new criminal charges." That is to say, in specifying the technical violations under a TVP program the only limitation is that the judicial district may *not* include "new criminal charges" among those technical violations. As the State correctly observes, if the Court of Appeals interpretation is correct, Rule 5-805(C) would require *all* violations that do not involve new criminal charges to constitute technical violations. This removes all discretion for judicial districts to determine technical violations for themselves, contrary to the purpose, structure, and language of the rule. In contrast, the phrase "any violation" permits a judicial district to define a technical violation for itself, as long as the violation does not include new criminal charges. This is consistent with the rehabilitative purposes and goals of probation. *See State v. Lopez*, 2007-NMSC-011, ¶ 8, 141 N.M. 293, 154 P.3d 668 ("[R]ehabilitation is the primary goal of probation." (citing *State v. Rivera*, 2004-NMSC-001, ¶ 24, 134 N.M. 768, 82 P.3d 939)); *State v. Nieto*, 2013-NMCA-065, ¶¶ 6-7, 303 P.3d 855 ("[P]robation serves a rehabilitative purpose.")

{12} A sentencing court in New Mexico historically has had the discretion to "suspend any sentence imposed upon such terms and conditions as it shall deem proper, and such sentence shall go into effect upon order of the court upon a breach of any of such terms or conditions by the person convicted." *Ex parte Bates*, 1915-NMSC-060, ¶ 2, 20 N.M. 542, 151 P. 698 (internal quotation marks and citation omitted). In dealing with probation violations, the sentencing court has three available options when a defendant violates terms or conditions of probation. *State v. Martinez*, 1982-NMCA-185, ¶ 5, 99 N.M. 248, 656 P.2d 911 (stating that the sentencing court "may (1) continue probation, (2) revoke probation and require the defendant to serve the balance of the previously imposed sentence, or (3) revoke

probation and require the defendant to serve a sentence *less* than the balance of the previously imposed sentence”). The Legislature has retained these options in the current sentencing scheme. “If [a probation] violation is established, the court may continue the original probation or revoke the probation and either order a new probation with any condition provided for in [NMSA 1978,] Section 31-20-5 [(2003)] or [NMSA 1978, Section] 31-20-6 [(2007)] or require the probationer to serve the balance of the sentence imposed or any lesser sentence.” NMSA 1978, § 31-21-15(B) (2016). We have further stated that “[t]he probation statutes themselves are structured in such a manner to give the sentencing court the broad power to ensure that the goal of rehabilitation is indeed being achieved.” *Rivera*, 2004-NMSC-001, ¶ 21. The Court of Appeals interpretation undermines, rather than supports, these goals and options. *See id.*

{13} The discretion provided under Rule 5-805(C) becomes further evident upon examination of local rules, which we have approved, that establish TVPs in judicial districts throughout New Mexico. The TVPs of First, Fourth, and Thirteenth Judicial Districts designate specific probation violations as technical violations. *See* LR1-306(C); LR4-301(C) NMRA; LR13-301(C) NMRA. The Second Judicial District also designates specific probation violations as technical violations under its TVP and includes as well “any other violations other than a new criminal offense.” LR2-307(C) NMRA. On the other hand, the Fifth and Seventh Judicial Districts define a technical violation as “any violation that does not involve new criminal charges.” LR5-301(C) NMRA; LR7-301(C) NMRA. The differences among these approved local rules further support the conclusion that Rule 5-805(C) gives each judicial district the discretion to determine, outside of new criminal charges, what its TVP includes as technical violations.

{14} Under the Court of Appeals reasoning, “technical violations” are “all violations that do not involve new criminal charges.” *See Aslin*, 2018-NMCA-043, ¶ 17. Based on the foregoing reasons, we hold that the Court of Appeals erred in its interpretation of Rule 5-805(C). We therefore reverse.

#### C. Issue That Remains to Be Decided

{15} In the Court of Appeals Defendant argued that the district court erred in ruling that Defendant’s probation violation was not a technical violation under the TVP. *Aslin*, 2018-NMCA-043, ¶ 1. Relying on an argument not preserved or even made, the Court of Appeals instead concluded that Defendant’s probation violation did not involve new criminal charges and consequently was a technical violation under its interpretation of Rule 5-805(C). *See Aslin*, 2018-NMCA-043, ¶ 17. Reasoning that “because local rules should not conflict with statewide rules,” the Court of Appeals reversed the order of the district court and remanded the case with instructions to reinstate Defendant’s probation and impose the sanction for a third violation under the TVP (up to fourteen days in jail). *Id.* ¶¶ 17-18.

{16} Defendant continues to make the argument before us that the district court should be reversed because it erred in ruling that Defendant’s probation violation was not a technical violation under the TVP. The State in turn correctly points out that this argument is not properly before us. Specifically, on a writ of certiorari, we “will consider only the questions set forth in [a] petition.” Rule 12-502(C)(2)(b). The only question on which we granted certiorari in this case is whether the “Court of Appeals misinterpreted Rule 5-805(C) when it held that *all* probation violations that do not involve ‘new criminal charges’ *must* be treated as technical under [the TVP].”

{17} Whether Defendant’s probation violation is or is not a technical violation under the TVP has serious consequences.

If the violation is a technical violation under the TVP, Defendant’s probation is not revoked, he has a third technical violation, and he is subject to no more than fourteen days in jail. On the other hand, if the violation is not a technical violation under the TVP, the district court order revoking Defendant’s probation and imposing the remaining sentence of two years, seven months, and seven days in the custody of the New Mexico Department of Corrections must be affirmed.

{18} Under the TVP, one of the definitions of a technical violation is “the failure to comply with any term of, or to complete, any treatment program or any other program required by the court or probation.” Under Defendant’s order of probation, one of the standard conditions of probation is, “I will follow all orders and instructions of my Probation/Parole Officer including actively participating in and successfully completing any level of supervision and/or treatment program, which may include Community Corrections, ISP, Elec Monitoring or other supervision/treatment program, as deemed appropriate by the Probation/Parole Officer.”

{19} Whether Defendant’s violation falls under the TVP or under the order of probation or neither must still be determined. We therefore remand the case to the Court of Appeals to answer this question, which Defendant first raised on direct appeal.

#### III. CONCLUSION

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

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

**WE CONCUR:**  
**JUDITH K. NAKAMURA, Chief Justice**  
**BARBARA J. VIGIL, Justice**  
**C. SHANNON BACON, Justice**  
**DAVID K. THOMSON, Justice**

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2020-NMSC-005**

No: S-1-SC-36516 (filed January 2, 2020)

STATE OF NEW MEXICO,  
Plaintiff-Petitioner,

v.

MIKEL A. MARTINEZ,  
Defendant-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI**

FRED T. VAN SOELEN, District Judge

Released for Publication February 18, 2020.

HECTOR H. BALDERAS,  
Attorney General  
MARIS VEIDEMANIS,  
Assistant Attorney General  
Santa Fe, NM  
for Petitioner

BENNETT J. BAUR,  
Chief Public Defender  
MJ EDGE,  
Assistant Appellate Defender  
Santa Fe, NM  
for Respondent

## Opinion

**Judith K. Nakamura,  
Chief Justice.**

{1} Defendant Mikel Martinez moved to suppress all evidence obtained as the fruits of a *Terry* stop that he alleges was unlawful and led to the discovery that he possessed drugs and drug paraphernalia. The district court determined that the stop was lawful as it was predicated on reasonable, articulable suspicion. The Court of Appeals reversed and held that the officer's suspicion amounted to nothing more than an "unparticularized hunch." *State v. Martinez*, No. 35,402, mem. op. ¶¶ 1, 15 (N.M. Ct. App. June 5, 2017) (non-precedential). This case requires us to evaluate what, precisely, the difference is between reasonable, articulable suspicion of criminality and a mere hunch. We conclude that the officer who stopped Martinez was not operating upon a hunch but had "a particularized and objective basis" to suspect that Martinez was engaged in criminal activity. *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (internal quotation marks and citation omitted). We affirm the district court. The Court of Appeals is reversed.

### I. BACKGROUND

{2} Martinez's charges included drug trafficking and possession. Prior to trial, he moved to suppress all evidence the State had to support these charges. At the suppression

hearing on the motion, New Mexico State Police Officer Donald Garrison provided the following testimony.

{3} At the time of the hearing, Officer Garrison had been with the New Mexico State Police for twenty years and had significant training and experience in narcotics investigations. On the date he encountered Martinez, Officer Garrison was conducting surveillance of an Allsup's gas station and convenience store, a location at which he knew drugs were purchased and sold with frequency. He had personally purchased drugs at the Allsup's in an undercover capacity "probably 15 to 20 times," and used confidential informants to make "[a]nother probably 20, 30" drug purchases there.

{4} While watching the Allsup's, he saw two men—later identified as Martinez and Don Crespin—drive up to one of the gas pumps at the Allsup's. Martinez was driving. Crespin exited the vehicle, started the gas pump, and then got back in. Martinez also exited and walked towards the convenience store. Before entering the store, he passed a large man. After passing Martinez, the large man walked to Martinez's vehicle; got in the left, rear seat; interacted with Crespin for about two to three minutes; and then exited the vehicle. Martinez left the store and returned to the vehicle. Officer Garrison believed he had just witnessed a "possible narcotics transaction."

{5} Martinez then drove to the side of the Allsup's and parked. After "a few minutes," an SUV appeared and parked next to Martinez and Crespin. A woman exited the SUV; entered Martinez's vehicle again on the left, rear side; stayed in the vehicle for a few minutes; exited; and then reentered the SUV, which drove away. Officer Garrison suspected he had just witnessed a second "illegal narcotics transaction."

{6} Officer Garrison decided to investigate to determine "exactly what was going on." He suspected that Martinez and Crespin were engaged in drug sales, but was "open-minded" and wanted to see if they had "a legitimate reason" for their activity. When asked why he suspected Martinez and Crespin were engaged in drug sales, Officer Garrison explained that "I've done them before, personally done [them], go in and sit inside [the] back of [the] vehicle, right front passenger side, somewhere inside a vehicle, do the drug transaction, and then exit the vehicle. It's just—it was consistent with what I've done and seen."

{7} Officer Garrison pulled his car behind Martinez and Crespin's vehicle, activated his emergency equipment, and made contact with the men. The remainder of the events are established by evidence in the record other than Officer Garrison's testimony.

{8} Crespin would not, despite Officer Garrison's request, keep his hands on the dashboard while they spoke, so Officer Garrison directed Crespin to exit the vehicle and then put him in handcuffs. After Crespin was handcuffed, Officer Garrison discovered a clear, plastic bag containing a white powdery substance he was sure was methamphetamine near the right, rear tire of the vehicle. Martinez was then also detained.

{9} Martinez and Crespin denied throwing the methamphetamine on the ground. Officer Garrison then asked for their consent to search the vehicle. His request was denied, so Officer Garrison summoned a K-9 unit and the dog alerted on the right, rear side of the vehicle. Officer Garrison informed the men that he would obtain a warrant to search the vehicle and that they were free to leave but that the vehicle would remain with him. Once the search warrant was obtained, methamphetamine, marijuana, a scale, cash, and other drug paraphernalia were discovered inside the vehicle.

{10} In his suppression motion, Martinez argued that Officer Garrison did not have reasonable suspicion "at the inception of the seizure" and, therefore, the seizure was unlawful and any fruits of that seizure must be suppressed. Martinez specifically asserted that Officer Garrison's suspicion that he was engaged in drug transactions "did not amount to anything more than an

inarticulate hunch that falls short of the reasonable, articulable, and particularized suspicion required to justify a seizure.” The district court rejected Martinez’s arguments. {11} The court found that Officer Garrison had knowledge that the Allsup’s was a place where drugs were sold and saw Martinez undertake precisely the type of conduct in which those selling drugs engage. Officer Garrison’s training, experience, and observations produced, in the court’s view, far more than a mere “hunch.” He had, the court concluded, reasonable, articulable suspicion of possible criminality to perform a Terry stop. We think it worthwhile to reproduce the district court’s own words.

[Y]ou have the suspicious behavior of the car pulling up to a pump, two people in the vehicle, one goes in the store while the other one pumps. While they’re pumping, a male approaches the vehicle . . . .

. . . .  
So you go and you sit in the car for two or three minutes, get out, then the car—the people get back in the car, they take off from there. Do they leave? No, they pull to the south side of the same building, sit there four or five minutes without getting out, which I think it is key here, until another vehicle pulls up next to them and basically the same thing happens. A person gets out, gets into the vehicle for a few minutes, gets back out, and takes off.

I think the training and experience of the officers says that is a drug transaction that’s going on . . . .

. . . .  
The fact that the observance—or the behavior displayed by the people in the vehicle took place in a high drug trafficking area is important.

And so I think the officer[] did have reasonable suspicion to stop the vehicle.

{12} Martinez proceeded to trial and was convicted and sentenced. He appealed and challenged the district court’s denial of his suppression motion. The Court of Appeals reversed and held that Officer Garrison’s knowledge and experience about drug sales at the Allsup’s gave rise to nothing more than an “unparticularized hunch” and, therefore, “it was not reasonable for Officer Garrison to conclude that [Martinez] was involved in drug transactions.” *Martinez*, No. 35,402, mem. op. ¶¶ 1, 15. In reaching this conclusion, the Court of Appeals relied heavily on *State v. Neal*, 2007-NMSC-043, 142 N.M. 176, 164 P.3d 57, which the Court described as “instructive” and “controlling.” *Martinez*, No. 35,402, mem. op. ¶¶ 11-14, 18.

{13} The State filed a petition for a writ of

certiorari. We granted the petition and have jurisdiction over the State’s appeal. See N.M. Const. art. VI, § 3; NMSA 1978, § 34-5-14(B) (1972).

## II. DISCUSSION

{14} “The legality of a search questioned in a suppression hearing is generally tested as a mixed question of law and fact . . . .” *Neal*, 2007-NMSC-043, ¶ 15 (internal quotation marks and citation omitted). This standard involves two separate lines of inquiry and is, therefore, spoken of as involving “a two-step process[.]” *State v. Leyva*, 2011-NMSC-009, ¶ 30, 149 N.M. 435, 250 P.3d 861.

{15} The first inquiry or step concerns the facts. The trial court is responsible for determining “the historical facts that animate the transaction to be evaluated.” *State v. Attaway*, 1994-NMSC-011, ¶ 5, 117 N.M. 141, 870 P.2d 103. The court “performs this fact-finding role by reciting events and assessing the credibility of the testimony offered[.]” and is given “wide latitude in determining that an historical fact has been proven.” *Id.* We review these “purely factual assessments” only “to determine if the fact-finder’s [findings are] supported in the record by substantial evidence.” *Id.* “Fact-finding frequently involves selecting which inferences to draw.” *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856 (internal quotation marks and citation omitted). And because it is the district court’s responsibility to select the factual inferences that shall govern, “all reasonable inferences in support of the [trial] court’s decision will be indulged in, and all inferences or evidence to the contrary will be disregarded.” *State v. Lopez*, 2005-NMSC-018, ¶ 9, 138 N.M. 9, 116 P.3d 80 (internal quotation marks and citation omitted).

{16} The second inquiry involves the law. This Court sits as final arbiter of what the law is and how it applies to any given set of facts. *Reed v. State ex rel. Ortiz*, 1997-NMSC-055, ¶ 47, 124 N.M. 129, 947 P.2d 86, *rev’d on other grounds*, 524 U.S. 151 (1998). Whether police conduct is objectively reasonable is a legal question that is necessarily “fact-based” and “compels a careful balancing of constitutional values[.]” *State v. Rowell*, 2008-NMSC-041, ¶ 8, 144 N.M. 371, 188 P.3d 95. Yet, “[a]rticulating precisely what ‘reasonable suspicion’ . . . mean[s] is not possible.” *Ornelas*, 517 U.S. at 694. Thus, we must define this inherently elusive concept and give it shape and content through the adjudication of cases; to put the point in slightly different terms: it is our constitutional responsibility “to shape the parameters of police conduct by placing the constitutional requirement of reasonableness in factual context . . . .” *State v. Vandenberg*, 2003-NMSC-030, ¶ 19, 134 N.M. 566, 81 P.3d 19 (internal quotation marks and citations omitted). The ultimate aim of this second line of inquiry is to decide the

constitutional reasonableness of the police conduct. See *Leyva*, 2011-NMSC-009, ¶ 9. In making that determination “we review the totality of the circumstances as a matter of law.” See *State v. Van Dang*, 2005-NMSC-033, ¶ 14, 138 N.M. 408, 120 P.3d 830.

{17} The “historical facts” in this case are not disputed. No one denies that Officer Garrison saw Martinez arrive at the Allsup’s and engage in the conduct Officer Garrison observed and recounted at the suppression hearing. The question before us is the legal significance of those facts. See *Vandenberg*, 2003-NMSC-030, ¶ 19. More specifically, the purely legal question we must answer is whether the evidence available to Officer Garrison was sufficient to justify the Terry stop he performed.

{18} We have interpreted Article II, Section 10 of the New Mexico Constitution to provide, in some contexts, broader protections against unreasonable searches and seizures than the Fourth Amendment. *State v. Yazzie*, 2016-NMSC-026, ¶ 38, 376 P.3d 858. But, “we have never interpreted the New Mexico Constitution to require more than a reasonable suspicion that the law is being or has been broken to conduct a temporary, investigatory traffic stop[.]” *Id.* We apply the same reasonable suspicion standard when conducting both Fourth Amendment and Article II, Section 10 analyses. *Id.*

### A. Reasonable Suspicion

{19} As we noted earlier, it is not possible to articulate with any precision what reasonable suspicion means. *Ornelas*, 517 U.S. at 694-95. For this reason, no “simple shorthand verbal formula” exists to measure the validity of a Terry stop. See 4 Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment*, § 9.5(a) at 644-45 (5th ed. 2012) (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). “Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person.” *Cortez*, 449 U.S. at 417. “[T]he essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account.” *Id.* “Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* at 417-18; *accord State v. Werner*, 1994-NMSC-025, ¶ 11, 117 N.M. 315, 871 P.2d 971.

{20} Here, Officer Garrison’s assessment that he had reasonable suspicion to temporarily stop and question Martinez was informed by (1) Officer Garrison’s training and experience with drug investigations; (2) the conduct in which Martinez engaged at the Allsup’s which in turn caused Officer Garrison to infer that Martinez was involved in drug transactions; and (3) the fact that the Allsup’s is a high-crime area where drug sales frequently occur. We discuss each of

these considerations in turn and describe how they factor into the reasonable suspicion analysis in this case.

### 1. Training and experience

{1} Although the method to test the ultimate validity of a *Terry* stop is objective, officers must necessarily rely upon their subjective judgment to determine if observed conduct suggests criminality. See *La Fave, supra*, § 9.5(a) at 648. This makes their work difficult. The police must “translate the law’s abstractions into actual practice in the unpredictable circumstances of the streets.” *United States v. Johnson*, 599 F.3d 339, 342-43 (4th Cir. 2010). “This is at once a vital and a difficult mission. It is vital because errors in either direction—toward excessive intrusion or toward impotent enforcement—can be costly. It is difficult because the contexts are varying and, quite often, the time for deciding is short.” *Id.* Training and experience ensure officers avoid the bookend evils of excessive intrusion and impotent enforcement.

{22} When an officer relies upon training and experience to effectuate a stop, it is necessary that the officer “explain *why* [their] knowledge of particular criminal practices gives special significance to the apparently innocent facts observed.” *United States v. Johnson*, 171 F.3d 601, 604 (8th Cir. 1999) (citing *Cortez*, 449 U.S. at 418-22). Or, as was said in *Terry v. Ohio*, “the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.” 392 U.S. 1, 21 (1968).

{23} There is, of course, always risk that even trained and experienced officers may err. But the simple truism that human judgment sometimes fails in no way undermines the value of training and experience and the unique perspective this provides law enforcement officers. Training and experience ensure that officers “are uniquely capable both of recognizing [the] signatures [of criminality], and by the same token, of not reading suspicion into perfectly innocent and natural acts.” *Johnson*, 599 F.3d at 343. “[E]xperience leads not just to proper action but to prudent restraint.” *Id.* In sum, “[r]easonable suspicion engages probabilities.” *Yazzie*, 2016-NMSC-026, ¶ 33. “[P]robability in turn is best assessed when one has encountered variations on a given scenario many times before.” *Johnson*, 599 F.3d at 343.

{24} Officer Garrison’s experience led him to anticipate that he might see drug transactions at the Allsup’s. Indeed, the evidence suggests that he was engaged in surveillance at the Allsup’s because there was a strong likelihood a drug transaction would be detected. His anticipation was not speculative. He knew drugs had been bought and sold at the Allsup’s many times before.

{25} Officer Garrison then observed Martinez partake in two instances of exactly the kind of drug activity Officer Garrison had previously observed at the Allsup’s. Again, Officer Garrison was not speculating when he formed suspicion that Martinez might be selling drugs. His suspicion was grounded upon specific facts and rational inferences from those facts.

{26} The Court of Appeals was unpersuaded that Officer Garrison could permissibly deduce, based on his “specialized training,” that Martinez was engaged in potential criminality. See *Martinez*, No.35,402, mem. op. ¶ 15 (“Officer Garrison did not point to any individualized behavior or any specific articulable facts . . . that could support a finding of reasonable suspicion that [Martinez] was involved in the purchase or sale of illegal narcotics.”). From the Court of Appeals’ perspective, what Officer Garrison observed amounted to nothing more than “otherwise innocent conduct,” and those observations could not justify a *Terry* stop for which reasonable suspicion was required. *Id.* ¶ 14. This view diverges from the perspective of the facts we are required to embrace as a matter of law.

{27} The view of the facts that controls here is that which is most favorable to the decision reached by the district court. *Lopez*, 2005-NMSC-018, ¶ 9. Moreover, courts must “defer to the training and experience of the officer when determining whether particularized and objective indicia of criminal activity existed.” *Leyva*, 2011-NMSC-009, ¶ 23 (internal quotation marks and citation omitted); see also *United States v. Wood*, 106 F.3d 942, 946 (10th Cir. 1997) (“[D]eference is to be accorded a law enforcement officer’s ability to distinguish between innocent and suspicious actions.”). The district court paid appropriate deference to Officer Garrison, his training, and the judgments he formed given his background and training. The Court of Appeals erred in discounting the gloss the district court gave the facts here. It was this error that prompted the Court of Appeals to determine, wrongly, that Officer Garrison provided no individualized or specific facts to justify his suspicion and his decision to perform the stop.

### 2. Permissible inferences versus hunches

{28} It cannot be, as a simple matter of logic, that an officer may stop and briefly investigate the possibility of criminal conduct only if the officer is certain of the existence of criminal conduct. If certainty of wrongdoing were the standard, there would never be reason for investigation.

{29} If officers need not be certain that observed conduct is criminal in order to stop a person and investigate, then what amount of suspicion must an officer possess to execute a valid *Terry* stop? Our case law makes clear that “[u]nsupported intuition

and inarticulate hunches are not sufficient.” *Jason L.*, 2000-NMSC-018, ¶ 20 (internal quotation marks and citation omitted). But where does the impermissible “hunch” end and the informed and permissible inference begin? We must attempt some answer to this question.

{30} “The level of suspicion required for an investigatory stop is considerably less than proof of wrongdoing by a preponderance of the evidence.” *State v. Urioste*, 2002-NMSC-023, ¶ 10, 132 N.M. 592, 52 P.3d 964 (internal quotation marks and citation omitted). Officers are “not required to rule out all possibility of innocent behavior before initiating a brief stop and request for identification. The test is founded suspicion, not probable cause.” *United States v. Holland*, 510 F.2d 453, 455 (9th Cir. 1975); accord *Yazzie*, 2016-NMSC-026, ¶ 18. “[P]olice officers must be permitted to act before their reasonable belief is verified by escape or fruition of the harm it was their duty to prevent.” *Holland*, 510 F.2d at 455.

{31} “The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.” *In re Tony C.*, 582 P.2d 957, 960 (Cal. 1978); accord *Yazzie*, 2016-NMSC-026, ¶ 22. This is because the principal function of an investigation is to resolve whether certain activity is in fact legal or illegal. *In re Tony C.*, 582 P.2d at 960; accord *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1206 (10th Cir. 2007). “[I]t will suffice that there exists at the time of the stop a substantial possibility . . . that criminal conduct has occurred, is occurring, or is about to occur.” *LaFave, supra*, § 9.5(b) at 658-59 (footnotes and internal quotation marks omitted).

{32} The argument that the conduct under scrutiny is equally consistent with innocence—an argument Martinez makes here in support of the Court of Appeals’ resolution of this case—can prevail only where there are no facts that would “make the conduct observed . . . anything but innocuous.” *United States v. Torres-Urena*, 513 F.2d 540, 542 (9th Cir. 1975). In other words, where there is not even “a significant possibility . . . that the person observed is engaged in criminal conduct.” *LaFave, supra*, § 9.5(b) at 663.

{33} Officer Garrison most certainly could infer that there was a substantial possibility Martinez was engaged in drug sales. Officer Garrison observed two instances of conduct consistent with drug transactions. The Court of Appeals’ conclusion that Officer Garrison’s deductions and inferences amounted to nothing more than an “unparticularized hunch” of wrongdoing overstates what is necessary for an officer to form particularized suspicion. *Martinez*, No. 35,402, mem. op. ¶ 15. Similarly, the



Court's conclusions are predicated on a view of the evidence not consistent with the district court's findings.

{34} In sum, while it was possible Martinez's conduct was innocuous, Officer Garrison was not required to wait until he was certain Martinez's conduct was criminal before investigating. Officer Garrison was permitted to investigate to resolve whether in fact Martinez's conduct was innocent or criminal.

### 3. High-crime areas

{35} Generally speaking, arguments in the Fourth Amendment context predicated upon allegations that conduct was observed in a "high-crime area" should be received with "circumspection." LaFave, *supra*, § 9.5(g) at 745 (citing Andrew Guthrie Ferguson and Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 Am. U.L. Rev. 1587, 1593 (2008)). Although circumspection is the appropriate stance as a general matter, not all high-crime-area arguments are made equally.

{36} These arguments generally come in two types. *Id.* at 744-45. The first involves entirely "unspecific" assertions about what type of crimes purportedly occur in the high-crime area and how those crimes rendered a defendant's conduct "suspicious." *Id.* at 745 n.363 (collecting cases). This form of high-crime-area argument rightly gains little or no traction. But, where an officer is patrolling an area known as a site where a particular type of crime is prevalent and stops an individual on suspicion that he or she has potentially committed the very crime that occurs with frequency in that area, then the assertion that the area in question is a high-crime area is quite acceptable if not essential to understanding and judging the merits of the officer's suspicion. *See, e.g., United States v. Whitfield*, 634 F.3d 741, 743-46 (3d Cir. 2010) (affirming the district court's finding of reasonable suspicion where the suspect engaged in a "closed fist hand-to-hand exchange" in an area known for drug activity). This second form of high-crime-area argument is logical and acceptable.

{37} We are not confronted here with generic allegations concerning some crime-ridden location as justification for stopping an individual engaged in some undefined, suspicious activity. Rather, Officer Garrison's testimony was that the Allsup's is a location where a particular type of crime, drug transactions, is committed with frequency and he suspected Martinez of engaging in precisely that type of crime, i.e., drug sales. The fact that the Allsup's is a drug hot spot was essential to making sense of Officer Garrison's testimony and actions. It was not

testimony to be dismissed or treated with undue circumspection.

### 4. Conclusion: reasonable suspicion

{38} Officer Garrison observed Martinez take part in what Officer Garrison believed—based on his training, experience, and familiarity with the Allsup's—were two drug sales. He engaged in rational inferences to reach the conclusion that there was a substantial possibility that Martinez was engaged in criminal conduct. He performed a *Terry* stop to "inquire exactly what was going on" and resolve the reasonable suspicion he formed. All of this was appropriate. The brief stop enabled Officer Garrison to answer whether in fact wrongdoing was actually afoot. The totality of the circumstances adequately supports the conclusion that Officer Garrison had reasonable suspicion to perform the *Terry* stop.

### B. Neal

{39} The Court of Appeals' resolution of this case turned largely upon its interpretation of *Neal* and the Court's commitment to the proposition that *Neal* is both controlling and dispositive here. We disagree, and address *Neal* separately as it is distinguishable from the matter before us.

{40} Unlike the present matter, *Neal* involved an initial, valid traffic stop. 2007-NMSC-043, ¶¶ 1, 22. The police saw Neal stop at a house that was under investigation for drug activity and speak with one of the residents. *Id.* ¶ 4. The officers monitoring the house formed the intention to stop Neal, saw that his windshield was broken, and after Neal drove away from the house stopped him for the windshield violation. *Id.* ¶ 5. The officer then sought to expand the stop based on suspicion that Neal might possess drugs. *Id.* ¶¶ 5, 9. The pivotal question in *Neal* was whether the officer could expand the stop. *Id.* ¶ 22. This question divided this Court.

{41} The crux of the disagreement between the three-justice majority and the two-justice dissent was what evidence could be considered when evaluating whether reasonable suspicion existed to expand the stop. *Compare id.* ¶ 28 with *id.* ¶ 40 (Bosson, J., dissenting). The majority declined to consider three factors the dissent thought crucial: (1) after pulling Neal over for the windshield violation, the officer who performed the traffic stop recognized Neal as an individual with a criminal history involving drug transactions; (2) customary warrant checks identified Neal as a possibly armed and dangerous individual and another officer was sent to the scene of the stop; and (3) Neal informed the officer that the man he spoke with at the house was an individual the officer knew was a suspected drug dealer. *Id.* ¶ 40 (Bosson, J., dissenting).

{42} The majority declined to consider this evidence and pointed to the proposition that "[o]fficers may not use a lawful stop to fish for evidence of other crimes where there is insufficient reason to detain a defendant, beyond the purpose of the initial detention." *Id.* ¶ 28 (internal quotation marks and citation omitted). The majority then went on to explain that there was, in fact, only the thinnest of permissible evidence to justify the expansion.

{43} According to the majority, that evidence included only the following: Neal stopped in front of a house under investigation and spoke to another man, a felon; Neal was nervous during the stop; he wanted to leave; and he did not give the officer consent to search his vehicle. *Id.* The majority clarified, however, that the officer did not know who Neal was when Neal was seen in front of the drug house and did not know the identity of the man Neal spoke with at the house when the officer observed them conversing. *Id.* ¶ 30. The majority also explained that nervousness during a stop, a defendant's desire to leave, and refusing to give consent to a search is not indicative of guilt. *Id.* ¶ 29. In the end, the only evidence available to the officer to expand the stop was, according to the majority, that someone stopped in front of a house under investigation. This was not enough, the majority held, to expand the stop. *Id.* ¶ 31.

{44} The present case is quite different from *Neal*. It does not involve either an initial traffic stop or the question of whether a traffic stop could be expanded into other matters. There is no concern about what evidence can or cannot be considered for resolution of the question presented: whether *all of the information* available to Officer Garrison was enough for a *Terry* stop to confirm or dispel suspicion of drug-related activity. Officer Garrison's suspicion that Martinez was engaged in drug sales was predicated on far more evidence than that which the majority in *Neal* thought permissible to assess the validity of the expansion of the stop in *Neal*.

### III. CONCLUSION

{45} The Court of Appeals is reversed and the district court's order denying the suppression motion is affirmed.

{46} IT IS SO ORDERED.

JUDITH K. NAKAMURA, Chief Justice

WE CONCUR:

BARBARA J. VIGIL, Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2020-NMSC-006**

No: S-1-SC-37034 (filed January 16, 2020)

GLORIA MENDOZA,  
Worker-Respondent,

v.

ISLETA RESORT AND CASINO,  
HUDSON INSURANCE, and  
TRIBAL FIRST,  
Employer/Insurer-Petitioners,

and

STATE OF NEW MEXICO UNINSURED  
EMPLOYERS' FUND,  
Statutory Third Party.

**ORIGINAL PROCEEDING ON CERTIORARI**

LEONARD J. PADILLA, Workers' Compensation Judge

Released for Publication April 7, 2020.

Barnhouse Keegan Solimon & West  
LLP  
DOLPH BARNHOUSE  
KELLI J. KEEGAN  
CHRISTINA S. WEST  
Albuquerque, NM  
for Petitioners

Law Office of LeeAnn Ortiz, LLC  
LEEANN ORTIZ  
Albuquerque, NM  
for Respondent

## Opinion

### C. Shannon Bacon, Justice.

{1} This appeal asks us to resolve three questions: (1) whether the Pueblo of Isleta, in entering the 2015 Indian Gaming Compact, expressly and unequivocally waived its tribal sovereign immunity to permit jurisdiction shifting of workers' compensation claims originating on tribal land to the Workers' Compensation Administration; (2) whether Gloria Mendoza, (Worker) as a non-party to the Compact, can challenge the Pueblo's compliance with the Compact; and (3) whether Isleta Casino, an entity of the Pueblo of Isleta, is an indispensable party to a lawsuit against its workers' compensation insurers. We hold that there is no definitive jurisdiction shifting language in the Compact, there is no private right

of action for Worker to mandate Compact compliance, and Isleta Casino, as a sovereign entity, is an indispensable party to Worker's claim, thus compelling dismissal of Worker's claim in its entirety.

{2} Worker filed a workers' compensation claim with the New Mexico Workers' Compensation Administration (WCA) after she suffered an on-the-job injury at Isleta Resort & Casino. Isleta Casino is located on the Pueblo of Isleta (the Pueblo). Because Worker's injury occurred within the Pueblo's sovereign jurisdiction, the WCA dismissed Worker's claim for lack of jurisdiction, referencing the Pueblo's tribal sovereign immunity. On account of the Pueblo's sovereign status, Worker's complaint was dismissed as to all parties, which included Hudson Insurance Company (Isleta Casino's insurer) and Tribal First (Hudson's third-party administrator)

(hereinafter, collectively "Petitioners"<sup>1</sup>). Worker appealed the WCA's dismissal to the New Mexico Court of Appeals, who reversed the findings of the WCA and remanded the case back to the WCA for further proceedings. *Mendoza v. Isleta Resort and Casino*, 2018-NMCA-038, ¶ 1, 419 P.3d 1256.

{3} In response to the Court of Appeals' decision, Petitioners filed a petition for writ of certiorari with this Court. We granted certiorari and proceed to address the aforementioned issues. Due to the unusual procedural posture of this case and the lack of record before us, we narrowly limit the holding to the facts presented here. With that consideration, we reverse the Court of Appeals' opinion in its entirety and affirm the WCA's dismissal of Worker's claim. The doctrine of sovereign immunity dictates our analysis and prohibits the claim from proceeding against any party in the WCA.

### I. BACKGROUND

{4} Worker injured her knee while working as a custodial porter at Isleta Casino. On the day of the accident, she filed a notice of accident form with her employer. In response to the notice of accident, Worker received correspondence from Tribal First informing her that her claim was denied. According to the letter, Worker's claim was denied because, "[p]er Isleta Resort & Casino[s] work injury program, claims are to be reported within 24 hours. Since you did not report your claim timely per Isleta Resort & [Casino's] work injury program, your claim is denied." After receiving the letter of denial, Worker filed a claim with the WCA. In response to this claim, Tribal First sent a letter to the WCA stating that because Isleta Casino is a tribal entity that retains sovereign immunity preventing it from being sued in state court, the WCA lacked jurisdiction over the matter.

{5} Despite the assertion of sovereign immunity, the WCA held a mediation conference in order to address Worker's claim. Following the mediation, the mediator presented her non-binding observations that (1) Hudson is the workers' compensation insurer for Isleta Casino, which was demonstrated by the filing of the Acord Certificate of Insurance with the WCA; (2) the Tribal First adjuster appeared telephonically and stated repeatedly that the WCA lacked jurisdiction to hear the case because of tribal sovereignty; (3) Tribal First had accepted premiums from the Pueblo but did not pay Worker's claim;

<sup>1</sup>Hudson Insurance Company, Tribal First, and Isleta Casino are all collectively referenced herein as "Petitioners," as these parties are all represented by the same attorneys and advance their arguments collectively. The State of New Mexico Uninsured Employers' Fund is a statutory third-party, but has not participated in this appeal.

and (4) Worker's counsel produced a copy of the Pueblo's tribal code, which does not mention workers' compensation as part of its jurisdiction.

{6} After reviewing the information from the mediator, the Director presented his recommended resolution, which provided in part:

- Because of the agreement between the Pueblo and the State of New Mexico (the Compact), the WCA has jurisdiction over Worker's claim;
- Tribal First and Hudson were the insurers for Isleta Casino at the time of Worker's injury;
- Worker's claim is compensable under the WCA, as it occurred on the job and in the course of employment;
- The Pueblo waived its sovereign immunity by entering into the Compact with the State; and
- Tribal First is acting in bad faith and engaging in unfair claims practices.

In response, Isleta Casino and Tribal First filed a notice of rejection of recommended resolution and a motion to dismiss for lack of subject matter jurisdiction, citing the Pueblo's sovereign immunity.<sup>2</sup>

{7} In their motion to dismiss, Petitioners stated two reasons in support of the WCA's lack of jurisdiction. First, they contended that the WCA lacked jurisdiction because tribal sovereign immunity barred the claim. Second, they argued that the Pueblo had exclusive jurisdiction over workers' compensation claims made under its insurance policy. Following those arguments, Petitioners asserted that because the WCA lacked jurisdiction to adjudicate Worker's claim, it necessarily lacked jurisdiction to adjudicate bad faith claims against Hudson and Tribal First.

{8} In response to the motion to dismiss, Worker argued that the Compact contained an express and unequivocal waiver of sovereign immunity that permitted her to bring a claim in the WCA. In support of her argument, Worker cited to Section 4(B)(6) of the Compact, which provides that the Pueblo shall adopt laws

requiring the Tribe, through its Gaming Enterprise or through a third-party entity, to provide to all employees of the Gaming Enterprise employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave or paid time off and medical and dental insurance as well as providing unemployment insurance and workers' compensation

insurance through participation in programs offering benefits at least as favorable as those provided by comparable State programs, and which programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Tribe's Tribal Court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and *as to which no defense of tribal sovereign immunity would be available*; and provided that to fulfill this requirement the Tribe may elect to participate in the State's program upon execution of the appropriate agreement with the State[.]

NMSA 1978, § 11-13-app. (2015) (emphasis added). Worker asserted that even if the Pueblo did retain sovereign immunity, such status did not extend to its insurer. Additionally, she argued that because the Pueblo had no workers' compensation program in place, the state program became the default. Following Petitioners' reply, the WCA granted the motion to dismiss.

{9} The WCA provided three reasons for granting Petitioners' motion to dismiss. First, it found that within the Compact, the Pueblo did not expressly and unequivocally waive sovereign immunity, such that it could be sued in the WCA. Next, it determined that Worker did not have standing to challenge the terms of the Compact because the Compact is a contract between the Pueblo and the State. Finally, it concluded that Isleta Casino was an indispensable party to the claim, and thus, the claim could not proceed absent its joinder. The order of dismissal summarily disposed of Worker's claim against all parties.

{10} Following the dismissal, Worker filed a notice of appeal with the Court of Appeals. The Court of Appeals held that (1) the Compact between the Pueblo and the State of New Mexico set forth an express and unequivocal waiver of sovereign immunity as to workers' compensation claims; (2) even if the Compact did not contain an express waiver of sovereign immunity, "Worker ha[d] a right to pursue her workers' compensation claim directly against Hudson and [Tribal First]"; (3) even if the Pueblo had not waived sovereign immunity, it was not an indispensable party, and its absence did not prevent Worker's claim from proceeding; and (4)

Worker was a third-party beneficiary to the Pueblo's workers' compensation policy. *Mendoza*, 2018-NMCA-038, ¶¶ 29-30, 37, 44. In response to the Court of Appeals' decision, Petitioners petitioned this Court for certiorari.

{11} In our review of this case, we note the particular deficiencies in the record that, in part, direct our analysis. Not only does the record lack an insurance contract between Petitioners for us to consider, no evidence of a tribal workers' compensation program or agreement between the Pueblo and the State exists in the record. Here, the record was so inadequately developed that we are unable to determine, with the limited information before us, what, and to what extent, interests of the Pueblo could be implicated should the case proceed absent its joinder. Because of these deficiencies, we are left to speculate about these potential interests of the Pueblo, whether such indeterminate interests could impact the Pueblo's sovereign immunity absent joinder, and where to remand the case to make such a determination. Thus, our conclusion is dictated by these particularities.

## II. STANDARD OF REVIEW

{12} The Court applies de novo review of a decision to grant or deny a motion to dismiss for lack of subject matter jurisdiction due to sovereign immunity. *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 6, 132 N.M. 207, 46 P.3d 668.

## III. DISCUSSION

### A. On Its Face, the Compact Does Not Contain an Express and Unequivocal Waiver of Immunity

{13} Concluding the Compact contains no express and unequivocal waiver of the Pueblo's immunity from suit in the WCA, we reverse the Court of Appeals and affirm the WCA's dismissal of Worker's claim for lack of jurisdiction. This holding is premised on the plain language interpretation of Section 4(B)(6) of the Compact, NMSA 1978, § 11-13-app. (2015), negotiated pursuant to the Indian Gaming Regulatory Act (IGRA). *See* 25 U.S.C. §§ 2701-2721 (2018).

{14} IGRA was enacted by Congress in order "to create a framework for states and Indian tribes to cooperate in regulating on-reservation tribal gaming[.]" *Navajo Nation v. Dalley*, 896 F.3d 1196, 1201 (10th Cir. 2018), *cert. denied*, 139 S. Ct. 1600 (2019). IGRA was Congress' attempt "to strike a balance between the rights of tribes as sovereigns and the interests that states may have in regulating sophisticated forms of gambling." *Gallegos*, 2002-NMSC-012, ¶ 10 (internal quotation marks and citation omitted). In order to negotiate matters

<sup>2</sup>After Worker initiated her case, a certificate of insurance was filed with the WCA listing Hudson as the worker's compensation insurance carrier for Isleta Casino at the time of Worker's accident.

related to tribal gaming, IGRA allows tribes and states to enter into gaming compacts. *Dalley*, 896 F.3d at 1201. Absent an operative gaming compact between a tribe and a state, Class III gaming is prohibited. *Id.* Class III gaming is the most profitable form of gaming and “includes casino games, slot machines, and horse racing.” *Id.* (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014)). “Importantly, IGRA expressly prescribes the matters that are permissible subjects of gaming-compact negotiations between tribes and states.” *Dalley*, 896 F.3d at 1201-02; see 25 U.S.C. § 2710(d)(3)(C). Because Isleta Casino is a Class III gaming facility, the State of New Mexico and the Pueblo entered into a gaming compact.

{15} The Compact between the State of New Mexico and the Pueblo was last revised in 2015. S.J. Res. 19, 52nd Leg., 1st Sess. (N.M. 2015). The Pueblo became a signatory to the Compact on July 28, 2015, which made it the operative Compact at the time of Worker’s injury. See *Indian Gaming*, 80 Fed. Reg. 44,992-01 (July 28, 2015).

{16} Worker contends that the Compact contains an express and unequivocal waiver of tribal sovereign immunity as to workers’ compensation claims. See *R & R Deli, Inc. v. Santa Ana Star Casino*, 2006-NMCA-020, ¶ 10, 139 N.M. 85, 128 P.3d 513 (“A tribe is free to waive its sovereign immunity, but [the waiver] must be express and unequivocal.”). Worker asserts that Section 4(B)(6) contains an express and unequivocal waiver as to both jurisdiction and liability allowing her to pursue a claim in the WCA.

{17} Petitioners claim that Section 4(B)(6) is simply an agreement between the State of New Mexico and the Pueblo that a workers’ compensation program will be implemented—a program in which no claim of sovereign immunity as to liability, rather than jurisdiction, will be available to the Pueblo. They concede that the applicable language references a waiver of sovereign immunity, but they contend the waiver is only operative in their own tribal forum, preventing the Pueblo from asserting the defense of sovereign immunity as to liability in a workers’ compensation claim brought in the Pueblo’s tribal court. Although there is no evidence of an operative tribal workers’ compensation program in the record, we agree with Petitioners, and find no jurisdiction shifting language in Section 4(B)(6). Federally recognized tribes and pueblos are “domestic dependent nations that exercise inherent sovereign authority.” *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, ¶ 19, 388 P.3d 977 (internal quotation marks omitted) (quoting *Bay Mills*, 572 U.S. at 788). As domestic dependent nations, they “are

subject to plenary control by Congress.” *Hamaatsa*, 2017-NMSC-007, ¶ 19. Because Congress possesses plenary control over tribes, federal law prohibits states from redefining the doctrine of sovereign immunity. *Id.* ¶ 21. It is well established that “tribal immunity is a matter of federal law and is not subject to diminution by the States.” *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 756 (1998). However, tribal sovereign immunity is not absolute. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).

{18} Tribal sovereign immunity can be waived one of two ways: Congress can expressly abrogate tribal sovereign immunity through legislation, *Bay Mills*, 572 U.S. at 790, or tribes can waive immunity through an express and unequivocal waiver, *Gallegos*, 2002-NMSC-012, ¶ 7. See also *Kiowa Tribe*, 523 U.S. at 754 (“As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.”). Absent congressional authorization or an express and unequivocal waiver by a tribe, state courts cannot hear suits against tribes. *Gallegos*, 2002-NMSC-012, ¶ 7. It is undisputed that here, Congress has not abrogated the Pueblo’s sovereign immunity as to workers’ compensation; therefore, we turn to whether the Pueblo has expressly and unequivocally waived its immunity, thus permitting workers’ compensation cases to be brought in the WCA.

{19} We agree with Petitioners and determine that Section 4(B)(6) does not contain an unambiguous, express, and unequivocal waiver, so as to permit jurisdiction shifting for workers’ compensation claims. This conclusion is supported by both our independent interpretation of Section 4(B)(6) and our reading of the Compact as a whole.

{20} First, when interpreting the Compact, we see no intent by the Pueblo to shift jurisdiction for workers’ compensation claims to the WCA. The Compact is a contract between the Pueblo and the State of New Mexico. *Gallegos*, 2002-NMSC-012, ¶ 30. “Generally, the goal of contract interpretation is to ‘ascertain the intentions of the contracting parties.’” *Id.* (internal quotation marks and citation omitted). If a contract is unambiguous, this Court’s role is to interpret the contract according to the intent of the contracting parties without manufacturing a new agreement. *Gallegos*, 2002-NMSC-012, ¶ 30. A contract is ambiguous only when it is “reasonably and fairly susceptible” to alternate constructions. *Lenscrafters, Inc. v. Kehoe*, 2012-NMSC-020, ¶ 18, 282 P.3d 758 (internal quotation marks and citation omitted). Disagreement as to the construction of a contract is not definitive evidence of ambiguity. *Id.*

{21} Although Petitioners and Worker disagree as to the applicability of Section 4(B)(6), the language is unambiguous in that it does not confer jurisdiction on the WCA. In arriving at this conclusion, we rely on the language in Section 4(B)(6), which states the Pueblo is required to provide

all employees of the Gaming Enterprise . . . workers’ compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable State programs, and which programs . . . shall include an effective means for an employee to appeal an adverse determination . . . to an impartial forum, such as (but not limited to) the Tribe’s Tribal Court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and as to which no defense of tribal sovereign immunity would be available[.]

NMSA 1978, § 11-13-app. (2015), Section 4(B)(6) explicitly states that “no defense of tribal sovereign immunity would be available” in appeals for adverse determinations of workers’ compensation claims, which are to be in an impartial forum—with no explicit mention of the WCA as a potential forum. Section 4(B)(6) goes on to state “that to fulfill this requirement [of implementing a workers’ compensation program] the Tribe may elect to participate in the State’s program upon execution of an appropriate agreement with the State[.]” Although some language within Section 4(B)(6) may be ambiguous, there is no ambiguity as to whether the tribe has authorized jurisdiction shifting to the State within this section. The only mention of the State in Section 4(B)(6), other than in reference to comparable programs, is that the Pueblo *may elect* to participate in the State’s worker’s compensation program “upon execution of an appropriate agreement.” There is no evidence in the record that such an agreement exists.

{22} Even assuming Section 4(B)(6) were ambiguous, our interpretation would be construed in favor of the Pueblo. See *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (“[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit[.]”). Thus, we resolve any perceived ambiguity by concluding that Section 4(B)(6) contains no express and unequivocal waiver of tribal sovereign immunity.

{23} In an attempt to clarify that the added language in Section 4(B)(6) does not waive immunity as to jurisdiction, Petitioners direct us to Section 8(D) of

the Compact, which is a specific choice of law provision within the Protection of Visitors section of the Compact that applies to visitors' tort claims. NMSA 1978, § 11-13-app. (2015). This section provides that the Pueblo,

by entering into this Compact and agreeing to the provisions of this Section, waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of ten million dollars (\$10,000,000) per occurrence, asserted as provided in this Section. *This is a limited waiver and does not waive the Tribe's immunity from suit for any other purpose.* The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this Section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured, up to the limits of liability set forth in this Paragraph. The Tribe and the State agree that *in any claim brought under the provisions of this Section, New Mexico law shall govern if the claimant pursues the claim in State Court, and the tribal law of the forum shall apply if the claim is brought in Tribal Court.*

*Id.* (emphasis added). By including a waiver of immunity and choice of law section for tort claims in Section 8(D), Petitioners assert that Section 4(B)(6) is intentionally distinguishable. Workers' compensation is neither included in this choice of law section, nor does Section 4(B)(6) contain its own choice of law section, which Petitioner's argue as indicative that jurisdiction shifting was never intended for workers' compensation claims. We agree.

{24} Petitioners raise a valid argument that if the Compact intended to provide a choice of law as to workers' compensation within the Compact, that specific language would be included within the workers' compensation section. *See Smith v. Tinley*, 1984-NMSC-011, ¶ 4, 100 N.M. 663, 674 P.2d 1123 ("In construing the terms of a written agreement, the document is considered as a whole with each part accorded significance and meaning according to its place in the agreement."). In considering the Compact as a whole, it would be discordant to apply an implicit choice of law provision to one section when an explicit, unambiguous choice of law provision is written into another section.

{25} We do not dispute the WCA mediator's finding that the Pueblo does not appear to have an operative workers'

compensation program in place; however, we dispute that this deficiency permits the WCA to exercise jurisdiction over Worker's claim. Such a determination would effectively operate as an implicit waiver of immunity, which is contrary to established precedent. *See Santa Clara Pueblo*, 436 U.S. at 58 ("It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed." (internal quotation marks and citations omitted)).

{26} Accordingly, we reverse the Court of Appeals' holding that the Compact contains an express and unequivocal waiver of the Pueblo's sovereign immunity that permits Worker to pursue her claim in the WCA. Because no waiver exists, we need not consider Petitioners' arguments as to whether such a waiver is permitted in Compact negotiations pursuant to IGRA. We next turn to whether Worker can pursue a private right of action to enforce Compact compliance.

**B. Worker is Unable to Pursue a Private Right of Action to Challenge the Pueblo's Compliance with the Compact**

{27} Petitioners assert that the Compact does not allow Worker to pursue a private party action for enforcement. A dispute resolution mechanism exists; however, they argue that mechanism is intended for the parties to the Compact—not Worker. Worker denies that she seeks a determination as to whether the Pueblo complied with the terms of the Compact. Rather, she states that she seeks to enforce rights that she claims are afforded to her pursuant to Section 4(B)(6).

{28} Not only is Worker, as a non-party to the contract, prevented from enforcing Compact compliance, the WCA cannot adjudicate such a dispute. No private right of action exists to enforce the terms of the Compact. *See Antonio v. Inn of the Mountain Gods Resort*, 2010-NMCA-077, ¶ 18, 148 N.M. 858, 242 P.3d 425 ("[E]ven if, as Worker argues, the Tribe did not have a workers' compensation program in place when he was injured, the Compact still does not provide a private right of action."). "Gaming compacts are contracts between two parties [the Pueblo and the State], and we treat them as such." *R & R Deli, Inc.*, 2006-NMCA-020, ¶ 20.

{29} Furthermore, the WCA cannot adjudicate disputes related to the Compact. *See Jones v. Holiday Inn Express*, 2014-NMCA-082, ¶ 13, 331 P.3d 992 ("The express terms of the Administration Act limit the WCA to resolving disputes that arise under the Compensation Act."); *see, e.g., id.* ¶ 15 ("By its terms, a dispute between insurers is simply not the type of claim the Compensation Act covers since it does not involve or affect a worker's

claim for compensation. It is not enough that this dispute between insurers generally relates to a workers' compensation claim. This case contemplates complex legal issues that the WCA was simply not designed to adjudicate."). Worker has no remedy against the Pueblo regarding its performance under the Compact. *See Antonio*, 2010-NMCA-077, ¶ 14 ("There is a difference between the right to demand compliance with state laws and the means available to enforce them").

{30} Worker's argument that she can demand compliance with the Compact is unavailing. Section 4(B)(6) outlines the specifications that shall be included in the Pueblo's workers' compensation program—it is not the mechanics of the program itself. Worker cannot pursue an action as to a provision that is simply an agreement between the State and the Pueblo that a program will be created. The State and the Pueblo are the only two parties who can challenge compliance. Concluding that there is no private right of action, we then determine whether the Pueblo is an indispensable party to Worker's claim.

{31} In that vein, if Isleta Casino is neglecting to provide workers' compensation coverage to its employees, as mandated by the Compact, the New Mexico Attorney General's office does have authority to intervene and challenge the Pueblo's noncompliance. It is concerning that employees such as Worker have no redress for work-related injuries suffered at Isleta Casino, and the Attorney General's office has seemingly overlooked this deficiency, leaving New Mexico residents who choose to work for Isleta Casino without a remedy.

**C. The Pueblo is an Indispensable Party to an Action Against its Insurer, Mandating Dismissal of Worker's Claim**

{32} The Pueblo is an indispensable party to an action against its insurer because its interests could be affected absent its joinder, and sovereign immunity protects the Pueblo from litigating in state court. Therefore, we reverse the Court of Appeals' holding that the Pueblo is not indispensable, and we rely on *Gallegos* to guide our analysis.

{33} Rule 1-019 NMRA outlines a three-part analysis to determine if a party is indispensable for just adjudication of a case. *Gallegos*, 2002-NMSC-012, ¶ 39. It requires us to consider "(1) whether a party is necessary to the litigation; (2) whether a necessary party can be joined; and (3) whether the litigation can proceed if a necessary party cannot be joined." *Little v. Gill*, 2003-NMCA-103, ¶ 4, 134 N.M. 321, 76 P.3d 639 (citing *Gallegos*, 2002-NMSC-012, ¶ 39). If a necessary party cannot be joined and the court determines the case

should not proceed “in equity and good conscience” without the necessary party, that party is deemed indispensable. *Gallegos*, 2002-NMSC-012, ¶ 39 (citing Rule 1-019(B)). If a party is deemed indispensable, the case must be dismissed. *Gallegos*, 2002-NMSC-012, ¶ 39.

{34} Petitioners argue that the Court of Appeals’ holding conflicts with our holding in *Gallegos*. In *Gallegos*, the plaintiff filed suit in district court over an injury that occurred at a casino on the Pueblo of Tesuque. *Id.* ¶ 3. The plaintiff named the Pueblo, among other defendants, in the complaint. *Id.* ¶ 4. The district court dismissed the complaint as to the Pueblo because the Pueblo had not waived its sovereign immunity. *Id.* The complaint was dismissed without prejudice as to the other defendants, preserving the plaintiff’s right to file an amended complaint. *Id.*

{35} The plaintiff subsequently filed an amended complaint solely against the insurer alleging breach of contract, insurance bad faith, and unfair practices. *Id.* ¶ 5. The district court dismissed the complaint as to the insurer on the premise that the Pueblo was an indispensable party to the action who could not be joined. *Id.* On appeal, this Court found that because the plaintiff’s claims against the insurer involved interpretation of the duties under the insurance contract between the insurer and the Pueblo, the Pueblo was an indispensable party to the action. *Id.* ¶¶ 43, 53 (“Indeed, [the plaintiff’s] asserted causes of action inherently involve the examination of the policy and an examination of the relationship of the insurer-insured to determine any duty [the insurer] might have to [the plaintiff], and [the Pueblo’s] role, if any, in the fulfillment of that duty.”). Essentially, because the interests of the insurer and the Pueblo were not identical, the action could not proceed without the Pueblo. *Id.* ¶ 45 (“Here, however, because [the plaintiff] is suing [the insurer] for alleged violation of its duties as [the Pueblo’s] insurer, we will not presume that [the insurer] can or will fully represent the interests of [the Pueblo] under the policy, and thus, [the Pueblo] is necessary to the litigation.”). Not only were the Pueblo’s and its insurer’s interests at odds, but this Court did not permit the action to proceed when nonjoinder was premised on the Pueblo’s sovereign status. *Id.* ¶ 47 (“Most compelling, however, is that the party in question in this case is a tribe.”).

{36} Petitioners’ argument in favor of indispensability relies on the language in *Gallegos* stating that “a tribal entity has an interest in protecting its tribal resources and controlling their dissipation and allocation under its insurance contract.” See *id.* Petitioners also argue that according to

*Gallegos*, Isleta Casino has a “compelling interest in protecting its sovereign right to litigate on its own behalf and in the forum of its choice.” See *id.* (internal quotation marks and citation omitted). Not only do Petitioners argue that the Court of Appeals’ opinion conflicts with *Gallegos*, but they claim that the opinion’s application essentially exposes the Pueblo, through the purchase of non-tribal insurance, to state court jurisdiction. The deficient record in this case coupled with the Pueblo’s sovereign status compels us to agree.

{37} Although we find merit with Worker’s argument that the Pueblo’s interests are seemingly identical to those of its insurer because no bad faith claims have been raised, we disagree that the analysis ends there. We also disagree with the Court of Appeals that *Gallegos* is not controlling because this case involves a statutory workers’ compensation claim. Such a finding requires us to ignore the jurisdictional deficiencies of Worker’s claim being litigated in the WCA. As discussed above, the Compact does not permit jurisdiction shifting for workers’ compensation claims. Thus, we must determine whether the Pueblo is a necessary and indispensable party to Worker’s claim.

{38} Applying the three-part Rule 1-019 analysis, we first determine if the Pueblo is a necessary party to the action. The Pueblo is deemed necessary if its economic interests might somehow be implicated. See *Golden Oil Co. v. Chace Oil Co.*, 2000-NMCA-005, ¶ 11, 128 N.M. 526, 994 P.2d 772. However, even if the Pueblo is necessary, its interests may not be impeded if they are truly identical to those of its insurers. See *id.* ¶ 13 (“We simply note that the interests of a necessary party will necessarily be impaired and impeded when a trial court rules in its absence, unless the interests of the absentee and one of the extant parties are truly identical.”); see also *Little*, 2003-NMCA-103, ¶ 16 (“Under Rule 1-019(A)(2)(a), if the interests of a necessary party and another in the litigation are truly identical, the interests of the necessary party would not be impaired if the litigation continues without the party.”). Here, however, we are left to speculate about the extent to which the Pueblo’s interests could be impeded because of the scant record. Therefore, we presume that the Pueblo’s interests could potentially be affected. See *Gallegos*, 2002 NMSC-012, ¶ 43 (stating that the “propriety or impropriety” of the insurer’s conduct was considered to be of “substantial interest” to the Pueblo, who paid for a policy and had a reasonable expectation of coverage). Although the interests of the Pueblo and its insurer appear identical at this time, as they are represented by the same attorneys who advance their arguments as a single

entity, their interests could quickly diverge if the claim were to proceed. Thus, we hold that the Pueblo is a necessary party to Worker’s claim and should be joined if possible.

{39} However, here, because the Pueblo is protected by sovereign immunity, its joinder is not feasible. See *Strader v. Verant*, 1998-NMSC-025, ¶ 31, 125 N.M. 521, 964 P.2d 82 (explaining that joinder is unfeasible in an action where sovereign immunity is a jurisdictional barrier). Deeming joinder impossible, we next determine if the Pueblo is an indispensable party to the action, necessitating dismissal of Worker’s claim.

{40} We consider four factors in determining whether the action should continue in equity and good conscience absent the Pueblo’s joinder: (1) the extent of prejudice to the Pueblo or remaining parties if a judgment is rendered in its absence, (2) the extent the prejudice can be alleviated through protective provisions in the judgment, (3) if a judgment rendered absent the Pueblo will be adequate, and (4) whether Worker will have a remedy if the action is dismissed for nonjoinder. See *Golden Oil Co.*, 2000-NMCA-005, ¶ 16 (citing Rule 1-019(B)).

{41} First, we consider the extent to which the Pueblo or remaining parties might be prejudiced if the claim were to proceed absent the Pueblo’s joinder, which is equivalent to the Rule 1-019(A) interest analysis. *Strader*, 1998-NMSC-025, ¶ 31. Generally, “in an action to void or set aside a contract[,] . . . the parties to the contract are indispensable to the litigation.” *Gallegos*, 2002-NMSC-012, ¶ 43. An insurance policy, such as Isleta Casino’s workers’ compensation policy with Insurer, is a contract between an employer and its insurer. See *id.* Because the insurance contract is not contained in the record, we are unable to determine the extent of the prejudice to the Pueblo or remaining parties should the action proceed. Therefore, we presume the Pueblo may be prejudiced if it were not joined in the action. See *id.* ¶ 50 (concluding that, as a party to the contract with its insurer, the tribe may be prejudiced if not joined in the action).

{42} Second, any protective provisions in a judgment or shaping of relief would not protect the sovereign interests of the Pueblo in litigating on its own behalf. See *id.* ¶ 47. We note, however, that such prejudice is minimal due to the particularities of Worker’s claim. Worker’s requested relief is coverage of her claim by Isleta Casino’s insurer, which is the exact purpose for which Isleta Casino has already paid premiums. See *Archer v. Roadrunner Trucking Inc.*, 1997-NMSC-003, ¶ 7, 122 N.M. 703, 930 P.2d 1155 (“The Act may be seen as

a social contract between employer and employee in which the former agrees to pay under a no-fault system and the latter agrees to pursue only those benefits provided for under the Act.”). Worker is neither seeking anything directly against the Pueblo, nor anything above the benefits provided under the workers’ compensation coverage. See *Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-034, ¶ 12, 131 N.M. 272, 34 P.3d 1148 (stating that the employee is not required to prove fault on behalf of the employer in exchange for not seeking benefits beyond what workers’ compensation coverage provides). Additionally, this reasoning applies to the third factor, as the Pueblo’s presence is not necessary to adjudicate a workers’ compensation claim since liability is not at issue. However, this particular determination is not dispositive in our decision, and we have to consider whether in “equity and good conscience” the action should proceed if dismissal leaves Worker with no remedy. See Rule 1-019(B).

{43} Finally, considering the fourth factor, if Worker’s action is dismissed for non-joinder, she will likely have no remedy. As to this element, we give deference to tribes, as a party’s lack of remedy does not prevail over a tribe’s right to protect its sovereign interests. See *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 118-19 (1968) (“The decision whether to dismiss (i.e., the decision whether the person missing is ‘indispensable’) must be based on factors varying with the different cases, some such factors being substantive, some procedural, [and] some *compelling by themselves*.” (emphasis added)); see also *White v. Univ. of Cal.*, 765 F.3d 1010, 1028 (9th Cir. 2014) (“[V]irtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether a remedy is available, if the absent parties are Indian tribes invested with sovereign immunity.” (internal quotation marks and citations omitted)); *Enter. Mgmt. Consultants, Inc. v. United States ex rel. Hodel*, 883 F.2d 890, 894 (10th Cir. 1989) (“When . . . a necessary party under Rule 19(a) is immune from suit, there is very little room for balancing of other factors set out in Rule 19(b), because immunity may be viewed as one of those interests compelling by themselves.” (internal quotation marks and citations omitted)); *Grader*, 1998-NMSC-025, ¶ 32 (“As a matter of public policy, the public interest in protecting tribal sovereign immunity surpasses a plaintiff’s interest in having an available forum for suit.”). We cannot ignore “the fact that society has consciously opted to shield Indian tribes from suit without congressional or tribal consent.” *Gallegos*, 2002-NMSC-012, ¶ 51 (internal quotation marks and citations omitted).

{44} We hold that the Pueblo is an indispensable party to Worker’s claim, thus mandating dismissal. Our holding is confined to the specific facts before us in this case. Our conclusion is predicated on both the Pueblo’s sovereign status and a deficient record, leaving us with no means to make a tangible determination of prejudice. Precedent demands that sovereign immunity prevails when determining indispensability, especially when the record does not definitely support an alternate conclusion. We caution parties, such as an insurer, against adopting a presumption that a tribe’s involvement in a case will always necessitate dismissal.

{45} Finally, we must address the Court of Appeals’ use of certain persuasive authority in its opinion below. To further bolster its conclusion that the Pueblo is an indispensable party, the Court of Appeals relied upon *Waltrip v. Osage Million Dollar Elm Casino*, 2012 OK 65, 290 P.3d 741, and the fact that Worker is an intended third-party beneficiary. See *Mendoza*, 2018-NMCA-038, ¶ 44. While we agree with the Court of Appeals’ conclusion that Worker is a third-party beneficiary to the insurance policy, see *Hovet v. Allstate Insurance Company*, 2004-NMSC-010, ¶¶ 16-17, 135 N.M. 397, 89 P.3d 69. However, the Court of Appeals’ comparison of Oklahoma’s estoppel statute to NMSA 1978, Section 52-1-4(C) (1990) is an inapposite approach to confer third-party beneficiary status and does not provide a path for Worker to proceed against Isleta Casino’s insurers.

{46} Section 52-1-4(C) provides that [e]very contract or policy insuring against liability for workers’ compensation benefits or certificate filed under the provisions of this section shall provide that the insurance carrier or the employer shall be directly and primarily liable to the worker and, in event of his death, his dependents, to pay the compensation and other workers’ compensation benefits for which the employer is liable.

“The rationale is straightforward: to make sure that injured workers or their dependents will be able to collect the benefits due to them even if the employer goes out of business or becomes bankrupt.” *Peterson v. Wells Fargo Armored Servs. Corp.*, 2000-NMCA-043, ¶ 12, 129 N.M. 158, 3 P.3d 135.

{47} In *Waltrip*, the plaintiff was injured while working at a casino located on the Osage Nation, a federally recognized tribe. *Waltrip*, 2012 OK 65, ¶¶ 2-3. Following the injury, the plaintiff filed a claim in the Oklahoma state workers’ compensation court, which the tribe and the insurer moved to dismiss claiming sovereign im-

munity. *Id.* ¶ 4. The workers’ compensation court dismissed the claims against all parties, and the plaintiff appealed. *Id.* On appeal, the Supreme Court of Oklahoma referenced an estoppel statute within the Oklahoma workers’ compensation statutory scheme. *Id.* ¶ 7. The purpose of the Oklahoma estoppel act is to “prevent those who insure employers against liability under the Workers’ Compensation Act from denying coverage based on the status of the parties.” *Id.* When an insurer collects premiums that are calculated based on an employee’s wage, the employer and insurer are estopped from denying coverage to that employee. *Id.* Essentially, the estoppel act prevents an insurer from denying liability for benefits owed to an employee under compensation law. *Id.*

{48} No such estoppel statute exists in the New Mexico workers’ compensation statutory scheme, and even if it did, application of such a statute in this case presumptively assumes that the Pueblo intended to adjudicate workers’ compensation claims within the state program. Again, there is nothing in the record to support the argument that the Pueblo executed “an appropriate agreement with the State” to submit to the WCA. NMSA 1978, § 11-13-app. (2015).

{49} Although we agree that the certificate of insurance effectively conferred third-party beneficiary status on Worker, determining that Worker is an intended third-party beneficiary to Isleta Casino’s workers’ compensation insurance policy does not then permit her to pursue her claim absent joinder of an indispensable party. As the Pueblo is an indispensable party who cannot be joined, Worker’s claim must be dismissed as to all parties. Thus, we reverse the Court of Appeals’ holding that Worker may proceed as a third-party beneficiary.

#### CONCLUSION

{50} Based on the foregoing, we reverse the Court of Appeals and conclude that (1) the Compact contains no express and unequivocal waiver as to the Pueblo’s sovereign immunity; (2) as a non-contracting party, Worker cannot pursue a private right of action to enforce Compact compliance; and (3) the Pueblo is an indispensable party to Worker’s claim, and therefore, the action must be dismissed in its entirety.

{51} IT IS SO ORDERED.  
C. SHANNON BACON, Justice

WE CONCUR:  
JUDITH K. NAKAMURA, Chief Justice  
BARBARA J. VIGIL, Justice  
DAVID K. THOMSON, Justice  
ABIGAIL P. ARAGON, Judge  
Sitting by designation

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2020-NMCA-013**  
No. A-1-CA-36521 (filed December 2, 2019)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
BRANDON DYKE,  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**  
JAMES WAYLON COUNTS, District Judge

Certiorari Denied, January 13, 2020, No. S-1-SC-38079.  
Released for Publication February 11, 2020.

Hector H. Balderas,  
Attorney General  
Santa Fe, NM

BENNETT J. BAUR,  
Chief Public Defender  
Santa Fe, NM

WALTER M. HART, III,  
Assistant Attorney General  
Albuquerque, NM  
for Appellee

STEVEN J. FORSBERG,  
Assistant Appellate Defender  
Albuquerque, NM  
for Appellant

## Opinion

**Linda M. Vanzi, Judge.**

{1} After Defendant Brandon Dyke was allowed to withdraw his guilty plea, a jury convicted him of multiple counts of criminal sexual penetration of a minor (CSPM) under the age of thirteen. The district court subsequently sentenced Defendant to ninety-nine years with thirty years suspended, leaving sixty-nine years to be served, minus credit for time served. Defendant appeals his convictions arguing that (1) the district court abused its discretion in disqualifying his counsel of choice; (2) due to vindictive sentencing as a result of the withdrawal of his plea agreement, the case should be remanded for resentencing in front of a different judge; and (3) he received ineffective assistance of counsel. We affirm.

### Background

{2} In early 2007 Heather Turner (Mother) reported to Alamogordo police that Defendant had engaged in criminal sexual contact with her then six-year-old daughter (Victim). Shortly thereafter, a grand

jury indicted Defendant on five counts of first degree criminal sexual penetration of a minor (CSPM) under thirteen, contrary to NMSA 1978, Section 30-9-11 (2003, amended 2009), six counts of second degree criminal sexual contact of a minor (CSCM) under the age of 13, contrary to NMSA 1978, Section 30-9-13(B) (2003), and one count of third degree CSCM, contrary to Section 30-9-13(C).

{3} Two months after the grand jury indictment, the State filed a criminal information against Mother charging her with child abuse. *State v. Heather Turner*, D-1215-CR-2007-00137. The charges against Mother arose from the same series of events that resulted in the indictment against Defendant. Attorney Todd Holmes represented Mother in her case and, on December 7, 2007, Mother pled guilty to the charges and was sentenced to a period of incarceration. While Mother's case was still pending in the district court, the State filed its disclosure of witnesses in Defendant's case listing Mother as a witness.

{4} On December 10, 2007, Defendant entered a written plea and disposition agreement (Agreement) in which he agreed to

plead guilty to three counts of first degree CSPM, and one count of second degree CSCM. Among other things, and as part of the Agreement, the State agreed to dismiss the remaining charges against Defendant. There was no agreement as to sentencing at that time; however Defendant was ordered to undergo a sixty-day diagnostic in the Department of Corrections. In the hearing to accept the plea, the district court informed Defendant—in error—that the minimum sentence he faced would be three years. After the hearing, and pursuant to the Agreement, the court entered judgment on June 3, 2008, sentencing Defendant to a total of sixty-nine years of incarceration (three eighteen-year sentences), with portions of it running concurrently, for a total of thirty-six years in prison.

{5} Holmes entered his appearance on behalf of Defendant on March 27, 2012, when he filed a petition for writ of habeas corpus alleging, inter alia, that the district court had erroneously informed Defendant of the minimum possible sentence during the plea colloquy. Defendant sought to have the sentence vacated and for trial to be set. During the hearing on the petition—held three years later on March 16, 2015—the district court told counsel that if it were to set aside the plea, Defendant “would be facing twelve counts that total . . . 183 years.” Holmes responded that he had “explained that to [Defendant],” and Defendant understood that setting aside the plea could result in “a trial, conviction on all counts, and perhaps a new sentencing.” After reviewing the audio of the plea colloquy, the district court agreed that it had “misinform[ed] Defendant that the minimum amount of time was three years as opposed to eighteen,” granted Defendant's petition, set aside the conviction, and set the case for trial.

{6} On January 21, 2016, Holmes filed an unopposed motion to withdraw from further representation of Defendant. As grounds for his motion, Holmes stated that Defendant was “unable to afford representation at a jury trial[,]” that Holmes “was only paid to file a [h]abeas action[,]” and that “[c]ounsel for Defendant has a conflict of interest as he represented Heather Turner who is the mother of [Victim] in the above-captioned proceeding.” The district court granted the motion and ordered the public defender department to appoint counsel for Defendant immediately.

{7} The case proceeded and after numerous continuances was finally set for a jury trial on February 21, 2017. On February 7, 2017, the district court entered an or-



der to transport Defendant to be present for the three-day trial. The day after entry of the transport order, and two weeks before the start of trial, Holmes filed an entry of appearance, notice of discovery demand, demand for speedy trial, and initial disclosure of witnesses. The filing stated, among other things, that Defendant intended “to call any and all State’s witnesses, co-defendants, and any witnesses listed in any of the discovery” but made no mention of Defendant’s current court-appointed counsel or Holmes’ prior withdrawal of representation. Although unclear, it appears that Holmes did not serve Jeffrey Van Keulen, the public defender appointed to represent Defendant.

{8} The State immediately filed a motion to deny substitution of counsel and/or motion to disqualify Holmes. As grounds for its motion, the State alleged that Defendant’s court-appointed counsel had not been relieved of his representation in contravention of Rule 5-107(B) NMRA, nor had Holmes sought court-approval for his entry of appearance. The motion also stated that Holmes had “an actual conflict in this cause as he previously represented a co-defendant, [Mother],” and that he was allowed to withdraw from the instant case citing his conflict in representing her. Further, the State contended that Holmes did not have a waiver from Mother, as required by Rule 16-107 NMRA, that Mother would not waive the conflict, and that this information was provided to Mr. Holmes. Mother was still listed on the witness list and was expected to testify at Defendant’s trial.

{9} After a hearing on the State’s motion to deny substitution of counsel and/or disqualify Holmes, which we discuss in further detail in our analysis below, the district court found that Holmes had a conflict and granted the State’s motion, thereby rejecting Holmes’ entry of appearance. The case proceeded to trial and a jury found Defendant guilty of all the charges brought against him: five counts of CSPM, and seven counts of CSCM under the age of thirteen. Thereafter, the district court sentenced Defendant. This appeal followed.

#### Discussion

{10} Defendant raises three arguments. First, Defendant contends his convictions should be reversed because he was improperly denied his counsel of choice. Second, Defendant argues that “[d]ue to vindictive sentencing[,] the case should be remanded for resentencing in front of a different judge.” Lastly, Defendant claims he “received ineffective assistance of counsel.” For the reasons that follow, we are unpersuaded by any of Defendant’s contentions on appeal.

### A. Sixth Amendment Right to Counsel of Choice

#### I. Standard of Review

{11} “[T]he Sixth Amendment guarantees [the] defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006) (quoting *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624-25 (1989)). But the Sixth Amendment also guarantees representation that is free from conflicts of interest. See *Wood v. Georgia*, 450 U.S. 269-71 (1981). While a defendant can knowingly and intelligently waive conflicts of interest, the district court is allowed “substantial latitude” to refuse such waivers in cases of either actual or potential conflict. *Wheat v. United States*, 486 U.S. 153, 163 (1988). Thus, a defendant cannot insist on representation by an attorney who has a conflict of interest that would undermine public confidence in the impartiality and fairness of the judicial process. See *Gonzalez-Lopez*, 548 U.S. at 152; *Wheat*, 486 U.S. at 159.

{12} Defendant and the State agree that, although New Mexico has not set out a standard of review for denial of counsel of choice, most appellate courts have reviewed a district court’s disqualification of a defense attorney for conflict of interest under an abuse of discretion standard. See, e.g., *United States v. Sanchez Guerrero*, 546 F.3d 328, 332 (5th Cir. 2008); *United States v. Gharbi*, 510 F.3d 550, 553 (5th Cir. 2007); *United States v. Locascio*, 6 F.3d 924, 931 (2nd Cir. 1993); *United States v. Smith*, 995 F.2d 662, 675-76 (7th Cir. 1993); *People v. Watson*, 46 N.E.3d 1057, 1060 (N.Y. 2016); see also *Wheat*, 486 U.S. at 164 (stating that “the [d]istrict [c]ourt’s refusal to permit the substitution of counsel . . . was within its discretion and did not violate petitioner’s Sixth Amendment rights”). We see no reason to depart from application of this standard here and, thus, will uphold the district court’s findings unless they are clearly erroneous, and the court was unreasonable, arbitrary, or unconscionable in its ruling. See *State v. Samora*, 2016-NMSC-031, ¶ 37, 387 P.3d 230 (stating that “[a]n abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case” (internal quotation marks and citation omitted)).

#### II. Preliminary Matters

{13} Defendant raises several choice of counsel arguments on appeal, three of which we dispose of at the outset before turning to the substantive conflict of interest issue presented.

{14} First, to the extent Defendant argues “[t]he [S]tate lacked standing to raise the issue of the potential conflict of interest,”

we disagree. Defendant relies on a number of cases to support his assertion that only a current or former client has standing to move for disqualification of counsel and, therefore, the State has no standing to assert the privilege held by the potential witness. These cases are inapposite and do not involve a defendant’s Sixth Amendment right to effective and conflict-free assistance of counsel. Moreover, Defendant fails to cite the plethora of cases directly addressing the issue. In general, these cases have observed that “when the government is aware of a conflict of interest, it has a duty to bring it to the court’s attention and, if warranted, move for disqualification” of the defendant’s counsel. *United States v. Migliaccio*, 34 F.3d 1517, 1528 (10th Cir. 1994) (emphasis added); *United States v. Tatum*, 943 F.2d 370, 379-80 (4th Cir. 1991) (same). As the Tenth Circuit has explained, “[t]he prosecution’s duty to alert the court to defense counsel’s potential and actual conflicts of interest is rooted not only in the defendant’s right to effective and conflict-free representation, but also in the prosecutor’s role as an administrator of justice, an advocate, and an officer of the court.” *United States v. McKeighan*, 685 F.3d 956, 966 (10th Cir. 2012) (internal quotation marks and citation omitted). Thus, in this case, it was the State’s duty to disclose Holmes’ potential or actual conflict of interest to facilitate the administration of justice by helping to avoid delays or retrials that could occur if the conflict rendered Holmes’ representation ineffective.

{15} We note as well that the rationale for imposing such a duty on the State is well founded. A failure to timely raise a conflict of interest could well lead to a reversal of any conviction obtained at trial. Moreover, if the State was to withhold known potential or actual conflicts of interest in Holmes’ representation rather than bring it to the district court’s attention, the prosecution could gain an unfair tactical advantage by restricting Holmes’ effectiveness at trial. See *United States v. Malpiedi*, 62 F.3d 465, 470 n.3 (2d Cir. 1995). Indeed, some federal appellate courts have reversed convictions based on defense counsel’s conflicts at trial and chastised the prosecution for knowing about the potential conflicts and not moving for disqualification. See *id.*; *Mannhalt v. Reed*, 847 F.2d 576, 583-84 (9th Cir. 1988); *United States v. Iorizzo*, 786 F.2d 52, 54, 59 (2d Cir. 1986); see also *United States v. Levy*, 25 F.3d 146, 152 (2d Cir. 1994) (noting that the prosecution failed to apprise a reassigned judge of conflict of interest concerns “thereby permitting the [j]udge to walk unwittingly into the ‘mine field’”). We conclude that the State had the obligation—and duty—to diligently alert

the district court to the conflict of interest arising from Holmes' representation of Defendant and properly did so here.

{16} Second, we do not consider Defendant's argument that "[t]he 'law of the case' did not apply and the [district] court judge abused [its] discretion in using it to justify the disqualification of [Defendant]'s chosen attorney." The State did not raise the "law of the case" doctrine in its motion to deny substitution of counsel and/or to disqualify Holmes. Although the prosecutor stated her belief that because Holmes had represented a co-defendant in the past, there was no waiver from the codefendant, and Holmes previously himself raised the fact of his conflict, the presence of a conflict became the law of the case, the district court nowhere entertained that argument or relied upon it in its order granting the motion. In fact, Defendant cites no record evidence for his assertion that the district court used the law of the case doctrine much less abused its discretion in doing so, and our review of the record discloses none. Accordingly, we do not address it further. See *Murken v. Solv-Ex Corp.*, 2005-NMCA-137, ¶ 14, 138 N.M. 653, 124 P.3d 1192 ("[W]e decline to review . . . arguments to the extent that we would have to comb the record to do so."); see also *Muse v. Muse*, 2009-NMCA-003, ¶ 42, 145 N.M. 451, 200 P.3d 104 ("We are not obligated to search the record on a party's behalf to locate support for propositions a party advances or representations of counsel as to what occurred in the proceedings."); *In re Aaron L.*, 2000-NMCA-024, ¶ 27, 128 N.M. 641, 996 P.2d 431 ("This Court will not consider and counsel should not refer to matters not of record in their briefs").

{17} Third, we do not address Defendant's argument that the State "objected to Mr. Holmes' entry for tactical reasons." We recognize the potential for the State to abuse its powers or to create conflicts of interest to deny a defendant the right to counsel of his choice. However, we conclude that the State did not do so here. Other than a general—and unsupported—assertion that because "Holmes had been successful in litigating [Defendant]'s habeas petition and the [S]tate may have preferred to oppose an overburdened and underpaid public defender rather than a privately retained attorney[.]" Defendant does not point to any specific wrongdoing by the State. And we see nothing in the record to suggest that the State acted improperly in any way by raising the conflict of interest or seeking rejection of Holmes second entry of appearance. The State filed its disclosure of witnesses in Defendant's case listing Mother as a witness on October 12, 2007, a decade before it filed the motion to disqualify. Moreover, the State's motion to disqualify was filed im-

mediately after Holmes filed his entry of appearance and relied, in large measure, on Holmes' earlier motion for withdrawal citing, *inter alia*, his conflict of interest. As a final matter, we note that this argument was unpreserved below, as Defendant did not raise the issue at any time during the hearing before the district court. See, e.g., *Nance v. L.J. Dolloff Assocs.*, 2006-NMCA-012, ¶ 12, 138 N.M. 851, 126 P.3d 1215 ("[W]e review the case litigated below, not the case that is fleshed out for the first time on appeal." (internal quotation marks and citation omitted)); *Woolwine v. Furr's, Inc.*, 1987-NMCA-133, ¶ 20, 106 N.M. 492, 745 P.2d 717 ("To preserve an issue for review on appeal, it must appear that [the] appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court."). We cannot conclude on this record that the State did anything but act in good faith, that its concerns were authentic, and that it took legitimate steps to resolve those concerns.

### III. The District Court Did Not Abuse Its Discretion in Disqualifying Holmes

{18} As we have noted, immediately after Holmes filed his entry of appearance, the State filed its motion to deny substitution of counsel and/or motion to disqualify Holmes. Holmes did not file a written response to the State's motion. Instead, the district court held a hearing on February 14, 2017, one week before the start of trial, on the State's motion.

{19} At the hearing, the district court engaged Holmes in a discussion about his understanding of his obligation to avoid any representation that involved a conflict of interest and his efforts to comply with that duty. During that exchange, Holmes stated that Defendant's family had initially hired him to file the habeas petition only and they did not hire him to do the underlying trial. Holmes further admitted that the "habeas really didn't involve anything but just listening to the record and the change of plea." When Holmes started to address the issue of the conflict and the "law of the case" argument, the district court interrupted asking, "So there wasn't a conflict? It was just nonsense, or what?" While Holmes contended that "I'm not sure if there is a conflict [of interest]," he nevertheless admitted, "I think the danger is . . . that, I guess on cross-examination if the State truly intends to call [Mother] as a witness . . . the risk would be . . . that my cross-examination might have information that [Mother] told me in confidence." With regard to the issue of waivers, Holmes thought—but could not remember—whether he had a waiver signed by Defendant but conceded that, if there was a conflict, "I believe that has to be waived, certainly by both parties, in writing." Holmes did not argue or have any

evidence that Defendant and/or Mother clearly agreed to waive any potential conflict. Nor did he respond to the State's assertion, raised in its motion, that Holmes did not have a waiver from Mother, Mother told the State that she would not waive the conflict, and Holmes was given this information. In sum, Holmes appears to have made no effort to obtain waivers from Defendant and Mother, nor did he say he would seek to do so. Instead, Holmes ended his argument by saying, "Judge, I'll leave it up to Your Honor. At this point, it's kind of tricky. . . . So Judge, we'll leave it up to your discretion at this point but I don't believe, in reviewing the rules, that a conflict really does exist." After hearing the arguments of the parties, the district court ruled for the State, and subsequently entered a written order finding that Holmes had a conflict and therefore, that the State's motion should be granted.

{20} In determining whether to disqualify counsel on conflict of interest grounds, the district court need not find an actual, existing conflict of interest. As the Supreme Court stated in *Wheat*, the court

must recognize a presumption in favor of [the defendant]'s counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict but by a showing of serious potential for conflict. The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the [district] court.

486 U.S. at 164. Determining whether such a potential conflict exists is no simple task. "The likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even for those thoroughly familiar with criminal trials." *Id.* at 162-63.

{21} In this case, the district court could have reasonably found at least a serious potential for conflict arising from Holmes' representation of Defendant. Mother had been charged with crimes arising out of the same set of circumstances facing Defendant in his trial. And Holmes had withdrawn from representing Defendant in this case because, Holmes asserted, he had of a conflict of interest based on his past representation of Mother. At the hearing on the State's motion, Holmes acknowledged the "danger" and "risk" of using confidential information gleaned in his representation of his former client to cross-examine Mother as a witness at Defendant's trial. Notwithstanding this recognition, however, and without any considered explanation, Holmes maintained below that he did not believe a conflict existed. But Holmes offered nothing

to establish how the vigorous defense of his current client (Defendant) would not be materially limited by his responsibility to his former client (Mother). Moreover, to the extent that Holmes previously represented Defendant in his habeas petition, Holmes told the district court that his appearance in the case “really didn’t involve anything but just listening to the record and the change of plea.” Thus, we can conclude that he neither gained nor divulged any confidential information in the course of that representation. And to reiterate, Holmes conceded that if a conflict existed, he would need waivers from both Defendant and Mother, yet he made no effort to proffer waivers from either of them. Nor did he respond to the State’s representation that Mother would not waive her conflict and how he might address that circumstance thus leaving the district court unable to consider any possible waivers. We find it difficult to understand why an attorney, under these circumstances, would not make at least some minimal effort to obtain waivers from his former clients. Important as well is that this was not a situation where the district court removed Defendant’s counsel of choice. Defendant was, and had been, represented by appointed defense counsel who presumably was ready for the upcoming trial. Notably, there was no motion to discontinue that attorney’s representation and substitute counsel pending before the court. See Rule 5-107(B) (“An attorney who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by the court.” (emphasis added)).

{22} Regardless of whether an actual conflict exists, there is clearly a potential conflict of interest inherent in Holmes’ representation of Defendant and his previous client whose criminal cases stemmed from the same set of facts and who was listed as a witness of the State in its case against Defendant, particularly given that Holmes himself had previously asserted a conflict. Based on the above, and given the disruption and delay that would have occurred in this decade-old case that was scheduled for trial in two weeks and likely would have required a continuance, we conclude that there was no abuse of discretion in the district court’s disqualification of Holmes.

#### **B. Defendant Failed to Establish a Presumptive or Actual Vindictiveness Claim**

{23} Defendant argues that the district court violated his right to due process under both the Federal and State Constitutions by imposing a vindictive sentence because it increased Defendant’s sentence following the withdrawal of his plea agreement and after a jury trial. As an initial

matter, we note that Defendant failed to preserve or adequately argue in the district court for protections under the New Mexico Constitution, and we therefore limit our analysis to Defendant’s claimed right under the United States Constitution. See *State v. Cannon*, 2014-NMCA-058, ¶ 10, 326 P.3d 485 (“This Court does not read [the d]efendant’s brief in chief or reply brief as asserting an argument for greater protection under the New Mexico Constitution, and [the d]efendant has made no attempt to rebut the [prosecution’s] contention that this issue was not preserved. We therefore limit our analysis accordingly.”).

{24} The issue of whether a harsher sentence represents a due process violation is a question of law that we review de novo. See *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 27, 142 N.M. 248, 164 P.3d 947 (“We review questions of constitutional law and constitutional rights, such as due process protections, de novo.”). A sentence is unconstitutionally vindictive if it imposes greater punishment because the defendant exercised a constitutional right, such as the right to jury trial or the right to appeal. See *Wasman v. United States*, 468 U.S. 559, 568 (1984). However, in *Alabama v. Smith*, 490 U.S. 794, 795 (1989), the United States Supreme Court held “that no presumption of vindictiveness arises when the first sentence was based upon a guilty plea, and the second sentence follows a trial.” The Court in *Smith* noted that a sentencing judge possesses much more relevant sentencing information after trial than is generally available when a defendant pleads guilty. *Id.* at 801. During a trial, “the judge may gather a fuller appreciation of the nature and extent of the crimes charged” and gain “insights into [the defendant’s] moral character and suitability for rehabilitation.” *Id.* In addition, “after trial, the factors that may have indicated leniency as consideration for the guilty plea are no longer present.” *Id.*; see *State v. Sisneros*, 1984-NMSC-085, ¶¶ 19-21, 101 N.M. 679, 687 P.2d 736 (holding that the presumption of vindictiveness was overcome, in part, because the original sentence was based on a guilty plea when the circumstances of the crime were not fully brought before the court, and the subsequent sentence was “based on jury verdicts following a full-scale trial”), overruled on other grounds by *State v. Saavedra*, 1988-NMSC-100, 108 N.M. 38, 766 P.2d 298. In sum, while a criminal defendant “may not be subjected to more severe punishment for exercising his constitutional right to stand trial, the mere imposition of a heavier sentence after a defendant voluntarily rejects a plea bargain does not, without more, invalidate the sentence.” *United States v. Morris*, 827 F.2d 1348, 1352

(9th Cir. 1987) (internal quotation marks and citations omitted). When “the record contains statements that give rise to an inference of vindictive sentencing, . . . the record [must] affirmatively show that no improper weight was given to the failure to plead guilty.” *Id.* (internal quotation marks and citation omitted).

{25} Therefore, it is not reasonable for a reviewing court to presume that a longer sentence imposed after trial was motivated by unconstitutional vindictiveness. Where there is no reasonable likelihood that the sentence is the product of actual vindictiveness on the part of the sentencing authority, the burden is on the defendant to prove actual vindictiveness in the sentencing decision. *Smith*, 490 U.S. at 799. “[T]he mere imposition of a longer sentence than [a] defendant would have received had he pled guilty . . . does not automatically constitute vindictive or retaliatory punishment.” *Williams v. Jones*, 231 F. Supp. 2d 586, 599 (E.D. Mich. 2002). “The Supreme Court’s plea bargaining decisions make it clear that a state is free to encourage guilty pleas by offering substantial benefits to a defendant, or by threatening an accused with more severe punishment should a negotiated plea be refused.” *Id.* Although a defendant is free to accept or reject a plea bargain, once that bargain has been rejected, “the defendant cannot complain that the denial of the rejected offer constitutes a punishment or is presumptive evidence of judicial vindictiveness.” *Id.*

{26} In this case, Defendant initially agreed to plead guilty to three counts of first degree CSPM, and one count of second degree CSCM. The district court sentenced Defendant for these four counts to a total of sixty-nine years of incarceration (three eighteen-year sentences), with portions of it running concurrently, for a total of thirty-six years in prison. After the jury trial, however, Defendant was found guilty of twelve counts of CSPM and CSCM (five counts of CSPM, and seven counts of CSCM). Based on the jury’s verdict, the district court sentenced Defendant to ninety-nine years with thirty years suspended, leaving sixty-nine years minus credit for time served. Thus, the question is whether Defendant’s sixty-nine year sentence is vindictive because it exceeds the thirty-six year sentence imposed after entry of the plea agreement.

{27} Defendant contends that comments made by the district court after trial demonstrated actual vindictiveness in violation of his due process rights. At the sentencing hearing, the State argued that it was “extremely hard and damaging” for Victim to have to testify so many years after the crimes and that the court “should sentence . . . Defendant to I believe essentially a life sentence.” Thereafter, the district court said:

It's terrible that she had to come back here and testify ten years after the fact and I played a part in that, it is in some great part my fault, because had I properly informed you maybe we wouldn't have ever had to undo your plea and go through this again so I apologize to [Victim] for my failings as a judge and not adequately informing . . . Defendant of the possibility of the mandatory sentences that he faced.

{28} According to Defendant, this “remorse at [the district court’s] part in the fiasco . . . demonstrates the vindictiveness of [Defendant’s] sentence.” We are not persuaded that that the district court’s comments above show that the sentence imposed by the judge in this case was based on a desire to punish Defendant for exercising his constitutional right to a trial. Defendant asks us to consider the comment in isolation. We decline to do so. Heard in its entirety, during the sentencing phase, the judge gave a lengthy and reasoned explanation for the sentence he was about to impose and, in his comments above, was merely acknowledging the burden on Victim for having to testify so many years after the crimes. In addition to those comments, the judge mentioned the facts of the case, including the nature of the crimes involved, the respective ages of Defendant and Victim, and the non-consensual nature of the sexual encounters. The judge then properly informed Defendant that he was entitled to appeal

and the number of days within which he would have to file his notice of appeal. Further, the judge never stated or implied that Defendant’s sentence was based on his failure to accept the plea offer ten years earlier. Indeed, at the hearing on Defendant’s habeas petition, the district court took great care to advise defense counsel that if it were to set aside the plea, Defendant “would be facing twelve counts that total . . . 183 years.” And counsel responded that he had “explained that to [Defendant],” and Defendant understood that setting aside the plea meant “a trial, conviction on all counts, and perhaps a new sentencing.”

{29} Defendant has not offered any evidence of vindictive sentencing beyond the fact of a discrepancy between the plea bargain offered to him and the actual sentence he received after a jury trial convicting him of all twelve counts. Under the circumstances, the sentence was well within the bounds of the 183 years the district court said Defendant would be facing by going to trial. In sum, Defendant has failed to show that the sentence imposed by the district court in this case was based on a desire to punish Defendant for exercising his constitutional right to a trial.

#### C. Defendant Did Not Receive

##### Ineffective Assistance of Counsel

{30} “The Sixth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, guarantees [defendants in criminal proceedings] the right to . . . effective assistance of counsel.” *Patterson v. LeMaster*, 2001-NMSC-013, ¶ 16, 130 N.M. 179, 21

P.3d 1032 (internal quotation marks and citation omitted). We review claims of ineffective assistance of counsel de novo. *Duncan v. Kerby*, 1993-NMSC-011, ¶ 7, 115 N.M. 344, 851 P.2d 466.

{31} On appeal, Defendant contends that the docketing statement “lists a number of errors that can be cumulatively regarded as ineffective assistance of counsel” and notes that his trial counsel filed a number of untimely motions on the eve of trial. However, Defendant concedes that the record does not demonstrate the reason for these late filings and that this issue “would better be argued in a habeas corpus proceeding.” We agree and suggest that if Defendant wishes to pursue his ineffective assistance of counsel claim, he may proceed with a petition for habeas corpus, pursuant to Rule 5-802 NMRA, following final mandate from this Court. *See Duncan*, 1993-NMSC-011, ¶ 7 (expressing a preference that ineffective assistance of counsel claims be adjudicated in habeas corpus proceedings, rather than on direct appeal); *State v. Herrera*, 2001-NMCA-073, ¶ 37, 131 N.M. 22, 33 P.3d 22 (same).

#### Conclusion

{32} For the foregoing reasons, we affirm.

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

LINDA M. VANZI, Judge

#### WE CONCUR:

J. MILES HANISEE, Chief Judge  
BRIANA H. ZAMORA, Judge

# ALDRIDGE, HAMMAR & WEXLER, P.A.

Congratulations to Allison Block-Chavez on attaining partnership level with the firm. Allison is a distinguished attorney, primarily focusing on fiduciary services, adult guardianships and conservatorships, estate planning, probate matters, real estate, and creditors' rights. Her range of experience and knowledge makes her a valuable resource to her clients. She is an outstanding member of the legal community, which is demonstrated through her many contributions to the New Mexico State Bar Board of Bar Commissioners, Young Lawyers Division of the State Bar of New Mexico (past president 2020), the American Bar Association, and recognized as Albuquerque Business First 40 Under Forty Honoree.



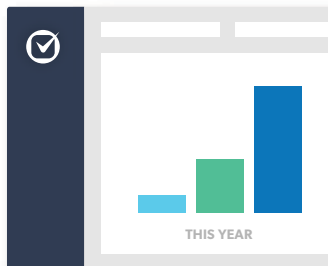
1212 Pennsylvania Street NE, Albuquerque, New Mexico 87110

505-266-8787 · [www.ABQLawNM.com](http://www.ABQLawNM.com)



**Data matters.  
Get more with Clio.**

Better run your firm with the insights you need to make smart business decisions.



1-866-734-7216  
[landing.clio.com/NMBar](http://landing.clio.com/NMBar)



State Bar of New Mexico Members receive an exclusive 10% discount.

## MARY PENNER Certified Genealogist®

### *Forensic Genealogy Specialist*

- Locate missing heirs for probate
- Find living heirs for quiet title
- Research land grant heirs
- Analyze familial DNA test results
- Transcribe and evaluate historical documents



Penner Research Services, LLC  
[www.marypenner.com](http://www.marypenner.com)  
email: [mary@marypenner.com](mailto:mary@marypenner.com)  
505.321.1353



**CUDDY & McCARTHY, LLP**

*Attorneys at Law*

**CUDDY & McCARTHY, LLP ANNOUNCES  
RETIREMENT OF CHARLOTTE HETHERINGTON**



We are at once happy and sad to announce the retirement of our dear friend and colleague, Charlotte Hetherington. Ms. Hetherington has been a cornerstone of our firm for the past 26 years. Her commitment to excellence and tireless support and mentorship of her partners, associates and staff is irreplaceable. Her legal acumen is unsurpassed and many an opposing counsel has been left defeated in her wake. While her retirement from our firm and legal community is certainly a loss, we want to extend our sincere happiness and support for Ms. Hetherington in her adventures to come. Charlotte, it is with the greatest fondness, appreciation and gratitude of your years of service to our firm, that we wish you all the best.

**SANTA FE OFFICE**

1701 Old Pecos Trail, Santa Fe, NM 87505  
Tel: 505-988-4476 • Fax: 888-977-3814

**ALBUQUERQUE OFFICE**

201 Third St NW, Suite 1300, Albuquerque, NM 87102  
Tel: 505-888-1335 • Fax: 888-977-3816

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



**Guebert Gentile & Piazza P.C.**  
ATTORNEYS



**Guebert Gentile & Piazza P.C.** is pleased to announce that **Lawrence A. Junker** has become a partner with the firm. Mr. Junker practices in the areas of insurance defense, insurance bad faith, products liability, professional liability and personal injury. Mr. Junker became a senior attorney with the firm in 2018.

Post Office Box 93880, Albuquerque, NM 87199-3880  
6801 Jefferson Street NE, Suite 400, Albuquerque, NM 87109  
Phone: 505.823.2300 Fax: 505.823.9600 Email: [advice1@guebertlaw.com](mailto:advice1@guebertlaw.com)  
[www.guebertlaw.com](http://www.guebertlaw.com)

**LAWPAY**<sup>®</sup>  
AN AFFINIPAY SOLUTION

**POWERING  
PAYMENTS  
FOR THE  
LEGAL  
INDUSTRY**

Plugs into law firms' existing workflows to drive cash flow, reduce collections, and make it easy for clients to pay



PROUD  
MEMBER  
BENEFIT

**888-726-7816**  
[lawpay.com/nmbar](http://lawpay.com/nmbar)



# JOHN C. ANDERSON REJOINS HOLLAND & HART

We welcome back John Anderson to our Santa Fe office as a Partner in the Government Investigations and White Collar Defense practice. John brings valuable perspective from serving as the U.S. Attorney for the District of New Mexico to help companies and individuals facing government and internal investigations.

**John C. Anderson**  
505.954.7290  
110 North Guadalupe, Suite 1  
Santa Fe, NM 87501



24/7 Live virtual receptionist services.

**Ruby's got your back.**

From your office, to your home, to on the go!

TO LEARN MORE VISIT:  
[WWW.RUBY.COM/NMBAR](http://WWW.RUBY.COM/NMBAR)

**LEATHERER**  
INSURANCE CONSULTANTS, INC.  
PROFESSIONAL LIABILITY SPECIALISTS

**We shop up to 22 professional liability insurance companies to find the right price and fit for your law firm.**

Make sure your insurance policy has:

- Prior acts coverage, to cover your past work.
- Claim expenses outside the limit of liability, no PacMan.
- "A" rating from A.M. Best, important, some companies are NOT!
- Free tail options for retiring attorneys.

*We help solve insurance problems for the growth of your firm*

Brian Letherer

1540 Juan Tabo NE, Suite H, Albuquerque, NM 87112  
bletherer@licnm.com • 505.433.4266  
[www.licnm.com](http://www.licnm.com)



# Manzano Day School

Joy in Learning® Since 1938



Pre-K through 5th grade 🍎 Nonprofit 🍎 Core Values 🍎 Child-Centered Education  
Bus Service 🍎 Extended Day Childcare 🍎 Outdoor Environmental Education

Book an in-person or virtual tour, today! Call 505-243-6659 to schedule.




**We have a podcast!**

**SBnm  
is Hear**

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




## MADISON, MROZ, STEINMAN, KENNY & OLEXY, P.A.

*We are pleased to announce*

**Aaron K. Thompson**

*has joined the Firm as an Associate*

Mr. Thompson earned his Bachelor of Arts degree in Government in 2001 from University of Texas and his Doctor of Jurisprudence in 2010 from University of Texas School of Law.

We welcome him to our practice.

---

201 Third Street N.W., Suite 1600  
Albuquerque, NM 87102  
505.242.2177 • [www.madisonlaw.com](http://www.madisonlaw.com)



**MADISON, MROZ, STEINMAN,  
KENNY & OLEXY, P.A.**

*We are pleased to announce*

**Paul M. Cash**

*has become a Shareholder in the Firm*

---

201 Third Street N.W., Suite 1600  
Albuquerque, NM 87102  
505.242.2177 • [www.madisonlaw.com](http://www.madisonlaw.com)

**David Stotts**

Attorney at Law

Commercial  
Real Estate  
Loan Workouts,  
Lenders or Borrowers

**242-1933**

**Don Bruckner**

*Mediation & Arbitration*

[donbruckner@guebertlaw.com](mailto:donbruckner@guebertlaw.com)  
505.823.2300

**JAY HONE**

**MEDIATIONS**

for information and scheduling,

call **505-301-1868** or email

**JayRHone@aol.com**

Classified

**Positions**

**Public Member Vacancy on the  
Private Investigations Advisory Board**

The Regulation and Licensing Department seeks applications to fill a public member vacancy on the Private Investigations Advisory Board. See NMSA 1978, Section 61-27B-6(C) and (E) for requirements. Please send any inquiries, or letter of interest and a resume to: [laurieann.trujillo@state.nm.us](mailto:laurieann.trujillo@state.nm.us)

**Assistant District Attorney**

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

**Assistant City Attorney**

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

**Ute Indian Tribe  
Fort Duchesne, Utah  
Department: Tribal Courts  
Position: Prosecutor**

Salary: To Be Negotiated Based on Experience; JOB DESCRIPTION – Prosecutor of the Ute Tribal Court. The Ute Indian Tribe of the Uintah and Ouray Reservation is seeking applicants for the position of Prosecutor of the Ute Tribal Court. Interested applicants should apply as set forth below. POSITION: The Prosecutor is a full-time position with a minimum 32-hour work week, Monday through Thursday, between 8:00 AM to 4:30 PM, with the understanding that the employee may be required to work extended hours, including weekends/holidays. The successful applicant must be dependable, responsible, and able to fulfill obligations in a professional manner. This is a tribally-funded position. GENERAL DESCRIPTION: The Prosecutor is responsible for independently prosecuting criminal, juvenile, civil, and other cases in the Ute Indian Tribal Court. The applicant must be willing to work within an environment conducive to the position's location and purpose. SUPERVISION: The Prosecutor works directly under the general supervision of the Executive Director. RESPONSIBILITIES: Duties include but are not limited to the following: Exercise independent discretion in the prosecution of adult criminal offenses, juvenile delinquent or status offenses, and civil prosecution of child neglect, traffic offenses, fish and wildlife offenses, exclusion matters, and other civil offenses occurring within tribal jurisdiction; Advise the Tribal Police in investigation, evaluating evidence, case preparation and preparation of legal pleadings including subpoenas, search warrants, and arrest warrants; Advise and assist the Tribal Police, Family Services, and other tribal agencies and programs as necessary in matters implicating tribal justice on the Reservation; Respond to calls from victims, concerned parties, and service providers; Maintain regular office hours and 24-hour availability to Tribal Police and the Tribal Court to address urgent matters; Appear and argue cases in the Tribal Court at all stages of proceedings, including pre-trial, trial, post-trial, and appeal; Draft written complaints, motions, proposed orders, legal briefs, jury instructions, sentencing recommendations, and other legal documents as appropriate; Assist in improving the Tribe's justice system, including development of codes and court rules, participation in meetings and trainings, and preparation and implementation of grants; Maintain confidentiality and adhere to all professional and ethical standards required by the bar associations of which the Prosecutor is a member. MINIMUM QUALIFICATIONS: Knowledge, Abilities and Skills: Knowledge of Federal Indian law and criminal law; Ability to maintain professionalism while interacting with a

wide variety of people in a fast-paced crisis-oriented environment; Knowledge of the laws and policies of the Ute Tribal Court including rules of procedure; Willingness to learn and respect the Ute customs and traditions and history of the Ute Tribe; Possess excellent verbal and written communication skills and ability to maintain a positive, non-adversarial working environment. EDUCATION & EXPERIENCE: J.D. from an ABA accredited law school; Utah State Licensed Attorney or eligible; No felony or misdemeanor convictions in the past year; Valid driver's license with the ability to obtain a Utah driver's license; Preference for experience working in Indian Country, particularly in a tribal legal system; Preference for experience working in criminal law; Preference for members of federally recognized tribes. HOW TO APPLY: Complete a Tribal Application Form which can be found on our website: [www.UTETRIBE.com](http://www.UTETRIBE.com). For questions or concerns, contact our office at (435) 725-4009. Applicants should mail a completed Tribal Application Form, cover letter, and resume to: Ute Indian Tribe; ATTN: Human Resources; RE: Prosecutor; P.O. Box 190; Fort Duchesne, UT 84026. The Ute Indian Tribe practices TRIBAL PREFERENCE in accordance with the Indian Preference Act, Indian Civil Rights Act and Indian Self Determination Act. -Employees must clear a Background Check in compliance with the Indian Child Protection and Family Violence Prevention Act. Employees must clear pre-employment alcohol/drug screenings in compliance with the Ute Tribe Substance Abuse Policy. Employees must successfully complete a three (3) month's probationary period in accordance with the Ute Tribe Personnel Manual.

**Personal Injury Attorney**

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

**Assistant City Attorney**

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

**Request For Applications:  
Hearing Officers**

The New Mexico Public Education Department, Division of Vocational Rehabilitation (NMDVR) and the New Mexico Commission for the Blind (NMCB) are seeking attorneys to serve as due process hearing officers to adjudicate disputes between the agencies and applicants/recipients of vocational rehabilitation services under the Federal Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., as amended through Public Law 114-95. Contracts will be awarded in one-year terms, with the option to extend in one-year increments for three additional years. Prior hearing officer experience is preferred but NMDVR and NMCB will also consider applicants with four years or more of administrative law experience. Knowledge of laws applicable to persons with disabilities and/or vocational rehabilitation laws is preferred. The Request for Applications for Hearing Officers is available on the New Mexico Division of Vocational Rehabilitation's website at <http://www.dvr.state.nm.us/>. The RFA includes the Stevens Amendment notices for NMDVR and NMCB. Prospective Offerors with questions should contact Joseph "Joby" Padilla at [joseph.padilla@state.nm.us](mailto:joseph.padilla@state.nm.us). The deadline to submit applications is March 17, 2021.

**Trial Attorney**

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

**Deputy City Attorney**

The City of Roswell Legal department is hiring a Deputy City Attorney. This position responsible for supporting the legal needs of the City of Roswell including providing advice to City Administrators as well as representing the City in litigation and legal matters. Work originates through the ongoing need of City government to enter into contracts, enforce state and federal laws, and defend the City in litigation. Work involves considerable contact with City employees, the court system, and general public and highly complex legal principles and practices. Please apply at <https://www.roswell-nm.gov/746/employment-opportunities>

### **Court of Appeals - Judges Jacqueline Medina and Briana Zamora Senior Law Clerks in Albuquerque**

Judges Jacqueline Medina and Briana Zamora of the New Mexico Court of Appeals are each hiring for a Senior Law Clerk in Albuquerque. Senior Law Clerks work closely with the judges to draft opinions and resolve cases involving all areas of the law. Outstanding legal research and writing skills are necessary. Four years of legal practice or clerking experience and a New Mexico law license are required. Current annual salary is \$69,222. Please send cover letter, resume, law school and undergraduate transcripts, and writing sample to: Anna Box, Court Manager, coamb@nmcourts.gov, 2211 Tucker Avenue, Albuquerque NM, 87106.

### **Eleventh Judicial District Attorney's Office, Div II**

The McKinley County District Attorney's Office, Gallup, New Mexico is seeking applicants for a Chief Deputy District Attorney position. The Chief Deputy District Attorney position requires extensive knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; organization and supervision; advanced trial skills; computer skills; audio-visual and office systems; ability to work effectively with other criminal justice agencies; ability to communicate effectively; ability to research/analyze information and situations. The Chief Deputy District Attorney must have supervisory experience and have in-depth knowledge of office policies and procedures, applicable employment law and public relations skills. The Chief Deputy District Attorney works with a high degree of autonomy and is supervised by the District Attorney. The Chief Deputy District Attorney must hold a New Mexico State Bar license. The McKinley County District Attorney's Office provides regular a supportive and collegial work environment. The salary is negotiable based on experience. 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 to commence immediately and will remain opened until filled.

### **Attorney**

Butt Thornton & Baehr PC seeks an attorney with a minimum five years' experience, at least 3 years' of which are in civil litigation. Butt Thornton & Baehr PC is in its 62nd 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.

### **Administrative Law Judge New Mexico State Personnel Office**

The Administrative Law Judge conducts administrative hearings on behalf of the State Personnel Board on state employees' appeals of disciplinary actions and separations imposed on them by their state agency. The incumbent candidate will review notices of appeal for timeliness, jurisdiction, and completion; accept valid appeals and issue scheduling orders to frame the appeal process; facilitate mediation when requested by the parties; oversee discovery; hold pre-hearing conferences and decide motions as needed; issue subpoenas to compel attendance of witnesses and production of documents; conduct merits hearings; perform legal research as needed; prepare written recommended decisions (including summary of the evidence, recommended findings of fact, and recommended conclusions of law) for submission to the State Personnel Board. Ideal candidate: Licensed Attorney with employment law experience. Contact Information: Janelle Haught (505) 476-7807 or email: Janelle.Haught@state.nm.us . Apply through the State Personnel Office: <https://careers.share.state.nm.us>

### **Associate Attorney**

Aldridge, Hammar & Wexler, P.A., a well-established firm in uptown Albuquerque, practicing in the areas of commercial and business law, estate planning and probate, fiduciary services, real estate, and creditor's rights is seeking an associate attorney to support the Firm's Partners in all areas of practice. The ideal candidate is a great communicator, verbally and in writing, quick to accept changing business needs, and eager to learn. All levels of experience will be considered. Compensation DOE. Please send cover letter, resume and references to Personnel@abqlawnm.com. All inquiries will be maintained as confidential.

### **Alternative Dispute Resolution Mediators and Facilitators**

The New Mexico Department of Education Special Education Division is seeking Facilitators and Mediators to resolve disputes between parents and school districts under the Individuals with Disabilities Education Act (IDEA). Contracts will be awarded for a one-year period, from July 1, 2021 through June 30, 2022, renewable annually for up to four years. Applicants must be experienced Mediators and Facilitators with knowledge of special education related issues. The Request for Applications for both Mediators and Facilitators is available on the Special Education website at: <https://webnew.ped.state.nm.us/information/rfps-rfis-rfas/> The deadline to submit separate applications for Mediator and/or Facilitator is March 26, 2021.

### **Attorney**

New Mexico Legal Group, a cutting-edge divorce and family law practice is adding one more divorce and family law attorney to its existing team. We are looking for one smart, entrepreneurial, down to earth, drama free lawyer to join us in our mission. If you do not have divorce and family law experience, we will still consider you as a candidate if you have other good courtroom experience (like the DA's or PD's Office). Why is this an incredible opportunity? You will be involved in creating the very culture and financial rewards that you have always wanted in a law firm; We practice at the highest levels in our field, with independence and cutting-edge practice and marketing strategies; The firm offers excellent pay (100k+), PPO health insurance, life, disability and vision insurance, an automatic 3% contribution to 401(k) and future profit sharing; This is also a great opportunity for lawyers in a solo practice who would like to merge their practice. This position is best filled by an attorney who wants to help build something extraordinary. This will be a drama free environment filled with other team members who want to experience something other than your run of the mill divorce firm. Interested candidates: Submit a resume and/or letter of interest explaining why you are drawn to this position and how you can be an asset to the team to [eballo@newmexicolegalgroup.com](mailto:eballo@newmexicolegalgroup.com). All inquiries are completely confidential.

### **Executive Director**

New Mexico Board of Bar Examiners  
The Executive Director of the New Mexico Board of Bar Examiners fills a highly responsible strategic, administrative, and supervisory position. The Executive Director works under the supervision of the Board of Bar Examiners which is responsible for administering the bar examination and determining the character and fitness of applicants, as well as any other eligibility factors relevant for consideration in the admission of applicants seeking admission to the bar in New Mexico. The position is located in Albuquerque, NM. Extensive managerial and administrative experience in a legal setting involving multiple complex issues is desired. Starting salary range is \$70,000 to \$90,000 depending on experience. Transmit resume and cover letter by e-mail to [info@nmexam.org](mailto:info@nmexam.org). Deadline to apply is February 26, 2021. More details: <https://nmexam.org/employment/>

### **Deputy District Attorney**

Immediate opening for a Deputy District Attorney in Silver City. Salary Depends on Experience. Benefits. Please send resume to Michael Renteria, District Attorney, [MRenteria@da.state.nm.us](mailto:MRenteria@da.state.nm.us) or call 575-388-1941.

### Associate Attorney

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

### Attorney

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

### Spanish Speaking Attorney

De Castroverde Law Group is looking to expand into Albuquerque. We are searching for a Spanish Speaking attorney with either Personal Injury, Immigration, or Criminal Defense experience. This is an amazing opportunity to join a growing team that has built a reputation of surrounding itself with exceptional talent. We take pride in treating each other and our clients like family. We are looking for the perfect person to expand the De Castroverde Law Group into this market. We will also consider acquiring an existing solo practitioner's law practice. Please check out our website to learn more about our team... [www.dlgteam.com](http://www.dlgteam.com). If interested, please email your resume to christopher@decastroverdelaw.com. All inquiries will be kept confidential.

### Attorney

Opening for Associate Attorney to do criminal and civil work in Silver City, New Mexico. Call (575) 538-2925 or send resume to Lopez, Dietzel, Perkins & Wallace, P. C., david@ldplawfirm.com, Fax (575) 388-9228, P. O. Box 1289, Silver City, New Mexico 88062.

### Two Staff Attorneys

The New Mexico Immigrant Law Center is committed to advancing justice and equity by empowering low-income immigrant communities. We are currently hiring for two staff attorney positions (Economic Justice Program and Survivor of Crime Program), as well as, a paralegal/partially accredited DOJ Representative. We provide excellent benefits, including full health insurance, dental and vision, generous paid holidays, vacation, and sick leave. We provide competitive non-profit salary and a family friendly work environment. Please see: [www.nmilc.org](http://www.nmilc.org) for more information and instructions on how to apply.

### Associate Attorney

Kasdan Turner Thomson Booth LLP, a plaintiff's firm emphasizing Construction Defect Litigation is seeking an Associate Attorney for their Albuquerque office. The candidate must be admitted to the New Mexico bar and should have five or more years of litigation experience, superior academic credentials, and strong writing skills. Construction or engineering experience is preferred, but not necessary. The individual must have experience drafting and arguing motions before courts, taking depositions, drafting written discovery, and preferably trial/arbitration experience. We are looking for a motivated, independent, and aggressive individual with strong analytical and judgment skills who can work with a team and individually on case assignments, write briefs, take depositions, coordinate with experts, and evaluate client intake. We offer a rewarding and challenging position with great opportunities to gain valuable experience in a dynamic environment, plus a competitive salary and benefits package. Please provide resume, salary requirements, and a writing sample to dochoa@kasdandclaw.com. All submissions will be kept in confidence.

### Criminal Defense Attorney

Growing Southern NM criminal defense firm looking for an Associate Attorney. Position open to both entry level and experienced attorneys. Ideal candidate is flexible, open-minded, and thrives in a non-traditional office environment. Tell us about yourself at [dave@nmnotguilty.com](mailto:dave@nmnotguilty.com).

### Advisory Board of Respiratory Care Practitioners – Public Member Vacancy

The Regulation and Licensing Department seeks applications to fill a public member vacancy on the Advisory Board of Respiratory Care Practitioners. See NMSA 1978, Section 61-12B-5(A)(3) and (D) for requirements. Please send any inquiries, or letter of interest and a resume to: [laurieann.trujillo@state.nm.us](mailto:laurieann.trujillo@state.nm.us)

### Environmental Attorney (ATTORNEY 2/3) – IRC83464

The Los Alamos National Laboratory Office of General Counsel (OGC) is seeking an experienced environmental attorney to provide legal advice and counsel on a wide range of interesting, often unique, environmental compliance, litigation and other matters. The attorney will draft legal documents, participate in negotiations with federal or state governments and citizens groups, represent the Lab in administrative permit or rulemaking hearings and other legal proceedings, and identify and implement strategies in support of OGC's focus on preventive law. The attorney will be a member of a Bar in good standing and have substantive knowledge of federal or state environmental laws and regulations. This position also requires the ability to obtain a security clearance, which involves a background investigation, and must meet eligibility requirements for access to classified matter. Apply online at: [www.lanl.gov/jobs](http://www.lanl.gov/jobs). Los Alamos National Laboratory is an EO employer – Veterans/Disabled and other protected categories. Qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, disability or protected veteran status.

### Senior Trial, Assistant Trial, Trial Attorney

The Third Judicial District Attorney's Office in Las Cruces is looking for: Senior Trial Attorney, Trial Attorney, Assistant Trial Attorney. Please see the full position descriptions on our website <http://donaanacountyda.com/>. Submit Cover Letter, Resume, and references to Whitney Safranek, Human Resources Administrator at [wsafranek@da.state.nm.us](mailto:wsafranek@da.state.nm.us).

### Litigation Attorney

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

### Associate Attorney

Hinkle Shanor, LLP's Santa Fe office is seeking an associate attorney to join its medical malpractice defense team. 0-3 years litigation experience is preferred, but all interested candidates are encouraged to apply. Ideal candidates will demonstrate strong academic achievement and polished writing skills. The selected candidate can expect to assist in all phases of civil litigation, including pleadings, pretrial discovery, briefing, and trial support. Competitive salary and benefits; all inquiries will be kept confidential. Please e-mail resumes to [gromero@hinklelawfirm.com](mailto:gromero@hinklelawfirm.com).

### Administrative Assistant Needed

The American Indian Law Center, Inc., ([www.ailec-inc.org](http://www.ailec-inc.org)), a non-profit organization housed at the UNM School of Law, is currently looking for an experienced Administrative Assistant. This position will provide administrative support to a small staff of attorneys and other professionals; assist with organizing and managing legal case files for a tribal appellate court; assist the bookkeeper with monthly accounts payable processing functions, assist in planning and coordinating events and conferences, greet and direct visitors, law students, tribal officials and respond to calls and emails. The Administrative Assistant will play an important role in providing customer service and overseeing the efficient functioning of our offices. Qualified candidates will have impeccable verbal and written communication skills, possess initiative and strong attention to details, be a self-starter; have a strong ability to multi-task and a friendly demeanor. Qualifications and Skills: Associate Degree or Paralegal Certification preferred; 3+ years experience working in an office setting overseeing daily functions; able to complete complex administrative tasks with minimal supervision; strong knowledge of Microsoft Office, Word, Excel and Outlook software; knowledge of video and web conferencing platforms; customer-service and detail oriented; as BIA contractor and grantee, AILC practices American Indian preference in hiring. We offer competitive wages and benefits. Please send cover letter and resume to: [ortega@law.unm.edu](mailto:ortega@law.unm.edu).

### Paralegal

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

### Paralegal

Solo practitioner seeking an experienced, professional, full-time paralegal for a high-minded elder law practice in Albuquerque Uptown. Practice is limited to probate and trust administration and litigation, guardianships and conservatorships, and other elder law matters. Experience in these areas preferred. The ideal candidate will be professional in dress, appearance, speech, and demeanor; will have an excellent command of the English language; and will be calm, competent, and confident while performing the duties of the paralegal. Duties will include timekeeping, e-filing, drafting pleadings, and scheduling. Position offers a pleasant, non-frenetic, low-drama working environment. Salary commensurate with experience; top salary for the best candidates. Email resume and cover letter to [ben@benhancocklaw.com](mailto:ben@benhancocklaw.com).

### Legal Secretary/Legal Assistant

Hinkle Shanor LLP is hiring a legal secretary/legal assistant for a busy medical malpractice defense group in its Santa Fe office. Applicants must have strong typing and computer skills. Experience in calendaring deadlines and court filings in all courts is required. Duties include reviewing, responding to and processing e-mails on a daily basis, reviewing correspondence and pleadings, keeping all files and filing up to date, scheduling depositions, management of electronic files and opening of new files. Familiarity with LMS time and billing software for time entry is a plus. Please send resume and letter of interest to [gromero@hinklelawfirm.com](mailto:gromero@hinklelawfirm.com).

### Litigation Secretary – Albuquerque, New Mexico

The Albuquerque office of Lewis Brisbois Bisgaard & Smith LLP is seeking a Litigation Secretary with 3+ years' experience in the various areas of insurance defense. This full-time position requires knowledge of State and Federal court procedures, court rules, e-filing procedures, and docketing. Experience working with insurance companies is always a plus. ATTRIBUTES: Self-starter who can work with little supervision, be extremely organized and very detail oriented; Ability to multi-task effectively and prioritize incoming work to meet deadlines; Demonstrate a professional demeanor and customer service approach during busy times. TECHNICAL QUALIFICATIONS: Advanced computer skills with Windows, Word, Excel, PowerPoint, and Outlook; Proficient with document management software, docketing and records management systems. Contact: Please email your cover letter and resume to [pfxrecruiter@LewisBrisbois.com](mailto:pfxrecruiter@LewisBrisbois.com) and include "Albuquerque Litigation Secretary" in the subject line. Lewis Brisbois offers a compensation and benefits package including health, dental and vision insurance, vacation and sick leave, 401k and more!

### Paralegal

New Mexico Legal Group is seeking an experienced, proactive, results- and detail-oriented Paralegal to join our cutting-edge divorce and family law firm. We are looking for candidates with a minimum of 2 years of paralegal experience - but not just in family law (although it's helpful). Why is this an incredible opportunity? We offer a fun work environment with a 1:1 Attorney/Paralegal ratio, highly competitive compensation package (salary, bonuses, health, vision and life insurance, PTO and employer-paid 3% 401(k) contribution) in a progressive, rewarding, and stable work environment. Our ideal candidate will have: demonstrated experience delivering the highest quality representation to clients; excellent communication skills - verbal and written; a teamwork mindset; outstanding organization and prioritization skills; a great sense of humor. Interested Candidates: Submit a resume and cover letter explaining why you are perfect for this exciting opportunity to [eballo@newmexicolegalgroup.com](mailto:eballo@newmexicolegalgroup.com). The cover letter is the most important thing so be creative and let us know who you really are.

### Litigation Paralegal

Litigation paralegal needed for Albuquerque based plaintiffs' law firm. Medical malpractice experience preferred, but not required. Must be able to work in a busy, fast-paced litigation practice. 3-5 years relevant experience required. Experience obtaining & organizing medical records, com-piling and reviewing records, and strong skills in Adobe PDF and Microsoft Office Suite a plus. The right candidate needs strong writing, communication and organization skills. Excellent benefit package included. Salary commensurate with experience. Spanish speaking helpful. Please email resumes to [mcmladmin@mcginnlaw.com](mailto:mcmladmin@mcginnlaw.com).

### Paralegal

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

### Paralegal

The Santa Fe office of Hinkle Shanor LLP seeks a paralegal for the practice areas of environmental, water, natural resources, real property, public utility and administrative law. Candidates should have a strong academic background, excellent research skills and the ability to work independently. Paralegal training or experience is not necessary. Competitive salary and benefits. All inquiries kept confidential. Santa Fe resident preferred. Please email resume to: gromero@hinklelawfirm.com

### Legal Assistant

Successful, growing civil defense firm seeks legal assistant committed to providing the highest quality service to clients. Excellent salary and benefits. The position requires daily calendaring, word processing, working with opposing counsel staff, court staff, and clients routinely. Must be able to multitask and handle large case load. Litigation experience a must, with a good understanding of the deadlines required by the Rules of Civil Procedure. Please e-mail your resume to resume01@swcp.com

### Legal Assistant

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

### Paralegal

Civil litigation firm seeking Paralegal with minimum of 3 or more years experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, and online research, is technologically adept and familiar with use of electronic databases and legal-use software. Qualified candidates must be organized and detail-oriented, with excellent computer and word processing skills and the ability to multi-task and work independently. Salary commensurate with experience. Please send resume with references and a writing sample to paralegal3.bleuslaw@gmail.com

### Legal Assistant/Witness Liaison

The Office of the New Mexico Attorney General is currently recruiting for a Legal Assistant/Witness Liaison position in our Medicaid Fraud Control Unit of Criminal Affairs. The job posting and further details are available at [www.nmag.gov/human-resources.aspx](http://www.nmag.gov/human-resources.aspx).

### Paralegal

Ahmad Assed & Associates is seeking an experienced paralegal for busy personal injury practice. Pay will be commensurate with experience. Please e-mail a letter of interest, writing sample, and resume to info@assedlaw.com

## Service

### Briefs, Research, Appeals—

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

## Office Space

### Santa Fe – Two Offices

Two offices in a conveniently located attorney office building. The building has six offices, large reception area, kitchenette, and ample parking for clients and attorneys. Retiring attorney moved out. Rent includes alarm, utilities, and janitorial services. Individually \$500 and \$450 or \$900 for both. Call Donna 505-795-0077.

### Sun Valley Executive Office Suites

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

### Office Space

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

### 2501 Rio Grande Blvd NW

Beautiful Southwestern Style Office Space located in the coveted Rio Grande Blvd corridor. Adobe construction. Wood vigas throughout. Two conference rooms. Private Sauna. Three large partner offices and additional offices for support staff. 4063SF. \$16/SF + CAM + Utilities. Red Sky Realty 505-247-3414

### 7103 4th St. NW, Suite O-5

Beautiful Office Space in North Valley. Reception Area, Kitchenette w/Counter, Private Bathroom and Large Office. 720SF. \$1250 per month + CAM + Utilities. Red Sky Realty 505-247-3414

### 2111 Golf Course Rd. SE, Suite A

Bright spacious office in Rio Rancho. Great visibility off Golf Course Rd corridor. Reception Area, Kitchenette w/Counter, Private Bathroom and Large Office. 750SF. \$1050 per month + CAM + Utilities. Red Sky Realty 505-247-3414

## Miscellaneous

### Want To Purchase

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

### New Mexico Reporters

For Sale: Volumes 1 to 150 and 1-12 of NM case law reporters, up through about 2018, for \$1900. Also about 26 volumes of West NM Statutes Annot., not updated, separate for \$200. Please email Michael Hoeferkamp at mike@hoeferkamp.com or call 505/506-0745.

### Search for Will

The Modrall Sperling Law Firm is representing the Estate of Steven Kidman, Deceased. If you have the original Will for Steven Kidman of Santa Fe County, please contact Jill Cates with the Modrall Sperling Law Firm at (505) 848-9717 or jillc@modrall.com.

## 2021 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. Ulibarri at 505-797-6058 or email [mulibarri@nmbar.org](mailto:mulibarri@nmbar.org)**



# DPC DIGITAL PRINT CENTER



**Where Quality and Customer Service Matters!**



We have turn-key service. Your job will have personal service from start to finish.

**Featuring:** Business cards, Stationary, Envelopes, Brochures, Booklets, Magazines, Programs, Calendars, Invitations, Postcards, Note cards and Holiday cards Binding (Square Back, Spiral, Saddle Stitch), Folding, Trimming, Punching, Scoring

*Ask about your Member Discount*

Marcia Ulibarri, Advertising and Sales Manager  
505-797-6058 • [mulibarri@nmbar.org](mailto:mulibarri@nmbar.org)



# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION

## POWERING PAYMENTS FOR THE LEGAL INDUSTRY

**The easiest way to accept credit,  
debit, and eCheck payments**

The ability to accept payments online has become vital for all firms. When you need to get it right, trust LawPay's proven solution.

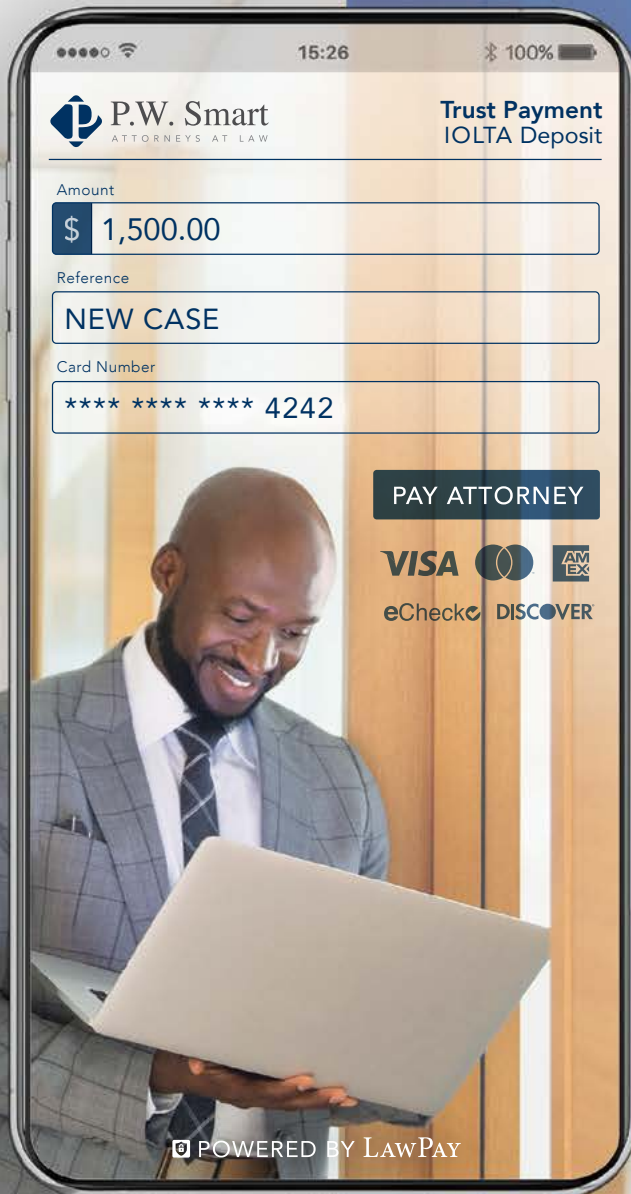
As the industry standard in legal payments, LawPay is the only payment solution vetted and approved by all 50 state bar associations, 60+ local and specialty bars, the ABA, and the ALA.

Developed specifically for the legal industry to ensure trust account compliance and deliver the most secure, PCI-compliant technology, LawPay is proud to be the preferred, long-term payment partner for more than 50,000 law firms.



Proud Member  
Benefit Provider

ACCEPT MORE PAYMENTS WITH LAWPAY  
888-726-7816 | [lawpay.com/nmbar](http://lawpay.com/nmbar)



LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Citizens Bank, N.A., Providence, RI.