

# BAR BULLETIN

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*The Wave* by Claire Hurrey (see page 3)

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## Meetings

### March

**24**  
**Natural Resources, Energy and Environmental Law Section Board**  
Noon, teleconference

**25**  
**Elder 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

### April

**6**  
**Health Law Section Board**  
9 a.m., teleconference

## Workshops and Legal Clinics

### March

**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

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

**About Cover Image and Artist:** "As my own vision travels across immense space, over large colorful masses, through atmospheres of beautiful light, I endeavor to share this with the viewer." Claire E. Hurrey These landscape oil paintings represent Hurrey's interest in how mass occupies space, in innumerable variations of weather and reflected light that create atmospheres of beauty. Both plein air studies and photographs were used for these studio works of the New Mexico landscape, painted from 2015-2016. Hurrey said, "My eyes are wide open to New Mexico's vast and immense desert spaces, big skies, and dramatic clouds, set over red rock cliffs with deep violet shadows, all held together by the light of its arid air." Hurrey has bachelors in sociology and fine art, a masters in drawing, and a Masters of Fine Art in painting. See more about Claire E. Hurrey and her paintings at [www.cehurrey.com](http://www.cehurrey.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>.

### Bernalillo County Metropolitan Court Notice of Reassignment

Bernalillo County Metropolitan Court Chief Judge Maria I. Dominguez announced that, as a result of the recent appointment of Judge Joshua J. Sánchez by Governor Lujan Grisham to Division IV, effective March 15, Judge Sánchez was assigned to the Metropolitan Court's felony division and will be hearing felony first appearances and preliminary examination hearings and holding dockets Tuesday through Saturday.

## Professionalism Tip

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

I will be mindful of time schedules of lawyers, parties, and witnesses.

### Administrative Hearings Office

#### Free Online Zoom Trainings

The Administrative Hearings Office will be conducting free online Zoom trainings covering all aspects of hearings pursuant to the Implied Consent Act. The trainings are for all hearing participants, including attorneys and law enforcement officers, across New Mexico who attend ICA License Revocation/MVD hearings. In addition to hearing directly from the hearing officers that conduct these hearings, training participants will also hear insights from an experienced law enforcement officer and an experienced defense attorney about the hearing process. For participant scheduling convenience, we are offering three opportunities to attend the training: Friday, March 26 from 1 to 4 p.m.; Monday, April 26 from 1 to 4 p.m.; or on Friday, May 21 from 1 to 4 p.m. To attend one of these trainings (you only need to attend one, so pick the time most convenient to you), pre-register by sending an email to [Scheduling.Unit@state.nm.us](mailto:Scheduling.Unit@state.nm.us) stating your role in the hearing process, how many Implied Consent Act license revocation hearings you have participated in, and which date you wish to attend.

### First Judicial District Court New Rio Arriba Magistrate Court Telephone Numbers

Effective Monday, March 1, the Rio Arriba County Magistrate Court in Espanola and Chama has new telephone numbers. The new numbers are listed here: Espanola: New main line 505-984-3955, fax is unchanged: 505-753-4802. Chama: new main line 505-984-3975, fax is unchanged: 575-756-2477.

### Twelfth Judicial District Court Notice of Mass Reassignment

Effective Dec. 29, 2020, pursuant to Rules 23-109, 1-088.1, 5-106, NMRA, a mass reassignment of criminal cases assigned to the Honorable James W. Counts were equitably reassigned to the

Honorable Angie K. Schneider and the Honorable Steven E. Blankinship. A mass reassignment of civil cases assigned to the Honorable James W. Counts were equitably reassigned to the Honorable Ellen R. Jessen and the Honorable Daniel A. Bryant. Further a mass reassignment of Lincoln County civil, domestic relations and probate/mental health cases assigned to the Honorable Daniel A. Bryant and the Honorable Ellen R. Jessen were reassigned to the Honorable John P. Sugg. Pursuant to New Mexico Supreme Court Order 20-8500-042, Public Health Emergency Protocol 3(E), dated Dec. 14, 2020, the exercise of peremptory excusals under the Rules are suspended for any cases filed on or before Dec. 31, 2020.

This notice of mass reassignment does not enlarge the period of time to file a peremptory excusal in individual cases where a notice of reassignment had previously been served on the parties by the clerk and the parties failed to timely file a peremptory excusal within ten 10 days as provided in Rule 1-088.1(C)(2). Further, pursuant to New Mexico Supreme Court Order 20-8500-042, Public Health Emergency Protocol 3(E), dated Dec. 14, 2020, the exercise of peremptory excusals under the Rules are suspended for any cases filed on or before Dec. 31, 2020.

### 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.sbnm.org/covid-19](http://www.sbnm.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@sbnm.org](mailto:rspinello@sbnm.org).

## Board of Bar Commissioners Appointment to New Mexico Legal Aid Board

The Board of Bar Commissioners will make one appointment from the First Congressional District to the New Mexico Legal Aid Board for a three-year term. The NMLA Board is responsible to see that the organization faithfully pursues its mission and to provide policy and fiduciary governance of the organization. Active status members in the First Congressional District admitted to practice in New Mexico who wish to serve on the Board should send a letter of interest and brief resume by March 29 to [info@sbnm.org](mailto:info@sbnm.org).

## Appointment to DNA – People's Legal Services, Inc.

The Board of Bar Commissioners will make one appointment to the DNA – People's Legal Services, Inc. Board for a four-year term. Active status attorneys in New Mexico who wish to serve on the board should send a letter of interest and brief resume by March 29 to [info@sbnm.org](mailto:info@sbnm.org).

## Appointment of Young Lawyer Delegate to ABA House of Delegates

The Board of Bar Commissioners will make one appointment of a young lawyer delegate to the American Bar Association House of Delegates for a two-year term, which will begin at the conclusion of the 2021 ABA Annual Meeting in Aug. 2021 and expire at the conclusion of the 2023 ABA Annual Meeting. The delegate must be willing to attend ABA mid-year and annual meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; however, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings. Members wishing to serve as the young lawyer delegate to the HOD must have been admitted to his or her first bar within the last five years or be less than 36 years old at the beginning of the term; be an ABA member in good standing throughout the tenure as a delegate; and report to the New Mexico YLD Board during the YLD Board's scheduled board meetings throughout the tenure as a delegate. Qualified candidates should send a letter of interest and brief resume by March 29 to [info@sbnm.org](mailto:info@sbnm.org).

## Access to Justice Fund Grant Commission

### 2021-22 Grant Process Now Open

The State Bar of New Mexico Access to Justice Fund Grant Commission now seeks grant applications from nonprofit organizations that provide civil legal services to low income New Mexicans within the scope of the State Plan. Upon review of the applications, the Grant Commission will make the final decision regarding applicants to be awarded grants and the amount of each grant. Approximately \$700,000 is to be disbursed. The Request for Proposals can be found at [sbnm.org/Leadership/Commissions](http://sbnm.org/Leadership/Commissions). Contact Vannessa Sanchez at [vsanchez@sbnm.org](mailto:vsanchez@sbnm.org) with any questions.

## 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 29
- April 5
- April 12

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

— *Featured* —

## Member Benefit



MeetingBridge offers easy-to-use teleconferencing especially designed for law firms. You or your staff can set up calls and notify everyone in one simple step using our Invitation/R.S.V.P. tool. No reservations are required to conduct a call. Client codes can be entered for easy tracking. Operator assistance is available on every call by dialing \*0.

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[meetingbridge.com/371](http://meetingbridge.com/371).**

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!

## Equal Justice Conference Attendance Financial Assistance Available

The Legal Services and Programs Committee has made available three stipends up to \$333 to provide financial assistance to individuals interested in attending the 2021 Equal Justice Conference on May 3-7. Visit the Legal Services and Programs webpage at [sbnm.org](http://sbnm.org) to view the criteria and digital/hard copy application. Send hard copy applications to Member Services or by email at [memberservices@sbnm.org](mailto:memberservices@sbnm.org) or by mail to State Bar of New Mexico, Attn: Member Services, PO Box 92860, Albuquerque, NM 87199. Applications must be received by 5 p.m. on March 26 for consideration.

## UNM SCHOOL OF LAW Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty, and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at UNMLawLibref@gmail.com or voice-mail at 505-277-0935. The Law Library's document delivery policy requires specific citation or document titles. Please visit our Library Guide outlining our Limited Operation Policies at: <https://libguides.law.unm.edu/limitedops>.

## OTHER BARS American Bar Association Commission on Domestic & Sexual Violence

The ABA Commission on Domestic & Sexual Violence provides training and technical assistance to civil litigators representing domestic violence victims & survivors. Our trainings range from webinars to intensive multi-day trial skills and custody litigation institutes (currently virtual). The support we provide includes:

- One-on-one consultation from an ABA Commission on Domestic & Sexual Violence staff attorney;
- Research assistance;
- Referrals and/or connections to experts;
- Accessibility audit of legal service organizations' intake and outreach.

The ABA Commission on Domestic & Sexual Violence also provides support and materials to legal professionals in response to the current online, remote practice reality, such as our free tip sheets for attorneys, and for clients and witnesses, on preparing for a virtual court hearing. For more information and to request copies of our publications, visit our website at <http://ambar.org/cdsv>

## OTHER NEWS New Mexico Mortgage Finance Authority Accepting COVID-19 Housing Assistance Program Applications

The New Mexico Mortgage Finance Authority is now accepting applications for their COVID-19 housing assistance program. More information may be found at their website <http://www.housingnm.org/static/covid-assistance>.

**Feeling overwhelmed about the coronavirus? We can help!**  
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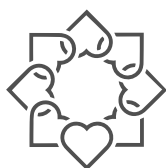
# Employee Assistance Program

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

**FREE** service offered by NMJLAP.



State Bar of New Mexico  
Judges and Lawyers  
Assistance Program



The  
Solutions  
Group

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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.sbnm.org](http://www.sbnm.org)

# Veterans Legal Clinic

The State Bar of New Mexico and the Young Lawyers Division would like to express its appreciation and gratitude to the following attorneys that participated in the Veterans Legal Clinic. Thank you for your professionalism, time and service to the community of New Mexico.

Michael Rueckhaus  
Valentina Basile  
Allan L. Wainwright  
Maria Montoya-Chavez

Lauren Riley  
Troy Ward  
David Ray Rosales  
Sheryl Saavedra

Amy Orlando  
Malia Santilla  
Jami Dawson  
William Waggoner



State Bar of New Mexico  
Young Lawyers Division

## VOLUNTARY BAR HIGHLIGHT

### New Mexico Women's Bar Association



**Our Vision:**

Success and fulfillment for every woman in the legal profession.

**Our goals are** to promote women to the highest level of achievement in their field, to develop a network and support system for women in the profession, to identify barriers to women in the legal profession and work to overcome them.

We are a diverse group of attorneys, practicing state-wide in all areas of law. Through events such as CLE's, "lunch and learn" meetings and social events we are working together to help our members improve their legal skills and enjoy their profession to the fullest extent.

Please visit our membership page at [www.nmwba.org](http://www.nmwba.org).

**We would love to welcome you as a member in 2021!**

Contact our President, Lucy Sinkular at  
[lhs@atkinsonkelsey.com](mailto:lhs@atkinsonkelsey.com) if you have any questions.



# The Connection Between Incivility and Well-Being

By William D. Slease

Early on in my legal career I found myself working as opposing counsel to an attorney who, at least when it came to speaking with me, apparently had never heard that many people begin phone conversations with greetings such as “hello, how are you today?” or “good afternoon, I’m calling to discuss the discovery you sent to my client.” Instead, our typical phone call started like this:

Me: “Hello, [opposing counsel’s (“OC”) name], this is Bill.”

OC: “What the f\*\*\* is wrong with you? I can’t believe you sent me this chickens\*\*\* discovery. We’re not going to answer this. I’m moving for sanctions.”

[this was normally barked at me at a loud volume, dripping with disdain].

It generally did not matter what the issue was; the tone and general substance of most of our phone calls was essentially the same: i.e. I was incompetent and would soon face a sanctions motion.

Whether it was because I was wrestling with my own confidence as a freshly minted attorney, or because I just assumed that is how some lawyers practiced and I needed to grow a thicker skin, looking back I am embarrassed to say that I allowed this to go on for well over one year. In the midst of it, OC’s conduct was taking a mental and physical toll on my well-being. I dreaded taking calls from OC and, when I had a waiting message, I physically felt a knot in my stomach. Too often I let the interaction distract me from other work, or darken my mood for the rest of the day. Too frequently I would replay the conversations in my head while I laid awake trying to sort it all out and wondering if this was typical of the practice of law.

I have a friend who often reminds me that you should not let another person ruin your day. But early in my career I could not easily shake these conversations. Although time has colored my memory, I am confident that on occasion, and particularly after some of the more severe encounters, I considered whether litigation specifically, and the practice of law more generally was really the profession for me.

Ultimately I did not leave litigation or the profession, and I eventually put a stop to the tone of OC’s phone calls with me. One day after returning from a visit with my doctor I

explained to OC that my doctor had diagnosed me with hypertension. I then told OC that I was reasonably certain that my high blood pressure resulted directly from my phone calls with OC; that OC must, in fact, be a carrier. OC laughed and from that point forward we started our phone calls with the sort of pleasantries adults typically exchange at the beginning of phone calls.

Over the past several years, our profession has started giving greater consideration to incivility in the practice of law. We have all heard the stories, attended CLEs devoted to the topic, and been asked to reconsider our conduct and the conduct of others as to whether it was civil or professional. I write this article not to rehash those stories or scold lawyers, but to suggest that the costs of incivility to the well-being of lawyers, to the image of the profession, and to the public that we serve far outweigh any perceived strategic benefit. I also hope to explore what might be at the root of some such behavior, and to offer some possible solutions.

The costs of incivility are real. Although not a study of lawyers’ performance,<sup>1</sup> at least one study found that almost half of workers who experienced incivility cut back their work effort.<sup>2</sup> That same study revealed that 80% of people lost time worrying about what happened in an uncivil encounter.<sup>3</sup> In another study, researchers discovered that study participants who were treated rudely by other study participants were 30% less creative and produced 25% fewer ideas.<sup>4</sup> And it is not just the recipient of uncivil behavior who pays a price. In another study, researchers discovered that merely witnessing uncivil conduct directed at others can diminish the witness’ problem-solving skills.<sup>5</sup> Significantly, researchers discovered that 12% of people reported that they left their job because of incivility.<sup>6</sup>

The legal profession is not immune to its members losing satisfaction due to treatment by colleagues. For example, in *Lee v. American Eagle Airlines, Inc.*, in the course of considering a motion for attorneys’ fees and costs, the Court noted the powerful and credible testimony of a young lawyer at an evidentiary hearing that reflected some of the conduct that was taking place in the underlying matter.<sup>7</sup> Among other things, the young lawyer testified that during phone conversations with opposing counsel she was hung up on, told she had been assigned to work on the case because she



was African-American, and wrongly accused of making misrepresentations.<sup>8</sup> The young attorney further testified that her experience with opposing counsel was a factor in her decision to leave her litigation practice.<sup>9</sup>

Incivility clouds cognitive abilities, diminishes creativity, damages reputations, drives up the costs to the client, drives down professional satisfaction and, in some cases, drives lawyers right out of practice. Moreover, it often leads to or exacerbates stress, substance abuse, anxiety, and a diminishment of a lawyer's mental health, all of which are well-documented, ongoing challenges for our profession.<sup>10</sup>

What can we do differently? At the outset, when someone acts in an uncivil manner, we are often quick to vilify the individual. But not all persons who act in an uncivil manner do so because of some deep character flaw or for a nefarious reason. Instead, consider that some individuals who act in an uncivil manner do so because of a significant underlying challenge in that person's life. Perhaps it results from a family or personal crisis, whether financial, medical, or emotional. This "uncivil actor" may need support and direction to resources to address the underlying issues. Fortunately, those resources are plentiful and include the State Bar of New Mexico's Judges and Lawyers Assistance Program ("JLAP") and the Solutions Group Employee Assistance Program. The former is a free service for all members of the New Mexico bench and bar and law students and provides confidential professional and peer to peer assistance for members of the legal profession experiencing problems with alcohol and other drugs, depression, and other mental health/emotional disorders, as well as with issues related to cognitive impairment. Likewise, the latter offers four free counseling sessions per person-per concern-per year for individuals working in the New Mexico legal community, as well as their family members. Both can assist an individual in getting at the root of what may be impairing an individual's well-being and causing that person to act in an uncivil and unprofessional manner.

Of course, not everyone who acts in an uncivil or unprofessional manner has an underlying crisis or mental health issue that might explain their conduct. For some, it is an occasional or one-off intemperate moment; quickly remedied and seldom repeated. For others, however, it is how they believe the practice of law should be; i.e. "we work in a rough-and-tumble profession and we should use incivility in a strategic manner to gain an advantage for a client. If opposing counsel cannot deal with it, perhaps they chose the wrong profession." But whether this latter individual realizes it or not, the damage to their physical and emotional well-being, the cost to their clients, the damage to their reputation, and the damage they inflict on their colleagues and the profession far outweigh the illusory benefit that they believe they might derive from their uncivil conduct. Moreover, although there appears to be limited research on the issue, logically the more one engages in caustic behavior on the job, the more likely that behavior will permeate the rest of that individual's life. At some point it may become more than a strategy; it may become their defining characteristic and can result in the loss

of friends, family, a sense of community, and that individual's overall well-being.

Inevitably, any discussion about incivility and its effect on a person's well-being tends to focus on the negative aspects of incivility, and the negative underlying causes. It is important, however, to think about the "other side;" i.e. the benefits of acting civilly. Remember OC, the attorney who tied my stomach in knots? Once we established a civil relationship, we ended up sharing more than polite greetings in the openings to our phone calls; we became collegial. Indeed, OC became somewhat of a mentor to me and I ended up learning much about practicing law from OC that served me well in my career. Over the course of many subsequent cases where we were opposing counsel, unburdened by the tone of our early relationship, we were able to focus on the merits of the case and the attendant factual and legal issues. We treated each other civilly and fairly, while never compromising our advocacy for our clients. In short, we enjoyed working on cases with one another; we enjoyed the practice of law. I hope that OC's overall well-being was the better for it; I am certain that mine was. ■

*William D. Slease is the Professional Practice Program Director for the State Bar of New Mexico. In addition to his duties at the State Bar, he serves as an adjunct professor at the University of New Mexico School of Law where he teaches 1L Lab and Ethics, and serves as a practice skills evaluator for the evidence-trial practice skills course. He formerly served as the Chief Disciplinary Counsel for the New Mexico Supreme Court Disciplinary Board. He is a member of and former President of the National Organization of Bar Counsel, and a former Co-Chair of the National Task Force for Lawyer Well-being. Prior to his work in the public service sector, he was in private practice with an emphasis in civil rights, employment and tort litigation. Bill takes care of his own well-being by spending time with his family, and by fishing for trout in the beautiful lakes and streams of New Mexico.*

#### Endnotes

<sup>1</sup> While admittedly, these studies were not focused on the conduct of lawyers, as a reflection of society at large, undoubtedly these findings are equally applicable to lawyers as they are to other professions and workplaces.

<sup>2</sup> Christine Porath and Christine Pearson, *The Price of Incivility*, Harvard Business Review (Jan.-Feb. 2013)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Lee v. American Eagle Airlines, Inc.*, 93 F. Supp. 2d 1322, 1325 (S.D. Fla. 2000)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See P.R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016)

# “What a *Healthy Lawyer* Looks Like”



It is time for a **CULTURE CHANGE** in the legal profession! Judges, lawyers and law students are some of the most hard-working professionals. This way of living is sustainable for a short while. However, soon you will ask yourself, “Is there more than this? Why am I doing this? Where’s the joy? How do I make a living at this long term **AND** be happy....or, at least, content?” We do not claim to have the answer for you, but we can give you pointers and guidance along the way such that you can **CHOOSE** your path. The path that helps you find clarity, meaning, tools to create gratitude and patience and an overall sense of **WHOLE** human being peace and flow. Fluffy? I think not! Intriguing? For sure! Imperative? Definitely!

“There’s no one right way to “lawyer”. Being a lawyer is one part of who you are, but not **ALL** of you. At the end of the day, you are a **HUMAN BEING**.”

## 2021 Campaign – “What a *Healthy Lawyer* Looks Like”

Each month, we will be releasing an article and podcast episode about one well-being topic!

— Well-Being topics and upcoming air dates —

- ☞ April 28: *Well-Being for Law Students*
- ☞ May 26: *Discussion on Sleep*
- ☞ June 23: *Hobbies – What are you doing for fun?*



State Bar of New Mexico  
Well-Being Committee



WBMH Law's **Sarah Bennett** has been selected to serve as a commissioner on the Uniform Law Commission. New Mexico ULC commissioners are appointed by the governor. Bennett will be joining twelve other notable New Mexican commissioners. As the sole New Mexico commissioner actively practicing family law, Bennett's voice will be an important one: the commission

is very active in the creation of uniform laws that impact families. Bennett previously served on the N.M. Domestic Relations Rules Committee, a committee tasked with evaluating proposed rules relating to domestic relations in New Mexico. During her tenure on this committee, she was instrumental in conforming the uniform rule to local procedures and obtaining its adoption by the supreme court in New Mexico.



Sloan Law Firm PC, is pleased to announce that **Francheska Bardacke** has joined the firm as an associate and will be working in the firm's newly located Albuquerque office at 505 Roma Avenue, as well as by appointment only at the Santa Fe office located at 304 Catron Street. Bardacke will be handling personal injury cases as well as general civil litigation. Bardacke received

her J.D from the University of New Mexico School of Law and was admitted to practice in New Mexico in 2012. She has a B.A. in Political Science from Colorado College. She is a member of New Mexico Trial Lawyers Association and licensed to practice in New Mexico Federal Court. She has tried more than 30 criminal jury trials in metro and district courts and has a passion for helping people that has steered her in life and her professional career. She is experienced in complex civil and commercial litigation as well as business, corporate and partnership law, insurance law, employment law, civil rights law and zoning and land use. She is excited to now work with clients to obtain the justice they deserve in a diverse personal injury practice.



Modrall Sperling is pleased to welcome **Michelle Hernandez** (left) as a newly elected member of the firm's executive committee, and announce that **Daniel Alsup** (right) has been elected to a

second term. The executive committee includes the firm's executive director and seven shareholders, charged with overseeing and directing the firm's activities and goals. Hernandez is a member of the firm's litigation group and chair of the diversity, equity, and inclusion committee. Hernandez is a former chair of the Albuquerque Hispano Chamber of Commerce, having served on its board of directors since 2013. She was regional president for the Hispanic National Bar Association from 2015 to 2019. Hernandez has achieved an AV<sup>®</sup> rating from Martindale-Hubbell, the highest rating for professional ethics and legal ability by her peers and has been included in the Bar Register of Preeminent Women Lawyers since 2014. She is among those listed in *Southwest Super Lawyers<sup>®</sup>* and *The Best Lawyers in America<sup>®</sup>*. Alsup is a member of the firm's public finance group. He regularly advises clients regarding a wide variety of public finance transactions and matters, including general obligation and revenue bonds, industrial revenue bonds, special district formation and financing, tax exempt and taxable loans, permissible uses of bond proceeds, post-issuance disclosure compliance, and bond election procedures. Chambers USA has recognized Alsup in the area of corporate/commercial law since 2016. He has been recognized in government finance by *Southwest Super Lawyers<sup>®</sup>*, and has also been listed by *Best Lawyers in America<sup>®</sup>* in public finance law.



Sloan Law Firm, PC, is pleased to announce that founding partner, **John Sloan**, is among the first attorneys to be "board certified" by the National Board of Trial Advocacy in Truck Accident Law. Sloan is licensed to practice law in Texas and New Mexico and is the only attorney in the State of New Mexico to hold certifications in truck accident law, civil trial advocacy and civil pretrial practice

by the NBTA. Sloan is also board certified in personal injury trial law by the Texas Board of Legal Specialization. Sloan serves as president of Trial Lawyers College and has recently been named to the board of regents of the Academy of Truck Accident Attorneys. ATAA is a leading non-profit trucking safety advocate organization which counts more than 600 attorney and legal professionals dedicated to promoting safety and accountability in the trucking industry by representing clients injured or killed in crashes involving tractor-trailers.



**Carl "Barry" Crutchfield**, a trial lawyer and resident of Hobbs, died unexpectedly on Feb. 14 at the age of 74 in Lovington, N.M.. Barry was born on Aug. 2, 1946 to Estelle and Carl Crutchfield in Eunice, N.M. Following graduation from Lovington High School in 1964, he went on to earn a Bachelor of Science degree in mathematics from Eastern New Mexico University in

Portales and a Doctor of Jurisprudence degree from the University of Texas School of Law in Austin. Barry joined the United States Marine Corps in 1971, serving the rank of captain until 1974. He further contributed to the U.S. Marine Corp as both a judge advisor and military judge. Barry met his wife, Susan, while in school at Eastern New Mexico University in 1967 and the two were married on August 17, 1968 in Austin. They went on to have two daughters in 1972 and 1977, respectively. With more than 45 years of experience, Barry had an accomplished career as a criminal defense trial attorney. Licensed to practice law by the State Bar of Texas in 1971, Barry was admitted to practice by the United States Court of Military Appeals in 1972, the United States Court of Appeals for the Tenth Circuit in 1974, the State Bar of New Mexico in 1974 and the United States District Court for the District of New Mexico in 1974. He would then go on to serve as partner at the firm of Sanders, Templeman & Crutchfield from 1974 until 1977 and then as partner at the firm of Templeman & Crutchfield from 1977 until present. In addition to his primary trade, Barry was affiliated with various organizations in relation to his areas of expertise. He maintained memberships with the Association of Trial Lawyers of America, the National Association of Criminal Defense Lawyers, the American Board of Trial Advocates and the New Mexico Trial Lawyers Association. In addition, he supported the New Mexico Criminal Defense Lawyers Association as well as the Lea County Bar Association. In light of his exceptional undertakings, Barry accrued several accolades and honors throughout his impressive career. He was presented with the Outstanding Contribution Award for the State Bar of New Mexico in 1990 and 1993. He has been honored as one of the top 100 trial lawyers and top 10 lawyers in New Mexico in the fields of criminal and personal injury law. A fellow of the New Mexico Bar Foundation, Barry was recognized as an industry expert in 2016 and a distinguished worldwide humanitarian in 2017. Barry was a devoted father and husband, a staunch Longhorn fan and an avid golfer. Known for his outgoing personality and his willingness to help anyone and everyone that he could, Barry was a well-known figure in the community. He was compassionate for those that needed help the most and fought fiercely on their behalf in the courtroom. He was a generous man who was willing to go above and beyond to make the world a better place. Barry most enjoyed traveling with his wife and friends, playing golf, watching UT beat OU and being with his beloved Scottish terrier, Wally. Preceding him in death were his parents, Carl and Estelle Crutchfield. Barry is survived by his wife, Susan Crutchfield; his daughters Jenna Adams and her husband Darrel of Denver, and Kelli Gault and her husband Travis of Houston; one grandson, Drew Adams of Denver; three granddaughters, Baylie Adams of Denver and Casey and Hadley Gault of Houston.



**Susan Marie Porter**, 62, of Albuquerque passed away on Feb. 9 shortly after being diagnosed with cancer. A lifelong criminal defense attorney, she dedicated her personal and professional life to unapologetically advocating for others—both humans and animals. Susan was a wonderful person to have as an ally, and a dreadful person to have as an adversary. Brilliant and at times

deceptively meek, she morphed into a crusader in the courtroom. She was humble to a fault and shunned any form of recognition or accolades. She detested pomp, pretension, and displays of wealth. For Susan, injustice of any kind was a personal offense to her to which she felt an obligation to respond. She was a dedicated mother to her two daughters and took great interest and pride in every aspect of their lives. "Boredom" was not a word with which Susan was acquainted. She had many hobbies and passions including playing guitar, woodworking, outdoor activities, and experiencing life through the eyes of her granddaughter. She enjoyed traveling to her childhood hometown of Tybee Island, G.A., and joined her daughter on several trips to Egypt and Palestine. She is survived by her husband, Maurice Fitzgibbon, 62, of Albuquerque, NM; her two daughters, Stephanie Porter, 35, of Albuquerque, NM, and Hannah Porter, 31, of Ann Arbor, M.I.; a granddaughter, Georgina Garcia, 7, of Albuquerque. She is predeceased by her ex-husband, William Russell Porter (d. 2008). Her loss will be felt dearly by her family and colleagues and her memory will be an inspiration to all who knew her.

**Randall William Childress**, 70, of Santa Fe passed away on Nov. 14, 2020. Randall was born to Charion and William Childress on June 11, 1950 in Dayton, Oh. Randy loved to laugh with his family and friends, travel, literature, baseball, the beach, and riding the waves. Randy graduated from Ohio State University and received his Juris Doctor Degree from the University of San Diego. He was a utility lawyer for San Diego Gas and Electric and Portland General Electric and served as a deputy attorney general for the New Mexico Office of the Attorney General from 1987 to 1990. In private practice, as The Law Firm of Randall W. Childress, PC, Randy represented El Paso Electric Company until his retirement in 2016. Randy is survived by his brother, Richard W. Childress of San Francisco and is mourned by the many friends and colleagues whose lives he touched with his luminosity.



**Matthew G. Reynolds** was chief judge of the 7th Judicial District for the State of New Mexico when he died of an aortic dissection on March 6. Born on March 12, 1955, he was just days shy of his 66th birthday. Matt was born in Anadarko, Oklahoma: the fourth of nine children born to Leo "Speck" Reynolds and Nadean Sprouse. He attended Notre Dame University where he earned both

a B.A. in ancient Greek and a M.A. degree in Scripture, which included a study abroad experience in Israel. He earned a J.D. from the University of Wyoming Law School. He began law school with wife Susan, toddler Hannah, and newborn Rosemary. The family didn't have much but they managed to purchase an old car he used to commute to campus. His classmates (out of affection for Matt's



family) would wait to leave the parking lot until Matt's car was up and running. They didn't want him lost to the cold and snow for lack of a decent engine. His third child, Samuel, was born between his second and third years. Matt was in the running for top of the class so several students threatened to come jump on the bed with Susan in it to induce labor during exam week. It was all in good fun. As more than one commented, "You are the poorest people here and you are still happy!" Matt drew happiness from his family and was driven to stay high in the class ranks by the need to support his growing clan. Upon graduation from Law School Matt moved his family to Alaska. When asked, "Why Alaska?" he'd reply, "I loved Jack London when I was young." The Reynolds family lived in Alaska six years during which time Matt practiced law as an associate at Hughes, Thorsness, Gantz, Powell, and Brundin; was an assistant District Attorney on Kodiak Island for a winter and spring; and then an associate at Heller Ehrman. It was while they were in Alaska that son Gabriel joined the family. From Alaska the family moved to Truth or Consequences where Matt was in private practice for 13 years. He was an advocate for children in Sierra County, serving as guardian ad litem on a pro bono basis. He chose not to seek payment for his guardian work because, "Not taking money allows me to fight for these kids with integrity and ferocity." Matt was appointed to the bench by Governor Bill Richardson in summer 2005. He was determined to serve his district and the state with diligence, integrity, at times humor, and

a continuing dedication to the well-being of the children in the seventh. There was nothing lukewarm about the man. He was passionate in his undertakings and wasn't afraid to express an opinion. He took his legal opinions very seriously. He loved being one of New Mexico's 13 water law judges and on his own time researched and wrote a history of water law (specifically prior appropriation) in New Mexico. His accomplishments were many, but Matt never stood on title. He was happy to be called "Matt" instead of "judge" when off the bench. He made corny jokes (including inventing a pun for each county in New Mexico), had a keen legal mind, looked at the job as a vocation, was proud of his wife and children, and played a mean game of Scrabble. For about eight years he memorized and practiced recitation of passages from Homer's Iliad and Odyssey in ancient Greek. He loved poetry, especially the poems of Robert Frost, and gave his children a love of the written word. He was an Okie with a wonderful mind that welcomed a challenge. Matt is survived by his wife Susan of just about 40 years, his daughter Hannah Reynolds and her husband Marcello Lippiello, daughter Rosemary Rivera, son Samuel Reynolds and his wife Deebee Grace Gallofin, and son Gabriel Reynolds and wife LaTasha Williams. Matt's four grandchildren Tori Rivera, Calista Rivera, Giuseppe Lippiello, and Caterina Lippiello will miss their grandpa but hopefully tales of his silly jokes and wild antics will keep them familiar with him for many years to come.



State Bar of New Mexico  
Senior Lawyers Division

## *2021 Attorney In Memoriam Recognition*

The State Bar of New Mexico Senior Lawyers Division is honored to host the annual Attorney In Memoriam Ceremony. This event honors New Mexico attorneys who have passed away during the last year (November 2020 to present) to recognize their work in the legal community. If you know of someone who has passed and/or the family and friends of the deceased (November 2020 to present), please contact [memberservices@nmba.org](mailto:memberservices@nmba.org).

# Legal Education

## March

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| <p>24 <b>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.sbnm.org</p> | <p>26 <b>REPLAY: Family Law Institute: Mandatory CYFD Report and Other Hot Topics in Ethics (2020)</b><br/>2.0 EP<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>26-28 <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>  |
| <p>25 <b>Ethics for Transactional Lawyers</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>26 <b>REPLAY: Get Organized! Fight the Paper – Organize your Digital Matter File! (2020)</b><br/>1.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>         | <p>30 <b>Undue Influence and Duress in Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  |
| <p>25 <b>Nonprofits and Commercial Real Estate</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p>26 <b>Staying Out of the News: How To Avoid Making the Techno-Ethical Mistakes</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                         | <p>30 <b>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.sbnm.org</p> |

## April

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| <p>1 <b>Due Diligence in Business Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                             | <p>6 <b>REPLAY: Oracle v Google and Its Implications (2020)</b><br/>1.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                     | <p>13 <b>Trust and Estate Planning for Second Marriages</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                    |
| <p>6 <b>Appraisals in Commercial Real Estate Finance &amp; Development</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>     | <p>8-9 <b>Family Law Institute (Spring Edition)</b><br/>8.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p>13 <b>REPLAY: Immigration Law Institute: Housing &amp; Rental Assistance (2020)</b><br/>1.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>7 <b>Domestic Asset Protection Strategies for Trust and Estate Planners</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>9 <b>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.sbnm.org</p> | <p>14 <b>E-Discovery for Small Cases</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   |

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

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| <p><b>14 Beneficiary Designations in Retirement Accounts: Protecting a Lifetime of Savings</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>21 Defending Estate and Gift Tax Audits</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p><b>28 Lawyer Ethics and Investigations for and of Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.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.sbnm.org</p>                          | <p><b>23 REPLAY: Family Law Institute: The 50/50 Presumption and Parenting Plans in Special Circumstances (2020)</b><br/>2.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>29 Drafting Indemnity Agreements in Business and Commercial Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                           |
| <p><b>16 REPLAY: Family Law Institute: Unsubstantiated Allegations of Abuse (2020)</b><br/>2.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>26 Roadmap of Venture Capital and Angel Funding, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p><b>30 REPLAY: Family Law Institute: Assessing and Understanding Children's Preferences (2020)</b><br/>2.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p><b>20 2021 Wage &amp; Hour Update: New Overtime Rules</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                   | <p><b>27 Roadmap of Venture Capital and Angel Funding, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  |   |

## May

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| <p><b>5 The Law of Background Checks: What Clients May/May Not Check</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>12 Internet Legal Research on a Budget</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                      | <p><b>14 How to Stay "Professional" when Videoconferencing: It's Not As Hard As You Think!</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p><b>11 Trust and Estate Planning for Single Clients</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                | <p><b>13 From One Thing to Another: Business Entity Conversions &amp; Domestication</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>14 2021 Fiduciary Litigation Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  |
| <p><b>12 Drafting Demand Letters</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                     |  | <p><b>18 2021 Trust and Estate Planning Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.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 February 26, 2021

### UNPUBLISHED OPINIONS

A-1-CA-38262	State v. S Baker	Affirm	02/22/2021
A-1-CA-38494	J Tsosie v. State of New Mexico Adult Parole Board	Reverse	02/22/2021
A-1-CA-38678	State v. Carlos A	Affirm	02/22/2021
A-1-CA-39287	E Trujillo v. Luna Community College	Affirm	02/24/2021
A-1-CA-39339	CYFD v. Nickolas C.	Affirm	02/24/2021
A-1-CA-36026	State v. M Toney	Affirm/Reverse/Remand	02/25/2021
A-1-CA-38125	State v. J D Padilla	Affirm	02/25/2021
A-1-CA-38373	State v. A Sanchez	Affirm	02/25/2021
A-1-CA-38480	C Roybal v. K Garcia	Affirm	02/25/2021
A-1-CA-38936	K Cooper v. A Cook	Affirm	02/25/2021
A-1-CA-39086	State v. V Watchman	Affirm	02/25/2021
A-1-CA-38509	Home Rejuvenation 1 v. R Torres	Affirm	02/26/2021

## Effective March 5, 2021

### PUBLISHED OPINIONS

A-1-CA-37786	A Cordova v. J Cline	Affirm/Reverse/Remand	03/01/2021
A-1-CA-36921	State v. F Vigil	Affirm	03/03/2021
A-1-CA-38719	CYFD v. Maisie Y	Reverse/Remand	03/03/2021

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

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective December 31, 2020:  
**Glen Timothy Ross Anstine**  
8258 Balsam Way  
Arvada, CO 80005

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On February 15, 2021:  
**Phyl Bean**  
Law Offices of the Public  
Defender  
505 S. Main Street,  
Suite 121  
Las Cruces, NM 88001  
575-541-3193  
phyl.bean@lopdmn.us

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

---

On February 5, 2021:  
**Emily Bowen**  
Office of the Second Judicial  
District Attorney  
520 Lomas Blvd., NW  
Albuquerque, NM 87102  
505-222-1079  
505-241-1000 (fax)  
emily.bowen@da2nd.state.  
nm.us

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective December 31, 2020:  
**Meredith Lynn Calfe**  
5545 Forbes Avenue, Unit A  
Pittsburgh, PA 15217

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective November 20, 2020:  
**Tricia Ann Cooper**  
1011 Lomas Blvd., NW  
Albuquerque, NM 87102  
505-842-8494  
tricia@rrcooper.com

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

---

As of January 6, 2021:  
**Jade Plagata Delfin**  
f/k/a **Jade D. Rotonda**  
Robles, Rael & Anaya, PC  
500 Marquette Avenue, NW,  
Suite 700  
Albuquerque, NM 87102  
505-242-2228  
505-242-1106 (fax)  
jade@roblesrael.com

---

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

---

As of December 29, 2020:  
**L. Bernice Galloway**  
f/k/a **L. Bernice Feathers**  
13823 Waterthrush Place  
Lakewood Ranch, FL 34202  
505-506-6265  
galloway505legal@gmail.com

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On February 23, 2021:  
**Debra A. Gilmore**  
New Mexico Children, Youth  
and Families Department  
1120 Paseo de Peralta  
Santa Fe, NM 87501  
505-328-8032  
debra.gilmore@state.nm.us

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective January 22, 2021:  
**Russell Taylor Jackson**  
Thomas J. Henry Law, PLLC  
5711 University Heights Blvd.,  
Suite 101  
San Antonio, TX 78429  
210-656-1000  
361-985-0601 (fax)  
rjackson@thomasjhenrylaw.  
com

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

---

Effective December 31, 2020:  
**Sydney Christ Keller**  
10375 Richmond Avenue,  
Suite 1357  
Houston, TX 77042

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## CLERK'S CERTIFICATE OF CHANGE TO INAC- TIVE STATUS

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Effective December 25, 2020:  
**Peter Henry Klages**  
PO Box 30865  
Albuquerque, NM 87190

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## CLERK'S CERTIFICATE OF EMERITUS ATTORNEY CERTIFICATION

---

On January 28, 2021:  
**Peter Henry Klages**  
PO Box 30865  
Albuquerque, NM 87190

---

## CLERK'S CERTIFICATE OF NAME CHANGE

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As of January 26, 2021:  
**Jolanna Kristyn Macias**  
f/k/a **Jolanna Kristyn Peter-  
son**  
Office of the Second Judicial  
District Attorney  
520 Lomas Blvd., NW  
Albuquerque, NM 87102  
505-222-1051  
jolanna.peterson@da2nd.  
state.nm.us

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

---

Effective December 31, 2020:  
**Kathleen Ann Meredith**  
1304 N. Geneva Road  
Provo, UT 84601

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

---

On February 5, 2021:  
**Gina Nuñez**  
Office of the Ninth Judicial  
District Attorney  
417 Gidding Street,  
Suite 200  
Clovis, NM 88101  
575-769-2246  
575-769-3198 (fax)  
gnunez@da.state.nm.us

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## CLERK'S CERTIFICATE OF NAME CHANGE

---

As of November 6, 2020:  
**Heidi Maria Pircher**  
f/k/a **Heidi P. Zoyhofski**  
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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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

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# Advance Opinions

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

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2020-NMCA-017**

No. A-1-CA-36186 (filed December 12, 2019)

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF RIO ARRIBA and  
GEORGE MARTINEZ,  
Petitioners-Appellees,

v.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF SANTA FE,  
Respondent-Appellant.

## **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

SARAH M. SINGLETON, District Judge

Released for Publication April 7, 2020.

ADAN E. TRUJILLO  
Española, NM  
for Appellees

R. BRUCE FREDERICK,  
Santa Fe County Attorney  
RACHEL A. BROWN,  
Deputy County Attorney  
Santa Fe, NM  
for Appellant

## **Opinion**

**Megan P. Duffy, Judge.**

{1} This appeal arises from the district court's peremptory writ of mandamus compelling the Board of County Commissioners of the County of Santa Fe (Board) to publish notice of Petitioners' annexation petition pursuant to NMSA 1978, Section 4-33-3 (1947, amended 2019). The Board appeals, arguing that the annexation petition was facially defective and thus it had no duty to publish notice. At the heart of this appeal is what is required to effect a valid annexation petition, an issue of first impression in New Mexico. Because we conclude that the annexation petition was legally defective, we reverse the district court with instructions to quash the writ of mandamus.

### **BACKGROUND**

{2} The City of Española lies within the boundaries of both Santa Fe County and Rio Arriba County. Residents living on the Santa Fe County side of Española must travel to the City of Santa Fe (the county seat of Santa Fe County) to access county services, such as the county clerk or county assessor, whereas residents

living on the Rio Arriba County side of Española are able to access these same county services at Rio Arriba County satellite offices located in Española, as well as at the county seat in Tierra Amarilla. Petitioner George Martinez and others who live within the Santa Fe County side of Española wish to access the county services available at the Rio Arriba County satellite offices in Española, given their proximity. To accomplish this, Martinez and others began the process to annex the Santa Fe County portion of Española to Rio Arriba County, pursuant to NMSA 1978, Sections 4-33-1 to -3 (1947, amended 2019).

{3} Martinez prepared a "Petition for Annexation" in light of the requirements set forth in Section 4-33-2, which provides:

A petition executed by at least fifty-one percent (51%) of the qualified electors residing within the portion of the county proposed to be annexed shall be filed with the county commissioners of the county in which such portion is located. Such petition shall set forth the facts showing the existence of the conditions described in Section [4-33-1] . . . hereof

and shall accurately set out the boundaries of the portion of the county proposed to be annexed.

The statute required the annexation petition to set forth facts showing that the following two conditions existed:

[(1)] Whenever, because of the location and conditions of roads, or the existence or nonexistence of transportation facilities, it will be more convenient for the residents of any portion of a county to travel to the county seat of some other contiguous county, and [(2)] because of such location and condition of roads or the existence or nonexistence of transportation facilities, it will be more convenient and economical for such other county to render governmental services to such portion of such other county, the portion of the county so affected may be annexed to such other county in the following manner.

Section 4-33-1; see *Youree v. Ellis*, 1954-NMSC-002, ¶ 12, 58 N.M. 30, 265 P.2d 354 (stating that these conditions are "the decisive grounds upon which alone the court is authorized to order an election on annexation"). The first condition—hereinafter referred to as the "county seat condition"—forms the basis of the parties' dispute in this appeal.

{4} Two maps were attached to the petition. The first map described "[t]he Santa Fe County territory proposed to be annexed into Rio Arriba County." The second depicted the distances and travel times from Española to the Santa Fe County offices in the City of Santa Fe and to the Rio Arriba County satellite offices in Española, and showed that the Rio Arriba County satellite offices were closer for the petitioning residents.

{5} Martinez delivered the petition to the Santa Fe County Manager and requested that the Board publish notice of the petition, as required by law. See § 4-33-3 (1947, amended 2019) ("Immediately upon the filing of such petition . . . , it shall be the duty of the county commissioners with whom such petition is filed to cause a notice to be published in some newspaper or newspapers of general circulation in each county affected."). The Board declined to take any action on the petition after concluding that it was "legally defective on its face" in that "it [did] not set forth facts showing that . . . because of the location and conditions of roads or the existence or nonexistence of transportation facilities[,] . . . it would be more convenient for citizens in the area proposed to be annexed

to travel to the county seat of Rio Arriba County (Tierra Amarilla) as opposed to the county seat of Santa Fe County (the City of Santa Fe).” The Board advised in a letter to Martinez that it “was not making a judicial determination about whether the conditions that would justify annexation do, in fact, exist” but rather, “was acting within its recognized authority to determine whether a citizen petition requesting it to act is legally valid on its face.”

{6} Martinez and the Board of County Commissioners of the County of Rio Arriba (together, Petitioners) filed a petition for a writ of mandamus in the district court in Santa Fe, asking the court to compel the Board to publish notice pursuant to Section 4-33-3. Petitioners stated that although the residents of the area proposed to be annexed “live minutes away from the Rio Arriba [satellite offices] also located in the City of Española, as residents of Santa Fe County they must travel to the Santa Fe County Annex in the City of Santa Fe to receive most county services.” Arguing that “[s]tatutes should be construed in the most beneficial way of which their language is susceptible to prevent absurdity, hardships, or injustice, to favor public convenience, and to oppose all prejudice to public interests[.]” *Cox v. City of Albuquerque*, 1949-NMSC-041, ¶ 14, 53 N.M. 334, 207 P.2d 1017, Petitioners contended that the annexation petition complied with the county seat condition in Section 4-33-1 because it set forth facts demonstrating that the distance and average travel times to the Rio Arriba County satellite offices in Española were much shorter than the distance and average travel times to the Santa Fe County offices.

{7} After receiving a response from the Board, the district court conducted a non-evidentiary hearing and issued a peremptory writ of mandamus, finding and concluding in relevant part:

Although the residents of the area proposed to be annexed “live minutes away from the Rio Arriba [Satellite Offices] also located in the City of Española, as residents of Santa Fe County they must travel to the Santa Fe County Annex in the City of Santa Fe to receive most county services.”

Martinez had filed the signature pages of the annexation petition and requested that Santa Fe County “publish notice that the petition had been received as required by law [and] included a proposed form of notice.”

The Board approved a motion that the Board “disapprove and take no further action on the petition since it is legally defective

on its face because it does not set forth facts showing the existence of the statutory conditions justifying annexation” and so advised Martinez in a letter.

“A plain language reading of . . . [Section] 4-33-1 would do a disservice to the purpose of the statute as well as to the people of Santa Fe County, because after all, all we are talking about is giving the people the opportunity to vote on whether or not they want this portion of the county to be allowed to join Rio Arriba County instead of Santa Fe County.”

Under the “more nuanced type of statutory construction” that interprets statutes “based on perceived legislative objective and purpose rather than on literal language[.]” Section 4-33-1 is divided into two parts: the first part deals with the convenience of the residents to interact with their county by traveling to the county seat of the new county and the second part looks at the ability of the new county to render government services to the petitioner and the people in the petitioner’s area.

The petition “showed that the people in the area proposed to be annexed would be able to interact with their potential new county . . . government on a more convenient basis based on the fact that there are county services available in Española” and “[d]espite the fact that the petition could have had more information in it about Tierra Amarilla, the petition was sufficient to comply with the aforementioned intent of the [L]egislature to ensure that facts are set forth that it is more convenient to interact with the potential new county and the potential new county government.”

The Board appeals.

#### DISCUSSION

{8} The Board argues that it had no duty to publish notice of a defective annexation petition and cannot be compelled by mandamus to do so. *See Kiddy v. Bd. of Cty. Comm’rs of Eddy Cty.*, 1953-NMSC-023, ¶ 10, 57 N.M. 145, 255 P.2d 678 (“The county commissioners are called upon to act upon legal petitions only. If a petition is not legal, no imperative duty exists on their part to call an election. They cannot by mandamus be compelled to perform an illegal task.”); *State of N.M. ex rel. San Miguel BCC v. Williams*, 2007-NMCA-036, ¶ 9, 141 N.M. 356, 155 P.3d 761 (“Mandamus is appropriate to compel the performance of an affirmative act by another where the

duty to perform the act is clearly [prescribed] by law and where there is no other plain, speedy and adequate remedy in the ordinary course of law.” (internal quotation marks and citation omitted)). Whether the annexation petition is defective depends on whether it satisfied the requirements set forth in Sections 4-33-1 and -2, and specifically, whether the petition set forth facts to establish the county seat condition. We must therefore determine what the Legislature intended in Section 4-33-1 by requiring as grounds for annexation that “it will be more convenient for the [petitioning] residents of any portion of a county to travel to the county seat of some other contiguous county.” Resolution of this question presents an issue of statutory construction that we review *de novo*. *Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61 (“The meaning of language used in a statute is a question of law that we review *de novo*.”).

{9} The parties advocate different approaches to statutory construction. The Board argues that the plain language of Section 4-33-1 is clear and unambiguous, and must be given effect without further statutory interpretation. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 18, 117 N.M. 346, 871 P.2d 1352 (“When a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” (internal quotation marks and citation omitted)). Petitioners, on the other hand, argue that a literal application of the county seat condition is absurd and unjust and ask us to apply a sensible construction instead. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047 (“[I]f the plain meaning of the statute is doubtful, ambiguous, or if an adherence to the literal use of the words would lead to injustice, absurdity or contradiction, we will construe the statute according to its obvious spirit or reason.” (alteration, internal quotation marks, and citation omitted)). As our Supreme Court wrote in *Gallegos*, “the two approaches, correctly understood, can be viewed as complementary, not contradictory.” 1994-NMSC-023, ¶ 22. “That is, if the meaning of a statute is truly clear—not vague, uncertain, ambiguous, or otherwise doubtful—it is of course the responsibility of the judiciary to apply the statute as written and not to second-guess the [L]egislature’s selection from among competing policies or adoption of one of perhaps several ways of effectuating a particular legislative objective.” *Id.* “But [our Supreme] Court also cautioned against an overly simplistic application of the plain-meaning rule, stating that it is part of the essence of judicial responsibility to search for and effectuate



the legislative intent—the purpose or object—underlying the statute.” *Bishop v. Evangelical Good Samaritan Soc.*, 2009-NMSC-036, ¶ 10, 146 N.M. 473, 212 P.3d 361 (internal quotation marks and citation omitted).

{10} “Therefore, when presented with a question of statutory construction, we begin our analysis by examining the language utilized by the Legislature, as the text of the statute is the primary indicator of legislative intent.” *Id.* ¶ 11. “We also consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect.” *Id.* In addition to the statutory language, we examine “the context in which it was promulgated, including the history of the statute and the object and purpose the Legislature sought to accomplish.” *Maes v. Audubon Indem. Ins. Grp.*, 2007-NMSC-046, ¶ 11, 142 N.M. 235, 164 P.3d 934; *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939 (“In other words, a statutory subsection may not be considered in a vacuum[.]” (internal quotation marks and citation omitted)). “The guiding principle of statutory construction is that a statute should be interpreted in a manner consistent with legislative intent.” *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M. 397, 89 P.3d 69.

{11} Turning now to the statute, a literal reading of the county seat condition would require that annexation petitions include facts showing that it is more convenient for residents to travel to a specific geographical location—the county seat. *See* § 4-33-1. The parties do not dispute that “county seat” refers to a specific and established location in each county, nor do they claim that the term is ambiguous. As applied in this case, the parties agree that a plain language interpretation would require Petitioners’ annexation petition to contain facts showing that it is more convenient for Española residents to travel to Tierra Amarilla than to Santa Fe. Petitioners also concede that a literal interpretation of the county seat condition would foreclose their petition, as they cannot show this condition is satisfied here.

{12} Petitioners argue, however, that “the legislative intent was not rooted in a desire to require convenient travel to a geographical location like the county seat for its own sake, but [rather,] a desire to ensure convenient access to the elected officials and the governmental functions and processes they administer.” Petitioners contend that because the county seat is the headquarters of county government, the Legislature’s purpose in adopting the county seat condition was to gauge the convenience of accessing and interacting with the governmental services available there. In this case, Petitioners argue that

it is “common knowledge” that most Rio Arriba County services are available in Española, and thus, the practical need to travel to Tierra Amarilla is “a seldom occurrence.” Consequently, even though Tierra Amarilla is farther away than Santa Fe, they contend that it is more convenient for them to interact with the Rio Arriba County government in Española than it is for them to interact with the Santa Fe County government in Santa Fe. Petitioners argue that a plain meaning interpretation of the county seat condition leads to an unjust and absurd result because it fails to consider the practical convenience of accessing county governmental services in locations outside of the county seat and ask us to adopt a construction that would consider the convenience of accessing county governmental services in other locations where they are found.

{13} To determine the Legislature’s intent, we begin by examining the language used by the Legislature as the primary indication of legislative intent. *Bishop*, 2009-NMSC-036, ¶ 11. We observe that Section 4-33-1 contains two conditions that, pursuant to Section 4-33-2, must exist as grounds for annexation. *See generally Stevenson v. Louis Dreyfus Corp.*, 1991-NMSC-051, ¶ 14, 112 N.M. 97, 811 P.2d 1308 (stating that conjunctive wording in a statute requires that all listed elements be present). The first condition evaluates convenience from the perspective of residents seeking annexation. For this condition, the Legislature stated that the annexation petition must show that it is more convenient for residents to “travel to the county seat” of the new county. *See* §§ 4-33-1 and -2. In juxtaposition, the second condition evaluates convenience from the perspective of the new county, and for this condition, the Legislature stated that the annexation petition must show that it will be more convenient for the new county to “render governmental services” to those residents. Section 4-33-1 (emphasis added). While Petitioners’ interpretation of the first condition would effectively substitute the term “county services” in place of the Legislature’s use of “county seat,” it is telling that the Legislature chose to use the term “services” only in the second condition. “We have previously said that when the Legislature includes a particular word in one portion of a statute and omits it from another portion of that statute, such omission is presumed to be intentional.” *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 2013-NMSC-013, ¶ 36, \_\_\_ P.3d \_\_\_ (internal quotation marks and citation omitted). Had the Legislature intended consider the convenience of accessing “county services” in the first condition, it could have done so expressly. *State v. Greenwood*, 2012-NMCA-017,

¶ 38, 271 P.3d 753 (“The Legislature knows how to include language in a statute if it so desires.” (alteration, internal quotation marks, and citation omitted)). Accordingly, a purely textual reading weighs against Petitioners’ proposed construction. {14} Likewise, our review of the history of the statute and the context in which it was promulgated inform our understanding of the Legislature’s purpose in designating “travel to the county seat” as the measure of convenience. *State v. Office of Pub. Def. ex rel. Muqqddin*, 2012-NMSC-029, ¶ 13, 285 P.3d 622 (stating that to give effect to the intent of the Legislature, “we examine the plain language of the statute as well as the context in which it was promulgated, including the history of the statute and the object and purpose the Legislature sought to accomplish” (internal quotation marks and citation omitted)). The Legislature enacted Section 4-33-1 and -2 in 1947 against a backdrop of laws requiring that governmental services be provided at the county seat. The county seat is the headquarters of county government, the place where the county government must maintain its offices and where county services must be provided, as required by the New Mexico Constitution and a constellation of statutes. *See, e.g.,* N.M. Const. art. VI, § 13 (amended 2018) (providing that the district court must be at the county seat); NMSA 1978, § 4-44-34 (1939) (providing that county officers “shall establish and maintain their offices and headquarters for the transaction of the business of their respective offices at the county seat of their respective counties and shall there keep all the books, papers and official records pertaining to their respective offices”); NMSA 1978, § 10-1-13(A) (2011) (defining county officers as the “county commissioner, county assessor, county clerk, county sheriff, county treasurer, probate judge, . . . and small claims court clerk”); NMSA 1978, § 34-7-4 (1869-1870) (providing that the probate court must be at the county seat); NMSA 1978, § 4-38-8 (1981) (requiring the board of county commissioners to meet at the county seat at quarterly meetings); NMSA 1978, § 34-6-24 (1988) (providing that the district court must be at the county seat). While counties may choose to provide services in locations outside of the county seat, we agree with the Board that “counties may over time change the number, type and extent of governmental services they provide outside their county seats based on funding or other considerations.” Petitioners, failing to acknowledge the import of these enactments, argue that “[i]f all county officers and corresponding functions they serve were not headquartered in the county seat, then a plain language reading of Section 4-33-1 would require

convenience of travel to the county seat because it is a specific geographical location that is symbolic of living in a particular county.” But that is precisely the point—without a substantial change to a number of laws, county services must *always* be provided in the county seat, whereas the same is not true for satellite offices. Given this, the Legislature’s requirement that annexation petitions state convenience in terms of travel to the county seat—the only location where county services are *required* to be comprehensively provided—is neither unreasonable nor absurd, even if some county services are presently closer for Petitioners in this particular case.

{15} As a further illustration of this point, in this case, some county services are *only* available at the county seat—the First Judicial District Court and the County Detention Center. Though Petitioners acknowledge that not all county services are available in Española, they have not suggested how convenience should be evaluated in circumstances where access to some county services is rendered *less* convenient by annexation, or more generally, what kinds and types of services are enough to establish that it is more convenient for residents to interact with another county. The Legislature has provided no guidance for resolving these questions within the Act, nor has it adopted any procedure for evaluating the merits or validity of an annexation petition before notice is published. See Section 4-33-3 (stating that a resident may bring an action within thirty days *after* notice is published alleging that “the conditions described in Section 4-33-1 . . . do not exist” and “[t]he judge, after hearing, shall make a determination as to whether the allegations of the petition are well taken”); *Rivera*, 2004-NMSC-001, ¶ 16 (“[W]e look not only to what is explicitly stated by the language of [the statute] but we also take special notice of what has been omitted from the purview of the statute.”). In this case, both issues were addressed in mandamus proceedings, pursuant to NMSA 1878, §§ 44-2-1 to -14 (1884, as amended through 1899). The district court made factual findings on

the actual convenience of interacting with Rio Arriba County before concluding that the annexation petition complied with the Legislature’s intent. That factual resolution was necessary here, and that it may be necessary every time an annexation petition states convenience in terms of accessing county services rather than travelling to the county seat, suggests that a “county services” interpretation would render unclear what is required to effect a facially valid annexation petition. *N.M. State Bd. of Ed. v. Bd. of Ed. of Alamogordo Pub. Sch. Dist. No. 1*, 1981-NMSC-031, ¶ 14, 95 N.M. 588, 624 P.2d 530 (“Legislative intent is to be given effect by adopting a construction which will not render the statute’s application absurd or unreasonable and will not lead to injustice or contradiction.”).

{16} For all of these reasons, we conclude that a plain meaning construction of the county seat condition is consistent with and best effectuates the Legislature’s intent in enacting Section 4-33-1. See *Gallegos*, 1994-NMSC-023, ¶ 3 (indicating that we will not depart from the plain language of a statute unless it is necessary to resolve an ambiguity or absurdity); see also *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599 (“The court will not read into a statute . . . language which is not there, particularly if it makes sense as written.” (internal quotation marks and citation omitted)); *N.M. Petroleum Marketers Ass’n v. N.M. Envtl. Improvement Bd.*, 2007-NMCA-060, ¶ 11, 141 N.M. 678, 160 P.3d 587 (adhering to the plain meaning when “[a]ppellants have not convinced us that adherence to the literal meaning of the broad language employed by . . . the Legislature would lead to injustice, absurdity, or internal contradiction”). Though we acknowledge that county services have become more accessible and available without the need to physically travel to a county office in the seventy years since Sections 4-33-1 and -2 were enacted, whether travel to the county seat remains the preferred measure of convenience for residents seeking annexation is a matter for the Legislature to determine.

*Perea v. Baca*, 1980-NMSC-079, ¶ 23, 94 N.M. 624, 614 P.2d 541 (“If a change in the statute is necessary or proper, that is a task for the Legislature.”); *M.D.R. v. State ex rel. Human Servs. Dep’t*, 1992-NMCA-082, ¶ 13, 114 N.M. 187, 836 P.2d 106 (“[I]t is not the function of the court of appeals to legislate. Correction of whatever inequity exists in such a situation is best left to the [L]egislature.” (citation omitted)).

{17} Applying the plain meaning construction of the county seat condition, we conclude that the district court erred in finding that the petition complied with Section 4-33-1. As applied in this case, a plain language reading of Section 4-33-1 requires that the petition state facts showing that it will be more convenient for the residents of Española currently residing in Santa Fe County to travel to Tierra Amarilla. Neither the petition nor its attachments made any reference to Tierra Amarilla and thus failed to comply with the statutory requirement that a petition set forth facts showing the existence of both conditions described in Section 4-33-1. Given this, the Board had no duty to publish notice pursuant to Section 4-33-3 and the district court erred by issuing a writ of mandamus directing it to do so. See *Kiddy*, 1953-NMSC-023, ¶ 12 (stating that a writ of mandamus should be refused when a petition was invalid, as there is no clear fact that would require performance by the board). We therefore reverse the district court.

{18} As a result of our holding, it is unnecessary to address the remaining arguments raised by the parties in this appeal.

## CONCLUSION

{19} We reverse the district court with instructions to quash the writ of mandamus.

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

**WE CONCUR:**  
**LINDA M. VANZI, Judge**  
**JULIE J. VARGAS, Judge**



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Prior to rejoining the firm, Josh was a partner in one of Portland, Oregon's premier criminal defense law firms and prior to that served as the Research and Writing Specialist for the Chief Federal Defender of Oregon.

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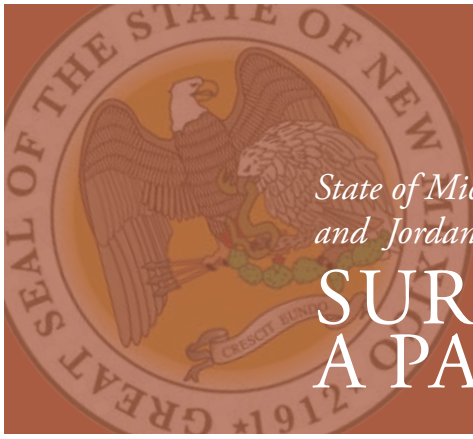
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*State of Michigan, Surrogate Parenting Act, 1988  
and Jordan & Tammy Myers, 2021*

# SURROGACY: A PATCHWORK OF LAWS

Jordan and Tammy Myers will be adopting their own twins after two Michigan judges dismissed their petition to obtain parental rights. The Myers, a heterosexual, married couple for whom a devastating cancer diagnosis made egg harvesting and surrogacy their only hope of adding to their family, had the unlucky chance of living in Michigan.

In Michigan, a 1988 state law makes any surrogacy agreement “void and unenforceable” and the participants in some agreements subject to felony charges and jail time. Still, many Michigan judges have granted pre-birth orders for children born via surrogacy. The Myers had hoped that the judge who would hear their case would be so inclined.

Learn more about surrogacy law in New Mexico on our blog at [www.wbmh.law/caselaw](http://www.wbmh.law/caselaw)

In the surrogacy sweepstakes, drawing a “lucky” judge can still be a factor in whether a person or a couple will be allowed to have a child - often in the only way medically possible for them. Surrogacy, while legal in the U.S., is not federally regulated. Each state has its own set of rules, often reflecting that state’s particular take on what kind of person (straight or not, single or not, genetically related to the fetus or not) will be favorably regarded by the law.

New Mexico is one of the “friendlier” states for surrogacy. But even here, traditional surrogacy and single parent surrogacy can be problematic.

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