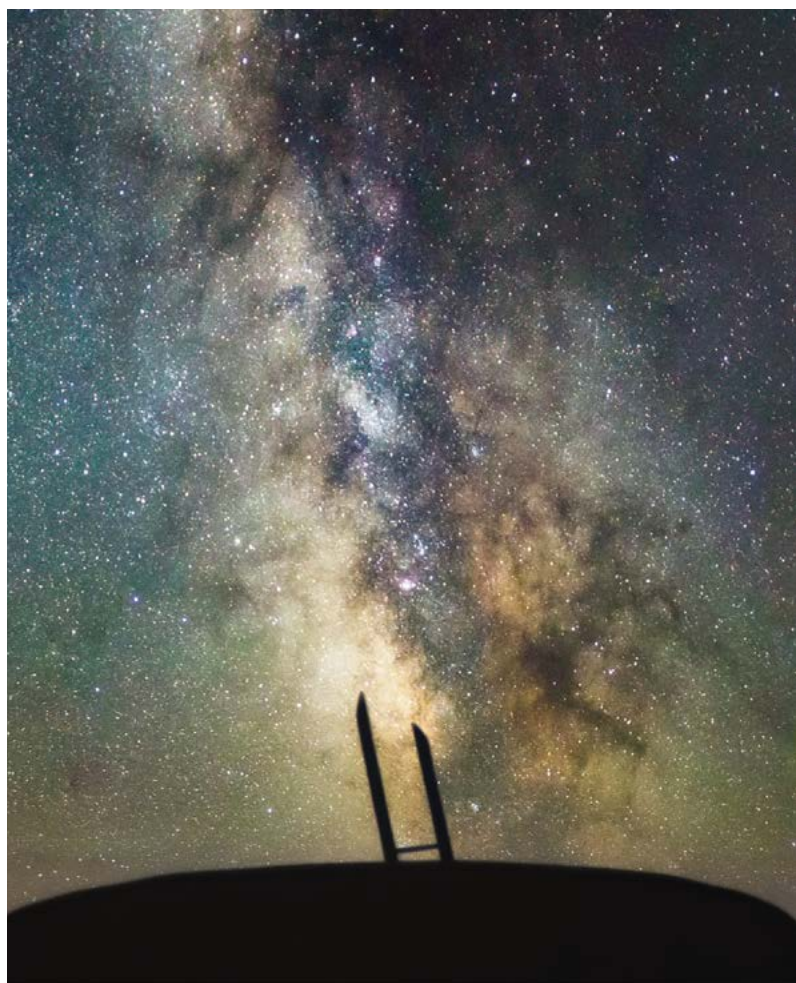


BAR BULLETIN

June 23, 2021 • Volume 60, No. 12



Ladder to the Sky, by Barry Schwartz

www.flickr.com/photos/barryabq/

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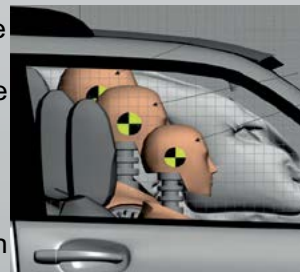
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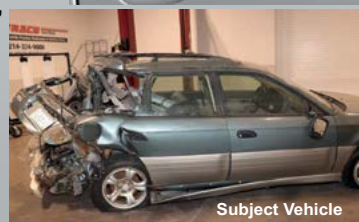
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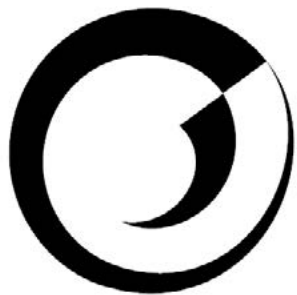


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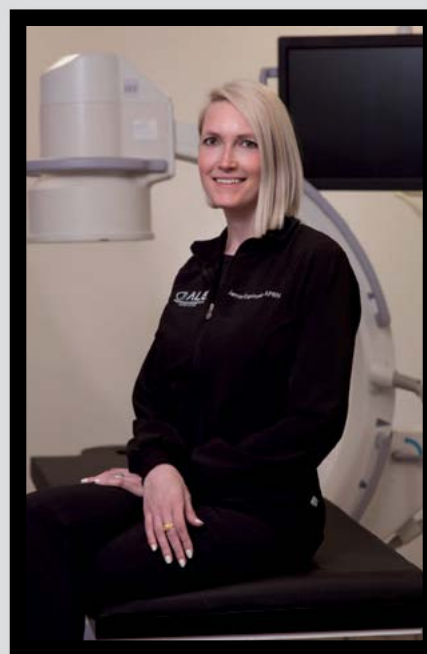
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Meetings

June

23
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

24
Trial Practice Section Board
Noon, State Bar Center

25
Immigration Law Section Board
Noon, teleconference

July

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

7
Employment and Labor Law Section Board
Noon, teleconference

8
Business Law Section Board
4 p.m., teleconference

9
Cannabis Law Section Board
4 p.m., State Bar Center

Workshops and Legal Clinics

June

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

July

7
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call
505-797-6022

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

August

4
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call
505-797-6022



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New Mexico**
Est. 1886

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June 23, 2021 • Vol. 60, No. 12

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About Cover Image and Artist: Barry photographs what we see in our daily lives to bring out their unusual beauty. He especially likes photographing old structures/buildings, discarded items, cemeteries, and anything with interesting shapes and patterns. He believes there is much hidden beauty in everyday objects, so he uses angles, colors, lighting, shapes, and shadows to find, illustrate, and preserve the beauty and ruggedness of the past and present that surround us.

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>.

Second Judicial District Court Civil Division XII

Candidate Announcement

The Second Judicial District Court Judicial Nominating Commission meeting convened by Zoom on May 27 at 9 a.m. and completed its evaluation of the six applicants to fill the vacancy on the Second Judicial District Court due to the retirement of the Honorable Judge Clay Campbell, effective May 1. The commission recommends the following candidates to Governor Michelle Lujan Grisham: **Elaine P. Lujan, Sean Patrick McAfee and Karl William Reifsteck.**

Office of the Public Defender Federal CJA Panel Applications

The CJA Panel Committee is accepting applications to join the panel of attorneys eligible to take appointments in federal criminal cases. If you've thinking about getting into federal court, now's your chance. We offer training, mentorship and other resources to assist new panel members. Applications are due no later than July 31. Call Marc Robert at 505-923-9338 with any questions. For a blank application, email marc_robert@fd.org.

Professionalism Tip

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

I will do my best to ensure that court personnel act civilly and professionally.

Hidalgo County District Court New Clerk's Office Hours

Effective July 12, the new office hours for the Hidalgo County District Court Clerk's Office will be 8 a.m. – 5 p.m., closing during the noon hour, Mondays through Thursdays. Because the Hidalgo County Courthouse is closed to the public on Fridays, the Hidalgo County District Court Clerk's Office will be closed for in person services; however the Court will be available by telephone at 575-542-3411 and email at lordadmin@nmcourts.gov on Fridays during the office hours noted above.

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

- June 28 at 5:30 p.m.
- July 5 at 5:30 p.m.
- July 12 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.

To attend this meeting, email Tenessa Eakins at teakins@sbnm.org for the Zoom link.

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

Employee Assistance Program

Managing Stress Tool for Members

NMJLAP contracts with The Solutions Group, The State Bar's EAP service, to bring you the following: FOUR FREE counseling sessions per issue, per year. This EAP service is designed to support you and your direct family members by offering free, confidential counseling services. Want to improve how you manage stress at home and at work? StressStop.com, an online suite of stress management and resilience-building resources, will help you improve your overall well-being, anytime and anywhere, from any device! The online suite is available at no cost to you and your family members. Tools include: My Stress Profiler; A confidential and personalized stress assess-

ment 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:

- 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:

- June 23: Hobbies – What are you doing for fun?
- July 28: Compassion Fatigue
- August 25: Fear

Legal Services and Programs Committee

Seeking Sponsors for Breaking Good High School Video Contest

The Legal Services and Programs Committee will host the sixth annual Breaking Good Video Contest for 2021. The video contest aims to provide an opportunity for New Mexico high school students to show their creative and artistic talents while learning about civil legal services available to their communities. The LSAP Committee would like to invite members or firms of the legal community to sponsor monetary prizes awarded to first, second, and third place student teams and the first place teacher sponsor. The video contest sponsors will be recognized during the presentation of the awards, to take place on 2022 Law Day, and on all promotional material for the video contest. For more information regarding details about the prize and scale and the video contest in general, or additional sponsorship information, visit sbnm.org/breakinggood.

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

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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 voicemail at 505-277-0935. The Law Library's document delivery policy requires specific citation or document titles. Please visit our Library Guide outlining our Limited Operation Policies at: <https://libguides.law.unm.edu/limitedops>.

Legal Education

June

- | | | |
|---|--|--|
| <p>23 Drafting Buy/Sell Agreements for Closely Held Companies, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>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</p> | <p>29 Drafting Small Commercial Real Estate Leases
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>24 Essential Workers, Essential Rights
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 Opportunity Zones: The New Wave of Real Estate Finance
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>30 Ethics in Negotiations - Boasts, Shading, and Impropriety
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>25 The Ethics of Representing Two Parties in a Transaction
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | | |

July

- | | | |
|---|---|--|
| <p>3 Rural Broadband vs. 5 G and Internet Connectivity Issues
1.0 G
Live Webinar
Conference of Western Attorneys General
www.cwagweb.org</p> | <p>11 Social Justice Initiatives and Consumer Protection Enforcement
1.0 G
Live Webinar
Conference of Western Attorneys General
www.cwagweb.org</p> | <p>19 Annual Rocky Mountain Mineral Law Institute
26.8 G
Live Webinar
Rocky Mountain Mineral Law Foundation
www.rmmlf.org</p> |
| <p>8 Sports Betting Subcommittee Meeting
1.0 G
Live Webinar
Conference of Western Attorneys General
www.cwagweb.org</p> | <p>15 Nursing Home Admission Agreements: A Discussion of the Arbitration Clauses Presented to Elders
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>22 The Mindful Approach to Addressing Mental Health Issues in the Legal Field
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>9 REPLAY: Gold King Mine Litigation Update (2020)
1.0 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>16 REPLAY: 2021 Family Law Spring Institute - Day 2 (2021)
4.0 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>23 REPLAY: Setting Boundaries with Our Clients and Ourselves (2020)
1.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

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

- 30 **REPLAY: So How 'Bout We All
Zoom, Zoom, Zooma, Zoom?:
Ethical and Best Practices for a
Virtual Practice (2021)**
1.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org

August

- | | | |
|--|--|---|
| <p>6 REPLAY: Selections from Women
in Law Symposium (2020)
3.0 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>13 REPLAY: 2021 Health Law
Legislative Roundup (2021)
1.5 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 REPLAY: A Look at the Practice of
Law Through the Decades: A Panel
Discussion of Women Attorneys
Practicing Law in New Mexico from
1980 to the Present (2020)
1.5 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>11 ADTA Annual Meeting
6.5 G
Live Webinar
Association of Defense Trial
Attorneys
360-748-9281</p> | <p>19-20 14th Annual Legal Service
Providers Conference
10.0 G, 2.0 EP
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | |

September

- 30 **Basics of Trust Accounting: How to
Comply with Disciplinary Board
Rule 17-204**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

New Mexico Makes it 18!

U.S. States That Have Legalized Adult Recreational Marijuana

By Julie A. Werner-Simon, former federal prosecutor, now Law Professor adjunct and Legal Analyst in Cannabis as Emerging Industry at Drexel University in Philadelphia

One of the biggest little stories in the field of marijuana coverage involves New Mexico. This spring heralded New Mexico's legalization of adult recreational use¹ with marijuana business trade publications updating maps showing that New Mexico is now "on the list" of the nation's adult-use regions.²

New Mexico, which in 1912 became the 47th state to join the U.S. has, with the passage of the adult recreational use marijuana legislation, changed its *close-to-last-status* on at least one "list of states," by becoming the most recent state in the nation to legalize adult recreational use of marijuana. But the question which has stymied many is this: Where on the numerical list of legalizing states is New Mexico? Just how many U.S. states have legalized recreational cannabis?

Is New Mexico the 18th adult recreational use state?³ Is it the 17th "*adult rec*" state,⁴ or, as some marijuana pundits say, the 16th state?⁵

The answer depends, in part, on how the term "legalization" is defined. States and U.S. territories legalize conduct formerly criminalized (in the states or territories) often either by legislation or through voter initiatives placed on the ballot. Legalization can be defined as happening the day the voters succeed with a majority of votes on an issue, or the date a state or territorial legislature passes a law, or the date the chief executive signs the law, or the date the authorized program (such as adult recreational sales) becomes effective.

In New Mexico's case, there is no dispute in any corner, that on April 12, when **New Mexico's** Gov. Michelle Lujan Grisham signed into law previously passed legislation, that New Mexico became an adult recreational use state. This legislation authorized future adult-use retail sales to begin no later than April 1, 2022 and adult home grow (6 plants per person and up to 12 per household) to start at the end of June 2021. Adult recreational use became a reality in April 2021 even though New Mexico's new law authorizes adult recreational sales to commence on an established timetable in the future.

New Mexico's recreational marijuana legalization came five days after Virginia's successful adoption of adult recreational legalization legislation. Under the law specific to Virginia, when the Virginia legislature, on April 7, adopted their governor's revisions to previously passed marijuana legislation, that state had effectively "legalized" adult recreational marijuana. Despite this, Virginia's governor Ralph Northam held a signing ceremony, weeks later, on April 21, 2021, even though the state had already legalized adult recreation use.⁶

Virginia's governor also advanced the date when adult-use would begin in the state from January 2024 to July 2021,⁷ but the change in the commencement of Virginia's sales date did not change the law's enactment date. Virginia kept its numerical placement on the adult recreational state-legal list.

Virginia's legalization was preceded by New York which legalized on March 31, 2021, when New York's governor Andrew Cuomo signed legislation legalizing adult recreational use.⁸

New Mexico, like Virginia and New York, followed in the path of the two adult-use U.S. territories, **Guam**, which legalized adult recreational use in 2019,⁹ and the **Northern Mariana Islands** in 2018,¹⁰ as well as the **District of Columbia**, which legalized adult-use in 2014.¹¹

Although, marijuana remains illegal federally, the pace of legalization in the states has increased at quick clip in the last seven months since the November 2020 election. Five states: Arizona, Mississippi, Montana, South Dakota, and New Jersey, all had marijuana legalization initiatives on the ballot, and all were successful.¹²

Not only does New Mexico's numerical placement on the adult recreational list depend on how legalization is defined; it is also linked to the happenings in a state some 700 miles north: South Dakota. South Dakota in November (like voters in Arizona, New Jersey, Montana) legalized adult-recreational use, and South Dakota also legalized medical use, just as Mississippi's November voters had done.¹³

Adult Recreational Order of Legalization* of US States

1. Colorado (2012)
2. Washington (2012)
3. Alaska (2014)
4. Oregon (2014)
5. California (2016)
6. Maine (2016)
7. Massachusetts (2016)
8. Nevada (2016)
9. Vermont (2018)
10. Michigan (2018)
11. Illinois (2019)
12. New Jersey (2020)
13. Montana (2020)
14. Arizona (2020)
15. South Dakota (2020)
16. New York (March 31, 2021)
17. Virginia (April 7, 2021)
18. New Mexico (April 12, 2021)

*Legalization defined as happening the day the voters succeed with a majority of votes on an issue, or the date a state or territorial legislature passes a law, or the date the chief executive signs the law, or the date the authorized program (such as adult recreational sales) becomes effective. List of states to include South Dakota which is undergoing legal challenges.

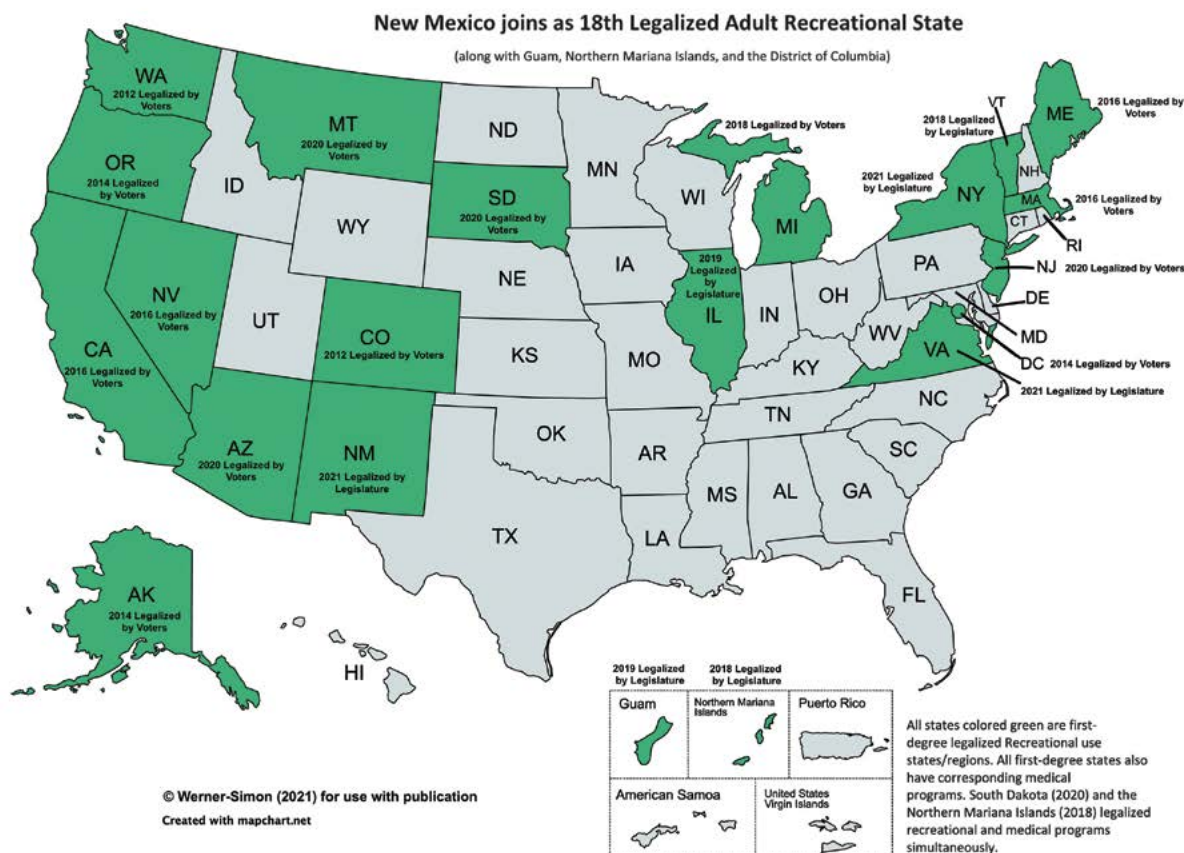
But South Dakota government officials have tried to undermine the voters, bringing legal challenges to **South Dakota's** voter-led simultaneous legalization of both medical and adult recreational use.¹⁴

Initially, South Dakota's governor attempted to block implementation of the medical program, Measure 26, approved by two-thirds of those voting in South Dakota.¹⁵ But despite those efforts, medical marijuana in South Dakota appears to be on track for a November 2021 debut.¹⁶

However, South Dakota law enforcement filed a lawsuit to stop the implementation of the voter-approved constitutional amendment guaranteeing adults in South Dakota the right to use recreational marijuana.¹⁷ On Feb. 8, 2021, a South Dakota state court judge ruled against the voters and invalidated South Dakota voters' passage of an adult recreational marijuana ballot initiative Amendment A, which was supported by 54% of South Dakotans voting last November. The case was appealed to South Dakota's Supreme Court and argument was held on April 28, 2021.¹⁸ It is not clear how the South Dakota justices will decide,¹⁹ and so, the marijuana-world legalization list makers wait.

Presently, since the voters in South Dakota approved the initiative and the highest state court has not yet ruled, it is more than appropriate to consider South Dakota, (where the voters prevailed at the ballot box) as still on the adult recreational list of states.

This means South Dakota is the 15th adult-recreational state, followed by New York as 16th, and then Virginia as 17th. **This makes New Mexico, the 18th state to legalize adult recreational use.**²⁰ The caveat



here is that if South Dakota's Supreme Court also dashes the will of the voters of that state, then South Dakota will come off the list and New Mexico will then become the 17th state with legalized adult-recreational status.

New Mexico's state motto in Latin is "*crescit eundo*" translated as "*It grows as it goes*."²¹ Since 1882 when New Mexico's territorial Secretary of State crafted those words, New Mexicans have debated their meaning.²²

No more. With the governor's signature affixed to the new legalization legislation, New Mexico is certain to

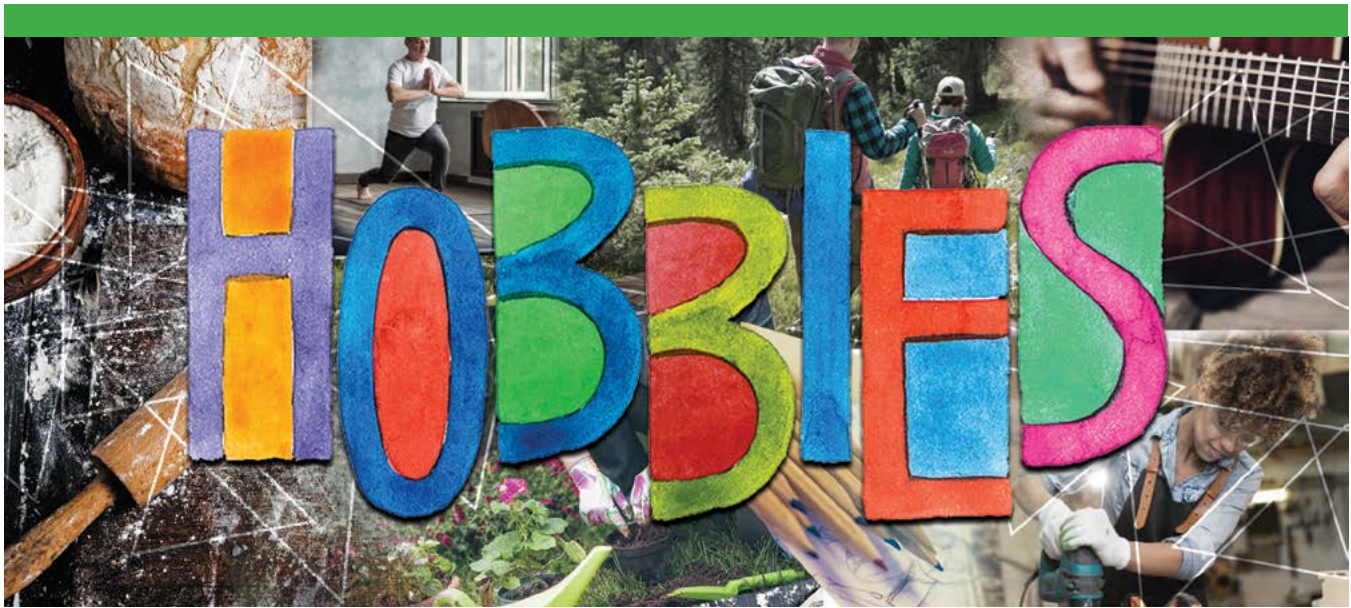
become a place where "*marijuana will grow, and folks will certainly go.*" ■



Professor Julie A. Werner-Simon, a former federal prosecutor, is a legal analyst for the "Cannabis as an Emerging Business" class at Drexel's LeBow School of Business and is a law professor adjunct at the Kline School of Law at Drexel University.

Endnotes

- ¹ <https://www.kcbd.com/2021/04/13/new-mexico-governor-legislature-legalizes-adult-use-cannabis/>
- ² <https://www.leafly.com/learn/legalization>
- ³ <https://azmarijuana.com/arizona-medical-marijuana-news/new-mexico-becomes-18th-state-to-legalize-marijuana/#:~:text=Governor%20Michelle%20Lujan%20Grisham%20signed,for%20adults%2021%20and%20over> & <https://www.marijuanamoment.net/virginia-governor-signs-marijuana-legalization-bill-in-ceremonial-event-even-though-its-already-enacted/>
- ⁴ <https://www.vox.com/2021/4/12/22360467/new-mexico-marijuana-legalization-law-michelle-lujan-grisham>; <https://www.jdsupra.com/legalnews/new-mexico-becomes-the-17th-state-to-6188668/> & https://www.thecentersquare.com/new_mexico/new-mexico-17th-state-to-legalize-cannabis/article_e52e31d0-9dfa-11eb-9a8f-37c41990a744.html
- ⁵ <https://www.businessinsider.com/new-mexico-becomes-16th-state-to-legalize-marijuana-for-adults-2021-4>
- ⁶ <https://www.marijuanamoment.net/virginia-governor-signs-marijuana-legalization-bill-in-ceremonial-event-even-though-its-already-enacted/>
- ⁷ <https://www.nbc29.com/2021/04/21/gov-northam-signs-bill-legalizing-marijuana/>
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By Caitlin L. Dillon

Baking. Cooking. Sourdough starters. Puzzles. Musical instruments. Biking. Walking. Knitting. Home improvement. Yoga. Reading. Drawing. Weightlifting. Bullet Journaling. Podcasts. Meditation. Zoom book clubs. Running. Woodworking. Tai-Chi. Gardening. Hiking. These are just a few of the hobbies we discovered (or re-discovered) while navigating the global pandemic. Hobbies are welcome distractions to our structured professional lives. They are anchors that delight, intrigue, and define us, providing us powerful connections to our passions and how we find meaning in our lives. As discussed in Elizabeth Segrán's book, *The Rocket Years*, hobbies are best defined as "the activities that you do for pleasure in your leisure time" (Segrán, 2020, p. 43). Hobbies were first promoted in the 19th Century and early 20th Century as "productive leisure... as an antidote to the dangers of destructive pastimes... fear that time spent not working would be time spent getting into trouble."¹ There was an early understanding that this useful direction of attention provided a distraction from the more unpleasant aspects of work.

There's something very prescient in that early promotion as we reflect on our experiences in the recent year. As we moved through COVID-19, many of us searched for new things to fill the time void and ease isolation woes. Research shows that spending time on hobbies is generally good for your health. According to a 2015 study, "increased leisure engagement is associated with greater positive mood, less stress and/or more stress coping, and better cardiovascular health."² People with hobbies "tend to be less depressed...and show more interest in the world around them, which is a marker of good mental health." (Segrán, 2020, p. 44). This means

that the hobbies you have now, and have yet to discover, can change your day to day life in a very real and meaningful way. Hobbies allow you to "cultivate parts of your identity" outside of your professional life and close relationships. External forces become less essential in defining who you are and what makes you happy. Neurologists have discovered that learning new skills "can slow down age related decline and stimulate new brain cell growth...pushing yourself to learn new skills throughout your life can help keep your mind nimble and sharp." (Segrán, p. 57). These are key assets to long term career success.

You may be asking yourself, "hobbies are clearly beneficial, but how do I fit them into my busy life?" Good question. In order to successfully integrate hobbies into your own life, you have to be deliberate and decide that they are worth the time and effort. You need to believe that they will improve your quality of life, whether that is reducing anxiety or giving yourself freedom to be creative. The next step is creating time for your hobby. The quickest and easiest way to do this is actively clocking out of work and shutting off your notifications on your cell phone. You'll be surprised at how much time is available once you stop looking at texts, emails, and everyone else's life on social media.

Now that you have time, make sure you're picking a hobby that "cultivate[s] or express[es] some part of yourself that does not come out at work or at home." (Segrán, p. 56). A hobby should be challenging yet familiar. As lawyers, we are often stuck inside, glued to multiple screens, dealing with difficult people and their corresponding problems. Choose a hobby that is the

opposite of the challenges or stressors you experience at work or home. For example, an introvert may need solo activities outdoors, while an extrovert might seek out team sports or community projects that encourage positive human interaction. Hobbies can also be things like working out or cooking your meals for the week. Both encourage creative expression and also provide opportunity for learning new skills, while also achieving practical benefits to your health. Everyone likes a two for one deal.

The key to unlocking the benefits of hobbies is consistency and practice. James Clear writes in *Atomic Habits*, “it is so easy to overestimate the importance of one defining moment and underestimate the value of making small improvements on a daily basis. Too often, we convince ourselves that massive success requires massive action.” (Clear, 2018, p. 15). Earth-shattering improvements are rarely the result of a singular act. You did not become a proficient trial attorney or accomplished legal writer overnight. It was more likely the result of getting 1 percent better each trial, brief, or motion. According to Clear, “habits are the compound interest of self-improvement...we make a few changes, but the results never seem to come quickly and so we slide back into our previous routines.” (Clear, p. 17). This is why developing new hobbies or good habits gets increasingly harder as we get older. Research has found that “at the age of twenty-five, the patterns in your brain start becoming hardwired, resisting your efforts to create new ones.”³ (Segran, p. 60). It is “the accumulation of many missteps—a 1 percent decline here and there—that eventually leads to a problem.” (Clear, p. 17).

While this may seem like dire straits, the good news is that it's never too late to rethink your leisure time. Making a conscious choice to engage in a habit or hobby that is “1 percent better or worse seems insignificant in the moment, but over the span of moments that make up a lifetime *these choices determine the difference between who you are and what you could be.*” (Clear, p. 18). Are your choices and your behaviors putting you on the path to success not just as a lawyer, but as a person? “Prevailing wisdom claims that the best way to achieve what we want...is to set specific, actionable goals.” (Clear, p. 23). However, our achievements have more to do with the path that we followed to get there rather than the specific goal we set. “Goals are about the results that you want to achieve. Systems [or paths] are about the processes that lead to those results.” *Id.* The goal in any sport is to finish on top, “but it would be ridiculous

to spend the whole game staring at the scoreboard...if you want better results, then forget about setting goals. Focus on your system instead.” (Clear, p. 24).

Achieving a goal is temporary, it is one moment in time that often continually puts off happiness. Making time each day or week for meaningful hobbies allows for a “cycle of endless refinement and continuous improvement” in your life and health. (Clear, p. 27). “The more pride you have in a particular aspect of your identity, the more motivated you will be to maintain the habits associated with it.” (Clear, p. 33). This is why hobbies are crucial to our health and identity as human beings. Too often we are myopically focused on our identities as lawyers, forgetting that we are far more than the esquire after our names or the person in the suit. So get out there. Walk into that gym. Knit a scarf. Ride a bike. Open the puzzle. Bake a pie. Take a walk. Plant a tomato. Whatever it is, it doesn't have to be perfect, it just has to be yours. ■

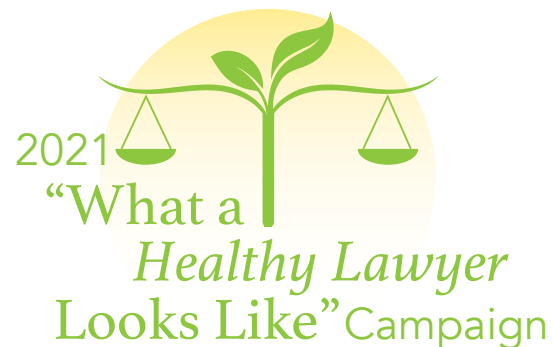
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Endnotes

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Seeking Sponsors for Breaking Good High School Video Contest

The Legal Services and Programs Committee will host the sixth annual **Breaking Good Video Contest for 2021-2022**. The Video Contest aims to provide an opportunity for New Mexico high school students to show their creative and artistic talents while learning about civil legal services available to their communities.

The LSAP Committee would like to invite members or firms of the legal community to sponsor monetary prizes awarded to first, second, and third place student teams and the first place teacher sponsor. The Video Contest sponsors will be recognized during the presentation of the awards, to take place on 2022 Law Day, and on all promotional material for the Video Contest. For more information regarding details about the prize and scale and the Video Contest in general, or additional sponsorship information, visit sbnm.org/breakinggood.

Questions? Call Member Services at 505-797-6039



State Bar of New Mexico
Legal Services and
Programs Committee

Gene Franchini Mock Trial Team Places Third *in National Competition*

A high school mock trial team from New Mexico placed third in a 46-team national competition held virtually from Evansville, Ind., from May 13-15. Winning four trials against teams from New Hampshire, North Carolina, Idaho and Washington, a team from Albuquerque Academy fell one scoring judge ballot short of competing in the championship round. Megan Blackwell received an outstanding witness award, and courtroom artist Mason Porch from La Cueva High School placed fourth. Courtroom journalist Caribbe Jaime from Onate High School (winner of the state courtroom journalist competition) also participated. The awards ceremony included a recorded statement by U.S. Supreme Court Justice Amy Coney Barret, whose children have participated in high school mock trial.



After cancellation of the 2020 state and national competitions due to the COVID-19 pandemic, a virtual format was developed using Zoom. The successful completion of a 25-team 2021 qualifier and state competitions and the national competition is a testament to the perseverance and ingenuity of all of the students, teacher and attorney coaches, and competition administrators involved. The state championship and national championship trials can be viewed on YouTube.

Congratulations go out to Team New Mexico,

including teacher coaches Joaquin Sanchez and Clint Ewell and the following students:

Rosa Bieber-Stanley, Roman Martinez, Megan Blackwell, Noah Vigil, Daniel Shapiro, Reeya Patel, Marly Fisher, and Mason Porch (courtroom artist).



VOLUNTARY BAR HIGHLIGHT

New Mexico LGBTQ Bar Association



The New Mexico LGBTQ Bar Association has more than 60 members and promotes and protects the interest of lesbian, gay, bisexual, transgender, and queer attorneys to achieve their full participation and advance to leadership positions in the legal profession. Membership includes access to free CLE credits and opportunities to meet other LGBTQIA-identifying lawyers, judges, and legal professionals; monthly lunch-n-learns where we discuss legal updates that impact our profession and clients; and community events to promote knowledge, acceptance, and awareness of the LGBTQIA community. Bar membership is \$35.

Co-Chairs: Adriel D. Orozco, Michelle Garcia

Email: aorozco@nmilc.org, MichelleG@nmlegalaid.org

Mailing Address: LGBTQ Bar Association, PO Box 92860, Albuquerque NM 87199

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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-024

No. A-1-CA-36295 (filed November 25, 2019)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.

YSIDRO ROBERT GARCIA,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

CINDY LEOS, District Judge

Certiorari Denied, April 10, 2020, No. S-1-SC-38136.

Released for Publication June 2, 2020.

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C. DAVID HENDERSON,
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for Appellee

Opinion

J. Miles Hanisee, Chief Judge.

{1} The State appeals from the district court's order granting Defendant Ysidro Garcia's motion to reconsider a prior district court judge's denial of Defendant's motions for mistrial. The State contends the district court erred in ordering a new trial because (1) Defendant did not file his motion to reconsider within the post-verdict time limit set forth by Rule 5-614(C) NMRA; (2) the district court misapprehended what occurred at trial; and (3) the State's witness referred to Defendant's invocation of his Fifth Amendment right to counsel on only one occasion, immediately after which the district court gave a curative instruction. Concluding Defendant's motion to reconsider was untimely, we reverse and remand for sentencing.

I. BACKGROUND

{2} Defendant was arrested on charges¹ of receiving or transferring a stolen vehicle, in violation of NMSA 1978, Section 30-16D-4 (2009), and went to trial before a

jury in September 2016. Before separately discussing the relevant post-trial proceedings, we first briefly review the portion of the trial proceedings on which Defendant's motions were premised.

A. Trial

{3} At trial, the State elicited testimony from Albuquerque Police Department Detective Joel Block about his interactions with Defendant at the police station following his arrest. When asked by the prosecutor what Defendant told him in the interview room at the police station, Detective Block said, "I did read him the advice of rights. He said he did understand. He did sign the form and he wished to speak to his attorney." Defense counsel promptly objected, asked to approach the bench, and moved for a mistrial. Then, presiding Judge David N. Williams asked the prosecutor, "Why did you elicit that?" The prosecutor responded, "Just to see if there w[ere] any admissions from [D]efendant." Defense counsel argued that "there's been a comment on the fact that [Defendant] invoked his [Fif]th Amendment . . . right to be silent[.]" and made the first motion for

a mistrial. Judge Williams denied Defendant's motion and stated that, in order to cure any prejudice arising from Detective Block's testimony, the court would instruct the jury that it was not to infer Defendant's guilt from his stated wish to speak with an attorney. Judge Williams then asked the prosecutor whether he knew Detective Block "was going to say [Defendant] asked for an attorney[.]" which the prosecutor denied. Judge Williams found there to be no "deliberate misconduct" by the State, and then provided the following curative instruction:

Ladies and gentlemen, in this country, somebody that[has been] arrested has an absolute right not to say anything to the police officers and has an absolute right to ask for an attorney if he or she wants one. You are not permitted, may not draw any inference at all about the testimony you heard that [Defendant] asked for an attorney.

{4} After giving the instruction, Judge Williams asked if each juror understood the instruction and whether the jury could assure the court that it would refrain from using that statement "in any way" when evaluating the evidence. The jurors responded affirmatively, and during the remainder of the trial, neither party referred to Detective Block's testimony that Defendant asked for a lawyer while he was in custody.

{5} After the jury returned a guilty verdict and the district court dismissed the jurors, Defendant renewed his earlier motion for a mistrial. The district court denied the renewed motion.

B. Post-Trial Proceedings

{6} On January 11, 2017, the district court entered a notice setting Defendant's sentencing hearing. The following day, the case was reassigned from Judge Williams to Judge Cindy Leos. On January 23, 2017, more than four months after the trial ended, Defendant filed an opposed motion to reconsider the district court's previous denials of Defendant's initial and renewed motions for a mistrial, contending again that the State's elicitation of Detective Block's testimony constituted "an impermissible comment on Defendant's silence." The State opposed the motion. At the outset of a hearing on Defendant's motion in March 2017 Judge Leos stated that, based on her review of the trial transcript, the question before the court was whether

¹Defendant was also charged with possession of burglary tools under NMSA 1978, Section 30-16-5 (1963), driving while license is suspended or revoked under NMSA 1978, Section 66-5-39 (2013, amended 2019), and possession of drug paraphernalia under NMSA 1978, Section 30-31-25 (1980), but these charges were dismissed on directed verdict.

a new trial was necessary due to Detective Block's testimony regarding Defendant's wish to speak with an attorney. Judge Leos opined that the trial "was fundamentally flawed," and that "[Defendant's] constitutional right to remain silent and for the jury to not necessarily have any knowledge of that . . . was impacted[.]" and concluded that a new trial was required.

{7} During argument on Defendant's motion, the State contended that (1) the district court's curative instruction was sufficient to prevent any prejudice to Defendant, and (2) Defendant's motion to reconsider was untimely, arguing that the timing of Defendant's motion suggested "improper forum shopping or [an] attempt to circumvent the decision of Judge Williams[.]" and that the proper course of action would be for Defendant to file an appeal with this Court. In response, Defendant argued that because judgment had not yet been entered in the case, the district court could reconsider any previous rulings in the case. Defendant also reiterated his underlying contention that, based on Detective Block's testimony regarding Defendant's request for an attorney, the "jury was tainted and any decision [reached thereafter] is questionable."

{8} Following argument, Judge Leos repeated her conclusion that the trial was "fundamentally flawed," adding that, in her view, the curative instruction "made things worse for [Defendant], not better." Finding that "the trial was flawed, [and that Defendant's] right to a fair trial was impacted by [Detective Block's] testimony[.]" Judge Leos granted Defendant's motion to reconsider and ordered a new trial. The State now appeals.

II. DISCUSSION

{9} The State argues the district court erred in ordering a new trial for three reasons: (1) the time limits under Rule 5-614(C) precluded a new trial in Defendant's case; (2) Judge Leos misapprehended what took place at the trial presided over by Judge Williams; and (3) the misapprehensions led Judge Leos to erroneously find prejudicial error had occurred at trial. After review of the record, we conclude that Defendant's motion to reconsider was untimely, and we therefore need not address the State's additional arguments.

The District Court Erred in Granting a New Trial Because Defendant's Motion Was Untimely

{10} This case requires us to (1) examine whether Rule 5-614 applies to a motion that seeks a new trial but is styled as a mo-

tion to reconsider; and (2) if so, whether Defendant's motion was time-barred Rule 5-614(C).

{11} "We review de novo questions of law concerning the interpretation of Supreme Court rules and the district court's application of the law to the facts." *State v. Foster*, 2003-NMCA-099, ¶ 6, 134 N.M. 224, 75 P.3d 824. We begin by observing while a motion for reconsideration would not typically be controlled by Rule 5-614, our appellate courts have held that when a motion's substance and effect is that of a different motion than that which was filed, we treat the motion substantively and procedurally based on the relief it seeks, an analysis that includes requirements for timeliness. In *State v. Baca*, our Supreme Court rejected an attempt to characterize the defendant's "motion for a premature termination of the trial for procedural reasons" as a request for an acquittal, concluding that "substance rather than labels" controls and that to conclude otherwise would mean a party "could simply misuse merits terminology to mask the true nature" of the relief sought. 2015-NMSC-021, ¶ 42, 352 P.3d 1151. Similarly, in *Chapel v. Nevitt*, this Court relied on "the language of the order and the relief that it sought" to determine whether an inaptly titled "motion to modify" should be considered under Rule 1-059(E) NMRA (governing motions to alter, amend, or reconsider final judgment) or as a motion to reconsider filed under to NMSA 1978, Section 39-1-1 (1917). 2009-NMCA-017, ¶ 18, 145 N.M. 674, 203 P.3d 889. Given our similar past resolution of misnamed motions seeking relief of a nature identified within and governed by a particular rule, we can conclude that when a motion's substance and effect is that of a motion for a new trial and a new trial is unambiguously the relief sought, Rule 5-614, along with the timeliness requirements set forth in Subsection (C) thereof, apply regardless of the motion's title.

{12} We now apply Rule 5-614 to Defendant's motion. Rule 5-614(C) requires that "[a] motion for a new trial based on [any grounds other than newly discovered evidence] shall be made within ten (10) days after verdict or finding of guilty or within such further time as the court may fix during the ten (10) day period." Where, as here, "our state court rules closely track the language of their federal counterparts, we have determined that federal construction of the federal rules is persuasive authority for the construction of New

Mexico rules." *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 9, 142 N.M. 527, 168 P.3d 99. Rule 5-614 was based on Rule 33 of the Federal Rule of Criminal Procedure and closely tracks the language of its federal counterpart. See *State v. Lucero*, 2001-NMSC-024, ¶ 8, 130 N.M. 676, 30 P.3d 365 ("In promulgating Rule 5-614, we derived the time requirement in [S]ubsection [(C)] of the rule from Rule 33 of the Federal Rules of Criminal Procedure."). "The time requirement for the filing of a motion for new trial in Rule 5-614(C) is nearly identical to the requirement in Rule 33 except that, compared to our ten-day filing requirement, the federal rule provides only seven days to file the motion after verdict or finding of guilty." *Lucero*, 2001-NMSC-024, ¶ 8 (internal quotation marks omitted). Turning then to federal precedent, we agree with the Tenth Circuit's holding that a defendant's motion for reconsideration, filed twenty-one months after denial, was not timely because under Federal Rule of Criminal Procedure 33, "a motion to reconsider the denial of a . . . new trial . . . is timely if filed within ten days of the entry of judgment" or order. *United States v. Miller*, 869 F.2d 1418, 1420-21 (10th Cir. 1989).

{13} In this case, after Judge Williams' post-verdict denial of Defendant's renewed motion for mistrial, Defendant filed his motion for reconsideration more than four months after the jury trial and, notably, only eleven days after the district court filed a notice reassigning the case to Judge Leos. Defendant's motion for reconsideration argued in part that the district court has inherent power to reconsider the denial of Defendant's initial and renewed motions for mistrial as a modification of an interlocutory order prior to final judgment. But the goal of the motion was crystal clear: it claimed "that the only remedy under the circumstances is a mistrial[.]" a ruling from which a new trial inherently flows. Although district courts are free to modify their interlocutory orders at any time before final judgment, *State v. Suskiewich*, 2014-NMSC-040, ¶ 11, 339 P.3d 614; *Sims v. Sims*, 1996-NMSC-078, ¶ 59, 122 N.M. 618, 930 P.2d 153, they may not do so contrary to the time limits in Rule 5-614(C), which restricts the authority of district courts for good reasons. Among those is finality.² As the Eleventh Circuit has recognized, "To permit the unlimited renewal or reconsideration of fully decided motions [for new trial] would needlessly tie up judicial resources and seriously

²Although an oral ruling is generally not considered to be a final judgment, *State v. Vaughn*, 2005-NMCA-076, ¶ 24, 137 N.M. 674, 114 P.3d 354, oral rulings on motions for mistrial present an exception to the general rule and are considered final. See *State v. Reyes-Arreola*, 1999-NMCA-086, ¶ 10, 127 N.M. 528, 984 P.2d 775 (concluding that oral declarations of mistrial are binding and are not subject to change unlike other oral decisions by the district court).

delay the final disposition of cases. Doing so would undermine both the language and purpose of the [r]ules.” *United States v. Gupta*, 363 F.3d 1169, 1174 (11th Cir. 2004). In addition, the United States Supreme Court has long emphasized the significance of the principle of recency, explaining that “as time passes, the peculiar ability which the trial judge has to pass on the fairness of the trial is dissipated,” and “[i]t is in the interest of justice that a decision on the propriety of a trial be reached as soon after it has ended as is possible[.]” *United States v. Smith*, 331 U.S. 469, 475-76 (1947).

{14} Here, during the ten days in which Defendant could have renewed his motion or moved to extend the ten-day time period under Rule 5-614(C), Defendant did not do so. As a consequence, any subsequent motion seeking a new trial on the basis of Detective Block’s testimony was

untimely and therefore barred. *See United States v. Bramlett*, 116 F.3d 1403, 1405-06 (11th Cir. 1997) (explaining that a renewed motion for a new trial, when made outside of the post-verdict seven-day period and beyond any extension granted within that seven-day period, is barred under Rule 33); *United States v. Matthews*, 256 F. Supp. 2d 202, 204 (S.D.N.Y. 2003) (denying appellant’s motion for reconsideration because it was filed outside of the post-verdict seven-day time period under Rule 33 and was therefore untimely).

{15} Judge Leos’ subsequent order granting Defendant’s motion for reconsideration and request for mistrial was an erroneous order granting an untimely motion for a new trial, not a modification of an interlocutory order. We reiterate that when the substance of such a motion is that of a motion for a new trial, and a new trial is unambiguously the relief sought, the

motion must be reviewed as a motion for a new trial—regardless of whether a party uses some other nomenclature—and must be filed in conformity with the timeliness requirements of Rule 5-614(C).

CONCLUSION

{16} For the aforementioned reasons, we reverse the district court’s order granting Defendant a new trial and remand for resentencing. Our opinion does not foreclose Defendant from appealing the denial of his motion for new trial after the district court enters a final judgment.

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

J. MILES HANISEE, Chief Judge

WE CONCUR:

M. MONICA ZAMORA, Judge
ZACHARY A. IVES, Judge

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-025
No. A-1-CA-36397 (filed January 30, 2020)

JEFFREY W. SANDEL,
Plaintiff-Appellant,
v.
JERRY W. SANDEL, individually,
and in his capacity as Personal
Representative of THE ESTATE
OF NANCY M. SANDEL,
and in his capacity as Trustee
of THE JERRY W. AND NANCY
M. SANDEL TRUSTS,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

LOUIS E. DEPAULI, JR., District Judge

Released for Publication June 2, 2020

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Opinion

Jacqueline R. Medina, Judge.

{1} Plaintiff Jeffrey Sandel appeals the district court's order dismissing his complaint on the grounds that Plaintiff was collaterally estopped from bringing his tort claims and barred by the statute of limitations for bringing a claim under the New Mexico Uniform Probate Code (the Probate Code). We affirm.

BACKGROUND

{2} This action arises out of an intergenerational dispute over the proceeds of a marital trust. Plaintiff is the adult son of Defendant Jerry Sandel and his now-deceased wife, Nancy Sandel. Defendant and Mrs. Sandel jointly executed the Jerry W. and Nancy M. Sandel Revocable Trust (the Trust) in 1974. The Trust was

amended and restated several times over the years, with the last amendments and restatements occurring in June 1995 (the 1995 Amendment), January 1999 (the 1999 Restatement), and May 2001 (the 2001 Restatement). Following Mrs. Sandel's death in 2001, Defendant, the personal representative of Mrs. Sandel's estate, informally probated her estate in August 2002. As we describe in detail below, Plaintiff first brought suit against Defendant, individually, as well as in his capacity as the personal representative of Mrs. Sandel's estate and trustee of the Trust in federal court, and when those claims were dismissed, Plaintiff then filed this action.

The Federal Lawsuit

{3} In October 2015, fourteen years after Mrs. Sandel's death, Plaintiff filed suit in federal district court (the Federal Suit)

against Defendant, alleging fraud, breach of trust, and conversion. Plaintiff's complaint alleged that under the original terms of the Trust, following the deaths of both Defendant and Mrs. Sandel, the Trust principal was to be distributed in equal parts to Plaintiff and his two siblings over the course of time until they reach thirty-five years of age, at which time they could demand their remaining full share of the marital trust principal. However, the Trust was amended in 1995 and then amended and restated in 2001 in such a way to ultimately eliminate Plaintiff's right to demand the principal of the Trust—which Plaintiff claimed was in the millions of dollars. A handwriting expert, who subsequently reviewed the 1995 Amendment and 2001 Restatement, concluded that Mrs. Sandel's signatures on two instruments were forged. The complaint further alleged that Defendant: (1) knew that Mrs. Sandel's signature was forged on the two instruments; (2) intentionally misled Plaintiff by telling him that Defendant and Mrs. Sandel "modified the terms of [Mrs. Sandel's] testamentary documents such that Plaintiff . . . had no inheritance rights, present or future, to any of the assets in [Mrs. Sandel's] estate[;]" and (3) fraudulently concealed the existence of the Trust by telling Plaintiff in March 2009 and February 2010 that "there was no trust in which Plaintiff . . . had any interest." As a result of Defendant's representations, Plaintiff claimed that he did not contest the validity of the Trust or the disposition of Mrs. Sandel's estate until he was able to obtain a copy of the 1995 Amendment and 2001 Restatement through discovery in a separate lawsuit.¹

{4} Defendant filed a motion for judgment on the pleadings, which the federal district court granted as to the counts for fraud, breach of trust, and conversion. *Sandel v. Sandel*, No. CV-15-924 MCA/KK, 2016 WL 7535356 (D.N.M. July 18, 2016). In doing so, the federal court found that those claims were foreclosed by *Wilson v. Fritschy*, 2002-NMCA-105, 132 N.M. 785, 55 P.3d 997, which "established that 'when the interference with inheritance takes place in the context of a will or other testamentary device that can be challenged in probate,' the plaintiff must utilize the Probate Code, rather than tort law, to obtain relief." *Sandel*, 2016 WL 7535356, at *1 (quoting *Wilson*, 2002-NMCA-105, ¶ 12). Although the federal district court dismissed Plaintiff's tort claims, it noted that Plaintiff could potentially pursue his fraud claim under NMSA 1978, Sec-

¹Plaintiff did not specify when this lawsuit took place.

tion 45-1-106(A) (1975), a Probate Code provision that allows any person to obtain “appropriate relief” within two years of discovering fraud “perpetrated in connection with any proceeding or in any statement filed under the . . . Probate Code or . . . fraud . . . used to avoid or circumvent the provisions or purposes of the code.” See *Sandel*, 2016 WL 7535356, at *1.

The State Lawsuit

{5} Following the dismissal of the Federal Suit, Plaintiff filed the instant action in state district court in August 2016. Plaintiff’s complaint alleged fraud, breach of trust, and tortious interference with an expected inheritance based largely on the same facts he alleged in the Federal Suit. Plaintiff further alleged that the same handwriting expert who reviewed the 1995 Amendment and 2001 Restatement believed that the 1999 Restatement was likely forged as well. In addition to the above causes of actions, Plaintiff contended that Defendant breached his duty as personal representative to Mrs. Sandel’s estate by intentionally failing to inform Plaintiff of the estate’s informal probate, which Plaintiff claimed he did not learn of until 2009. Although Plaintiff admitted learning in 2009 that Mrs. Sandel’s estate had been probated in 2002, the complaint alleged that Plaintiff did not discover the fraud until 2015.

{6} In response, Defendant filed a counterclaim against Plaintiff for malicious abuse of process. Additionally, Defendant moved to dismiss for failure to state a claim, arguing that the Federal Suit barred Plaintiff’s tort claims under the doctrine of res judicata. Defendant also argued that Plaintiff’s claims were time-barred under NMSA 1978, Section 46A-6-604(A) (2007), which provides that “[a] person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor’s death within the earlier of . . . three years after the settlor’s death; or . . . one hundred twenty days after the trustee sent the person a copy of the trust [along with a notice containing certain information].” Alternatively, Defendant argued that Plaintiff’s claims were time-barred because Plaintiff knew or should have discovered the alleged fraud in 2009.

{7} Defendant attached several exhibits in support of his motion, including multiple affidavits from his estate planning attorney in which the attorney described his personal involvement with drafting the provisions of the Trust—including the 1995 Amendment, 1999 Restatement, and 2001 Restatement—as well as his involvement with the informal probate of Mrs. Sandel’s will. Defendant’s attorney also attested that he met with Plaintiff on June 5, 2002, to go over Mrs. Sandel’s will and the disposition provisions of the Trust and that he sent

Plaintiff a complete copy of Mrs. Sandel’s will and the 2001 Restatement on April 9, 2009. Additionally, Defendant attached a copy of Mrs. Sandel’s will devising her entire estate (besides personal and household effects) to the Trust, as well as copies of the 1995 Amendment, 1999 Restatement, and 2001 Restatement—including the unnotarized signature pages with Mrs. Sandel’s purportedly forged signatures.

{8} In addition to the above, Defendant attached two other exhibits to the motion. One was a copy of an email Plaintiff sent to Defendant’s attorney in 2009 in which Plaintiff wrote:

I received a copy of the [Trust] . . . you sent me on April 9, 2009 and of course I plan on challenging it in court. I have retained [an attorney] in Farmington and have sent a copy to my family law attorney in California . . . and given him permission to give a copy of the trust to other attorneys that may be interested in representing me. As you know [Defendant] has repeatedly lied to me about the [T]rust and on numerous occasions has told me there is no trust and then later told me that all of my mother’s trust is in his name. . . . [Defendant] has constantly defamed me and lied to me about the [T]rust that was originally set up for my comfort, support, and welfare which instead has been used to manipulate, defame, abuse, and hurt me. . . . [Defendant] is liable for damages that have been caused by his neglect and mishandling of an estate that he pretends to be the sole owner of which is not true. I will personally sue your client for damages and I will win.

The other was a short, six-paragraph affidavit Plaintiff submitted in the Federal Suit in which Plaintiff admitted sending an e-mail in 2009 threatening to challenge the Trust in court. In that affidavit, Plaintiff attested that “[i]n or around 2001, shortly after the death of [Mrs. Sandel], . . . Defendant . . . told [Plaintiff] that he and [Mrs. Sandel] had modified the terms of [her] testamentary documents such that [Plaintiff] had no inheritance rights, present or future, to any of the assets in [Mrs. Sandel’s] estate” and that Defendant told Plaintiff in 2009 and 2010 that “there was no trust in which [Plaintiff] had any interest.” Plaintiff also attested that he did not discover the purported forgeries until 2015 because Mrs. Sandel’s signatures “on the 1995, 1999, and 2001 [T]rust instruments here in dispute looked similar enough to hers that [Plaintiff] did not question them when [he] saw them.” In sum, over sixty

pages of supporting documents were attached to Defendant’s motion to dismiss.

{9} Plaintiff responded, setting forth his “separate statement of undisputed facts,” to which he attached the same affidavit of his from the Federal Suit and a copy of the same e-mail Plaintiff sent to Defendant’s attorney. Plaintiff also attached various pleadings from the Federal Suit, including the federal district court’s order granting judgment on the pleadings. Plaintiff argued that his tort claims were not barred by res judicata because the Federal Suit did not resolve the merits of his challenge to the validity of the Trust under the Probate Code. Next, Plaintiff argued—relying on his affidavit from the Federal Suit—that his claims did not accrue until he discovered the purported forgeries in 2015. Lastly, Plaintiff argued that Defendant should be equitably estopped from raising a statute of limitations defense.

{10} Because the parties submitted materials outside of the pleadings that were not excluded by the state district court, the court was obligated to treat Defendant’s motion to dismiss as one for summary judgment. See Rule 1-012(B) NMRA (stating that if “matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by Rule 1-056 NMRA[.]”). After considering Defendant’s motion, “all other pleadings generated by the motion, the applicable law,” and the “undisputed facts,” the state district court granted Defendant’s motion. Notwithstanding that Defendant sought dismissal on res judicata grounds, the state district court held that Plaintiff was “collaterally estopped from proceeding in tort.” Further, the court held that, “[i]n any event, whether proceeding in tort or probate, all possible statutes of limitations have run[.]” The district court’s statute of limitations ruling was based on the following factual allegations which the court accepted as undisputed and therefore true: (1) Defendant told Plaintiff in 2001 that Mrs. Sandel’s testamentary documents had been altered in such a way to eliminate Plaintiff’s inheritance rights; (2) Defendant told Plaintiff in March 2009 that there was no trust in which Plaintiff had an interest; (3) Plaintiff was aware of the Trust and knew of its terms since 2009; and (4) Plaintiff threatened litigation to challenge the Trust in 2009. Based on these facts, the district court held that Plaintiff knew or should have learned of his causes of action in 2009, at the very latest. Because Plaintiff did not bring the suit until 2016—seven years later—the district court held that Plaintiff’s claims were time-barred and dismissed his complaint with prejudice. This appeal followed.

DISCUSSION

{11} Plaintiff makes three arguments on appeal. First, Plaintiff contends that the district court improperly held that the Federal Suit precluded him from his bringing tort claims in state district court because the elements of collateral estoppel were not met. Second, Plaintiff contends that he timely brought his claims pursuant to Section 45-1-106 of the Probate Code because he did not discover Defendant's purported forgeries until 2015. Lastly, Plaintiff claims that Defendant should be equitably estopped from raising the statute of limitations defense. We address each in turn.²

Standard of Review

{12} We review orders granting summary judgment de novo. *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280. Summary judgment is appropriate where the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 1-056(C). “An issue of fact is ‘material’ if the existence (or non-existence) of the fact is of consequence under the substantive rules of law governing the parties’ dispute.” *Oakey, Estate of Lucero v. May Maple Pharmacy, Inc.*, 2017-NMCA-054, ¶ 15, 399 P.3d 939 (internal quotation marks and citation omitted).

{13} The movant has the initial burden of making a prima facie showing that he is entitled to summary judgment, which constitutes “such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted.” *Romero*, 2010-NMSC-035, ¶ 10 (internal quotation marks and citation omitted). Once the movant establishes this prima facie case for summary judgment, “the burden shifts to the non-movant to demonstrate the existence of specific evidentiary facts which would require trial on the merits.” *Kreutzer v. Aldo Leopold High Sch.*, 2018-NMCA-005, ¶ 27, 409 P.3d 930 (internal quotation marks and citation omitted). When attempting to meet this burden, the non-movant cannot rely on allegations or speculation but must present admissible evidence demonstrat-

ing the existence of a genuine issue of a material fact. *Id.* “If the non-movant fails to do so, summary judgment, if appropriate, shall be entered against him.” *Id.* (internal quotation marks and citation omitted). In determining whether there exists a genuine issue of material fact, “[w]e review the record in the light most favorable to support a trial on the merits, and we construe all reasonable inferences from the record in favor of the party that opposed summary judgment.” *Griffin v. Penn*, 2009-NMCA-066, ¶ 7, 146 N.M. 610, 213 P.3d 514 (internal quotation marks and citations omitted).

{14} Although our courts view summary judgment with disfavor, see *Romero*, 2010-NMSC-035, ¶ 8, “[t]he Rule 1-056 procedure serves a worthwhile purpose in disposing of groundless claims, or claims which cannot be proved, without putting the parties and the courts through the trouble and expense of full blown trials on these claims.” *Kreutzer*, 2018-NMCA-005, ¶ 30 (alteration, internal quotation marks, and citation omitted).

I. Res Judicata, Not Collateral Estoppel, Bars Plaintiff's Tort Claims

{15} Plaintiff first challenges the district court's holding that Plaintiff is collaterally estopped from proceeding with his tort claims. Specifically, Plaintiff argues, among other things, that the doctrine of collateral estoppel does not apply because the causes of action in the two suits are the same. We agree. As our Supreme Court has stated:

[Collateral estoppel] bars re-litigation of the same issue if (1) the party to be estopped was a party to the prior proceeding, (2) the cause of action in the case presently before the court is different from the cause of action in the prior adjudication, (3) the issue was actually litigated in the prior adjudication, and (4) the issue was necessarily determined in the prior litigation. . . . If any one element is not satisfied issue preclusion is not applicable.

Ideal v. Burlington Res. Oil & Gas Co. LP, 2010-NMSC-022, ¶ 9, 148 N.M. 228, 233 P.3d 362 (emphasis added).³ Here, although Plaintiff brought two additional

claims for breach of fiduciary duty and tortious interference with an expected inheritance that he did not bring in the Federal Suit, all of his causes of action arise out of Defendant's purported forgeries and alleged motivation to wrongfully disinherit Plaintiff. Accordingly, the causes of action in Plaintiff's suits are the same, cf. *Chaara v. Lander*, 2002-NMCA-053, ¶ 15, 132 N.M. 175, 45 P.3d 895 (“[C]laims present the same ‘cause of action’ for purposes of res judicata if they arise out of the same transaction, or series of connected transactions.” (internal quotation marks and citation omitted)); cf. also *Three Rivers Land Co. v. Maddoux*, 1982-NMSC-111, ¶ 27, 98 N.M. 690, 652 P.2d 240 (“What factual grouping constitutes a ‘transaction[,]’ and what groupings constitute a ‘series[,]’ are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.” (internal quotation marks and citation omitted)), *overruled on other grounds by Universal Life Church v. Coxon*, 1986-NMSC-086, ¶ 9, 105 N.M. 57, 728 P.2d 467), and collateral estoppel does not apply to the case at hand. See *Ideal*, 2010-NMSC-022, ¶ 9.

{16} Nonetheless, as we explain, we affirm on the related doctrine of res judicata. Defendant's motion to dismiss accurately argued that res judicata barred Plaintiff's tort claims from being litigated again, and Plaintiff responded to the arguments raised by Defendant. Consequently, we may affirm the district court's judgment on the grounds of res judicata under the right for any reason doctrine. See *Wild Horse Observers Ass'n, Inc. v. N.M. Livestock Bd.*, 2016-NMCA-001, ¶ 29, 363 P.3d 1222 (“An appellate court may affirm a district court if it was right for any reason and affirming on new grounds would not be unfair to the appellant.”); cf. *Blea v. Sandoval*, 1988-NMCA-036, ¶ 8, 107 N.M. 554, 761 P.2d 432 (holding that, despite the defendant's erroneous reliance on res judicata on appeal, collateral estoppel applied and precluded the plaintiffs from claiming superior title).

²Defendant claims that Plaintiff failed to preserve his arguments because he did not raise them in his docketing statement. Defendant is mistaken, however, as cases assigned to the general calendar are no longer restricted to briefing only those issues raised in the docketing statement. See Rule 12-318(A)(1) NMRA (providing that “[t]he appellant may raise issues in addition to those raised in the docketing statement or statement of the issues unless the appellee would be prejudiced”). Defendant does not claim that he would be prejudiced, and we therefore proceed to address Plaintiff's arguments.

³We recognize that because the initial judgment comes from federal court, we apply the federal law of collateral estoppel. See *Deflon v. Sawyers*, 2006-NMSC-025, ¶ 13, 139 N.M. 637, 137 P.3d 577. However, as federal courts, unlike New Mexico courts, do not require that the two suits contain different causes of action, compare *Shovelin v. Cent. N.M. Elec. Coop.*, ¶ 10, 115 N.M. 293, 850 P.2d 996 (1993), with *Smith v. Dinwiddie*, 510 F.3d 1180, 1188 (10th Cir. 2007), we must adhere to New Mexico law in regard to this element. See *Deflon*, 2006-NMSC-025, ¶ 13 (stating that our courts will apply federal preclusion law “unless doing so conflicts with precedent from [our Supreme Court]”).

{17} “Res judicata is a judicially created doctrine designed to promote efficiency and finality by giving a litigant only one full and fair opportunity to litigate a claim and by precluding any later claim that could have, and should have, been brought as part of the earlier proceeding.” *Potter v. Pierce*, 2015-NMSC-002, ¶ 1, 342 P.3d 54. “Because the prior action was in federal court, federal law determines the preclusive effect of a federal judgment.” *Moffat v. Branch*, 2005-NMCA-103, ¶ 11, 138 N.M. 224, 118 P.3d 732. Nonetheless, as New Mexico does not diverge from federal law with respect to res judicata, we may employ state precedent. See *Deflon*, 2006-NMSC-025, ¶ 2. “A party asserting res judicata or claim preclusion must establish that (1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits.” *Potter*, 2015-NMSC-002, ¶ 10. “[W]e review the legal issue presented by the district court’s application of res judicata de novo.” *Deflon*, 2006-NMSC-025, ¶ 3.

{18} Here, Defendant filed a motion for judgment on the pleadings in the Federal Suit, to which Plaintiff filed a written response. *Sandel*, 2016 WL 7535356, at *1. After considering the parties’ written submissions, the federal district court found that Plaintiff’s tort claims were foreclosed by *Wilson*, 2002-NMCA-105. *Sandel*, 2016 WL 7535356, at *1. Accordingly, the court granted judgment on the pleadings in favor of Defendant, dismissing Plaintiff’s tort claims with prejudice.⁴ *Id.*

{19} Under these circumstances, we conclude the elements of res judicata are present. First, the order granting judgment on the pleadings constituted a final judgment, as it disposed of Plaintiff’s tort claims to the fullest extent possible. *Cf. Turner v. First N.M. Bank*, 2015-NMCA-068, ¶ 7, 352 P.3d 661 (concluding that an order dismissing for failure to state a claim constituted a final judgment because “it fully disposed of the rights of the parties, and otherwise disposed of the matter to the fullest extent possible” and “decisively and fully determined that [the p]laintiffs failed to state a cause of action”); *Vill. of Los Ranchos de Albuquerque v. Shiveley*, 1989-NMCA-095, ¶¶ 12-13, 110 N.M. 15, 791 P.2d 466 (concluding that an order dismissing for lack of standing constituted a final judgment because the order “ter-

minated the suit and the proceeding was completely disposed of so far as the court had power to dispose of it”). Second, the district court’s order granting judgment on the pleadings expressly considered the merits of whether Plaintiff’s tort claims were foreclosed by *Wilson*, 2002-NMCA-105. See *Styskal v. Weld Cty. Bd. of Cty. Comm’rs*, 365 F.3d 855, 858 (10th Cir. 2004) (explaining that an adjudication “on the merits” is one that passes directly on the substance of a particular claim). And lastly, Plaintiff does not dispute that the parties and causes of action (as discussed above) were the same in both suits. As a result, Plaintiff is barred from bringing his tort claims against Defendant.

{20} Although Plaintiff tailors his argument toward the application of collateral estoppel, we understand his argument in the context of res judicata to be that the Federal Suit was not decided on the merits. Plaintiff points to the federal district court’s subsequent order dismissing Defendant’s counterclaim in which it stated, “The [c]ourt’s order dismissing Plaintiff’s tort claims did not resolve the merits of Plaintiff’s challenge to various estate planning documents . . . that challenge must be resolved in state court.” *Sandel v. Sandel*, No. CV-15-924 MCA/KK, 2016 WL 7510236, at *1 (D.N.M. Aug. 25, 2016). Plaintiff claims that this statement establishes there was no litigation on the merits. Plaintiff is correct that the Federal Suit did not address the merits of Plaintiff’s challenge to the Trust, and, therefore he is not precluded by either res judicata or collateral estoppel from challenging the Trust under the Probate Code. However, as discussed above, the federal district court analyzed whether Plaintiff’s tort claims were foreclosed by *Wilson*, 2002-NMCA-105, and concluded that they were. See *Sandel*, 2016 WL 7535356, at *1. Thus, the Federal Suit addressed the merits of whether Plaintiff could bring his tort claims against Defendant. See *Styskal*, 365 F.3d at 858.

{21} We note that Plaintiff continues to challenge whether he had an adequate remedy under the Probate Code, and consequently, whether the federal district court properly applied *Wilson*. Our task, however, is not to determine whether the federal court arrived at the correct conclusion; our task here is limited to addressing its preclusive effect. See *Concerned Residents of Santa Fe N., Inc. v. Santa Fe*

Estates, Inc., 2008-NMCA-042, ¶ 17, 143 N.M. 811, 182 P.3d 794 (“The purpose of res judicata is to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.” (internal quotation marks and citation omitted)); *Moffat v. Branch*, 2002-NMCA-067, ¶ 26, 132 N.M. 412, 49 P.3d 673 (“The essence of res judicata is that litigants are encouraged and afforded a full and fair opportunity to raise issues that exist between them in a single action. There are consequences for the failure to take advantage of this opportunity. If a litigant is able to raise a claim in an action before the action becomes final, but does not do so, the claim is forever barred.” (citation omitted)). Accordingly, to the extent that Plaintiff challenges the merits of the Federal Suit, we can offer him no relief.

II. Plaintiff’s Probate Code Claim is Time-Barred

{22} Plaintiff next challenges the district court’s holding that he was time-barred from bringing a claim under the Probate Code. The parties disagree about the statute of limitations applicable to Plaintiff’s claim. Plaintiff argues that, pursuant to Section 45-1-106, his claim is not time-barred because he brought it within two years of discovering that Mrs. Sandel’s signatures were allegedly forged.⁵ Defendant, on the other hand, argues that Section 46A-6-604(A) bars Plaintiff from bringing his claim because it necessarily involves a challenge to the validity of a revocable trust, which must be made, at the latest, within three years of the settlor’s death. We need not decide this issue because even if Plaintiff is correct that he had two years from the time of discovery of the fraud to file his claim under Section 45-1-106, he failed to come forward with competent evidence demonstrating that he could not have reasonably discovered the fraud in 2009. We explain.

{23} New Mexico follows the discovery rule, which provides that a cause of action sounding in fraud does not accrue until the plaintiff “discovers” the fraud. See *Wilde v. Westland Dev. Co.*, 2010-NMCA-085, ¶ 18, 148 N.M. 627, 241 P.3d 628; see also NMSA 1979, § 37-1-7 (1880) (“In actions for relief, on the ground of fraud . . . , the cause of action shall not be deemed to have accrued until the fraud . . . shall have been discovered by the party aggrieved.”). Section 45-1-106 expressly incorporates this rule into

⁴Although the federal district court’s order did not specify whether the dismissal was with prejudice, we presume it was. *Cf. Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1299 (10th Cir. 2014) (“Dismissals for failure to state a claim are presumptively with prejudice because they fully dispose of the case.”).

⁵Plaintiff also argues that NMSA 1978, Section 37-1-18 (1880) indefinitely tolled his cause of action. However, Section 37-1-18 only applies to limitations periods provided in Chapter 37 of the New Mexico Statutes Annotated, and is therefore inapplicable to Section 45-1-106’s limitations period.

its limitation period, providing that “[a]ny proceeding must be commenced within two years after the discovery of the fraud.” “[D]iscovery is defined as the discovery of such facts as would, on reasonable diligent investigation, lead to knowledge of the fraud or other injury.” *Wilde*, 2010-NMCA-085, ¶ 18 (alteration, internal quotation marks, and citation omitted). “In the absence of actual knowledge of fraud, a reasonable-person standard will be applied as to whether a plaintiff should have known of the fraud.” *Id.* (alteration, internal quotation marks, and citation omitted). If a reasonable person in the plaintiff’s position would have made an inquiry leading to the discovery of the fraud, then the plaintiff is said to be on “inquiry notice” and deemed to have discovered the cause of action for purposes of the rule. See *Yurcic v. City of Gallup*, 2013-NMCA-039, ¶ 9, 298 P.3d 500.

{24} Although our courts generally characterize the application of the discovery rule as a jury question, see *id.* ¶ 10, where there are undisputed facts that show that the plaintiff knew or should have become aware of the facts underlying his or her claim by a specific date, the district court may decide the issue as a matter of law. See, e.g., *Brunacini v. Kavanagh*, 1993-NMCA-157, ¶ 30, 117 N.M. 122, 869 P.2d 821. “When a defendant makes a prima facie showing that a claim is time barred, a plaintiff attempting to invoke the discovery rule has the burden of demonstrating that if he or she had diligently investigated the problem he or she would have been unable to discover the facts underlying the claim.” *Butler v. Deutsche Morgan Grenfell, Inc.*, 2006-NMCA-084, ¶ 28, 140 N.M. 111, 140 P.3d 532 (alterations, internal quotation marks, and citation omitted); see also *Martinez v. Showa Denko, K.K.*, 1998-NMCA-111, ¶ 22, 125 N.M. 615, 964 P.2d 176 (“Even applying the discovery rule, in order to refute [the d]efendant’s prima facie showing that [the p]laintiff filed her lawsuit outside the time limitation of the statute of limitations, it was incumbent upon [the p]laintiff to demonstrate that if she had diligently investigated the problem she would have been unable to discover the cause of her injury.”). Here, Plaintiff argues that the district court improperly dismissed his claims as time-barred because factual disputes existed with regard to when he discovered or should have discovered his claim. We disagree.

{25} The exhibits attached to Defendant’s motion to dismiss, together with the allegations set forth in Plaintiff’s complaint, established the following undisputed facts. Defendant’s estate planning attorney met with Plaintiff to go over Mrs. Sandel’s will and the Trust on June 5, 2001, including the Trust’s disposition provisions. De-

fendant told Plaintiff in 2001 that he and Mrs. Sandel “had modified the terms of [Mrs. Sandel]’s testamentary documents such that [Plaintiff] had no inheritance rights, present or future, to any of the assets in [Mrs. Sandel]’s estate.” Defendant told Plaintiff in 2009 and 2010 that “there was no trust in which [Plaintiff] had any interest.” Plaintiff learned in 2009 that Defendant probated Mrs. Sandel’s estate seven years earlier. Also in 2009, Defendant’s attorney sent Plaintiff a complete copy of Mrs. Sandel’s will, which devised her estate to the Trust. Defendant’s attorney sent Plaintiff a copy of the 2001 Restatement in 2009 (including the unnotarized signature page), which Plaintiff admitted receiving in an email. In that same email, Plaintiff asserted that Defendant “repeatedly lied” to Plaintiff about the Trust, telling Plaintiff “on numerous occasions . . . there [was] no trust and then later [telling him] that all of [Mrs. Sandel]’s trust [was] in [Defendant]’s name.” Plaintiff stated that he “of course” planned on challenging the Trust and claimed that Defendant was “liable for damages that have been caused by his neglect and mishandling of an estate that he pretends to be the sole owner of which is not true.” To this end, Plaintiff informed Defendant’s attorney that he retained an attorney in Farmington and sent a copy of the Trust to his family law attorney in California, giving him or her permission to forward a copy of the Trust to other attorneys who would be interested in representing Plaintiff.

{26} The above undisputed facts constituted a prima facie showing that Plaintiff reasonably should have discovered the alleged forgeries by 2009. Plaintiff knew that Defendant and Mrs. Sandel disinherited him by devising Mrs. Sandel’s estate to the Trust. Plaintiff had a copy of the allegedly forged 2001 Restatement eliminating his right to collect any of the Trust’s multi-million dollar corpus, which was formalized by Defendant’s and Mrs. Sandel’s unnotarized signatures. Plaintiff believed Defendant had “repeatedly lied” about the Trust and caused Plaintiff damages. Indeed, Plaintiff stated that he planned on challenging the Trust and went so far as to retain an attorney. Under these circumstances, the district court properly determined that a reasonable person would have diligently investigated the validity of a trust he believed was illegally altered. Furthermore, given that the Trust was co-created by someone Plaintiff claims “repeatedly lied” about the Trust, a reasonable person would have investigated the authenticity of Mrs. Sandel’s unnotarized signature on the 2001 Restatement. And although it is unclear when Plaintiff received copies of the 1995 Amendment and the 1999 Restatement, a reasonable

person in Plaintiff’s position would have investigated the authenticity of Mrs. Sandel’s signatures on related trust instruments after discovering that her signature on the 2001 Restatement was possibly forged.

{27} Once Defendant made this prima facie showing that Plaintiff was on inquiry notice of the alleged forgeries in 2009, it became Plaintiff’s burden to demonstrate that if he had diligently investigated the Trust, he would have been unable to discover that Defendant allegedly forged Mrs. Sandel’s signatures. See *Butler*, 2006-NMCA-084, ¶ 28; *Martinez*, 1998-NMCA-111, ¶ 22. Plaintiff did not meet this burden. Plaintiff’s lone support comes from his own affidavit, in which he attested, in relevant part,

I did not discover that my mother’s signatures on the [T]rust instruments at issue in this case were forgeries until the summer of 2015. The signatures of my mother on the 1995, 1999, and 2001 [T]rust instruments here in dispute looked similar enough to hers that I did not question them when I saw them. . . . Although in 2009 I sent an e[-]mail threatening to challenge the [T]rust instruments in court, I did so merely because I was upset that my inheritance rights had been virtually eliminated. I had no reason to believe at that time that my mother’s signature had been forged.”

{28} Neither the pleadings attached to Plaintiff’s response, nor the statements in his affidavit (including the one above) create a genuine dispute of material fact sufficient to demonstrate that he was unable to reasonably have discovered his cause of action within the statute of limitations period. Plaintiff’s statement that he did not question Mrs. Sandel’s signatures because they looked “similar enough,” does not explain why Plaintiff could not have performed a reasonably diligent investigation in order to discover whether he had a claim in 2009 or why he could not have discovered his claim had he performed such an investigation. Importantly, Plaintiff did not provide any facts to establish why he could not have hired a handwriting expert in 2009 when he received the trust documents and threatened to challenge the Trust with the assistance of multiple attorneys. Indeed, Plaintiff provides no facts at all—disputed or not—to explain why he did not investigate his potential claims in 2009, and what prompted him to ultimately hire the handwriting expert when he finally did.

{29} Since the undisputed facts established that Plaintiff was on inquiry notice, it was incumbent upon him to proffer competent evidence sufficient to establish that an objectively reasonable person’s diligent investiga-

tion would not have revealed the facts on which Plaintiff relies in bringing his claim. See *Butler*, 2006-NMCA-084, ¶ 28; *Martinez*, 1998-NMCA-111, ¶ 22. Plaintiff did not do this. We, therefore, conclude as a matter of law, based on the undisputed material facts that Plaintiff knew or with reasonable diligence should have known of Defendant's purported forgeries in 2009. See *Brunacini*, 1993-NMCA-157, ¶ 30. Accordingly, the district court properly dismissed Plaintiff's claim, as he brought suit more than two years after 2009. We reject Plaintiff's argument that our holding would impose too high a "standard of care" on disinherited heirs because it would require "every disinherited heir to hire forensic examiners . . . when they are merely put on notice that they were simply disinherited through a genuine signature." Our holding today is not that an heir must hire a handwriting expert to investigate the signatures on testamentary documents in every case of disinheritance; it is simply that Plaintiff failed to meet his burden to demonstrate why a disinherited heir in these specific circumstances could not have discovered the alleged forgery after a reasonably diligent investigation.

{30} Finally, Plaintiff argues that the district court's ruling was premature because Plaintiff did not have the benefit of discovery. We recognize that "[i]t is generally inadvisable to grant summary judgment before discovery has been completed." *Romero v. Giant Stop-N-Go of N.M., Inc.*, 2009-NMCA-059, ¶ 17, 146 N.M. 520, 212 P.3d 408. Plaintiff, however, never requested or filed a Rule 1-056(F) affidavit requesting more time to obtain discovery to support his position. See *id.* ("Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his position, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just"). Although Defendant did not style his motion as one for summary judgment, he attached several exhibits in support of his motion, and Plaintiff did the same in response, including listing his own "statement of undisputed facts." Rule 1-012(C) makes clear that when matters outside the pleading are included with a motion to dismiss, the motion is to be treated as one for summary

judgment (unless the district court excludes the extraneous evidence). Plaintiff never argued that he needed more time to develop the evidence or to do more discovery. Nor did he file a motion for reconsideration stating that he needed additional discovery to meet his burden to proffer evidence sufficient to create a genuine dispute of fact. Appellate courts do not exist to rescue parties from the consequences of their choices in the district court, and if Plaintiff needed more time to develop evidence, it was incumbent upon him to make this request to the district court. Cf. *Butler*, 2006-NMCA-084, ¶ 38 (rejecting the plaintiff's assertion that he needed more discovery to develop his discovery rule argument because he never made any specific allegations regarding what he hoped to find in discovery). Accordingly, we decline to remand this matter back to the district court so Plaintiff can engage in further discovery.

III. Plaintiff Is Not Entitled to Equitable Estoppel

{31} Lastly, Plaintiff argues that Defendant should be equitably estopped from asserting a limitations defense because he misled Plaintiff by (1) forging Mrs. Sandel's signatures, (2) failing to inform Plaintiff that Mrs. Sandel's estate was probated, and (3) lying about the existence of the Trust. Although Plaintiff raised this argument below, the district court did not explicitly address it in its order. However, by granting Defendant's motion on statute of limitations grounds, the district court necessarily rejected Plaintiff's equitable estoppel claim. After reviewing the record, we conclude the Plaintiff failed to meet his burden to demonstrate the elements of equitable estoppel.⁶

{32} "Equitable estoppel prohibits a party from asserting a statute of limitations defense if that party's conduct has caused the plaintiff to refrain from filing an action until after the limitations period has expired." *Little v. Baigas*, 2017-NMCA-027, ¶ 23, 390 P.3d 201 (internal quotation marks and citation omitted). "[T]he party relying on a claim of equitable estoppel has the burden of establishing all facts necessary to prove it . . . [and] must plead the circumstances giving rise to estoppel with particularity" *Id.* ¶ 22 (internal quotation marks and citations omitted). In order to raise equitable estoppel, the plaintiff must demonstrate that the defendant: "(1) concealed material facts, falsely represented material facts, or made

representations of fact different or inconsistent with later assertions in court; (2) had an intent or expectation that such conduct would be acted upon by the plaintiff; and (3) possessed either actual or constructive knowledge of the real facts." *Id.* ¶ 24 (internal quotation marks and citation omitted). Additionally, the plaintiff must demonstrate that he or she: "(1) lacked both the knowledge and the means of acquiring knowledge of the truth as to the facts in question; (2) relied on the defendant's conduct; and (3) acted upon that conduct in a way that prejudicially altered his position." *Id.* (internal quotation marks and citation omitted).

{33} Thus, in order to raise a claim for equitable estoppel in regard to asserting a statute of limitations defense against Plaintiff's claim under Section 45-1-106, Plaintiff was required to demonstrate, among other things, that Defendant's conduct caused Plaintiff to refrain from filing his claim within two years of discovery of the fraud. See § 45-1-106(A) (providing that any person may obtain "appropriate relief" within two years of discovering the fraud); *Little*, 2017-NMCA-027, ¶ 23. Plaintiff failed to do this. Although (according to Plaintiff) Defendant concealed the existence of the Trust and the fact that Mrs. Sandel's estate had been probated for some years, it is undisputed that Plaintiff learned of the estate's probate and obtained a copy of 2001 Restatement in 2009. Plaintiff cannot point to any actions by Defendant beyond 2009 that caused Plaintiff to refrain from filing his action within two years. While Plaintiff claims he did not know that Mrs. Sandel's signature was allegedly forged at that point, he failed to demonstrate that Defendant took any actions to prevent Plaintiff from investigating Mrs. Sandel's signatures after 2009. Accordingly, Plaintiff's claim for equitable estoppel must fail.

CONCLUSION

{34} For the foregoing reasons, we affirm the district court's dismissal of Plaintiff's claims and remand for further proceedings on Defendant's remaining counterclaim for malicious abuse of process.

{35} **IT IS SO ORDERED.**
JACQUELINE R. MEDINA, Judge

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

⁶Defendant argues that equitable estoppel does not apply under the facts of this case, as Defendant never promised to not plead the statute of limitations, nor did Plaintiff claim that he knew of his cause of action and relied on Defendant's statements of conduct in failing to bring his suit. See *Estate of Brice v. Toyota Motor Corp.*, 2016-NMSC-018, ¶¶ 10-14, 373 P.3d 977 (discussing the differences between the doctrines of equitable estoppel and fraudulent concealment and stating that "the doctrine of equitable estoppel comes into play if the defendant takes active steps to prevent the plaintiff from suing in time, as by promising not to plead the statute of limitations" and "equitable estoppel applies when a plaintiff who knows of his cause of action reasonably relies on the defendant's statement or conduct in failing to bring suit" (internal quotation marks and citation omitted)). Nonetheless, we need not decide this issue given our conclusion that Plaintiff did not demonstrate the elements of equitable estoppel.

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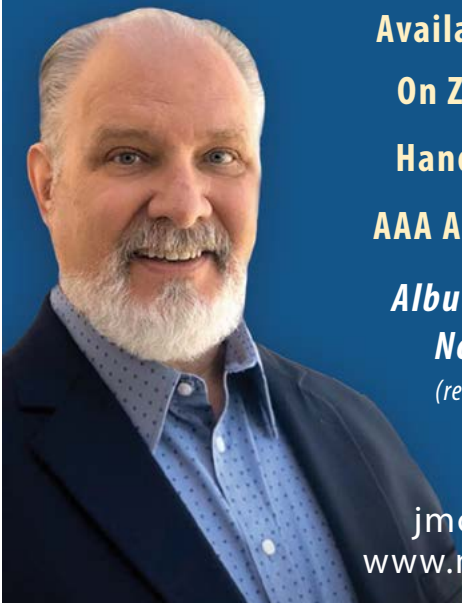
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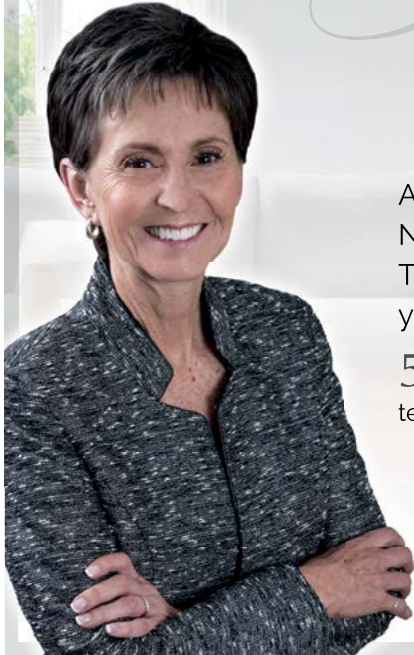
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Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Affairs Division—Aviation Department. The Legal Department's team of attorneys provides a broad range of general counsel legal services to the City. This specific position will focus on representation of the City's interests with respect to Aviation Department legal issues and regulatory compliance. The position will be responsible for interaction with Aviation Department administration, the Albuquerque Police Department, various other City departments, boards, commissions, and agencies, and various state and federal agencies, including the Federal Aviation Administration and the Transportation Security Administration. The legal services provided will include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and drafting permits, easements, real estate contracts and procurement contracts and negotiating same, serving as records custodian for the Aviation Department, providing counsel on Inspection of Public Records Act requests and other open government issues, providing advice on City ordinances and State/Federal statutes and regulations, litigating matters as needed, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Aviation background is not essential, but any experience with aviation/airports will be considered. 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.

Director of Litigation

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

Associate Attorney

Hatcher Law Group, P.A. seeks an associate attorney with three or more years of legal experience for our downtown Santa Fe office. We are looking for an individual motivated to excel at the practice of law in a litigation-focused practice. Hatcher Law Group defends individuals, state and local governments and institutional clients in the areas of insurance defense, coverage, workers compensation, employment and civil rights. We offer a great work environment, competitive salary and opportunities for future growth. Send your cover letter, resume and a writing sample via email to juliez@hatcherlawgroupnm.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.

Deputy City Attorney for Property & Finance

The City of Albuquerque Legal Department is seeking a Deputy City Attorney for its Property and Finance Division. The work includes management, oversight and development of the Property and Finance Division's Managing Attorneys, Assistant City Attorneys and staff. This person will track legal projects, timelines, deliverables, and project requirements within the division. Outside of managerial duties, work includes but is not limited to: contract drafting, analysis, and negotiations; drafting ordinances; drafting regulatory law; assisting with Inspection of Public Records Act requests; procurement; providing general legal advice in matters regarding public finance, commercial transactions, real estate transactions, public works, and risk management; review of intergovernmental agreements; and civil litigation. Attention to detail and strong writing skills are essential. Seven (7)+ years of legal experience, including three (3)+ years of management experience is preferred. An applicant must be an active member of the State Bar of New Mexico, in good standing. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Assistant City Attorney Advising APD

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.

Full-Time and Part-Time Attorney

Jay Goodman and Associates Law Firm, PC is seeking one full-time and one part-time attorney, licensed/good standing in NM with at least 3 years of experience in Family Law, Probate, and Civil Litigation. If you are looking for meaningful professional opportunities that provide a healthy balance between your personal and work life, JGA is a great choice. If you are seeking an attorney position at a firm that is committed to your standard of living, and professional development, JGA can provide excellent upward mobile opportunities commensurate with your hopes and ideals. As we are committed to your health, safety, and security during the current health crisis, our offices are fully integrated with cloud based resources and remote access is available during the current Corona Virus Pandemic.

Office space and conference facilities are also available at our Albuquerque and Santa Fe Offices. Our ideal candidate must be able to thrive in dynamic team based environment, be highly organized/reliable, possess good judgement/people/communication skills, and have consistent time management abilities. Compensation DOE. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

Associate Attorney

Katz Herdman MacGillivray & Fullerton in Santa Fe seeks an associate attorney. Our boutique practice includes real estate, water law, estate planning, business, employment, construction and related litigation. Send your resume, statement of interest, transcript and writing sample to ctc@santafelawgroup.com. All levels considered, with ideal candidates having 1-3 years of practice experience.

Lawyers – 2-6 Years Experience

Montgomery & Andrews, P.A. is seeking lawyers with 2 – 6 years of experience to join its firm in Santa Fe, New Mexico. Montgomery & Andrews offers enhanced advancement prospects, interesting work opportunities in a broad variety of areas, and a relaxed and collegial environment, with an open-door policy. Candidates should have strong written and verbal communication skills. Candidates should also be detail oriented and results-driven. New Mexico licensure is required. Please send resumes to rvalverde@montand.com.

Associate Attorney

Stiff, Keith & Garcia is looking to hire a full time associate with 2-5 years of experience, wanted for hard-working, well established, civil litigation defense firm. Great opportunity to grow. Salary DOE, great benefits includes health, dental, and life insurance, also 401K match, Inquiries are kept confidential. Please send resume to karrants@stiffllaw.com

CFE Manager

The City's Consumer and Financial Protection Initiative was established in collaboration with the Cities for Financial Empowerment (CFE) Fund through an initial scope of work outlined in the CFE Fund Grant Agreement. The Manager will provide leadership, direction and vision to implement the next phase of the City's efforts to provide robust consumer and financial protection for the residents of Albuquerque. The Manager is responsible for establishing policies and procedures for outreach, education, consumer complaints, referrals, and enforcement activities where appropriate. The Manager will also provide oversight and direction for implementing the City's consumer and financial protection strategic plan. Master's Degree in related field or Juris Doctor. Juris Doctor strongly preferred. If attorney, must be licensed in New Mexico within six months of hire. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Attorney Supervisor Position Albuquerque

The NM Environment Department Office of General Counsel seeks to fill an Attorney Supervisor position in Albuquerque. This position requires a Juris Doctorate and at least five (5) years of experience in the practice of law in one or more of the following areas: administrative law, drafting or review of contracts, rulemaking, legislative affairs, open government, or representation of a public agency. Appellate experience is preferred and specialized knowledge in environmental law or natural resources law is desired. Applicant should have supervisory experience. Applicant must be licensed to practice in New Mexico, be in good standing and have no history of professional disciplinary actions. Regular travel to Santa Fe will be required. Salary ranges from \$34.18/hr. to \$54.68/hr. Previous applicants must resubmit an application to be considered for the position. To apply: access the website for the NM State Personnel Office (SPO), www.spo.state.nm.us and click on View Job Opportunities and Apply. The State of New Mexico is an Equal Opportunity Employer.

Chief Children's Court Attorney Position

The Children, Youth and Families Department is seeking to fill the Chief Children's Court Attorney position to be housed in any CYFD office in the state. Salary range is \$81,823- \$142,372 annually, depending on experience and qualifications. Incumbent will be responsible for direction and management of Children's Court Attorneys and legal staff located throughout the state who handle civil child abuse and neglect cases and termination of parental rights cases. The ideal candidate must have a Juris Doctorate from an accredited school of law, be licensed as an attorney by the Supreme Court of New Mexico and have the requisite combination of executive management and educational experience. Benefits include medical, dental, vision, paid vacation, and a retirement package. For information, please contact: Marisa Salazar (505)659-8952. To apply for this position, go to www.state.nm.us/spo/. The State of New Mexico is an EOE.

Litigation Attorney

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

Associate Attorneys

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

Managing City Attorney

The City of Albuquerque Legal Department is hiring a Managing City Attorney for the Property and Finance Division. The work includes management, oversight and development of Assistant City Attorneys, paralegals and staff. Other duties include but are not limited to: contract drafting, review, analysis, and negotiations; drafting ordinances; regulatory law; Inspection of Public Records Act; procurement; public works and construction law; real property; municipal finance; risk management; advising City Council, boards and commissions; intergovernmental agreements; dispute resolution; municipal ordinance enforcement; condemnation; and civil litigation. Attention to timelines, detail and strong writing skills are essential. Five (5)+ years' experience including (1)+ years of management experience is preferred. Applicants must be an active member of the State Bar of New Mexico, in good standing. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Assistant City Attorney

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

Associate County Attorney

Los Alamos County is accepting applications for a full-time, regular Associate County Attorney. Under limited supervision and at the direction of the County Attorney, provides legal advice and counsel, prepares legal research, assists in developing ordinance and administrative regulations, provides legal, and policy analysis of issues, and drafts and negotiates contracts. Juris Doctorate Degree from an accredited law school is required. Must be a member of the New Mexico State Bar. Salary range is \$82,122 to \$121,057.89 / annually. Closing date is July 7, 2021 at 11:59 p.m. MST. For more information and to apply visit our website at www.losalamosnm.us.

Full-Time Associate Attorneys in Albuquerque and Santa Fe Office

Cuddy & McCarthy, LLP, one of the oldest law firms in New Mexico, with 20 attorneys, and offices located in Albuquerque and Santa Fe, has immediate openings in our Albuquerque and Santa Fe offices for full-time Associate Attorneys. We foster well-rounded lawyers and this is a great opportunity to work in the firm's general civil practice, handling a caseload pertaining to litigation, school law, insurance defense, labor & employment matters, real estate, trust & probate, as well as other areas of law. Candidates must have 3-4 years of relevant attorney experience. Our ideal candidate will be responsible, organized, a team player, possess strong people skills, as well as excellent time management skills. Strong research, writing, and oral communication skills are required. Candidates must be committed to serving the diverse needs of our clients. Salary based upon qualifications and experience. Please send cover letter, resume, law school transcript and a writing sample to our Executive Director at: agarcia@cuddymccarthy.com. All sub-missions will be kept confidential.

Litigation Attorney

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

Assistant District Attorney

The 6th Judicial District Attorney's Office has an opening for an Assistant District Attorney Position in Silver City. Must have experience in criminal prosecution. Salary DOE. Letter of interest, resume, and three current professional references to MRenteria@da.state.nm.us.

Limited Opening: Associate Attorney

We only do one thing — fight for people — and we do it well. And we need your help. The Spence Law Firm New Mexico, LLC, is growing; this is your chance to join our team in Albuquerque and make a difference out there! Must be ready to hit the ground running — you will be part of a team working integrally on high-level plaintiff's cases. Full-spectrum plaintiff's work. Drafting pleadings, discovery, taking depositions, settlement work; and trying cases to juries. Must be motivated; good with people; read, write, and think critically. Litigation experience preferred; good soul, confidence, a sharp mind, and the right attitude, required. Comp. salary, strong benefits, opportunity of a lifetime. Superstars only, please. Is this you? Email letter of interest, resume, references to: recruiting@spencelawyers.co

Associate Attorney

Join our growing legal team of 90+ attorneys. Jones, Skelton & Hochuli, a premier defense law firm in Albuquerque, New Mexico, and Phoenix, Arizona, is seeking an associate attorney with 3 - 5 years' experience in general liability for our Albuquerque office. The ideal candidate will possess a good understanding of civil litigation and a drive to provide exceptional client service. Candidates must work well individually and as part of a legal team. Candidates must be highly motivated and have excellent academic credentials. We will consider out-of-area and out-of-state candidates on a teleworking basis, or in some cases, provide a relocation reimbursement for candidates who possess the qualifications listed below. Our firm offers a collaborative and supportive environment, complete with professional development programs including in-house CLE and Trial College, and the opportunity to try cases. Qualifications JD degree from an ABA accredited law school; Active member in good standing with the New Mexico State Bar; 3 plus years litigation experience in insurance defense; Strong experience with motion practice, discovery disputes, conducting depositions, making court appearances and trial preparation; Excellent oral advocacy and written communications skills. We offer a competitive salary based on experience, transparent bonus structure, and comprehensive benefits. Please send your cover letter, salary requirement, and resume to attyrecruiting@jshfirm.com. AA/EOE.

Attorney Wanted

Small AV-rated firm seeks experienced 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.

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.

Legal Assistant

The Rodey Law Firm is accepting resumes for a legal assistant position in its Santa Fe office. Candidate must have excellent organizational skills; demonstrate initiative, resourcefulness, and flexibility, be detail-oriented and able to work in a fast-paced, multi-task legal environment with ability to assess priorities. Responsible for calendaring all deadlines. Must have a high school diploma, or equivalent, and a minimum of three (3) years experience as a legal assistant, proficient with Microsoft Office products and have excellent typing skills. Paralegal skills a plus. Firm offers comprehensive benefits package and competitive salary. Please send resume to jobs@rodey.com or mail to Human Resources Manager, PO Box 1888, Albuquerque, NM 87103.

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>.

Litigation Paralegal

Lewis Brisbois is seeking a professional, proactive Paralegal to join our growing office. Candidates should be proficient in all aspects of the subpoena process, reviewing medical records, and research. Performs any and all other duties as necessary for the efficient functioning of the Department, Office and Firm. Practices and fosters an atmosphere of teamwork and cooperation. Ability to work independently with minimal direction. Ability to work directly with partners, associates, co-counsel and clients. Ability to delegate tasks and engage firm resources in the completion of large projects. Excellent organizational skills and detail oriented. Effective written and oral communication skills. Ability to think critically and analytically in a pressured environment. Ability to multi-task and to manage time effectively. Knowledge of Microsoft Office Suite, familiarity with computerized litigation databases. Ability to perform electronic research using Lexis. Please submit your resume along with a cover letter and two writing samples to phxrecruiter@lewisbrisbois.com and indicate "New Mexico Paralegal Position". All resumes will remain confidential.

Litigation Paralegal

A paralegal position is waiting for you in a small but busy law firm. Dixon Scholl Carrillo PA is seeking someone with at least 5 years of experience in civil litigation. Focus on Insurance Defense, Personal Injury, Medical Malpractice. Must possess excellent writing and research skills, proficient legal terminology, organizational skills, high volume document control abilities and attention to detail. Must have ability to work with minimal supervision and be self-motivated. We offer excellent benefits and a great work environment. Email your resume to Michaela at momalley@dsc-law.com.

Legal Assistant

The Gentry Law Firm is seeking a full-time legal assistant. Job duties include: drafting simple pleadings, filing pleadings, processing payments, maintaining attorney calendars and client files, communicating with clients via email and over the phone, and conducting legal research. Must be familiar with use of electronic databases and legal-use software technology. Must be organized and detail-oriented professional. All inquiries confidential. Salary based on experience. Competitive benefits. Please send resume and cover letter to staff@jgentrylaw.com.

Paralegal

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

Paralegal

Busy personal injury firm seeks paralegal with experience in personal injury litigation. Ideal candidate must possess excellent communication, grammar and organizational skills. Must be professional, self-motivated and a team player who can multi-task. Salary depends on experience. Firm offers benefits. Fax resumes to (505) 242-3322 or email to: leanne@whitenerlawfirm.com

Regulatory Programs Licensing Coordinator

The State Bar of New Mexico seeks outgoing, detail oriented applicants to join our team as a full-time Regulatory Programs Licensing Coordinator. This position works closely with other staff to provide clerical and administrative support to the Regulatory Programs Department in all aspects of attorney licensing. Attorney licensing includes collection of annual licensing fees, recording of annual attorney registrations including certifications, tracking Minimum Continuing Legal Education (MCLE) compliance, Pro Hac Vice registration, member status changes, new admittee processing, and other projects as assigned. The position reports to the Director of Licensing and works as part of the Regulatory Programs Department. \$15-18/hour, depending on experience and qualifications. EOE. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/News-Publications/Career-Center/State-Bar-Jobs> for full details and application instructions.

Service

Forensic Genealogist

Certified, experienced genealogist: find heirs, analyze DNA tests, research land grants & more. www.marypenner.com, 505-321-1353.

Office Space

2025 Rio Grande Boulevard NW

Located in the historic Rio Grande corridor, furnished law office available with separate paralegal/legal assistant space. Includes receptionist; Wifi; two large conference rooms; shared kitchen space; and on-site parking. Lease amount is \$1,000.00 per month. Please contact Kathy at either (505) 243-3500 or ksmith@branchlawfirm.com to schedule a tour.

Downtown Office Space for Rent

Two single private offices available for rent at 1000 2nd Street NW. Share space with two other attorneys. Small kitchen, conference room, and two bathrooms. Wi-Fi & utilities included, \$850 a month PER office. Please call or email Erin Pearson at 505-244-1400 or esp@civilrightslaw.com.

Oso Del Rio

Beautiful Rio Grande Boulevard office for 4-6 lawyers & staff. 3707 sq. ft. available now for lease. Call David Martinez 343-1776; davidm@osolawfirm.com

110 12th Street NW

Beautiful, 2-story office for rent in Historic Downtown Albuquerque. Formerly Kathy Townsend Court Reporters. Upstairs: four private offices; one bath; small break area with small refrigerator. Downstairs: waiting area with fireplace; large office or open work area; generous breakroom area with large refrigerator; one bath; furnished conference room with table and 8 chairs; newly installed wood vinyl flooring. High ceilings, large windows, modern light fixtures throughout. Functioning basement, onsite parking. \$3,000.00/month. Contact Shane Youtz, (505) 980-1590 for an appointment.

Historical property For Sale

131 14th St SW- Rare find in Aldo Leopold historic district- Stunning 2-3 bedroom home with office, two full baths. Perfect for attorney office/residence. Huge covered parking lot. Includes 2 income producing studios with backyard access and much more. Wonderful neighborhood! MLS #991049. For more information call/email, Veronica Bustamante, QB/Realtor- bustamantevl@yahoo.com- 715-1485. MLS #991049

Miscellaneous

Want To Purchase

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

2021 Bar Bulletin Publishing and Submission Schedule

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

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

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

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



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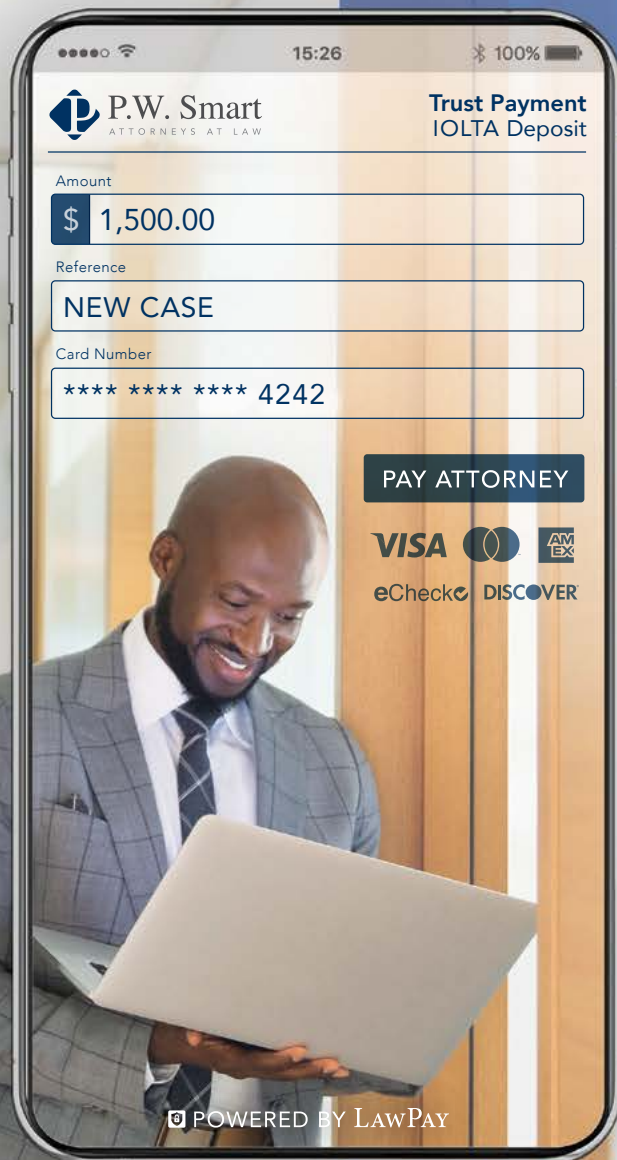
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