

BAR BULLETIN

April 28, 2021 • Volume 60, No. 8



Flip Side, by Janet Bothne

www.janetbothne.com

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—SPECIAL INSERT—
YLD in Brief



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Upcoming Webinars



APRIL 30

Replay: Family Law: Assessing and Understanding Children's Preferences

2.0 G

9–11 a.m.

\$98 Standard Fee

MAY 12

Internet Legal Research on a Budget

1.0 EP

11 a.m.–Noon

\$89 Standard Fee

MAY 14

How to Stay “Professional” when Videoconferencing: It’s Not As Hard As You Think!

1.0 EP

11 a.m.–Noon

\$89 Standard Fee

Upcoming Teleseminars



APRIL 29

Drafting Indemnity Agreements in Business and Commercial Transactions

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MAY 11

Trust and Estate Planning for Single Clients

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MAY 14

2021 Fiduciary Litigation Update

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MAY 5

The Law of Background Checks: What Clients May/May Not Check

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MAY 12

Drafting Demand Letters

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MAY 18

2021 Trust and Estate Planning Update

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MAY 13

From One Thing to Another: Business Entity Conversions & Domestication

1.0 G

11 a.m.–Noon

\$79 Standard Fee

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

505-797-6000 • 800-876-6227
Fax: 505-828-3765 • address@sbnm.org

April 28, 2021 • Vol. 60, No. 8

www.sbnm.org



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Meetings

April

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

29
Trial Practice Section Board
Noon, teleconference

30
Cannabis Law Section Board
9 a.m., teleconference

30
Immigration Law Section Board
Noon, teleconference

May

4
Health Law Section Board
9 a.m., teleconference

5
Employment and Labor Law Section Board
Noon, teleconference

Workshops and Legal Clinics

April

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: Janet Bothne's artwork focuses on the limitless possibilities color presents as subject matter. Born near Boston, Bothne studied art at the University of MA at Amherst as well as UCLA and Brentwood Art Center in California. She has exhibited in numerous venues such as The Los Angeles County Museum's Sales & Rental Gallery, The Santa Monica Art Museum and Miami Solo. She is currently represented in California, Florida, Massachusetts, Maryland and Texas. She relocated to New Mexico in 2013 where she now shares her enthusiasm for art with the students she coaches in her abstract painting classes at "Studio J" in the North Valley. View additional works by visiting: www.janetbothne.com. Contact Janet to schedule a studio visit by email: janetbothne@mac.com or call 310-666-1944.

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.

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

Professionalism Tip

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

I will give all cases deliberate, impartial and studied analysis and consideration.

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.

Second Judicial District Court Civil Division XII Announcement of Vacancy

One vacancy on the Second Judicial District Court Civil Division XII will exist as of May 1 due to the retirement of the Honorable Judge Clay Campbell, effective May 1. Inquiries regarding additional details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court Sergio Pareja, chair of Second 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 you by emailing the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Thursday, May 6 at 5 p.m. Applications received after that time will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Second Judicial District Judicial Nominating Commission will convene beginning at 9 a.m. on Thursday, May 27, 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:

Topic: Second Judicial District Court - Civil Division XII Judicial Nominating Commission Meeting

Time: Thursday, May 27 at 9 a.m.

Join Zoom Meeting

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

Meeting ID: 379 615 447

Password: 72146

Destruction of Exhibits:

Pursuant to 1.21.2.6.17 FRRDS (Records Retention and Disposition Schedules-Exhibits), the Second Judicial District Court will destroy exhibits filed with the court, the domestic (DM/DV) for the years of 2014 to 2019 including but not limited to cases which have been consolidated. Cases on appeal are excluded. Parties are advised that exhibits may be retrieved beginning April 28 to May 28. Should you have cases with exhibits, please verify exhibit information with the Special Services Division, at 841-6717, from 8:30 a.m. to 4 p.m., Monday through Friday. Plaintiff's exhibits will be released to counsel for the plaintiff(s) or plaintiffs themselves and defendant's exhibits will be released to counsel of record for defendant(s) or defendants themselves by order of the court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by order of the court.

Seventh Judicial District Court Candidate Announcement

The Seventh Judicial District Court Judicial Nominating Commission meeting convened by Zoom on Monday, April 12 at 9 a.m., and completed its evaluation of the seven applicants to fill the vacancy on the Seventh Judicial District Court due to the unexpected passing of the Honorable Chief Judge Matthew Reynolds. The commission recommends the following candidates to Governor Michelle Lujan Grisham: **Ricardo Berry, Raymond Sharbutt, Jr., Katherine Stout and Roscoe A. Woods.**

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.

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

- May 3 at 5:30 p.m.
- May 10 at 5:30 p.m.
- May 17 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.

— *Featured* —

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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:

- May 3: 11:30 a.m. -12:30 p.m. (Bring your lunch!)

This session 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?

Young Lawyers Division

Ask A Lawyer Call-In Day:

Volunteers Needed for May 1

Once a year, New Mexico residents can get their legal questions answered free or receive brief legal advice through the Ask-a-Lawyer Call-in Program sponsored by the YLD. The YLD is recruiting volunteer attorneys virtually and in-person to answer questions from across the state on a variety of topics including: employment law, divorce, child support, landlord/tenant issues, personal injury, estate planning, real estate and more. This year's program will take place from 9 a.m.-noon on Saturday, May 1. Help us spread the word to you friends and family of this great event. For further questions, contact Member Services at memberservices@sbnm.org.

UNM SCHOOL OF LAW

Law Library Hours

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

OTHER BARS

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. Register at <https://form.jotform.com/sbnm/albuquerque-bar-association-law-day>. Attendees will earn 1 general credit of CLE.

American Bar Association Seeking Writers to Join Editorial Board

The ABA Litigation Section's national news magazine seeks excellent writers interested in joining its editorial board as contributing editors. Contributing editors

write four articles and attend two ABA conferences (partial reimbursement available) per year. Litigation News reaches an audience of tens of thousands and is a great opportunity to connect with attorneys across the country. If you are interested, please send your résumé and a writing sample to LitNewsWriteOn@gmail.com.

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>.

Christian Legal Aid

Virtual Training Seminar

New Mexico Christian Legal Aid invites you to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a Virtual Training Seminar on Friday, May 14 from 1-5 p.m. via Zoom. Join them for free CLE credits and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 243-4419 or Jen Meisner christianlegalaid@hotmail.com.



Douglas "Doug" Alan Azar, born in Raton, New Mexico, on October 19, 1955, passed away March 13, 2021. He was 65. Doug's outlook on life was simple. Brains, like muscles, may be purchased through time and dedication. But what is not for sale is character. That said, Doug understood that suffering was an ineradicable part of life. Yet how a man accepts his fate and all

the suffering it entails, how he takes up his cross, that is how one's character is tested. Doug maintained the ability to dictate how he dealt with the external forces and suffering fate sent his way. He continued to appreciate the beauty of life, to appreciate all the miracles life had to offer. The ability to remain brave, dignified, and unselfish under the most difficult circumstances is something external forces may never take away. Doug was a real-life superhero and will be missed dearly.

Matthew G. Reynolds was chief judge of the 7th Judicial District for the State of New Mexico when he died of an aortic dissection on March 6. Born on March 12, 1955, he was just days shy of his 66th birthday. Matt was born in Anadarko, Okla.: the fourth of nine children born to Leo "Speck" Reynolds and Nadean Sprouse. He attended Notre Dame University where he earned both a B.A. in ancient Greek and a M.A. degree in Scripture, which included a study abroad experience in Israel. He earned a J.D. from the University of Wyoming Law School. He began law school with wife Susan, toddler Hannah, and newborn Rosemary. The family didn't have much but they managed to purchase an old car he used to commute to campus. His classmates (out of affection for Matt's family) would wait to leave the parking lot until Matt's car was up and running. They didn't want him lost to the cold and snow for lack of a decent engine. His third child, Samuel, was born between his second and third years. Matt was in the running for top of the class so several students threatened to come jump on the bed with Susan in it to induce labor during exam week. It was all in good fun. As more than one commented, "You are the poorest people here and you are still happy!" Matt drew happiness from his family and was driven to stay high in the class ranks by the need to support his growing clan. Upon graduation from law school, Matt moved his family to Alaska. When asked, "Why Alaska?" he'd reply, "I loved Jack London when I was young." The Reynolds family lived in Alaska six years during which time Matt practiced law as an associate at Hughes, Thorsness, Gantz, Powell, and Brundin, was an assistant district attorney on Kodiak Island for a winter and spring, and then an associate at Heller Ehrman. It was while they were in Alaska that son Gabriel joined the family. From Alaska the family moved to Truth or Consequences where Matt was in private practice for 13 years. He was an advocate for children in Sierra County, serving as guardian ad litem on a pro bono basis. He chose not to seek payment for his guardian work because, "Not taking money allows me to fight for these kids with integrity and ferocity." Matt was appointed to the bench by Governor Bill Richardson in summer 2005. He was determined to serve his district and the state with diligence, integrity, at times humor, and a continuing dedication to the well-being of the children in the 7th. There was nothing lukewarm about the man. He was passionate in his undertakings and wasn't afraid to express an opinion. He took his legal opinions very seriously. He loved being one of NM's 13 water law judges and on his own time researched and wrote

a history of water law (specifically prior appropriation) in New Mexico. His accomplishments were many, but Matt never stood on title. He was happy to be called "Matt" instead of "judge" when off the bench. He made corny jokes (including inventing a pun for each county in New Mexico), had a keen legal mind, looked at the job as a vocation, was proud of his wife and children, and played a mean game of Scrabble. For about eight years he memorized and practiced recitation of passages from Homer's Illiad and Odyssey in ancient Greek. He loved poetry, especially the poems of Robert Frost, and gave his children a love of the written word. He was an okie with a wonderful mind that welcomed a challenge. Matt is survived by his wife Susan of just about 40 years, his daughter Hannah Reynolds and her husband Marcello Lippiello, daughter Rosemary Rivera, son Samuel Reynolds and his wife Deebee Grace Gallofin, and son Gabriel Reynolds and wife LaTasha Williams. Matt's four grandchildren Tori Rivera, Calista Rivera, Giuseppe Lippiello, and Caterina Lippiello will miss their grandpa but hopefully tales of his silly jokes and wild antics will keep them familiar with him for many years to come.

Leonard Joseph DeLayo Jr., an Albuquerque attorney who was "the voice of reason" for 20 years on the Albuquerque Public Schools Board of Education, including five terms as board president, died in a local hospital on March 12. He was 71. On Monday, friends remembered him as a man of great intelligence, humor and patience, a great listener, and a dedicated public servant and family man.

Karl Raymond Gillson, who served as the district attorney for the 11th Judicial District in Gallup for nearly two decades, was laid to rest Friday. Gillson died at the age of 58 on Jan. 24 from a health-related condition he had been battling prior to retirement in 2017, according to his family. "The biggest thing that I remember about him is his love and care and compassion for his family, which then really spilled out into the community," his niece Elicia Goodsoldier said during a phone interview Monday. "I think that love for his people, the Navajo people, really showed up in so many places – in our community of Lupton, the city of Gallup and McKinley County, and throughout the Navajo reservation. I think that's why he chose the profession he did, because he knew he could help many people that way, ensuring that justice was being served." Born in Gallup on Jan. 19, 1963, Gillson grew up between Gallup and Lupton, Arizona. He graduated from Rehoboth High School and attended Dordt University in Iowa, where he ran cross country, eventually transferring to New Mexico State University and graduating with a bachelor's degree in political science, summa cum laude. In 1988, Gillson attended the pre-law Summer Institute for American Indian and Alaskan Native Students at the University of New Mexico. He graduated from the UNM School of Law in 1991 and became an assistant district attorney for McKinley County. Albert Benally, who was a young detective working on vehicular accidents for the McKinley County Sheriff's Office in 1991, recalled when Gillson started his career at the DA's office. "By clan, we were related, and we started calling each other brothers," Benally said. "We worked on many cases together." One particular case Benally remembered from those early years involved a vehicle homicide on U.S. 491 – known then as Route 666 or "Triple 6." Benally recalled that a semi-truck hit a passenger vehicle, sending it straight into a power pole that caused a major outage from the north side of Gallup all the way to Thatch. The

person being tried was the driver of the passenger vehicle because he was intoxicated at the time and his passenger died during the accident. “The crime scene was big and Karl put me on the stand for 3 hours,” Benally recalled. “That long in the stand is not typical, but it does happen. In my career, it’s probably the only time it has happened. We lost that case because the jury, they all came from the rez, and they wanted to know how fast was the semi going because they understood what it is like to have a semi-truck tailgating on Triple 6. They were asking how come the semi-truck didn’t get charged. That was the main thing. The jury turned around on us. Karl and I had an argument and we didn’t talk to each other for three weeks. But a couple of weeks later, we were sitting back at his desk working on another case.” Benally said working those cases during the early years of their careers helped them build strategy. “Karl was persistent. He didn’t like to lose at all and he made sure it was a closed case before we went to trial. He made sure we had a guilty verdict before we went to trial,” Benally said. “By the end, we were winning most of the cases, we were getting convictions right and left. He truly worked for the victims.” With only two years in the DA’s office, Gillson caught the eye of then-New Mexico Gov. Bruce King, who appointed Gillson as McKinley County magistrate judge in 1993. “At only 30 years old, Karl was the youngest and first Navajo (and third Native American ever) to serve as a magistrate judge in the state of New Mexico,” Gillson’s family reported in his obituary. “While serving as district judge, he ensured that there were Navajo, Zuni, and Spanish language translators available for those appearing in his court. He advocated for alternative dispute resolution methods, bringing Navajo peacemaking into the courts.” Benally said that during Gillson’s time on the bench, he supported the DARE program with the McKinley County Sheriff’s Office, the Drug Court Program, cross commission between agencies, and helped raise funds to sponsor the Youth Drug Free Powwow during the Inter-Tribal Indian Ceremonial. “The Powwow was bigger than the ceremonial events,” he recalled. In 2000, Gillson ran for McKinley County district attorney and won. He served in that position for 17 years, until retirement in 2017. As district attorney, he obtained federal funding from the Office on Violence against Women at the Department of Justice and the DOJ Community Gun Violence Prosecution Program to hire two prosecutors to work on domestic violence and sexual assault cases. “He knew that this was a great need, especially knowing that American Indian women are highly affected by domestic violence and sexual assault,” Goodsoldier said. Benally recalled that during those years he and Gillson worked on the domestic violence case of a former Navajo police officer, Harrison Largo, who was accused of shooting his partner, Frieda Smith. “We were working the case and the victim died on us. So from there, it became a homicide case.” Largo was eventually convicted by a jury of tampering with evidence and first degree murder to 33 years in prison. “We reviewed the case every week before we went to trial,” Benally said. As district attorney, Gillson also targeted and prosecuted non-Native American art dealers who sold counterfeit Indian jewelry in violation of the 1990 Indian Arts and Crafts Act. The Department of the Interior Indian Arts and Crafts Board commended Gillson in 2007 for his involvement prosecuting arts dealer Amro Al-Assi, then co-owner and manager of the Silver Bear Trading Company in downtown Gallup. Al-Assi was convicted of selling a counterfeit bracelet as the work of a well-known Navajo jeweler, Jesse Monongya, whose original works command high prices in the market. “McKinley County

District Attorney Karl Gillson and his staff are to be highly commended for their outstanding expertise, dedication, and hard work to obtain this important conviction,” the board wrote in a news release after the verdict. At the time, Gillson was quoted: “Clearly, the jury sent the message that maintaining the integrity of communities and of the Native American arts and crafts industry is vital and important to the Indian peoples’ livelihood and the communities’ economic endurance.” Gillson’s winning record put him on the map and his cases were studied by young law students. Former Navajo Nation Chief Prosecutor Gertrude Lee remembered reading about Gillson’s work since she was in law school. “There weren’t that many Navajo attorneys at the time. He was young and an inspiration,” Lee said during a phone interview Monday. Lee met Gillson a year after graduating from law school, when she was working for Congressman Ben Ray Lujan in Gallup in 2010. Lee recalled that she initially thought it was a meet-and-greet lunch with various local liaisons at a restaurant called Salsa’s. Then, she realized it was a “recruitment” lunch; Gillson had arranged to persuade her to work for him. “Recruiting attorneys was something that Karl was constantly doing – he didn’t shy away,” Lee said. “He would hire people who had not done criminal law and provide his own kind of support.” He offered Lee a job and she accepted. Asked why, she said: “He challenged me. He told me I was an attorney and I needed to be in the courtroom. I never thought I would be a trial attorney. I always thought I would work on research and policy work. He planted that seed in my head and something about it made me want to do it.” Lee’s first case working for Gillson involved prosecuting a 17-year-old man who was accused of stabbing a transvestite and killing him in the parking lot of a truck stop in Gallup. It was a challenging case because the suspect, Jonah Jeter, alleged self-defense, but he was eventually convicted of second-degree murder. “Putting that kind of trust in a new attorney, it inspires the person to rise to the occasion,” Lee said. “I learned from him to have courage and believe in the work that I was doing.



A Message from State Bar President Carla Martinez

Dear Members of the State Bar of New Mexico,

I hope that you and your loved ones are staying healthy and feeling optimistic about our future. I am hopeful that we will reach some sense of normalcy as COVID vaccinations are administered and new COVID cases are declining. Despite the challenges we have faced, the State Bar leadership and staff continue to focus on supporting its membership.

Website and New Database (AMS)

Last month, the State Bar completed the transition of its new website and association management system (AMS). The website includes a refreshed look and includes a single sign-on feature allowing you to log into State Bar regulatory and member services from one place. The AMS also allows the State Bar to streamline many operational functions including billing, credit reporting, CLE registration, license renewal, and more. I would welcome you to visit the website at www.sbnm.org and explore the new functions on the website by clicking "Log In" in the top right corner.

ABA Day

Each year, the American Bar Association holds ABA Day in Washington, D.C., to connect state bar leaders with local and national lawmakers in an effort to improve access to justice issues. I will be attending this virtual lobbying event with other bar leaders from New Mexico to address increased funding for legal services that are addressing increased domestic violence and homelessness due to the pandemic, and enhanced security for our federal judges and courthouses.

Well-Being Week in Law

Please mark your calendars for 2021 Well-Being Week in Law which is being held May 3 through May 7. The week is being hosted by the Institute for Well-Being in Law (IWIL) and each day of the week will focus on a different aspect of well-being including physical, spiritual, occupational and intellectual, social, and emotional. For more information about Well-Being Week in the Law please visit IWIL's website at www.lawyerwellbeing.net.

You may always take advantage of the State Bar's free Employee Assistance Program which provides free counseling and well-being resources to members, their staff, and their families. This EAP is provided at no cost through the New Mexico Judges and Lawyers Assistance Program. Please visit www.solutionsbiz.com/Pages/default.aspx for more information.

Upcoming Annual Meeting

As a reminder, the 2021 Annual Meeting will be held on Oct. 8. It will be a virtual event but we expect to incorporate some in-person components at the State Bar Center as restrictions are lifted. Similar to 2020, the annual meeting will be a free event providing a variety of CLE credits. I am delighted to know the Albuquerque International Balloon Fiesta is occurring this year, which gives us an opportunity to celebrate the beautiful fall weather and balloons during our annual event.

Special Committee on Sections

In accordance with our strategic plan, the Board of Bar Commissioners is committed to improving member services and fostering relationships with volunteer bar groups. The BBC's Special Committee on Sections has been identifying ways in which State Bar leadership and staff can better support practice sections, standing committees, and divisions advance their volunteer work. I encourage you to share your ideas on how the State Bar can better support its volunteers and legal groups.

It is a pleasure to serve as your State Bar President this year and I look forward to providing you updates throughout the rest of the year. As a final note, the State Bar Center is open for limited meetings. If you need assistance scheduling a meeting or have other questions, please contact the State Bar at info@sbnm.org or 505-797-6000.

Warmest regards,

A handwritten signature in black ink that reads "Carla C. Martinez". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Carla C. Martinez
President, State Bar of New Mexico

The Stress Test: Searching for WELLBEING IN LAW SCHOOL

By Annie Swift

Law school is hard—ask just about anyone who has been through it.¹ Certainly, there is that rare student who eats law school for breakfast; aces the exam, wins the mock trial, lands the top job, and has a fabulous time doing it. Then there are students like me, who occasionally feel great in law school, and occasionally feel like law school eats our lunch.

I had no idea what to expect when I started my legal education. I had some goals—namely to do my best, learn a lot, and get a degree that would allow me to help people. I also promised myself that I would prioritize my happiness and my family, and that I would not get caught up in the stress. While I am on track with most of my goals, I still have trouble with the stress. Apparently, I am not alone.

During our 1L student orientation, an administrator introduced us to the law school counselor. The counselor conveyed a clear message—you will feel overwhelmed, anxious, uncertain, and even desperate. The counselor told us that the school had recently lost a student to suicide and asked us to seek help if we needed it.² Another person came to talk to us about addiction in the legal profession,³ and left pamphlets with additional resources.⁴ I was startled by the implication that I would need their services at some point. Could law school really be that bad? I took their business cards, just in case.

Throughout that first semester, I learned a lot about law school stress. With hundreds of pages to read each week, I found out how unnerving it can be when a professor cold calls you to present a case.⁵ Despite hours of study, I rarely felt certain that I had understood the cases, much less that I could explain them. As finals approached, I began to fear the sharp edge of the exam curve. I questioned why I had to compete with my colleagues for everything from grades to a spot on a journal. I struggled to understand why the doctrinal classes often seemed far removed from the ends of justice.⁶

Meanwhile my colleagues, at least on the surface, appeared to absorb and recite the doctrine intuitively. I wondered how I fit in with these brilliant and talented people. I met boxers and bridge players, organizers, art historians and authors, scientists, soldiers, and singer-song writers. Some of my peers even had



law degrees in foreign countries—imagine learning the law in a second or third language! Most impressive were the superhero parents tending to their children before, after, and during class. I had no comparable superpower to speak of, but I did have my reasons to be in law school, and they kept me grounded. I was also lucky to make dear friends with many remarkable classmates. I feel so grateful for the ways we have kept one another afloat.

The pressure has hardly waned since that first year. The course load has increased, and the stakes remain high as we look towards employment. I am surprised by how the little things continue to affect me. It still stings to feel lost in class, bomb a quiz, or fall behind on an assignment. I sometimes wonder if I will find success as an attorney, or if I still have time to become an artist or a firefighter. . . I have found that many of my classmates struggle with similar anxieties.

School can feel even more daunting when life throws a curveball. On top of the academic and economic stresses most students face, many of us have endured painful circumstances in our personal lives. In my own time of need, I felt relieved to have picked up the school therapist's business card.⁷ I have seen other peers lose family members and friends, get diagnosed with serious illnesses, go through divorces, accidents, and assaults. Students have experienced financial crisis, food insecurity, and homelessness, all while trying not to worry about grades.⁸

The recent student cohorts have faced unique stressors. The pandemic took a particular toll on our educational experience. We have been isolated from the law school community, with

limited opportunities to pick our professors' thoughts and commiserate with our classmates. On top of the persistent anxiety brought on by the virus, we have had to adapt to class online.

Learning over Zoom is patently exhausting. Our brains work harder to connect latent audio with facial expressions, and we miss important cues we would normally pick up through body language.⁹ It seems impossible to maintain focus through hours of Zoom class, particularly if the internet fails intermittently. Home life can be distracting, with chores to tend to, roommates working close by, and family asking for help.

Many students have faced additional hardship. Beyond the pandemic, the past year has brought political turmoil and a nationwide reckoning with racism and police brutality. Not every student has experienced this collective trauma to the same degree.¹⁰ I cannot know the pain of my colleagues of color who have had old wounds reopened by racialized violence. I can, however, stand in solidarity, get informed, and lend support.

How else can we take care of ourselves and one another through adversity? How do we cope with the pressure and make it to the finish line? Maybe it is in the little things. We can offer ourselves and others patience, compassion, and congratulations for our resilience and success. We can learn that letters on a transcript do not define us—that we can pursue the legal education that inspires us if the traditional path does not fit. We can turn to what makes us happy (like friends, family, pets, and rest) to avoid the emotional pitfalls of law school.¹¹ Perhaps most importantly, we can seek help and we can offer it to those in need.¹² With any luck, we will feel good about our personal and professional growth—even if we have not yet found our superpower. ■

Annie Swift is a second-year law student at the University of New Mexico and the student representative for the New Mexico State Bar Well-Being Committee. When not studying or working, Annie enjoys gardening, dinking around in her partner's woodshop, and hanging out with their pets.

Endnotes

¹ You can also consult authors who have written at length about the difficulties of law school. See, e.g., KATHRYNE M. YOUNG, *HOW TO BE SORT OF HAPPY IN LAW SCHOOL* (2018); ANDREW J. MCLURG, *1L OF A RIDE* (3rd ed. 2017); ROBERT H. MILLER, *LAW SCHOOL CONFIDENTIAL: A COMPLETE GUIDE TO THE LAW SCHOOL EXPERIENCE* (3rd ed. 2015).

² Suicide is painfully common in the legal community. See Chris Ritter, *What Law Students Must Know About Suicide*, <https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=36460>. For more information on depression and suicide in law school, please visit <http://www.daveneefoundation.org/>.

³ According to a 2014 national study of law student wellbeing, about one in four law students screened positive for possible alcohol dependence, and about one in seven had used prescription drugs without a prescription in the previous year. Jerome M. Organ, David B. Jaffe, & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, *J. LEGAL EDUC.* 66, 116–156 (2016).

⁴ Find the Judges and Lawyers Assistance Program resources at <https://www.sbnm.org/Member-Services/Judges-and-Lawyers-Assistance-Program>.

⁵ For more information about the pressure law students experience under the Socratic method, see Todd Peterson & Elizabeth Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 *YALE J. HEALTH POL'Y L. & ETHICS* 357, 376 (2009).

⁶ For more discussion on why legal formalism can result in “a form of education that emphasizes doctrines and cases and minimizes external factors, such as justice, social policy, and politics[.]” see JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION THAT FAILS ITS CREATIVE MINDS* 35 (2005).

⁷ Many barriers stand in the way of law students seeking help for mental health challenges, including social stigma, financial limitations, lack of time, and potential threat to bar admission. For more information, see Jerome M. Organ, David B. Jaffe, & Katherine M. Bender, *Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*, *THE BAR EXAMINER* (Dec. 2015).

⁸ To learn about academic accommodations, contact Bonnie Stepleton at stepleton@law.unm.edu.

⁹ Brenda K. Wiederhold, *Connecting through technology during the coronavirus disease 2019 pandemic: Avoiding “Zoom Fatigue”* 23 *CYBERPSYCHOLOGY, BEHAVIOR, & SOCIAL NETWORKING* 437, 437–438 (2020).

¹⁰ For a general overview and links to more information about mental health challenges for students of color, see Abby Quirk, *Mental Health Support for Students of Color During and After the Coronavirus Pandemic*, *CENTER FOR AMERICAN PROGRESS* (June 28, 2020), <https://www.americanprogress.org/issues/education-k-12/news/2020/07/28/488044/mental-health-support-students-color-coronavirus-pandemic/>.

¹¹ For more information, see Lawrence S. Krieger & Sheldon M. Kennon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 *GEO. WASH. L. REV.* 554 (2015); Lawrence S. Krieger, *The Hidden Sources of Law School Stress: Avoiding the Mistakes That Create Unhappy and Unprofessional Lawyers* (2014).

¹² Professional counseling services are available for law students. Schedule with Antionette Kuehn through the UNM SHAC Health Portal; <https://shac.unm.edu/shac-health-portal.html>, or through the Employee Assistance Program; <https://www.sbnm.org/Member-Services/Judges-and-Lawyers-Assistance-Program/Employee-Assistance-Program>. For additional resources, visit <https://www.americanbar.org/groups/lawyer-assistance/articles-and-info/law-student-resources/>.



MON 
STAY STRONG
 Physical Well-Being

TUES 
ALIGN
 Spiritual Well-Being

WEDS 
ENGAGE & GROW
 Career & Intellectual Well-Being

THURS 
CONNECT
 Social Well-Being

FRI 
FEEL WELL
 Emotional Well-Being

YOU'RE INVITED TO BE A WELL-BEING CHAMPION

WHAT IS IT?

Too many lawyers and their support teams aren't thriving. It's time to take action. **Well-Being Week In Law (WWIL)** is one way to do so. You're invited to join organizations across the legal profession to lead and participate in activities that promote health and happiness across the legal profession.

WHEN IS IT?

May 3-7, 2021. The month of May is Mental Health Awareness Month.

MAY							01
	02	03	04	05	06	07	08
	09	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					

WHO'S INVOLVED?

The "who" is you! WWIL is an event of the Institute for Well-Being in Law (IWIL), a 501(c)(3) charitable organization. The ABA Commission on Lawyer Assistance Program's Well-Being Committee serves as a sponsor. We invite you to join us and many other organizations in being a champion for lawyer well-being.

HOW CAN I GET INVOLVED?

The WWIL team of volunteers has been working hard to make it easy for you to get involved. On our web page, you'll find out how to join an event or organize your own activities:

1. Sign up for a webinar
2. Download an Activity Planning Guide to plan your own activities.
3. Read and download resources and tools (e.g., tip sheets, etc.).
4. Find materials to market your activities, like logos, stickers, social media post ideas, and more.

WHY PARTICIPATE?

Too many in the legal profession struggle with mental health and alcohol use disorders. Many others, while not dealing with a diagnosable illness, still are not fully well. The aim of WWIL is to raise awareness about mental health and encourage action and innovation across the profession to improve well-being.

Legal Education

April

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|--|--|---|
| <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>29 Drafting Indemnity Agreements in Business and Commercial Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>30 REPLAY: 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> |
| | <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>30 Natural Resources, Energy, and Environmental Law 2021 Legislative Update
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

May

- | | | |
|---|--|--|
| <p>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</p> | <p>13 From One Thing to Another: Business Entity Conversions & Domestication
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>20 Drafting Escrow Agreements in Business & Commercial Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>7 2021 Health Law Legislative Roundup
1.5 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>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</p> | <p>20 The Lawyer's Guide to Ethical Business Development
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>11 Trust and Estate Planning for Single Clients
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>14 2021 Fiduciary Litigation Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Presentations that Captivate
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>12 Drafting Demand Letters
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>18 2021 Trust and Estate Planning Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 REPLAY: The World Has Changed. Let's Sort it Out (2020)
3.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>12 Internet Legal Research on a Budget
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>19 Subtenants in Commercial Leasing: How to Protect Your Client
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>24 Due Diligence in Commercial Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

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

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| <p>25 Ethics of Shared Law Offices, Working Remotely & Virtual Offices
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>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</p> | <p>27 Ethical Issues in Contract Drafting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>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</p> |
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June

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|---|--|---|
| <p>1 Trust and Estate Planning for Family Businesses, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>2 Trust and Estate Planning for Family Businesses, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>2 Retain Your Clients: A Roadmap to Effective, Ethical Client Service
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>3 Drafting Employee Handbooks
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>3 Overcoming Procrastination - How to Kick the Habit
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>4 Smartphones, Tablets, and Other Devices in the Workplace
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>8 2021 Ethics in Civil Litigation Update, Part 1
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>9 2021 Ethics in Civil Litigation Update, Part 2
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>10 Special Issues in Small Trusts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>11 Ethics of Co-Counsel and Referral Relationships
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>11 REPLAY: Naked and Afraid: A Legal Survival Skills Program (2020)
2.0 G, 1.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>15 Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>15 Buying and Selling Commercial Real Estate, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>16 Buying and Selling Commercial Real Estate, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>18 REPLAY: Family Law Spring Institute - Day 1 (2021)
4.0 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>18 Cybersleuth Investigative Series: Using Free Public Records and Publicly Available Information for Investigative Research
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>18 Lawyer Ethics and the Internet
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>21 Piercing the Entity Veil: Individual Liability for Business Acts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
|---|--|---|

Opinions

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

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

Effective April 2, 2021

PUBLISHED OPINIONS

A-1-CA-37314	State v. F Begaye	Affirm/Reverse/Remand	03/30/2021
A-1-CA-37459	Autovest v. D Agosto	Affirm/Reverse/Remand	03/31/2021
A-1-CA-37483	Autovest v. M Estrada	Affirm/Reverse/Remand	03/31/2021
A-1-CA-37936	State v. D Wilson	Affirm	03/31/2021
A-1-CA-37969	Autovest, LLC v. D Agosto	Affirm/Reverse/Remand	03/31/2021
A-1-CA-38091	State v. T. Anderson	Affirm	03/31/2021

UNPUBLISHED OPINIONS

A-1-CA-36758	State v. K Pierre	Affirm	03/29/2021
A-1-CA-37828	J Vega v. South Valley Care Center	Affirm	03/29/2021
A-1-CA-38446	Marchiondo Law Offices v. J Reese	Affirm	03/29/2021
A-1-CA-38791	Distribution Management Corporation v. NM Tax & Rev	Affirm	03/29/2021
A-1-CA-38993	State v. J Quintero	Affirm	03/29/2021
A-1-CA-39102	Acropolis Condominium Ass'n v. M Sanchez	Affirm	03/29/2021
A-1-CA-39304	CYFD v. Celeste W	Affirm	03/29/2021
A-1-CA-38042	V Fischer v. S Carter	Affirm	03/30/2021
A-1-CA-39267	M Aragon v. New Mexico Superintendent of Insurance	Affirm	03/30/2021
A-1-CA-39432	CYFD v. Gilbert B.	Affirm	03/31/2021

Effective April 9, 2021

PUBLISHED OPINIONS

A-1-CA-37503	B Taylor v. Waste Management	Reverse/Remand	04/06/2021
A-1-CA-37575	State v. R Ocon	Affirm/Reverse/Remand	04/08/2021

UNPUBLISHED OPINIONS

A-1-CA-37704	V Chase v. L Chase	Affirm	04/05/2021
A-1-CA-38049	State v. T Lopez	Affirm	04/05/2021
A-1-CA-39224	State v. R Cooksey	Affirm	04/05/2021
A-1-CA-38680	State v. K Chapo	Affirm	04/06/2021
A-1-CA-38992	J Contreras v. Allstate Insurance Co.	Affirm	04/06/2021
A-1-CA-39147	H Maldonado v. M Grimes	Affirm	04/07/2021

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

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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**CLERK'S CERTIFICATE
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INACTIVE STATUS
AND CHANGE OF
ADDRESS**

Effective February 1, 2021:
Justus Wendell Anderson
Warren Fonville LLC
1635 Rogers Road
Fort Worth, TX 76107

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

Effective March 15, 2021:
Steven Kyle Armstrong
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Las Cruces, NM 88011
360-929-1112
sarmst76@hotmail.com

**CLERK'S CERTIFICATE
OF LIMITED
ADMISSION**

On April 1, 2001:
Bruce C. Baizel
New Mexico Environment
Department
PO Box 5469
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Santa Fe, NM 87502
505-827-2855
bruce.baizel@state.nm.us

**CLERK'S CERTIFICATE
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Effective March 31, 2021:
Stephanie N. Basom
400 W. Illinois, Suite 1400
Midland, TX 79701

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

As of February 22, 2021:
Shane Brill
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Defender
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575-257-3233
shane.brill@lopdm.us

**CLERK'S CERTIFICATE
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Effective March 31, 2021:
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**CLERK'S CERTIFICATE
OF WITHDRAWAL**

Effective March 31, 2021:
Charles E. Buckland
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**CLERK'S CERTIFICATE
OF WITHDRAWAL AND
CHANGE OF ADDRESS**

Effective March 31, 2021:
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**CLERK'S CERTIFICATE
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**CLERK'S CERTIFICATE
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**CLERK'S CERTIFICATE
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Effective March 31, 2021:
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22219 River Road
Grand View, ID 83624

CLERK'S CERTIFICATE OF NAME AND ADDRESS CHANGE

As of December 16, 2020:
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Effective March 31, 2021:
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CLERK'S CERTIFICATE OF ADMINISTRATIVE SUSPENSION

Effective March 26, 2021:
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505-213-0629 (fax)
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Rules/Orders

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

From the New Mexico Supreme Court

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of PATRICK LOPEZ, ESQ.

DISCIPLINARY NO. 2020-01-4444

**An Attorney Licensed to Practice Law before the Courts of the
State of New Mexico**

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

The Complainant hired you in 2017 to obtain a Writ of Garnishment on a judgment for almost \$13,000.00 that she obtained on behalf of a landlord-company. In January 2018, you entered your appearance in the case. You did not file an Application for Writ of Garnishment until August 2018.

On December 14, 2018, the Court issued a Writ of Garnishment. You promptly had the Writ served on the Garnishee. However, you failed to provide sufficient identifying information for the judgment-debtor. The Garnishee was unable to reach you to find out more information.

On March 12, 2019, you filed a Motion for Default Judgment against the Garnishee; you did not request a hearing.

On April 24, 2019, the Garnishee, through its employee

“HP”, filed an Answer and hand-wrote: “Not enough info/no attorney response/original sent 2/22/19.” The Answer contained the phone number and address of HP. However, you took no further action and did not communicate with Complainant, despite her efforts to find out the status of the matter.

On January 22, 2020, disciplinary counsel called HP and then suggested by email to you that you call her. On February 6, 2020, you emailed disciplinary counsel that he would “reach out to [HP] to seek a resolution.”

On February 10, 2020, disciplinary counsel emailed you: “Please let me know when you do and what happens. You should act immediately; this matter has dragged on far too long.” On February 18, 2020, you emailed disciplinary counsel that you had called HP, but that she needed a Social Security Number of the judgment-debtor. You stated that he would contact Complainant for the information.

On March 4, 2020, disciplinary counsel again requested an update. By email on March 5, 2020, you stated: “My client did provide me with the . . . social security number. I will contact [HP] tomorrow. . . . I will update you after I contact [HP].”

On April 10, 2020, disciplinary counsel emailed and asked for an update. On April 17, 2020, you emailed disciplinary counsel that you had not “been able to reach [HP] at her office, but I will continue to try to reach her. . . . If I am unable to reach her I will request a hearing and ask the court to order the defendant’s [judgment-debtor] appearance which will clear up any confusion.” Finally, you provided identifying information of the judgment-debtor to HP, and eventually provided a proposed Order to Pay to the Court, where it awaits the Court’s action.

Your conduct violated the following Rules of Professional Conduct: 16-101, by failing to provide competent representation to a client; 16-103, by failing to represent your client diligently; 16-104(A), by failing to communicate with his client; 16-302, by failing to expedite litigation; and 16-804(D), by engaging in conduct prejudicial to the administration of justice.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. The formal reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico Bar Bulletin.

Dated January 22, 2021
The Disciplinary Board of the
New Mexico Supreme Court

By
Hon. Cynthia A. Fry (ret’d)
Board Chair

Disciplinary Quarterly Report

Final Decisions

Final Decisions of the NM Supreme Court 3

Matter of Eric Morrow, Esq., (No. S-1-SC-38658).

The New Mexico Supreme Court issued an order on March 10, 2021 indefinitely suspending Respondent for a period of no less than two (2) years from the practice of law. This matter was brought before the Court on a Conditional Agreement.

Matter of James Klipstine, Esq., (No. S-1-SC-38655).

The New Mexico Supreme Court issued an order on March 29, 2021 indefinitely suspending Respondent for a period of no less than three (3) years. This matter was brought before the Court on the Disciplinary Board's request to adopt its recommendation for discipline.

Matter of Barbara Ann Patterson, Esq., (No. S-1-SC-38648).

The New Mexico Supreme Court issued an order on March 29, 2021 indefinitely suspending Respondent from the practice of law. This matter was brought before the Court on the Disciplinary Board's request to adopt its recommendation for discipline.

Summary Suspensions

Total number of attorneys summarily suspended 1

Matter of Richard A. Madril, Esq. (No. S-1-SC-38725).

The New Mexico Supreme Court entered an order on March 15, 2021 summarily suspending Respondent from the practice of law. Respondent was found guilty of a felonious serious crime in the State of Arizona. US v. Madril, CR-18-01309-002-TUC-RM (LAB)

Administrative Suspensions

Total number of attorneys administratively suspended..... 3

Matter of Margaret Yvonne Romero, Esq. (No. S-1-SC-38676).

The New Mexico Supreme Court entered an order on March 26, 2021 administratively suspending Respondent from the practice of law for the failure to cooperate with Disciplinary Counsel

Matter of Thomas Patrick McLarty, Esq. (No. S-1-SC-38631).

The New Mexico Supreme Court entered an order on March 26, 2021 administratively suspending Respondent from the practice of law for the failure to cooperate with Disciplinary Counsel

Matter of Joel Alan Gaffney, Esq. (No. S-1-SC-38619).

The New Mexico Supreme Court entered an order on March 26, 2021 administratively suspending Respondent from the practice of law for the failure to cooperate with Disciplinary Counsel

Disability Inactive Status

Total number of attorneys removed from disability inactive states 0

Charges Filed

Charges were filed against an attorney for allegedly failing to competently represent a client; charging an excessive fee, representing a client when there was a significant risk that his representation was materially limited by his own personal interests.

Charges were filed against an attorney for allegedly failing to competently represent the client, failing to act with reasonable diligence and promptness, failing to keep the client reasonably informed, and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly acquiring a propriety interest in property that is the subject of litigation, failing to notify a third person of the receipt of property in which the third person has an interest, and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly charging an excessive fee, failing to hold a client's property separate from the lawyer's own property and by failing to keep complete records of the account funds, dishonestly converting a client funds for his own use, and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly filing a frivolous lawsuit, engaging in conduct intended to disrupt a tribunal, and engaging in conduct prejudicial to the administration of justice.

Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law 0

Reciprocal Discipline

Total number of attorneys reciprocally disciplined 0

Reinstatement from Probation

Petitions for reinstatement filed 0

Formal Reprimands

Total number of attorneys formally reprimanded 1

Informal Admonitions

Total number of attorneys admonished 2

Letters of Caution

Total number of attorneys cautioned 10

Disciplinary Quarterly Report

Attorneys were cautioned for the following conduct: (1) lack of competence; (2) excessive fees; (3) dishonesty, deceit, fraud or misrepresentation, (3) lack of candor (4) lack of fairness to opposing party, (5) trust account violation (6) failure to communicate, and (7) ex parte contact with court.

<i>Complaints Received</i>	
Allegations	No. of Complaints
Trust Account Violations.....	2
Conflict of Interest.....	2
Neglect and/or Incompetence.....	20
Misrepresentation or Fraud.....	10
Relationship with Client or Court.....	0
Fees.....	9
Improper Communications.....	10
Criminal Activity.....	1
Personal Behavior.....	3
Other.....	32
Total number of complaints received.....	89

Meet the Board

Lindsay Cutler has been a member of the YLD Board of Directors since 2019. Cutler works for the New Mexico Center on Law & Poverty as an attorney on the Economic Equity team, where she started as a fellow in 2017. Cutler practices consumer and housing law and engages in multifaceted legal work, including litigation, administrative advocacy and policy reform.

Cutler is a graduate of the University of Mary Washington and UCLA School of Law. Following her undergraduate degree, Cutler worked for the Laguna Pueblo and Albuquerque Public Schools fostering access and increasing opportunities for families to engage in their children's education. During law school, Cutler was an editor on the UCLA Law Review and the Indigenous Peoples' Journal of Law, Culture & Resistance.

Lindsay Cutler

Director-At-Large, Position 4



Stephen Ralph

Director-At-Large, Position 5

Stephen Ralph currently serves as director-at-large, Position 5. He is currently employed as a senior trial attorney at the Bernalillo County District Attorney's Office, in Albuquerque. Ralph has previously served as a law clerk for the New Mexico Supreme Court and an Assistant District Attorney in Clovis. He graduated from the UNM School of Law in 2015. Ralph recently completed an MBA from the University of Northern Colorado and is currently pursuing an LLM in taxation from Washington University School of Law in St. Louis. Ralph is an active member of Toastmasters International and serves as the Club Growth Director for District 23 of Toastmasters International. Ralph has earned the Distinguished Toastmaster award, the highest award in Toastmasters International. Stephen is a Life Member of the National Eagle Scout Association, and a member of the National Association of District Attorneys, the Federalist Society, and the National Association of Parliamentarians.

Breanna Contreras is an intellectual property, commercial litigation and employment litigation attorney with Bardacke Allison LLP in Santa Fe. In the IP arena, she represents a variety of clients in the United States and overseas in brand strategy, IP enforcement, copyright and trademark registration and maintenance, and licensing in the technology, literary, arts, music, and film industries. Contreras also regularly handles complex commercial and employment disputes on behalf of both plaintiffs and defendants. Contreras was named a Rising Star by *Super Lawyers* four years in a row-2018-2021, an accolade reserved to only the top 2.5% of attorneys in the Southwest. She is a proud graduate of UNM Anderson School of Management '10, and Notre Dame Law School '13, where she was privileged to learn from now-Justice Amy Coney Barrett.

Breanna Contreras

Region 2 Director

Vacant

Region 3 Director

Apply now for Region 3 Director (covering the Fifth & Ninth Judicial Districts). *All young lawyers whose principal place of practice is in the designated region are eligible. The appointment is for a one-year term, with the opportunity to run and be re-elected during the October 2021 election cycle. Contact Shasta Inman if you are interested in serving!*

Devon Aragon Martinez serves as the Region 4 director. She is an assistant district attorney in the Third Judicial District, where she handles a wide range of felony cases. As a Mora, N.M. native and UNMSOL graduate, Martinez understands the importance of community and giving back. During her time at UNMSOL, Martinez served as the vice president of community affairs for MALSA, a student, mentor for incoming 1L students, and moot court coach for the Marshall-Brennan Project. Most recently, Martinez as served as a mock trial coach for the prosecution during law camp and presented to local law enforcement about trial preparation.

Devon Aragon Martinez

Region 4 Director

Meet the Board



Allison Block-Chavez
Immediate Past Chair

Allison Block-Chavez, is a partner and attorney at Aldridge, Hammar & Wexler, PA, in Albuquerque, where her law practice focuses on fiduciary services, adult guardianships and conservatorships, estate planning, probate matters, real estate, and creditors' rights. Allison graduated from the UNM School of Law and served as the judicial law clerk for Chief Judge Michael E. Vigil of the New Mexico Court of Appeals. She currently serves as Second Judicial District Commissioner to the State Bar of New Mexico's Board of Bar Commissioners and as New Mexico's young lawyer delegate to the American Bar Association's House of Delegates.



Lauren Riley
ABA District 23 Representative

Lauren Riley practices family law at Batley Family Law, P.A. in Albuquerque. Riley earned her B.A. in Social Work from Colorado State University and is a graduate of UNM School of Law. She practices in all aspects of family law including divorce, custody, child support, kinship-guardian and divorce modification.

Riley currently serves as the American Bar Association's Young Lawyers Division district representative for New Mexico and Arizona. She also serves as a mentor to UNM law students and is actively involved with UNM School of Law. Riley is also on the board of Wesley Kids Early Education Center.

Message from the YLD Chair *continued from page 1*

ABA YLD Mountain West States Regional Summit – this regional summit was last in New Mexico in 2017, when young lawyer and law student affiliates from Mountain West states joined NM YLD in Albuquerque. Like prior meetings, the 2021 Regional Summit will be an informative conference with CLE offerings, a public service project, and opportunities for attendees to engage in social activities to strengthen the bonds between the young lawyer and law student communities in the greater Mountain West area. The 6th Annual Regional Summit, scheduled for April 2020 in Lake Tahoe, Nev. was canceled due to COVID-19, but we tentatively hope to see everyone in person in Santa Fe this November! More details forthcoming.

Law Student Support – In a regular (read: non-virtual) year, the YLD partners with the UNM School of Law for numerous law-student support programming, including a robust mentorship program and a mock interview event. But having those programs virtually this year saved costs, and the YLD was additionally privileged to be able to give money to the UNM law students' mental health services and emergency funds, and provide grocery gift cards to students in need. Law school is hard and it is stressful enough without having to do it during a global pandemic! Our UNMSOL Programming subcommittee continues to maintain connections with the law school students and staff, fielding suggestions on how we can further support our future young lawyer members.

Please feel free to reach out at any time with comments, concerns, questions or suggestions at shasta.inman@gmail.com.

Best,
Shasta N. Inman, YLD Chair

Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2020-NMSC-007
No: S-1-SC-36966 (filed March 19, 2020)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
RONALD WIDMER,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

STAN WHITAKER, District Judge

Released for Publication May 5, 2020.

HECTOR H. BALDERAS,
Attorney General
JOHN KLOSS,
Assistant Attorney General
Santa Fe, NM
for Petitioner

BENNETT J. BAUR,
Chief Public Defender
C. DAVID HENDERSON,
Appellate Defender
Santa Fe, NM
for Respondent

Opinion

David K. Thomson, Justice.

{1} This appeal requires us to determine whether an officer's question was sufficiently related to protecting officer safety to qualify for the public safety exception to the admissibility requirements of *Miranda* announced in *New York v. Quarles*, 467 U.S. 649, 655-56 (1984). The Court of Appeals determined that the question in this case did not qualify for the *Quarles* public safety exception. *State v. Widmer*, 2018-NMCA-035, ¶ 29, 419 P.3d 714. The Court of Appeals consequently reversed Defendant Ronald Widmer's conviction for possession of methamphetamine and remanded for a new trial. *Id.* ¶¶ 1, 40. We respectfully disagree and affirm the ruling of the district court that the *Quarles* public safety exception applied in this case because of the need to determine whether Defendant was armed or carrying potentially harmful drug paraphernalia before officers performed a pat-down search. We therefore reverse the Court of Appeals on its disqualification of the public safety exception and remand for further proceedings consistent with this opinion.

I. BACKGROUND

{2} Officers from the Albuquerque Police Department (APD) approached Defendant in a Walgreens parking lot in the late evening. Defendant, accompanied

by a woman, was trying to start a motor scooter. APD had received an anonymous tip concerning two persons and a scooter with an ignition that "appeared to be tampered with." The officers suspected that the scooter was stolen. After briefly speaking with Defendant and the woman, officers ran Defendant's personal identification information and the scooter's vehicle identification number (VIN) through the National Crime Information Center (NCIC) to check for outstanding warrants and any stolen vehicle reports. NCIC did not return a stolen vehicle report but did report Defendant's outstanding felony warrants for trafficking drugs. Officers placed Defendant in handcuffs while they awaited confirmation that the warrants were valid.

{3} While Defendant was in custody, but before he was advised of his *Miranda* rights, an officer asked him, "Is there anything on your person that I should know about?" Defendant responded, "I have meth." Officers collected a white powder from inside a pill container hanging from Defendant's belt loop and placed it in a plastic evidence bag. After officers recovered the physical evidence, Defendant muttered, "Well, I'm gonna have another charge now." The white powder recovered from Defendant's belt loop tested positive for methamphetamine. As a result, Defendant was charged with felony possession of a controlled substance.

{4} Defendant asked the district court to suppress both his "alleged" statement to officers concerning "meth" and the physical evidence, arguing that the officer's question following arrest did not qualify under the narrow public safety exception to *Miranda*. The district court denied Defendant's motion but instructed the jury to determine whether the "statement allegedly made by the defendant . . . was given voluntarily" before considering it in deliberations. *See* UJI 14-5040 NMRA. The jury found Defendant guilty of possession of methamphetamine.

{5} Defendant appealed his conviction for possessing methamphetamine. The Court of Appeals reversed his conviction and held that the statement and the physical evidence should have been suppressed. *Widmer*, 2018-NMCA-035, ¶¶ 29-30. The Court of Appeals remanded for a new trial because it held that the erroneously admitted evidence was not harmless error, *id.* ¶¶ 38-40, and therefore declined to address the merits of other issues Defendant raised, *see id.* ¶ 40. We granted certiorari.

II. DISCUSSION

{6} The Court of Appeals majority did not address the issue Defendant raised concerning the lawfulness of his arrest. *Id.* Because that issue was not presented to this Court in the State's petition for writ of certiorari, we do not determine whether Defendant's arrest was lawful. *See State v. Morales*, 2010-NMSC-026, ¶ 19, 148 N.M. 305, 236 P.3d 24 ("Under the appellate rules, it is improper for this Court to consider any questions except those set forth in the petition for certiorari." (internal quotation marks and citation omitted)); *see also* Rule 12-502(C)(2)(b) NMRA ("[T]he Court will consider only the questions set forth in the petition."). We turn to the issue of whether the district court erred by admitting the incriminating statement officers elicited from Defendant based on the *Quarles* public safety exception to *Miranda*.

{7} Because the officers chose not to take the short, simple step of advising Defendant of his constitutional rights, we must determine whether Defendant was subjected to a custodial interrogation, and if so, whether there was an exception to *Miranda* that renders his statements admissible. If a defendant is subject to custodial interrogation but not advised of his rights under *Miranda*, the law generally requires that the defendant's response be suppressed. *See Quarles*, 467 U.S. at 654 ("The *Miranda* Court, however, presumed that interrogation in certain custodial circumstances is inherently coercive and held that statements made under those

circumstances are inadmissible unless the suspect is specifically informed of his *Miranda* rights and freely decides to forgo those rights.” (footnote omitted)). However, suppression of a defendant’s statements or responses to an unadvised custodial interrogation is not required if the *Quarles* public safety exception applies. See *id.* 467 U.S. at 655 (“[T]here is a ‘public safety’ exception to the requirement that *Miranda* warnings be given before a suspect’s answers may be admitted into evidence.”).

{8} Although we determine that Defendant was subjected to a custodial interrogation, we respectfully disagree with the Court of Appeals reasoning concerning the application of the *Quarles* public safety exception in this case. Because we conclude that the *Quarles* exception applies, we reverse on this issue, vacate the Court of Appeals opinion, and remand for further proceedings consistent with this opinion. We specifically instruct the Court of Appeals to address Defendant’s argument concerning the lawfulness of his arrest, as it appears to be relevant to the remaining analysis. See, e.g., *State v. Almanzar*, 2014-NMSC-001, ¶ 10, 316 P.3d 183 (“If [a d]efendant’s arrest was lawful, then the search incident to the arrest falls within the exception to the constitutional search warrant requirement.”); *State v. Ruffino*, 1980-NMSC-072, ¶ 3, 94 N.M. 500, 612 P.2d 1311 (observing that “search incident to a lawful arrest” is one of the recognized exceptions that permit warrantless searches).

{9} The minority, citing *Quarles*, would hold that although Defendant was in custody, “questions designed to protect public safety” are exempt from the definition of interrogation. See *Min. Op.* ¶¶ 47-58. We disagree. By exempting questions designed to protect public safety, *Quarles* did not redefine what constitutes interrogation. Instead, *Quarles* determined that exigent circumstances may justify an exception to *Miranda* and permit a court to admit a defendant’s self-incriminating statements regardless of whether the defendant was subjected to custodial interrogation. *Quarles*, 467 U.S. at 655-56, 658. *Quarles* specifically observed, “The New York Court of Appeals was undoubtedly correct in deciding that the facts of this case come within the ambit of the *Miranda* decision as we have subsequently interpreted it.” 467 U.S. at 655-56. However, *Quarles* recognized “a narrow exception to the *Miranda* rule . . . [that] will be circumscribed by the exigency which justifies it.” *Id.* at 658.

{10} If questions designed to protect public safety were never interrogation, there would be no reason for *Quarles* to create an exception to the requirements of *Miranda*. We choose to remain faithful

to the Fifth Amendment and the *Quarles* analysis. Defendant was subjected to a custodial interrogation, but the *Quarles* public safety exception applied. The district court did not err by admitting Defendant’s statement in this case.

A. Standard of Review

{11} “Appellate review of a district court’s decision regarding a motion to suppress evidence involves mixed questions of fact and law.” *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. “The trial court’s denial of a motion to suppress will not be disturbed on appeal if it is supported by substantial evidence, unless it also appears that the determination was incorrectly premised.” *State v. Jacobs*, 2000-NMSC-026, ¶ 34, 129 N.M. 448, 10 P.3d 127; accord *State v. Trangucci*, 1990-NMCA-009, ¶ 13, 110 N.M. 385, 796 P.2d 606. This Court reviews the application of the law de novo but views the evidence in the light most favorable to the state. *State v. Ochoa*, 2004-NMSC-023, ¶ 5, 135 N.M. 781, 93 P.3d 1286. “Whether facts support an exception to the *Miranda* requirement is a question of law.” *United States v. Lackey*, 334 F.3d 1224, 1226 (10th Cir. 2003).

B. The Officer’s Question Subjected Defendant to Custodial Interrogation

{12} “Prior to any [custodial interrogation, a] person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). This Court has stated, “The federal and state constitutional provisions [protect] against self-incrimination and require, at a minimum, that before any individual may be subjected to custodial interrogation, the individual must be made aware of various rights the courts have established to aid in protecting the right to be free from self-incrimination.” *State v. Rivas*, 2017-NMSC-022, ¶ 27, 398 P.3d 299; see generally *Miranda*, 384 U.S. at 478-79. If a defendant is subjected to custodial interrogation without being advised of the right to remain silent, a presumption of coercion arises. See *United States v. Patane*, 542 U.S. 630, 631 (2004) (“[T]he *Miranda* rule creates a presumption of coercion in custodial interrogations, in the absence of specific warnings, that is generally irrebuttable for purposes of the prosecution’s case in chief.”).

{13} However, the *Miranda* rule is “only applicable when (1) the suspect is in ‘custody,’ and (2) any ‘questioning [] meet[s] the legal definition of interrogation.” *United States v. Cash*, 733 F.3d 1264, 1276-77 (10th Cir. 2013) (alterations in original) (quoting *United States v. Benard*, 680 F.3d 1206, 1211 (10th Cir. 2012)). Neither party disputes, and there is no question, that

Defendant was in custody when he was questioned, so what we must determine is whether he was interrogated.

{14} “[I]nterrogation” refers to ‘either express questioning or its functional equivalent’—i.e., ‘words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.’” *Cash*, 733 F.3d at 1277 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980)). For the reasons that follow, we determine that the officer’s question constituted interrogation.

1. The officer’s question was not normally attendant to arrest and custody

{15} Officers received notification through NCIC that there were two outstanding felony warrants for Defendant’s arrest, and they initiated arrest procedures while they confirmed the warrants.

{16} As part of the arrest procedures preceding the physical search, the officers put on protective gloves, and Officer Apodaca asked Defendant, “Is there anything on your person that I should know about?” Officer Apodaca testified that he asked Defendant “as a courtesy” because Officer Apodaca was going to search Defendant. Officer Apodaca also testified that he was concerned that a needle or other sharp object in Defendant’s possession might injure and expose him to bodily fluids or other hazardous materials during the physical search.

{17} The State argues that the officer’s question was “normally attendant to arrest and custody.” This argument is consistent with officer testimony that the question is “routine[ly]” asked of a person the officer is preparing to search and handcuff, “for [officer] safety, as well as the safety of the defendant.” Although we agree that “[n]ot every sentence punctuated by a question mark constitutes an interrogation,” *Cash*, 733 F.3d at 1277, we disagree with the State’s view of the officer’s inquiry given the facts of this case.

{18} Even when a suspect is in custody, not all police questioning constitutes interrogation for purposes of *Miranda*. “[Q]uestions such as ‘what is your name?’ and ‘where do you live?’ will not usually constitute interrogation within the meaning of *Miranda*.” *United States v. Edwards*, 885 F.2d 377, 385 (7th Cir. 1989). These questions are constitutionally permissible because “police routinely ask people for their names and addresses in nonarrest situations—in order to ascertain the identity and residence of witnesses, as well as to dispel (or confirm) suspicions aroused by unusual behavior—where it is clear that *Miranda* warnings are not required.” *Id.* (citing *California v. Byers*, 402 U.S. 424 (1971)).

{19} Limited police questioning focused on procedural matters is not interrogation if the questions are not directed at obtaining evidence of a crime. In *Pennsylvania v. Muniz*, the United States Supreme Court concluded that “limited and carefully worded inquiries as to whether [the defendant] understood” instructions on how to perform a sobriety test were “necessarily attendant to the police procedure held by the court to be legitimate.” 496 U.S. 582, 603-04 (1990).

{20} We emphasize that the context matters for purposes of determining whether police have subjected a suspect to interrogation without warning. “There is a routine booking question exception to the *Miranda* rule that covers a person’s name, address, height, weight, eye color, date of birth, and current age.” *United States v. Virgen-Moreno*, 265 F.3d 276, 293 (5th Cir. 2001). “Nevertheless, questions designed to elicit incriminatory admissions are not covered under the routine booking exception.” *Id.*

{21} An officer is not permitted to transform a question that constitutes interrogation into a question normally attendant to arrest and custody by simply making it a policy to ask specific questions during the process of custody or arrest. See *Muniz*, 496 U.S. at 602 n.14 (“[T]he police may not ask questions, even during booking, that are designed to elicit incriminatory admissions.” (emphasis added) (citation omitted)). Such a “question-first” strategy is constitutionally repugnant because it undermines the policy established by *Miranda* to safeguard a defendant’s Fifth Amendment protection against self-incrimination. See *Missouri v. Seibert*, 542 U.S. 600, 611 (2004) (“The object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed.”). The minority analysis would produce the same result for which the State essentially advocates, the adoption of a policy that would permit a question-first strategy so long as the officer did not subjectively seek to elicit incriminatory admissions. We will not condone such conduct.

{22} The question in this case was not normally attendant to arrest and custody. “Is there anything on your person that I should know about?” was not asked for identification purposes and was not narrowly focused on police procedure. It was much broader than the officer’s limited inquiries in *Muniz* directed at the defendant’s understanding of the instructions for the sobriety test. Though the State argues that officers routinely ask this question when initiating an arrest and search of a suspect, our inquiry cannot end there. See *Muniz*, 496 U.S. at 602 n.14. (“[R]ecognizing a

‘booking exception’ to *Miranda* does not mean, of course, that any question asked during the booking process falls within that exception.” (citation omitted)). Seemingly innocuous questions that call for an incriminating response may not be normally attendant to arrest and custody when viewed in context. We must consider the context of the questioning and the content of the question to determine whether the question was reasonably likely to elicit an incriminating response.

2. The officer’s question was reasonably likely to elicit an incriminating response

{23} “Interrogation occurs when an officer subjects an individual to questioning or circumstances which the officer knows or should know are reasonably likely to elicit incriminating responses.” *State v. Fekete*, 1995-NMSC-049, ¶ 41, 120 N.M. 290, 901 P.2d 708 (internal quotation marks and citation omitted). The officer’s subjective intent (e.g., concern for the officer’s own safety) is not determinative because this “is an ‘objective [inquiry,] . . . and we focus on the perceptions of a reasonable person in the suspect’s position rather than the intent of the investigating officer.” *United States v. Yepa*, 862 F.3d 1252, 1257 (10th Cir. 2017) (alteration and omission in original) (quoting *Cash*, 733 F.3d at 1277).

{24} Questions directed at establishing an element of a crime constitute interrogation because they are “reasonably likely to elicit an incriminating response.” See *United States v. Disla*, 805 F.2d 1340, 1347 (9th Cir. 1986). In *Disla*, officers discovered cocaine and cash in an apartment and developed a suspicion that the defendant resided there when they observed him approaching the apartment building. *Id.* Based on “both the context of the questioning and the content of the question,” the Ninth Circuit concluded that the defendant was subjected to interrogation, because “the question as to where [the defendant] lived was related to an element (possession) of the crime.” *Id.*

{25} Similarly, in *United States v. Perdue*, the Tenth Circuit concluded that the question “‘What stuff?’” was interrogation when officers, with guns drawn, detained an arrestee who was lying on the ground upon order of the officers. 8 F.3d 1455, 1458-59, 1465 (10th Cir. 1993). The arrestee replied, “‘The marijuana that I know you guys found in the shed.’” *Id.* at 1459. In *Harryman v. Estelle*, the Fifth Circuit concluded that an arrestee was subjected to interrogation when an officer, aware of drug paraphernalia found in the arrestee’s motel room, asked “‘What is this?’” when he found a condom containing white powder in the arrestee’s waistband. 616 F.2d 870, 873 (5th Cir. 1980). The arrestee responded, “‘Oh, you know what it is. It is

heroin.’” *Id.* The instant case is analogous to these two cases because the officer’s question in each of the three was reasonably likely to elicit an incriminating statement establishing knowledge or possession of drugs.

{26} The State argues that the question was not reasonably likely to elicit an incriminating response because the question was not “part of any investigation into whether [Defendant] possessed a controlled substance.” Again the State’s argument advocates for this Court to abandon the objective test and construct a subjective test based on the subjective belief or intent of the officer who “could not have known [the question] was reasonably likely to elicit an incriminating response . . .” (Emphasis added.) We see no reason to change the inquiry to incorporate a subjective standard. As we have previously stated, the test is objective. *State v. Fekete*, 1995-NMSC-049, ¶ 41. Defendant correctly pointed out at oral argument that if an arrestee possesses contraband or other evidence on the arrestee’s person and an officer asks the arrestee, “Do you have anything else on you that I should know about?,” not only is the question reasonably likely to elicit an incriminating response, but the response is necessarily incriminating if the arrestee is truthful.

{27} The minority asserts, “Federal case law confirms that questions falling within the public safety exception do not and cannot constitute interrogation.” *Min. Op.* ¶ 57 (citing as examples *United States v. Reyes*, 353 F.3d 148, 154 (2d Cir. 2003); *United States v. DeSantis*, 870 F.2d 536, 541 (9th Cir. 1989); and *Lackey*, 334 F.3d at 1228). The minority fails to appreciate that exempting public safety questions from the definition of interrogation would nullify the requirement that exigent circumstances justify suspending the requirements *Miranda* imposes. *Quarles*, 467 U.S. at 658 (stating that “in each case” the exception “will be circumscribed by the exigency which justifies it”). Instead, the minority would hold that any question that could be related to officer or public safety could never compel an incriminating statement. Federal precedent, including the precedent cited by the minority, does not grant law enforcement such broad latitude and sweeping authority. See *Quarles*, 467 U.S. at 655, 658 (holding that even though a defendant was subjected to custodial interrogations “there is a ‘public safety’ exception to the requirement that *Miranda* warnings be given” that must be justified by exigent circumstances).

{28} For example, *Reyes* acknowledged the legal determination of the federal government that “the officer’s questioning constituted interrogation within the meaning of *Miranda*.” 353 F.3d at 151. In

that case, the “sole contention [was] that the statements should have been admitted under the ‘public safety exception’ to the *Miranda* rule.” *Id. Reyes*, 353 F.3d at 154, applied the policy determination announced in *Quarles* that where law enforcement asks a question that is “necessary to secure [officers’] safety or the safety of the public” and “not solely to elicit testimonial evidence from a suspect,” courts may admit a defendant’s response. *Quarles*, 467 U.S. at 658-59 (emphasis added).

{29} *DeSantis* observed, “The *Quarles* decision does not warrant the conclusion that the ‘public safety’ exception allows the police to obtain involuntary, or coerced, statements in exigent circumstances.” *DeSantis*, 870 F.2d at 540. In adopting a public policy suspending the Fifth Amendment protections against compelling a “person . . . to be a witness against himself,” the United States Supreme Court in *Quarles* “recognize[d] that certain exigencies required the courts to relax rules that act as prophylactic safeguards of the right against compelled self-incrimination.” *DeSantis*, 870 F.2d at 540. Under the totality of the circumstances, the question, “whether there were any weapons in the bedroom,” was incriminating, but an officer had given *DeSantis* his *Miranda* warnings, and the question was not asked solely to elicit testimonial evidence. *Id.* at 537, 539, 541.

{30} Finally, *Lackey* does not analyze interrogation. See *Lackey*, 334 F.3d at 1226-28. *Lackey* necessarily assumed that the defendant was subjected to custodial interrogation and held that “the reasoning of *Quarles* applies squarely to the circumstances here” and “[t]he exception [to *Miranda*] undoubtedly extends to officers’ questions necessary to secure their own safety.” *Id.* at 1227-28 (internal quotation marks and citation omitted). The minority reliance appears to rest on dicta, which postulates that the physical evidence is the actual source of incrimination, not the defendant’s incriminating statement. *Id.* at 1228 (observing that if the search is incident to a lawful arrest, “officers have the right to, and will, search the person of an arrestee”). This reasoning fails to appreciate that both the statement and the physical evidence are incriminating and further assumes that there is a lawful arrest.

{31} We appreciate that the district court found that exigent circumstances and concern for officer safety justified the question in this case, and we agree that *Quarles* applied in this case. However, this Court’s determination, affirming the district court, does not require us to alter, and arguably eviscerate, the definition of interrogation formulated by *Innis*. Defendant was subjected to a question concerning his knowledge of possible contraband that he

possessed, an element directly related to his possession charge. A reasonable person under these circumstances who was in possession of contraband would have perceived three options: lie, say nothing, or tell the incriminating truth. Given these options, the officer’s question in this case reflects “a measure of compulsion above and beyond that inherent in custody” because “the police should know [the question is] reasonably likely to elicit an incriminating response from” Defendant. *Innis*, 446 U.S. at 300-01.

{32} The *Innis* Court observed, “Any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 302 n.8. Because officers knew they were arresting Defendant on felony warrants, and because officers knew they were going to search for and find any contraband on Defendant’s person, the question was tantamount to a demand that Defendant tell the incriminating truth. See *State v. Ybarra*, 1990-NMSC-109, ¶ 15, 111 N.M. 234, 804 P.2d 1053 (determining that interrogation occurred where officers “took advantage” of compelling circumstances that resulted in an arrestee’s incriminating statements even though the officers did not create the circumstances).

{33} The *Widmer* majority adopted the reasoning of the Washington Court of Appeals in *State v. Spotted Elk*, 34 P.3d 906 (Wash. Ct. App. 2001), as part of its interrogation analysis. *Widmer*, 2018-NMCA-035, ¶¶ 20-21. Our analysis does not rely on *Spotted Elk* because it can be read to suggest a shift in the interrogation analysis away from an objective test (focused on the perceptions of a reasonable person in the suspect’s position) toward a subjective test (improperly based on the subjective belief or intent of the officer), which we reject. Reliance on *Spotted Elk* is not required to reach the conclusion that we share with the Court of Appeals that Defendant was subjected to custodial interrogation.

{34} Based on the foregoing, Defendant was subjected to custodial interrogation, and his right to be instructed under *Miranda* attached.

C. The *Quarles* Exception to *Miranda* Applies in This Case

{35} Although we determine that Defendant’s *Miranda* rights attached, we conclude that the *Quarles* public safety exception applies in this case because the question was not asked solely to elicit incriminating testimony. The potential for Defendant having objects on his person that threatened officer safety

“outweigh[ed] the need for the prophylactic rule protecting the Fifth Amendment’s privilege against self-incrimination.” *Quarles*, 467 U.S. at 657 (concluding that the need for answers may outweigh the prophylactic rule).

{36} In *Quarles*, a woman approached two officers on patrol, told them that a man with a gun had just raped her, and gave them a description of the man. *Id.* at 651-52. She also told the officers that the man had entered a nearby supermarket. *Id.* The officers entered the supermarket and spotted the suspect, who attempted to escape. *Id.* at 652. Officers lost sight of the suspect momentarily but apprehended him before he could exit the supermarket. *Id.* When officers searched the suspect, they noticed that he was wearing an empty shoulder holster and asked where the gun was. *Id.* The suspect nodded in the direction of the gun and responded, “The gun is over there.” *Id.* *Quarles* announced a safety exception to the prophylactic requirements of *Miranda* and indicated that it covered public safety and police safety concerns. *Id.* at 658-69 (“We think police officers can and will distinguish almost instinctively between questions necessary to secure *their own safety or the safety of the public* and questions designed solely to elicit testimonial evidence.” (emphasis added)).

{37} *Quarles* applies in a situation where the potential threat is to an officer’s safety. See *Trangucci*, 1990-NMCA-009, ¶¶ 11-12 (“The [United States] Supreme Court has clearly included considerations of police safety within the purview of the public safety exception.”). In *Trangucci*, the Court of Appeals held that the *Quarles* exception distinguishes between questions that are clearly investigatory and those that are objectively reasonable based on a need to protect “from [an] immediate danger.” *Trangucci*, 1990-NMCA-009, ¶ 11 (internal quotation marks and citation omitted). The application of the *Quarles* exception does not turn on whether the risk is to the safety of the general public or only police officers. *Trangucci*, 1990-NMCA-009, ¶ 11; accord *Lackey*, 334 F.3d at 1225-26, 1228 (applying *Quarles* where an officer asked a handcuffed defendant, before a pat down search, if the defendant had any guns or sharp objects on him, and the defendant responded that he did not but said that there was a gun in the car). The *Trangucci* court affirmed the denial of a motion to suppress a defendant’s statement that he had ditched a gun in response to the question “‘Where is the gun?’” *Id.* ¶¶ 5, 13. The defendant made the statement while being searched, after officers pulled the defendant out from under a dresser in a motel room before they located the gun that the defendant was suspected of using. *Id.* ¶¶ 3-5.

{38} In this case, the fact that the question did not use terms such as “sharp objects” or “weapons” specifically does not bar the application of the *Quarles* safety exception. We acknowledge that the officer’s questioning was not ideal, and as Defendant points out, the answer to any question asked concerning what Defendant had on his person was potentially incriminating. But “[t]his type of question is logical and important to permit” because in addition to concerns about weapons a suspect could use against an officer during a search, “sharp and bio-hazardous objects pose a great risk to officers regardless of any action by the suspect.” *United States v. Hernandez*, 751 F.3d 538, 541 (7th Cir. 2014).

{39} An officer should not be expected to craft a perfect question in the heat of the moment, and a broad question that may elicit information other than specific safety concerns does not bar the application of the *Quarles* exception. See *United States v. Williams*, 181 F.3d 945, 953 n.13 (8th Cir. 1999) (“[C]onditioning admissibility of evidence under the public safety exception on an officer’s ability to ask questions in a specific form would run counter to the *Quarles* Court’s decision that an officer may forgo announcement of *Miranda* warnings when public safety is threatened.”); see also *United States v. Estrada*, 430 F.3d 606, 612 (2nd Cir. 2005) (“Thus, a question that plainly encompasses safety concerns, but is broad enough to elicit other information, does not necessarily prevent application of the public safety exception when safety is at issue and context makes clear that the question primarily involves safety.”). Here, as the Court of Appeals minority opinion points out, the district court determined that in conjunction with his search, the officer donned protective “gloves as one precaution against the possibility of sharp objects such as needles.” *Widmer*, 2018-NMCA-035, ¶ 45 (Hanisee, J., dissenting). The question was a second precaution. We conclude that the officer limited the inquiry to items on Defendant’s person including potentially hazardous items that could affect officer safety. Thus, we affirm the district court’s determination that the *Quarles* exception applies.

{40} This Court acknowledges that reasonable people may disagree. In support of suppressing the physical evidence, the *Widmer* majority concluded that the “narrow” public safety exception did not apply and that the question must be “focused . . . [and] necessary to ensure the safety of the officer when there is an objective, immediate threat to the safety of the officer.” *Widmer*, 2018-NMCA-035, ¶¶ 29-30. Respectfully, this Court believes that the better application of the public

safety exception aligns with those courts that do not apply such a narrow reading of the *Quarles* exception.

D. We Vacate the Court of Appeals Opinion and Remand for Further Proceedings

{41} Officers subjected Defendant to custodial interrogation, and *Miranda* warnings generally would be required. See *State v. Nieto*, 2000-NMSC-031, ¶ 20, 129 N.M. 688, 12 P.3d 442 (observing that a suspect’s *Miranda* rights attach when the suspect is subjected to custodial interrogation). However, in this case, the *Quarles* exception lifted the prophylactic rule requiring *Miranda* warnings. *Trangucci*, 1990-NMCA-009, ¶ 12 (observing that officer safety is encompassed within the public safety exception). The district court did not err in admitting Defendant’s statement, “I have meth.” We therefore do not reach the Court of Appeals determination that the physical evidence should have been suppressed as fruit of the poisonous tree subsequent to a *Miranda* violation because the *Quarles* public safety exception permitted the interrogation at issue.

{42} Based on our holding, we are not required to and do not reach the question whether the Court of Appeals properly applied the fruit of the poisonous tree doctrine to suppress the physical evidence. We simply note that federal case law may not support such an application of the doctrine. See *Quarles*, 467 U.S. at 659-60 (admitting both the defendant’s response to an officer’s question asked before giving *Miranda* warnings and the physical evidence); see also *id.* at 667-72 (O’Connor, J., concurring in the judgment in part and dissenting in part) (reasoning that suppression of the physical evidence is not proper and observing that “whatever case can be made for suppression [of statements made during custodial interrogation without Fifth Amendment instruction] evaporates when the statements themselves are not admitted”).

{43} As the ultimate arbiter of the New Mexico Constitution, it is our duty to observe that Defendant failed to raise and argue whether the fruit of the poisonous tree doctrine should apply to physical evidence discovered subsequent to a violation of the right to instruction under Article II, Section 15 of the New Mexico Constitution. See *State v. Gomez*, 1997-NMSC-006, ¶¶ 22-23, 122 N.M. 777, 932 P.2d 1 (providing guidance on the interstitial approach and preservation of questions when broader protection may be available under the state constitution). As former Associate Justice William J. Brennan, Jr., of the United States Supreme Court wrote:

[D]ecisions of the [United States Supreme] Court are not, and should not be, dispositive of ques-

tions regarding rights guaranteed by counterpart provisions of state law. Accordingly, such decisions are not mechanically applicable to state law issues, and state court judges and the members of the bar seriously err if they so treat them.

Brennan, William J., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 502 (1977) (footnote omitted). We agree that the dual nature of our federalism requires robust scrutiny of constitutional decisions of federal courts by state courts and scrutiny of “state-granted rights that state courts can safeguard,” *id.* at 502-03, and so remind practitioners to raise state constitutional issues where appropriate.

III. CONCLUSION

{44} For the foregoing reasons, we conclude that the *Quarles* public safety exception applied to the officer’s question in this case. Accordingly, we vacate the Court of Appeals opinion and remand to the Court of Appeals for further proceedings consistent with this opinion.

{45} IT IS SO ORDERED.
DAVID K. THOMSON, Justice

WE CONCUR:
BARBARA J. VIGIL, Justice
C. SHANNON BACON, Justice
JAMES T. MARTIN, Judge,
Sitting by designation

NAKAMURA, Chief Justice (concurring in part, dissenting in part).

{46} First, while I concur that the question Officer Apodaca asked Widmer falls within the public safety exception identified in *Quarles* and agree that it does so for the reasons articulated in the majority opinion, see *Maj. Op.* ¶¶ 38-39, I do not concur that the question constitutes “interrogation” as that term is used in *Miranda*. *Maj. Op.* ¶ 34. If the question Officer Apodaca asked Widmer falls within the public safety exception, it cannot be interrogation. Second, the majority has not given adequate deference to the district court’s assessment of the facts. Rather, the majority applied the law to the facts as it found them. The Court of Appeals’ majority similarly did not defer to the district court about fact matters and incorrectly embraced facts and inferences in direct opposition to the district court’s resolution of this case. See *Widmer*, 2018-NMCA-035, ¶ 29.

I. PUBLIC SAFETY EXCEPTION AND INTERROGATION

{47} If we ask what the public safety exception is an exception to, the answer is that it is an exception to the requirement that police must *Mirandize* criminal sus-

pects before asking them certain questions, i.e., those focused on public safety. *Quarles* expressly holds that police officers need not Mirandize an accused before asking questions designed to protect public safety. 467 U.S. at 655-56. The basic thought at work here is that *Miranda* is not concerned with and has no effect on questions designed to secure public safety. *Id.* at 656-58. At the core of this thought is a policy choice: The United States Supreme Court decided that the Fifth Amendment shall not operate in such a way that it jeopardizes public safety. *Id.* at 657-58.

{48} Secondary authorities uniformly confirm what is apparent from the language of *Quarles* itself: the public safety exception is an exception to “the requirement that *Miranda* warnings be given.” 2 Wayne R. LaFave et al., *Criminal Procedure*, § 6.7(b), at 859 (4th ed. 2015) (emphasis added) (quoting *Quarles*, 467 U.S. at 655); 2 Joseph G. Cook, *Constitutional Rights of the Accused*, § 6:33, at 6-220 (3d ed. 1996) (stating that *Quarles* “recognized a public safety exception to the requirement of *Miranda* warnings”); 3 Nancy Hollander et al., *Wharton’s Criminal Procedure*, § 19:8, at 19-33-35 (14th ed. 2017) (observing that *Quarles* created a public safety exception to the requirement that *Miranda* warnings be given); 4 Mark S. Rhodes, *Orfield’s Criminal Procedure Under the Federal Rules*, § 26:507, at 171-72 n.15 (2d ed. 1987) (observing that *Quarles* created a “[p]ublic safety exception to the *Miranda* warning requirement”); 2 David S. Rudstein et al., *Criminal Constitutional Law*, § 4.02A, at 4-98 (Matthew Bender 2019) (“So long as the officers ask questions that are reasonably prompted by a concern for the public safety, *Miranda* warnings are not required.” (internal quotation marks and citation omitted)).

{49} Because the public safety exception is an exception to the requirement that *Miranda* warnings be given at all, questions permissibly and properly asked for public safety cannot constitute interrogation as understood by *Miranda*. If this were not so and properly posed public safety questions could constitute “interrogation,” then such questions posed to a suspect in custody could produce a *Miranda* violation. Indeed, the majority in this case holds that Widmer was in custody and subject to interrogation such that his *Miranda* right “attached.” *Maj. Op.* ¶ 34. In subsequent paragraphs, the majority writes that “the *Quarles* exception lifted the prophylactic rule requiring *Miranda* warnings.” *Maj. Op.* ¶ 41. They conclude that “suppression of a defendant’s statements or responses . . . is not required if the *Quarles* public safety exception applies.” *Maj. Op.* ¶ 7. This is incorrect.

{50} The focus of the *Quarles* exception is not suppression. *Quarles* eliminates the requirement that *Miranda* warnings be given. Thus, the majority does not properly conceptualize how the *Quarles* exception functions.

{51} Unfortunately, our case law also has not correctly grasped the effect of the public safety exception as it is described in *Quarles*. In *State v. Cooper*, this Court explained that “[u]nder certain circumstances, such as the ‘public safety’ exception recognized in . . . *Quarles*, 467 U.S. [at] 655-60 . . . a statement taken in violation of *Miranda* may be admissible.” 1997-NMSC-058, ¶ 41, 124 N.M. 277, 949 P.2d 660. *Cooper* misstates the law. Proper public safety questions cannot violate *Miranda* because there is no requirement to Mirandize the accused before asking proper public safety questions.

{52} The cases and treatises discussing *Quarles* and how the public safety exception was incorporated into Fifth Amendment doctrine do not describe the exception as “lifting” an “attached” right. As noted, those authorities uniformly indicate that *Miranda* has no effect on an officer’s authority to ask public safety questions. The basic point here is that no right “attaches” when these questions are asked and, thus, *Quarles* does not “lift” that right or eliminate the need for suppression. Put most simply, a thing not subject to a term can never be construed as violating that term.

{53} Having said all of this, it is still possible to ask why it must be true that properly posed public safety questions cannot constitute interrogation. The answer to this question is that proper public safety questions are not designed to elicit incriminating statements.

{54} Consider *Quarles*. There can be no doubt that when Mr. Quarles was asked “Where is the gun?” his decision to supply an answer was damning. After all, he was charged with criminal possession of a weapon. *Quarles*, 467 U.S. at 651. The question “Where is the gun?” was undoubtedly a form of direct-police questioning bearing on an element of the crime with which Mr. Quarles was charged. Justice Marshall made this very point in his dissent and claimed that the majority’s approach effectively eviscerated *Miranda*. See, e.g., *id.* at 675 (Marshall, J., dissenting). In the end, however, it appears it did not matter to the majority that the question asked was a form of direct questioning bearing on an element of Mr. Quarles’ crime. The Court decided that the Fifth Amendment could not be construed in such a way that it jeopardized public safety and, therefore, it was not necessary to Mirandize Mr. Quarles before asking him “Where is the gun?” Despite Marshall’s

protest, this was not some momentous departure from an unbending principle.

{55} It is settled that “[n]ot all express questioning by the police is considered interrogation under *Miranda* and *Innis*.” Rudstein, *supra*, § 4.02[3][b], at 4-60. Routine booking questions are not interrogation. *Id.* Similarly, “[r]outine questions asked at bail hearings are generally not viewed as ‘interrogation.’” Hollander, *supra*, § 19:8, at 19-30-31. “General background questions such as name, address, age, and occupation are not usually viewed as interrogation. . . .” Cook, *supra*, § 6:32, at 6200-01. “Requesting a driver’s license or other permit is not considered interrogation[.]” *Id.* at 6-206. “Conversations where the defendant responds to being informed about the charge have been held not to constitute interrogation.” Rudstein, *supra*, § 4.02[3][b], at 4-63. Asking a defendant to perform field sobriety tests is not interrogation even if the physical and verbal responses the defendant gives incriminate him. LaFave, *supra*, § 6.7(c), at 875. If the reader has detected a pattern this is the intended effect. The *Quarles* public safety exception identifies a type of police questioning that is also not interrogation.

{56} This point is most obvious given *Quarles*’ observations that “police officers can and will distinguish almost instinctively between [1] questions necessary to secure their own safety or the safety of the public and [2] questions designed solely to elicit testimonial evidence from a suspect.” 467 U.S. at 658-59. The clear implication of this observation is that questions posed for public safety are not designed to elicit incriminating statements from a suspect.

{57} Federal case law confirms that questions falling within the public safety exception do not and cannot constitute interrogation. See, e.g., *Reyes*, 353 F.3d at 154 (“We are likewise persuaded that the arresting officer’s questions were sufficiently limited in scope and were not posed to elicit incriminating evidence. . . . The questions that the officer asked Reyes concerned the presence of dangerous objects on Reyes’ person.” (citations omitted)); *DeSantis*, 870 F.2d at 541 (“Viewing the totality of the circumstances in the present case, the inspectors cannot be said to have coerced DeSantis into revealing that there was a gun in the bedroom. . . . [V]iewed objectively, Martino’s question was not intended to elicit testimonial evidence, but rather to secure the inspectors’ own protection.”); *Lackey*, 334 F.3d at 1228 (“The purpose of the question ‘Do you have any guns or sharp objects on you?’ is not to acquire incriminating evidence; it is solely to protect the officers, as well as the arrestee, from physical injury. Thus, in this context requiring *Miranda* warnings

does precious little to protect the arrestee's privilege against self-incrimination." (emphasis omitted)).

{58} The validity of the view that public safety questions are not interrogation is also apparent given the clear inconsistency in the majority opinion. The majority cannot simultaneously hold that the question Officer Apodaca asked Widmer was "limited . . . to items on [Widmer's] person including potentially hazardous items that could affect officer safety" and hold that Officer Apodaca's question was "reasonably likely to elicit [from Widmer] an incriminating statement establishing knowledge or possession of drugs." Compare *Maj. Op.* ¶ 39 with *id.* ¶ 25. Officer Apodaca's question was either asked for his safety or it was asked to elicit an incriminating response from Widmer. It cannot be for both. And what is most troublesome about this inconsistency is that, in the wake of this opinion, officers will be unable to discern what, exactly, they can and cannot permissibly ask an arrestee before searching them. Officers may feel obligated to jeopardize their own safety for concern that a safety question might be deemed constitutionally inappropriate interrogation.

II. THE DISTRICT COURT'S

FACTUAL DETERMINATIONS

{59} The majority correctly determines as a matter of law that the question Officer Apodaca asked Widmer cannot be categorically excluded as a permissible public safety question merely because the question was poorly worded. *Maj. Op.* ¶¶ 38-40. The majority also correctly concludes as a matter of law that the officers' concerns with protecting themselves from "weapons" or "sharp and bio-hazardous objects" potentially within an arrestee's clothes or on their body is a safety concern *Quarles* was certainly meant to address. *Maj. Op.* ¶ 38. What is absent from the majority's analysis, however, is how the

district court's findings, and the inferences supporting those findings factor into its resolution of this case.

{60} The facts are undisputed. Officer Apodaca stated that, immediately prior to asking Widmer whether he had anything on his person Officer Apodaca needed to know about, both officers were in the process of donning protective gloves. Officer Apodaca explained that they don these gloves when searching arrestees to protect themselves from any unknown and potentially dangerous items arrestees might have in their pockets or otherwise on their person. The district court must have credited this testimony when it decided that the question Officer Apodaca asked was asked "for the purpose of finding out whether or not there were weapons on [Widmer] or something that could harm [the officers]."

{61} This fact determination necessarily required the district court to assess the credibility of the two officers, to evaluate the coherence of their explanation as to why they did what they did, and to bring to bear normative considerations about what constitutes appropriate police conduct given the community in which these events transpired. Of course, the district court could have resolved this matter in favor of Widmer. It could have decided, as a fact matter, that the question Officer Apodaca asked was not asked for legitimate safety concerns but was an attempt, or ruse, to elicit an incriminating response. It did not.

{62} The question we must ask and answer on appeal is whether the district court correctly applied the law to the facts *as it found them*. There is undoubtedly overlap between the fact determinations the district court made and the legal questions we must ask and answer on appeal, but this overlap does not make the district court's factual determinations irrelevant. In fact, the district court's fact determinations are all but dispositive in this case.

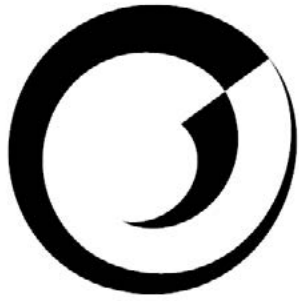
{63} The twin legal conclusions that officers are not expected to ask perfect questions and that they are justified in asking arrestees whether they have weapons or other dangerous items in their clothing or on their persons are common sense conclusions that are neither novel nor controversial. This case really turns on the fact that the district court believed the officers and the explanations they provided for their conduct.

{64} Attention must be given to the district court's factual determinations for an additional reason. The Court of Appeals' majority opinion claims that "[t]he officers expressed no concern of any kind" that their interactions with Widmer "posed a danger to their safety." *Widmer*, 2018-NMCA-035, ¶ 29. The Court of Appeals went on to state that Officer Apodaca "did not say" that Widmer might have something on his person that could harm Officer Apodaca. *Id.* This is not a fair account of the officers' testimony.

{65} Officer Apodaca testified that officers routinely ask the individuals they search if they might encounter dangerous objects during the search. This concern is self-evidently reasonable. It is impossible to foresee what members of our society might be carrying in the pockets of their clothing. It is even less clear what the individuals police officers routinely interact with—those involved in the drug trade or who have committed crimes—might have in their pockets. Officer Apodaca was not expected to know with certainty what was in Widmer's pockets before asking him questions designed to ensure Officer Apodaca did not harm himself during the search. To expect otherwise is unreasonable.

{66} For all of these reasons, I respectfully dissent in part.

JUDITH K. NAKAMURA, Chief Justice



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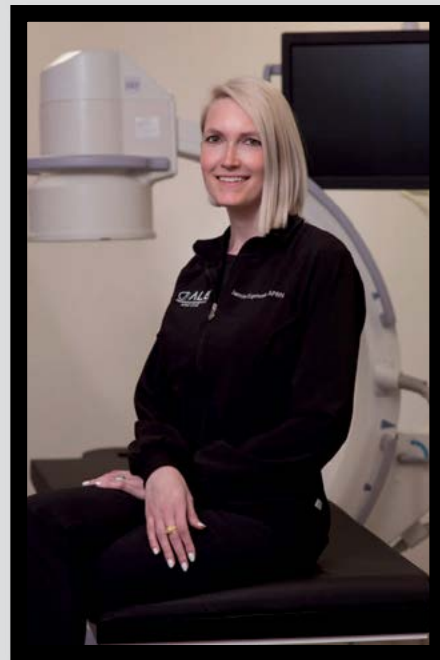
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Kathleen Wilson, Esq. Hinkle Shanor, LLP.

Kathleen Wilson is a partner at Hinkle Shanor LLP and is the Managing Partner of the Firm's Albuquerque office. Her practice is primarily devoted to defending healthcare liability cases in litigation and at trial. She is a former President of the New Mexico Defense Lawyers Association and of the New Mexico Chapter of the American Board of Trial Advocates. We are proud of Kathleen and congratulate her for this well-deserved honor.



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YLAW is thrilled to announce Carolyn Ramos and Brett Eaton have joined the firm.



Carolyn comes to YLAW with over 20 years of experience in defending trucking and transportation, sports and recreation, product liability and other catastrophic personal injury cases. She earned the preeminent AV rating from Martindale-Hubbell, has been recognized by Best Lawyers in America, is a Southwest Super Lawyer and NMDLA's 2018 Defense Lawyer of the Year.

Brett, a 2012 graduate of the UNM School of Law, will continue his diverse practice in trucking and transportation, retail litigation, product liability, governmental liability and civil rights. In 2019, Brett was recognized by his peers as NMDLA's Young Lawyer of the Year. He looks forward to building his practice with YLAW.



With the arrival of these exceptional attorneys, YLAW is bursting at the seams. We are so proud Carolyn and Brett have chosen to make YLAW their home.

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State Bar of New Mexico
Senior Lawyers Division

2021 Attorney In Memoriam Recognition

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

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Positions

Senior Trial Attorney

Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Torrance County (Estancia). Estancia is less than an hour drive from Albuquerque. Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Will also have full benefits and excellent retirement plan. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmaldin@da.state.nm.us .

Associate Attorney

Multi-state firm with an Albuquerque office is seeking an associate attorney with 3 or more years' experience, to represent lenders in a residential mortgage foreclosure practice. We seek a candidate who has experience with foreclosure, bankruptcy and civil litigation. Please send a letter of interest, salary range, and resume if interested to kbradley@tblaw.com and mmh@tblaw.com or Tiffany & Bosco, P.A., 1700 Louisiana Blvd. NE, Abq, NM 87110.

Attorney

Allen, Shepherd, & Lewis, P.A. is seeking an attorney with 2-4 years of litigation experience to join our firm. Experience in worker's compensation, construction defects, professional malpractice or personal injury preferred. Must be licensed in New Mexico or obtain New Mexico license. Candidates considered for a position must have excellent oral and written communication skills. Available position is considered regular and full time. Please send resume with cover letter, unofficial transcript, writing sample and salary requirements to Allen, Shepherd, & Lewis, P.A. Attn: Human Resources, P.O. Box 94750, Albuquerque, NM 87199-4750 or email to hr@allenlawnm.com. All replies will be kept confidential. Our firm values integrity and a strong work ethic. Our firm values an inclusive workplace to serve our diverse client needs. Our firm is an equal opportunity employer and welcome applications from all candidates who meet our stated hiring preferences.

Assistant Trial Attorney

Assistant Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Sierra County (Truth of Consequences). Truth of Consequences is a short one hour drive from Las Cruces. Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Will also have full benefits and excellent retirement plan. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmaldin@da.state.nm.us .

Attorney

The New Mexico Finance Authority (NMFA) in Santa Fe seeks to hire a hard-working, self-motivated, full-time Attorney with at least 5 years of experience to work with the Commercial Lending group. Under the direction of the Chief Legal Officer, this position is responsible for providing professional, timely and competent legal services to the NMFA. Concentration areas include, but are not limited to: representing the NMFA in the negotiation, documentation and closing of secured and unsecured loan transactions; analysis of UCC and real property collateral issues; experience in commercial finance, lending and incentive programs; familiarly with creditor's rights and bankruptcy matters; loan loss issues and underwriting; familiarity with open meetings, public records and similar transparency statutes; experience in legislative research and statutory interpretation. The NMFA is a government instrumentality whose mission is to advance New Mexico by financing impactful, well-planned projects. The ideal candidate must be licensed to practice law in New Mexico; must have excellent legal writing, research, and oral communication skills, excellent organizational and prioritizing abilities. Business and Corporate Law highly preferred. Must have the ability to use initiative and good judgement in working independently as well as in a team. Must be able to perform all duties with minimal supervision. The successful candidate must demonstrate exceptional analysis skills and the ability to communicate the results to a variety of audiences. Ability to balance multiple projects and competing priorities in a fast-paced environment is required. Submit resumes to Chief Administrative Officer, New Mexico Finance Authority, 207 Shelby St., Santa Fe, NM 87501 or e-mail to dcdebaca@nmfa.net Salary: \$50-55/hr.

Attorney Senior (Position #43808) Civil Court (FT At-Will)

The Second Judicial District Court is accepting applications for an At-Will Attorney Senior in Civil Court. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and five (5) years' of experience in the practice of civil law. The Attorney Senior will be assigned to the Elder and Disability Court Initiative. The attorney can expect to perform research and writing, conduct training, be appointed as a Court Investigator to conduct investigations and hearings and to work with Judges and court staff on the continued development of the Initiative. Experience handling guardianship/conservatorship issues under the probate code, working knowledge of the Developmentally Disabled Waiver Program and Social Security Disability Income and accounting skills are preferred. SALARY: \$30,995 to \$50,367 hourly, plus benefits. Target Pay: \$40,975. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested on the employment application will be rejected. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSES: May 19, 2021, at 5:00 p.m.

Senior Assistant City Attorney

Fulltime regular, exempt position that represents the City in municipal court prosecutions, administrative hearings, and appeals in District Court. Provides legal assessments and recommendations; conducts factual and legal analysis to determine whether legal issues should be prosecuted or defended based on the facts of law and evidence. Juris Doctor Degree AND three year's experience in a civil law practice; at least one year of public law experience preferred. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico, and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at www.las-cruces.org. Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed. SALARY: \$73,957.99 - \$110,936.99 / Annually OPENING DATE: 05/11/20 CLOSING DATE: Continuous

Litigation Attorney

Robles, Rael & Anaya, P.C. is seeking an attorney with experience (5-7 years) in civil litigation. The successful candidate should be familiar with the law regarding governmental liability and be able to advise insurance and risk management agencies. Candidates are expected to have excellent communication skills (written and oral), be a self-starter who takes ownership of executing tasks, have an ability to manage and prioritize assigned case-load and be an effective team player. We offer a competitive compensation and benefits package, 401k plan, professional development, CLE credits and more. We also offer a defined bonus incentive program. Please submit a resume and writing sample to chelsea@roblesrael.com.

Assistant City Attorney

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

Associate Attorney

Associate Attorney, with 2-5 years of experience, wanted for hard-working, well established, civil litigation defense firm. Great opportunity to grow and share your talent. Salary DOE, great benefits incl. health, dental & life ins. and 401K match. Inquiries kept confidential. Please email your resume to kayserk@civerolo.com, or mail to Civerolo, Gralow & Hill, PA, PO Box 93940, Albuquerque NM 87199.

Director of Litigation

DNA-People's Legal Services is a non-profit law firm providing high quality legal services to persons living in poverty on the Navajo, Hopi, and Jicarilla Apache Nations, and in parts of Northern Arizona, Northwest New Mexico, and Southern Utah. DNA is seeking to hire an experienced Director of Litigation. Applicants must have ten years of legal practice experience in a Legal Services Corporation or similarly funded non-profit civil legal aid program; and five (5) years legal supervision experience. Applicant must be licensed to practice law in Arizona, New Mexico, or Utah, or be able to obtain a state license to practice law in one of these jurisdictions within two (2) years of hiring. Applicant must also possess a Navajo, Hopi, or Jicarilla tribal court license, or the ability to obtain a tribal court law license in one of these jurisdictions within two (2) years. Applicant must also be admitted to practice law in at least one Federal District or Federal Appellate Court; or be able to gain admittance to a Federal District or Appellate Court located in the DNA service area within two years. Please contact DNA Human Resources for additional information including a job description and a complete listing of minimum job qualifications. We provide excellent benefits, including full health insurance, dental and vision, generous paid holidays, vacation, and sick leave. Please send employment application found at <https://dnalegalservices.org/>, resume, cover letter, and other application materials to HResources@dnalegalservices.org or fax to 928.871.5036.

Associate Attorneys

Mynatt Martínez Springer P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking associate attorneys with 0-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pre-trial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@mmslawpc.com.

Associate Lawyer - Litigation

Sutin, Thayer & Browne is looking to hire a full-time associate for our Litigation Group. The successful candidate must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Send letter of interest, resume, and writing sample to sor@sutinfirm.com.

Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office, Gallup, New Mexico is seeking qualified applicants for an Assistant Trial Attorney and a Senior Trial Attorney position. Senior Trial Attorney position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; computer skills; audio-visual and office systems; ability to work effectively with other criminal justice agencies; ability to communicate effectively; ability to research/analyze information and situations. Must be New Mexico Licensed. Assistant Trial Attorney position is an entry level position and requires basic knowledge and skills in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations, ability to draft legal documents; ability to work effectively with other criminal justice agencies. Must have a JD degree and be New Mexico Licensed. The McKinley County District Attorney's Office provides regular courtroom practice and a supportive and collegial work environment. Salary is negotiable. Submit letter of interest and resume to District Attorney Bernadine Martin, Office of the District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us. Position to commence immediately and will remain opened until filled.

Trial Attorney

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

Real Estate Attorney

Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for an attorney with 3-7 years' experience in real estate matters for our Albuquerque office. Experience in land use, natural resources, water law, environmental law and/or other real estate related practice areas a plus. Prefer New Mexico practitioner with strong academic credentials and broad real estate background. Firm offers excellent benefit package. Salary commensurate with experience. Please send indication of interest and resume to Adrian Salazar, via e-mail to hr@rodey.com with "Real Estate Attorney" in the subject line, or P.O. Box 1888, Albuquerque, NM 87103. All inquiries kept confidential.

Attorney

Moses, Dunn, Farmer and Tuthill, P.C. seeks an attorney with 1 to 5 years' experience for an associate position. Our firm has a varied civil practice serving clients in areas including business transactions, real estate matters, employment, commercial law, and related litigation. Bankruptcy law experience is a plus. Our firm is an AV Preeminent® rated firm, serving New Mexico clients for more than 65 years. We offer a competitive compensation package. Please send your resume to Alicia L. Gutierrez, P.O. Box 27047, Albuquerque, NM, 87125.

Senior Trial Attorney Trial Attorney

Assistant Trial Attorney

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

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.

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.

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."

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.

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 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.

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.

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 - \$73,251036). Send resumes to Lori Holesinger, HR Administrator, 335 S. Miller Ave., Farmington, NM 87401, or via e-mail lholesinger@da.state.nm.us

New Mexico Counties Litigation Attorney

New Mexico Counties (a non-profit focusing on advocacy for New Mexico counties) is seeking an in-house litigation associate for its legal bureau. The Legal Bureau defends all manner of claims and suits brought against the member counties, with a focus on civil rights and tort claims. This position is a full time salaried position in our Albuquerque office. We offer an excellent benefits package, competitive salary, very reasonable billable hour requirement, a very generous retirement savings plan, and great working environment. Successful candidates will have interest in civil litigation and a desire to be part of a creative and innovative team. If you have questions, please call Brandon Huss at 505-820-8116. Resumes should be emailed to bhuss@nmcountries.org; this position will remain open until filled.

Legal Director

New Mexico Environmental Law Center is seeking a legal director who will support NMELC's mission of working with communities to advance environmental justice across the state. Apply by: May 10, 2021. More information: <https://nmelc.org/employment/>.

2021 Bar Bulletin Publishing and Submission Schedule

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

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

**For more advertising information, contact:
Marcia C. Ulibarri at
505-797-6058 or email
mulibarri@nmbar.org**

Legal Assistant

Modrall Sperling Law Firm has an excellent opportunity for an experienced legal assistant. In this role, you will provide a broad range of legal assistant services to two or more attorneys at one of New Mexico's top law firms. Key Responsibilities: Provide administrative support to attorneys; Handle communications with clients and others; Organize case materials and conduct documentary research; Draft and file legal documents; Manage case calendars; Assist with client billing; Maintain client contacts. Basic Requirements: 3 to 5 years experience as a legal secretary, legal assistant, or paralegal; Knowledge of New Mexico court rules and filing procedures; Strong Word, PDF, Outlook, and calendaring skills; Excellent communication and client service skills; Editing and proofreading skills. This position requires a legal assistant who is self-motivated, detail-oriented, able to multi-task and work under pressure. Modrall Sperling offers an outstanding compensation and benefits package. Please forward your resume to: Susan Harris via email at susanh@modrall.com.

Assistant General Counsel- Water Environment & Natural Resources

Location: Sandia Pueblo, NM. Main Duties: The Assistant General Counsel's responsibilities will cover a wide range of legal matters that would typically confront a tribal general counsel's office, including: providing a diverse range of legal advice to the Pueblo; performing high level legal research and analysis in various areas of law and policy specifically in relation to water and environmental law and policies; and serving as the primary contact and expert for the Pueblo's water and natural resource legal matters, subject to the direction and oversight of the General Counsel. Closing Date: 6/1/2021 or until position filled. Website Link to apply: www.sandiacasino.com/careers

Paralegal Wanted

Experienced personal injury and litigation paralegal wanted for busy Santa Fe law firm, 30-40 hours per week. Salary based on experience. Spanish-speaking a plus. Email resume and writing sample to Danette@hemphillfirm.com.

Paralegal

Work Remotely. Make your own schedule. Macke Law & Policy, LLC is seeking a part-time paralegal to support its busy civil practice. Absurdly flexible work hours and remote work is available. Contract employment is also available. Certification is preferred, but not required. Send cover letter and resume, with salary or hourly requirements, and references, in confidence, to dan@mackelaw.com.

Legal Assistant

We are seeking a legal assistant to work one on one with a litigation attorney/mediator located in downtown Santa Fe, on a part time basis. The successful applicant must meet the following criteria: Previous experience in a similar legal support role, for 3 years or more; Knowledge and familiarity with online filing and service using the Odyssey system; Familiarity with virtual meetings scheduled via Zoom. Mac computer experience will be an advantage. Start date will be in May, with a competitive hourly wage offered. The successful applicant will be engaged as a contractor, and will be required to provide a New Mexico CRS number. All applications will be received in confidence. HireALegalAssistant@gmail.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.

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.

Investigator - Albuquerque 2021-04

The Federal Public Defender for the District of New Mexico is seeking a full time, experienced investigator for the main office in Albuquerque. More than one vacancy may be filled from this announcement. This position is a graded position ranging from a JSP 11-14, currently yielding \$65,056 – 109,571 annually depending on experience. Federal salary and benefits apply. Position Description: An investigator must be able to perform duties and responsibilities such as: conducting interviews to corroborate reports and facts already contained or presented in records, discovery material or various other formats; locating fact witnesses and experts; conducting open ended interviews with witnesses and other sources of information to explore and develop new facts and information; initiating new areas of investigation after being assigned the case and discussing it with the attorney; gathering records; locating, viewing and retrieving tangible evidence, personal property and other relevant items; photographing crime scenes and evidence; maintaining filing and information reference systems; writing comprehensive descriptive reports of work done; and testifying effectively in federal court proceedings. An investigator must have the ability and willingness to accept responsibility, use initiative, ingenuity and resourcefulness. An investigator must be able to work well with a team and also individually. Knowledge of computer applications is required. Working knowledge of the criminal justice system is required. Regular, out-of-town, overnight travel throughout the State of New Mexico is required. An investigator also must perform all other duties as assigned. Qualifications: Applicants must have a high school degree or equivalent and the requisite experience. Qualified applicants must possess a minimum of six years (three years general plus three years specialized) investigative experience or equivalent. Education above the high school level in accredited institutions may be substituted for general experience. Mitigation experience is a plus. Spanish proficiency preferred. Applicants may be given a Spanish proficiency test. The selected candidate will be subject to a background check as a condition of employment. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. ' 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, with three references to: Margaret A. Katze, Federal Public Defender, FDNM-HR@fd.org Reference 2021-04 in the subject. Applications must be received by May 17, 2021. Positions will remain open until filled and are subject to the availability of funding. The Federal Public Defender is an Equal Opportunity Employer. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Social Worker – Mitigation Specialist 2021-05

The Federal Public Defender for the District of New Mexico is accepting applications for the position of Social Worker – Mitigation Specialist. The position will be based in the Las Cruces office, but may assist district-wide. Current starting salary range for a JSP 11-14 is \$64,649 - \$108,885. More than one position may be filled from this posting. The Federal Public Defender operates under the authority of the Criminal Justice Act (CJA), 18 U.S.C. §3006A, to provide defense services for indigent persons in federal criminal cases and related matters in the federal courts. Primary Job Duties: We are looking for applicants with social work training and experience to identify and access resources and services in the community for clients needing mental health and physical health treatment, substance abuse treatment, housing and employment. This position will also assist clients in obtaining needed documents, transportation, social security benefits, and other needs related to re-entering the community after incarceration, to include conditions of release on bond or as alternatives to incarceration. Demonstrated cultural responsiveness required. We are looking for someone with a commitment to working with indigent, under-served, marginalized and diverse communities. A large percentage of our clients are of Native American or Latin American descent. The mitigation aspect of the position will involve taking social histories, gathering and summarizing social history records, conducting interviews with clients and individuals with relevant knowledge about the client's childhood development, education, employment, medical and mental health history. This position will consult with experts, develop and maintain relationships with clients, their family members, local social service providers, pretrial service/probation officers, and other entities to support both the client and the attorney assigned to the case. Position may also require the assistance in the development and presentation of evidence in court proceedings, field investigation, reviewing and analyzing discovery and other case documentation. Applicants must be able to travel as necessary and visit with incarcerated clients. Applicants must possess the ability to work both independently and in a team environment, communicate effectively both orally and in writing, be accurate and attentive to detail, compose correspondence independently, organize work, set priorities and meet critical deadlines. This position may be responsible for supervising social work interns as needed. Other duties as assigned. Qualifications: Applicants must have a bachelor's degree and relevant experience at a minimum. A Bachelor of Social Work (BSW) with 4 years of experience is desired, however a Master of Social Work (MSW) or Master of Science in Social Work (MSSW) with at least 2 years relevant experience is preferred. Bilingual Spanish skills required. A proficiency test will be given. This is a full-time position

with federal salary and benefits. The position is subject to mandatory Electronic Funds Transfer (direct deposit) participation for payment of net pay. Salary commensurate with qualifications and experience. All résumé information and certifications will be verified during the interview process. Final appointment is subject to a satisfactory background investigation. In one PDF document, please submit a statement of interest and detailed résumé of experience with at least three references to: Melissa Read, Administrative Officer, FDNM-HR@fd.org Reference 2021-05 in the subject. Applications must be received by May 17, 2021. Position will remain open until filled and is subject to the availability of funding. The Federal Public Defender is an equal opportunity employer. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

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

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

Administrative Assistant to CJA Resource Counsel 2021-06

The Federal Public Defender for the District of New Mexico is seeking a full-time administrative assistant to the CJA Resource Counsel for the District of New Mexico. This position will be located in Las Cruces, NM, but will assist district-wide. The CJA Resource Counsel works closely with the Courts, the Federal Public Defender and the Defender Services Office to improve the quality of representation and the efficient management of the CJA Panel. In this position, the assistant will work closely with the CJA Resource Counsel primarily in managing panel appointments and processing payment vouchers. Other duties include but are not limited to: contacting CJA counsel to determine availability for appointment in criminal cases; monitoring court dockets to determine changes in representation of CJA clients; assisting in the expeditious assignment of counsel in criminal cases; maintaining updated information regarding the CJA Guidelines, federal travel guidelines, local rules of the court for the District of New Mexico; assisting with coordination of travel for panel attorneys and service providers in accordance with federal travel regulations; assisting CJA Panel attorneys and the Court with the efficient processing of vouchers for reimbursement and authorizations for service providers, travel and other case-related expenses; preparing and assisting in the preparation of various CJA forms, and verifying their compliance with requirements; assisting in the maintenance of lists of service providers to assist CJA counsel; disseminating and receiving information involved in panel management; and other duties as assigned consistent with the mission of the position. Applicants must bring solid attention to detail, a positive work ethic, a reputation for personal and professional integrity and an ability to work well with the CJA Resource Counsel, the Federal Public Defender, the Court and members of the CJA panel. Preferred qualifications of any applicants for this position include experience with federal criminal practice; and substantial experience with various computer programs, including word processing, spreadsheets, PACER and CM/ECF, and billing and timekeeping programs. There is a preference for applicants with a working knowledge of the electronic eVoucher system, either as an administrator or from the perspective of attorney filers. Some experience with financial matters would be welcomed. Some travel may be required, including occasional work in the main office in Albuquerque. Applicants must have a high school degree or equivalent and the requisite experience. Selected applicants will be subject to a background investigation. Salary commensurate with experience. This position is a graded position with a salary range of JSP 9, 11-12 on the GS pay table. The Federal Public Defender operates under the authority of the Criminal Justice Act, 18 U.S.C. § 3006A. The

Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience with three references to: Melissa Read, Administrative Officer, FDNM-HR@fd.org Reference 2021-06 in the subject line. Applications must be received by May 17, 2021. The position will remain opened until filled and is subject to the availability of funding. No phone calls please. Only those selected for an interview will be contacted.

Full Time Legal Assistant

Immediate opening to work in our fast-paced immigration law firm. Candidate should be detail oriented and be able to work independently. Must have strong writing skills and comprehension in both English and Spanish. Will assemble family-based application packets and prepare filings to the Immigration Court as part of a legal team. Will work with clients to obtain necessary documents and information, preform data entry, and work with attorneys to provide excellent customer service. Position is full time and has full benefits. We are looking for individuals interested in pursuing a challenging, exciting and satisfying career, helping people from all parts of the world. Position requires passion and commitment to helping immigrants and their families. No direct experience required, but priority will be given to candidates with prior office and/or legal experience. Salary DOE & education. Please email resume and cover letter to L. Becca Patterson, Assistant Office Manager at lp@rkitsonlaw.com. Full fluency in Spanish and English required. If considered for the position you will be contacted to provide additional writing material. Please note, incomplete applications will not be considered.

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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.

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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 Hoferkamp at mike@hoferkamp.com or call 505/506-0745.

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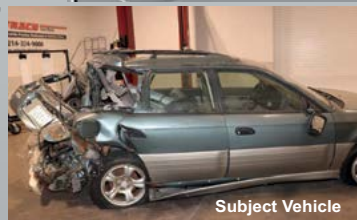
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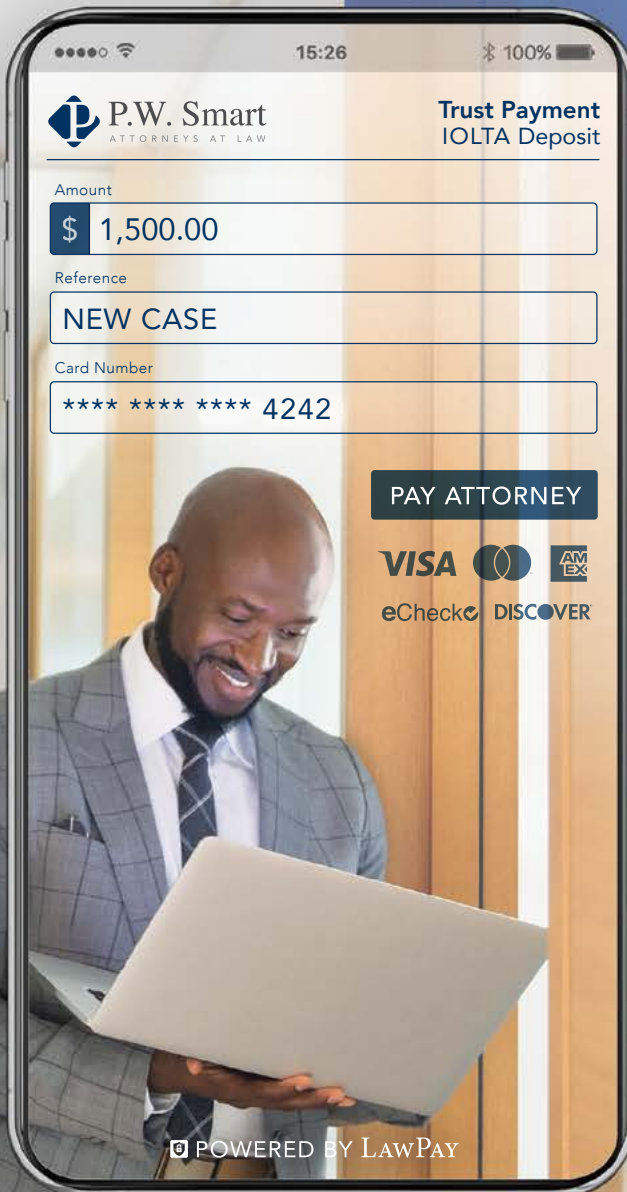
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