

BAR BULLETIN

April 14, 2021 • Volume 60, No. 7



Cubero Mystery by Michael Rizzo Jr. (see page 3)

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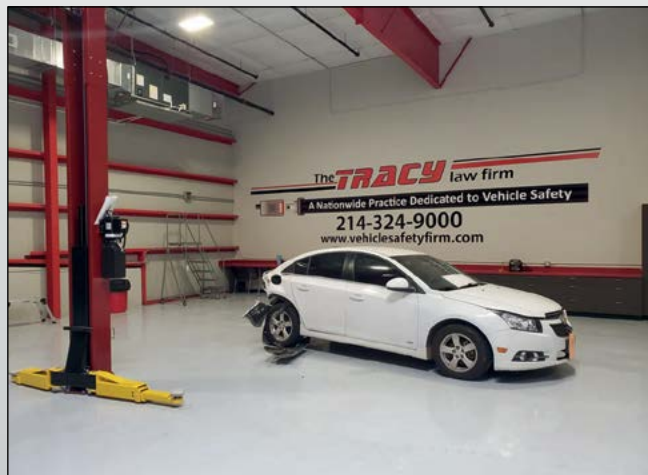
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CLE Planner

*Upcoming programming
from the
Center for Legal Education*

CRASHWORTHINESS:

We Didn't Invent the Word;
We DEFINED it.



Every vehicle accident case you handle has the potential to be on one of the 235 racks or in one of our six inspection bays at the firm's Forensic Research Facility. We continually study vehicle safety through the use of engineering, biomechanics, physics and innovation.

If you have any questions about a potential case, please call us. There may be vehicle safety system defects that caused your clients catastrophic injury or death.



Subject Vehicle



Test Vehicle



4701 Bengal Street, Dallas, Texas 75235

214-324-9000



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From the New Mexico Court of Appeals

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Meetings

April

14
Children's Law Section Board
Noon, Teleconference

14
Tax Section Board
9 a.m., teleconference

15
Public Law Section Board
Noon, Teleconference

16
Family Law Section Board
9 a.m., teleconference

20
Solo and Small Firm Section Board
10:30 a.m., teleconference

27
Intellectual Property Law Section Board
Noon, teleconference

28
Natural Resources, Energy, and Environmental Law Section Board
Noon, teleconference

29
Trial Practice Section Board
Noon, teleconference

Workshops and Legal Clinics

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

May

5
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call
505-797-6022

26
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call
505-797-6094

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: Michael Rizzo Jr. works in several mediums. He started out in film photography and now works digitally and enjoys the freedom of Photoshop. He also creates serigraphs using some of those digital images and finds the rich colors of screen printing exciting to experiment with. For more information, contact Rizzo at rizzo_art@hotmail.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 or visit <https://lawlibrary.nmcourts.gov>.

Bernalillo County Metropolitan Court Notice to Attorneys

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.

Fourth Judicial District Court Vacancy Announcement

Due to the recent appointment of the Honorable Judge Gerald E. Baca to the New Mexico Court of Appeals, a vacancy will exist in the Fourth Judicial District Court effective April 26. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. Sergio Pareja, chair of Fourth Judicial District Court Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the judicial selection website, <http://lawschool.unm.edu/judsel/application.php>, or emailed to

Professionalism Tip

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

I will make all reasonable efforts to decide cases promptly.

you by emailing the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Friday, April 16. Applications received after that time will not be considered. The Judicial Nominating Commission will meet at 9 a.m. on Monday, April 26, and the meeting will occur exclusively by Zoom. The commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. If you would like the Zoom invitation emailed to you, please contact Beverly Akin by email at akin@law.unm.edu. Alternatively, you may find the Zoom information for this hearing below. Please change your zoom screen to your first, last name to be admitted.

Topic: Fourth Judicial District Court Nominating Commission Meeting
Date Time: Monday, April 26, at 9 a.m.
Join Zoom Meeting
<https://unm.zoom.us/j/379615447?pwd=M3lSVGxuSEkrSjd4cExlVXYwK3MzQT09>
Meeting ID: 379 615 447
Password: 72146

Seventh Judicial District Court Announcement of Applicants

Seven applications have been received in the Judicial Selection Office as of 5 p.m., Tuesday, March 30, the vacancy occurred due to the unexpected passing of the Honorable Chief Judge Matthew Reynolds. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the court. The Seventh Judicial District Court Judicial Nominating Commission will convene beginning at 9 a.m. on Monday, April 12, and will occur exclusively by Zoom. The commission meeting is open to the public, and anyone who wishes to be heard about any of the applicants will have an opportunity to be heard. If you would like the Zoom invitation emailed to you, please contact Beverly Akin by email at akin@law.unm.edu. Alternatively, you may find the Zoom information for this hearing below. The names of the applicants in alphabetical order: **Ricardo A. Berry,**

Lee Albert Deschamps, Anne Elizabeth Gibson, Virginia Louise Hicks, Raymond Frederick (Ray F.) Sharbutt, Jr., Katherine Renee Stout and Roscoe Augustus Woods. Please change your zoom screen to your first and last name to be admitted.

Topic: Seventh Judicial District Court Nominating Commission Meeting
Date Time: Monday, April 12, at 9 a.m.
Join Zoom Meeting
<https://unm.zoom.us/j/379615447?pwd=M3lSVGxuSEkrSjd4cExlVXYwK3MzQT09>
Meeting ID: 379 615 447
Password: 72146

Administrative Office of the Courts

Notice of E-Filing in Magistrate Court Civil Cases

Electronic filing by attorneys in civil cases in Magistrate Courts starts April 23 in the First, Third, Sixth and Thirteenth Judicial Districts. E-filing and service of documents will occur through the online File & Serve system, which also will be used to submit proposed text/orders for judges to review. E-filing is voluntary during the phased-in magistrate court rollout, which should be completed statewide by August. Online training for attorneys will be offered April 26, 27 and 28, 3:30-4:30 p.m. Visit the Judiciary's e-filing webpage for more information and to register for training, <https://www.nmcourts.gov/e-filing-magistrate-courts>.

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: 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 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.

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 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.

Board of Bar Commissioners

Meeting Summary

The Board of Bar Commissioners for the State Bar met virtually on February 5. Action taken at the meeting follows:

- Approved the Dec. 9, 2020 meeting minutes;
- Received an update on the newly created Professional Practice Program and created an advisory committee to assist with the program; individuals will be identified to serve on the committee for the Board's approval at the April meeting;
- Received information on licensing and MCLE compliance deadlines;
- Received information on the new Association Management Software upgrade and website;
- Provided the updated Strategic Plan Timeline and reported that no changes were made at this time;
- Held an executive session to discuss a personnel issue;
- Appointed the following to the Board of Bar Commissioners: Allison Block-Chavez to the vacancy in the Second Judicial District; Elias Barela and Jesus Lopez to the vacancy in the Seventh and Thirteenth Judicial Districts; and appointed Michael Eshleman to the vacancy in the Out-of-State District; all of the terms will run through December 31;
- Appointed Christopher K. P. Cardenas from the Second Congressional District to the New Mexico Legal Aid Board for a three-year term; a notice will be published for the vacancy on the NMLA Board in the First Congressional District;
- Appointed Damon Hudson and Ramona J. Martinez-Salopek to the New Mexico Access to Justice Commission for three-year terms;
- Received the 2019 Annual Report for the Client Protection Fund and approved proceeding with rule changes to 17A-010, Eligible Claims, to include unauthorized practice of law for the Supreme Court's approval;
- Received a report on the Executive Committee which met to review the meeting agendas and approve a statement from the State Bar on the acts of violence at the U.S. Capitol on January 6, 2021; the statement will be published on the State Bar's website and on the ABA website;
- Received a report from the Finance Committee and accepted the 2020 Year-End Financials and approved the list of 2021 Recurring ACH Payments and added three additional recurring payments to the list; reviewed the mission of the committee; discussed the intercompany payable and didn't recommend a payment at this time; reviewed the Client Protection Fund, Access to Justice and Judges and Lawyers Assistance Program 2020 Year-End Financials; and received a licensing and MCLE update as well as an audit update, which will be presented at the April meeting;
- Received a report on the Special Committee on Diversity and Gender Recommendations; the committee conducted its initial review of the reports and will be meeting again to look at the recommendations more closely;
- Received a presentation on lobbying, which the Special Committee on Sections will be looking at and will bring a recommendation to the Board;

— *Featured* —

Member Benefit



Take advantage of a free employee assistance program, a service offered by the New Mexico Judges and Lawyers Assistance Program in cooperation with The Solutions Group. Get help and support for yourself, your family and your employees. Services include up to four FREE counseling sessions/issue/year for any behavioral 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, substance use disorder assessments, video counseling and 24/7 call center. Providers are located throughout the state.

**To access this service call
855-231-7737 or 505-254-3555
and identify with NMJLAP.
All calls are confidential.**

- Received a list of sections and committees that did not submit an annual report for 2020 and will be added to the sunset list this year;
- Received the 2021 Board meeting dates as follows: April 16, June 11, Oct. 7, and Dec. 8;
- Received a report from the ABA House of Delegates representative Bobbie Batley;
- Received a report from the Disciplinary Board liaison and a request for resources for members impacted by COVID-19;
- Received the 2021 Internal Committees and the Supreme Court Boards and Committees Liaison rosters; and

- Received a State Bar 2020 Year-In-Review, which will be sent out to the membership.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the board at the April 16 meeting.

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. Contact Vanessa Sanchez at 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 Attorney Support Group

- April 19 at 5:30 p.m.
- April 26 at 5:30 p.m.
- May 3 at 5:30 p.m.

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

NMJLAP Committee Meetings

- July 10 at 10 a.m.
- Oct. 2 at 10 a.m.

If you wish to attend the meeting, email Tenessa Eakins at teakins@sbnm.org for the Zoom link.

The NMJLAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. Over the years the NMJLAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Judges and Lawyers Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

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: FOUR FREE counseling sessions per issue, per year. This EAP service is designed to support you and your direct family members by offering free, confidential counseling services. Want to improve how you manage stress at home and at work? StressStop.com, an online suite of stress management and resilience-building resources, will help you improve your overall well-being, anytime and anywhere, from any device! The online suite is available at no cost to you and your family members. Tools include: My Stress Profiler: A confidential and personalized stress assessment that provides ongoing feedback and suggestions for improving your response to 10 categories of stress, including change, financial stress, stress symptoms, worry/fear and time pressure. Podcasts and videos available on demand: featuring experts in the field, including Dan Goleman, Ph.D., Emotional Intelligence; Kristin Neff, Ph.D., Self-Compassion; and David Katz, M.D., Stress, Diet and Emotional Eating. Webinars: Covering a variety of topics including work-life balance, thinking through stress, and mindfulness at work. Call 505-254-3555, 866-254-3555, or visit www.solutionsbiz.com to receive FOUR FREE counseling sessions, or to learn more about the additional resources available to you and your family from the Solutions Group. Every call is completely confidential and free.

N.M. Well-Being Committee

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness.

2021 Campaign - What a Healthy Lawyer Looks Like

N.M. Well-Being Committee Meetings:

- May 25th, at 1 p.m.
- July 27th, at 1 p.m.
- September 28th, at 1 p.m.
- Nov. 30, at 1 p.m.

Caregivers Roundtable For Legal Professionals:

- April 19: 11:30 a.m. – 12:30 p.m. (Bring your lunch!)
- April 26: 9 – 10 a.m.
- May 3: 11:30 a.m. -12:30 p.m. (Bring your lunch!)

These sessions will provide an opportunity for caregivers in our legal community to experience the benefits of listening and sharing experiences with members in their community in an effort to release tension, gain connection, and understand new ways to manage the stress and responsibility of caring for others while managing their careers at home. The dialogue consists of the caregiver's real experience in his/her role at home while providing care and the impact it may have to their well-being. To sign up, please email Jessica at arreo-lajessica2021@gmail.com, or Natalie at nlduran24@gmail.com and a Google Meets link will be provided to you. For any further questions, please call Tenessa at 505-797-6093.

Upcoming Legal Well-Being in Action Podcast Release Dates:

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

Notices will continue on page 9.

Legal Education

April

- | | | |
|---|--|---|
| <p>14 Housing Insecurity and the Law During the Covid-19 Pandemic 1.0 G Live Webinar New Mexico Hispanic Bar Association www.newmexicohispanicbar.org</p> | <p>16 Family Law Institute: Unsubstantiated Allegations of Abuse (2020) 2.0 G Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>26 Roadmap of Venture Capital and Angel Funding, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> |
| <p>14 E-Discovery for Small Cases 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>20 Estate and Gift Tax Audits 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>27 Roadmap of Venture Capital and Angel Funding, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> |
| <p>14 Beneficiary Designations in Retirement Accounts: Protecting a Lifetime of Savings 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>20 Failures of the Reverse Mortgage Industry and Opportunities You May Not Know About 1.0 G Live Webinar Santa Fe Estate Planning Council www.santafeestateplanningcouncil.wildapricot.org/</p> | <p>28 Lawyer Ethics and Investigations for and of Clients 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> |
| <p>16 Replay: Animal Law Institute (2020) 3.0 EP Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>21 Defending Estate and Gift Tax Audits 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>29 Drafting Indemnity Agreements in Business and Commercial Transactions 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p> |
| <p>16 Animal Law 2021 Legislative Roundup 1.5 G Live WEBINAR UNM School of Law Animal Legal Defense Fund https://unm.zoom.us/j/tjwtdO2hrzkjH9aGWOx4kT4Kg54rrjkmDGpH</p> | <p>21 So How 'Bout We All Zoom, Zoom, Zooma, Zoom?: Ethical and Best Practices for a Virtual Practice 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>29 Replay: Revealing Unconscious Prejudice: How You Can Benefit (2020) 2.0 EP Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org</p> |
| <p>16 Deepfakes Audios and Videos: What Lawyers Need to Know 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>23 Family Law Institute: The 50/50 Presumption and Parenting Plans in Special Circumstances (2020) 2.0 G Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org</p> | <p>30 Family Law Institute: Assessing and Understanding Children's Preferences (2020) 2.0 G Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org</p> |

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

May

| | | | | | |
|----|--|----|--|----|---|
| 5 | The Law of Background Checks: What Clients May/May Not "Check" 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 14 | 2021 Fiduciary Litigation Update 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 24 | Due Diligence in Commercial Real Estate Transactions 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org |
| 11 | Trust and Estate Planning for Single Clients 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 18 | 2021 Trust and Estate Planning Update 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 25 | Ethics of Shared Law Offices, Working Remotely & Virtual Offices 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org |
| 12 | Drafting Demand Letters 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 19 | Subtenants in Commercial Leasing: How to Protect Your Client 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 26 | Talking About Wealth Transfer Plans: Practical Strategies to Avoid Disputes Among Beneficiaries 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org |
| 12 | Internet Legal Research on a Budget 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org | 20 | Drafting Escrow Agreements in Business & Commercial Transactions 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 27 | Ethical Issues in Contract Drafting 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org |
| 13 | From One Thing to Another: Business Entity Conversions & Domestication 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 20 | The Lawyer's Guide to Ethical Business Development 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org | 27 | How to Maintain A Diverse Legal Workforce and Eliminate Bias, In Any Economic Environment 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org |
| 14 | How to Stay "Professional" when Videoconferencing: It's Not As Hard As You Think! 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org | 21 | Presentations that Captivate 1.0 G Live Webinar Center for Legal Education of NMSBF www.sbnm.org | | |

Notices continued from page 6.

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>.

Animal Law 2021 Legislative Roundup

The UNM School of Law Student Animal Legal Defense Fund with the cooperation of the Animal Law Section of the State Bar of New Mexico will be hosting their annual legislative roundup presentation. A panel discussion of animal-related legislation considered during the 2021 session of the New Mexico State Legislature of what passed, what didn't, what's next. The presentation is on Friday, April 16 from 11:30 a.m. – 1 p.m. MST. The course has been approved for 1.5 general CLE credits. The course is free and register here: <https://unm.zoom.us/j/tJwtdO2hrzkjH9aGWox4kT4Kg54rrjk-mDGpH>

OTHER BARS

Albuquerque Bar Association Law Day Celebration and CLE

Save the date for the Albuquerque Bar Association's Law Day celebration and CLE. The event will be 11:45 a.m.-1 p.m., April 29, virtually. The event will feature Gov. Michelle Lujan Grisham and Chief Justice Michael E. Vigil.

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>.

VOLUNTARY BAR HIGHLIGHT

Twelfth Judicial District Bar Association

The Twelfth Judicial District Bar Association serves Lincoln and Otero counties. We meet at noon on the third Tuesday of every month. Due to Covid-19 restrictions, meetings are virtual at this time. We offer general and ethics CLE's throughout the year, at no charge to our members, and host an annual Bench and Bar Conference each fall (scheduled in early October this year). Our meetings, CLE's, and annual conference are open to everyone and all are welcome to join us! Membership dues range from \$25-55.

President/Chair: Stacey Haase • **Email:** nm12thbarassociation@gmail.com
Phone: 575-551-4808 • **Mailing Address:** PO Box 914, Alamogordo, NM 88311



By now you've probably seen or heard about the attorney in Texas who accidentally signed into a hearing with a filter that made him look like a cat, the California doctor who appeared at a hearing while a patient was on the operating table, or the child support defendant in Michigan who appeared at a hearing unclothed at the top half of their body. Even the United State Supreme Court has had arguments interrupted by a toilet flush.



While these may strike us as comical, it is important to always remember that virtual hearings and trials are still formal court proceedings. What does this mean? First, find a quiet room while participating in the hearing or trial to avoid the proceedings from being interrupted. Close your door and tell others you will be in a hearing or trial and that you should not be distracted.

Second, try not to slouch, move around, sit on the floor, or recline on a couch or in bed. Instead, if you are physically able to do so, sit upright in a chair or stand, and importantly, tell your clients and witnesses to do the same.

Other than water, do not drink, eat or smoke during the hearing or trial. Again, tell your clients and witnesses to do the same.

In other words, the judges, lawyers and all other participants need to act in the same manner and show the same decorum and respect that they would when appearing in person.

This includes dressing appropriately, being prepared and giving full respectful attention to the court, opposing counsel, the jury (if one is empaneled) and all other parties and witnesses. This ensures that the party or trial proceeds in the same orderly fashion as it would if it were held in person in the courthouse.

Justice demands no less.

Next time, follow these rules, check your computer, and don't be a cat at your next hearing!

Watch: Chief Justice provides more tips and best practices
<https://www.sbnm.org/Member-Services/Professional-Practice-Program>

“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

Caregivers Roundtable for Legal Professionals

Coming soon!

The State Bar of New Mexico Well-Being Committee will be facilitating an on-line roundtable session for caregivers in the legal community!

Caregivers Roundtable for Legal Professionals

will provide an opportunity for caregivers in our legal community to experience the benefits of listening and sharing experiences with members in their community in an effort to release tension, gain connection, and understand new ways to manage the stress and responsibility of caring for others while managing their careers at home. The dialogue consists of the caregiver's real experience in his/her role at home while providing care and the impact it may have to their well-being.

This roundtable will be led by two members in our legal community, and by a Licensed Professional Clinical Counselor (LPCC). Meeting frequency for the Caregiver Roundtable for Legal Professionals will be hosted every Monday via Google Meets with weekly alternating meeting times from morning to afternoon.

April 12 • 9 – 10 a.m.

April 19 • 11:30 a.m. – 12:30 p.m. (Bring your lunch!)

April 26 • 9 – 10 a.m.

To sign up, please email **Jessica at arreolajessica2021@gmail.com**,
or **Natalie at nlduran24@gmail.com**
and a Google Meets link will be provided to you.
For any further questions, please call Tenessa at 505-797-6093.



State Bar of New Mexico
Well-Being Committee

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 March 12, 2021

PUBLISHED OPINIONS

| | | | |
|--------------|--|----------------|------------|
| A-1-CA-37231 | Par Five Services v. NM Taxation & Rev | Affirm/Reverse | 03/08/2021 |
| A-1-CA-37303 | Mosaic Potash v. NM Taxation & Revenue | Affirm/Reverse | 03/08/2021 |
| A-1-CA-39148 | State v. Jesenya O | Reverse/Remand | 03/11/2021 |

UNPUBLISHED OPINIONS

| | | | |
|--------------|---------------------------------|-----------------------|------------|
| A-1-CA-37132 | State v. I Atencio | Affirm/Vacate/Remand | 03/08/2021 |
| A-1-CA-37866 | A Hittinger v. Essence of Light | Affirm | 03/08/2021 |
| A-1-CA-39344 | CYFD v. Brandy A. | Affirm | 03/08/2021 |
| A-1-CA-37944 | State v. J Lujan-Sierra | Affirm/Reverse/Remand | 03/09/2021 |
| A-1-CA-37981 | State v. T Herburger | Reverse/Remand | 03/09/2021 |
| A-1-CA-38257 | State v. J Yazzie-Miller | Affirm | 03/09/2021 |
| A-1-CA-39285 | CYFD v. Timothy W | Affirm | 03/09/2021 |
| A-1-CA-39324 | State v. L Coker | Affirm | 03/09/2021 |
| A-1-CA-38716 | State v. M Sandoval | Affirm | 03/10/2021 |
| A-1-CA-38354 | City of Rio Rancho v. K Self | Affirm | 03/11/2021 |

Effective March 19, 2021

PUBLISHED OPINIONS

| | | | |
|--------------|----------------------|-----------------------|------------|
| A-1-CA-37827 | E Wallbro v. K Nolte | Affirm/Reverse | 03/15/2021 |
| A-1-CA-37899 | State v. J Hansen | Affirm/Reverse/Remand | 03/17/2021 |

UNPUBLISHED OPINIONS

| | | | |
|--------------|--|--------|------------|
| A-1-CA-38120 | State v. J Apodaca | Affirm | 03/15/2021 |
| A-1-CA-38455 | State v. J Jackson | Affirm | 03/15/2021 |
| A-1-CA-38481 | M Aguilar v. City of Albuquerque | Affirm | 03/15/2021 |
| A-1-CA-38783 | State v. C Wilson | Affirm | 03/15/2021 |
| A-1-CA-38683 | State v. E Triste | Affirm | 03/18/2021 |
| A-1-CA-38750 | J Stockard v. Performance Transportation | Affirm | 03/18/2021 |

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

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

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

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Effective March 26, 2021

UNPUBLISHED OPINIONS

| | | | |
|--------------|--|----------------|------------|
| A-1-CA-36713 | State v. L Coriz | Affirm | 03/22/2021 |
| A-1-CA-38043 | State v. B Barron | Affirm | 03/22/2021 |
| A-1-CA-39299 | CYFD v. Randall B. | Affirm | 03/22/2021 |
| A-1-CA-36953 | Boulanger v. Rio Rancho Public Schools | Affirm | 03/23/2021 |
| A-1-CA-39443 | E Jones v. B Jones | Reverse/Remand | 03/23/2021 |
| A-1-CA-37968 | State v. J Barber | Reverse/Remand | 03/24/2021 |
| A-1-CA-39349 | State v. M Hague | Affirm | 03/25/2021 |
| A-1-CA-39350 | State v. M Hague | Affirm | 03/25/2021 |

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

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From the Clerk of the New Mexico Supreme Court

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-018

No. A-1-CA-36403 (filed December 19, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

WILLIAM KALINOWSKI,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

T. GLENN ELLINGTON, District Judge

Certiorari Denied, February 24, 2020, No. S-1-SC-38102.

Released for Publication April 7, 2020.

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Opinion

Julie J. Vargas, Judge

{1} Defendant William Kalinowski appeals his convictions for six counts of embezzlement, contrary to NMSA 1978, Section 30-16-8 (2007), and three counts of fraud, contrary to NMSA 1978, Section 30-16-6 (2006). Defendant argues that the district court erred in (1) refusing to allow his expert to testify regarding the effects of the “great recession” on local home builders; (2) limiting the testimony of his other experts; (3) admitting evidence of other uncharged incidents in contravention of Rule 11-404(B) and Rule 11-403 NMRA; and (4) failing to dismiss the case for violation of Defendant’s right to effective assistance of counsel. Finding no error, we affirm the district court on the grounds raised by Defendant.

{2} In addition, this Court has raised sua sponte a question regarding the sufficiency of the evidence supporting Counts 1 and 3 relating to the embezzlement of customer deposits paid to Defendant. *See State v. Clemons*, 2006-NMCA-031, ¶ 10, 139 N.M. 147, 130 P.3d 208 (raising sufficiency of the evidence sua sponte); *State*

v. Maes, 2003-NMCA-054, ¶ 5, 133 N.M. 536, 65 P.3d 584 (same). After reviewing the supplemental briefing, we conclude that Counts 1 and 3 are not supported by sufficient evidence and thus reverse the corresponding embezzlement convictions. We remand to the district court to vacate Defendant’s convictions on Counts 1 and 3 and enter an amended judgment and sentence.

BACKGROUND

{3} Defendant, operating through several business entities, began building homes in Santa Fe in the late 1990s under the moniker Barranca Builders. Defendant’s business grew and he was eventually hired to build homes in Las Campanas luxury golf community in Santa Fe. To fund these construction projects, Defendant relied on substantial down payments from purchasers (deposits) and construction loans obtained either by purchasers or by one of his business entities. Importantly, Defendant did not strictly apply deposit funds, or funds advanced under the construction loans, to the particular projects with which they were associated. Instead, he pooled all the funds together in a single account and used them to pay all the bills of Defendant’s business entities.

{4} Defendant contracted to build a home in Las Campanas for Robert and Janice Sostrin on October 3, 2007. Under the terms of the agreement and addendum, the Sostrins paid an initial deposit of \$213,750 to Defendant. Though Robert Sostrin testified that he assumed the deposit would be used toward construction costs on his home, neither the terms of the agreement nor any conversations between Defendant and the Sostrins specified the particular purpose for which the money was to be used. Defendant ultimately failed to complete the home, liens were filed by unpaid subcontractors, and the Sostrins were forced to pay an extra \$250,000 to another builder to finish the construction. These events gave rise to the crime charged in Count 1 of the indictment.

{5} Defendant also contracted to build three homes for Howard Hawks, doing business as Hawks Holdings, LLC (Hawks Holdings). The contract required Hawks Holdings to pay Defendant an initial deposit of \$363,943. Hawks testified at trial that the deposit funds were “to get the job going[,]” though he did not point to any actual agreement between himself and Defendant as to the specific purpose for the deposit money. Defendant was unable to finish building the homes for Hawks Holdings, liens were filed against the property by various subcontractors, and Hawks Holdings eventually had the project completed for approximately one million dollars over the original contract price. These events gave rise to the crime charged in Count 3 of the indictment.

{6} Based on these and similar incidents, Defendant was charged with six counts of embezzlement and three counts of fraud for his failure to finish several construction projects. At trial, Defendant was convicted on all of the charges. Defendant appeals those convictions, asserting various claims of error. This Court ordered the parties to submit supplemental briefing regarding the sufficiency of the evidence to support Defendant’s embezzlement convictions related to the deposits paid to Defendant by the Sostrins and Hawks Holdings as charged in Counts 1 and 3. We begin our analysis with the sufficiency of the evidence supporting those counts and develop additional facts as necessary to the remaining issues in the body of the opinion that follows.

DISCUSSION

I. Sufficiency of the Evidence

{7} Questions of sufficiency that require us to engage in statutory interpretation “present[] a question of law which is reviewed de novo on appeal.” *State v. Chavez*, 2009-NMSC-035, ¶ 10, 146 N.M. 434,

211 P.3d 891. “In interpreting a statute, our primary objective is to give effect to the Legislature’s intent.” *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125. “In discerning legislative intent, we look first to the language used and the plain meaning of that language.” *Id.* “[W]hen a statute contains clear and unambiguous language, we will heed that language and refrain from further statutory interpretation.” *Id.*

{8} “After reviewing the statutory standard, we apply a substantial evidence standard to review the sufficiency of the evidence at trial.” *Chavez*, 2009-NMSC-035, ¶ 11. In reviewing the sufficiency of the evidence to support Defendant’s convictions for embezzlement, “we must determine whether substantial evidence, either direct or circumstantial, exists to support a guilty verdict beyond a reasonable doubt for every essential element of the crimes at issue.” *State v. Mercer*, 2005-NMCA-023, ¶ 13, 137 N.M. 36, 106 P.3d 1283. “We must view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 (internal quotation marks and citation omitted). “The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” *Id.* (alterations, internal quotation marks, and citation omitted).

{9} “Embezzlement consists of a person embezzling or converting to the person’s own use anything of value, with which the person has been entrusted, with fraudulent intent to deprive the owner thereof.” Section 30-16-8(A). In relevant part, the jury instructions for Counts 1 and 3 required the State to prove beyond a reasonable doubt:

1. [D]efendant was entrusted with over \$20,000;
2. [D]efendant converted this money to [D]efendant’s own use. “Converting something to one’s own use” means keeping another’s property rather than returning it, or using another’s property for one’s own purpose rather than the purpose authorized by the owner;
3. The money belonged to Robert and Janice Sostrin [as charged in Count 1 and Hawks Holdings as charged in Count 3];
4. At the time [D]efendant converted the money to his own use, [D]efendant fraudulently intended to deprive the owner of the owner’s property. “Fraudulently intended” means intended to deceive or cheat[.]

See UJI 14-1641 NMR; see also Section 30-16-8(A), (F).

{10} At issue here is whether the deposits “belonged to” the Sostrins and Hawks Holdings such that Defendant was “entrusted” with the deposits paid to him, or whether that money became his property upon payment, precluding a finding of embezzlement if he converts his own property; the property converted must be that “of another.” 3 Wayne R. LaFave, *Substantive Criminal Law* § 19.6(d), at 130 (3d ed. 2018); see *State v. Earp*, 2014-NMCA-059, ¶ 15, 326 P.3d 491 (“[E]mbezzlement necessarily requires the conversion of the property of another[.]”).

{11} A survey of cases from other states considering embezzlement in similar contexts have almost universally found that contractors cannot be convicted of embezzlement of down payment funds upon a failure to complete a project because the deposit money is legally the property of the contractor at the time it is paid. As explained by the Supreme Court of Iowa, “[o]nce the money changes hands, both title and possession vest in the contractor.” *State v. Galbreath*, 525 N.W.2d 424, 426 (Iowa 1994); see also *Crawford v. State*, 453 So. 2d 1139, 1142 (Fla. Dist. Ct. App. 1984) (holding that a down payment to contractor does not retain its character as property belonging to the homeowner and vacating the defendant’s embezzlement conviction); *State v. Marshall*, 541 N.W.2d 330, 332-33 (Minn. Ct. App. 1995) (holding that a security company who accepted advance payments could not be guilty of taking “property of another” when the company failed to perform); *Shelley v. State*, 447 So. 2d 124, 126 (Miss. 1984) (concluding even in a case of “fast talk” by a “known crook” once the owner gave money to the contractor, “it belonged to him” and as such, the defendant’s conviction for embezzlement required reversal); *Commonwealth v. Austin*, 393 A.2d 36, 39 (Pa. Super. Ct. 1978) (concluding that ownership and title of the money received under a construction contract passed to the defendant when paid, requiring reversal of the defendant’s theft conviction); *State v. Amanns*, 2 S.W.3d 241, 245 (Tenn. Crim. App. 1999) (stating that the homeowner relinquished all interest in her down payment at the time she paid it to the defendant under a contract for home improvement); cf. *State v. Coleman*, 33 A.3d 468, 473 (Md. 2011) (“When a defendant has a right to receive money or property, he cannot be guilty of stealing it.”).

{12} The facts of *Shelly* are instructive. 447 So. 2d at 124-25. In *Shelly*, the homeowners purchased a lot for purposes of constructing a retirement home. *Id.* at 124. They entered into a written contract with the defendant to construct the home completely for \$20,000. *Id.* at 124-25. After

the defendant cleared the site to prepare for construction to begin, the homeowners paid the defendant a down payment of \$2,000 pursuant to their contract. *Id.* at 125. The homeowners issued four more payments to the defendant, bringing the total amount paid to the defendant for construction work pursuant to their contract to \$13,250. *Id.* At this point, the defendant had not begun work on the home. *Id.* The defendant subsequently did a small amount of foundation work and brought some necessary materials to the work site, but stopped all work thereafter without returning any money to the homeowners. *Id.* The defendant was subsequently charged and convicted of embezzlement of the \$13,250. *Id.* The Supreme Court of Mississippi reversed the conviction, holding that the money belonged to the defendant at the time it was paid to him under the contract and thus he could not be charged with embezzlement under these facts. *Id.* at 126.

{13} We similarly conclude that title and ownership of the deposits vested in Defendant at the time the Sostrins and Hawks Holdings paid the money to him. See *Galbreath*, 525 N.W.2d at 426; *Crawford*, 453 So. 2d at 1142. Consequently, at the time Defendant used the deposit money for purposes other than the construction of the Sostrin and Hawks Holdings properties, the deposits already legally belonged to Defendant; he could not be found to have converted the deposits because they were his property—not “property of another.” See *Earp*, 2014-NMCA-059, ¶ 15; see also 3 LaFave, *supra*, § 19.6(d), at 131-32 (“[A] building contractor who receives from the landowner an advance payment on the contract and who thereafter spends the money for his own purposes and does not fulfill the contract, is not guilty of embezzlement, unless the money is earmarked to be used only for a construction purpose.” (footnotes omitted)). As such, we hold the State failed to present evidence sufficient beyond a reasonable doubt to prove the essential element of entrustment and reverse Defendant’s convictions under Counts 1 and 3.

{14} The State attempts to distinguish the facts of this case from the foregoing authority by asserting that “a trust relationship exists between homebuyers and home builders in New Mexico by statute.” To support this proposition, the State directs us to the New Mexico Construction Industries Licensing Act (CILA), NMSA 1978, Section 60-13-23(F) (1993). Section 60-13-23, entitled “Revocation or suspension of license by the commission; causes,” lists the circumstances under which the Construction Industries Division will revoke a contractor’s license. Subsection F, on which the State relies, provides that



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a contractor shall have his or her license “revoked or suspended . . . for . . . conversion of funds or property received for prosecution or completion of a specific contract or for a specified purpose in the prosecution or completion of any contract, obligation or purpose, as determined by a court of competent jurisdiction[.]” *Id.* We are unpersuaded that this statute alone, setting out the circumstances under which a contractor’s license will be revoked or suspended, creates a per se fiduciary relationship between all contractors and their customers in New Mexico sufficient to satisfy the entrustment element of criminal embezzlement.

{15} To support its construction of Section 60-13-23(F), the State points to Tenth Circuit case law interpreting this statute in the bankruptcy context. *See In re Romero*, 535 F.2d 618 (10th Cir. 1976). In *Romero* the Tenth Circuit refused to discharge the debt of a construction contractor, concluding the predecessor to Section 60-13-23(F) “clearly imposes a fiduciary duty upon contractors who have been advanced money pursuant to construction contracts.” 535 F.2d at 621. This principle was applied to Defendant’s bankruptcy action to prevent the discharge of his debt to Hawks Holdings. *See In re Kalinowski*, 482 B.R. 334 (B.A.P. 10th Cir. 2012).

{16} We note at the outset that Tenth Circuit cases are not binding on this Court. *See Moongate Water Co., Inc. v. Doña Ana Mut. Domestic Water Consumers Ass’n*, 2008-NMCA-143, ¶ 20, 145 N.M. 140, 194 P.3d 755 (“[W]e are not bound by the analyses or conclusions reached in the federal cases.”). We find nothing in the language of the licensing statute that indicates an intent on the part of the Legislature to create a fiduciary or trust relationship between contractors and those who retain their services. *See Trujillo*, 2009-NMSC-012, ¶ 11 (looking “to the language used and the plain meaning of that language” to discern legislative intent). Instead, the statute focuses on circumstances that authorize the Construction Industries Division to revoke or suspend a contractor’s license. Absent a more specific indication, the principle of lenity counsels against a conclusion that the element of entrustment is satisfied by the mere existence of this licensing statute. *Cf. State v. Ogden*, 1994-NMSC-029, ¶ 25, 118 N.M. 234, 880 P.2d 845 (“Statutes defining criminal conduct should be strictly construed, and doubts about construction of criminal statutes are resolved in favor of lenity.”). We find the State’s reliance on Section 60-13-23 unpersuasive and conclude the essential element of entrustment has not been met in this case. Accordingly, we reverse Defendant’s embezzlement convictions under Counts 1 and 3.

II. Exclusion of Defendant’s Expert Ed Paschich

{17} Defendant argues that the exclusion of his expert, Ed Paschich, precluded him from being able to present his theory of defense: that Defendant “employed a legitimate—though flawed—business model” and was prevented from paying all his subcontractors by the onset of the “great recession.” The State argues that the district court properly excluded this information as irrelevant “because it concerned Paschich’s own efforts to weather the recession, and there was no showing that his situation was similar to [Defendant]’s.”

{18} Prior to trial, the State moved to exclude testimony from Paschich. Defendant planned to have Mr. Paschich testify generally about the effects of the recent economic recession on construction contracting in New Mexico. Defendant explained that Mr. Paschich would not testify about Defendant’s situation specifically and had not been provided with any information related to Defendant’s case. Instead, Defendant intended to ask Mr. Paschich “to comment on the effects of the [r]ecession, how it affected builders, what builders normally do to try and weather such economic reversals, and how such customary precautions did not save some builders in this instance.” In its motion to exclude Mr. Paschich’s testimony, the State argued that Mr. Paschich was not qualified to comment on the Santa Fe market because he was not building in that area during the relevant time and his testimony would be unhelpful to the jury because the actions of others were irrelevant to Defendant’s conduct. After a hearing, the district court granted the State’s motion, finding “the reliability of the information that [Mr. Paschich] could testify to does not necessarily translate to the situation that the jury has to address, and therefore is not an aid to their decision-making process.”

{19} Under Rule 11-702 NMRA, district courts have broad discretion in the exclusion of expert testimony, upon consideration of whether the expert “(1) is qualified, (2) provides testimony that will assist the trier of fact, and (3) provides testimony regarding scientific, technical, or other specialized knowledge with a reliable basis.” *State v. Consaul*, 2014-NMSC-030, ¶ 56, 332 P.3d 850 (internal quotation marks and citation omitted). “The prerequisite that expert testimony must assist the trier of fact to understand the evidence or to determine a fact in issue . . . goes primarily to relevance.” *State v. Hughey*, 2007-NMSC-036, ¶ 17, 142 N.M. 83, 163 P.3d 470 (internal quotation marks and citation omitted). “[W]e review a district court’s ruling excluding evidence for an abuse of discretion.” *State v. Garcia*,

2013-NMCA-064, ¶ 11, 302 P.3d 111. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case. We cannot say the [district] court abused its discretion by its ruling unless we can characterize [the ruling] as clearly untenable or not justified by reason.” *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citations omitted).

{20} The district court determined that testimony from Mr. Paschich would not assist the trier of fact because “[Mr. Paschich] had [financial] difficulties at a time remote from the alleged circumstances in the case”; “Mr. Paschich’s experience [was] . . . too remote from the situation in Santa Fe” as he was primarily building homes in Albuquerque at the time; and Mr. Paschich’s overall experience with the recession was not shown to be similar to Defendant’s.

{21} Defendant asserts that “[i]n order to put his ‘lack of criminal intent’ defense to the jury, it was necessary . . . to demonstrate specifically how home builders operate, how the ‘[g]reat [r]ecession’ affected the construction industry in New Mexico, and what [Defendant] could and could not do about it.” This argument misses the mark. The fact that Defendant eventually intended but was prevented from replacing any misappropriated money, does not negate that fraud and embezzlement were committed in the first place. Additionally, it is unclear on appeal, as it was to the district court, exactly how Mr. Paschich’s testimony would have assisted Defendant, especially in light of the district court’s findings that Mr. Paschich’s experience was remote from Defendant’s in both time and location, and lacked similarity. Accordingly, we conclude the district court did not abuse its discretion in excluding Mr. Paschich’s testimony.

{22} To the extent that Defendant argues that the exclusion of Mr. Paschich’s testimony infringed on his right to present a defense, we disagree. We again note that Defendant has failed to demonstrate how Mr. Paschich’s testimony would actually have provided him any defense given the lack of clear exculpatory value. In any event, the authority relied on by Defendant is inapposite because it concerns the “presumption against exclusion of otherwise admissible defense evidence.” *State v. Campbell*, 2007-NMCA-051, ¶ 13, 141 N.M. 543, 157 P.3d 722 (emphasis added) (internal quotation marks and citation omitted). Here, Defendant has failed to demonstrate that the evidence was otherwise admissible. We acknowledge the importance of the constitutional right of the accused to present a defense. *State v. Rosales*, 2004-NMSC-022, ¶ 7, 136 N.M.

25, 94 P.3d 768. “However, that right has never been absolute or unlimited.” *Id.* “[A] defendant’s interest in presenting evidence may at times bow to accommodate other legitimate interests in the criminal trial process[.]” including compliance with the rules of evidence. *Id.* (internal quotation marks and citation omitted). Because we conclude that Mr. Paschich’s testimony was properly excluded under Rule 11-702, we reject Defendant’s contention that he was improperly precluded from presenting his defense.

III. Limitation on Testimony of Other Defense Witnesses

{23} Defendant argues the district court erred in impermissibly limiting the testimony of two other defense expert witnesses, Janet McHard and Anne Layne. Specifically, Defendant argues that the district court prevented his experts from testifying that Defendant’s “business records did not display red flags indicative of fraud, and that the records kept by [Defendant’s bookkeeper] . . . were so inaccurate that [Defendant] could not have had an idea of the precarious financial condition of his company when he continued to take draws.” The State responds by asserting that the district court did not limit the testimony as Defendant asserted, and moreover, Defendant elicited this exact testimony from his expert witnesses. We conclude that Defendant has not demonstrated that the district court erred in this regard.

{24} Defendant fails to point us to any portion of the record demonstrating that the district court explicitly limited or excluded any of the testimony from Ms. McHard and Ms. Layne. See *Corona v. Corona*, 2014-NMCA-071, ¶ 26, 329 P.3d 701 (“[T]he burden is on the appellant to clearly demonstrate that the district court erred.”). After review of the hearing, it appears that while the district court found Defendant failed to lay sufficient foundation to permit Ms. Layne to testify regarding these points, the district court indicated it would allow Ms. McHard to testify about both issues and she did, in fact, testify about the lack of red flags and the inaccuracies in Defendant’s records. Defendant makes no attempt to demonstrate how Ms. Layne’s testimony would have differed from Ms. McHard’s. See *State v. Fuentes*, 2010-NMCA-027, ¶ 29, 147 N.M. 761, 228 P.3d 1181 (noting that we will “not review unclear or undeveloped arguments [that] require us to guess at what a part[y]’s arguments might be”). Having failed to carry his burden to demonstrate error, we conclude that the district court did not impermissibly exclude or limit the testimony of Ms. McHard or Ms. Layne.

IV. Other Acts Evidence

{25} Defendant argues that the district court abused its discretion in allowing testimony of Charles Zimmerman and James Arrington relating to “instances of a similar nature to the nine charged in the indictment[.]” contrary to Rule 11-404(B). The State argues that the evidence was relevant for non-propensity purposes and thus was properly admitted. We conclude that the district court did not abuse its discretion in admitting the testimony.

{26} During the pretrial proceedings, the State filed notice of its intent to introduce evidence of uncharged misconduct including instances of improper fund diversion from projects not included in the indictment. The State explained that the evidence would be relevant to establish identity, motive, intent, and absence of mistake. The Defendant filed a motion to exclude the evidence on the grounds that it had “negligible” probative value and was impermissibly being offered to prove Defendant’s propensity to commit the crimes charged. The district court denied Defendant’s motion after a hearing, concluding there were non-propensity reasons offered for the testimony, including context, lack of mistake, and identity. At trial, the State offered the testimony of Charles Zimmerman and James Arrington, who each testified to incidents involving Defendant’s alleged misappropriation of funds similar to the charged allegations relating to other projects in Las Campanas.

{27} “Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Rule 11-404(B) (1). “Rule 11-404(B) is a rule of inclusion, not exclusion, providing for the admission of all evidence of other acts that are relevant to an issue in trial, other than the general propensity to commit the crime charged.” *State v. Bailey*, 2017-NMSC-001, ¶ 14, 386 P.3d 1007 (alteration, internal quotation marks, and citation omitted). Rule 11-404(B) itself provides a non-exhaustive list of potential, permissible reasons to admit such evidence, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Id.* ¶ 13. Evidence is properly excluded under Rule 11-403 as unfairly prejudicial “if it is best characterized as sensational or shocking, provoking anger, inflaming passions, or arousing overwhelmingly sympathetic reactions, or provoking hostility or revulsion or punitive impulses, or appealing entirely to emotion against reason.” *State v. Stanley*, 2001-NMSC-037, ¶ 17, 131 N.M. 368, 37 P.3d 85 (internal quotation marks and citation omitted).

{28} “Admission of evidence . . . under Rule 11-404(B) . . . is within the sound discretion of the [district] court, and its determination will not be disturbed on appeal in the absence of an abuse of discretion.” *State v. Romero*, 2019-NMSC-007, ¶ 26, 435 P.3d 1231. “Likewise, the exclusion of relevant evidence under Rule 11-403 . . . explicitly recognizes the large discretionary role of the [district] court in controlling the introduction of evidence.” *Romero*, 2019-NMSC-007, ¶ 26 (alterations, internal quotation marks, and citation omitted). “[A]n abuse of discretion results when the [district] court’s decision is contrary to logic and reason.” *Id.* (internal quotation marks and citation omitted).

{29} Defendant’s other acts presented at trial through the testimony of Charles Zimmerman and James Arrington were admissible to show intent. Defendant’s main assertion at trial was that he lacked fraudulent intent when he used the funds at issue for something other than their intended purpose. Thus, evidence of other similar transactions was relevant to disprove Defendant’s assertions that he lacked the requisite criminal intent. See *State v. McCallum*, 1975-NMCA-030, ¶ 7, 87 N.M. 459, 535 P.2d 1085 (“In the case of fraud, related incidents of accused’s acts are admissible to establish motive, absence of mistake or accident, common scheme or plan, or the identity of the person charged with various crimes.”); cf. *State v. Nguyen*, 1997-NMCA-037, ¶ 10, 123 N.M. 290, 939 P.2d 1098 (“When the defendant admits the act which constitutes the crime, but denies having the required mental state, then evidence of another, nearly identical, act is admissible to show intent and knowledge.”).

{30} To the extent that Defendant argues this evidence should have been excluded under Rule 11-403 as unfairly prejudicial, we are unpersuaded. Defendant himself admits that “[t]he testimony . . . added nothing to the presentation of t[h]e State’s case in chief other than to demonstrate that others had experienced the same losses due to [Defendant’s] failure to pay as those whose incidents were charged.” This falls far short of establishing the evidence was “sensational or shocking, provoking anger, inflaming passions, or . . . provoking hostility or revulsion or punitive impulses, or appealing entirely to emotion against reason.” See *Stanley*, 2001-NMSC-037, ¶ 17. Accordingly, we conclude the district court did not err in admitting other act evidence pursuant to Rule 11-404(B) or Rule 11-403.

V. Motion to Dismiss for Ineffective Assistance of Counsel

{31} Finally, Defendant contends that the district court erred in refusing to dismiss the charges against him for violation of

Defendant's right to effective assistance of counsel. The State argues that Defendant cannot be heard to complain of the district court's refusal to dismiss the case because it granted him the alternative relief he requested, and because there is no remedy to be provided in a case such as this where ineffectiveness is remedied pretrial.

{32} This issue arises because it appears that Defendant initially had trouble securing sufficient resources and counsel competent for his defense. Defendant's first attorney represented him pro bono, alerted the district court to the fact that Defendant was indigent, and requested the Law Office of the Public Defender (LOPD) provide the funds necessary to mount a defense, or alternatively to appoint new counsel. The district court granted the motion and ordered the LOPD to fund necessary expert witnesses and to either contract with or provide appropriate counsel. Both Defendant's original and subsequent replacement counsel withdrew from representation, forcing the LOPD to appoint a third attorney to represent him in this case. The LOPD funded a forensic accountant, but it appears that this accountant failed to properly investigate the matter.

{33} After discussing the situation with the district court at a hearing, Defendant's counsel moved to dismiss the charges, or in the alternative, stay the proceedings; order the LOPD to adequately fund Defendant's defense; and, if the LOPD did not comply, order the LOPD to show cause why they should not be held in contempt. The district court held a hearing on the matter and ultimately denied Defendant's motion to dismiss the charges but granted the alternative relief requested by Defendant and ordered a show cause hearing, finding that the LOPD had not complied with the court's earlier order to secure competent counsel. Ultimately, the district court declined to hold the LOPD in contempt but instead appointed a special master to ensure that the LOPD complied with its previous order to "make [available] whatever resources are necessary . . . to provide effective assistance of competent counsel to [Defendant] in an adequate and timely fashion[.]"

{34} In his briefing, Defendant fails to support his argument with any citation to authority for the proposition that dismissal was required in this circumstance. See *State v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129 ("[A]ppellate courts will not consider an issue if no authority is cited in support of the issue and that, given no cited authority, we assume no such authority exists."). Additionally, De-

fendant does not attempt to demonstrate that the counsel and resources he received after the appointment of the special master were in any way constitutionally deficient. See *Patterson v. LeMaster*, 2001-NMSC-013, ¶ 17, 130 N.M. 179, 21 P.3d 1032 ("A prima facie case of ineffective assistance is made by showing that defense counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced." (internal quotation marks and citation omitted)); see also *Fuentes*, 2010-NMCA-027, ¶ 29 (same). We conclude Defendant has failed to demonstrate error. Our decision does not preclude Defendant's ability to pursue habeas corpus or other post-sentence relief with respect to a future claim of ineffective assistance of counsel. See *State v. Arrendondo*, 2012-NMSC-013, ¶ 44, 278 P.3d 517; see also Rule 5-803 NMRA (petitions for post-sentence relief).

CONCLUSION

{35} For the foregoing reasons, we conclude there is insufficient evidence to sustain Counts 1 and 3, requiring that Defendant's convictions on those counts be reversed. Finding Defendant's other claims of error unpersuasive, we otherwise affirm. We remand this case to the district court for it to vacate Defendant's convictions as to Counts 1 and 3 and to enter an amended judgment and sentence consistent with this opinion.

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

I CONCUR:
M. MONICA ZAMORA, Judge

JACQUELINE R. MEDINA, Judge (dissenting in part and concurring in part).
MEDINA, Judge (dissenting in part and concurring in part).

{37} I concur with the majority's opinion as to Parts II, III, IV, and V. However, I respectfully disagree with the majority's conclusion in Part I as to whether the evidence was sufficient to support Defendant's convictions for embezzlement as charged in Counts 1 and 3. In my opinion, Section 60-13-23(F) makes clear that funds received "for prosecution or completion of a specific contract" still belong to a contractor's client(s). Therefore I believe there was sufficient evidence that Defendant converted property belonging to another when he used the funds received from the Sostrins and Hawks Holdings for purposes other than completion of their contracts. Accordingly, I dissent.

{38} The majority points out that many jurisdictions have "found that contractors cannot be convicted of embezzlement of down payment funds upon a failure to complete a project because the deposit money is legally the property of the contractor at the time it is paid." Majority Op. ¶ 11. I agree that this logic is sound in jurisdictions that do not impose a fiduciary duty on contractors in regard to their client's payments. I believe, however, Section 60-13-23(F) imposes such a duty. See Restatement (Second) of Trusts § 23 cmt. c. (1959) ("A trust may be created by statute without a manifestation of intention on the part of any person as settlor."). As it does not appear that any of the jurisdictions the majority cites have enacted a statute similar to Section 60-13-23(F), I find these cases distinguishable.

{39} Although our courts have not yet had the opportunity to address Section 60-13-23(F)'s implications, the Tenth Circuit addressed its predecessor statute in *In re Romero*, 535 F.2d 618. In *In re Romero*, the issue was whether a contractor's misuse of certain monies advanced for completion of a construction project constituted "defalcation¹ while acting as an officer or in any fiduciary capacity," which is a non-dischargeable debt under the Bankruptcy Act. 535 F.2d at 620-21, n.2. The court examined the previous version of Section 60-13-23(F), which provided for the revocation or suspension of a contractor's license for "diversion of funds or property received for prosecution or completion of a specific contract, or for a specified purpose in the prosecution or completion of any contract, obligation or purpose[.]" *Romero*, 535 F.2d at 621. In light of CILA's purpose to provide "a comprehensive method for the licensing and control of contractors in order to protect the public from either irresponsible or incompetent contractors[.]" the Court concluded that NMSA 1953, Section 67-35-26(G) (1967) (Vol. 1, 1967 Pocket Supp.), "clearly imposes a fiduciary duty upon contractors who have been advanced money pursuant to construction contracts." *Romero*, 535 F.2d at 621 (quoting in part *Peck v. Ives*, 1972-NMSC-053, ¶ 5, 84 N.M. 62, 499 P.2d 684). Consequently, the Tenth Circuit held that the contractor was acting in a fiduciary capacity imposed by law, which "existed independent of any express understanding he had with [his client.]" See *Romero*, 535 F.2d at 622. The Tenth Circuit has since reaffirmed *Romero* on numerous occasions, including its application to Defendant for his contract with Hawks Holdings. See *Kalinowski*, 482 B.R. at 344 (holding that Defendant's debt owed to Hawks Holdings

¹"Defalcation" is defined as "[t]he fraudulent misappropriation of money held in trust; financial wrongdoing involving a breach of trust[.]" *Defalcation*, Black's Law Dictionary (11th ed. 2019).

constituted “defalcation while acting in a fiduciary capacity” and, was therefore, non-dischargeable in bankruptcy).

{40} While Tenth Circuit cases are not binding on this Court, see *Moongate Water Co., Inc.*, 2008-NMCA-143, ¶ 20, I find *Romero* persuasive. See *State v. Long*, 1996-NMCA-011, ¶ 7, 121 N.M. 333, 911 P.2d 227 (noting that our courts follow federal law to the extent we find it persuasive). As noted, the purpose of CILA is to “provide[] a comprehensive method for the licensing and control of contractors in order to protect the public from either irresponsible or incompetent contractors.” *Peck*, 1972-NMSC-053, ¶ 5; see *Mascareñas v. Jaramillo*, 1991-NMSC-014, ¶ 14, 111 N.M. 410, 806 P.2d 59 (“The wrong to be remedied is the exploitation of the public by incompetent and unscrupulous contractors who are unable or unwilling to obtain a license. In effect, the wrongs to be remedied are circumstances which permit unlicensed contractors to flourish and profit at the expense of the public.”). Consistent with this purpose, CILA requires all contractors in the state of New Mexico to obtain a license, see NMSA 1978, § 60-13-12(A) (1989), which are only issued after an applicant meets strict licensing requirements. See NMSA 1978, § 60-13-14 (1997). Additionally contractors must pass an examination that tests “general business knowledge, rules and regulations of the division and the provisions of [CILA]” or complete a business and law course approved by the licensing commission. NMSA 1978, § 60-13-16(A)-(C) (1997).² In order to keep their license, contractors must meet industry-related continuing education requirements, see NMSA 1978, § 60-13-18(D) (2007), as well as refrain from committing certain prohibited acts. See § 60-13-23. As relevant here, Section 60-13-23(F) provides that a contractor’s license “shall be revoked or suspended for,” *inter alia*, “conversion of funds or property received for prosecution or completion of a specific contract or for a specified purpose in the prosecution or completion of any contract, obligation or purpose, as determined by a court of competent jurisdiction.” In addition to losing their license, a contractor who violates Section 60-13-23(F) might be required to pay an administrative penalty of up to ten percent of the dollar amount of the contract or work performed. See NMSA 1978, § 60-13-23.1(A)(2) (1989). Thus, it is clear our Legislature imposes heightened duties on contractors, one of which is a duty not to convert funds received for completion of a specific contract.

{41} Although Section 60-13-23, on its face, merely lists grounds for revocation or suspension of a contractor’s license, Subsection F nonetheless indicates that the Legislature intended to impose a fiduciary duty on the contractors of New Mexico. Importantly, after *Romero* was decided, our Legislature amended Section 60-13-23(F) to replace the phrase “diversion of funds or property” with “conversion of funds or property.” Compare § 67-35-26(G) (emphasis added), with § 60-13-23(F) (emphasis added). I do not believe this alteration was without significance. Our courts generally define “conversion,” in relevant part, as “the unlawful exercise of dominion and control over personal property *belonging to another* in exclusion or defiance of the owner’s rights[.]” *AAA Auto Sales & Rental, Inc. v. Sec. Fed. Sav. & Loan Ass’n*, 1992-NMCA-130, ¶ 9, 114 N.M. 761, 845 P.2d 855 (emphasis added). “Conversion” in its literal sense is defined as “[t]he act of *changing from one form to another*; the process of being exchanged.” *Conversion*, Black’s Law Dictionary (11th ed. 2019) (emphasis added); see *State v. Jade G.*, 2007-NMSC-010, ¶ 18, 141 N.M. 284, 154 P.3d 659 (“[I]n construing a statute, statutory words are presumed to be used in their ordinary and usual sense.” (internal quotation marks and citation omitted)). Accordingly, when the Legislature substituted the word “diversion” with “conversion,” it presumably intended to clarify that a contractor is capable of (but prohibited from) altering the nature of the funds he receives for the completion of a specific contract by using the funds for a purpose other than “prosecution or completion of a specific contract.” Section 60-13-23(F). In other words, Section 60-13-23(F) recognizes that contractors have a fiduciary duty to use their client’s funds received for completion of a specific contract for that purpose. Thus, by using the word “conversion,” the Legislature made clear that funds received by contractors for the prosecution or completion of a specific contract still belong to the client and must be applied toward completion of the agreed upon contract unless and until the contractor completes the specified construction. To read Section 60-13-23(F) any other way would render it absurd, as a contractor could not convert their own funds. See *Foremost Ins. Co. v. Allstate Ins. Co.*, 486 N.W.2d 600, 609 (Mich. 1992) (“[A] person cannot convert his own property[.]” (alteration, internal quotation marks, and citation omitted)); *Hahn v. Tanksley*, 317 S.W.3d 145, 156 (Mo. Ct. App. 2010) (“[The defendants] could not

convert their own property.”); see also *State v. Peppers*, 1990-NMCA-057, ¶ 25, 110 N.M. 393, 796 P.2d 614 (“We avoid construing statutes so as to render their application absurd or unreasonable.”). Accordingly, I believe contractors can be convicted of embezzling funds received from clients for “prosecution or completion of a specific contract.” Section 60-13-23(F).

{42} Here, the evidence was sufficient to demonstrate that Defendant received the funds for completion of the Sostrin’s home, as well as the three homes for Hawks Holdings. The Sostrins paid Defendant an initial deposit of \$213,750 “represent[ing] 15% of the agreed upon [b]ase [m]odel [c]ost” under the terms of the agreement and addendum entered into to construct a house on land that was to be sold to the Sostrins. Similarly, Hawks Holdings paid Defendant a “project deposit” of \$363,943 to complete three homes for Howard Hawks. Additionally, the contract specified that “[Defendant’s p]rofit in the amount of \$20.00 per square foot of the pre-approved [c]onstruction [b]udget . . . is being withheld by [Hawks Holdings] on each house until [Hawks Holdings] sold the houses to third party purchasers.” While the contracts did not specify that the deposits must be used for construction, I find this evidence sufficient to demonstrate that the deposits constituted “funds . . . received for prosecution or completion of a specific contract” (i.e., to complete Defendant’s clients’ homes), and therefore, they still belonged to Defendant’s clients under Section 60-13-23(F).

{43} Although Defendant was not personally licensed as a contractor, there was ample evidence that he was the de facto manager of K2 Construction Company LLC, the contractor listed as the builder in both the Sostrin’s and Hawks Holdings’ contracts. As the de facto manager of a legal entity licensed and operating as a contractor, Defendant was responsible for complying with CILA, including Section 60-13-23(F). See *Kalinowski*, 482 B.R. at 343-44 (holding that Defendant was the de facto manager of K2 Construction Company LLC and, therefore, subject to the same fiduciary duty imposed by Section 60-13-23(F)). Additionally, whether or not Defendant’s role vis-a-vis K2 imposed on him a duty to comply with Section 60-13-23(F), he purported to have the capacity to build the Sostrins and Hawks Holdings’ homes and is, consequently, a contractor, as defined by CILA. See NMSA 1978, § 60-13-3(A)(2) (1999) (defining “contractor” as “any person who undertakes, offers to undertake by bid or other

²In the case of legal entities seeking to obtain a contractor’s license, the entity must have in its employ a “qualifying party” “who submits to the examination for a license to be issued under [CILA] and who is responsible for the licensee’s compliance with the requirements of [CILA.]” NMSA 1978, § 60-13-2(E) (2013); Section 60-13-14(A);

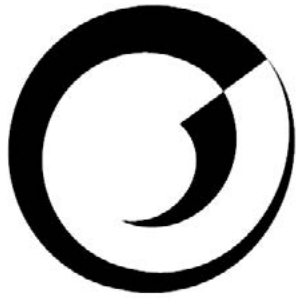
means or purports to have the capacity to undertake, by himself or through others, contracting [which] includes constructing . . . any . . . building”); § 60-13-12(A) (“No person shall act as a contractor without a license[.]”). And although Defendant was not, himself, a *licensed* contractor, I believe he was still subject to the fiduciary duty imposed by Section 60-13-23(F), as to interpret CILA as only imposing such a duty on licensed contractors (but not unlicensed ones) would run contrary to CILA’s purpose and lead to the absurd result of creating a double standard more favorable to unlicensed contractors. See *Mascarenas*, 1991-NMSC-014, ¶ 14; *Little*

v. Jacobs, 2014-NMCA-105, ¶ 20, 336 P.3d 398 (“The effect of our holding is to create another detriment to contracting without a license, which is consistent with the purpose of CILA.”); see also *Peppers*, 1990-NMCA-057, ¶ 25 (“We avoid construing statutes so as to render their application absurd or unreasonable.”).

{44} Contrary to Defendant’s fiduciary duty, however, Defendant did not strictly use the funds advanced to him for completion of the four homes, but rather pooled them together and used them to pay his many business entities’ bills. As a result, the Sostrins and Hawks Holdings had to collectively pay over one million dollars

to have their homes completed by other contractors. Accordingly, I would hold that there was sufficient evidence that Defendant converted property of another as to Counts 1 and 3. Lastly, because there is not an “insurmountable ambiguity” as to Section 60-13-23(F)’s import, the rule of lenity is inapplicable in this case. See *State v. Davis*, 2003-NMSC-022, ¶ 14, 134 N.M. 172, 74 P.3d 1064 (“The rule of lenity counsels that criminal statutes should be interpreted in a defendant’s favor when insurmountable ambiguity persists regarding the intended scope of a criminal statute.”).

JACQUELINE R. MEDINA, Judge



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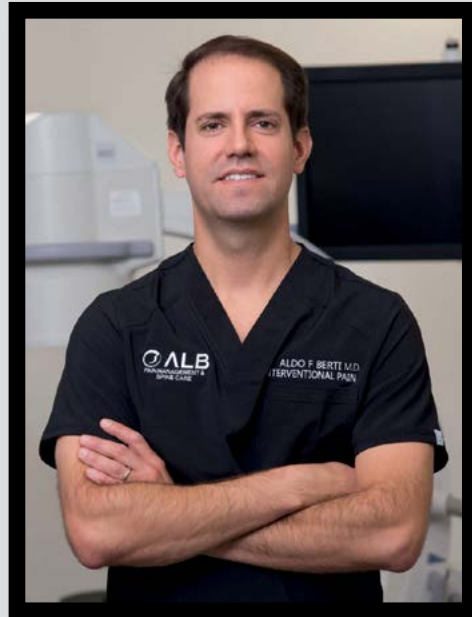
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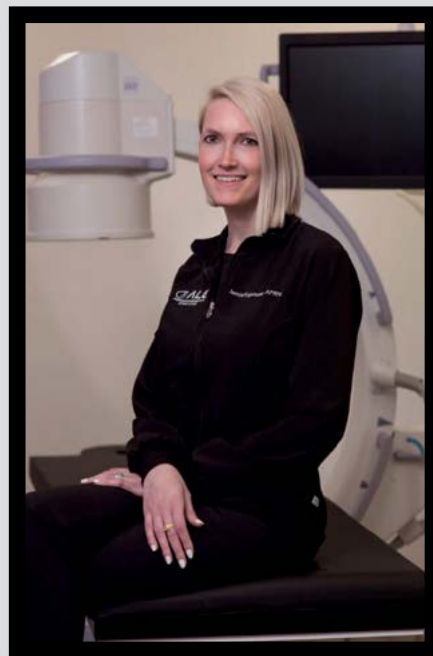
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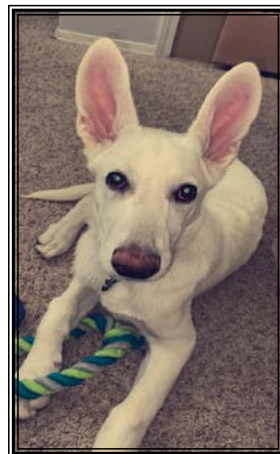
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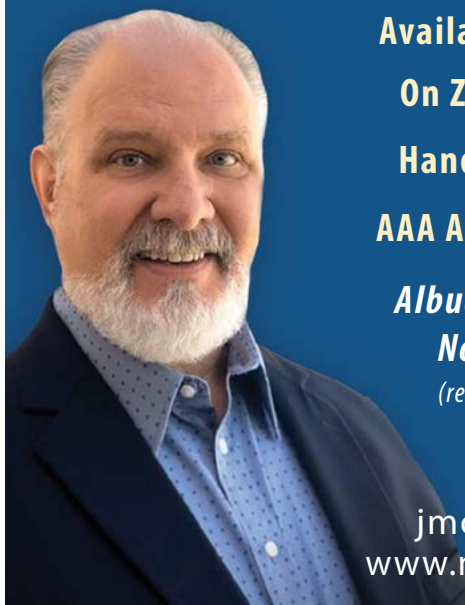
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Trial Attorney

Assistant Trial Attorney

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Manager

The City's Consumer and Financial Protection Initiative was established in collaboration with the Cities for Financial Empowerment (CFE) Fund through an initial scope of work outlined in the CFE Fund Grant Agreement. The Manager will provide leadership, direction and vision to implement the next phase of the City's efforts to provide robust consumer and financial protection for the residents of Albuquerque. The Manager is responsible for establishing policies and procedures for outreach, education, consumer complaints, referrals, and enforcement activities where appropriate. The Manager will also provide oversight and direction for implementing the City's consumer and financial protection strategic plan. Master's Degree in related field or Juris Doctor. Juris Doctor strongly preferred. If attorney, must be licensed in New Mexico within six months of hire. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Assistant Trial Attorney and Senior Trial Attorney 1st Judicial District Attorney

The First Judicial District Attorney's Office seeks an entry level magistrate court attorney and an experienced attorney to handle general felonies and violent crimes in district court. Both positions are for the Espanola Office serving Rio Arriba County. Salary for each position is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest via email to 1stDA@da.state.nm.us.

Part-time Receptionist/File Clerk

Paul L. Civerolo, LLC is seeking a part time receptionist/file clerk. This person will be responsible for promptly answering and transferring in-coming calls and filing and scanning documents in an organized manner. Applicants must also have reliable transportation for delivering documents to local offices. No prior experience necessary. Email resumes to darla@civerololaw.com.

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

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

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.

Chief IP Counsel (Patent Attorney 4) IRC83855

The Los Alamos National Laboratory Office of Laboratory Counsel is seeking a highly experienced attorney to lead the Intellectual Property (GC-IP) group in its mission to provide timely services and advice on a variety of IP matters related to dynamic institutional priorities. The attorney will lead all strategic initiatives, provide advice to the Laboratory's senior management and technology transfer division and co-develop and advise on IP-related policies and procedures. Other duties include drafting and reviewing agreements and conducting and participating in negotiations. The attorney will have a J.D. degree and 12 years of experience after passing the Bar, along with the demonstrated ability to lead and coordinate the legal work of a patent function involving attorneys and paralegals in an in-house, law firm or government setting. Apply online at 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.

Full-Time and Part-Time Attorney

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

Lawyer Position

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

Attorney

Solo practitioner looking for attorney who is seeking contract work in areas of family law, probate, and estate planning. Please send resume with cover letter to willstandwithyou@gmail.com.

Case Load Blues?

Let me help. Attorney with 17 years of experience in Plaintiff and civil defense work in state and federal court accepting legal research and writing projects big and small. Motions, briefs, case assessments and more. Contact rz@thelawgroup.com or call 505-306-4246 to discuss. Fees negotiable.

Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney with the primary responsibility of advising the Albuquerque Police Department (APD). Duties may include: acting as general counsel; representing APD in the matter of United States v. City of Albuquerque, 14-cv-1025; reviewing and providing advice regarding policies, trainings and contracts; reviewing uses of force; representing APD or officers in legal proceedings, including but not limited to Pohl motions, responses to subpoenas, and requests for blood draws; drafting legal opinions; reviewing and drafting legislation, ordinances, and executive/administrative instructions; providing counsel on Inspection of Public Records Act requests and other open government issues; and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing skills are essential. Additional duties and representation of other City Departments may be assigned. Preferences include: Broad experience in both civil and criminal law; five (5)+ years' experience; experience in drafting policies; experience in developing curricula; experience in drafting and reviewing contracts; and addressing evidentiary issues. Candidates 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 and include a resume and writing sample with your application.

Assistant Trial Attorney/ Deputy District Attorney

The Eleventh Judicial District Attorney's Office, Division I (San Juan County), is accepting resumes for immediate positions from Assistant Trial Attorney to Deputy District Attorney. Salary is based on experience and the NM District Attorney Personnel and Compensation Plan (\$54,308.80 - \$73,251,036). Send resumes to Lori Holesinger, HR Administrator, 335 S. Miller Ave., Farmington, NM 87401, or via e-mail lholesinger@da.state.nm.us

Join Forces?

Are you an established practitioner or firm that would like to merge with an AV-rated small firm that concentrates in civil litigation, especially insurance defense? We seek one or more such attorneys with same or compatible practices. Contact us at nmann@gcmlegal.com.

Associate Attorney

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

Assistant 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.

Paralegal

Rothstein Donatelli, LLP, is seeking a Paralegal with a minimum of 5 years' experience for its Santa Fe office. This person will work with attorneys in our civil rights, criminal defense, and Indian law practices. Qualified candidates must have working knowledge of state and federal district court civil and criminal rules and filing procedures, advanced computer skills in Windows, Word, Excel, PowerPoint, and Outlook, and proficiency with trial preparation, document and case management, calendaring, and online research. Please send cover letter and resume to info@rothsteinlaw.com

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

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

Established Albuquerque Family Law Firm seeks experienced paralegal with current working knowledge of domestic matters, state & local rules, filing procedures, trial preparation, calendaring & discovery. Must possess strong word processing skills and experience with Word, Excel, and Outlook. Salary DOE. Bachelor's degree or Associate degree with minimum of two years' experience in NM Family Law. Please send both a cover letter and resume to Letty@cortezhoskovec.com

Secretary/Legal Assistant

The Santa Fe office of Hinkle Shanor LLP is hiring a legal secretary/legal assistant for transaction and litigation work in the areas of real estate, business and corporate law, bankruptcy, civil litigation, wills, estates and trusts. Applicants must have strong word processing and computer skills. Experience in calendaring deadlines and of 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 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.

Paralegal

Paralegal position in established commercial civil litigation firm. Requires minimum of 3-5 years' prior experience with knowledge of State and Federal District Court rules and filing procedures; factual and legal online research; trial preparation; case management and processing of documents including acquisition, review, summarizing and indexing of same; drafting discovery and related pleadings; maintaining and monitoring docketing calendars; oral and written communications with clients, counsel, and other case contacts; familiar with use of electronic databases and legal-use software technology. Must be organized and detail-oriented professional with excellent computer skills. All inquiries confidential. Salary DOE. Competitive benefits. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Service

Briefs, Research, Appeals—

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

Office Space

Office Mate/Santa Fe

Looking to replace retiring office mate beginning June 1 in old Santa Fe. The office is in a one story old adobe complex literally next door to the District Attorney's office and the District Courthouse. There are three office spaces, one large one is good for clients and staff. Offices are built around an old courtyard with a fountain. Great unlimited parking and just full of Santa Fe charm, brick floors, vigas and latillas and Kiva fireplace; I have a criminal defense practice, but would share with anyone, but a professional would be preferred. Val Whitley, The Whitley Law Firm, 505-992-2903.

Sun Valley Executive Office Suites

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

Historic Downtown Building for Lease

417 2nd Street SW. Entire historic office building on a dynamic street. Close to courthouses and government buildings. Free street-front parking plus 4 private space in back. Kitchenette, private patio. 1370 SF. \$1500/mo. triple net. Available May 1. billsands417@gmail.com

Downtown Office Space For Lease:

1001 Luna Circle. Charming 1500 square ft. home converted to 4 offices, kitchenette and open reception/secretarial area with fireplace and wood floors. Walking distance from courthouses and government buildings. Free parking street-front and in a private lot in back. Security System. \$1500/mo. plus utilities. Call Ken @ 505-238-0324

Miscellaneous

New Mexico Reports

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.

Want To Purchase

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

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@sbnm.org

The publication schedule can be found at
www.sbnm.org.

FOR SALE – 5201 CONSTITUTION AVE NE, Albuquerque, NM
Sale Price - \$1,100,000 8,900 SF Available



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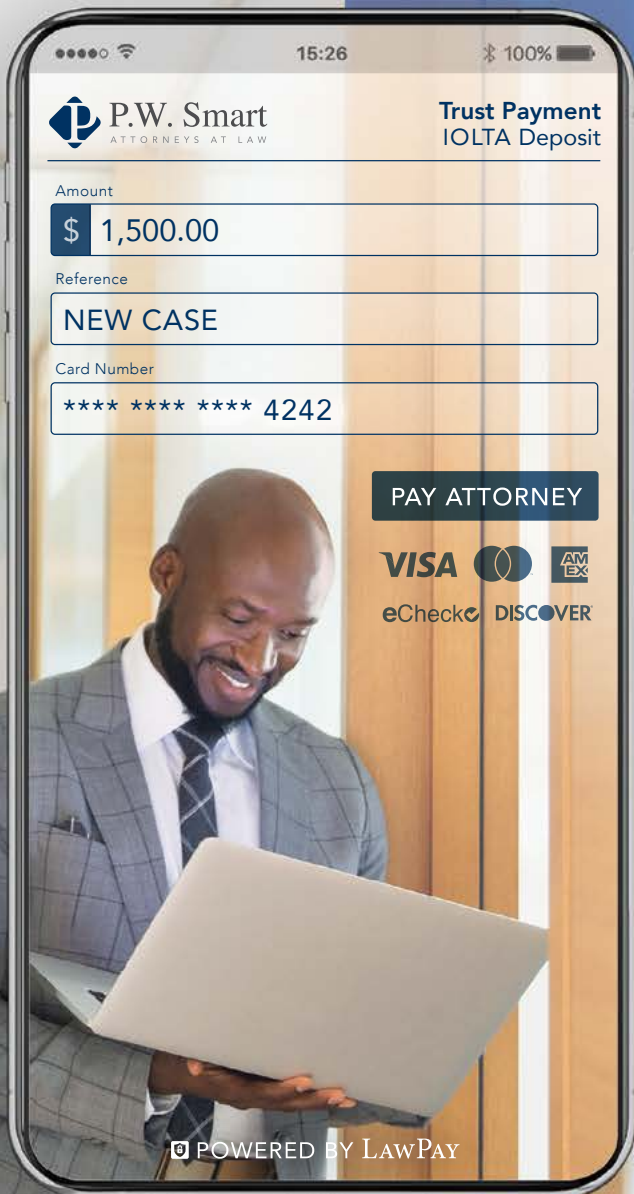
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