

BAR BULLETIN

May 12, 2021 • Volume 60, No. 9



High Desert, by Angelique Chacón

www.angeliquechacon.com

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CLE programming from the Center for Legal Education

Register online at www.sbnm.org/CLE-Events or call 505-797-6020.

Upcoming Webinars



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

MAY 20

The Lawyer’s Guide to Ethical Business Development

1.0 EP

11 a.m.–Noon
\$89 Standard Fee

MAY 21

Replay: The World Has Changed. Let’s Sort it Out (Stuart Teicher) (2020)

3.0 EP

8:30–11:45 a.m.
\$147 Standard Fee

MAY 21

Presentations that Captivate

1.0 EP

11 a.m.–Noon
\$89 Standard Fee

Upcoming Teleseminars



MAY 13

From One Thing to Another: Business Entity Conversions & Domestication

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 25

Ethics of Shared Law Offices, Working Remotely & Virtual Offices

1.0 EP

11 a.m.–Noon
\$79 Standard Fee

MAY 14

2021 Fiduciary Litigation Update

1.0 G

11 a.m.–Noon
\$79 Standard Fee

MAY 19

Subtenants in Commercial Leasing: How to Protect Your Client

1.0 G

11 a.m.–Noon
\$79 Standard Fee

MAY 26

Talking About Wealth Transfer Plans: Practical Strategies to Avoid Disputes Among Beneficiaries

1.0 G

11 a.m.–Noon
\$79 Standard Fee

MAY 24

Due Diligence in Commercial Real Estate Transactions

1.0 G

11 a.m.–Noon
\$79 Standard Fee



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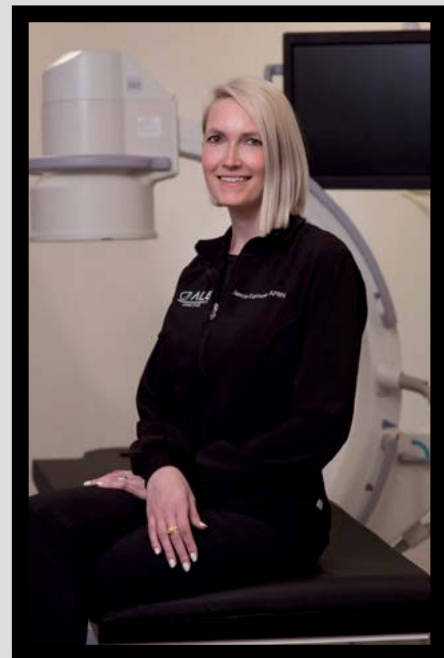
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Meetings

May

12

Animal Law Section Board

11:30 a.m., teleconference

12

Children's Law Section Board

Noon, teleconference

12

Tax Section Board

9 a.m., teleconference

13

Business Law Section Board

4 p.m., teleconference

14

Prosecutors Law Section Board

Noon, teleconference

18

Solo and Small Firm Section Board

10:30 a.m., teleconference

20

Public Law Section Board

Noon, teleconference

21

Family Law Section Board

9 a.m., teleconference

Workshops and Legal Clinics

May

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

June

2

Divorce Options Workshop

6-8 p.m., Video Conference

For more details and to register, call

505-797-6022

23

Consumer Debt/Bankruptcy Workshop

6-8 p.m., Video Conference

For more details and to register, call

505-797-6094

24

Common Legal Issues for Senior Citizens Workshop

11 a.m.-noon, Video Conference

For more details and to register, call

505-797-6005



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New Mexico

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About Cover Image and Artist: Angelique Chacón's photography is focused mainly on animals, flowers and landscape scenes. Living in the Southwest provided incredible landscapes to choose from. She is a person who really loves color and at some point began shooting flowers in macro form, trying to get as close to the inside of a flower as possible. Her goal for viewers is for them to perceive the images of the flower as an abstract art form. She finds that getting right into the heart of a flower expresses a beauty not otherwise seen. Because her stepfather was an abstract painter, she grew to really love his abstract art and found her own way of presenting abstract images through macro photography. Chacón's vision as an artist is to bring to viewers the natural occurrences as she saw them. Each of her photographs is a graphic presentation of her vision. For more of her work, visit www.angeliquechacon.com.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov/>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. Library Hours: Monday-Friday 8 a.m.-noon and 1 p.m.-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

New Mexico Supreme Court Announcement of Vacancy

A vacancy on the Supreme Court will exist as of July 1 due to the retirement of the Honorable Senior Supreme Court Justice Barbara Vigil, effective June 30. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Sergio Pareja, chair of the Supreme Court Judicial 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: <https://lawschool.unm.edu/judsel/application.html> or emailed to you by contacting the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Friday, May 21 by 5 p.m. All applications and letters of references are to be emailed to akin@law.unm.edu. Applications received after 5 p.m. 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 New Mexico Supreme Court Judicial Nominating Commission will convene beginning at 9 a.m. on Thursday, June 17 and will occur exclusively by Zoom. The commission meeting is open to the public,

Professionalism Tip

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

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

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: New Mexico Supreme Court Judicial Nominating Commission Meeting
Time: Thursday, June 17 at 9 a.m.

Join Zoom Meeting

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

Meeting ID: 379 615 447

Password: 72146

Administrative Hearings Office

Free Online Zoom Trainings

The Administrative Hearings Office will be conducting free online Zoom trainings covering all aspects of hearings pursuant to the Implied Consent Act. The trainings are for all hearing participants, including attorneys and law enforcement officers, across New Mexico who attend ICA License Revocation/MVD hearings. In addition to hearing directly from the hearing officers that conduct these hearings, training participants will also hear insights from an experienced law enforcement officer and an experienced defense attorney about the hearing process. For participant scheduling convenience, we are offering three opportunities to attend the training: Friday, May 21 from 1 to 4 p.m. To attend this training, 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 ex-

cluded. 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.

Fourth Judicial District Judicial Nominating Commission Candidate Announcement

The Fourth Judicial District Court Judicial Nominating Commission meeting convened by Zoom on Monday, April 26, at 9 a.m., and completed its evaluation of the three applicants to fill the vacancy on the Fourth Judicial District Court due to the recent appointment of the Honorable Judge Gerald E. Baca to the New Mexico Court of Appeals effective April 26. The commission recommends the following candidates to Governor Michelle Lujan Grisham: **Michael Able Aragon**; **Herman G. Gallegos, aka Herman Chico Gallegos**; and **Twila C. Quintana**.

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 17 at 5:30 p.m.
- May 24 at 5:30 p.m.
- May 31 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 ser-

— *Featured* —

Member Benefit



Clio's groundbreaking suite combines legal practice management software (Clio Manage) with client intake and legal CRM software (Clio Grow) to help legal professionals run their practices more successfully. Use Clio for client intake, case management, document management, time tracking, invoicing and online payments and a whole lot more.

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vices. Want to improve how you manage stress at home and at work? StressStop.com, an online suite of stress management and resilience-building resources, will help you improve your overall well-being, anytime and anywhere, from any device! The online suite is available at no cost to you and your family members. Tools include: My Stress Profiler: A confidential and personalized stress assessment that provides ongoing feedback and suggestions for improving your response to 10 categories of stress, including change, financial stress, stress symptoms, worry/fear and time pressure. Podcasts and videos available on demand: featuring experts in the field, including Dan Goleman, Ph.D., Emotional Intelligence; Kristin Neff, Ph.D., Self-Compassion; and David Katz, M.D., Stress, Diet and Emotional Eating. Webinars: Covering a variety of topics including work-life balance, thinking through stress, and

mindfulness at work. Call 505-254-3555, 866-254-3555, or visit www.solutionsbiz.com to receive FOUR FREE counseling sessions, or to learn more about the additional resources available to you and your family from the Solutions Group. Every call is completely confidential and free.

N.M. Well-Being Committee

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

2021 Campaign - What a Healthy Lawyer Looks Like

N.M. Well-Being Committee Meetings:

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

Upcoming Legal Well-Being in Action Podcast Release Dates:

- May 26: Discussion on Sleep
- June 23: Hobbies – What are you doing for fun?

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/limiteddops>.

OTHER BARS 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 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 christianlegalaids@hotmail.com.

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 16, 2021

UNPUBLISHED OPINIONS

A-1-CA-37958	State v. D Mote	Affirm	04/14/2021
A-1-CA-39189	State v. A Pojaj	Affirm	04/14/2021

Effective April 23, 2021

PUBLISHED OPINIONS

A-1-CA-38089	State v. S Taylor and M Taylor	Affirm	04/19/2021
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UNPUBLISHED OPINIONS

A-1-CA-37860	Marker v. NM Oil Conservation Commission	Affirm	04/19/2021
A-1-CA-38814	Marker v. NM Oil Conservation Commission	Affirm	04/19/2021
A-1-CA-38971	B Mondragon v. M Toulouse Oliver	Affirm	04/19/2021

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

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



COURT OF APPEALS JUDGE GERALD E. BACA *Takes Oath of Office*



*Court of Appeals Judge Gerald Baca
taking the oath of office.*

Judge Gerald E. Baca was sworn into office today as a judge of the state Court of Appeals.

In a virtual ceremony, Judge Baca took the oath of office in a courtroom at the San Miguel County Courthouse. Chief Justice Michael Vigil administered the oath from his office in the Supreme Court Building in Santa Fe.

In remarks after the ceremony, Judge Baca said all judges "are trying to do the best we can for the citizens of New Mexico ... and do justice. That's my intent at the Court of Appeals — to do justice."

Judge Baca has served on the Fourth Judicial District Court since May 2013. He became the district's acting chief judge in November 2017 and permanently assumed the position in April 2018. He also served on the district court in 2007-2009. The district covers San Miguel, Mora and Guadalupe counties.

Judge Baca received his law degree from the University of New Mexico in 1987, and earned a bachelor's degree in political science from New Mexico Highlands University in 1984.

He has worked in the private practice of law in Las Vegas, and was a prosecutor in the District Attorney's Office in the Fourth and First Judicial Districts.

Court staff and judges presented Judge Baca with an engraved baseball and bat congratulating him on the Court of Appeals judgeship and thanking him for his leadership and public service. Among his hobbies and interests, Judge Baca is a baseball fan and serves as a referee and umpire for high school baseball, basketball, soccer and wrestling.

Gov. Michelle Lujan Grisham appointed Judge Baca to the Court of Appeals, filling a vacancy created by Justice Julie Vargas' appointment to the state Supreme Court.



*Gift from judges and court staff to
Judge Gerald Baca.*

Photos courtesy of the Fourth Judicial District Court

Q2 2021



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Authentic and Sustainable Self-Care

<https://attendee.gototraining.com/rt/9038296056716817921>

Creating a Mindfulness Practice

<https://attendee.gototraining.com/rt/2852128079011518721>

Pandemic Fatigue: Staying the Course

<https://attendee.gototraining.com/rt/1701463869520099330>

Managing Stress in Difficult Times

<https://attendee.gototraining.com/rt/8278630276690038786>

Finding Forgiveness for Ourselves and Others

<https://attendee.gototraining.com/rt/7902159696619468545>

The Power and Practices of Gratitude

<https://attendee.gototraining.com/rt/2444278534339260929>

Feeling overwhelmed about the coronavirus? We can help!

FREE SERVICE FOR MEMBERS!

Employee Assistance Program

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

FREE service offered by NMJLAP.



State Bar of New Mexico
Judges and Lawyers
Assistance Program



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

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

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

www.sbnm.org



The New Mexico Public Defender Commission has unanimously appointed current **Chief Public Defender Bennett J. Baur** to a second, four-year term leading the state Law Offices of the Public Defender. The LOPD employs more than 400 New Mexicans in the service of providing counsel to indigent people charged with crimes in the state's courts. The independent state agency most

recently received a \$57.2 million budget to operate 15 offices across the state and to coordinate a network of over 100 contract attorneys. The commission selects the chief public defender and provides guidance in the mission and administration of the department. "Chief Baur has been a very strong advocate for our indigent clients in his last five years leading this department. He has worked closely with the commission, the legislature and others in the criminal legal system to address the root causes of crime and to fight for the resources public defenders desperately need to address systemic injustices and provide effective representation across our great state," Public Defender Commission Chairman Thomas Clear III said. Baur began his career as a trial attorney in the Albuquerque office of the public defender in 1993. After time as an assistant district attorney and nine years in private practice, he returned to the LOPD as the First Judicial District Defender. He has also served as deputy chief and interim chief for the department. Baur is a past president of the New Mexico Criminal Defense Lawyers Association and has advocated on criminal justice issues in the New Mexico legislature for more than 20 years. He resides in Santa Fe.

Five lawyers from Sutin, Thayer & Browne have been selected for inclusion in the *2021 Southwest Super Lawyers* list, a ranking of outstanding lawyers who have attained high degrees of peer recognition and professional achievement. Only 5% of nominated lawyers attain this ranking, with 2.5% of younger lawyers who are nominated achieving the designation of rising star. The attorneys selected are **Suzanne Wood Bruckner** – tax, **Maria Montoya Chavez** – family law, **Robert J. Johnston** – rising star – tax, **Barbara G. Stephenson** – employment and labor and **Benjamin E. Thomas** – employment and labor.



Isaac Leon has joined Sutin, Thayer & Browne as an associate attorney. He practices primarily in the areas of taxation and general business. Leon received his J.D. from the UNM School of Law in 2019, where he was recognized for his service to the Economic Justice Clinical Law Program. During his tenure as a law student, Leon was a legal extern for Presbyterian Healthcare Services, had a second externship with New Mexico

Legal Aid's Low Income Taxpayer Clinic, and worked as a law clerk for a number of firms in Colorado and New Mexico. He also worked as a tax intern for a firm in Las Cruces while an undergraduate. Prior to joining Sutin, Leon was a law clerk and associate attorney for an Albuquerque law firm where he drafted, negotiated, and finalized stock and asset purchase agreements with ancillary documents on both the buyer and seller sides. He reviewed and revised construction contracts, drafted various corporate documents including operating agreements with comprehensive buy-sell provisions, redemption agreements, loan and security agreements, and self-directed IRA LLC operating agreements, along with researching corresponding tax issues. Leon earned an M.B.A. from the UNM Anderson School of Management, a Bachelor of Accounting degree from New Mexico State University, and is working on his Tax LL.M. with the University of Denver Sturm College of Law Graduate Tax Program with an anticipated graduation date of May 2022.

In Memoriam

www.sbnm.org

Margaret Elaine “Lanie” Spencer Marr, 88, died Oct. 24, 2020, in Albuquerque from complications due to Alzheimer’s disease. She was born Jan. 5, 1932, in Denver where she lived much of her life. Elaine leaves behind her husband of 35 years, Elliott Moore, presently residing in Albuquerque. She is also survived by her four children from her previous husband, Richard J. Bernick; Philip Bernick, Amy Bernick Sheridan, Margaret Stephenson and Andrew Bernick. She adored and will be sorely missed by her six grandchildren; Wesley Sheridan, Zachary Stephenson, Nathan Sheridan, Nicholas Stephenson, Tess Bernick, and Galen Bernick. She also leaves behind her younger brother Jon Marr, two half- brothers Bill Stark and Bob Stark, and one great-grandchild, Gracie Guzman. Lanie, the name many called her, was born in Denver, Colorado in 1932 where she lived much of her life, raising her young children and becoming an attorney. Her zest for adventure led her to subsequently live in Salida, Colo. and both Santa Fe and Socorro. Shorter home stays were spent in Costa Rica, Tamil Nadu, India, and the Canary Islands, not to mention travels to numerous exotic locales including China and Africa. All who knew Elaine could doubtless recount her hosting warm and gracious get-togethers wherever she called home. She developed friendships with those from all walks of life and perfected a system of swapping her lawyering skills for sides of beef, ceramics, or carpentry projects. She even exchanged lodging for private, informal concerts by accomplished opera apprentices. The household was often full of a bustling, colorful cast of characters including her favorite little terriers (Westies) who alerted everyone to their delightful, disheveled presence. Elaine worked primarily out of her home in Socorro over the last 30 plus years amongst a beautiful and eclectic mix of family heirlooms and unique garage sale finds. Her keen intellect was exercised by continuing to practice law, passionately working on projects of value, and designing everything from room remodels to jewelry. Her love of reading was reflected by the overflowing bookshelves that coursed through every room of the old adobe house.

Shayla Spolidoro, age 37, beloved daughter and sister, passed from this world on Saturday, July 11, 2020. Shayla was born on December 15, 1982, in Santa Fe to Mark and Carolyn Spolidoro. The first years of Shayla’s life were in Glorieta, N.M., where she lived in a passive solar adobe home built by her parents. It was there that she welcomed her younger brother to complete her family. At age six, the family moved to Santa Fe, NM where she attended Montessori Children’s House for preschool and for grades 1-5. This school was a good fit for Shayla because it promoted her love of learning. Her middle school and high school years were in Los Alamos. While in Los Alamos, Shayla developed some deep and meaningful friendships that lasted her entire life. To further her education, Shayla moved to live independently in Albuquerque where she graduated from UNM, and went on to attain a dual degree in accounting and law. After passing the bar exam, she worked at a Santa Fe law firm for a year. In July 2019, she started her job as an attorney for Disability Rights New Mexico. Shayla’s life experience shaped her ambition to advocate for people with disabilities, and this job was the perfect setting to fulfill this goal. Shayla’s life was characterized by her passions and perseverance to attain her goals. This required overcoming the difficulties created by her lifelong medical disability. Shayla had a fierce drive to be independent. The challenges she faced to achieve such a lifestyle were daunting, but she always confronted and overcame them regardless of how impossible it appeared. Shayla’s life was not long, but it was certainly successful. Shayla is survived by her mother, Carolyn Spolidoro; father, Mark Spolidoro; and brother, Kyle Spolidoro.

Matthew T. Byers died on Jan. 2. He was born on May 30, 1963, to R. Lynn Byers and Joyce A. Byers in Ridley Park, Pennsylvania. The family moved to Albuquerque’s South Valley in 1970, and Matt lived there for the next 20 years. He was proud of his roots and proud to be a Rio Grande Raven. Matt graduated from the UNM School of Law in 1990 and began practicing law in Carlsbad that same year. He remained in Carlsbad the rest of his life. The only exception was a six-month period practicing in Pennsylvania, which quickly sent him back to Carlsbad, vowing to never leave again. Matt always considered himself to be fortunate to practice with outstanding attorneys, which are abundant in southeastern New Mexico. They taught him how to practice law like a gentleman and how to be better at his craft. During his career, Matt was awarded the Robert H. La Follette Award for pro bono service and was an AV rated attorney by Martindale Hubbell. In 2012, he received a special award from the New Mexico Supreme Court for assistance he gave in acting as an inventorying attorney for a large practice that had been shut down. He loved practicing law and helping others. He ended his career only because he died. Otherwise, he would still be practicing with his friend and partner, Cas Tabor. But the law was not his greatest source of joy. By late 1997, Matt declared himself a member of the He-man Woman-haters Club and vowed that he and his daughter, Amanda, would get through life on their own. Then he met Lori. Those who know the family know that Matt and Lori had a love story rarely rivaled. Together, they raised six smart, funny and rotten children. Matt and Lori did it as a team and were always each other’s loudest cheerleaders. Although Matt tried not to be a prideful man, his family always made him proud. If there is a legacy that Matt hopes he has passed along, it is one of charity, humor, and a dedication to lifting others up. Waitstaff throughout the state of New Mexico, and especially in Carlsbad, are mourning his loss because he made it a point to tip well, having started in circumstances in which his family lived off of tips when he was a kid. Although his profession, sometimes required him to be tough, he tried to do so with dignity and with respect to all involved. Matt was preceded in death by his parents, his son, David Weyerman, and his sister, Valerie Byers. Survivors are Lori, his children, Amber Van Stry (Aragorn), Lyndsey Nations, Amanda Byers, Saren Walls (Chris), and Loren Girndt. He is also survived by his sister Peggy Lewis (Boyad). He also leaves behind six grandchildren. One other thing Matt hoped his friends would do is tell Lori and the girls stories about Matt that still make them laugh. He’d like them to have those to carry in their hearts with a smile. And yes, you know damn well that he wrote the first draft of this obit.



Reese P. Fullerton Jr., an attorney, mediator, facilitator, and civic leader whose abundant care and thoughtfulness touched all who knew him, died Thursday, March 25, at El Castillo in Santa Fe, from complications of frontotemporal dementia. He spent his final days celebrating Spring, surrounded by family and friends. He was 73. Reese was born in Santa Fe in 1947 to

Reese P. Fullerton Sr. and Loretta Fullerton. He grew up in Santa Fe attending Saint Francis School from kindergarten to 9th grade, and spending his free time fishing, hunting, and horseback riding in the mountains of northern New Mexico. After finishing high school in Scottsdale, Arizona, Reese attended undergraduate and

law school at Georgetown University. After serving as a JAG Officer, Reese left the Air Force as a Second Lieutenant and then clerked for U.S. District Court Judge Charles Stewart in New York, where he met his beloved wife, Anne Seagrave. After living in Washington, DC for a few years, Reese and Anne returned to Santa Fe to raise their sons, Seth, John, and Adam. Reese's professional and personal successes were extensive. His early career included work for the U.S. Civil Rights Commission, managing Senator Jeff Bingaman's first Senate campaign, directing the New Mexico Prison Riot Study for the NM Attorney General's office, and serving as guardian ad litem for abused and neglected children. In all his endeavors, Reese found the most joy and pride in bringing people together to solve difficult problems. A life-long collaborator, Reese's seemingly effortless capacity to help people find common ground was appreciated by all who knew him. Reese's innate skills in, and love of, conflict resolution made him a sought-after mediator and facilitator. He helped to resolve conflicts and built lasting connections around the world including Bosnia and Serbia, Beirut, and Ireland. Closer to home, he worked on many natural resource issues in New Mexico and trained and mentored many people including students at the United World College, the New Mexico County College, the Navajo Technical University and many other organizations. Reese's ambition to help the people of New Mexico led him to run for Governor in 1998. While not successful, the campaign redoubled Reese's desire to build bridges and support better government and collaborative solutions. He went on to serve as New Mexico Deputy Secretary of Energy and Natural Resources, and Director of the Office of Workforce Development and Training. In all aspects of his life, Reese was a deeply caring, loving, and thoughtful man. He embraced the world with energy and curiosity. He drew people to him with his wonderful stories and deep interest in learning about everyone he met. Reese continued to love spending time in the New Mexico mountains, and enjoyed summers with countless family and friends on Cliff Island, Maine. He was a devoted husband, father, grandfather, brother, and friend. Reese was predeceased by his wife, Anne, and is survived by their three sons, Seth (Olivia Sloan), John (Julia Rudakov) and Adam (Ellen Kincaid) and three grandchildren, Henry, Alexa, and Daisy.

Robert J. (Bob) Maguire, age 76, a resident of Albuquerque since 1970, died peacefully on March 19 at home surrounded by his loving family. He is survived by his wife, Rita of Albuquerque; sons, Daniel (Zarina) of El Paso, and Thomas of Albuquerque; brothers George Maguire of San Francisco, Gregory (Paula) Maguire of Delaware; sisters, Celeste (Eric) Maguire Eggink of the Netherlands, Joan (Letty) Maguire of Albuquerque, Patricia Maguire and numerous nieces, nephews, grandnieces, and grandnephews. Bob was preceded in death by his father Frank and mother Carolyn, both of Albuquerque. Bob attended Slippery Rock University in Pennsylvania where he met his future wife, Rita. Graduating in 1968, he entered Law School at the University of Pittsburgh. Married on June 27, 1970, Bob and Rita moved to Albuquerque where he completed Law School at the University of New Mexico, graduating in 1971. Admitted to the New Mexico Bar that same year, Bob practiced law in Albuquerque from 1971 until 2007. An Irishman to the core, Bob was blessed with the fabled "gift of gab" and loved exchanging stories and jokes with everyone he encountered. He had an infectious smile and hearty laugh that warmed the room. His passions were family, politics, the Law and sports, subjects which he could discuss for hours. An eternal optimist and loving man of

faith, there were no strangers in Bob's life, only friends he'd not yet met. He belonged to Our Lady of Annunciation Church, the State Bar of New Mexico, Kiwanis Club, and was a past Board Member of ARCA. Bob was active in the Boy Scouts of America and was proud to see both his sons become Eagle Scouts. The Family wishes to thank Comfort Keepers, especially Jessica Marek and Michelle Maef, Brookdale Home Health, Kindred Hospice, Cece Rivera, and family and friends who visited with Bob over the past few years.



Mark Anthony Basham, born on Dec. 20, 1959, died on Easter Day. Preceded in death by his beloved parents, Austin and Judy; survived by his dear sister Donna "Espy", and his three children, Jordan, Mack, and Austin, he passed away in the embrace of his kids. Santa Fe was his heart; he tried to serve it well, first as city attorney, later as probate judge, always as a love-struck advocate,

stupefied by the breadth of the sky. He left only to return, coming home after graduating from Princeton University, coming home after completing his JD at the UNM School of Law, coming home to the mountains and high deserts that filled him with the swelling pride that strikes this state's native sons. Many friends loved him. Many friends will miss him. With his cabin up in Pecos, he achieved one of his life's dreams and shared it freely and generously, as if in disbelief of his luck. In his last days, he was fortunate enough to have the companionship of Lisa Estrada, to whom he dictated his own short obituary. He signed it as his mother used to sign her letters and messages to him, now addressed to the residents of his cherished city, to the friends that loved him, and to his family, all of whom he must regrettably leave behind. Con cariño.

Long time Raton resident, **Bill Erwin**, passed away peacefully on Dec. 12, 2017 in Steamboat Springs, Colo. William Carl Erwin was born to Woody and Jane Erwin on May 18, 1943, in Raton. He was preceded in death by his daughter, Jenny, his sister, Jane, his parents, Jane and Woody Erwin, and his nephew, Ross Erwin. He is survived by Jackie Erwin, his daughter and son-in-law, Lura and Donny Amparan, his granddaughters, Breanne and Jordan Amparan, his brother Ralph Erwin, and nephew, Rees Erwin, and many close friends. Bill attended school in Raton and played football, basketball, tennis, and ran track for the Raton Tigers. After high school, Bill attended Texas Western University in El Paso, Texas. He worked on the railroad and as an announcer at the racetrack to put himself through college and law school. While attending UTEP, he met his future wife, Jackie Erwin. They moved to Denver while Bill attended law school and then on to Raton to raise their two daughters, Lura and Jenny. He started a law practice in Raton and soon after was elected the youngest president of the State Bar of New Mexico. He later went on to practice law in Angel Fire. Bill was always an outdoorsman. He was an Eagle Scout and guide at the Philmont Boy scout Ranch during his youth. He loved to hike, mountain bike, ski, play tennis, and pilot his small plane. Bill had many opportunities to travel and hike all over the U.S. as well as Napal and Machu Picchu. His favorite thing to do was blend into a new place and visit with the locals over coffee while soaking up their culture. He loved horse racing and working on his land in Yankee. He spent many years announcing the races at La Mesa Park in Raton. Bill was very involved in every community he lived in.

He was generous with his advice and tried to help anyone achieve their dreams. Bill always believed in the power of education. He encouraged many people to attend college, and ensured that his own children and granddaughters were able to attend college and grad school.

Charles Lee Barth passed away on Jan. 6. While in high school, Chuck's first job was working for Sol's Pizza, a family-owned business. After graduating from Del Norte High School in 1970, Chuck attended the University of Albuquerque, and in 1974, received his bachelor's degree in criminal justice. This is where he began his pursuit of what would become an extraordinary career. Chuck went on to Washington, D.C., where he completed training in both federal law enforcement criminal investigation, and U.S. secret service executive protective service training. Chuck's real adventure began in 1975, when he served in the Executive Protective Service at the White House protecting Presidents Gerald R. Ford and Jimmy Carter. In 1976, Chuck became a secret service agent, assigned to the New York field office, where he provided protection for more than 100 dignitaries visiting the U.S.; including, Pope John Paul II, Fidel Castro, and Israeli Prime Minister Menachem Begin. Lastly, from 1979 to 1981, Chuck was assigned to former President Richard M. Nixon's detail in New York City. Chuck returned home and pursued his Juris Doctor degree at the UNM School of Law graduating in 1985. He held several different positions until July 1989, when he began his service as an Assistant U.S. Attorney until his retirement in December 2014. His passion for criminal justice was so strong that he decided to teach as well. As a professor, he taught criminal justice at the University of Phoenix, UNM and CNM. His students loved him and he was an inspiration to many. In 2017, until the time of his death, Chuck came out of retirement and served as Bernalillo County's chief deputy district attorney in D.A. Raul Torrez's administration. However, the assignment he was most proud of was that as a certified handler and housefather for "Woodstock," a victim assistance dog for the DAs office.



Lalo Garza, 91, of Las Cruces, passed away at the family home on March 10. Lalo is preceded in death by his parents Librado and Eduviges Garza, and his sisters, Frances Trevino and Angela Abrego. Lalo is survived by his wife of 62 years, Margie Garza; his children, Carmen Garza, Carlos Garza, and Robert Garza (Maryester); his brother, Florentino (Sandy) Garza; his grandchildren Michael Garza (Amy), Joseph Garza, Marcel Garza, Carson Garza and Alannah Spilsbury; and his great granddaughter, Madilyn Garza. Lalo was born in San Antonio, Texas to Librado Garza and Eduviges Garcia-Lopez on October 17, 1929. His father served in World War I in France. When Lalo was four, his father died of tuberculosis. Soon thereafter his mother also succumbed to tuberculosis. Lalo, his two sisters Frances and Angela, and his brother Florentino were taken in by missionaries at the House of Neighborly Service in San Antonio, Texas. His sisters went to the Presbyterian School for Mexican girls in Taft, Texas, and Lalo and his brother were taken in by Izeal J. Phelps and Wilma Callahan until they were old enough to attend The Allison James School (The First Presbyterian Church) in Santa Fe, then Menaul (a faith-based college preparatory day and boarding school) in Albuquerque. Lalo attended UNM where he earned a Bachelor of Science in Education. Then he continued his education at the UNM School

of Law where he earned a juris doctor degree. Lalo had a 45-year career in the legal profession. He was in private practice, served as the city attorney for Tularosa, N.M., deputy district attorney in Alamogordo, N.M., deputy new mexico attorney general on special assignment, 3rd judicial district attorney, and 3rd judicial district court judge. He retired from public service in 1993 and joined his daughter in private practice. Lalo continued to live in Las Cruces, where he enjoyed a leisure retirement with regular golf and recreation. He was an enthusiastic competitor who thrived in his early years with tennis as well as track and field. He was an avid golfer for most of his life and was quite good. He was the reigning seniors golf champion at NMSU for over 10 years starting in the 1980's. The family wish to extend our sincere thanks to Doctor John Glick and his staff, Memorial Medical Center, Mesilla Valley Hospice, Home Instead Senior Care and all the close friends and family who have been a part of his celebrated life.



Theodore (Ted) Anthony Martinez, born Sept. 1, 1953, passed away in the early morning hours of April 9 following an unexpected bout with cancer. Ted was preceded in death by his parents, Delio and Eloisa S. Martinez. Ted grew up in a small farm in the Espanola Valley. He enjoyed fishing, hiking and camping in the mountains of northern New Mexico. He was

active in various school and church organizations and attained the highest rank of Eagle Scout in the Boy Scouts of America. After earning his undergraduate degree from UNM, he was awarded a scholarship to the University of Minnesota School of Law where he earned his Juris Doctorate. He was a founding member of the Ballet Folklorico de Minnesota. Upon graduation, he practiced law in St. Paul, M.N., before moving to Northridge, C.A. There, he suffered a tragic accident which required his right arm to be amputated. Soon after, he moved to Albuquerque, NM, and began a long-standing career serving families and children in New Mexico. As a contract public defender he represented youth in juveniles delinquency matters for twelve years. He also represented parents and children in child welfare cases and served as a Children's Court Attorney for the Children, Youth and Families Department before coming to work for the Second Judicial District Court. As Special Master and Hearing Officer for the Court, he presided over Juvenile Delinquency, Child Welfare and Mental Health hearings. He served on numerous committees to improve outcomes for children and families including the Children's Court Improvement Commission, the New Mexico Supreme Court Rules Committee and numerous Juvenile Detention Alternatives Initiatives committees. He served as the Chair of the JDAI Case Processing Committee, was a certified child welfare law specialist, and a member of the Children's Law Section of the New Mexico Bar. Ted was loving, kindhearted and generous to a fault; for example, donating his stimulus check money to the local food bank, the charities he supported and his church. He lived his life with zest, dignity, good cheer and happiness in spite of all the setbacks and curve balls that life threw at him. He was very spiritual and had a deep devotion to God and his Roman Catholic faith. Having one arm did not slow him down. He took pleasure in cooking New Mexican cuisine and he was an avid Minnesota Vikings fan. He had a keen sense of humor and enjoyed a good laugh as well as making people laugh. He often made himself the target of his quick wit as well as anyone else who dared set themselves up in his presence. He wore his pride

and love on his sleeve for his son, Patrick, 15, who was the center of his universe. In addition to Patrick, he is survived by two older brothers; Frank D. Martinez (Juliette), of Tucson, A.Z.; and Eloy G. Martinez (Kathy) of Ft. Collins, Colo., and their families. He is also survived by his former spouse and Patrick's mother Anna; his step-daughter Alexis (Jose) and their two daughters, Azul and Rosa, who was Ted's Goddaughter, his former mother-in-law, Mela, and step-grandson, Alex, all of Albuquerque. Other survivors include two aunts, Nora (Gilbert) of Chamita, N.M.; and Dorila Swindle (Bill, deceased) of Ft. Smith, A.R., and numerous cousins.



The Honorable Craig J. La Bree, 63, of Hobbs passed away May 30, 2020, at his residence. He was born in Washington D.C on Dec. 3, 1956, to parents Jack and Michelle La Bree. Craig is preceded in death by his father John E. La Bree. He is survived by his mother Michelle V. La Bree, wife Rita M. La Bree, daughter Jennifer Meister (Bella Vista, AR), son Nathaniel Riley (Lubbock,

TX), and grandchildren Chloe, Pearl, and Opal. Craig was a father, an eagle scout, a lawyer, and a judge. When he was 14 years old, he started a lawn mowing business to earn money for college. After graduating from high school in his hometown of McLean, V.A., Craig attended George Mason University. Throughout his time at GMU, he continued his lawn mowing business, employing up to 8 students at one point. It was during this time that his lifelong fascination with computing began, leading him to found the Computer Science program at GMU. Craig earned his Bachelor of Science Degree in Business Administration in the spring of 1978. Craig was no stranger to hard work. Following his graduation from GMU, he worked construction to earn money for law school. That fall, he began his studies at Pepperdine University School of Law in Malibu, C.A.. He completed his Juris Doctor Degree in the Spring of 1981. After law school, he moved to New Mexico, where he worked as an associative attorney at Williams, Johnson, Reagan, Porter & Love, P.A. From 1982 to 1985, he gained further legal experience while working for Robert L. Love and Associates. Beginning in 1985, he started the joint practice Hanna & La Bree, P.C. In 2000 he started Craig J. La Bree P.C., which he operated until 2011 when Governor Susana Martinez appointed him to fill a

vacant seat for Magistrate Judge in Hobbs, NM. During his first bid for re-election in 2012, Craig walked to every home in his district, leaving notes and speaking with his constituents. He did this once again in 2016, where he won in a landslide election. Craig's education and career played a large part in his life, but they are not what made him a great man, that was his love for family and life. Craig married the love of his life on June 5, 1994, and embraced Jennifer and Nathaniel as his children. Craig shared his love for travel and scuba diving with his wife Rita, traveling all over the world, visiting places from the Great Barrier Reef to France. Craig's adventurous spirit extended to all aspects of his life. He was an avid reader of Science Fiction, a love that he passed on to Nathaniel. Craig had a curious mind and was often found watching videos of how things worked. He loved everything related to space and rarely missed a SpaceX rocket launch. Craig rarely sat still. He spent his free time working on his house or helping family, friends, neighbors, and co-workers with anything they needed. He never believed in doing anything in half measures, often saying to not to "half-ass" a task. When anyone needed help or advice, they knew he would not only help but provide them with skills and knowledge. Craig believed in leaving the world a better place, a belief he practiced every day of his life. He had faith in his community and family, and it will be a struggle to learn to live without this Giant in our lives.

Paul Kendell Asay was born in Provo, Utah, on Aug. 25, 1966, and passed away in the place he loved so deeply, Lovell, on Jan. 24. Paul was a police officer in Lovell for eight years, a job that he loved. He was injured on the job, so he went to the University of Wyoming and achieved a Juris Doctorate degree. With his law degree he traveled the world, working in New Mexico, Afghanistan, St. Louis, Mo., Burlington, Kan., and Leeds, S.D. He had many adventures in his life. He loved horses, rounding up cattle, jeeping in the hills, the Big Horn Mountains and nature. He was an amazing son, brother and a loving husband and father, who wanted the best for them and the best for all he came in contact with. He is survived by his parents, Gary and Glenda Asay, sisters April (Brian) Chaffin, Brenda (Roland) Simmons, Marchia Asay and Meredith Asay; Julie Asay and their children Dillon (Desiree) Asay, Taylor Asay, Connor Asay and Rebecca Asay; two beautiful granddaughters, Sophia and Layla Asay; and multiple nieces and nephews, who have fond memories of jeeping, camping and fishing with their uncle Paul.

Legal Education

May

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| <p>12 Drafting Demand Letters
1.0 G
Teleseminar
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
Live Webinar
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>14 2021 Fiduciary Litigation Update
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> |
| <p>12 The Littler Executive Employer Conference
18.0 G, 1.0 EP
Live Webinar
Littler Mendelson
www.littler.com</p> | <p>18 2021 Trust and Estate Planning Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <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>12 The Nuts and Bolts of Federal Appellate Practice
1.5 G
Live Webinar
Administrative Office of the U.S. Courts
202-502-4603</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>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>12 Worker’s Compensation and Retail, Restaurant, and Hospitality Conference
12.0 G, 1.0 EP
Live Webinar
Claims and Litigation Management Alliance
954-587-0488</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>27 Ethical Issues in Contract Drafting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>13 Cultivating a Practice of Inclusion and Belonging with Mindfulness
1.5 G
Live Webinar
New Mexico Coalition of Sexual Assault Programs
www.nmcsap.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>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> |
| <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>21 Presentations that Captivate
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | |

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

June

1	Trust and Estate Planning for Family Businesses, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	10	Special Issues in Small Trusts 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	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
2	Trust and Estate Planning for Family Businesses, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	11	Ethics of Co-Counsel and Referral Relationships 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org	18	Lawyer Ethics and the Internet 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org
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	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	21	Piercing the Entity Veil: Individual Liability for Business Acts 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org
3	Drafting Employee Handbooks 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	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	22	Drafting Buy/Sell Agreements for Closely Held Companies, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org
3	Overcoming Procrastination - How to Kick the Habit 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org	15	Buying and Selling Commercial Real Estate, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	23	Drafting Buy/Sell Agreements for Closely Held Companies, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org
4	Smartphones, Tablets, and Other Devices in the Workplace 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	16	Buying and Selling Commercial Real Estate, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org	25	The Ethics of Representing Two Parties in a Transaction 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org
8	2021 Ethics in Civil Litigation Update, Part 1 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org	18	REPLAY: Family Law Spring Institute - Day 1 (2021) 4.0 G Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org	25	Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 1.0 EP Live Replay Webinar Center for Legal Education of NMSBF www.sbnm.org
9	2021 Ethics in Civil Litigation Update, Part 2 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org				

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-019

No. A-1-CA-35971 (filed July 31, 2019)

JUSTIN GOODMAN,
Plaintiff-Appellee,
v.

OS RESTAURANT SERVICES, LLC
f/k/a OS RESTAURANT SERVICES INC.
d/b/a OUTBACK STEAKHOUSE,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

MANUEL I. ARRIETA, District Judge

Certiorari Dismissed, January 13, 2020, No. S-1-SC-37873.

Released for Publication May 5, 2020.

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Opinion

J. Miles Hanisee, Judge.

{1} Defendant OS Restaurant Services, LLC (Outback) appeals from the district court's judgment and certain pre- and posttrial rulings associated with a jury's finding that Outback violated the New Mexico Human Rights Act (NMHRA). On appeal, Outback contends that under the NMHRA: (1) Plaintiff's previously-filed worker's compensation claim does not provide a basis for his claim that Outback retaliated against him; (2) Plaintiff failed to establish that he had a reasonable, objective, good-faith belief he was disabled or Outback believed him to be disabled when it terminated his employment; and (3) inconsistent evidentiary and legal rulings by the trial court deprived Outback of a jury determination as to whether Plaintiff was disabled. We affirm.

I. BACKGROUND

{2} Plaintiff hurt his ankle while working at the Outback Steakhouse in Las Cruces, New Mexico. He immediately reported the injury to his supervisor, Dustin York. Several minutes later Plaintiff discovered

that his ankle was discolored and swollen to a size larger than a grapefruit. Unable to walk from the restaurant without support, Plaintiff left using crutches that his wife brought to him upon learning of his injury. When Plaintiff told York that he wanted to file a worker's compensation claim and asked for an incident report, York replied that Plaintiff did not need to file such a claim and suggested that Plaintiff was not injured while working. York also told Plaintiff that an incident report was not required to receive medical treatment utilizing worker's compensation benefits, which was inaccurate. When Plaintiff persisted in his desire to file a worker's compensation claim, York both delayed submitting the claim with Outback's insurance carrier and entered an incorrect date of injury, which slowed the availability of Plaintiff's worker's compensation benefits. {3} According to Plaintiff, three days after his injury, York informed him that because he wanted to file a worker's compensation claim, Plaintiff "would no longer be promoted" to assistant manager, as Plaintiff had anticipated, because he was perceived to be "unreliable." Plaintiff nevertheless insisted that his worker's compensation claim be submitted, at which point York

continued to obfuscate, giving Plaintiff two toll-free numbers that were actually phone numbers for Wells Fargo Bank. Plaintiff finally asked his medical care provider to call York, and York eventually acquiesced and told Plaintiff he would file the claim.

{4} Five days after his injury, Plaintiff asked York to make an accommodation for him so he could return to work, but York refused. By then, Plaintiff could walk while wearing a protective boot, but not well enough to be a server. Plaintiff suggested that he could expedite food orders (expediting work) or do prep work in the kitchen (prep work), but York did not think Plaintiff could perform those alternative duties with his impairment. Sometime later, Plaintiff told his coworker Eric Tyler that he wanted to contact an attorney, which Tyler reported to another supervisor.

{5} Approximately five weeks after his injury, Plaintiff contacted Jacilyn Jolly, Outback's employment paralegal, and reported that York had taken actions to delay his worker's compensation benefits and refused to accommodate him. Two days later, ostensibly because it was York's policy to terminate employees who had not worked in over thirty days, Plaintiff was fired. Over the course of the next several weeks, Plaintiff developed osteomyelitis, a rare type of bone infection that arose as a complication of his ankle injury, spread through both of his legs, and persisted for nine months.

{6} Plaintiff's amended complaint alleged three causes of action. Under the NMHRA, Plaintiff alleged alternative bases for liability: First, that Outback unlawfully discriminated against him based upon "his disability and/or perceived disability"; and Second, that Outback's actions "also constitute[d] a bad faith worker's compensation retaliation claim." Plaintiff also alleged common law tort claims for retaliatory discharge, also premised upon Plaintiff's worker's compensation claim, and for negligent hiring, training, supervision, and retention of York. Prior to trial, Outback filed its motion in limine which sought exclusion of evidence related to "the exacerbation of Plaintiff's ankle injury," which Outback contended to be irrelevant, and Outback's alleged "failure to accommodate Plaintiff's disability" because Plaintiff's amended complaint did not allege such a claim under the NMHRA. In its written order granting the motion in part, the district court ruled that Plaintiff lacked evidence establishing a "long term or permanent" injury that "substantially limit[s] a major

life activity[.]” which rendered any accommodation-premised claim non-cognizable under the NMHRA, but that Plaintiff could assert that his medical treatment was delayed because of Outback’s actions. {7} A jury trial ensued, and after the presentation of evidence Outback sought judgment as a matter of law under Rule 1-050(A)(2) NMRA on all counts. As relevant to this appeal, and first regarding Plaintiff’s NMHRA claim for discrimination, Outback reminded the district court of its evidentiary ruling on Outback’s motion in limine, arguing that the trial evidence failed to establish that Plaintiff’s injury was a serious medical condition as that term is utilized in the NMHRA and did not reveal knowledge on the part of Outback regarding any such condition. Secondly, as to Plaintiff’s NMHRA claim of retaliation, Outback contended that Plaintiff failed to show that he “engaged in a protected activity” on which retaliation was premised.

{8} With respect to the first component of Outback’s motion, the district court stated that Plaintiff “ha[d] failed to establish and [could not] establish that [his injury] was a medical condition or disability as defined under the [NMHRA].” The court added that the regulatory definition of a serious medical condition was unmet because Plaintiff seemed only to have a “sprained ankle or a seriously sprained ankle[.]” and “[t]here did not appear to be any impairment that would come out of it nor [would be] expected.” The court observed that “[t]he problem is we don’t have any medical evidence to substantiate the medical condition that existed as of [Plaintiff’s date of injury]. I was surprised that everybody pulled the medical records out, but that’s a trial decision.” Accordingly, the court announced its intention to not permit Plaintiff’s claim of discrimination based on a serious medical condition or a disability under the NMHRA to proceed to the jury. Although the record is less clear regarding its rationale for permitting Plaintiff’s NMHRA retaliation claim to proceed to the jury, the court stated its perception that Plaintiff’s submission of a worker’s compensation claim could be a basis for it.

{9} Before deliberations began the following morning, the district court instructed the jury and provided it with a special verdict form. Among other responses supplied in conjunction with the jury’s partial verdict for Plaintiff—that is, a verdict that rested solely upon Plaintiff’s NMHRA claim—the jury concluded that Plaintiff’s filing of a worker’s compensation claim was not “a motivating factor”

in Outback’s decision to discharge him, nor had Outback negligently “retain[ed] or supervis[ed]” York. Consistent with the special verdict form, those answers appear to have eliminated the common law torts of retaliatory discharge and negligent hiring, supervision and retention of York. In answering “Yes” in response to the same special verdict form’s question as to whether or not Outback violated the NMHRA, the jury’s conclusion could only have rested upon the lone instruction it received regarding the NMHRA, which stated only generally that in order to have violated the NMHRA Outback must have engaged in some form of “threat, retaliation, or discrimination against [Plaintiff for] oppos[ing] an unlawful discriminatory practice.” The jury instructions lacked definitions or guidance regarding what constitutes an unlawful threat, retaliatory act, or a discriminatory act or practice, and the special verdict form did not seek specificity as to the basis for a finding of Outback’s liability under the NMHRA. Outback expressed reservations regarding, but notably did not object to the special verdict form, predicting that because the form only generally asked whether Outback violated the NMHRA, “the appellate court will not know whether [an NMHRA verdict against Outback would rest upon] protected activity involving Plaintiff’s [w]orker’s [compensation] claim, or . . . things that fall within the four corners of the [NMHRA].”¹ In conjunction with its affirmative response to the form’s question regarding whether Outback violated the NMHRA, the jury awarded Plaintiff \$60,000 in damages for lost wages and \$35,000 in damages for emotional distress.

{10} Following the verdict, Outback filed a renewed motion for judgment as a matter of law. The motion focused solely on whether an employee’s filing of a worker’s compensation claim can amount to protected activity for the purpose of an NMHRA retaliation claim. Specifically, it asserted that “[Plaintiff] prevailed on only . . . [his] claim that Outback had violated the anti-retaliation provision [of the NMHRA] by discharging [Plaintiff] for filing a worker’s compensation claim.” Plaintiff responded in part by arguing that “Plaintiff had multiple causes of action . . . under three legal theories from the same common core of operative facts” and that aspect of the verdict that concluded that Outback violated the NMHRA was supported by testimony regarding Plaintiff’s engagement in numerous protected activities for which retaliation is disallowed. In reply, Outback renewed its argument that Plaintiff “failed to establish

that he suffered from a disability or that he was perceived as disabled by Outback on or before the date that he was terminated. Nor does Plaintiff’s proof establish that it was objectively reasonable for him to believe that he was disabled on that date.” {11} During the hearing on Outback’s renewed motion, both parties and the district court were unsure of the basis upon which the jury reached its verdict. For example, Outback believed the only basis for Plaintiff’s NMHRA retaliation claim as it was presented to the jury was Plaintiff’s filing of a worker’s compensation claim. Plaintiff believed the district court “agreed with [Plaintiff]” that “there was another cause of action under [the NMHRA that] prohibits threats, reprisal, [and] retaliation for making a complaint,” including complaints about failure to accommodate because of a disability. For its part, and reflecting on Outback’s argument that the jury was not instructed as to what constitutes an unlawful discriminatory practice or protected activity under the NMHRA, the district court said,

Yeah, I had difficulty in submitting both theories as alternative theories. I would have preferred one over the other, but it went on both. The special verdict [form expressed that] Outback had violated the [NMHRA]. Now, the question is, what does [the jury’s] finding mean? To me, it means that they, the jury, found that in retaliation for filing a worker’s comp[ensation] claim on a serious physical injury, the jury could have found that they terminated [Plaintiff]. That’s how I read it. It’s not a tort claim, but it is a finding under the [NMHRA]. The other finding that’s probable here from the jury is that [Plaintiff] had opposed an unlawful discriminatory practice . . . related to the worker’s comp[ensation] claim.

{12} Adding to the perplexity, the district court’s own position with respect to whether Plaintiff proved the occurrence of a serious medical condition diverged from that expressed in its order granting Outback’s motion in limine and its ruling that appeared to grant Outback’s pre-verdict motion for judgment as a matter of law as to Plaintiff’s claim of disability discrimination under the NMHRA: “Now that I’ve sat at trial and I’ve seen the exhibits . . . there is evidence to tie the lack of accommodation as a retaliatory discriminatory practice” and that “there was evidence here of a serious physical injury so I think the jury rightfully found so.”

¹In response to Outback’s concern, the district court stated its contrary belief that “the jury instructions . . . are specific that the claim here is for retaliatory discharge under . . . the [NMHRA].”

{13} Ultimately, the district court's ruling denying Outback's renewed Rule 1-050 motion rested upon its conclusion that: "The parties instructed the jury that [in order for Plaintiff to prevail it must] find an unlawful discriminatory practice. I think the jury could have tied in the worker's comp[ensation] claim to the serious medical condition and that's what we've got. I can't see it any other different way." Following issuance of the district court's one-page order of denial, Outback appealed.

II. DISCUSSION

{14} On appeal, Outback argues that the jury's verdict must be reversed, or that a new trial should be granted, for three reasons. First, because the NMHRA does not protect Plaintiff from retaliation based on his filing a claim for worker's compensation benefits. Second, because Plaintiff did not objectively and reasonably believe himself to be disabled or that he was regarded by Outback to be disabled within the scope of the NMHRA. Third, because the district court's inconsistent rulings regarding the issue of Plaintiff's disability status deprived Outback of a jury determination on an essential element of Plaintiff's NMHRA retaliation claim.

A. Preliminary Matters

{15} Before resolving Outback's points of appeal, we first address the nature of the task at hand. We do so because our review of the district court record reveals an overarching state of confusion poorly suited to clarification on appeal. The quandary began when the district court partially granted Outback's motion in limine, appearing to exclude evidence related to Plaintiff's injury from the standpoint of workplace accommodation, then nonetheless admitted non-medical evidence of Plaintiff's injury and Outback's responses thereto, which reflected Outback's unwillingness to allow Plaintiff to return to work in any capacity, its delay in filing his worker's compensation claim, and ultimately its termination of Plaintiff's employment. The confusion deepened when the district court purported to grant Outback judgment as a matter of law as to that aspect of Plaintiff's NMHRA claim that was premised on disability discrimination due to a serious medical condition, then nonetheless generally instructed the jury that one basis upon which Outback's liability under the NMHRA could rest is discrimination. Finally, the special verdict form (to which no party objected) cemented our inability to know just *how* Outback violated the NMHRA, only generically inquiring *whether* Outback violated the NMHRA. Postverdict litigation did little more than solidify the puzzlement of much that we are now asked to resolve on appeal. In this circumstance, therefore, we begin by reiterating certain core appellate principles.

{16} First, on appeal, "there is a presumption of correctness in the rulings and decisions of the [district] court[,] and the party claiming error must clearly show error." *Best v. Marino*, 2017-NMCA-073, ¶ 42, 404 P.3d 450 (internal quotation marks and citation omitted); see *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 ("Appellant must affirmatively demonstrate its assertion of error"). We do not presume a district court applied an incorrect standard of proof. *Robertson v. Carmel Builders Real Estate*, 2004-NMCA-056, ¶ 25, 135 N.M. 641, 92 P.3d 653. As well, "[j]ury instructions become the law of the case against which sufficiency of the evidence is to be measured." *Muncey v. Eyeglasses World, LLC*, 2012-NMCA-120, ¶ 21, 289 P.3d 1255 (internal quotation marks and citation omitted). A party that fails to object to jury instructions "is in no position to complain about the theories of liability . . . and damages . . . given to the jury." *Pub. Serv. Co. of N.M. v. Diamond D Const. Co.*, 2001-NMCA-082, ¶ 28, 131 N.M. 100, 33 P.3d 651. More concretely, when a party has not raised a claim of jury instruction error on appeal, the "unchallenged jury instructions are therefore the law of the case." *Estate of Saenz v. Ranack Constructors, Inc.*, 2018-NMSC-032, ¶ 40, 420 P.3d 576. Jury verdicts will be affirmed when consistent with the instructions given and the evidence at trial. See *Littell v. Allstate Ins. Co.*, 2008-NMCA-012, ¶¶ 14-16, 38-42, 70, 177 P.3d 1080 (upholding jury verdict premised upon the plaintiff's claims of hostile work environment and retaliatory constructive discharge based on the instructions provided and the evidence supporting the separate causes of action). Lastly, "[u]nder the 'general verdict rule,' a general verdict may be affirmed under any theory supported by evidence unless an erroneous jury instruction was given." *Christopherson v. St. Vincent Hospital*, 2016-NMCA-097, ¶ 23, 25-26, 384 P.3d 1098 (determining a verdict to be general in nature despite responses to "special verdict" questions that "were very general" and recognizing that the general verdict rule permits affirmance "on any of the seven theories advanced by [the p]laintiff . . . [if] supported by the evidence."); see *Bustos v. Hyundai Motor Co.*, 2010-NMCA-090, ¶ 48, 149 N.M. 1, 243 P.3d 440 (also stating the general verdict rule).

{17} Outback challenges no specific pre-verdict ruling by the district court as a stand-alone basis for reversal. It does not contend that the jury instructions, including that which defined liability under the NMHRA or the special verdict form which sought only a general determination of liability under the NMHRA, were erroneous. It does not directly argue

that the jury's verdict was not supported by sufficient evidence or that the verdict itself was improper in light of the law of the case, here the unchallenged jury instructions. Moreover, if the jury's verdict is legally sustainable on any NMHRA theory advanced by Plaintiff, we need consider its propriety no further.

{18} Bearing in mind this overarching framework of appellate review, we first address the determinative aspect of Outback's second point of appeal; that is, its contention that it is entitled to judgment as a matter of law on Plaintiff's NMHRA retaliation claim because Plaintiff did not establish that he had an "objectively reasonable, good faith belief that Outback regarded him as disabled" at the time Plaintiff engaged in the protected activity of complaining to Jolly about York's treatment of him. (Emphasis added.) Plaintiff counters that he "could have reasonably believed that he possessed a handicap or serious medical condition because Outback regarded him as having such a condition, even if his injury was not in fact substantially limiting."

{19} Although Outback's framing of this issue and both parties' arguments on this point reflect a misunderstanding of what it means for Outback to have regarded Plaintiff to be disabled, which we will explain later in this opinion, we ultimately conclude that Plaintiff established that Outback regarded him to be physically handicapped as that term of art is utilized in the NMHRA. Based on our affirming this theory of liability in the context of the jury's general verdict, we decline to reach Outback's contention that the filing of a worker's compensation claim cannot be a basis for liability under the NMHRA. Accordingly, we affirm the district court's ruling on Outback's renewed motion for judgment as a matter of law and leave undisturbed the jury verdict in favor of Plaintiff on his NMHRA retaliation claim. We also conclude that the district court's inconsistent rulings do not warrant reversal because Outback acquiesced to, or waived its objections to, the jury instructions and special verdict form that embodied the district court's rulings.

B. The New Mexico Human Rights Act

{20} Under the NMHRA, it is an unlawful discriminatory practice for "an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition[.]" NMSA 1978, § 28-1-7(A) (2004, amended 2019).

It is also an unlawful discriminatory practice for an employer to “engage in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice.” Section 28-1-7(I)(2).

{21} The NMHRA defines “physical or mental handicap” as “a physical or mental impairment that substantially limits one or more of a person’s major life activities. A person is also considered to be physically or mentally handicapped if the person has a record of a physical or mental handicap or is regarded as having a physical or mental handicap[.]” NMSA 1978, § 28-1-2(M) (2007). The NMHRA defines “major life activities” to be “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working[.]” Section 28-1-2(N). Here, neither party suggests that the record supports the proposition that Plaintiff actually had a physical handicap. The relevant question with respect to Plaintiff’s NMHRA retaliation claim, therefore, is whether Outback regarded Plaintiff to be physically handicapped (disabled) when it retaliated against him for opposing its unlawful discriminatory practice. See § 28-1-7(I)(2) (defining retaliation under the NMHRA); § 28-1-2(M) (“A person is also considered to be physically or mentally handicapped if the person has a record of a physical or mental handicap or is regarded as having a physical or mental handicap[.]”).

{22} Our Supreme Court has instructed that in interpreting the NMHRA, “it is appropriate to rely upon federal adjudication for guidance in analyzing a claim under the Act,” with the caveat that we have not “adopted federal law as our own,” and that we do not bind “New Mexico law to interpretations made by the federal courts of the federal statute.” *Trujillo v. N. Rio Arriba Elec. Coop., Inc.*, 2002-NMSC-004, ¶ 8, 131 N.M. 607, 41 P.3d 333 (internal quotation marks and citation omitted). The NMHRA definition of “physical or mental handicap” is substantially similar to the Americans with Disabilities Act’s (ADA’s) definition of “disability.” Compare § 28-1-2(M), with 42 U.S.C. § 12102(1) (2012) (“The term ‘disability’ means, with respect to an individual[:]: (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment”). More importantly, *Trujillo* also stated that in the context of an NMHRA medical condition discrimination case, the NMHRA terms “serious medical condition” and “handicap” are interchangeable with the ADA term “disability.” See 2002-NMSC-004, ¶ 8. The ADA was amended in 2008 to “explicitly lower[] the standard

for ‘substantially limits,’ ” and to state “ ‘the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.’ ” *Rico v. Xcel Energy, Inc.*, 893 F.Supp.2d 1165, 1168 (D.N.M. 2012) (quoting Pub. L. No. 110-325, §§ 2(a)(6), 2(b)(5) (2008), 122 Stat. at 3553-54). As Outback notes, however, the NMHRA has not been similarly amended and no reported New Mexico decision has applied the amended federal standards to the NMHRA, so we rely on federal cases interpreting the ADA prior to its 2008 amendments.

{23} The Tenth Circuit has stated that an employer regards an employee as impaired under the ADA—or in NMHRA parlance, regards an employee as having a “physical handicap”—if it “(1) . . . mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) . . . mistakenly believes that the person’s actual, non-limiting impairment substantially limits one or more major life activities.” *Lusk v. Ryder Integrated Logistics*, 238 F.3d 1237, 1241 (10th Cir. 2001) (internal quotation marks and citation omitted). Interpreting just the ADA, this Court has applied the same definition. *Katcher v. Johnson Controls World Servs., Inc.*, 2003-NMCA-105, ¶ 18, 134 N.M. 277, 75 P.3d 877 (citing *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 489 (1999), ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553).

{24} A prima facie case of retaliation under the ADA requires a plaintiff to prove the following elements: (1) the plaintiff engaged in a protected activity; (2) the plaintiff was subjected to an “adverse employment action subsequent to or contemporaneous with the protected activity”; and (3) “there was a causal connection between the protected activity and the adverse action.” *Selenke v. Med. Imaging of Colo.*, 248 F.3d 1249, 1264 (10th Cir. 2001); see also UJI 13-2307 NMRA (Human Rights Act violation) (“An employer violates the Human Rights Act if it engages in any form of retaliation against any person who has opposed any unlawful discriminatory practice.”). With respect to the first element, “to prosecute an ADA retaliation claim, a plaintiff need not show that she suffers from an actual disability. Instead, a reasonable, good faith belief that the statute has been violated suffices.” *Selenke*, 248 F.3d at 1264 (emphasis added). In other words, even if an ADA plaintiff is not actually disabled, a reasonable, good-faith belief on the part of the plaintiff that he or she has engaged in activity protected by the statute will suffice.

C. The District Court Did Not Err by Denying Outback’s Renewed Motion for Judgment as a Matter of Law

1. Standard of Review

{25} We review the district court’s denial of a renewed motion for judgment as a matter of law under Rule 1-050(B) de novo, resolving all conflicts in the evidence in the nonmoving party’s favor. *Williams v. Mann*, 2017-NMCA-012, ¶ 25, 388 P.3d 295. To the extent that Outback challenges evidentiary rulings that are relevant to its argument that it is entitled to judgment as a matter of law with respect to Plaintiff’s NMHRA retaliation claim, we review evidentiary rulings for an abuse of discretion. See *Lewis v. Albuquerque Pub. Sch.*, 2018-NMCA-049, ¶ 32, 424 P.3d 643 (“With respect to the admission or exclusion of evidence, we generally apply an abuse of discretion standard when the application of an evidentiary rule involves an exercise of discretion or judgment[.]”) (alteration, internal quotation marks, and citation omitted).

{26} Despite Outback’s framing of this argument strictly as a matter of law requiring de novo review of the district court’s interpretation of the NMHRA, our review here necessarily entails the jury’s findings of fact in light of the jury instructions given at trial because as Outback argues, “[t]his issue . . . [asks] whether [Plaintiff] presented evidence to support a necessary element of his [NMHRA] retaliation claim.” We review jury verdicts deferentially because “[a]ppellate reversal of jury verdicts must be done cautiously and only under a strict standard of review in order to safeguard a litigant’s constitutional right to a jury trial. For this reason a standard of review was designed to resolve all doubts in favor of the jury verdict.” *Gonzales v. Sansoy*, 1984-NMSC-098, ¶ 5, 102 N.M. 136, 692 P.2d 522 (citation omitted). See *Baxter v. Gannaway*, 1991-NMCA-120, ¶ 11, 113 N.M. 45, 822 P.2d 1128 (“[T]he appellate court should strive to uphold the decisions of the fact[-]finder.”).

{27} “Generally, an appellate court may affirm a trial court ruling on a ground not relied on below if reliance on the new ground would not be unfair to the appellant.” *Atherton v. Gopin*, 2015-NMCA-003, ¶ 36, 340 P.3d 630. Although in doing so we may not “assume the role of the [district] court and delve into fact-dependent inquiries[.] . . . we may affirm the district court’s order on grounds not relied upon by the district court if those grounds do not require us to look beyond the factual allegations that were raised and considered below.” *Id.* (alteration, internal quotation marks, and citation omitted).

2. Plaintiff Established That Outback Regarded Him As Physically Handicapped Under the NMHRA

{28} In the NMHRA’s terms, Outback could not have committed an unlawful discriminatory practice if Outback did

not regard Plaintiff to be physically handicapped at the time he complained to Jolly, because then Plaintiff's complaint to Jolly was not protected by the NMHRA. *See* § 28-1-2(M) ("A person is also considered to be physically or mentally handicapped if the person has a record of a physical or mental handicap or is regarded as having a physical or mental handicap." (emphasis added)); § 28-1-7(I)(2) (defining an unlawful discriminatory practice as an employer "engag[ing] in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice."). Because of the absence of medical evidence apart from Plaintiff's testimony regarding his injuries, York's testimony at trial is crucial to our determination that Outback regarded Plaintiff to be physically handicapped under the NMHRA. Referring to the time-frame immediately after Plaintiff was injured, Plaintiff's counsel questioned York:

Plaintiff's counsel: So you saw [Plaintiff] in crutches, he's telling you he can't work, he's got records of physical injury, you regarded him as being disabled, didn't you?

Mr. York: Disabled?

Plaintiff's counsel: Yeah.

Mr. York: I would say a sprained ankle is a disability.

But York's testimony that he believed Plaintiff to be disabled does not end our analysis. For Plaintiff to prevail on his NMHRA retaliation claim on the theory that Outback terminated Plaintiff because Outback regarded him to be physically handicapped, he needed to establish that Outback, through its employees, including York, believed, even if mistakenly, that Plaintiff's ankle injury substantially limited one or more of his major life activities. *See Lusk*, 238 F.3d at 1241 (stating employer regards employee to be disabled if it "(1) . . . mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) . . . mistakenly believes that the person's actual, non-limiting impairment substantially limits one or more major life activities."). The major life activities implicated here are walking, working, and possibly performing manual tasks. *See* § 28-1-2(N) (defining "major life activities" under the NMHRA).

{29} In addition to York's testimony, Plaintiff testified that when he requested an accommodation from York, he could still walk, but not well enough to be a server. Plaintiff also testified that he asked his father to fix a pipe inside the restaurant since he told York before he was injured that he would fix it, and York was upset that he had not fixed the pipe. A reasonable inference from that testimony was that Plaintiff's

mobility was impaired, and also that he was not capable of fixing the pipe due to his injury, and thus possibly could not perform manual tasks. However, Plaintiff's suggested accommodations of expediting work and prep work indicated that he felt he could work, stand, and walk to some degree. Given that Plaintiff clearly felt he could work a prep shift, which required walking and standing for eight hours, and communicated the same to York, York's refusal to accommodate Plaintiff with server, expediting, or prep shifts because he did not believe that Plaintiff could perform that work in his condition is indicative of his belief, even if mistaken, that Plaintiff was substantially limited in one or more of his major life activities.

{30} To reiterate, the record indicates that York was mistaken for three reasons. First, Plaintiff told York he could work a prep shift, which would have required walking and standing for eight hours. In the absence of any medical evidence or testimony, which the district court ensured when it barred that evidence in its ruling on Outback's motion in limine, Plaintiff's testimony that he felt he could have worked the prep shift is evidence that York was mistaken.

{31} Second, Plaintiff's physician's notes, which Plaintiff gave to York following his injury, did not reflect that Plaintiff was physically limited other than being unable to work during a specified date range. There was a section in each note called "Restrictions" in which the physician could have checked a box next to certain restrictions such as Plaintiff's ability to lift, bend, and twist, and whether Plaintiff should not bear weight on his legs, should avoid standing and walking for more than a certain number of hours, or needed crutches, among other restrictions. None of those boxes was checked. In fact, there were no details on the notes other than that Plaintiff could not work during a specified date range.

{32} Finally, York testified that he believed "a sprained ankle is a disability." Again, under the NMHRA, Plaintiff was "considered to be physically or mentally handicapped if . . . [he was] regarded as having a physical or mental handicap[.]" Section 28-1-2(M). York was Plaintiff's supervisor at Outback, and thus York's perspective as to whether Plaintiff had a physical or mental handicap that substantially limited one or more of his major life activities is indicative of whether Outback regarded Plaintiff to be physically handicapped or disabled since York felt that Plaintiff could not perform a major life activity, working, because of his injury. Because evidence in the record supports a determination that York mistakenly believed that Plaintiff's injury substantially

limited his major life activity of working, we conclude that Outback regarded Plaintiff to be disabled.

{33} Outback is incorrect that the relevant inquiry here is whether Plaintiff had a reasonably objective, good-faith belief that Outback regarded him to be disabled. On a retaliation claim, for a plaintiff to proceed on the theory that an employer *regarded* an employee to be disabled and discriminated against him or her because of it, and then terminated an employee because he or she opposed that discrimination, it is irrelevant what the *employee* believed the *employer* thought about his condition. The employee's good-faith belief that his employer has violated the relevant statute, in this case the NMHRA, and whether the employer regarded that employee to be disabled, are the relevant inquiries. *See id.* § 28-1-2(M) ("A person is . . . considered to be physically . . . handicapped if the person . . . is regarded as having a physical . . . handicap[.]"); *Selenke*, 248 F.3d at 1264 (stating an employee need not prove he or she "suffers from an actual disability" to prove an ADA retaliation claim, but the employee does need to show that he or she had "a reasonable, good[.]-faith belief that the statute has been violated"). If an employer takes adverse employment action because it mistakenly believes the employee's impairment is actually more limiting than it is, or alternatively mistakenly believes the employee is suffering from a substantially limiting impairment when the employee is not impaired at all, that belief and ensuing action based upon it combines to amount to an unlawful discriminatory practice because the *employer* is taking action based on *its mistaken perception* that the employee is disabled. *See Lusk*, 238 F.3d at 1241 (applying the ADA to an employer's mistaken belief concerning impairment).

{34} Notwithstanding the foregoing, Plaintiff still had to have a good faith, objectively reasonable belief that Outback violated the NMHRA, as opposed to a good faith, objectively reasonable belief that Outback regarded him to be disabled, which is what Outback argues. *See Selenke*, 248 F.3d at 1264 (stating showing necessary for ADA retaliation claim). Here, the record indicates that Plaintiff had such a belief. Plaintiff reported to Jolly that York tried to convince him not to file a worker's compensation claim, and when that effort failed, York gave him telephone numbers that were purportedly for Outback's worker's compensation insurer, but were actually for a Wells Fargo bank. Plaintiff also told Jolly about York's pressure on him to find coverage for the shifts of work that he was missing or "man up and work." Additionally, Plaintiff told Jolly that York told him, "If you want to manage for me, you will show up no matter what."

{35} Plaintiff testified that by February 12, 2012, which was approximately six weeks after his injury, his worker's compensation claim had "finally" been approved and his Magnetic Resonance Imaging scan was scheduled for February 15. However, two days later, Jolly called Plaintiff to terminate his employment. According to Plaintiff, Jolly told him that the decision to terminate him was York's, and "each store handles how they—each store treats [w]orkers' [c]ompensation differently. It depends on the individual proprietor, and it was his decision alone to terminate me." However, Plaintiff also testified that Jolly told him that York terminated him "because I hadn't worked in [thirty] days, and it's his policy to remove in the [thirty] days." For her part, Jolly testified that Plaintiff told her that he was concerned "that his [w]orker's [c]omp[ensation] injury had been reported on the wrong date, and that he didn't like the tone of some text messages." The record shows that Plaintiff had a good faith, objectively reasonable belief that Outback violated the NMHRA by terminating him because it regarded him as having a physical handicap. Additionally, although no New Mexico case has decided whether the determination of an impairment as a serious medical condition is a question of law or fact, the Tenth Circuit has decided that "[w]hether the plaintiff has an impairment within the meaning of the ADA" and "[w]hether the conduct affected is a major life activity for purposes of the Act is also a legal question for the court." *Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1129 (10th Cir. 2003); see

also Rule 13-2307G NMRA, comm. cmt. (recognizing the Tenth Circuit's holding in *Doebele*). We therefore affirm the district court's judgment and denial of Outback's renewed motion for judgment as a matter of law, but because we do so on grounds that the district court did not rely upon,² we affirm the judgment and denial under the right for any reason doctrine. See *Atherton*, 2015-NMCA-003, ¶ 36 (stating that we may affirm the district court as right for any reason if doing so would not be unfair to the appellant and if it would not require us to look beyond factual allegations considered below).

D. The District Court's Inconsistent Rulings Do Not Warrant Reversal Because Outback Either Acquiesced or Waived Objections to the Jury Instructions and Special Verdict Form

{36} On appeal, Outback argues that the district court's inconsistent rulings during and following trial, especially its mistaken belief that the jury found that Plaintiff had a serious physical injury, prejudiced it such that we must order a new trial. Specifically, Outback contends that the district court's pretrial ruling on Outback's motion in limine concluding that Plaintiff did not have a physical handicap or serious medical condition under the NMHRA and the district court's directed verdict during trial dismissing Plaintiff's NMHRA claims that were premised upon discrimination and failure to accommodate were inconsistent with the district court's denial of Outback's renewed motion for judgment as a matter of law in part because Plaintiff had a serious injury and was retaliated against

because of it. Plaintiff answers that Outback's new trial request was not preserved,³ that Outback invited any error because of its motion in limine, and that the district court's reliance on its conclusion that Plaintiff had a serious medical condition in denying Outback's renewed motion for judgment as a matter of law does not warrant reversal because whether Plaintiff had a serious medical condition was not an element of his NMHRA retaliation claim.

{37} While we agree to some degree that the district court's rulings were inconsistent, Outback is not entitled to a new trial because Outback either acquiesced to or waived its objection to the jury instructions or special verdict form, and indeed does not raise claims of error with respect to them on appeal. We focus our analysis on Outback's waiver of objections and acquiescence to the general-in-nature jury instructions and special verdict form because they comprise the law of the case. See *Estate of Saenz*, 2018-NMSC-032, ¶ 40 ("[U]nchallenged jury instructions are therefore the law of the case."); *Muncey*, 2012-NMCA-120, ¶ 21 (stating that "[j]ury instructions become the law of the case" for the purpose of evaluating sufficiency of the evidence); *Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 43, 146 N.M. 853, 215 P.3d 791 (same). {38} With respect to Plaintiff's NMHRA retaliation claim, the jury was instructed that "[a]n employer violates the [NMHRA] if it . . . engages in any form of threat, retaliation, or discrimination against any person who has opposed an unlawful discriminatory practice." The district court stated its intention to not permit Plaintiff's NMHRA

²Because the district court's reasons for denying Outback's renewed motion for judgment as a matter of law were flawed, we do not rely upon them, even though we affirm the district court's denial as right for any reason. By the time it heard Outback's renewed motion for judgment as a matter of law, it had changed its position and concluded that the evidence showed that Plaintiff had a serious medical condition because of its inaccurate memory of evidence that Plaintiff notified Outback of his surgery pre-termination (it was actually post-termination). Additionally, the district court erroneously concluded that the jury found that Plaintiff had a serious medical condition simply because Plaintiff argued his NMHRA retaliation claim on the basis of his worker's compensation claim. The jury made no such finding because the special verdict form did not allow the jury to identify the unlawful discriminatory practice that Plaintiff opposed and for which Outback retaliated against him. The mere existence of a worker's compensation claim is not probative of the severity of the worker's injury. See NMSA 1978, § 52-1-9 (1973) (stating worker has right to compensation provided for in Workers' Compensation Act for "any personal injury accidentally sustained").

³Outback argued during the hearing on its renewed motion for judgment as a matter of law that filing a Workers' Compensation claim "does not always involve a disability[.]" which prompted the district court's conclusion "that the evidence is that this did turn out to be a serious medical condition." The district court then asked, even though it did not allow Plaintiff's retaliation claim to go forward on the basis of discrimination, whether there was "substantial evidence upon which the jury can rely on to say that he was discriminated [against because he filed] a Workers' Comp[ensation] claim that was related to a serious medical condition?" We agree with Outback's argument on appeal that its counsel during the hearing attempted to inform the district court that it was making inconsistent rulings, since Outback's counsel argued during the hearing that "the reason that you dismissed the failure to accommodate claim itself was you found at the time that all this was going on, that the time that he was communicating to Outback, that the injury had not yet progressed to the point where it was, in fact, a disability." Thus, Outback preserved this issue for review on appeal. See *Lasen, Inc. v. Tadjikov*, ___-NMCA-___, ___ P.3d ___, (No. A-1-CA-34744 Dec. 21, 2018) ("The primary purposes for the preservation rule are: (1) to specifically alert the district court to a claim of error so that any mistake can be corrected at that time, (2) to allow the opposing party a fair opportunity to respond to the claim of error and to show why the district court should rule against that claim, and (3) to create a record sufficient to allow this Court to make an informed decision regarding the contested issue.") (alteration, internal quotation marks, and citation omitted).

claim on the basis of discrimination based on physical handicap, and yet a general statement that discrimination is a basis upon which Outback may have violated the NMHRA remained in the jury instruction. Outback argued that it was problematic that the jury was not “given a standard for how they decide whether the retaliation has occurred” in the jury instruction and stated that the jury should be “told what the protected opposition activity is.” The district court then suggested to Outback that it submit a jury instruction defining the protected activity. There is no indication in the record that Outback actually submitted such an instruction, and such an instruction was ultimately not given to the jury.

{39} The special verdict form asked the jury only *whether* Outback “violate[d] the [NMHRA,]” but did not ask the jury to specify *how* Outback violated the NMHRA. Outback twice objected to the special verdict form, but its first objection is not relevant to this appeal.⁴ Outback also argued that “if the jury makes a finding that Outback violated the [NMHRA], the appellate court will not know whether it was based on protected activity involving the worker[s] comp[ensation] claim, or protected activity involving things that fall within the four corners of the act. It might be worth asking two subsets or sub questions there.” However, Outback withdrew its objection to the special verdict form, claiming later at the hearing on the renewed motion for judgment as a matter of law that it withdrew its objection because it believed there was just one basis for the NMHRA retaliation claim, which was Plaintiff’s worker’s compensation claim.

{40} Outback’s failure to submit an alternative NMHRA retaliation jury instruction and Outback’s decision to

allow the jury to be instructed with the general-in-nature jury instruction constitutes waiver of any objection to it, or alternatively acquiescence to the same. See *Pittard v. Four Seasons Motor Inn, Inc.*, 1984-NMCA-044, ¶ 24, 101 N.M. 723, 688 P.2d 333 (concluding plaintiffs waived their right to challenge a jury instruction on appeal when their submitted jury instruction did not accurately reflect the law). Cf. Rule 1-051(B) NMRA (“The court shall instruct the jury regarding the law applicable to the facts in the cause unless such instructions be waived by the parties.”); Rule 1-051(I) (“For the preservation of any error in the charge, objection must be made to any instruction given . . . or, in case of a failure to instruct on any point of law, a correct instruction must be tendered, before retirement of the jury.”); *Estate of Saenz*, 2018-NMSC-032, ¶ 23 (“As a general rule, the right to object to an improper verdict is waived when not made at the time of the return of the verdict and cannot be reclaimed and revived by resorting to a motion for a new trial or on appeal.” (internal quotation marks and citation omitted)). Similarly, Outback’s withdrawal of its objection to the special verdict form indicated its agreement. Outback cannot now challenge the jury’s verdict that it violated the NMHRA when it failed to object to overly general or flawed jury instructions. Regardless of the district court’s inconsistent rulings about whether Plaintiff had a serious medical condition, Outback was aware that the jury received a flawed NMHRA retaliation instruction, and Outback acquiesced to a special verdict form that did not ask the jury to specify how Outback violated the NMHRA. Further, although the district court erroneously concluded that the jury found that Plaintiff had a serious medical

condition, in light of our conclusion that, as a matter of law, Outback regarded Plaintiff to be disabled and that Plaintiff had a good faith, reasonable belief that Outback violated the NMHRA, the district court’s inconsistent ruling on that topic did not impact the outcome.

We have previously warned:

[W]e are not prepared to second-guess or override the jury. It is up to the parties to carefully try their cases, to assure that the jury is clearly and carefully instructed, to make critical objections in regard to instructions, and to carry the burden of persuasion through convincing evidence and argument. It is not the duty of an appellate court to sift through the testimony and other evidence and attempt to decide the case based on instructions with which the parties found no material fault.

Muncey, 2012-NMCA-120, ¶ 48. That warning remains true today. We decline to reverse the jury verdict and order a new trial.

CONCLUSION

{41} For these reasons, we affirm the jury verdict in Plaintiff’s favor with respect to his NMHRA retaliation claim and the district court’s denial of Outback’s renewed motion for judgment as a matter of law.

{42} **IT IS SO ORDERED.**
J. MILES HANISEE, Judge

WE CONCUR:
KRISTINA BOGARDUS, Judge
JAMES J. WECHSLER,
Judge Pro Tempore

⁴Outback argued in its first objection to the special verdict form that “the jury should first have to decide the statutory [NMHRA retaliation] claim before moving to the retaliatory discharge claim.” Ultimately the parties agreed that the jury would be asked to decide liability with respect to both retaliatory discharge and the NMHRA retaliation claim, and that there would be another instruction in the special verdict form telling the jury that if it “found in favor of Plaintiff . . . regarding statutory [NMHRA] retaliation, then you may answer . . . regarding the award of punitive damages.”

Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-020

No. A-1-CA-36565 (filed December 30, 2019)

MICHAEL BRIAN MCDONALD, PH.D.,
Plaintiff-Appellee,

v.

ZIMMER INC., and ZIMMER
HOLDINGS INC.,

Defendants-Appellants,
and

LAMORRIS RICHARD HERRIN, JR.
and RK ORTHOPEDICS, LLC,
Defendants.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

NAN G. NASH, DISTRICT JUDGE

Released for Publication May 5, 2020.

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Opinion

Linda M. Vanzi, Judge.

{1} Zimmer Inc. and Zimmer Holdings Inc. (collectively, Defendants) appeal the district court's finding of strict liability for a design defect in the hip prosthetic implanted in Brian McDonald (Plaintiff). Following a bench trial, the district court concluded

that the design of the prosthetic was unreasonably dangerous, in that it shed excessive metal debris, causing poisoning and death of the soft tissue in Plaintiff's hip joint, requiring Plaintiff to have additional hip surgeries and ongoing (potentially lifelong) antibiotic treatment. Defendants argue on appeal that (1) the district court erred in its findings and conclusions concerning a design defect; and (2) the hip prosthetic is an unavoidably

unsafe product, for which adequate warnings were given, such that Defendants are not subject to strict liability, pursuant to comment k to the Restatement (Second) of Torts § 402A (1965). Defendants seek judgment as a matter of law, or a new trial. For the reasons set forth below, we affirm the district court.

BACKGROUND

I. Procedural History

{2} Plaintiff filed a lawsuit against Defendants, and co-defendants Lamorris Richard Herrin, Jr., and RK Orthopedics, LLC, on May 9, 2013. The complaint arose from Plaintiff's injuries in connection with the failure of his hip implant, a prosthetic device designed and manufactured by Defendants. The claims tried before the district court in December 2016, in a bench trial, sounded in strict liability (design defect and failure to warn), negligence, breach of express and implied warranties, and punitive damages. The district court found Defendants strictly liable for a design defect in the prosthetic device, and dismissed all other claims, including those against co-defendants Herrin and RK Orthopedics.¹

II. Facts Presented at Trial

A. Plaintiff's Hip Surgeries

{3} In 2010 Plaintiff was diagnosed with severe osteoarthritis with flattening of the femoral head, osteophyte formation, and cystic formation. Plaintiff consulted with orthopedic surgeon Joshua Carothers, M.D., and elected to have total hip replacement surgery.² Dr. Carothers had originally planned to use a single-modular prosthetic device for Plaintiff's hip replacement—a Zimmer brand “M/L Taper with VerSys head.” “Single-modular” describes a device with a fixed or solid neck-stem³ component (the component anchored to the femur) coupled with an artificial head (replacing the “ball” of the natural hip joint). Zimmer's device, which included a titanium alloy neck-stem component, and a cobalt-chromium alloy (CoCr) head component, was (at the time) considered the “gold standard” in total hip replacement. However, during the surgery in June 2010, Dr. Carothers had to make certain adjustments to accommodate Plaintiff's anatomy, and decided to use a dual-modular device instead: the Zimmer brand “M/L Taper Hip Prosthesis with Kinectiv Technology” (MLTK).⁴ The

¹The co-defendants were dismissed pursuant to a motion under Rule 1-041(B) NMRA, granted by the district court following the bench trial.

²Also known as “total hip arthroplasty.”

³Also called a “monoblock taper.”

⁴Dr. Carothers noted in his testimony that, at the time, Presbyterian Hospital (where Plaintiff's surgery was performed) had a sole-source contract with Defendants, and therefore Dr. Carothers was restricted to using a Zimmer product for Plaintiff's total hip replacement.

MLTK is a “dual-modular” device because the neck and stem components of the prosthetic are separate and can be adjusted, both in relationship to the head and to one another, to account for variations in joint configuration (e.g., leg length, offset, and version, which refers to the forward or backward rotation of the hip joint). In Plaintiff’s case, these options allowed Dr. Carothers to choose an anteverted neck (one with a forward rotation) for Plaintiff’s implant. Like the traditional M/L Taper, the MLTK’s neck and stem are made of titanium alloy. The MLTK can be used with either a CoCr head (such as the VerSys) or a ceramic head. Dr. Carothers used the CoCr head.

{4} Plaintiff initially recovered well, but by early May 2011, Plaintiff was experiencing hip pain, groin pain, and loss of flexibility. Dr. Carothers commenced an established series of tests to determine the cause of Plaintiff’s pain, which showed, *inter alia*, that Plaintiff had elevated levels of C-reactive protein (indicating tissue necrosis, or tissue death), and a pseudotumor⁵ forming in the hip joint. Plaintiff then saw Christopher Beauchamp, M.D., at the Mayo Clinic in Phoenix, Arizona, on September 2, 2011, where Dr. Beauchamp diagnosed Plaintiff with an adverse reaction to metal debris, associated with the MLTK implant, and scheduled Plaintiff for revision surgery. Dr. Beauchamp ordered a blood serum test, which revealed slightly elevated chromium levels, and significantly elevated (tenfold the normal level) cobalt levels. Dr. Beauchamp performed a revision surgery on Plaintiff’s right hip joint on October 4, 2011, during which he discovered corrosion⁶ and metal debris at the taper junction of Plaintiff’s MLTK prosthetic, as well as burnishing on the neck component at the second (neck-stem) junction, necrotic (dead) tissue, and turbid (cloudy) joint fluid. Dr. Beauchamp’s pre-operative and post-operative diagnoses were failed total hip replacement secondary to adverse reaction to metal debris caused by the CoCr

head on the hip prosthetic articulating with the titanium trunnion (the top of the neck, where it couples with the head). Such adverse reaction is also known as metallosis or adverse local tissue reaction.

{5} Dr. Beauchamp revised the hip by exchanging the CoCr head for a ceramic head; he also replaced the Kinectiv neck component and the polyethylene liner (which rests between the head and the cup). Dr. Beauchamp was unable to remove all of the necrotic tissue around Plaintiff’s right hip, because removing too much tissue leaves a patient at risk for joint dislocation; however, retaining necrotic tissue poses a risk of infection, given the lack of blood circulation to the dead tissue. In fact, Plaintiff developed an infection following this revision surgery, requiring a second revision surgery, performed by Dr. Carothers. Dr. Carothers performed an irrigation and debridement for the infection and replaced the Kinectiv neck and polyethylene liner. He also replaced the ceramic head from the first revision surgery with a new ceramic head.⁷ Plaintiff has required and may permanently require antibiotic therapy due to his continued risk for infection. It is probable that Plaintiff will require a third, more complicated revision surgery in the future to eradicate the infection.

B. Development of the MLTK

{6} Single-modular hip prostheses have been widely used since the early 1980s, but dual-modular prostheses were not developed until approximately twenty years later. Indeed, when Defendants launched the development of the MLTK in 2001 (through a project known as “G2”), it was a new design and a “new frontier” for Defendants. Defendants employed multiple engineers and approximately twenty consulting surgeons on the design team. The MLTK was intended to be minimally invasive, to offer a wider range of adjustments to surgeons, and to provide greater flexibility within the joint. Defendants designed the titanium neck and stem components to be used with either a CoCr

or a ceramic head component. The MLTK offers a total of sixty possible configurations.

{7} Hip implants fail for a variety of reasons, including but not limited to dislocation, fracture, loosening, infection, and metallosis. Some degree of corrosion occurs in all modular hip implants. Although there is no consensus as to why some patients with a corroding implant develop metallosis, while others do not, it is well understood that more corrosion/metal debris increases the risk of developing metallosis. Defendants were aware the particular characteristics of the MLTK would increase the risk of micro-motion, and therefore corrosion and liberated metal debris from junctions of the prosthetic. Specifically, the MLTK features (1) two modular junctions, and therefore an additional location where corrosion may occur; (2) a junction between two dissimilar metals (known to generally pose a higher risk of corrosion than junctions between similar metals); (3) a neck that is thinner in two planes and more flexible⁸ than a traditional neck (increasing the likelihood of fretting corrosion); and (4) optional adjustments in length and version that may increase the bending moment⁹ in the neck (further increasing the likelihood of fretting corrosion).

{8} Accordingly, one of the design goals for the MLTK was to minimize corrosion at the head-neck and neck-stem junctions, with the goal that the metal debris released by the device would be within “known acceptable levels.” However, no reasonable level for wear debris was, in fact, known. Defendants elected to define “known acceptable level[s]” through a “clinically proven” predicate device: the traditional M/L taper with a CoCr (VerSys) head, and six-inch tapered titanium neck (a single-modular device). This device, according to Defendants’ research report on the MLTK, had a “long clinical history of exhibiting some debris generation without adverse clinical effects.” Defendants therefore designed a test (known as an accelerated

⁵A pseudotumor is metal-related pathology consisting of a large fluid collection in the joint.

⁶Corrosion is a reduction-oxidation reaction at the surface of a metal. It may occur where two metals with differing electro-potentials are in contact with one another, and the more active metal (i.e., the metal that more readily loses electrons) oxidizes, or corrodes. This is known as galvanic corrosion. Corrosion may also occur through micro-motion or fretting—that is, wear to a metal surface induced by rubbing (on metal or another surface). With fretting corrosion (also known as tribocorrosion), surface wear removes the metal’s natural oxide coating and exposes it to a new chemical environment. In the junction of a modular hip prosthetic, wear is created by the micro-motion of one component against the other, and small volumes of joint fluid exchanged within the junction facilitate the corrosive reaction, carrying oxides and metal ions outside of the joint, and generally altering the electro-chemical environment around and within the joint. This phenomenon has been described as mechanically-assisted crevice corrosion.

⁷Dr. Carothers testified that, for Plaintiff’s primary surgery, he believed the benefits of using the MLTK with the CoCr head outweighed the risks, but at the time, he did not know that the MLTK with CoCr head presented a risk of metallosis.

⁸The MLTK neck is in the top third of flexibility among hip prosthetic necks.

⁹The “moment” is the product of force times distance. In the neck of the MLTK, for instance, the longer the neck, the greater the moment. A greater moment induces greater bending (and consequently, greater micro-motion in the junction).

corrosion fatigue test¹⁰) that would quantify the “worst case” metal debris released by the predicate device, which was determined to be 5.62 milligrams. Defendants reasoned that, if the debris generated by the “worst case” orientation of the MLTK in a similar environment was below 5.62 milligrams, the MLTK would, like the predicate device, avoid adverse clinical effects.¹¹

{9} At trial Defendants explained that they ran corrosion fatigue testing on the two MLTK junctions “separately,” in order to isolate and measure the worst-case metal debris generated at the head-neck, and neck-stem junctions, respectively. In effect, the Defendants tested the entire MLTK device with a ceramic head, but never tested the entire device with CoCr head. Defendants’ explicit rationale for this was that utilization of the ceramic head would minimize the debris generated at the head-neck junction, thus allowing Defendants to isolate the debris generated at the neck-stem junction. Defendants then separately tested the head-neck junction using a CoCr head and titanium neck, but did not use the Kinectiv neck, instead using a titanium neck of similar geometry (a 12/14 Taper) anchored in bone cement. Defendants added together the metal debris released in each test,¹² which totaled 4.4 milligrams. Because this total was less than the 5.62 milligrams released by the predicate device, Defendants determined that the debris generated by the MLTK in vivo would be within “known acceptable levels.”

{10} Nothing prevented Defendants from performing corrosion fatigue testing on the entire MLTK device with a CoCr head. Spectrum Accelerated Corrosion Fatigue (SACF) testing, which would have applied side loads in a variable manner more similar to a patient’s use of his or her joint, was

also considered by the G2 design team in 2006, but Defendants elected not to pursue it. Although the best evaluation of a device would include clinical information, in addition to laboratory testing, and one of Defendants’ consulting surgeons, Joshua Jacobs, M.D., proposed clinical studies in 2003 (and 2011, after the device had been marketed), Defendants never conducted one prior to launching the MLTK. Again, evidence showed that Defendants deemed a clinical study unnecessary, reasoning that the clinical predicate device used in the corrosion fatigue testing provided sufficient information regarding the device’s risk of corrosion in patients. Ultimately, the MLTK, configured with the CoCr head or the ceramic head, passed Defendants’ testing for fatigue strength and stability.

C. Marketing and Use of the MLTK

{11} The MLTK was cleared for marketing by the Food and Drug Administration (FDA) on January 24, 2007. The MLTK is a “Class III” medical device—meaning one that either “presents a potential unreasonable risk of illness or injury” or which is “purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health[.]” 21 U.S.C. § 360c(a)(1)(C) (2018). Although such devices are ordinarily required to undergo a rigorous premarket approval process, the Medical Device Amendments Act of 1976, Pub. L. No. 94-295, 90 Stat. 539 (the Act), permitted devices that are “substantially equivalent” to devices already on the market to avoid the premarket approval process. See 21 U.S.C. § 360e(b)(1)(B) (2018). Courts have observed that this truncated route (known as the “510k process,” under a prior version of the Act) is “focused on equivalence, not safety.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 493 (1996) (emphasis,

internal quotation marks, and citation omitted). Whereas the premarket review process (which requires 1,200 hours to complete) is a federal safety review, the on-average 20-hour review process for devices marketed under 510k “requires little information, rarely elicits a negative response from the FDA, and gets processed very quickly.” *Id.* at 479 (internal quotation marks and citation omitted).

{12} Manufacturers are required to internally track adverse events in connection with medical devices and to report them to the FDA; these are made public through the Manufacturer and User Facility Device Experience (MAUDE) database. However, because such data is primarily controlled by the manufacturers, and because not all doctors report adverse events to manufacturers, statistical data from MAUDE may not be used to justify or prove a device’s safety. At trial, evidence was presented that, per Defendants’ internal reporting, 47 MLTK devices were revised due to metallosis between July 9, 2009 and June 20, 2016. It is unknown whether, or how many of these devices were configured in the same manner as Plaintiff’s, because Defendants do not track reported revisions with sufficient detail to ascertain this information. Dividing this number by the number of devices sold worldwide through 2016 (148,470), .032 MLTK devices were revised due to metallosis, for every thousand sold.¹³ The traditional M/L Taper (the predicate device in testing for the MLTK) had a lower metallosis revision rate (.025 per thousand) during the same period.

{13} At trial, evidence was also presented regarding the MLTK’s performance as reported through independent registries in Australia and the United Kingdom (UK).¹⁴ It appears that the MLTK had a significantly higher overall revision rate,¹⁵ and a nine-times higher rate of revision

¹⁰ Accelerated corrosion fatigue testing is calculated to mimic and accelerate the corrosive conditions in the human body, to measure a prosthetic’s loss of debris under such conditions and to ascertain the fatigue strength of the components. Fatigue strength refers to resistance to cracking or fracture under corrosion stress. In this case, such testing entailed immersing the relevant prosthetic components in a solution with a PH slightly more acidic than the human body, at a temperature somewhat higher than the temperature of the human body, and subjecting the components to loads analogous to the weight borne by the joint over a period of approximately five years.

¹¹ Defendants initially ran corrosion fatigue testing on a design featuring a CoCr neck, as CoCr is an alloy superior in strength to titanium. However, this combination generated too much metal debris, and was therefore abandoned in favor of a design that replaced the CoCr neck with a titanium neck. This change in materials extended the time-frame of the G-2 project (from three to five years) and resulted in additional costs for Defendants.

¹² Defendants actually tested five different constructs for the neck-stem junction and averaged them.

¹³ Units sold does not reflect the units actually implanted in a patient, further limiting the usefulness of this data.

¹⁴ George Kantor, M.D., retained by Plaintiff as an expert in orthopedic surgery, explained that the registry data is problematic in terms of relying on it to communicate reasons for revision of a given prosthetic device, because the data is limited in specificity, and the causes of implant failure are complex. For instance, revisions reported as caused by loosening of the prosthetic, fracture, infection, and osteolysis (bone loss), may have been caused by metallosis or metal-related pathology, but not reported as such. Dr. Kantor felt that this data’s best function, then, is as a “canary in the mine-shaft.”

¹⁵ Dr. Kantor testified that, per National Institutes of Health consensus on hip prosthetic performance, the five-year revision rate for survival should be 2.0; per the Australian data; the MLTK’s rate was 5.1 at five years.

due to metal-related pathology, compared to all other hip implant systems being used in Australia as of 2013. In the UK, the revision rate between 2006 and 2016 was 23 for 1,074 MLTK units implanted, for a revision rate of only .021, but the number of MLTKs sold in the UK has also dropped precipitously since 2012; zero were sold in 2016. No explanation for this was offered in evidence at trial.¹⁶

{14} In 2010 Dr. Jacobs submitted a research proposal to study fretting corrosion in the MLTK. The proposal sought to utilize corrosion fatigue and other wear testing of the entire device (both junctions) with a CoCr head, in multiple configurations. The rationale for this was that, “presently, the amount of metal released from newer dually modular head-neck total arthroplasty components is not well characterized and thus the biological impact of this is not known.” Dr. Jacobs explained that fretting corrosion in modular junctions “appears to be a major or primary source of metal released in vivo in total joint arthroplasty patients” and that “[t]he issue of metal release from modular prosthetic devices is becoming increasingly urgent due to an increasing prevalence of implant modularity associated with new Kinectiv joint replacement surgery techniques.” Defendants’ lead engineer in the design of the MLTK, Steven Meulink, met with Dr. Jacobs, and agreed with his concerns, but Defendants did not fund the proposed research because they “did not have funding for the project at [the] time.”

{15} Dr. Jacobs then reported on ten cases in which head-neck taper corrosion was “observed at the time of revision[,]” and in which adverse local tissue reactions were observed in a subset of several patients, leading Defendants to conduct a Quality Investigation Report (QIR-12014) in 2011. QIR-12014 noted a substantial rise in “corrosion complaint rates” in the past five years, among which the majority had “in-vivo times of less than four years.” Moreover, the highest number of complaints were regarding CoCr heads on MLTK devices or CoCr heads on a fixed CoCr stem (the VerSys Beaded Full Coat Stem).

{16} Soon thereafter, in 2012, Paul J. Diwilius, M.D., another of Defendants’ consulting surgeons for the MLTK, published a short-term study on a large cohort of patients, some of whom received a traditional M/L Taper implant, and some of whom received the MLTK implant, with the aim of understanding whether the advantages of the MLTK outweigh

its disadvantages. He concluded that the advantages of the MLTK’s modular neck configuration did not translate to better outcomes, and that the benefits of using the MLTK over the M/L Taper did not outweigh the risks. In a group of three patients with the MLTK components, he observed corrosion and adverse local tissue reactions at the junction of the CoCr head and titanium neck. He also noted the risk of corrosion at the titanium neck-stem junction. Dr. Diwilius “now almost exclusively uses nonmodular stems and ceramic femoral heads to decrease the possibility of corrosion.” Dr. Beauchamp, who performed Plaintiff’s first revision surgery, no longer uses the Zimmer CoCr head in his total hip arthroplasty practice. He has switched to ceramic heads, to “eliminate cobalt-chromium from the equation,” and reduce the risks to his patients. Indeed, Dr. Beauchamp testified that the Mayo Clinic in Arizona has largely shifted to use of ceramic heads, only, to avoid the metal debris generated by CoCr heads. Dr. Kantor testified that he has performed approximately 5,000 hip surgeries, and that he never uses dual-modular implants in his primary procedures. Moreover, although the prevalence of metallosis is not yet well understood, Dr. Kantor sees cases of metallosis on a monthly basis.

{17} In a 2016 article, Dr. Jacobs recommended, to prevent adverse local tissue reactions, minimizing the micro-motion of modular junctions, and “optimizing material selection,” noting that “many surgeons have abandoned CoCr heads entirely” in favor of ceramic heads. Dr. Jacobs also noted that serum cobalt levels differentially elevated over chromium levels have become a “hallmark” diagnosis for adverse local tissue reaction. At trial, Dr. Jacobs testified that he has never seen a case of adverse local tissue reaction in a patient with a ceramic head component and is only aware of a case report or two documenting such a reaction in a patient with a ceramic head on a CoCr stem (not a titanium stem, used in the MLTK). Although Dr. Jacobs testified that ceramic heads present risks—including a risk of fracture—he felt that these risks are exceedingly low. Dr. Jacobs was also aware that ceramic head technology was available in 2010 (when Plaintiff received his primary MLTK implant).

{18} Finally, Jeremy Gilbert, Ph.D., a biomedical engineering expert retained by Defendants, authored a 2016 study investigating the material loss associated with use of a ceramic head, versus a CoCr

head, on a group of modular hip prosthetics including the MLTK. Dr. Gilbert found that use of the ceramic head resulted in reduction of material loss by an order of magnitude (a factor of ten), and that the study’s findings “support the hypothesis that the use of ceramic heads mitigates metallic material loss from taper junctions.” At trial, Dr. Gilbert acknowledged that the use of ceramic heads should eliminate the release of cobalt-chromium entirely. He also testified that a “constant” in patients who develop adverse local tissue reactions is the presence of modular junctions, where at least one component in those junctions is fabricated from cobalt alloy. A 2015 study by Brian J. McGrory, M.D., noted that, while minimal titanium corrosion still occurs with the use of a ceramic head, it does not seem to cause metallosis. {19} In 2010, 90 percent of the femoral heads sold by Zimmer were CoCr, and ten percent were ceramic. By the time of trial in 2016, 50 percent of the femoral heads sold by Zimmer were CoCr, and 50 percent were ceramic.

D. Risk of Injury

{20} Plaintiff’s expert biomechanical engineer, Albert Burstein, Ph.D., testified that earlier generations of single-modular hip implants did not generate fretting corrosion/metal debris at toxic levels in meaningful clinical quantities. However, the MLTK introduced a risk of fretting corrosion well beyond that seen in earlier devices. According to Dr. Burstein, Defendants did not perform adequate testing with respect to the risk of corrosion in the MLTK. Specifically, Dr. Burstein opined, Defendants failed to test the cobalt-chromium head on the full Kinectiv device, even though the Kinectiv neck-stem is more flexible than a titanium neck anchored in bone cement, and greater flexibility is known to increase micro-motion, and therefore corrosion. Furthermore, Defendants’ test of the neck-stem junction did not include a CoCr head, nor the multiple geometric configurations available to surgeons (such as the anteverted orientation of Plaintiff’s implant), despite the fact that the version of the neck (in addition to the length) is known to impact fretting corrosion. Defendants’ failure to adequately test resulted in the marketing of an unreasonably dangerous and defective device—one that, when used with a CoCr head, in the configuration seen in Plaintiff’s implant, allowed the liberation of excessive, toxic quantities of cobalt debris.¹⁷

¹⁶It appears that fewer than one-third of the MLTKs implanted in the UK used cobalt-chromium heads.

¹⁷Dr. Burstein noted that Plaintiff’s configuration was a more “extreme” case within the system of sixty possible configurations of the MLTK. He explained that, in order to predict performance, an adequate number of configurations at certain extremes need to be tested (and, in the case of the MLTK, they were not).

{21} Dr. Gilbert testified that, in his opinion, the MLTK as configured in Plaintiff is not unreasonably dangerous. In his view, Defendants effectively tested the worst-case configurations of the MLTK, and separate testing of each junction was appropriate under a principle of mechanical engineering known as “Saint Venant’s [p] rinciple,” such that motion at one of the MLTK junctions should not affect motion at the other. However, Dr. Gilbert later conceded that corrosion at one location affects other locations of corrosion, under principles of electrochemistry, as he had previously testified when presenting to the FDA. Dr. Gilbert stated that the corrosion observed on Plaintiff’s device was moderate. However, when asked at trial: “If a device is throwing off or creating so much metal debris and corrosion that it causes metallosis or adverse local tissue reaction, that is not an acceptable risk of harm, is it?” Dr. Gilbert responded, “No, it’s not.”

III. Findings and Conclusions on Strict Liability for Design Defect

{22} Based on the evidence presented at trial, the district court found (in relevant part) that “Plaintiff developed metallosis around his implant and his implant failed due to the corrosion caused by the cobalt chromium femoral head articulating with the titanium trunnion.” The district court reasoned that “[a]lthough a small amount of non-toxic corrosion or metal debris may occur with a hip implant, an implant that causes an excessive amount of corrosion or metal debris sufficient to cause toxic metal poisoning creates an unreasonable risk of injury.” It further found that the MLTK device, when configured with a CoCr head, as in Plaintiff’s case, may generate metal debris sufficient to cause toxic metal poisoning. Accordingly, the MLTK, as configured in Plaintiff’s case, was defective.

DISCUSSION

I. Standard of Review

{23} We review de novo the district court’s application of law to the facts. *TPL, Inc. v. N.M. Taxation & Revenue Dep’t*, 2003-NMSC-007, ¶ 10, 133 N.M. 447, 64 P.3d 474. Moreover, where a district court enters conclusions of law following a bench trial, those conclusions must find support in one or more findings of fact. *Chavez v. S.E.D. Labs.*, 2000-NMSC-034, ¶ 19, 129 N.M. 794, 14 P.3d 532 (*Chavez II*). “Findings are sufficient if, taken together

and construed in support of the judgment, they justify that judgment.” *Id.* We review a district court’s factual findings as we would the verdict of a jury—for substantial evidence. See *Bustos v. Hyundai Motor Co.*, 2010-NMCA-090, ¶ 27, 149 N.M. 1, 243 P.3d 440; see also *Giant Cab, Inc. v. CT Towing, Inc.*, 2019-NMCA-072, ¶ 6, ___ P.3d ___.¹⁸ “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clovis Nat’l Bank v. Harmon*, 1984-NMSC-119, ¶ 7, 102 N.M. 166, 692 P.2d 1315 (internal quotation marks and citation omitted). Moreover, “we resolve all disputed facts in favor of the successful party, indulge all reasonable inferences in support of a verdict, and disregard all evidence and inferences to the contrary.” *Id.* ¶ 7 (noting also that we do not re-weigh the evidence).

II. Analysis

{24} Defendants’ first argument on appeal is that the district court effectively held Defendants “absolutely liable” for Plaintiff’s injuries, both through misapplication of the law, and because there were insufficient findings or evidence of a design defect in the hip prosthetic. Defendants specifically assert that, in its assessment of risk of injury, the district court failed to make sufficient findings under the seven factors required by *Brooks v. Beech Aircraft Corp.*, 1995-NMSC-043, ¶ 32 n.2, 120 N.M. 372, 902 P.2d 54 (citing UJI 13-1407 NMRA, comm. cmt.). Defendants also suggest that the findings, such as they are, were not supported by sufficient evidence.¹⁹

{25} Defendants’ second argument on appeal is that the district court should have found strict liability inapplicable to Plaintiff’s claims under comment k to the Restatement (Second) of Torts Section 402A, pursuant to which “unavoidably unsafe products” are exempt from strict liability, provided (as here) the product was properly prepared and marketed and adequate warnings were given. We address each argument in turn.

A. The District Court Did Not Err in Finding a Design Defect

{26} Defendants first contend that the district court identified no defect in the MLTK, and instead erroneously “based its conclusion that the MLTK was defective in design on its finding that the implant was ‘unreasonably dangerous.’” However, this is precisely what is required under New

Mexico law. “[A]n unreasonable risk of injury resulting from a condition of the product or from a manner of its use . . . makes the product defective.” UJI 13-1406 NMRA; see *Rudisaile v. Hawk Aviation, Inc.*, 1979-NMSC-015, ¶ 11, 92 N.M. 575, 592 P.2d 175 (noting that “[c]ourts have generally equated ‘defective’ with ‘unreasonably dangerous’”), *abrogated on other grounds by Livingston v. Begay*, 1982-NMSC-121, ¶ 24, 98 N.M. 712, 652 P.2d 734. An unreasonable risk of injury is “a risk which a reasonably prudent person having full knowledge of the risk would find unacceptable. This means that a product does not present an unreasonable risk of injury simply because it is possible to be harmed by it.” UJI 13-1407; see *id.*, comm. cmt. (further explaining that “a product is defective if it is unreasonably dangerous as marketed. It is unreasonably dangerous if a reasonable person would conclude that the magnitude of the scientifically perceivable danger as it is proved to be at the time of the trial outweighed the benefit of the way the product was so designed and marketed” (alteration, internal quotation marks, and citation omitted)). In determining whether a product design poses an unreasonable risk of injury, the factfinder conducts a risk-benefit analysis, and considers “the ability to eliminate the risk without seriously impairing the usefulness of the product or making it unduly expensive.” UJI 13-1407.

{27} While a “defect” may be considered a separate element of the cause of action in the sense that an unreasonable danger must result “from a condition of the product or from a manner of its use,” the concept is broad. See *Brooks*, 1995-NMSC-043, ¶ 31 (“Our ‘unreasonable-risk-of-injury’ test [has] allowed for proof and argument under any rational theory of defect.”); *id.* ¶ 32 (holding that UJI 13-1406 and 13-1407 “adequately define ‘defect’ ” by focusing the fact-finder’s attention to evidence of the relative risks and benefits of a product’s design); see also *Rudisaile*, 1979-NMSC-015, ¶ 11 (relying on other state court holdings that “[i]f a product is unreasonably dangerous, it is necessarily defective[.]” and that separate proof of defectiveness and unreasonable danger is not required (internal quotation marks and citation omitted)). The cases cited by Defendants do not offer any meaningful alternative definition of “defect.” For instance, in *Tenney v. Seven-Up Co.*,

¹⁸Defendants assert that “[w]hether the evidence presented at trial is sufficient to support the trial court’s decision” is a question of law subject to de novo review. This is incorrect. The case cited by Defendants for this proposition, *Couch v. Astec Indus., Inc.*, 2002-NMCA-084, ¶¶ 56-57, 132 N.M. 631, 53 P.3d 398, is addressed to the standard of review for entry of a directed verdict, not entry of a judgment following trial.

¹⁹Throughout Defendants’ briefs, it is unclear whether they are challenging the district court’s factual findings, or the evidence in support of those findings, or both. We have endeavored to address both contentions where it appears they are raised, but the overlapping nature of the arguments has made our review more difficult.

1978-NMCA-090, ¶ 7, 92 N.M. 158, 584 P.2d 205, we noted that a defect was an element of proof in a strict liability case, but held that the product in that case was defective only in the sense that it was unfit for its intended purpose, and not unreasonably dangerous. We emphasized that strict liability is only imposed where “the product involves a risk of death or serious personal injury or substantial damage.” *Id.* ¶ 6. Similarly, *Trujillo v. Berry*, 1987-NMCA-072, ¶ 12, 106 N.M. 86, 738 P.2d 1331, only states that a defective product is an element of a products liability claim. In *Pacific Indemnity Co. v. Therm-O-Disc, Inc.*, 476 F. Supp. 2d 1216, 1229 (D.N.M. 2006) (applying New Mexico law), the federal district court held that “the mere fact that a failure or accident occurred is insufficient to support a strict products liability claim[,]” and that [t]here must be evidence of a defect[,]” but did not offer any definition of “defect.”

{28} Here, it was virtually undisputed that significant corrosion and metal debris generated by the MLTK, as configured with a CoCr head, was a substantial cause of Plaintiff’s serious injury (i.e., metallosis) and failed implant. The question for the district court was, then, whether the MLTK so configured posed an unreasonable risk of metallosis, taking into account the relative risks and benefits of its design. See UJI 13-1406, -1407. The district court found that the MLTK’s dual modularity and flexible neck, its multiple possible configurations, and its CoCr-titanium head-neck junction, offers a number of benefits, but also a risk of corrosion greater than the risk posed by earlier, single-modular designs. The court further found that, although patients respond differently to corrosion, greater corrosion increases the associated risks, such as metallosis. Consistent with the foregoing, the court cited evidence that the MLTK configured with a CoCr head poses a greater risk of metallosis than other devices. Defendants’ own consulting expert biomechanical engineer, Dr. Gilbert, testified that it was not an acceptable risk of harm for a device to generate metal debris sufficient to cause metallosis. Dr. Beauchamp, who performed Plaintiff’s revision surgery at the Mayo Clinic, agreed that a safely-designed hip prosthetic should not generate metal debris sufficient to cause metallosis. The MLTK, including as configured with a ceramic head, had passed Defendants’ internal product testing/design goals for strength, corrosion fatigue and junction

stability. The court found that *Defendants’ own alternative design*—the MLTK with a ceramic head—was being used by Defendants’ own consulting surgeon and others to avoid the risk of metallosis posed by the CoCr head. The above findings were sufficient to support the district court’s conclusion that the MLTK with a CoCr head, as configured in Plaintiff, presented an unreasonable risk of metallosis, rendering it defective.

{29} Defendants argue that, even if the district court made a broad connection between the MLTK and an unreasonable risk of injury, it did not adequately connect any particular feature of the MLTK with the mechanism of injury or the degree of risk, and therefore erred in finding a design defect. Defendants cite, *inter alia*, *Bustos*, 2010-NMCA-090, ¶ 23, for the proposition that a design defect, and the risk posed thereby, must be precisely described and quantified. In that case, the “steep rake of [the] support pillar for the car roof” was identified by expert testimony as the defect that created the unreasonable risk of injury. That expert based his opinion on the damage to and measurements of the vehicle at issue, and a calculation that filling the support pillar with foam would add 10-20 percent structural strength. *Id.* Here, by contrast, no expert quantified the amount of corrosion necessary to cause metallosis, and thus no expert could quantify the “excessive” corrosion allegedly caused by the MLTK in Plaintiff, nor did any expert describe whether all, or only some of configurations of the MLTK with a CoCr head were defective.

{30} To the extent Defendants argue that the district court misapplied the law by failing to require adequate quantification of the risks posed by the MLTK, the defendants in *Bustos*, an enhanced injury case,²⁰ also argued that the plaintiffs were required to show the unreasonableness of the risk through precise data: namely that, but for the defective design, the roof would have crushed only to a certain number of inches. *Id.* ¶ 30. We disagreed, as testimony in the record reflected various ways that the strength of the roof could have been improved without undue cost (including but not limited to altering the rake of the support pillar), and the expert opined that, as a result of the failure to undertake any of these improvements, the roof did not provide adequate survival space in a slow rollover accident. *Id.* ¶¶ 30-32. Thus, there was evidence from which a jury could reasonably infer that the roof could and should have been designed not to crush to a level “way

below what would be considered necessary to provide rollover protection[.]” *Id.* ¶ 32. Similarly, here, the findings supported the district court’s reasonable inference that the MLTK could and should have been designed to minimize corrosion and metal debris to levels that do not cause metallosis.

{31} We further note the following: Defendants elected to market the MLTK without a precise understanding of what degree of corrosion or volume of metal debris presents a risk of metallosis. The district court concluded that Defendants’ testing was inadequate to measure the quantity of corrosion and debris liberated by the MLTK with a CoCr head. Defendants identify no law that would require Plaintiff to conduct the research and clinical trials omitted by Defendants in order to establish a precise quantification of the risks posed by the MLTK. Indeed, we read the district court’s findings regarding the inadequacies of Defendants’ testing of the MLTK as an explanation for the presence of an unreasonable risk that could have been better understood and earlier identified, but was not.

{32} To the extent Defendants argue that there was insufficient evidence to support the district court’s findings,²¹ Defendants’ brief overlooks significant portions of the evidentiary record—including key testimony from Dr. Gilbert (Defendants’ own consulting expert), Dr. Jacobs, Mr. Meulink, Dr. Beauchamp, Dr. Kantor and exhibits such as research articles and Zimmer’s own internal data. Defendants focus almost exclusively on Dr. Burstein’s testimony, and the language of the findings themselves, rather than on the sufficiency of the entire record under the applicable legal standards. Under our appellate rules, “[a] contention that a verdict, judgment, or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing on the proposition[.]” Rule 12-318(A) (3) NMRA. This rule is intended to ensure that we are fully apprised of the fact-finder’s view of the facts and its disposition of the issues, particularly given that we “resolve all disputed facts in favor of the successful party, indulge all reasonable inferences in support of a verdict, and disregard all evidence and inferences to the contrary.” *Harmon*, 1984-NMSC-119, ¶ 7; see *Martinez v. Sw. Landfills, Inc.*, 1993-NMCA-020, ¶ 15, 115 N.M. 181, 848 P.2d 1108 (stating that the purpose of Rule 12-318 is to ensure that the appellate court is fully apprised of the “fact finder’s view of the facts and its disposition of the issues”). The district court’s findings

²⁰*Bustos* requires a plaintiff in an enhanced injury case to present evidence as to the *degree of enhancement*, and in that sense requires some quantification of the properties affecting risk. 2010-NMCA-090, ¶¶ 35-46. We agree with Plaintiff that this does not equate to a requirement that risks be precisely quantified in every design defect case.

²¹In their reply brief, Defendants state that they do not focus “primarily” on the sufficiency of the evidence, which is of little assistance.

are binding on Defendants, who failed to set forth the substance of the evidence (favorable or unfavorable) bearing on those findings. *See Maloof v. San Juan Cty. Valuation Protests Bd.*, 1992-NMCA-127, ¶ 19, 114 N.M. 755, 845 P.2d 849; *see also Chavez v. S.E.D. Labs.*, 2000-NMCA-034, ¶ 26, 128 N.M. 768, 999 P.2d 412 (*Chavez I*), *aff'd in part, rev'd in part on other grounds by Chavez II*, 2000-NMSC-034, ¶ 24.

{33} Defendants' next argument on appeal is that, in reaching its determination that the MLTK as configured in Plaintiff posed an unreasonable risk of injury, the district court failed to consider the seven factors set forth in *Brooks*, 1995-NMSC-043, ¶ 32 n.2, and the committee commentary to UJI 13-1407. But we find no support for the contention that all seven factors must be considered for every design defect claim. Rather, UJI 13-1407 states in the committee commentary that "[c]riteria for determining whether a risk of injury is unreasonable have not been provided in the instruction because the committee feels this falls within the unique domain of advocacy under the circumstances of proof in each case." The commentary then lists the seven risk-benefit criteria suggested by Professor John W. Wade in his article "*The Nature of Strict Tort Liability for Products*," 44 Miss. L. J. 825, 837-38 (1973):

(1) the usefulness and desirability of the product . . . ; (2) the availability of other and safer products to meet the same need . . . ; (3) the likelihood of injury and its probable seriousness, i.e., "risk" . . . ; (4) the obviousness of the danger . . . ; (5) common knowledge and normal public expectation of the danger (particularly for established products) . . . ; (6) the avoidability of injury by care in use of the product (including the effect of instructions or warnings) . . . [;] and (7) the ability to eliminate the danger without seriously impairing the usefulness of the product or making it unduly expensive.

We considered these factors in *Bustos*, where the defendants argued (citing *Brooks*) that the jury was improperly instructed on the plaintiffs' design defect claim because the jury should have been required to consider whether there was a showing of a reasonable alternative design. *Bustos*, 2010-NMCA-090, ¶¶ 50-51. This Court held that, "[w]hile a jury is required to make risk-benefit calculations, consideration of alternative designs is but one of several risk-benefit considerations that a jury may balance in determining whether a product created an unreasonable risk of injury." *Id.* ¶ 54 (emphasis added). We then referred to the seven risk-benefit considerations set forth in UJI 13-1407's committee commentary. *See Bustos*, 2010-NMCA-090, ¶ 54. This

Court reasoned that only the seventh factor (the ability to eliminate the danger without seriously impairing the usefulness of the product or making it unduly expensive) contains language included in the actual jury instruction as something the jury "should" consider. *Id.* Defendants conceded this point at oral argument.

{34} Here, the district court's conclusions of law included consideration of the manufacturer's ability to eliminate the danger without seriously impairing the usefulness of the product or making it unduly expensive. It is unclear from Defendants' brief whether they challenge the sufficiency of the findings on this point, or the sufficiency of the evidence to support those findings. Again, Defendants' argument flatly ignores the district court's findings concerning the use of a ceramic head, Defendants' own alternative component part, in order to avoid the risk of metallosis. In other words, Defendants already market a design that avoids the risk of metallosis without impairing the product's functionality. Such findings suffice to demonstrate that the district court considered the ability to eliminate the danger without impairing the usefulness of the product or rendering it unduly expensive. *See Chavez II*, 2000-NMSC-034, ¶ 19. To the extent Defendants raise an argument regarding the sufficiency of the evidence to support these findings, Defendants' brief again disregards the majority of the evidentiary record. There was evidence that use of a ceramic head on the MLTK virtually eliminates the risk of metallosis; evidence that the MLTK with a ceramic head met Defendants' internal strength and stability requirements; and evidence that sales of the ceramic head, versus the CoCr head, have gone from ten percent to 50 percent of the market share since 2010. Defendants presented no evidence that any risk of injury from the use of their alternative design outweigh the benefits of avoiding metallosis. In any event, we again hold that the district court's findings are binding on Defendants, who failed to set forth the substance of the evidence bearing on those findings. *See Rule 12-318(A)(3); Chavez I*, 2000-NMCA-034, ¶ 26; *Maloof*, 1992-NMCA-127, ¶ 19.

B. Defendants' Argument Under Comment K Was Not Preserved

{35} Defendants' second argument on appeal is that the district court should have found the doctrine of strict liability to be inapplicable to Plaintiff's claims, under comment k to the Restatement (Second) of Torts, Section 402A. Section 402A provides that a supplier should not be held strictly liable for the provision of an unavoidably unsafe product, provided the product was properly prepared and marketed, and adequate warnings were given.

{36} Specifically, Section 402A comment (1) provides that a seller in the business of

supplying a product "who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer[.]" However, comment k to this Section provides, in part, as follows:

Unavoidably unsafe products. There are some products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use. . . . Such a product, properly prepared, and accompanied by proper directions and warning, is not defective, nor is it *unreasonably dangerous*. The same is true of many . . . drugs, vaccines, and the like, many of which for this very reason cannot legally be sold except to physicians, or under the prescription of a physician. . . . The seller of such products, again with the qualification that they are properly prepared and marketed, and proper warning is given, where the situation calls for it, is not to be held to strict liability for unfortunate consequences attending their use, merely because he has undertaken to supply the public with an apparently useful and desirable product, attended with a known but apparently reasonable risk.

{37} New Mexico has incorporated the strict liability standards set forth in the Restatement (Second) of Torts, Section 402A, with some exceptions and modifications. *See, e.g.*, UJI 13-1406, use note (providing that the instruction is to be used together with UJI 13-1407 "in every strict products liability case based upon Restatement (Second) of Torts § 402A"); UJI 13-1406, comm. cmt. (noting that the language in Section 402A "has less than the universal application which these instructions are intended to have for strict products liability relating to production flaw defects, unsafe design or formulation, warning inadequacies, safety options and products which are unavoidably unsafe, with a risk of harm not justified by usefulness or desirability of the product"). New Mexico's "unavoidably unsafe products" exception is set forth in UJI 13-1419 NMRA, which provides, in part, as follows:

There are some products which, even when properly prepared and labeled, cannot be made safe for their intended and ordinary use. Because of the nature of ingredients or natural characteristics of the products, use of these products involves substantial risk of injury, and some users will necessarily be harmed. Such products are said to be unavoidably unsafe. Unless the product unreasonably

exposes users to risk of injury, there is no liability for supplying an unavoidably unsafe product. Whether users are unreasonably exposed to risk of injury turns upon a balancing of the dangers and benefits resulting from the product's use.

The use note of this UJI provide that it "must be given only in cases in which the generic condition of the product gives rise to the risk of injury, for example, certain chemicals and drugs. The risk arises from the nature of the product and not from inadequacies of design, manufacture, or labeling." UJI 13-1419, use note. The Committee Commentary, in turn, provides that "[w]hether a risk is reasonable is a question for the jury, balancing the benefits and hazards of the product." UJI 13-1419, comm. cmt.

{38} We must first address whether Defendants preserved for our review their argument that the MLTK is an unavoidably unsafe product under comment k of Section 402A and UJI 13-1419. We hold that they did not.

{39} In general, an issue is not preserved unless the appellant "fairly invoked a ruling of the trial court on the same grounds argued in the appellate court." *Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 24, 314 P.3d 688 (internal quotation marks and citation omitted). Defendants concede that they did not seek a finding that the MLTK was "unavoidably unsafe" nor did they otherwise refer to comment k or UJI 13-1419 in motion practice, at trial, in written closings, or in their requested findings of fact and conclusions of law. At oral argument, defense counsel identified only Defendants' affirmative defenses, set forth in the answer to the complaint, as explicitly raising comment k of Section 402A or UJI 13-1419. "We require parties to assert the legal principle upon which their claims are based and to develop the facts in the trial court primarily for two reasons: (1) to alert the trial court to a claim of error so that it has an opportunity to correct any mistake, and (2) to give the opposing party a fair opportunity to respond and show why the court should rule against the objector." *State v. Gomez*, 1997-NMSC-006, ¶ 29, 122 N.M. 777, 932 P.2d 1. Thus, an affirmative defense is not preserved for our review unless it is litigated before the district court and a ruling is invoked on the issue. See, e.g., *Rodriguez ex rel. Rodarte v. Sanchez*, 2019-NMCA-065, ¶¶ 25-26, 451 P.3d 105 (holding that the defendant's statute of limitations argument, while raised as an

affirmative defense in the answer, was not litigated before the district court; therefore, it was not preserved for appellate review).

{40} Defendants argue, in reply, that their proposed findings and conclusions are predicates for the application of comment k; therefore, Defendants constructively sought the trial court's ruling on the issue, preserving their argument. Specifically, Defendants sought a conclusion of law that the MLTK did not present an unreasonable risk of harm, and a conclusion that the MLTK was not defectively designed. Moreover, Defendants proposed, and the district court adopted the following findings: zero risk of corrosion is unattainable; some corrosion may occur in any modular implant device; there is no consensus as to why patients react differently to corrosion; and Defendants' warnings for the MLTK were adequate. We hold that, while these points would be relevant to a Section 402A comment k/UJI 13-1419 analysis, they do not amount to a comment k analysis.

{41} UJI 13-1419 (New Mexico's iteration of comment k) is only applicable where a product "cannot be made safe" for its intended use, and where the nature of a product, or its "generic condition . . . gives rise to the risk of injury." UJI 13-1419, use note. It is inapplicable where the risk arises "from inadequacies of design[.]" *Id.* Furthermore, New Mexico's UJI expressly adopts a case-by-case inquiry, as it contains a caveat that there may be strict liability even for an unavoidably unsafe product, where the product "unreasonably exposes users to risk of injury[.]" UJI 13-1419. In other words, even an unavoidably unsafe product may present dangers so unreasonable that the imposition of strict liability is appropriate. This risk-benefit determination is a question of fact for the jury (or in this case, the district court). *Id.*, comm. cmt. Other jurisdictions have adopted comment k in a similar manner; Oklahoma holds (in a case cited by Defendants) that the unavoidably unsafe exception does not apply unless the product was incapable of being made safer at the time of its distribution, and its benefits justify its risks. *Tansy v. Dacomed Corp.*, 890 P.2d 881, 885-86 (Okla. 1994). On appeal, Defendants cite cases holding that an FDA-approved medical device is covered by comment k and exempt from strict liability. See, e.g., *Gross v. Stryker Corp.*, 858 F. Supp. 2d 466, 481-82 (W.D. Pa. 2012). However, at least one jurisdiction has addressed the distinction between drugs/devices approved through the premarket process, and those approved through the 510k process, holding

that the latter are subject to a more rigorous case-by-case analysis. See, e.g., *Burningham v. Wright Med. Tech., Inc.*, 2019 UT 56, ¶ 39, 448 P.3d 1283 (holding that "when an implanted medical device enters the market through the 510(k) process . . . the manufacturer must prove by a preponderance of the evidence that (1) when the product was made, it could not be made safe for its intended use even applying the best available testing and research, and (2) the benefits of the product justified its risk").

{42} As the evidence in this case makes clear, a finding that all modular hip implants present some risk of corrosion is not a finding that all modular hip implants present an unavoidable risk of metallosis. Indeed, notably, Defendants did not pose this equivalency to the district court. Defendants proposed no finding that the risk of metallosis arose from the nature of the MLTK, and not from an inadequacy in design. Defendants proposed no finding that the MLTK was incapable of being made safe for its intended use. Defendants ignore the district court's finding that "[t]he FDA 510(k) process cannot be used as evidence that the MLTK was safe for use[.]" but their arguments here suggest that they are entitled to the "blanket" exemption afforded by some jurisdictions to all prescription drugs and medical devices. In sum, the cited findings and conclusions would not have alerted the district court, or Plaintiff, that Defendants were seeking a finding that the MLTK was unavoidably unsafe under comment k and UJI 13-1419, and accordingly, Defendants have failed to establish that we can review their comment k argument on appeal.²²

CONCLUSION

{43} For the foregoing reasons, we conclude that the district court properly applied the law of strict liability for design defect. Moreover, the district court's findings supported its conclusion that the MLTK as configured in Plaintiff was defective. Those findings are binding, given that Defendants failed to set forth the substance of the evidence bearing on them. Defendants also failed to preserve their argument under comment k to the Restatement (Second) of Torts Section 402A, and we do not address it here. Accordingly, we affirm.

{44} IT IS SO ORDERED.
LINDA M. VANZI, Judge

WE CONCUR:
J. MILES HANISSEE, Chief Judge
JACQUELINE R. MEDINA, Judge

²²At oral argument, Defendants referred to our holding in *Davila v. Bodelson*, 1985-NMCA-072, ¶¶ 25-28, 103 N.M. 243, 704 P.2d 1119, for the proposition that an argument is preserved if there was evidence in the record supporting a theory, and the theory was tried on implied consent of the parties. But in *Davila*, the district court gave an instruction under UJI 13-1419 at trial; the question on appeal was whether the instruction had been given in error. *Davila*, 1985-NMCA-072, ¶ 25. The issue was not, as here, whether the district court's ruling had been fairly invoked, such that the court and the plaintiff were able to address the theory presented. See *Gomez*, 1997-NMSC-006, ¶ 29. Accordingly, *Davila* is inapposite.



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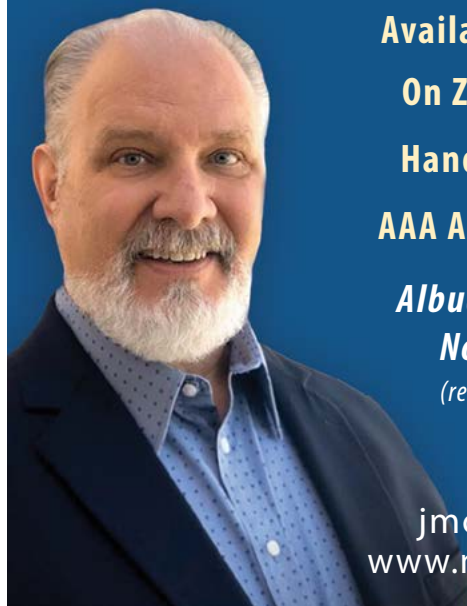
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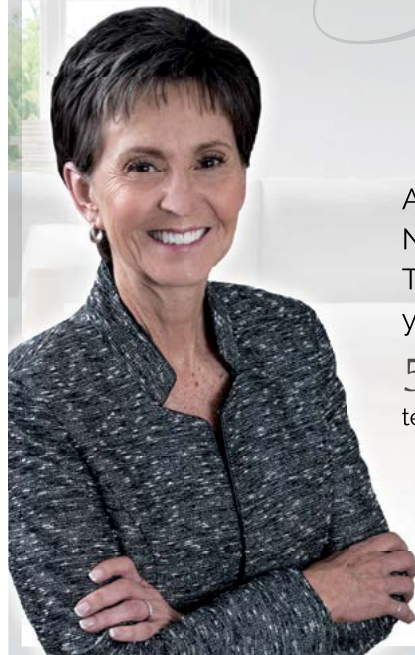
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The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad office. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant 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.

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.

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.

Associate Attorney

Small, collegial Santa Fe firm seeks motivated attorney to become part of busy litigation, real estate and business practice. We are looking for an attorney with a minimum of 3 years of litigation experience, strong research, writing and people skills. Applicant must have experience drafting and arguing motions before courts, taking depositions, drafting written discovery and preferably trial/arbitration experience. Salary commensurate with experience. Please send resume, references and short writing sample to: Hays & Friedman, P.A., 530-B Harkle Road, Santa Fe, New Mexico 87505, or submit resume to ameliam@haysfriedmanlaw.com. All inquiries will be kept confidential.

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."

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.

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@nmcounties.org; this position will remain open until filled.

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 HRResources@dnalegalservices.org or fax to 928.871.5036.

Assistant Trial Attorney/ Deputy District Attorney

The Eleventh Judicial District Attorney's Office, Division I (San Juan County), is accepting resumes for immediate positions from Assistant Trial Attorney to Deputy District Attorney. Salary is based on experience and the NM District Attorney Personnel and Compensation Plan (\$54,308.80 - \$73,251.036). Send resumes to Lori Holesinger, HR Administrator, 335 S. Miller Ave., Farmington, NM 87401, or via e-mail lholesinger@da.state.nm.us

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!

Staff Attorney

Disability Rights New Mexico, a statewide non-profit agency serving to protect, promote and expand the rights of persons with disabilities, seeks full-time Staff Attorney primarily to represent agency clients in legal proceedings. The position also involves commenting on proposed regulations and legislation, and other policy advocacy. Must have excellent research and writing skills, and demonstrate competence in a range of legal practice including litigation. Advanced education, work experience or volunteer activities relevant to disability issues preferred. Must be licensed or eligible for license in NM. Persons with disabilities, minorities, and bilingual applicants strongly encouraged. Competitive salary and benefits. Send letter of interest addressing qualifications, resume, and names of three references to DRNM, 3916 Juan Tabo NE, Albuquerque, NM 87111, or by email to MWolfe@DRNM.org. Applicants encouraged to apply ASAP, but no later than 6/4/2021. AA/EEO.

Chief Judge

The Jicarilla Apache Nation is seeking qualified individuals for the Chief Judge position. The Chief Judge presides over the judicial department of the Jicarilla Apache Nation and is supervises Associate Judge and Court employees. The Chief Judge coordinates the activities of the court divisions and is responsible for ensuring that the court system functions properly and shall hear cases in a fair and impartial manner. Possess a Juris Doctorate Degree and have four (4) years of training or experience in the field of Indian Law and demonstrated experience with the concepts of Federal Indian Law, Tribal Law and principles of tribal sovereignty and jurisdiction. Must pass or have passed the Jicarilla Apache Tribal Bar and State Bar and have experience as a tribal judge in a tribal justice system exercising both civil and criminal jurisdiction. Valliant Consulting Group staffing@valliant.com 505-246-8798 Office.

Associate Judge

The Jicarilla Apache Nation is seeking qualified individuals for the Associate Judge position. The Associate Judge is responsible for fairly and impartially hearing and deciding judicial matters within the Jicarilla Apache Nation pursuant to the Jicarilla Apache Tribal Law and Order Code, ordinances, Tribal Resolutions and applicable Federal and Local Laws. The Associate Judge must be of high moral character, govern with integrity, and most not have been convicted of a felony or a crime involving dishonesty or ever been disbarred by any jurisdiction. Valliant Consulting Group staffing@valliant.com 505-246-8798.

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 Socorro County (Socorro). Socorro is a short one 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.

NM Attorney General seeks Assistant Attorneys General, Paralegal and Financial Investigator Positions

The Office of the New Mexico Attorney General is currently recruiting for Assistant Attorneys General, Paralegal and Financial Investigator positions. The job postings and further details are available at www.nmag.gov/human-resources.aspx.

Fiduciary Relationship Manager

New Mexico Bank & Trust is seeking a Fiduciary Relationship Manager as the primary relationship manager for the trust and investment management services of high net worth individuals, businesses, government entities, and non-profit organizations. A successful Fiduciary Relationship Manager will provide an exceptional level of personal service, while meeting or exceeding prescribed client contact requirements. As the trusted advisor, the Fiduciary Relationship Manager establishes rapport, develops strong partnerships, and translates and implements financial solutions to clients. A successful Fiduciary Relationship Manager also pursues additional revenue potential with existing clients, prospects, business relationships, and other sources. Requires relevant BA/BS and financial services, wealth advisor, fiduciary specialist or related experience. CFP, CTFA, JD or CPA preferred. To be considered for this opportunity, please apply directly at https://htlf.wd1.myworkdayjobs.com/en-US/New-Mexico-Bank-Careers/job/Albuquerque-Downtown-New-Mexico---4th--Gold-Fiduciary-Officer_21-0330, or email AGrace@nmb-t.com with your resume and cover letter.

Litigation Assistant

The law firm of Gallagher, Casados & Mann, P.C. is seeking a litigation assistant with 3+ years' experience in the areas of insurance defense. This full-time position requires knowledge of State and Federal court procedures, court rules, e-filing, and docketing. Please email resume to nmann@gcmlegal.com.

Plaintiff's Personal Injury & Civil Rights Associate

Collins & Collins, P.C. is seeking a litigation associate attorney with a minimum of 3 years civil litigation experience. The firm represents only plaintiffs in cases involving personal injury, wrongful death, medical malpractice and civil rights. Candidates must be detail-oriented with strong research, writing and analysis skills. Please send a resume and 2 writing samples to info@collinsattorneys.com

Prosecutor Position

The New Mexico Medical Board is accepting applications to fill the Prosecuting Attorney position for the agency. This position will be based in Santa Fe, New Mexico. This position is responsible for prosecuting physicians and other licensees primarily for violation of the Medical Practices Act specific to unprofessional or dishonorable conduct and/or the Impaired Healthcare Provider Act. For the complete job description and requirements refer to the Board's website at: <https://www.nmmb.state.nm.us>, located in the home page under "Notices". This position will remain posted until it is filled.

Assistant Santa Fe County Attorney I

Santa Fe County is soliciting applicants for an Assistant County Attorney (ACA) I. The successful candidate will focus their practice in areas assigned based upon experience, need, and interest. The ideal candidates are those with strong analytical, research, communication, and interpersonal skills, who enjoy working hard in a collaborative, fast-paced environment on diverse and topical issues that directly impact the community in which they live or work. The salary range for the position is \$28,8461-\$38,4134/hr., depending upon qualifications and budget availability. Applicants must be licensed to practice law in the State of New Mexico. Individuals interested in joining our team must apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities.

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 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.

Attorney Wanted

Small AV-rated firm seeks attorney interested in civil litigation, primarily insurance defense. Must do high-quality work, use good judgment, possess strong work ethic, work efficiently, and take initiative. We provide camaraderie, access to decades of experience and a great future. Email resume to nmann@gcmlegal.com.

Associate Attorney

Chapman and Priest, P.C. seeks Associate Attorney to assist with increasing litigation case load. Candidates should have 2-10 years civil defense litigation experience, good research and writing skills, as well as excellent oral speaking ability. Candidate must be self-starter and have excellent organizational and time management skills. Trial experience a plus. Please send resume, references, writing sample and salary requirements to cassidyolguin@cplawnm.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.

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>.

Full-Time Paralegal

Egolf + Ferlic + Martinez + Harwood LLC is hiring a full-time paralegal position. The Firm is based in downtown Santa Fe but represents clients throughout the state. Ideal candidate will show initiative, demonstrate attention to detail and organization, and work well under pressure. They must be able to communicate well with others, while also being able to work independently. Litigation experience a plus! For the right candidate, the Firm is willing to train individuals with related experience or education. The Firm offers a competitive salary and benefits package that includes healthcare, life insurance & retirement match. Interested candidates should submit a resume to Annette@EgolfLaw.com

Paralegal (Flexible)

Part-time paralegal position available. Minimum of five years' experience in civil law required. The right candidate will know how to e-file via Odyssey, draft pleadings, and will be a multi-tasker with a positive attitude. Please email your resume, writing sample, and references to dargomezlaw@gmail.com to be considered.

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

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.

Legal Assistant:

New Mexico Law firm seeking a Legal Assistant to join our team. This opportunity is for someone who is a resourceful, motivated self-starter who desires to serve local businesses by providing excellent service to New Mexico companies. Applicants would be responsible for anticipating, coordinating, and delivering legal and general administrative support to the firm's attorneys, must have a willingness to master the skills and services necessary to effectively support our clients, must be team-oriented, and interact professionally with clients, attorneys, and staff. We offer a competitive salary. To apply please email a resume and writing sample to bblc@BrionesBusinessLaw.com.

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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500 N. Church Street. Law library, deposition room, kitchen, utilities and wifi all included. Email: bmurphee@gmail.com

Miscellaneous**Want To Purchase**

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

Join Forces?

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

For Sale**Office Furniture**

RETIRING!! great office furniture to include desks, chairs, tall bookcases perfect for files and notebooks, teak conference table expandable to 8 feet and chairs, two credenzas, reception room furniture, printers, keyboards, legal books and office supplies. Available for sale between May 17-19. Call 505-293-8888 for an appointment.

2021 Bar Bulletin Publishing and Submission Schedule

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

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

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

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

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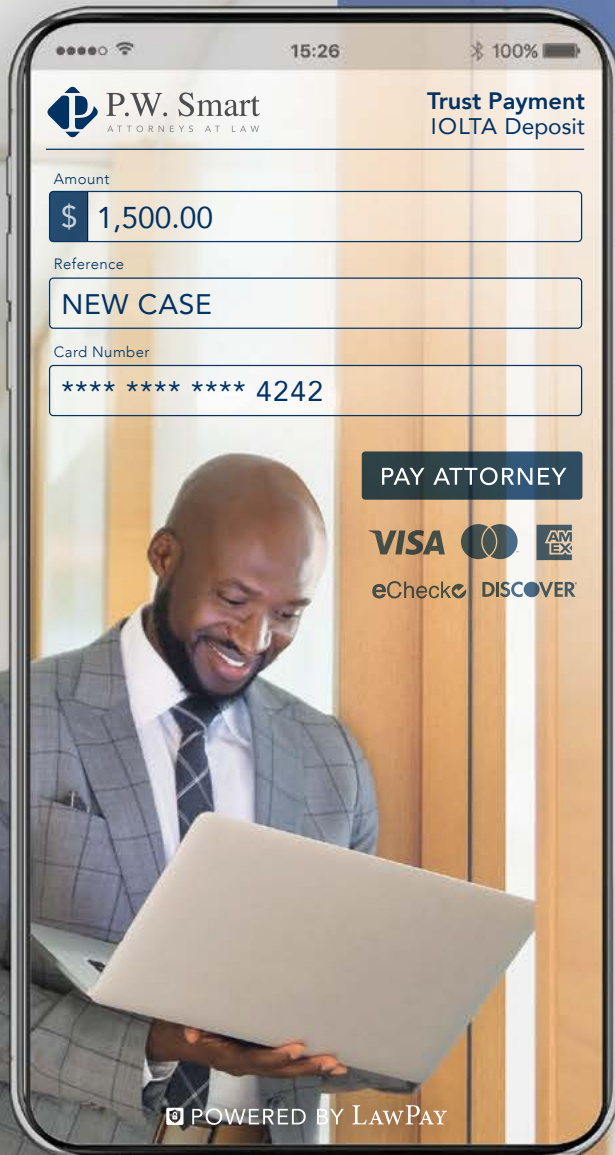
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