

# BAR BULLETIN

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*Iris Trio* by Julia McFall (see page 3)

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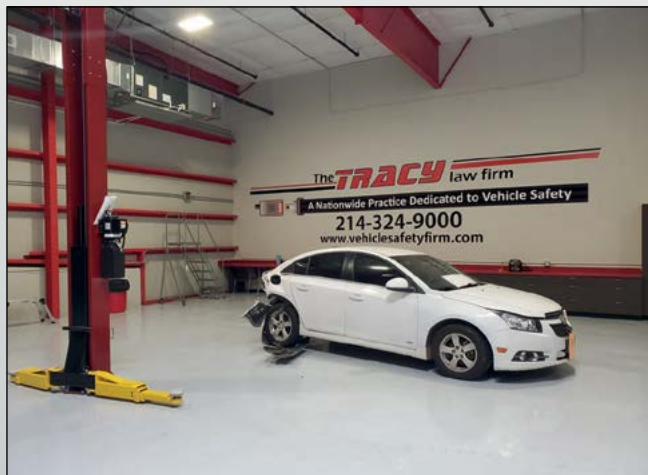
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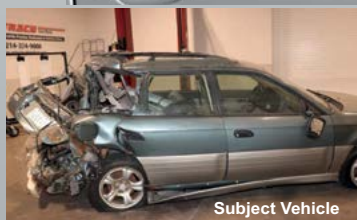
# CRASHWORTHINESS:

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



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

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



Subject Vehicle



Test Vehicle



4701 Bengal Street, Dallas, Texas 75235

214-324-9000



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### Meetings

#### July

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

**29**  
**Trial Practice Section Board**  
Noon, State Bar Center

**30**  
**Immigration Law Section Board**  
Noon, teleconference

#### August

**3**  
**Health Law Section Board**  
9 a.m., teleconference

**4**  
**Employment and Labor Law  
Section Board**  
Noon, teleconference

**9**  
**Trust and Estate Division Section  
Board**  
Noon, State Bar Center

**10**  
**Appellate Practice Section Board**  
Noon, teleconference

### Workshops and Legal Clinics

#### July

**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

**25**  
**Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., Video Conference  
For more details and to register, call  
505-797-6094

#### September

**1**  
**Divorce Options Workshop**  
6-8 p.m., Video Conference  
For more details and to register, call  
505-797-6022

**About Cover Image and Artist:** Julie McFall was admitted to the bar in October 2013 and was the inaugural law clerk of the Honorable Justice Barbara Vigil of the New Mexico Supreme Court. She also clerked for Judge (now Justice) Michael Vigil when he served on the New Mexico Court of Appeals. She is currently an associate attorney at the civil litigation firm, Atkinson, Baker & Rodriguez, PC. McFall enjoys painting acrylic on canvas. View more of her work at [www.trulyjuliedesigns.com](http://www.trulyjuliedesigns.com).



# Notices

## COURT NEWS

### New Mexico Supreme Court Rule-Making Activity

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

### Supreme Court Law Library

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

### Administrative Office of the Courts

#### Notice of E-Filing in Magistrate Court Civil Cases

Attorneys may now file civil cases electronically in all magistrate courts across New Mexico. A phased-in statewide implementation of e-filing in magistrate courts was completed when the service began July 26 in the Fourth, Seventh and Eighth Judicial Districts. E-filing and service of documents will occur through the online File & Serve system which also will be used to submit proposed text/orders for judges to review. E-filing is currently voluntary but will become mandatory for attorneys filing civil cases in magistrate courts effective Sept. 9. Visit the Judiciary's e-filing webpage for more information, <https://www.nmcourts.gov/e-filing-magistrate-courts>.

### Second Judicial District Court Notice of Mass Reassignment

Pursuant to the Constitution of the State of New Mexico, Judge Elaine Lujan has been appointed to Division XII of the Second Judicial District Court by Governor Michelle Lujan Grisham. Effective July 12 Judge Elaine Lujan will be assigned civil court cases previously assigned to Judge Clay Campbell, Division XII. Parties will be afforded an opportunity to exercise a

## Professionalism Tip

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

I will be open to constructive criticism and make such changes as are consistent with this creed and the Code of Judicial Conduct when appropriate.

peremptory challenge of the newly appointed judicial officer in accordance with the New Mexico Rules of Civil Procedure, NMRA 1-088.1 for all cases filed on or after Jan. 1 in accordance with New Mexico Supreme Court Order No. 21-8500-015, Emergency Court Protocol 3(E).

### Third Judicial District Vacancy Announcement

A vacancy on in the Third Judicial District Court exists as of July 1 due to the retirement of the Judge Lisa C. Schultz, effective June 30. The deadline for applications was 5 p.m., July 16 by 5 p.m. The Third Judicial District Court Judicial Nominating Commission will convene beginning at 9 a.m. on July 28 and will occur exclusively by Zoom. The commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. For an invitation, email Beverly Akin at [akin@law.unm.edu](mailto:akin@law.unm.edu).

Topic: Third Judicial District Court Judicial Nominating Commission

Date: July 28, 9 a.m.

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

Meeting ID: 379 615 447

Password: 72146

### Seventh Judicial District Court Governor Appoints Woods

Gov. Michelle Lujan Grisham appointed Roscoe A. Woods to the Seventh Judicial District Court, filling the vacancy created by the unexpected passing of Judge Matthew G. Reynolds.

### Reassignment of Cases Due to the Unexpected passing of Honorable Matthew G. Reynolds

Due to the unexpected passing of Honorable Matthew G. Reynolds, Judge Roscoe A. Woods, sworn in June 1 is assigned to the cases previously assigned to Judge Reynolds. Pursuant to NMRA 1-088.1, parties who have not yet exercised a peremptory excusal will have until July 28 to excuse the successor judge.

### Ninth Judicial District Court Announcement of Vacancy

A vacancy in the Ninth Judicial District Court will exist Aug. 7 due to the retirement of the Judge Matthew Chandler, effective Aug. 6. The Ninth Judicial District Court Judicial Nominating Commission will meet in-person beginning at 9 a.m. on Aug. 25 at the Curry County Courthouse located at 700 N. Main, Clovis, N.M. to evaluate the applicants for this position. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Sergio Pareja, Chair of the Ninth Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the judicial selection website: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for Aug. 6 at 5 p.m. Applications received after that time will not be considered. The commission meeting is open to the public. Any individual who wishes to be heard about any of the candidates will have an opportunity to be heard at the meeting. Fully vaccinated individuals are not required to wear face masks, although they may choose to do so. Face masks must be worn at all times by individuals who are not fully vaccinated.

### 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. Now is a great time to get into federal court. We offer training, mentorship and other resources to assist new panel members. Applications are due July 31. Call Marc Robert at 505-923-9338 with any questions. For a blank application, email [marc\\_robert@fd.org](mailto:marc_robert@fd.org).

## 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.

## Tenth Circuit Court of Appeals Library Now Open

The Tenth Circuit Court of Appeals Library, Albuquerque Branch is now open to members of both the District of New Mexico Federal Bar and State Bar of New Mexico. The Library is located on the second floor of the Pete V. Domenici U.S. Courthouse and hours are 8 a.m. to noon and 1 p.m. to 5 p.m., Monday through Friday when staff is present. The library can provide in-person, limited assistance to members of the general public at this time. For more information, call 505-348-2135.

## STATE BAR NEWS COVID-19 Pandemic Updates

The State Bar of New Mexico is committed to helping New Mexico lawyers respond optimally to the developing COVID-19 coronavirus situation. Visit [www.sbnm.org/covid-19](http://www.sbnm.org/covid-19) for a compilation of resources from national and local health agencies, canceled events and frequently asked questions. This page will be updated regularly during this rapidly evolving situation. Please check back often for the latest information from the State Bar of New Mexico. If you have additional questions or suggestions about the State Bar's response to the coronavirus situation, please email Executive Director Richard Spinello at [rspinello@sbnm.org](mailto:rspinello@sbnm.org).

## New Mexico Judges and Lawyers Assistance Program

*NMJLAP is 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

- Aug. 2 at 5:30 p.m.
- Aug. 9 at 5:30 p.m.
- Aug. 16 at 5:30 p.m.

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

## NMJLAP Committee Meetings

- Oct. 2 at 10 a.m.
- 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? Visit <https://mystresstools.com/registration/tsg-nmsba>, or visit the [www.solutionsbiz.com](http://www.solutionsbiz.com). MyStressTools is an online suite of stress management and resilience-building resources that 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:

— *Featured* —

## Member Benefit



Take advantage of a free employee assistance program, a service offered by the New Mexico Judges and Lawyers Assistance Program in cooperation with The Solutions Group. Get help and support for yourself, your family and your employees. Services include up to four FREE counseling sessions/issue/year for any behavioral health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other free services include management consultation, stress management education, critical incident stress debriefing, substance use disorder assessments, video counseling and 24/7 call center. Providers are located throughout the state.

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

- **My Stress Profiler:** A confidential and personalized stress assessment that provides ongoing feedback and suggestions for improving your response to 10 categories of stress, including change, financial stress, stress symptoms, worry/fear and time pressure.
- **Podcasts and videos available on demand:** Featuring experts in the field, including Dan Goleman, Ph.D., emotional intelligence; Kristin Neff, Ph.D., self-compassion; and David Katz, M.D., stress, diet and emotional eating.

- **Webinars:** Covering a variety of topics including A Step Forward: Living Through and With the Grief Process, Creating a Mindfulness Practice, and Re-entering the Workforce.

Call 505-254-3555, 866-254-3555, or visit [www.solutionsbiz.com](http://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:**

- Sept. 28, at 1 p.m.
- Nov. 30, at 1 p.m.

### **Upcoming Legal Well-Being in Action Podcast Release Dates:**

- July 28: Compassion Fatigue
- Aug. 25: Fear
- Sept. 22: Stigma & Counseling

### **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](http://sbnm.org/breakinggood).

#### **Public Law Section**

#### **Now Accepting Nominations for Lawyer of the Year Award**

Since 1996, the Public Law Section has presented the annual Public Lawyer Award to lawyers who have had distinguished

careers in public service and who are not likely to be recognized for their contributions. The Public Law Section is now accepting nominations for the Public Lawyer of the Year Award for 2021. Visit [sbnm.org/publiclaw](http://sbnm.org/publiclaw) to view previous recipients and award criteria. Nominations are due at 5 p.m. on Aug. 31. Award presentation date and format to be determined but will be in the fall for hopeful in-person celebrations. The selection committee will consider all nominated candidates. Sign up for the Public Law Section at [sbnm.org/sections!](http://sbnm.org/sections!)

### **UNM SCHOOL OF LAW Law Library Hours**

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at [UNMLawLibref@gmail.com](mailto: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

## July

- |   |   |
|---|---|
| <p><b>30</b>    <b>REPLAY: So How 'Bout We All Zoom, Zoom, Zooma, Zoom?: Ethical and Best Practices for a Virtual Practice (2021)</b><br/>1.0 EP<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.sbnm.org">www.sbnm.org</a></p> | <p><b>30</b>    <b>Good Faith and Fair Dealing in Business Transactions: Litigation Risks</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |
|---|---|

## August

- |   |   |  |
|---|---|--|
| <p><b>2</b>    <b>Concrete Tips For Negotiating Commercial Real Estate Leases In The District 2021</b><br/>2.0 G<br/>Live Webinar<br/>District of Columbia Bar<br/><a href="http://www.dcbar.org">www.dcbar.org</a></p> | <p><b>5</b>    <b>The Strategic Use Of Mediation</b><br/>2.0 G<br/>Live Webinar<br/>District of Columbia Bar<br/><a href="http://www.dcbar.org">www.dcbar.org</a></p>   | <p><b>12</b>    <b>International Law &amp; How It Impacts on Immigration</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                        |
| <p><b>3</b>    <b>Is That Defamation? Using The Law To Fight Defamatory Attacks 2021</b><br/>2.0 G<br/>Live Webinar<br/>District of Columbia Bar<br/><a href="http://www.dcbar.org">www.dcbar.org</a></p>               | <p><b>6</b>    <b>REPLAY: Selections from Women in Law Symposium (2020)</b><br/>3.0 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.sbnm.org">www.sbnm.org</a></p>                        | <p><b>12</b>    <b>Key Issues In International Trade Law 2021</b><br/>1.0 G<br/>Live Webinar<br/>District of Columbia Bar<br/><a href="http://www.dcbar.org">www.dcbar.org</a></p>   |
| <p><b>3</b>    <b>Alternatives to the H-1B Visa</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/><a href="http://www.aila.org">www.aila.org</a></p>                                      | <p><b>10</b>    <b>Advanced L-1 Strategies: Navigating the Changing Terrain</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/><a href="http://www.aila.org">www.aila.org</a></p>                      | <p><b>12</b>    <b>Adjustment Exceptions that Feel Like Magic</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/><a href="http://www.aila.org">www.aila.org</a></p>                               |
| <p><b>3</b>    <b>Incentive Compensation in Businesses - Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                          | <p><b>11</b>    <b>ADTA Annual Meeting</b><br/>6.5 G<br/>Live Webinar<br/>Association of Defense Trial Attorneys<br/>360-748-9281</p>   | <p><b>13</b>    <b>NM Defense Lawyers Association and West Texas TADC Joint Seminar</b><br/>4.2 G, 1.0 EP<br/>Live Webinar<br/>New Mexico Defense Lawyers Association<br/><a href="http://www.nmdla.org">www.nmdla.org</a></p> |
| <p><b>4</b>    <b>Incentive Compensation in Businesses - Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                          | <p><b>11</b>    <b>Trust and Estate Planning for Cabins, Boats, and Other Family Recreational Assets</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |  |

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

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|---|---|---|
| <p><b>13</b>    <b>REPLAY: 2021 Health Law Legislative Roundup (2021)</b><br/>1.5 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p><b>20</b>    <b>Hot Topics in Copyright Law: Artificial Intelligence, Computer Code, Fair Use (Google v. Oracle), and NFTs (Non-Fungible Tokens)</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>27</b>    <b>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)</b><br/>1.5 G<br/>Live Replay Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p><b>13</b>    <b>Advanced Oratorical Cross-Examination Techniques That Work Best Against Experts at Trial and at Depositions</b><br/>1.5 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p><b>24</b>    <b>TN Strategies and Trends: Consular and Ports-of-Entry</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p>   | <p><b>29</b>    <b>Current Issues 2021</b><br/>14.7 G<br/>Live Webinar<br/>Center for Public Utilities NMSU<br/>business.nmsu.edu</p>   |
| <p><b>17</b>    <b>Privacy Law, Issues and Trends</b><br/>1.0 G<br/>Live Webinar<br/>MWH Law Group LLP<br/>414-436-0354</p>   | <p><b>26</b>    <b>What on Earth is the Wage? The State of Play on Prevailing Wages</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p>  | <p><b>31</b>    <b>Trust and Estate Planning for Firearms</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>19-20</b>    <b>14th Annual Legal Service Providers Conference</b><br/>10.0 G, 2.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   |   | <p><b>31</b>    <b>Hot Topics in Marriage-Based Adjustment of Status</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p>   |

## September

- |  |   |   |
|--|---|---|
| <p><b>2</b>    <b>Solutions for “Stuck” Employment-Based Cases</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p>              | <p><b>23</b>    <b>Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                         | <p><b>29</b>    <b>10 Steps to Client Relationship Mastery</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                       |
| <p><b>9</b>    <b>APA Litigation: How to Take USCIS Denial to Federal Court</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p> | <p><b>24</b>    <b>Changing Minds Inside and Out of the Courtroom</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p><b>30</b>    <b>Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p><b>14</b>    <b>Advanced Strategies for EB-1 RFEs</b><br/>1.5 G<br/>Live Webinar<br/>American Immigration Lawyers Association<br/>www.aila.org</p>                        | <p><b>28</b>    <b>Staying Out of the News: How To Avoid Making the Techno-Ethical Mistakes that Put You on the Front Page</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |   |





## A Message from State Bar President Carla Martinez

Dear Members of the State Bar of New Mexico,

I am deeply saddened by the passing of former Dean and Professor Fred Hart, a beloved member of our legal community. Professor Hart personally touched my life with his engaging classes in commercial law. He welcomed me and many others into the law school community and provided a calming presence in an otherwise stressful environment. I am humbled reading of Professor Hart's dedication to his family and the legal community, including his commitment to diversity and creating opportunities for those typically underrepresented. Although there are generations of lawyers to come who will never know how wonderful Professor Hart was, they will feel his presence in the foundational work and opportunities he created in our legal community.

In early July, New Mexico residents enjoyed the removal of remaining pandemic occupancy restrictions on commercial and day-to-day activities. As such, the State Bar Center fully reopened for its members to use. Staff are planning for in-person events, meetings and seminars including the first in-person CLE in September. Even though we are excited to be fully opened, State Bar staff also intend to plan virtual programming to help optimize membership participation.

As a reminder, we will be having our 2021 Annual Meeting and Member Appreciation Event on October 8. The event will be free to all State Bar members and will give you an opportunity to earn 5 CLE credits, including 1 ethics credit. The event will be live streamed, but there will also be a limited number of in-person tickets on a first-come, first-served basis. The in-person events will be held at the State Bar Center.

The 2021 Annual Meeting and Member Appreciation Event will begin with opening remarks from New Mexico Supreme Court Chief Justice Michael Vigil and American Bar Association President Reggie Turner. The CLE programming will include an update on the Commission on Equity and Justice from New Mexico Supreme Court Justice Shannon Bacon and Torri Jacobus, Managing Director of the City of Albuquerque's Office of Civil Rights. Additionally, University of New Mexico Assistant Professor of Law Verónica C. Gonzales-Zamora will lead a discussion on access to justice with an opportunity to continue the discussion with two breakout CLEs planned for fall 2021 and early 2022. Another CLE will include tips on incorporating family-friendly policies into your law practice. The CLE will be led by Julianna Silva from the local nonprofit Family Friendly New Mexico.

Moreover, a transformative conversation about mindfulness will be led by Cory Muscara. Cory is a former monk, mindfulness advisor for the Dr. Oz show and bestselling author of *Stop Missing Your Life*. Copies of Cory's book *Stop Missing Your Life* will be distributed to the first 400 online registrants and all in-person attendees. In addition to Cory's discussion on mindfulness, Michelle DuVal of the Mindfulness Center will guide attendees through a meditation session. Lastly, we will honor the 2021 Annual Award recipients throughout the day. Visit [www.sbnm.org/annualmeeting](http://www.sbnm.org/annualmeeting) for more information and registration.

I hope that you and your loved ones are experiencing some sense of normalcy and enjoying a safe summer with family and friends. Please do not hesitate to reach out to your State Bar Commissioners, State Bar staff or myself if you need any assistance.

Warm regards,

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

Carla C. Martinez  
President, State Bar of New Mexico

# It Shouldn't Hurt To Be A Lawyer: Dealing With Compassion Fatigue

By William D. Slease

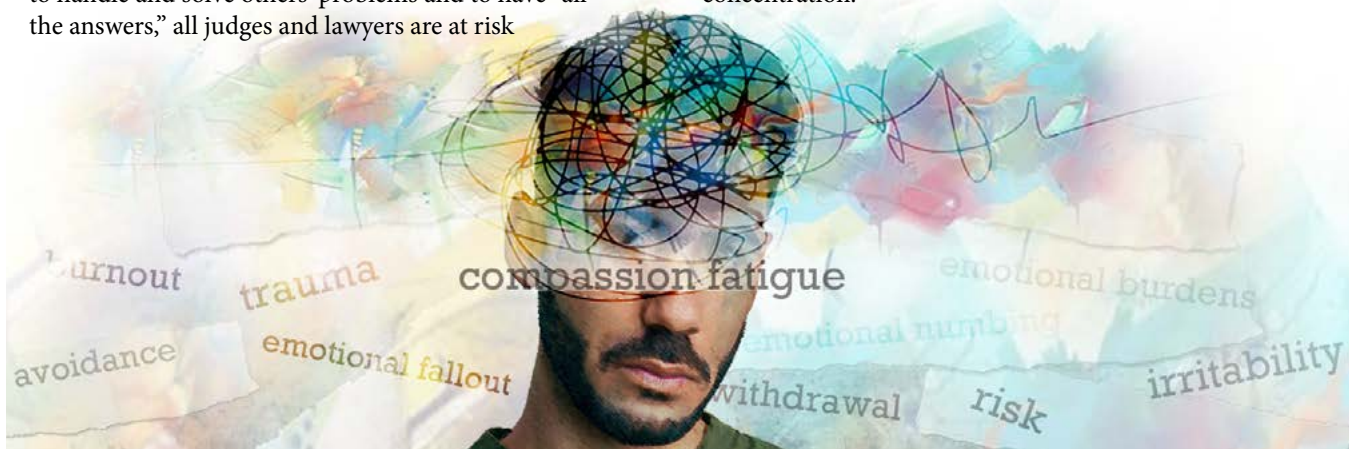
When I graduated from law school, my classmates and I had been trained in a variety of skills to equip us with managing in the “real world” of lawyering. We were trained on how to research the law, how to cite precedent, the importance of practicing professionally and ethically, and the difference between a tort and a contract. We were trained in assessing risks and making reasoned recommendations based on those assessments. But one thing we were not trained in was how to deal with the risks to a lawyer’s mental health and well-being as a result of working with individuals who have been the victims of trauma, violence, and other emotionally tumultuous events. In fact, much like social workers and other mental health workers, a lawyer’s constant exposure to the emotional upheaval and traumatic events of others, including the lawyer’s clients, can lead to a phenomenon known as “compassion fatigue,” or “secondary trauma.”<sup>1</sup> But unlike social workers and mental health professionals who are typically trained on dealing with the emotional fallout of working with a traumatized population, lawyers and judges receive no such training and, in fact, are often unaware that they may be at risk for or are experiencing secondary trauma in their jobs.<sup>2</sup>

Compassion fatigue is often mistaken for burnout because many of the symptoms of each are similar; a lack of diligence in attending to work, avoidance of others, including clients, difficulty making decisions, withdrawal, and perseveration.<sup>3</sup> But compassion fatigue is usually more pervasive than burnout and often involves a feeling of hopelessness, and strong feelings of anxiety and excessive emotional numbing.<sup>4</sup>

Given the fact that legal professionals are expected to handle and solve others’ problems and to have “all the answers,” all judges and lawyers are at risk

of compassion fatigue. But as lawyers have become increasingly specialized, and focused their practice on one or a limited number of areas of practice, certain practices are at greater risk of compassion fatigue.<sup>5</sup> It may come as no surprise that attorneys who practice primarily or exclusively in the areas of family law, criminal defense, workers’ compensation, bankruptcy, or immigration, are considered at higher risk for compassion fatigue, given that they spend their days working with individuals whose legal predicaments carry a heavy emotional component including the loss of family, jobs, financial stability, safety, security, personal well-being, and/or liberty.<sup>6</sup> And because they are focused in one or a narrow area of practice, they lack a balanced caseload that includes matters in which client satisfaction, a positive outcome, and a sense of personal achievement are more frequently experienced, or what researchers have labelled as “compassion satisfaction.”<sup>7</sup>

Compassion fatigue among attorneys is nothing new. In 2003, Andrew P. Levin and Scott Greisberg published the results of a study they conducted on secondary trauma and burnout in lawyers from agencies specializing in domestic violence and family law, as well as legal aid organizations providing criminal law representation.<sup>8</sup> The lawyers’ symptoms of compassion fatigue were compared to other study participants of similar age and experience but who were either mental health providers or social service workers.<sup>9</sup> The study results revealed that the lawyers experienced more secondary trauma and burnout as compared to the other two comparison groups.<sup>10</sup> Specifically, the lawyers showed higher levels of “intrusive recollection of trauma materials, avoidance of reminders of the material and diminished pleasure and interest in activities, and difficulties with sleep, irritability, and concentration.”<sup>11</sup>



Gabor Mate, a physician who spent many years working in Vancouver, Canada with patients challenged by mental health issues and addiction, has opined that the term compassion fatigue is a misnomer.<sup>12</sup> As Dr. Mate has observed, professionals do not tire of being compassionate.<sup>13</sup> Instead, they often fail to attend to their own self-care; i.e. they fail to have compassion for themselves.<sup>14</sup> So what is a lawyer to do? Just that: show self-compassion and prioritize self-care. How? Try the following:

- » Try to start your day “quietly.” Instead of jumping out of bed, checking your emails and news feeds, spend five to ten minutes just “feeling the day.” Take in some deep breaths, stretch, notice the weather outside, and mentally tell yourself that you are going to have a good day.
- » Routinely exercise, pay attention to your diet, and get sufficient sleep each night.
- » Practice effective coping strategies, like daily breathing exercises, mindfulness and meditation. It might be something as simple as asking yourself before you walk into the office in the morning, “how am I feeling today?” If the answer is “not so hot,” ask yourself why and what can you do to improve your mood. Alternatively, it may mean simply taking a quick walk to clear your head before or after facing a particularly challenging case or client.
- » Set boundaries with your clients; explain when and how they can contact you and what is reasonable for them to expect.
- » Connect with others, talk about things you enjoy, and try to share a laugh.
- » Set time aside at least weekly to engage in a hobby or to learn a new skill unrelated to the practice of law.
- » Carve out time each day to be unplugged from technology, and “off-the-clock.”
- » Take vacations (more than just one every few years and more than just a long weekend) and when you do, leave work, including your electronic devices behind.
- » Be realistic with yourself, and others. You cannot be everything to everyone, and cannot solve or fix all of your clients’ problems. At times, doing your best for a client who has made poor life choices is simply what a friend of mine calls “engaging in damage control.”
- » Reach out for support - talk with colleagues or seek professional counseling.

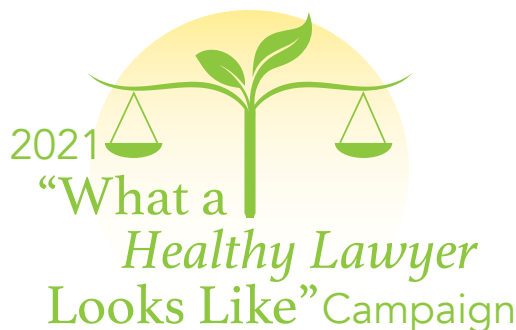
At the end of the day, try to focus on the positives of being a legal professional. Remind yourself that being a legal professional is a noble endeavor, and that helping your

clients navigate their legal problems can be exhilarating and extremely satisfying. But also remind yourself that being a good lawyer does not mean that you need to shoulder all of your clients’ emotional burdens or sacrifice your own well-being to “zealously” represent your clients. Showing yourself some self-care, some compassion, will make you a healthier, happier, and more effective lawyer.

*WILLIAM D. SLEASE is the Professional Practice Program Director for the State Bar of New Mexico. In addition to his duties at the State Bar, he serves as an adjunct professor at the University of New Mexico School of Law where he teaches Ethics, 1L Lab, and serves as a practice skills evaluator for the evidence-trial practice skills course. He formerly served as the Chief Disciplinary Counsel for the New Mexico Supreme Court Disciplinary Board.*

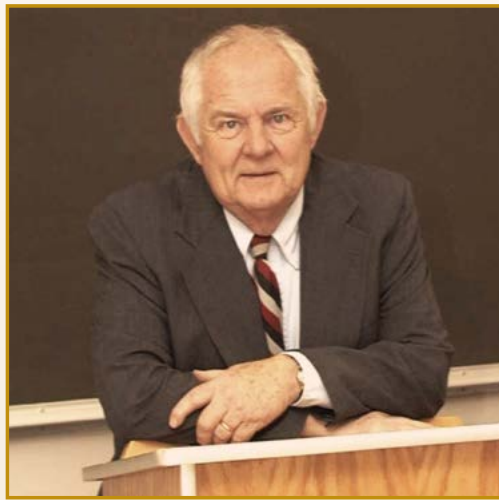
#### Endnotes

- <sup>1</sup> See, e.g., Christine Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, 34 ABA Child Law Practice 9 (Sept. 2015); *Law and Life: Dealing With Compassion Fatigue*, 33 GPSOLO MAG. 5 (Robert M. Salkin Ed. 2016).
- <sup>2</sup> Rainville, *supra*, note 1.
- <sup>3</sup> David Donovan, *Compassion Fatigue: For Lawyers, the Well of Empathy Can Run Dry with Consequences*, DETROIT LEGAL NEWS (May 1, 2017).
- <sup>4</sup> Dennis Portnoy, *Burnout and Compassion Fatigue: Watch for the Signs*, Journal of Catholic Health Associations of the United States (July – August, 2011).
- <sup>5</sup> Donovan, *supra* note 3.
- <sup>6</sup> Donovan, *supra* note 3. See also Rebecca Raney, *Compassion Fatigue, A Side Effect of the Immigration Crisis*, American Psychological Association, (October 15, 2019).
- <sup>7</sup> Donovan, *supra* note 3.
- <sup>8</sup> Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 250 (2003).
- <sup>9</sup> *Id.* at 250.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.*
- <sup>12</sup> See generally [dgabormate.com](http://dgabormate.com) and the resources and links therein.
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.*





## *Statement of Recognition On the Passing of* **DEAN FRED HART**



THE NEW MEXICO SUPREME COURT is saddened by the passing of Dean Fred Hart. Dean Hart's contributions in the area of commercial law were unparalleled, evidenced by his prolific writings on the subject. Notwithstanding his status as a giant in the area of commercial law, it is his contributions to the New Mexico legal community that will be his legacy. Dean Hart's commitment to diversity in law school faculty and admissions transformed the UNM School of Law and New Mexico Bar for the generations that followed his tenure as dean. That commitment extended beyond the hiring of faculty and admission of students. He, along with his wife, Joan, went to extraordinary lengths to insure the success of the students admitted to the law school, with Dean Hart creating summer programs to prepare incoming students for the rigors of law school and Joan chaperoning "kids camps" so students with children could attend class without worrying about childcare. Dean Hart's impact on the New Mexico legal community and the people it serves will endure for many years to come.

Chief Justice Michael Vigil

Justice Barbara Vigil

Justice C. Shannon Bacon

Justice David K. Thomson

Justice Julie J. Vargas

# Opinions

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

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

**Effective July 9, 2021**

## **PUBLISHED OPINIONS**

A-1-CA-37330	Deutsche Bank v. J Valerio	Reverse/Remand	05/20/2021
A-1-CA-37395	Federal National Mortgage v. B Trissell	Affirm	05/24/2021
A-1-CA-37995	E Sanchez v. Board of CC of Taos Co	Reverse/Remand	05/24/2021
A-1-CA-38286	State v. H Atencio	Reverse/Remand	06/03/2021
A-1-CA-38286	State v. H Atencio	Reverse/Remand	06/22/2021
A-1-CA-37884	J Bachmann v. Regents of UNM	Affirm	06/30/2021
A-1-CA-37455	State v. C Phillips	Affirm/Reverse/Remand	07/07/2021

## **UNPUBLISHED OPINIONS**

A-1-CA-37856	State v. H Vasquez-Salas	Affirm	05/17/2021
A-1-CA-37883	G White v. Board of County Councilors of the Couty of Los Alamos	Affirm	05/17/2021
A-1-CA-38316	Y Valencia Perez v. E Calzadillas	Affirm	05/17/2021
A-1-CA-38405	L McCabe v. R Clark	Affirm	05/17/2021
A-1-CA-38584	State v. M Silva	Affirm	05/17/2021
A-1-CA-38660	State v. T Secatero	Affirm	05/17/2021
A-1-CA-38682	D Perkins v. C Kennemer	Affirm	05/17/2021
A-1-CA-38853	State v. T Najera	Affirm	05/17/2021
A-1-CA-38958	State v. H Rosales	Affirm	05/17/2021
A-1-CA-38973	State v. C Amaya	Affirm	05/17/2021
A-1-CA-39009	State v. J Zavala	Affirm	05/17/2021
A-1-CA-39037	CitiMortgage v. M Bernard	Affirm	05/17/2021
A-1-CA-39052	K Kline v. Wells Fargo Bank	Affirm	05/17/2021
A-1-CA-39482	CYFD v. Andrea A	Reverse	05/17/2021
A-1-CA-38048	T Komogorova v. Bernalillo County Board of Commissioners	Affirm	05/18/2021
A-1-CA-38907	State v. R Garcia	Affirm	05/18/2021
A-1-CA-38444	State v. C Herrera	Affirm	05/19/2021
A-1-CA-39169	State v. S Gutierrez	Affirm	05/19/2021
A-1-CA-38252	R Marquez v. City of Las Vegas	Reverse/Remand	05/20/2021
A-1-CA-39228	S Wickard v. T DeVere Wickard	Affirm	05/20/2021
A-1-CA-37342	H Lane v. O Soto-Vega	Affirm	05/24/2021
A-1-CA-37766	Constructors v. NM Dept. of Transportation	Affirm	05/24/2021
A-1-CA-39097	State v. S Snyder	Affirm	05/24/2021
A-1-CA-38335	State v. L Garcia	Vacate/Remand	05/25/2021
A-1-CA-38760	CYFD v. Kimberly W	Affirm	05/25/2021

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



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A-1-CA-38786	A Chacon Jr. v. O Chacon	Affirm	05/25/2021
A-1-CA-38467	S Bravo v. S Bravo	Affirm	05/27/2021
A-1-CA-36220	State v. R Kleinegger	Affirm	05/28/2021
A-1-CA-37658	State v. C Shepherd	Affirm	05/28/2021
A-1-CA-37986	State v. L Billie	Affirm/Reverse/Remand	05/28/2021
A-1-CA-38327	CYFD v. Joshua L.	Affirm	05/28/2021
A-1-CA-38798	State v. D Getchell	Affirm	06/02/2021
A-1-CA-37607	State v. C Roberts	Vacate	06/03/2021
A-1-CA-39541	CYFD v. Daniel N	Affirm	06/03/2021
A-1-CA-37276	Pueblo Norte v. Town of Taos	Affirm	06/07/2021
A-1-CA-37649	State v. L Vargas	Affirm	06/07/2021
A-1-CA-38215	State v. M Arreola-Varela	Affirm	06/07/2021
A-1-CA-39301	CYFD v. Cassandra B	Affirm	06/07/2021
A-1-CA-38307	D Lebeau v. New Mexico General Services Department	Reverse/Remand	06/08/2021
A-1-CA-37732	State v. S Sandoval	Affirm	06/09/2021
A-1-CA-38894	A Garrett v. Government Employees Insurance Co.	Dismiss	06/09/2021
A-1-CA-38414	State v. J Brionez	Affirm	06/10/2021
A-1-CA-38882	State v. V Castillo	Affirm	06/10/2021
A-1-CA-39219	M Currier v. J McAvoy	Affirm	06/10/2021
A-1-CA-38223	C Diaz v. N Barela	Affirm	06/14/2021
A-1-CA-38988	State v. Z Yanes	Affirm	06/14/2021
A-1-CA-39300	M Birdsall v. W Johnson-Birdsall	Affirm	06/14/2021
A-1-CA-39417	J Miller v. The GEO Group	Affirm	06/14/2021
A-1-CA-38164	State v. D Turner	Affirm	06/15/2021
A-1-CA-38360	F Rogers v. M Crosier	Affirm	06/15/2021
A-1-CA-38984	R Wallace v. A Baldonado	Affirm	06/15/2021
A-1-CA-39196	State v. C Salazar	Affirm	06/15/2021
A-1-CA-38768	State v. D Priemazon	Reverse/Remand	06/16/2021
A-1-CA-37669	State v. O Flores-Castillo	Affirm	06/17/2021
A-1-CA-37932	Silver Oak Drilling v. New Mexico Taxation and Revenue	Affirm	06/17/2021
A-1-CA-37771	State v. T Barker	Affirm	06/21/2021
A-1-CA-37869	J Stocker v. Lovelace Rehab Hospital	Affirm	06/21/2021
A-1-CA-38272	J Wilcox v. Management & Training Corp.	Affirm/Remand	06/21/2021
A-1-CA-39002	A Scott v. A Gonzales	Affirm	06/21/2021
A-1-CA-39043	State v. L Martinez	Affirm	06/21/2021
A-1-CA-38111	State v. C Grajeda	Affirm/Reverse/Remand	06/22/2021
A-1-CA-38114	The Bank of New York Mellon v. D Holmes	Affirm	06/22/2021

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

A-1-CA-36291	State Engineer v. J Boyd	Affirm	06/24/2021
A-1-CA-37712	T Lopez, et al., v. Edeal Dairy	Affirm	06/28/2021
A-1-CA-37980	State v. C Pacheco	Affirm	06/28/2021
A-1-CA-38031	H Martinez v. Law Offices of John C. Ye	Reverse/Remand	06/28/2021
A-1-CA-38733	State v. J Brewer	Affirm	06/28/2021
A-1-CA-37838	State v. C Mitchell	Affirm/Reverse/Remand	06/30/2021
A-1-CA-38375	State v. A Gonzales	Affirm	06/30/2021
A-1-CA-36554	C Bailey v. R Brasier	Affirm/Reverse	07/06/2021
A-1-CA-38614	CYFD v. Heather S	Affirm	07/06/2021
A-1-CA-38527	State v. D Murray	Affirm	07/07/2021

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# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court  
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

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## IN MEMORIAM

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As of August 23, 2020:  
**Clayton Fisher Childs**  
9416 Indian School Rd., NE  
Albuquerque, NM 87112

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## IN MEMORIAM

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As of March 30, 2020:  
**Alexander B. Ching**  
110 W. Clinton Street  
Hobbs, NM 88240

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## IN MEMORIAM

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As of August 6, 2020:  
**G. W. Crane**  
PO Box 1844  
Corrales, NM 87048

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## IN MEMORIAM

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As of February 14, 2021:  
**C. Barry Crutchfield**  
113 East Washington  
Lovington, NM 88260

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## IN MEMORIAM

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As of March 12, 2021:  
**Leonard J. DeLayo Jr.**  
1439 Valle Drive, NW  
Albuquerque, NM 87107

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## IN MEMORIAM

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As of October 2, 2020:  
**Ann Marie Dumas**  
100 Molina Road  
Peralta, NM 87042

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## IN MEMORIAM

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As of August 31, 2020:  
**Carolyn S. Fudge**  
4600 Cayetana Place, NW  
Albuquerque, NM 87120

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## IN MEMORIAM

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As of March 25, 2021:  
**Reese Peters Fullerton Jr.**  
PO Box 382  
Santa Fe, NM 87504

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## IN MEMORIAM

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As of January 24, 2021:  
**Karl R. Gillson**  
1109 Utah Circle  
Gallup, NM 87301

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## IN MEMORIAM

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As of February 2, 2021:  
**Albert Austin Hale**  
PO Box 4440  
Window Rock, AZ 86515

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## IN MEMORIAM

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As of July 2, 2020:  
**Jay Daniel Hertz**  
8704 La Sala Del Sur, NE  
Albuquerque, NM 87111

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## IN MEMORIAM

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As of July 28, 2020:  
**Timothy C. Holm**  
PO Box 2168  
Albuquerque, NM 87103

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## IN MEMORIAM

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As of August 19, 2020:  
**Christin K. Kennedy**  
201 Twelfth Street, NW  
Albuquerque, NM 87102

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## IN MEMORIAM

---

As of October 24, 2020:  
**Elaine S. Marr**  
204 Grant Street  
Socorro, NM 87801

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## IN MEMORIAM

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As of September 28, 2020:  
**Sampson Martinez**  
PO Box 2415  
Gallup, NM 87301

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## IN MEMORIAM

---

As of August 28, 2019:  
**William Howard Parsons Jr.**  
717 17th Street,  
Suite 2800  
Denver, CO 80202

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## IN MEMORIAM

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As of February 10, 2021:  
**William J. Perry**  
PO Box 372  
Pawnee, OK 74058

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## IN MEMORIAM

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As of December 31, 2020:  
**Donald A. Peterson**  
3717 General Patch St., NE  
Albuquerque, NM 87111

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## IN MEMORIAM

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As of February 9, 2021:  
**Susan M. Porter**  
908 Lomas Blvd., NW  
Albuquerque, NM 87102

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## IN MEMORIAM

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As of March 6, 2021:  
**Hon. Matthew G. Reynolds**  
PO Box 3009  
Truth or Consequences, NM  
87901

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## IN MEMORIAM

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As of November 16, 2020:  
**Hon. William Riordan**  
2740 Rio Grande Ave., NW  
Albuquerque, NM 87104

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## IN MEMORIAM

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As of August 7, 2020:  
**Benjamin Michael Smith**  
505 Marquette Avenue, NW,  
Suite 120  
Albuquerque, NM 87102

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## IN MEMORIAM

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As of November 30, 2020:  
**Thomas A. Tabet**  
1412 Lomas Blvd., NW  
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## IN MEMORIAM

---

As of October 8, 2020:  
**Lawrence R. White**  
3800 E. Lohman Avenue,  
Suite H  
Las Cruces, NM 88011

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## CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

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**Bradley Heaton Barton**  
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# 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-027**

No. A-1-CA-36267 (filed November 5, 2019)

JOSEPH R. MAESTAS,  
Plaintiff-Appellant,  
v.

TOWN OF TAOS,  
Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**

SARAH C. BACKUS, District Judge

Certiorari Granted, April 27, 2020, No. S-1-SC-38171; Cross-Petition Granted,  
April 27, 2020, No. S-1-SC-38171.

Released for Publication June 23, 2020.

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## Opinion

**Briana H. Zamora, Judge.**

{1} After Plaintiff Joseph Maestas was terminated from his position with the Town of Taos he brought a suit under the Whistleblower Protection Act (WPA), NMSA 1978, §§ 10-16C-1 to -6 (2010), alleging the Town had terminated his employment in retaliation for complaints he made about mismanagement and waste. A jury found the Town had violated the WPA but nevertheless did not award Maestas any damages. Maestas argues that the district court abused its discretion in certain evidentiary rulings before and during trial, in denying his posttrial motions for a new trial and for equitable relief, and that the district court erred by failing to award him attorney fees and costs under the WPA. We agree with Maestas that the WPA requires payment of reasonable attorney fees and litigation costs upon a finding that an employer

has violated the WPA. Accordingly, we reverse the district court in that respect but otherwise affirm.

### BACKGROUND

{2} When Maestas began his employment with the Town in August 2010, he signed a copy of the Employee's Statement of Receipt and Understanding of Policy, including the Internet use policy, which provided that "I know that any violation of this policy could lead to disciplinary action against me up to termination of employment[.]" The Internet use policy prohibited use of the Town's computers to view pornography. In April 2014 Maestas was discovered viewing pornography on his Town-owned work computer during work hours, and, the Town terminated Maestas's employment less than two weeks later.

{3} Maestas filed a complaint against the Town in February 2015. The complaint alleged that the Town terminated Maestas's employment in violation of the WPA and breached the covenant of good faith and fair dealing. Maestas alleged that he

had complained to the Town officials and councilors during his employment about mismanagement, waste of funds, and improper acts involving road procurement contracts, and that the Town terminated him in retaliation for those complaints. He requested compensation for actual damages, reinstatement, back pay, and punitive damages, as well as attorney fees and costs. {4} At trial, the Town's information technology manager testified that the Town located over 5000 pornographic images on Maestas's computer. The district court denied Maestas's motion in limine to exclude these images from evidence and the images were admitted at trial, although only approximately thirty images were used during questioning and included with the exhibits in the jury room. While Maestas admitted he had been viewing pornography at work, he testified that he was not terminated for viewing pornography, but rather, because he had reported malfeasance by Town employees. Maestas testified that he had lost income and suffered emotional distress, and further stated that he was not requesting reinstatement of his position with the Town "at this time." {5} At the close of trial, the jury returned a verdict finding the Town violated the WPA and that Maestas was damaged, but the jury did not award any damages to Maestas. Following the trial, Maestas filed motions with the district court for: (1) a new trial, (2) equitable relief, and (3) attorney fees and costs. Additional facts relevant to these motions are included in our discussion of Maestas's arguments below.

### DISCUSSION

#### I. The District Court Did Not Abuse Its Discretion in Denying Maestas's Motion for a New Trial on Damages

{6} We begin by addressing Maestas's argument that the district court abused its discretion in denying his motion for a new trial on damages. During deliberations, the jury sent a note to the judge referencing jury instruction number thirteen. As given, instruction thirteen stated:

If you should decide in favor of [Maestas] on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by him to have resulted from the wrongful conduct of the [Town] as claimed[.]

UJI 13-1802 NMRA. The note was misplaced and is not in the record. However, the following exchange took place between counsel and the district court:



**District Court:** Regarding jury instruction number thirteen, sentence number one, which the sentence is: “If you decide in favor of [Maestas] on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages, etc.” The question is the word[s], “must” then “fix.” Does the jury have the obligation to award a monetary amount to [Maestas]?

**Defense Counsel:** No.

**District Court:** That’s my answer, and I don’t think they do, so I just wanted you know that’s the question.

Maestas’s attorney remained silent throughout this exchange and raised no objection. After trial, Maestas filed a motion for a new trial on damages claiming that (1) the district court erroneously responded to the jury’s question and lost the jury note; (2) the district court erred in modifying the UJI; (3) the jury verdict was inconsistent, contradictory, and ambiguous; and (4) the jury may have been confused by the evidence because the district court admitted pornographic images. The district court denied the motion.

{7} On appeal, Maestas renews these arguments. As an initial matter, we decline to address Maestas’s first three arguments because he failed to make timely objections at trial and thereby waived his objections on appeal. See *Estate of Saenz v. Ranack Constructors, Inc.*, 2018-NMSC-032, ¶¶ 24-30, 420 P.3d 576 (holding that the plaintiff’s failure to timely object in the district court constituted waiver of his arguments based on the jury instructions or verdict). Maestas did not object to jury instruction thirteen, failed to object to the district court’s proposed answer to the jury’s question, and had an opportunity to object to the verdict but did not. See *id.* ¶¶ 28-30. Applying *Estate of Saenz*, the waiver rule precludes Maestas’s challenges, and we do not address them further.

{8} Maestas’s remaining argument is predicated on the idea that the district court abused its discretion in admitting the pornography evidence, which he claims improperly prejudiced the jury. The Town sought to introduce the pornography evidence in support of its affirmative defense to Maestas’s WPA claim—that

it terminated Maestas’s employment for viewing pornography at work, not for retaliation. While over 5000 pornographic images were found on Maestas’s work computer, the district court restricted the use of the pornography evidence at trial after ruling on Maestas’s motion in limine.<sup>1</sup> The Town introduced thirty images at trial, although all 5000 photographs were printed and stacked on defense counsel’s table as permitted by the Court’s ruling. Despite the limitations placed on the Town’s use of the pornographic pictures by the district court, Maestas argues that the admission of multiple images was unnecessary because the Town’s termination policy did not depend on the quality or quantity of an employee’s improper use of the Internet, and also because he never disputed that he viewed the pornography on his work computer. However, Maestas does not rebut the Town’s argument that the evidence was relevant to the Town’s affirmative defense of justifiable termination. As the district court noted, Maestas alleged that the Town’s punishment was too severe, an allegation that the Town had the right to refute. We agree with the district court that the evidence was probative of the Town’s defense that the termination of Maestas was reasonable and was due to the extensive and improper use of his work computer during work hours. We conclude that the district court did not abuse its discretion in admitting this evidence and therefore, it likewise did not abuse its discretion in denying Maestas’s motion for a new trial.

## II. The District Court Did Not Abuse Its Discretion in Denying Maestas’s Motion for Equitable Relief

{9} We next address Maestas’s argument that the district court abused its discretion in denying his posttrial motion for equitable relief—front pay and retirement benefits—under the WPA. While Maestas requested reinstatement of his employment in his complaint and in his briefing to this Court, he did not request reinstatement in his posttrial motion and we therefore limit our analysis to his claims for front pay and retirement benefits.

{10} “We review a district court’s decision to grant or deny equitable relief for abuse of discretion.” *Collado v. City of Albuquerque*, 2002-NMCA-048, ¶ 21, 132 N.M. 133, 45 P.3d 73. The district court abuses its discretion if its ruling was clearly untenable or not justified by reason. *Id.* In

this case, the district court offered three reasons for denying Maestas’s motion: (1) because Maestas did not seek to bifurcate his equitable claims prior to trial and did not seek equitable relief from the jury at trial; (2) because the jury instructions and verdict form permitted the jury to award “[a]ny other special damage proven by the evidence”; and (3) because it would “not allow [Maestas] a new opportunity to secure relief which he did not pursue until after the jury made its decision.”

{11} As an initial matter, with regard to the district court’s ruling that Maestas should have submitted his claims to the jury, we note that “the [district] court must determine the mode and order of trial” when legal and equitable claims have been joined. *Scott v. Woods*, 1986-NMCA-076, ¶ 30, 105 N.M. 177, 730 P.2d 480. As a general matter, the district court determines when and if equitable relief is appropriate, not a jury. *Blea v. Fields*, 2005-NMSC-029, ¶ 16, 138 N.M. 348, 120 P.3d 430. Further, “when equitable and legal claims present common issues of fact which are material to the disposition of both claims, the legal claims must be submitted to a jury before the equitable claims are decided.” *Id.* ¶ 1. Maestas, however, failed to request bifurcation of his equitable claims before trial, and we question the timeliness of his request for a bench trial on his equitable claims coming as it did after the jury awarded him no damages. See Rule 1-042(B) NMRA (permitting the district court to order bifurcation of issues through separate trials under certain circumstances); Rule 1-007(B) NMRA (requiring “[a]n application to the court for an order” be made by motion in writing). Regardless, the district court correctly concluded Maestas was not entitled to front pay and retirement benefits, though as we explain below, we reach this conclusion for reasons different from those articulated by the district court.

{12} In his complaint, Maestas’s requests for relief were limited to reinstatement and retirement benefits; he did not request front pay. “Courts are in general agreement that front pay is only available if the court finds that reinstatement is inappropriate.” Ernest F. Lidge III, *Wrongfully Discharged In-House Counsel: A Proposal to Give the Employer a Veto Over Reinstatement While Giving the Terminated Lawyer Front Pay*, 52 WFLR 649, at 658 (2017). “The overarching preference in employment discrimination cases is for reinstatement.”

<sup>1</sup>Maestas also argues that the district court abused its discretion in granting the Town’s motion in limine to exclude testimony regarding other employees who allegedly downloaded pornography. The Town argues that Maestas waived his objections to the motion in limine by withdrawing his motion in opposition. We agree with the Town. “[A] party cannot rely on a withdrawn objection to preserve error.” *State v. Frazier*, 2007-NMSC-032, ¶ 38, 142 N.M. 120, 164 P.3d 1 (internal quotation marks and citation omitted). Because Maestas withdrew his objection to the filing of the third motion in limine, he denied the district court an opportunity to consider and rule on his objection and therefore failed to preserve the issue for appeal. See *Azar v. Prudential Ins. Co. of Am.*, 2003-NMCA-062, ¶ 22, 133 N.M. 669, 68 P.3d 909. We decline to address this issue.

*Id.* (internal quotation marks omitted); *cf. Smith v. FDC Corp.*, 1990-NMSC-020, ¶ 24, 109 N.M. 514, 787 P.2d 433 (stating that under the Age Discrimination Employment Act, front pay may be an appropriate remedy when reinstatement or comparable alternative employment is not feasible). Since Maestas did not request reinstatement in his posttrial motion and testified during trial that he was not requesting reinstatement “at this time,” we conclude that he is not entitled to the alternative remedy of front pay.

{13} In addition, Maestas failed to make any specific argument with respect to retirement benefits or direct our attention to anything in the record supporting such a claim. We will not search the record to determine the viability of Maestas’s claim and therefore, decline to address this undeveloped issue further. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (“We will not review unclear arguments, or guess at what a party’s arguments might be.” (alteration, internal quotation marks, and citation omitted)); *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (“We will not search the record for facts, arguments, and rulings in order to support generalized arguments.”).

{14} We therefore hold that the district court did not abuse its discretion in denying Maestas’s motion for equitable relief.

### III. Attorney Fees and Costs

{15} The district court denied Maestas’s request, pursuant to the WPA, for attorney fees and costs, and awarded costs to the Town pursuant to Rule 1-068 NMRA. We address attorney fees first.

#### A. Maestas is Entitled to Attorney Fees Pursuant to the WPA

{16} Maestas argues that the district court abused its discretion in denying his request for attorney fees because the WPA mandates an attorney fee award. The Town argues that attorney fees under the WPA are dependent on recovery of damages and, because the jury awarded zero damages, Maestas is not a “prevailing party” and thus, is not entitled to attorney fees. “Appellate courts review an award of attorney fees for abuse of discretion.” *Am. Civil Liberties Union of N.M. v. Duran*, 2016-NMCA-063, ¶ 24, 392 P.3d 181. However, to the extent we are required to interpret the WPA in deciding whether Maestas is entitled to an award of attorney fees, we apply a *de novo* review. *See id.*

{17} “New Mexico adheres to the so-called American rule that, absent statutory or other authority, litigants are responsible for their own attorney[] fees.” *Montoya v. Villa Linda Mall, Ltd.*, 1990-NMSC-053, ¶ 6, 110 N.M. 128, 793 P.2d 258. At issue here is whether Maestas was entitled to an attorney fee award based on the jury’s finding that the Town violated the WPA and

that Maestas was damaged by the violation, despite the jury’s award of zero damages. This question requires us to construe, for the first time, Section 10-16C-4(A) of the WPA, which provides in relevant part:

A public employer that violates the provisions of the [WPA] shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee.

{18} In determining legislative intent, we first look to the plain language of the statute and refrain from further interpretation if the language is not ambiguous. *Marbob Energy Corp. v. N.M. Oil Conservation Comm’n*, 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.3d 135. “[W]here the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others.” *N.M. Real Estate Comm’n v. Barger*, 2012-NMCA-081, ¶ 7, 284 P.3d 1112 (internal quotation marks and citation omitted).

{19} The WPA provides that an employer that violates the WPA “shall” be required to pay the employee’s reasonable attorney fees. Section 10-16C-4(A). “Generally, the use of the word ‘shall’ imposes a mandatory requirement.” *N.M. Dep’t of Health v. Compton*, 2000-NMCA-078, ¶ 11, 129 N.M. 474, 10 P.3d 153 (omission, internal quotation marks, and citation omitted). Applying the plain language of the WPA to the facts in this case, Maestas would be entitled to a reasonable attorney fee because the jury found that the Town violated the WPA. *Cf. Gudenkauf v. Stauffer Commc’ns, Inc.*, 158 F.3d 1074, 1078, 1080 (10th Cir. 1998) (stating, in cases involving statute without prevailing party requirement, that “not every non-monetary victory precludes a fee award” and that “recovery may be had even where actual damages are minimal or nonexistent if [the] plaintiff succeeds in serving an important public purpose”); *see also Norris v. Sysco Corp.*, 191 F.3d 1043, 1052 (9th Cir. 1999) (stating, in case involving statute without prevailing party requirement, that “[s]uffice it to say . . . the mere fact that [the plaintiff] did not obtain actual tangible relief does not preclude an award of fees”). The mandatory nature of the WPA’s language

is consistent with the public’s interest in encouraging employees to bring forward cases of government malfeasance. *See Flores v. Herrera*, 2016-NMSC-033, ¶ 9, 384 P.3d 1070 (“[T]he Legislature enacted the WPA to encourage employees to report illegal practices without fear of reprisal by their employers.” (internal quotation marks and citations omitted)).

{20} The Town, however, contends that “a party must recover a judgment in order to be granted prevailing party status” and relies on cases interpreting attorney fee statutes that contain the term “prevailing party” in support of its position. *See, e.g., Harvey-Williams v. Peters*, Nos. 95-4274, 95-4354, 1997 WL 397234, at \*3 (6th Cir. 1997) (in an unpublished opinion applying 42 U.S.C. § 1988(b) (2018), which provides that “the court may allow the prevailing party reasonable attorney[] fees as part of the costs”); *Lintz v. Am. Gen. Fin., Inc.*, 76 F. Supp. 2d 1200, 1210 (D. Kan. 1999) (concluding that “an award of zero damages does not render the plaintiff a prevailing party” pursuant to 42 U.S.C. § 2000e-5(k), which permits the district court, in its discretion, to award “the prevailing party . . . a reasonable attorney[] fee” (emphasis added)). Unlike the WPA, the statutes in those cases explicitly condition attorney fee awards by stating that they are available to a prevailing party. Attorney fees under the WPA, in contrast, depend on whether a public employer is found to have violated the provisions of the WPA, and are not conditioned on an employee’s status as a prevailing party. Had the Legislature intended to limit WPA attorney fee awards to only prevailing parties, then it would have written that language into the statute, as it has in other statutes. *See State v. Lindsey*, 2017-NMCA-048, ¶ 19, 396 P.3d 199 (“[T]he Legislature knows how to include language in a statute if it so desires[.]” (internal quotation marks and citation omitted)); *see also, e.g., NMSA 1978, § 47-8-48(A)* (1995) (stating “the prevailing party shall be entitled to reasonable attorney[] fees” (emphasis added)); *NMSA 1978, § 39-2-2.1* (1975) (“In any civil action . . . to recover on an open account, the prevailing party may be allowed a reasonable attorney fee set by the court[.]” (emphasis added)); *NMSA 1978, § 7-1-29.1(A)* (2019) (“[T]he taxpayer shall be awarded . . . attorney fees . . . if the taxpayer is the prevailing party.” (emphasis added)). Thus, we conclude that the plain language of WPA requires the district court to award Maestas reasonable attorney fees.

{21} We next address an issue of first impression—what “reasonable” means with respect to attorney fees under the WPA. The Town argues that even if the Court were to conclude that the WPA permits

fees, the principle of proportionality would prevent Maestas from obtaining an award of attorney fees. Specifically, relying on Rule 16-105 NMRA, the Town argues that “the [d]istrict [c]ourt reasonably could reject a fee request because a zero damages recovery from the jury is proportional to a zero-fee recovery.” See Rule 16-105(A) (4) (“A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include . . . the amount involved and the results obtained.”).

{22} Our Courts have applied the Rule 16-105 factors and, similarly, the lodestar criteria in determining whether a party is entitled to a reasonable attorney fee. While Defendant argues for proportionality, we think the lodestar method is more appropriate. For instance, like the WPA, the fee-shifting provision in the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2019), also does not include the “prevailing party” requirement. Instead, the IPRA provides that “the court shall award . . . reasonable attorney[] fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of” the IPRA. Section 14-2-12(D). In *Rio Grande Sun v. Jemez Mountains Public School District*, 2012-NMCA-091, ¶ 20, 287 P.3d 318, we held that “[i]n statutory fee-shifting cases like [the IPRA], the lodestar method for determining attorney fees is generally used because it provides adequate fees to attorneys who undertake litigation that is socially beneficial, irrespective of the pecuniary value to the claimant.” (alteration, internal quotation marks, and citation omitted).

{23} For these reasons, we conclude that the appropriate method for determining a reasonable attorney fee under the WPA is by applying the lodestar criteria, which include:

the time and labor required—the novelty and difficulty of the questions involved and skill required; (2) the fee customarily charged in the locality for similar services; (3) *the amount involved and the results obtained*; (4) the time limitations imposed by the client or by the circumstances; and (5) the experience, reputation and ability of the lawyer or lawyers performing the services.

*Id.* ¶ 13 (emphasis added) (internal quotation marks and citation omitted). We therefore remand this matter to the district court to apply the lodestar method to determine the reasonable attorney fee.

#### **B. Maestas is Entitled to Costs Incurred Prior to the Town’s Offer**

{24} Maestas also argues that, under the plain language of the WPA, he must be awarded costs incurred before the Town issued a Rule 1-068 offer of settlement. He relies on the same provision of the WPA addressed above, which states that “an employer [that has violated the WPA] shall be required to pay the litigation costs and reasonable attorney fees of the employee.” Section 10-16C-4(A). The Town argues that Maestas’s construction of the WPA would render Rule 1-068(A) meaningless. {25} Rule 1-068(A) provides that “[i]f an offer of settlement made by a defending party is not accepted and the judgment finally obtained by the claimant is not more favorable than the offer, the claimant must pay the costs, excluding attorney[] fees, incurred by the defending party after the making of the offer and

shall not recover costs incurred thereafter.” Prior to trial, the Town tendered a \$10,000 offer of settlement under Rule 1-068, which Maestas did not accept. Our understanding of Maestas’s argument is that he is only requesting costs incurred prior to the Town’s offer of settlement. We agree that he is entitled to them for the same reasons he is entitled to a reasonable attorney fee.

{26} However, because Maestas rejected the Town’s offer of settlement, which exceeded his award of zero damages, we conclude the award of costs to the Town pursuant to Rule 1-068 was appropriate. See Rule 1-068(A). Maestas also contests the amount of costs awarded to the Town arguing that “[t]he [district] court awarded costs not allowed under Rule [1-054].” “Generally, the district court has broad discretion in awarding attorney fees and we will not disturb the court’s fee determination unless there has been an abuse of discretion.” *Calderon v. Navarette*, 1990-NMSC-098, ¶ 7, 111 N.M. 1, 800 P.2d 1058. Based on our review of the record, the district court did not abuse its discretion in its determination of which of the Town’s costs were reasonable. We hold that the district court abused its discretion in denying Maestas’s request for the costs he incurred prior to the offer of settlement, but affirm the district court’s order awarding costs to the Town.

#### **CONCLUSION**

{27} For the foregoing reasons, we reverse and remand for a determination of Maestas’s reasonable attorney fees and the costs he incurred prior to the Town’s Rule 1-068 offer of settlement. However, we affirm the district court’s rulings on the remaining issues.

{28} **IT IS SO ORDERED.**  
**BRIANA H. ZAMORA, Judge**

**WE CONCUR:**  
**JENNIFER L. ATTREP, Judge**  
**MEGAN P. DUFFY, Judge**

# Advance Opinions

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

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2020-NMCA-028**

Nos. A-1-CA-36308 & A-1-CA-36309  
(filed December 24, 2019)

KAREN L. ROGERS,  
Petitioner-Appellee,  
v.  
RED BOOTS INVESTMENTS, L.P.,  
Respondent-Appellant.  
and  
KAREN L. ROGERS,  
Petitioner-Appellee,  
v.  
RED BOOTS INVESTMENTS, L.P.,  
Respondent

DAVID S. SMOAK,  
Arbitrator-Appellant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

VALERIE A. HULING, District Judge

Certiorari Denied, March 9, 2020, No. S-1-SC-38108; Cross-Petition Denied,  
March 9, 2020, No. S-1-SC-38108.

Released for Publication June 23, 2020.

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## Opinion

**Julie J. Vargas, Judge.**

{1} Red Boots Investments, L.P. (Red Boots) and David Smoak (collectively, Appellants) filed separate appeals, appealing the district court's orders vacating an arbitration award<sup>1</sup> issued by Smoak in favor of Red Boots, disqualifying David Smoak as

arbitrator, and disqualifying Stanley Hatch as legal counsel to the arbitrator. Because both appeals raise several identical issues, we consolidate the appeals for decision.

{2} On appeal, Appellants' raise the following issues: (1) whether Smoak, as the arbitrator, has the right to appeal the district court's orders; (2) whether the district court erred in vacating Smoak's arbitration award for "evident partiality," under the

New Mexico Uniform Arbitration Act (the NMUAA), NMSA 1978, §§ 44-7A-1 to -32 (2001); and, (3) whether the district court erred in prospectively disqualifying Smoak from serving as an arbitrator of future disputes between the parties. We affirm.

### I. BACKGROUND

{3} Bill Rogers (Husband) and Karen Rogers (Wife) dissolved their marriage by stipulated judgment (the Stipulated Judgment) entered by a California court. Pursuant to the Stipulated Judgment, two trusts for the benefit of Husband's and Wife's minor children (collectively, the Trusts) were ordered to pay child support to Wife. To effectuate the Stipulated Judgment, Husband and Wife formed Red Boots to hold Husband's and Wife's marital assets and distribute those assets at a rate proportionate to their respective interests in the partnership. Husband served as the managing member of both Red Boots and Red Boots' general partner, TexWest, LLC. {4} Following a dispute over the implementation of the Stipulated Judgment and the management of Red Boots, Wife sued Husband in California and Texas. Much of the property involved in the dispute was located in New Mexico and owned by RSF Land and Cattle Company, LLC (RSF), for which Husband served as managing member and Smoak served as president. Husband and Wife agreed to mediate their disputes, with Smoak serving as mediator and Hatch as Smoak's attorney. Husband and Wife reached a preliminary settlement on September 11, 2008, but when a dispute arose regarding the terms of the settlement, arbitration was scheduled. Before the arbitration was commenced, Husband and Wife resolved their disputes and executed a settlement agreement (the Settlement Agreement) between themselves, Red Boots, the Trusts, RSF, and Smoak (collectively, the Parties). Following the execution of the Settlement Agreement, the Parties filed this action in district court, seeking an order confirming the Settlement Agreement, which the Parties presented to the district court as an arbitration award. The district court confirmed the arbitration award on May 8, 2009.

{5} The Settlement Agreement required the Parties to submit all disputes or claims arising from "the operations of Red Boots, the interpretation of the Red Boots' partnership, the interpretation of the Stipulated Judgment, and the activities of the general partner of Red Boots"

<sup>1</sup>The parties to these appeals have engaged in several arbitration proceedings prior to filing these appeals. These appeals are limited to matters related to the arbitration award entered in favor of Red Boots and against Karen Rogers, dated May 5, 2016. This award is referred to as the "RB Award II" throughout the opinion.

to an escalating three-step process: (1) informal discussions; (2) mediation; and (3) “final and binding” arbitration. The Settlement Agreement provided that the mediator would also serve as the arbitrator if mediation was unsuccessful, and stated that any necessary arbitration is governed by New Mexico law. Paragraph 24 of the Settlement Agreement provided that none of the Parties “shall make any comment, statement, or representation to the guardian ad litem, [the California court] or any other court of competent jurisdiction contrary to the established terms of this Settlement Agreement[,]” and that violation of this provision would result in the mediator or arbitrator ordering “payment of reasonable costs, attorney[] fees, and expenses incurred by the other Litigating Parties[.]”

{6} The Settlement Agreement designated the possible mediators and, thus, arbitrators in order of preference as Smoak, Hatch, Ben M. Allen, and George Bravante. The Parties noted in the Settlement Agreement that Smoak disclosed his role as the president and a member of RSF, and that because Husband was the managing member of RSF, Smoak “may have an interest in the resolution of the disputes between the Parties and may be susceptible to influence by [Husband].” The Settlement Agreement also recognized that Hatch served as RSF’s legal counsel and “may be susceptible to influence by [Husband]” because of Husband’s role as the managing member of RSF. Nevertheless, the Parties “voluntarily appointed” Smoak to act as mediator with Hatch acting as Smoak’s legal counsel, and released and discharged Smoak and Hatch from all claims, complaints, liability, loss, or damage resulting from mediation, the Settlement Agreement, or any decisions by Smoak or Hatch relating to the mediation or the Settlement Agreement. Smoak and Hatch nonetheless agreed “that they will in any future mediation or arbitration take all reasonable steps and act in good faith to be neutral and fair to all [P]arties.”

{7} The present case arises from separate, but related, arbitration proceedings conducted pursuant to the terms of the Settlement Agreement. As such, we set forth the relevant factual and procedural backgrounds of each arbitration proceeding leading up to the case at bar.<sup>2</sup>

#### A. The Trusts Arbitration

{8} After the Trusts failed to make certain child support payments to Wife as required by the Settlement Agreement, Wife sent a letter to Hatch, as counsel for the Trusts, demanding immediate pay-

ment. Hatch wrote to Wife, demanding mediation of the disputes she raised in her letter. In response, Wife wrote that she was willing to participate in mediation provided that “[a]n independent and neutral mediator shall be selected by agreement of the parties or if the parties cannot agree, the parties shall ask for such a mediator to be appointed by the [district c]ourt.”

{9} Due to the unavailability of the other possible mediators, Bravante was designated in accordance with the Settlement Agreement to resolve their dispute. Wife filed a motion seeking to reopen the district court litigation, remove Bravante as the mediator, and appoint a neutral mediator. The district court denied Wife’s motion to remove Bravante and appoint a neutral arbitrator, ordered the parties to mediate the dispute, and appointed Bravante as the mediator. Following unsuccessful mediation, Bravante withdrew for health reasons and the district court appointed Bruce Hall as the arbitrator.

{10} During arbitration, the Trusts raised several counterclaims against Wife and argued Wife violated Paragraph 24 of the Settlement Agreement by filing her motion to remove Bravante in district court and “making comments, statements, and/or representations to the [district c]ourt.” Hall entered an arbitration award in Wife’s favor (Trusts Award) on February 29, 2012, concluding the Trusts breached the Settlement Agreement, dismissing the Trusts’ counterclaims, and rejecting the Trusts’ argument that Wife’s conduct breached “any contractual obligation under the Settlement Agreement.” The district court confirmed the Trusts Award.

#### B. Red Boots Arbitration I

{11} During the first arbitration between Wife and Red Boots (RB Arbitration I), Smoak was appointed to serve as the arbitrator and began the process of scheduling the arbitration on May 22, 2012. On June 28, 2012, Wife filed (1) an application in the district court to temporarily restrain and preliminarily enjoin Smoak from conducting an arbitration in the RB Arbitration I matter, and (2) a motion to permanently disqualify Smoak from serving as mediator or arbitrator for any disputes under the Settlement Agreement and to appoint a neutral arbitrator for the RB Arbitration I matter. To support her motion to permanently disqualify Smoak, Wife provided an affidavit explaining that she and Smoak spoke shortly after Hall entered the Trusts Award. Wife stated that Smoak told her during that conversation “that he thought . . . Hall was wrong in not penal-

izing [Wife] for the [motion to remove Bravante as the mediator] and that . . . Hall should have awarded attorney fees against [Wife].” After Red Boots submitted its list of issues for arbitration, which included Wife’s “violation of the Settlement Agreement’s Alternative Dispute Resolution provisions against going to court which led to . . . large amounts of Red Boots’, Tex[W]est’s and [Husband’s] [sic] time and efforts to defend, and . . . large amounts of the time and efforts of others to defend[.]” Smoak notified Red Boots and Wife that the issues within the scope of arbitration included “[d]isputes concerning the violation of the provisions of [Paragraph] 24 of the Settlement Agreement as it relates to present court actions initiated by [Wife].” {12} The district court denied Wife’s motion to disqualify Smoak in the RB Arbitration I, and denied her motion to permanently disqualify Smoak “as not being ripe for decision.” Addressing the scope of the upcoming RB Arbitration I, the district court limited the arbitrability of the Paragraph 24 issue:

Regarding the scope of the issues for the [RB A]rbitration [I], with respect to any issue relating to reasonable costs, attorney fees, and expenses which might be sought against [Wife] pursuant to [Paragraph] 24 of the . . . Settlement Agreement . . . , the arbitration is limited to *considering only costs, attorney fees and expenses related to disputes between [Wife] and Red Boots . . . beginning with the [application to temporarily restrain and preliminarily enjoin Smoak] filed in [the district court on] June 28, 2012[,] and the [motion to disqualify Smoak and appoint a neutral arbitrator] also filed June 28, 2012.* Nothing contained herein suggests whether or not any costs, attorney fees or expenses should be awarded. (Emphasis added.)

Neither Red Boots nor Smoak filed a motion to reconsider the district court’s order and neither appealed the order.

{13} Following the RB Arbitration I, Smoak issued the RB Award I which addressed Red Boots’ claim for damages against Wife under Paragraph 24. After acknowledging the district court’s limitation concerning the costs, fees and expenses that could be sought against Wife, Smoak concluded that Paragraph 24 was and would “continue to be a major issue for the parties[.]” that it “beg[ged] to be addressed

<sup>2</sup>Although the awards in the Trusts Arbitration and those we identify herein to be RB Arbitrations I, III, IV and V are not the subject of this appeal, we nonetheless set forth the relevant background of each of the arbitrations to provide the necessary context for the appealed district court orders.

in detail and directly[.]” and that “[i]t was not raised or responded to in the [district] court pleadings.” Notwithstanding the district court’s order, Smoak then awarded litigation costs dating back to September 12, 2008, against Wife in conflict with that order, concluding:

[Wife’s] court actions with respect to the present arbitration constitute a single violation of [Paragraph] 24 harming Red Boots, [TexWest], and the member of [TexWest]. Thus, [t]he damages to be awarded in favor of Red Boots as a result of [Wife’s] violation of [Paragraph] 24 in this matter are the payment of reasonable litigation costs incurred by Red Boots in disputes with [Wife] since the closing of the original mediation on September 12, 2008. . . . The litigation costs incurred by Red Boots from September of 2008 through June of 2012 amount to \$730,173.58.

In his summary of the decision and award, Smoak stated, “Red Boots is awarded damages for [Wife’s] breach of the Settlement Agreement under [Paragraph] 24 in the amount of \$730,173.58 plus an amount equal to the costs incurred in this dispute after June 30, 2012.” Wife filed a motion to vacate RB Award I. Finding Wife’s motion to be untimely, the district court denied Wife’s motion and confirmed RB Award I.

### C. RB Arbitrations II, III, IV, and V

{14} In 2013 Red Boots and Wife engaged in the second Red Boots Arbitration (RB Arbitration II). On June 26, 2013, Wife filed a motion in district court to join Smoak and RSF as parties to the arbitration and to join certain issues to the RB Arbitration II. The district court denied this motion. On November 7, 2013, Wife filed an application in the district court to temporarily restrain and preliminarily enjoin Smoak from conducting the RB Arbitration II. The district court orally vacated the arbitration scheduled for later that month, but did not rule on Wife’s application. The RB Arbitration II was subsequently rescheduled and Smoak entered an arbitration award (RB Award II). In the RB Award II, Smoak again concluded Wife had violated Paragraph 24, this time by filing her untimely motion to vacate the RB Award I and by responding to Smoak’s motion to compel payment of fees related to the RB Arbitration I because it “contained substantive statements and representations contrary to the established terms of the Settlement Agreement.” Smoak awarded Red Boots \$1,250,000 for each of these two violations. Wife filed a motion to vacate the RB Award II.

{15} In early 2015, Red Boots and Wife engaged in a third arbitration proceeding (RB Arbitration III). On May 28, 2015, Wife filed an application in the district court to temporarily restrain and preliminarily enjoin Smoak from conducting the RB Arbitration III. Smoak entered an arbitration award in this proceeding on the following day (RB Award III), again concluding Wife was liable to Red Boots for violating Paragraph 24 of the Settlement Agreement, this time pointing to “her filings on June [26], 2013, [to join parties and issues] and November 7, 2013[, to temporarily restrain and enjoin Smoak.]” Smoak awarded Red Boots damages in the amount of \$850,000. In December 2015, the district court denied both of Wife’s applications. Red Boots filed a motion to confirm RB Award III. The district confirmed the RB Award III.

{16} Following a fourth arbitration between Red Boots and Wife, (RB Arbitration IV) Smoak entered the RB Award IV, concluding that Wife’s “filings in conjunction with the [a]pplication for [a temporary restraining order] relating to the [RB Arbitration III] breached the provisions of [Paragraph] 24[.]” and that such breach entitled Red Boots to \$1,320,000 in damages. The district court vacated RB Award IV, but deferred ruling on Red Boots’ and Smoak’s motions to reconsider the vacatur pending the outcome of these appeals.

{17} During a fifth arbitration between Red Boots and Wife (RB Arbitration V), Wife filed (1) a motion to appoint a different arbitrator and (2) an application to temporarily restrain and preliminarily enjoin Smoak from mediating or arbitrating. In its order denying Wife’s application for a temporary restraining order and preliminary injunction, filed on October 21, 2016, the district court nevertheless cautioned Smoak not to proceed with arbitration pending the outcome of Wife’s motion to appoint a different arbitrator, stating:

An arbitrator’s refusal to postpone a hearing upon a showing of sufficient cause is justification for vacating an award. [See] . . . § 44-7A-24(a)(3). . . . Conducting further arbitration proceedings while there is a pending motion before this Court to appoint a different arbitrator may be considered sufficient cause for postponement. Therefore, if . . . Smoak chooses to proceed, on a proper motion any award may be vacated by this Court.

Notwithstanding the district court’s warning, Smoak proceeded with the RB Arbitration V while Wife’s motion to appoint a different arbitrator was still pending.

{18} During a November 29, 2016, hearing on Wife’s motion to appoint a different

arbitrator, Smoak testified that he did not believe the district court’s scheduling of a hearing to consider his removal as arbitrator was a reasonable cause to postpone the arbitration, that he did not “see the point in delaying [the arbitration] further,” and that notwithstanding the district court’s earlier warning, he proceeded to arbitration eleven days earlier on November 18, 2016. Smoak also testified that although he was aware of the district court’s limitation on the arbitrability of Paragraph 24, he nevertheless declined to adhere to that limitation because he interpreted the provision and the Settlement Agreement differently from the district court.

{19} At this juncture, the district court granted Wife’s motion to appoint a different arbitrator, finding “that there is clear and convincing evidence that there is evident partiality on the part of Arbitrator . . . Smoak disqualifying him from serving as arbitrator or mediator in any proceeding conducted pursuant to the Settlement Agreement[.]” and removing Smoak from serving as an arbitrator under the Settlement Agreement. The district court also disqualified Hatch from serving as counsel to the arbitrator or mediator under the Settlement Agreement on grounds of evident partiality. Based on its finding that there was evident partiality by Smoak, the district court vacated the RB Award II. Both Smoak and Red Boots filed motions to reconsider the district court’s rulings.

{20} In its order denying Smoak’s and Red Boots’ motions to reconsider its order appointing a different arbitrator, the district court noted that notwithstanding the waiver of Smoak’s conflicts of interest, he agreed to be “neutral.” The district court made two findings to support its conclusion that Smoak demonstrated evident partiality: (1) without appealing or moving to reconsider the district court’s limitation on the arbitrability of Paragraph 24 in the RB Arbitration I, Smoak “expressly rejected” the district court’s limitation and awarded “millions of dollars . . . against [Wife] and in favor of Red Boots[.]” and (2) Smoak proceeded with arbitration when he knew a motion to appoint a different arbitrator was pending and after the district court had warned him that proceeding with arbitration might result in the vacatur of the arbitration award. The district court concluded that equity “demand[ed]” Smoak’s removal prior to the entry of an award in the RB Arbitration V and that pursuant to Section 44-7A-12(a), the district court had the authority to appoint a new arbitrator because the Settlement Agreement’s method for selecting arbitrators had failed. The district court relied on Section 44-7A-24 and used the

same findings regarding Smoak's evident partiality in denying Smoak's and Red Boots' motions to reconsider its order vacating RB Award II. These appeals followed.

## II. DISCUSSION

{21} On appeal, all Appellants argue that: (1) the district court erred in vacating the RB Award II for evident partiality; and (2) the district court erred in prospectively disqualifying Smoak and Hatch. However, before we address those arguments, we address Appellant Smoak's argument that, as the arbitrator, he has a right to appeal the district court's decision.

### A. Smoak Has a Right to Appeal

{22} "The right to appeal is . . . a matter of substantive law created by constitutional or statutory provision." *New Mexico v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415. "Whether a party has a right to appeal is a question of law reviewed de novo." *In re Guardianship of C.G.*, 2019-NMCA-\_\_\_\_, ¶ 26, \_\_\_\_ P.3d \_\_\_\_ (No. A-1-CA-35613, Oct. 29, 2019). "Appellate review, including the right to appellate review, . . . is governed by the rules applicable to civil appeals to the court of appeals from the district court." NMSA 1978, § 45-1-308 (1975). "And NMSA 1978, Section 39-3-2 (1966), which governs civil appeals from the district court, allows a right of appeal to 'any aggrieved party' by a district court's decision, order, or judgment." *In re Guardianship of C.G.*, 2019-NMCA-\_\_\_\_, ¶ 26. Generally speaking, "[a]n aggrieved party means a party whose interests are adversely affected." *State v. Nehemiah G.*, 2018-NMCA-034, ¶ 15, 417 P.3d 1175 (internal quotation marks and citation omitted). Although "New Mexico has always required allegations of direct injury to the complainant to confer standing, . . . once the party seeking review alleges he himself is among the injured, the extent of injury can be very slight." *In re Guardianship of C.G.*, 2019-NMCA-\_\_\_\_, ¶ 29 (alteration, emphasis, internal quotation marks, and citation omitted). Based on the circumstances in the case at bar, we conclude Smoak has the right to appeal the district court's orders.

{23} Smoak argues he was aggrieved by the district court's orders because, among other reasons, the district court prevented him from serving as an arbitrator under the Settlement Agreement to which he was a party and from recovering arbitration costs and fees under the RB Award II. The district court's orders directly and sufficiently aggrieved Smoak such that he has a right to appeal those orders.

{24} To the extent Smoak challenges the district court's disqualification of Hatch as legal counsel under the Settlement Agreement, he fails to demonstrate how he has standing to appeal a decision adverse to

Hatch. See *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 ("We will not review unclear arguments, or guess at what [a party's] arguments might be."). We therefore decline to address this argument further, affirming the district court on this matter, and we proceed to discuss the district court's vacatur of the RB Award II.

### B. The District Court Did Not Err in Vacating RB Award II

{25} Appellants challenge the district court's vacatur of the RB Award II. "Under the NMUAA, there are strict limitations on judicial review of arbitration awards." *K.R. Swerdfeger Const. v. UNM Bd. of Regents*, 2006-NMCA-117, ¶ 13, 140 N.M. 374, 142 P.3d 962. "In the absence of a statutory basis to vacate an arbitration award, the district court must enter an order confirming the award." *Id.* ¶ 14. However, upon a party's motion, the district court shall vacate an arbitration award when, among other reasons, there was "evident partiality by an arbitrator appointed as a neutral arbitrator." Section 44-7A-24(a)(2) (A). "The party seeking to vacate the award bears the burden of proving partiality." *In re Arbitration Between Town of Silver City & Silver City Police Officers Assoc. (Silver City)*, 1993-NMSC-037, ¶ 16, 115 N.M. 628, 857 P.2d 28.

{26} We review the district court's ruling on motions to confirm or vacate an arbitration award for an abuse of discretion. See *Edward Family Ltd. P'ship v. Brown*, 2006-NMCA-083, ¶ 17, 140 N.M. 104, 140 P.3d 525 ("We review the district court's order confirming the arbitration award and denying the motion to vacate for abuse of discretion."). Similarly, "[w]e review the denial of a motion to reconsider for an abuse of discretion." *Wilde v. Westland Dev. Co.*, 2010-NMCA-085, ¶ 35, 148 N.M. 627, 241 P.3d 628. On appeal, we must determine "whether substantial evidence in the record supports the [district] court's findings of fact and whether the [district] court correctly applied the law to the facts when making its conclusions of law." *Casias v. Dairyland Ins. Co.*, 1999-NMCA-046, ¶ 8, 126 N.M. 772, 975 P.2d 385. "Substantial evidence is that evidence which is relevant and which a reasonable mind could accept as adequate to support a conclusion." *Medina v. Found. Reserve Ins. Co.*, 1997-NMSC-027, ¶ 12, 123 N.M. 380, 940 P.2d 1175. "We view the evidence in the light most favorable to the prevailing party and indulge all reasonable inferences in support of the findings." *Eagle Laundry v. Fireman's Fund Ins. Co.*, 2002-NMCA-056, ¶ 14, 132 N.M. 276, 46 P.3d 1276. Resolving the question of whether the district court erred in vacating the RB Award II for evident partiality requires that we discuss three issues: (1) the applicability of the

evident partiality standard as it applies to Smoak under the facts of this case, (2) the evidence necessary to support a finding of evident partiality, and (3) the sufficiency of the evidence supporting the district court's finding of evident partiality on the part of Smoak.

### 1. Applicability of the Evident Partiality Standard to Smoak

{27} Appellants argue the district court erred in applying the evident partiality standard to Smoak because he was appointed as a "non-neutral arbitrator." Indeed, vacatur on grounds of evident partiality applies only to arbitrators appointed as *neutral* arbitrators. See § 44-7A-24(a)(2)(A) (providing that the district court shall vacate an arbitration award if there was "evident partiality by an arbitrator appointed as a *neutral arbitrator*" (emphasis added)); Unif. Arbitration Act § 12 cmt. 5, 7 U.L.A. 27 (2000) ("The ground of evident partiality in Section 24(a)(2)(A) by its terms only applies to an arbitrator appointed as a *neutral* [.]" (internal quotation marks omitted)). We must therefore determine whether the terms of the Settlement Agreement required Smoak to serve as a neutral arbitrator.

{28} "Courts must interpret the provisions of an arbitration agreement according to the rules of contract law and apply the plain meaning of the contract language in order to give effect to the parties' agreement." *McMillan v. Allstate Indem. Co.*, 2004-NMSC-002, ¶ 10, 135 N.M. 17, 84 P.3d 65. Although Smoak and Hatch disclosed their relationships which rendered them potentially "susceptible to influence by [Husband]," they nevertheless agreed "that they will in any future mediation or arbitration take all reasonable steps and act in good faith to be neutral and fair to all [P]arties." (Emphasis added.) Applying the plain meaning of the Settlement Agreement, we conclude the Parties intended Smoak to be a neutral arbitrator such that the district court did not err in applying the evident partiality standard to him.

### 2. Evidence Necessary to Find Evident Partiality

{29} Before turning to the district court's finding that there was evident partiality by Smoak, we first consider the proof necessary to establish evident partiality. Our Supreme Court has explained that "evidence of arbitrator partiality must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative[.]" and that "[a]s a general rule, partiality cannot be inferred from adverse evidentiary rulings or from the enforcement of procedural rules." *Silver City*, 1993-NMSC-037, ¶¶ 16, 18 (internal quotation marks and citation omitted). However, neither this Court nor our Supreme Court has explained what this "direct, definite"



and demonstrable evidence must show to support a finding of evident partiality. *Id.* ¶ 16 (internal quotation marks and citation omitted). To do so, we therefore look to other jurisdictions for guidance.

{30} As a starting point for interpreting the term, we first turn to the United States Supreme Court's decision in *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968), which addressed the vacatur of an arbitration award for evident partiality under the Federal Arbitration Act (the FAA). The Court was split in its attempt to establish a clear standard. Writing for the four-justice plurality, Justice Black explained that the Court had no reason to suspect the arbitrator "of any improper motives." *Commonwealth Coatings Corp.*, 393 U.S. at 147. Nevertheless, Justice Black appeared to suggest that arbitrators be held to the same ethical standards as judges, explaining that "we should, if anything, be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review." *Id.* at 149. Accordingly, he suggested "that arbitrators disclose to the parties any dealings that might create an impression of possible bias[.]" and concluded that arbitrators "not only must be unbiased but also must avoid even the appearance of bias." *Id.* at 149-50. In his concurrence, Justice White repudiated the apparent stringency of Justice Black's opinion: "The Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges." *Id.* at 150 (White, J., concurring). However, he wrote that an arbitrator's disclosure is required "where the arbitrator has a substantial interest in a firm which has done more than trivial business with a party." *Id.* at 151-52. As a result of the split decision in *Commonwealth Coatings Corp.*, the federal courts were left without a clear standard.

{31} In an early attempt to provide guidance as to the meaning of evident partiality under the FAA, the United States Court of Appeals for the Second Circuit concluded that vacatur on grounds of evident partiality required "a showing of something more than the mere appearance of bias," but something less than "proof of actual bias." *Morelite Constr. Corp. v. N.Y. City Dist. Council Carpenters Benefit Funds*, 748 F.2d 79, 83-84 (2d Cir. 1984) (internal quotation marks omitted). Thus, the court held that evident partiality "will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." *Id.*

at 84. The Second Circuit has since held that a party challenging an arbitration award "must prove the existence of evident partiality by clear and convincing evidence," e.g., *Certain Underwriting Members of Lloyds of London v. Florida, Dep't of Fin. Servs.*, 892 F.3d 501, 505 (2d Cir. 2018), that "partiality can be inferred from objective facts inconsistent with impartiality[.] . . . [and that a] showing of evident partiality must be direct and not speculative." E.g., *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 104 (2d Cir. 2013) (internal quotation marks and citation omitted). A majority of the circuits have adopted either this or a similar construction of evident partiality. See *Apperson v. Fleet Carrier Corp.*, 879 F.2d 1344, 1358 (6th Cir. 1989) (en banc) ("We agree with the *Morelite* court's analysis[.]"); *accord Cooper v. WestEnd Capital Mgmt., L.L.C.*, 832 F.3d 534, 545 (5th Cir. 2016); *JCI Commc'ns, Inc. v. Int'l Bhd. of Elec. Workers, Local 103*, 324 F.3d 42, 51 (1st Cir. 2003); *Dow Corning Corp. v. Safety Nat'l Cas. Corp.*, 335 F.3d 742, 750 (8th Cir. 2003); *Kaplan v. First Options of Chicago, Inc.*, 19 F.3d 1503, 1523 n.30 (3d Cir. 1994); *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 991 F.2d 141, 146 (4th Cir. 1993); see also *Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d 1197, 1201 (11th Cir. 1982) (requiring proof establishing "a reasonable impression of partiality"); *Merit Ins. Co. v. Leatherbys Ins. Co.*, 714 F.2d 673, 681 (7th Cir. 1983) (suggesting that evident partiality may be shown where the "circumstances are such that a man of average probity might reasonably be suspected of partiality" and such circumstances are "powerfully suggestive of bias"). Several circuits have clarified that the party asserting evident partiality "must establish specific facts that indicate improper motives on the part of the arbitrator." *Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240, 252 (3d Cir. 2013) (internal quotation marks and citation omitted); *accord Uhl v. Komatsu Forklift Co.*, 512 F.3d 294, 306 (6th Cir. 2008); *JCI Commc'ns, Inc. v. Int'l Bhd. of Elec. Workers, Local 103*, 324 F.3d 42, 51 (1st Cir. 2003); *Consolidation Coal Co. v. Local 1643, United Mine Workers of Am.*, 48 F.3d 125, 129 (4th Cir. 1995). Many states have followed suit and adopted these interpretations for purposes of the Uniform Arbitration Act of 2000 (UAA), §§ 1-33, 7 U.L.A. 1-52 (Supp. 2002). E.g., *Denison Mines (USA) Corp. v. KGL Assoc. Inc.*, 381 P.3d 1167, 1178 (Utah Ct. App. 2016); *Fong v. MPGM Mirage Int'l Mktg.*, 381 P.3d 612, \*4 (Nev. 2012) (confirming an arbitration award by order of affirmance); *Wilbanks Sec., Inc. v. McFarland*, 2010 OK CIV APP

17, ¶¶ 26-32, 231 P.3d 714, 722-23; *McNaughton & Rodgers v. Besser*, 932 P.2d 819, 822 (Colo. App. 1996).

{32} Although not binding on this Court, we find the standard adopted by the Fourth Circuit in *Consolidated Coal Co.*, 48 F.3d at 129, to be most persuasive. While requiring that a showing of evident partiality be made by evidence that is "direct, definite and capable of demonstration rather than remote, uncertain or speculative," see *id.* (internal quotation marks and citation omitted), as our Supreme Court has required, see *Silver City*, 1993-NMSC-037, ¶ 16, the Fourth Circuit has explained that "[t]o demonstrate evident partiality . . . , the party seeking [vacatur] has the burden of proving that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration." *Consolidated Coal Co.*, 48 F.3d at 129 (internal quotation marks and citations omitted). "This reasonable person standard[.]" the Fourth Circuit explained, "requires a showing of something more than the appearance of bias, but not the insurmountable standard of proof of actual bias." *Id.* (internal quotation marks and citation omitted). "Furthermore, the party asserting evident partiality must establish specific facts that indicate improper motives on the part of the arbitrator." *Id.* (internal quotation marks and citation omitted). "A party need not prove that the arbitrator, in fact, had improper motives." *ANR Coal Co., Inc. v. Cogentrix of N. Carolina, Inc.*, 173 F.3d 493, 500 (4th Cir. 1999). "To do so would make the standard for evident partiality equivalent to proving actual bias." *Id.* "But a party seeking vacatur must put forward facts that objectively demonstrate such a degree of partiality that a reasonable person could assume that the arbitrator had improper motives." *Id.* "The party challenging the award must prove the existence of evident partiality by clear and convincing evidence[.]" *Certain Underwriting Members of Lloyds of London*, 892 F.3d at 505, which is evidence that "instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition and the fact[-]finder's mind is left with an abiding conviction that the evidence is true." *State ex rel. Children, Youth & Families Dep't v. Michelle B.*, 2001-NMCA-071, ¶ 12, 130 N.M. 781, 32 P.3d 790 (internal quotation marks and citation omitted). Having set forth the standard we view to be the best fit to evaluate claims of evident partiality, which we now adopt, we consider whether sufficient facts support the district court's finding of evident partiality.

### 3. The District Court's Finding of Evident Partiality

{33} Appellants challenge the district court's finding of evident partiality. The district court's finding that Smoak demonstrated evident partiality was based on: (1) Smoak's "intentional disregard" for the district court's ruling limiting the arbitrability of Paragraph 24; and (2) Smoak's refusal to postpone the arbitration in the RB Arbitration V, despite the district court's express warning not to proceed to arbitration while the motion to appoint a new arbitrator was pending. After reviewing for substantial evidence, we will discuss Appellants' legal challenges to these findings. We will then turn to Smoak's more general argument that the district court is limited in the timing of, and the evidence considered in its vacatur ruling.

#### a. The District Court's Finding That Smoak Intentionally Disregarded Its Limitation on the Arbitrability of Paragraph 24

{34} The district court's finding that Smoak intentionally disregarded its limitation on the arbitrability of Paragraph 24 is supported by substantial evidence. After the district court ruled that arbitration concerning Paragraph 24-related costs, attorney fees, and expenses was limited to those costs, fees, and expenses "related to disputes between [Wife] and Red Boots . . . beginning with" Wife's motion and application filed in the district court on June 28, 2012, Smoak awarded Red Boots damages under Paragraph 24 for "litigation costs incurred by Red Boots from September of 2008 through June of 2012 amount[ing] to \$730,173.58" (Emphasis added.) Indeed, on several occasions during the hearing on Wife's motion to appoint a different arbitrator, Smoak conceded that he did not follow the district court's limitation.

{35} However, Appellants argue the district court's finding that Smoak intentionally disregarded the limitation on the arbitrability of Paragraph 24, made during the RB Arbitration I, was in error because the RB Award I "was res judicata on the [Paragraph] 24 claim," the district court wrongly considered the merits of the RB Award I, and the district court was prohibited from limiting the arbitrability of Paragraph 24 under its subject matter jurisdiction and the FAA. We acknowledge that our Supreme Court has held that "when arbitration affords opportunity for presentation of evidence and argument substantially similar in form and scope to judicial proceedings, the award should have the same effect on issues necessarily determined as a judgment has." *Rex, Inc. v. Manufactured Hous. Comm. of State of N.M.*, 1995-

NMSC-023, ¶ 12, 119 N.M. 500, 892 P.2d 947 (alteration, internal quotation marks, and citation omitted). However, *Rex* did not discuss, nor have Appellants cited supporting authority bearing upon, the issue of whether an arbitrator's conduct in a prior related arbitration proceeding can be considered in a finding of evident partiality. *See Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists.").

{36} As to Appellants' argument that the district court erred in considering the merits of the RB Award I, it is true that the NMUAA "neither empowers the district court to review an arbitration award on the merits of the controversy, nor grants the district court the authority to review an award for errors of law or fact." *Silver City*, 1993-NMCA-037, ¶ 7. However, that is not what took place here. The district court's finding of evident partiality was not predicated on the merits of the RB Award I, but on Smoak's decision to disregard a district court ruling and order Wife to pay costs in Husband's favor, evidence from which a reasonable person would have to conclude that Smoak had improper motives to favor Husband and oppose Wife.

{37} Red Boots also challenges the district court's limitation on the arbitrability of Paragraph 24 during the RB Arbitration I on grounds that the district court lacked jurisdiction and that the FAA precluded such a ruling. However, Red Boots misstates the issue involved in the district court's finding of evident partiality, which is not whether Smoak contravened a valid court ruling and was therefore legally mistaken, but whether Smoak ignored a district court order from which neither Smoak nor Red Boots appealed or moved to reconsider. And while the district court generally cannot infer evident partiality from adverse evidentiary rulings, *see id.* ¶ 18, it did not base its finding on such grounds. Indeed, in its order denying Smoak's and Red Boots' motions to reconsider, the district court explained that the question of whether its order limiting the arbitrability of Paragraph 24 "was within the [district c]ourt's authority or was incorrect is irrelevant to the [district c]ourt's current ruling." Instead, the district court relied upon the fact "that [Smoak] did not attempt to appeal or move for reconsideration of the [district c]ourt's determination and in [RB Award I] expressly rejected that determination resulting in millions of dollars being awarded against [Wife] and in favor of Red Boots, of which [Husband] had the greater interest, in the years following."

{38} Insofar as Red Boots argues for the applicability of the FAA outside the context explained above, we first note that the Parties expressly agreed that the NMUAA shall govern arbitration under the Settlement Agreement. *See Strausberg v. Laurel Healthcare Providers, LLC*, 2013-NMCA-032, ¶ 26, 304 P.3d 409 ("New Mexico respects party autonomy; the law to be applied to a particular dispute may be chosen by the parties through a contractual choice-of-law provision." (internal quotation marks and citation omitted)). Nonetheless, Red Boots fails to explain to what extent the FAA should apply. We therefore decline to review this argument further, *see Headley*, 2005-NMCA-045, ¶ 15 ("We will not review unclear arguments, or guess at what [a party's] arguments might be."), and proceed to review the district court's finding that Smoak proceeded with the RB Arbitration V notwithstanding the district court's warning.

#### b. The District Court's Finding that Smoak Disregarded Its Warning Not To Proceed with the RB Arbitration V

{39} The district court's finding that Smoak disregarded its warning not to proceed to arbitration is supported by the district court's unambiguous statement: "Conducting further arbitration proceedings while there is a pending motion before this Court to appoint a different arbitrator may be considered sufficient cause for postponement. Therefore, if . . . Smoak chooses to proceed, on a proper motion any award may be vacated by this Court [under Section 44-7A-24(a)(3)]." In spite of the district court's admonition, Smoak proceeded with the RB Arbitration V just days before the scheduled hearing on Wife's motion.

{40} Appellants argue there is no legal basis from which the district court could find evident partiality based on Smoak's refusal to postpone the RB Arbitration V. Moreover, Smoak argues that his refusal to postpone arbitration was necessary to comply with Section 44-7A-16(c) (providing that the arbitrator "may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date"), and the Settlement Agreement, which requires the arbitrator to set arbitration within sixty days "after notice by the complaining party of the demand for arbitration." Here, again, Appellants misstate the issue, which is not whether the NMUAA expressly provides that an arbitrator's refusal to postpone arbitration upon showing of sufficient cause for postponement is a sufficient basis for a finding of evident partiality. Nor is the issue whether Smoak's refusal to postpone arbitration was done so

as to comply with the law and Settlement Agreement, an argument which is belied by the record.<sup>3</sup> Rather, the issue is whether Smoak's conduct in refusing to comply with the district court's admonition and proceeding to arbitration while Wife's motion to remove him as arbitrator was pending in the district court is evidence from which a reasonable person would have to conclude that Smoak was partial to the other party to the arbitration.

**c. Limitations on the Evidence Considered in the District Court's Vacatur**

{41} Smoak challenges the district court's vacatur, arguing the district court must wait until after an award is entered before vacating the award and that the district court's review for evident partiality is limited to the arbitrator's disclosures, to conduct occurring during the arbitration from which the vacated award originates, and to conduct occurring "in the execution of" the vacated award.

{42} Smoak first argues that the district court "cannot consider vacatur or removal of an arbitrator for partiality before [alternative dispute resolution] commences." We agree that vacatur of an arbitration award cannot occur unless and until an arbitration award is issued. See Section 44-7A-24(a) (providing circumstances under which the district court "shall vacate an award made in the arbitration proceeding" (emphasis added)). However, as we will explain further below, we disagree that the district court erred in prospectively disqualifying Smoak and Hatch from future arbitrations under the Settlement Agreement.

{43} Smoak also argues the district court's review of evident partiality was limited to whether he disclosed his interests and relationships that might affect his partiality. To be sure, other jurisdictions have recognized that the failure to disclose information that would be required under their equivalents to Section 44-7A-13 may provide evidence to support a finding of evident partiality. E.g., *Scandinavian Re-insurance Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 72 (2d Cir. 2012) ("Among the circumstances under which the evident partiality standard is likely to be met are those in which an arbitrator fails to disclose a relationship or interest

that is strongly suggestive of bias in favor of one of the parties."); *Narayan v. Assoc. of Apartment Owners of Kapalua Bay Condo.*, 398 P.3d 664, 673 (Haw. 2017) ("Evident partiality may be found in two situations: when an arbitrator fails to make necessary disclosures to the parties, or when additional facts show actual bias or improper motive, even if the arbitrator makes the necessary disclosures."). Smoak relies on Section 44-7A-13(d), which provides a presumption of evident partiality under Section 44-7A-24(a)(2) when a neutral arbitrator fails to disclose certain interests or relationships. However, Smoak cites no authority to support his argument that the district court's review of evident partiality is exclusively limited to such evidence, and we therefore assume no such authority exists. See *Curry*, 2014-NMCA-031, ¶ 28 ("Where a party cites no authority to support an argument, we may assume no such authority exists").

{44} Nor has Smoak cited authority limiting the district court's consideration of an arbitrator's conduct to that which occurs during the arbitration from which the vacated award originates. See *id.* Instead, Smoak cites *Fernandez v. Farmers Insurance Company of Arizona*, 1993-NMSC-035, 115 N.M. 622, 857 P.2d 22, to support the argument that vacatur of an arbitration award "should be based on conduct or events that occur in the execution of that award. In *Fernandez*, our Supreme Court, citing NMSA 1978, Sections 44-7-12, and -13 (1971, repealed 2001), held that "[t]he district court's review thus is generally limited to allegations of fraud, partiality, misconduct, excess of powers, or technical problems in the execution of the award." 1993-NMSC-035, ¶ 9. Our reading of *Fernandez* and the relevant statutory authority, however, leads us to conclude that our Supreme Court's use of the phrase "in the execution of the award" was not intended to limit the scope of a district court's review for evident partiality, but was directed at the modification or correction of an arbitration award under Section 44-7-13. Indeed, while Section 44-7-13 appeared to concern matters of technical issues in the execution of an arbitration award, Section 44-7-12 neither appears to have contemplated nor limited by its language the evidence the district

court may consider in evaluating claims of evident partiality. Compare § 44-7-13 (permitting the modification or correction of an arbitration award where there were errors in the arbitration award or with the arbitrator's consideration of matters not submitted to them), with § 44-7-12 (listing conduct by the arbitrator which are grounds for vacating an arbitration award). We will therefore not read into Section 44-7-12, nor its amended equivalent Section 44-7A-24, language which is not there. See NMSA 1978, § 12-2A-19 (1997) ("The text of a statute or rule is the primary, essential source of its meaning."); *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 9, 148 N.M. 426, 237 P.3d 728 ("The first guiding principle in statutory construction dictates that we look to the wording of the statute and attempt to apply the plain meaning rule, recognizing that when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." (alteration, internal quotation marks, and citation omitted)); *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236 (explaining that "we will not read into a statute or ordinance language which is not there, particularly if it makes sense as written" (internal quotation marks and citation omitted)).

{45} Based on the foregoing, we conclude the district court's findings were supported by substantial evidence of a clear and convincing nature and that its finding of evident partiality was not an abuse of discretion. Indeed, Smoak's repeated disregard for the district court's rulings, in favor of Husband and against Wife, is direct, definite, and demonstrative evidence from which a reasonable person would have to conclude that Smoak was partial and had improper motives in favor of Husband and against Wife. Having concluded the district court did not err in vacating the RB Award II, we turn to the question of whether it erred in prospectively disqualifying Smoak and Hatch from further arbitrations under the Settlement Agreement.

**C. The District Court Did Not Err in Prospectively Disqualifying Smoak and Hatch**

<sup>3</sup>Smoak argues November 18, 2016, was the latest date on which he could have scheduled arbitration while remaining in compliance with the Settlement Agreement and thus Section 44-7A-16(c). However, the Settlement Agreement provides that "[t]he arbitrator shall set the arbitration within sixty (60) days after notice by the complaining party of the demand for arbitration." Although Smoak cites several points in the record purportedly demonstrating his scheduling of arbitration following a demand for arbitration, these citations demonstrate Smoak's attempt to schedule mediation after a demand for mediation was made as well as his scheduling of arbitration based on the demand for mediation, not arbitration. The earliest point at which we can find a demand for arbitration that would trigger the sixty-day limitation period under the Settlement Agreement is October 10, 2016. Based on the record and citations provided to this Court, we are unable to conclude that November 18, 2016, was the final date on which Smoak could have scheduled arbitration. See *N.M. Cattle Growers' Assoc. v. N.M. Water Quality Control Comm'n*, 2013-NMCA-046, ¶ 16, 299 P.3d 436 (recognizing that we will not search the record for facts to support a party's arguments).

{46} Appellants argue the district court was without authority to prospectively disqualify Smoak and Hatch from future arbitrations conducted pursuant to the Settlement Agreement. Here, the district court prospectively disqualified Smoak and Hatch under the court's equitable authority. "The district courts of this State have broad jurisdiction—legal and equitable, original and appellate." *State ex rel. State Highway & Transp. Dep't of N.M. v. City of Sunland Park*, 2000-NMCA-044, ¶ 10, 129 N.M. 151, 3 P.3d 128. "[O]nly if a statute so provides with express language or necessary implication will New Mexico courts be deprived of their inherent equitable powers." *Sims v. Sims*, 1996-NMSC-078, ¶ 30, 122 N.M. 618, 930 P.2d 153. "[W]e will not disturb the district

court's exercise of its equitable jurisdiction on appeal [absent an abuse of discretion]" *City of Sunland Park*, 2000-NMCA-044, ¶ 10.

{47} Although the NMUAA does not expressly provide for the prospective disqualification of arbitrators, it does indicate an apparent authorization of such actions. See § 44-7A-12(b) (defining circumstances under which an individual "may not serve as an arbitrator required by an agreement to be neutral"); § 44-7A-13(b) (permitting vacatur of an arbitration award when "a party timely objects to the appointment or continued service of the arbitrator based upon" the arbitrator's required disclosures). Significantly, the NMUAA does not expressly state or necessarily imply that district courts are prohibited

from exercising their equitable authority to prospectively disqualify arbitrators for evident partiality. We therefore conclude the district court did not abuse its discretion in disqualifying Smoak and Hatch based on its finding of evident partiality.

### III. CONCLUSION

{48} Finding no error by the district court, we affirm.

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

**WE CONCUR:**  
**J. MILES HANISEE, Chief Judge**  
**M. MONICA ZAMORA, 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-029**  
No. A-1-CA-37558 (filed February 4, 2020)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
SARITA JONES,  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**  
MATTHEW E. CHANDLER, District Judge

Released for Publication June 23, 2020.

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## Opinion

**Briana H. Zamora, Judge.**

{1} At issue in this appeal is the district court's refusal to instruct the jury on Sarita Jones's (Defendant's) theory that she acted in defense of another against use of excessive force by a police officer. We hold for the first time in New Mexico that defense of another against use of excessive force by a police officer is a viable defense, and we apply the standard announced in *State v. Ellis*, 2008-NMSC-032, 144 N.M. 253, 186 P.3d 245, involving self-defense claims against police officers. We conclude that Defendant was entitled to a defense of another instruction against the use of excessive force by police officers directed at her son. We thus reverse Defendant's convictions for battery upon a peace officer (NMSA 1978, § 30-22-24 (1971)), and resisting or abusing a peace officer (NMSA 1978, § 30-22-1(D) (1981)) and remand this case to the district court for a new trial.

### BACKGROUND

{2} The following facts are derived from testimony and video evidence presented at trial. Officers John Hong and Raphael

Aguilar were dispatched to Defendant's home in reference to a domestic dispute. Officer Hong arrived first, and as he approached the house, he saw the front door slam shut and heard yelling from inside the home. After knocking loudly and announcing his presence, Officer Hong asked Defendant and her two sons to step outside of the house for safety reasons. Although they were resistant at first, all three eventually came outside and stood on the porch. While Officer Hong was attempting to ascertain their identities and investigate the situation, Defendant's son, Corey, stepped inside the house and closed the door. Almost immediately, Corey opened the door, yelled at his brother and Sergeant Aguilar, who had just arrived and was walking across the front lawn. Sergeant Aguilar immediately pulled his taser and ordered Corey to the ground, advancing into the house as Corey retreated with his hands raised. Sergeant Aguilar knew that Corey had a warrant for his arrest and intended to arrest Corey because of the warrant, but he did not convey this information to Corey or Defendant at the time of the arrest. However, Sergeant Aguilar testified that another officer had informed Corey and Defendant a "couple

weeks" prior that Corey had an outstanding warrant for his arrest. As Sergeant Aguilar advanced towards Corey, Officer Hong drew his taser as well and pointed it at Corey. Defendant testified that when she saw the officers with tasers drawn and pointed at her son, she believed the weapons were guns and attempted to place herself between the officers and her son. Defendant grabbed Sergeant Aguilar's wrist. Sergeant Aguilar fired the taser at Corey but struck Defendant instead. Officer Hong's lapel video captured the incident, all of which occurred within a few minutes.

{3} At trial the district court denied Defendant's request for a defense of another jury instruction. Defendant was found guilty of battery upon a peace officer and resisting or abusing an officer. Defendant appeals her convictions.

### DISCUSSION

#### I. The District Court Erred in Denying Defendant's Defense of Another Instruction

{4} At the outset, we note that the district court denied Defendant's request for a defense of another jury instruction finding it was not a viable defense because the "law does not allow" for defending another against excessive force by a police officer. We disagree and hold that defense of another against use of excessive force by a police officer is a viable defense as set forth below.

#### A. Defense of Another Against Excessive Police Force

{5} Defendant argues that under the facts and circumstances of this case she was entitled to a defense of another instruction to the same extent that Corey would have been entitled to a self-defense instruction. The State agrees on the law, specifying that the controlling case on use of self-defense against a police officer, *Ellis*, 2008-NMSC-032, should apply when a defense of another instruction is requested in the context of alleged excessive police force.<sup>1</sup>

{6} We agree with the parties that controlling case law on use of self-defense against a police officer applies with full force in this case, involving defense of another. New Mexico "[c]ase law and commentary treat 'defense of another' and 'self-defense' as virtually identical for purposes of analysis." *State v. Sandoval*, 2011-NMSC-022, ¶ 16, 150 N.M. 224, 258 P.3d 1016 (internal quotation marks and citation omitted); *State v. Gallegos*, 2001-NMCA-021, ¶ 7, 130 N.M. 221, 22 P.3d

<sup>1</sup> Although Defendant contends that the standard used in *Ellis* is inappropriate because it is based on a civil standard, she concedes that this Court is bound by our Supreme Court's decision in *Ellis* and "we do not have the authority to overrule it." *Romero v. Laidlaw Transit Servs., Inc.*, 2015-NMCA-107, ¶ 15, 357 P.3d 463. Thus, we do not address this argument.

689 (using “self-defense” interchangeably with “defense of another”); *State v. Duarte*, 1996-NMCA-038, ¶ 3, 121 N.M. 553, 915 P.2d 309 (relying on self-defense theory to analyze instructions for defense of another); see also UJI 14-5182 NMRA comm. cmt. (referring specifically to UJI 14-5181 NMRA (self-defense) in the defense of another instruction); cf. NMSA 1978, § 30-2-7 (1963) (distinguishing justifiable homicide without differentiating between defense of self and defense of family or others, in certain circumstances). Because we analyze self-defense and defense of another claims similarly, we see no reason, and the parties have provided us none, why the defense of another defense would be unavailable to a defendant when an officer uses excessive force. See *State v. Orosco*, 1982-NMCA-181, ¶ 10, 99 N.M. 180, 655 P.2d 1024 (acknowledging that the defendant had successfully raised defense of another in response to a misdemeanor charge for resisting and abusing an officer based on the defendant’s action in protecting his father, and that this identical defense could be used to defeat the battery upon a police officer charge arising from the same incident). We thus look to New Mexico law on self-defense against the use of excessive force by a police officer to determine the availability of the defense of another defense in this context.

{7} In New Mexico, a person has a limited right of self-defense against a police officer using excessive force. See *State v. Kraul*, 1977-NMCA-032, ¶ 29, 90 N.M. 314, 563 P.2d 108 (holding that a person has a limited right “to defend oneself from a police officer[.]” regardless of “whether the attempted arrest is lawful or unlawful”). In *Ellis*, our Supreme Court outlined the standard to apply in cases involving self-defense claims against police officers. See generally 2008-NMSC-032, ¶¶ 14-42. The Court concluded that the right to self-defense against a police officer is not absolute; it does not exist if the officer is “using necessary force to effect an arrest.” *Id.* ¶ 16 (internal quotation marks and citation omitted). However, if “some evidence of excessive force” is presented, an

“instruction on self-defense is required.” *Id.* (internal quotation marks and citation omitted). Given the similar treatment of self-defense and defense of another by our courts, we apply the *Ellis* standard, as the parties have done, to determine whether a jury should be instructed that a defendant was defending another against the use of excessive force by a police officer.<sup>2</sup>

#### **B. Application of *Ellis* Standard in Defendant’s Case**

{8} Having concluded that the *Ellis* standard applies in determining whether a jury should be instructed on defense of another, we apply it to the facts of this case. The propriety of jury instructions is a mixed question of law and fact that we review de novo. *State v. Salazar*, 1997-NMSC-044, ¶ 49, 123 N.M. 778, 945 P.2d 996. “When evidence at trial supports the giving of an instruction on a defendant’s theory of the case, failure to so instruct is reversible error.” See *State v. Brown*, 1996-NMSC-073, ¶ 34, 122 N.M. 724, 931 P.2d 69. “We view the evidence in the light most favorable to the giving of the requested instruction.” *State v. Hill*, 2001-NMCA-094, ¶ 5, 131 N.M. 195, 34 P.3d 139. If a defendant presents any evidence, even slight, to support a jury instruction, he is entitled to the instruction. *Id.* ¶ 8.

{9} A defendant is only entitled to a defense of another jury instruction if an officer used force against another that was unreasonable and unnecessary. See *Ellis*, 2008-NMSC-032, ¶ 17. “Generally, the question of the reasonableness of the actions of the officer is a question of fact for the jury.” *Id.* (alteration, omission, internal quotation marks, and citation omitted). However, a court may determine as a matter of law that reasonable minds of the jurors could not differ as to whether the officer used excessive force. *Id.* To make this determination, the court must evaluate whether an objectively reasonable officer on the scene would have acted similarly in light of the facts and circumstances of the case, including the severity of the crime at issue, whether the suspect poses a threat to the safety of others, and whether the suspect is actively resisting arrest or

attempting to evade arrest by flight. *Id.* ¶ 26. The objective standard, based on a “reasonable officer’s opinion about the use of force,” takes into consideration the “fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* ¶¶ 26, 28 (internal quotation marks and citation omitted). “The [s]tate must prove to the jury that the officer met an objectively reasonable standard in employing force against the defendant.” *Id.* ¶ 31.

{10} Applying the *Ellis* standard to the facts here, we conclude that reasonable minds could differ as to whether the officers used excessive force against Corey. We cannot evaluate the severity of the crime that was the basis for the arrest warrant because the State did not present any evidence as to the nature of the original crime, let alone whether the officers had reason to be wary for his safety. And, the State only put on evidence that the officers were called because of domestic issues and yelling within the home. Likewise there was insufficient evidence that Corey posed a threat to the officers. While unquestionably Corey was arguing loudly with his family and screaming profanities, both officers testified that Corey never threatened anyone. Indeed, Sergeant Aguilar testified that even though Corey was difficult to deal with, Corey was not threatening during this incident and was never threatening during past encounters. Although Officer Hong testified that he was somewhat concerned that Corey could have retrieved a weapon when he briefly went inside and closed the door, he never testified to acting on this concern. Finally, at the time Sergeant Aguilar drew and pointed his taser at Corey and advanced on him, Corey had not yet resisted or evaded arrest. Based on these facts, we conclude that the reasonableness of the officers’ actions remained a “question of fact for the jury.” *Ellis*, 2008-NMSC-032, ¶ 17 (internal quotation marks and citation omitted).

{11} The State argues that like the defendant in *Ellis*, Corey “repeatedly disobeyed

<sup>2</sup>Our conclusion is reinforced by similar holdings in other jurisdictions that have recognized the right of defense of another against the use of excessive force by a police officer. See, e.g., *People v. Bailey*, 439 N.E.2d 4, 9 (Ill. App. Ct. 1982) (recognizing “defense of another against excessive force in the effectuation of an arrest”); *Commonwealth v. Miranda*, 928 N.E.2d 664, 668-69 (Mass. App. Ct. 2010) (holding that the defendant was entitled to an instruction on defense of another on her interaction with a state trooper engaged in a scuffle with a third party); *Batson v. State*, 941 P.2d 478, 483 (Nev. 1997) (“hold[ing] that a person may defend another only where that person has witnessed a police officer’s unlawful and excessive use of force, and only where the individual being ‘rescued’ is facing imminent and serious bodily harm at the hands of the police officer”); *State v. Gelinas*, 417 A.2d 1381, 1386 (R.I. 1980) (“[W]e hereby adopt the rule that one who comes to the aid of an arrestee must do so at his own peril and should be excused only when the individual would himself be justified in defending himself from the use of excessive force by the arresting officer.”); *Letson v. State*, 805 S.W.2d 801, 805 (Tex. App. 1990) (providing that defense of another against a police officer requires “evidence that a police officer was using or attempting to use excessive force”). The jurisdictions that have recognized defense of another against excessive police force are “split in terms of the circumstances under which an intervener may use force in defending another from excessive police force.” Kindaka Sanders, *A Reason to Resist: The Use of Deadly Force in Aiding Victims of Unlawful Police Aggression*, 52 San Diego L. Rev. 695, 732 (2015).

the [officer's] commands, . . . actively resisted the [officer's] attempts to regain control of the situation, [and] flaunted the [officer's] authority[.]" *Id.* ¶ 40. We disagree with this comparison. In *Ellis*, the defendant was "both physically and verbally hostile" towards the police officer. *Id.* ¶ 37. The defendant was aggressively approaching the officer, and the defendant "was aware that his actions affected" the officer because the police officer "was shaking during the encounter[.]" *Id.* ¶ 38 (internal quotation marks omitted). Here, Corey did not approach Sergeant Aguilar and retreated with his hands raised when the officer drew his taser and advanced towards him. While Corey was clearly being uncooperative with Officer Hong, Sergeant Aguilar gave Corey mere seconds to comply with his commands. Finally, the video indicates that Officer Hong was on the path to gaining control of the situation before Sergeant Aguilar arrived because the other members of the household had calmed down and were communicating with him. Defendant's case is distinguishable from *Ellis*.

{12} For the reasons stated above, we conclude the district court erred by failing to instruct the jury on defense of another against the use of excessive force by a police officer.

## II. Double Jeopardy Challenge

{13} Defendant argues that her convictions for battery upon a peace officer and resisting or abusing a peace officer violate the double jeopardy guarantee against multiple punishments for the same conduct and that the district court's "merger" of the two offenses was insufficient to remedy the violation. The State concedes this error. Because this issue is likely to arise again on retrial if Defendant is convicted of both offenses, we briefly address Defendant's claim. If the State relies on unitary conduct for both convictions, Defendant's convictions for battery upon a peace officer, § 30-22-24, and resisting or abusing a peace officer, § 30-22-1(D), would violate double jeopardy. *See State v. Ford*, 2007-NMCA-052, ¶¶ 18-23, 141 N.M. 512, 157 P.3d 77 (concluding convictions, based on unitary conduct, for battery upon a peace officer, § 30-22-24, and resisting

or abusing a peace officer, § 30-22-1(D), violate double jeopardy because resisting or abusing a peace officer is a lesser-included offense of battery upon a peace officer). The appropriate remedy for such a double jeopardy violation is vacation of the lesser offense of resisting or abusing a peace officer. *See State v. Santillanes*, 2001-NMSC-018, ¶ 28, 130 N.M. 464, 27 P.3d 456 ("[T]he general rule requires that the lesser offense be vacated in the event of impermissible multiple punishments." (internal quotation marks and citation omitted)).

## CONCLUSION

{14} For the foregoing reasons, we reverse Defendant's convictions for battery upon a peace officer and resisting or abusing a peace officer and remand for a new trial consistent with this opinion.

{15} **IT IS SO ORDERED.**  
**BRIANA H. ZAMORA, Judge**

**WE CONCUR:**  
**JENNIFER L. ATTREP, Judge**  
**MEGAN P. DUFFY, Judge**



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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](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### Deputy City Attorney

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. Out-side 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](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### 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](mailto:MRenteria@da.state.nm.us).

### Assistant City Attorney for Municipal Affairs Division

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Affairs Division. The department's team of attorneys provides a broad range of general counsel legal services to the Mayor's Office, City Council, various City departments, boards, commissions, and agencies. The legal services provided by the division includes, but are not limited to, drafting legal opinions, reviewing and drafting ordinances and executive/administrative instructions, reviewing and drafting contracts, 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, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing skills are essential. Five (5)+ years' experience is preferred and 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](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### Assistant City Attorney for Office of Civil Rights

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Office of Civil Rights. 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 receiving, documenting, investigating, and addressing reported civil rights and human rights violations. The position will be responsible for interaction with the Albuquerque Human Rights Board, various other City departments, boards, commissions, and agencies. 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, providing advice on City ordinances and State/Federal statutes and regulations, providing general advice and counsel on day-to-day operations, and participate in court proceedings regarding enforcement as needed. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as licensed attorney; experience with government agencies, policy writing, civil rights enforcement; strong commitment to social justice, policy advocacy and research. Candidates 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](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### Associate Attorneys

Mynatt Martínez Springer P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking associate attorneys with 0-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting 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](mailto:rd@mmslawpc.com).

### **Associates and Mid-Career Lawyers Sought**

Our top-rated regional litigation defense firm is expanding in Albuquerque and we are looking for additional lawyers to join our busy practice, whether you have been practicing for a year or two, or more than a couple of decades. We have opportunities for associates who want to hit the ground running with interesting cases and strong mentors. Our growth also means that there are positions for more senior lawyers interested in a lateral shareholder move such as by joining their practice to our infrastructure and building on an existing client base. Salaries for either role are competitive with a full benefits package, straightforward partner/shareholder track and a casual work environment. All resumes and cover letters can be sent directly to Cristina at [cray@raylaw.com](mailto:cray@raylaw.com).

### **County Attorney**

Otero County Administration, Alamogordo, New Mexico is seeking a County Attorney. This position serves as in-house counsel, legal advisor to the Board of County Commissioners and to the County Manager. Represents the County in all matters not assigned to insurance counsel; investigates, prepares and negotiates contracts and civil cases; conducts administrative hearings and represents the County in administrative proceedings. Please see the full position description along with instructions on how to apply on our website <https://www.co.otero.nm.us/Jobs.aspx>. Please contact Cassie Green, HR Director at 575-437-7427 or [cgreen@co.otero.nm.us](mailto:cgreen@co.otero.nm.us) for any questions.

### **Associate Attorney**

deGrauw Law Firm, PC, an AV rated civil litigation firm, is looking to add an associate attorney. Please visit our website at [dglaw-firmmpc.com](http://dglaw-firmmpc.com) to learn more about our practice. We are looking for well-rounded, self-starters that have good writing and communications skills and are ready for depositions, hearings and trial. A repertoire of (good) jokes is a plus. We offer competitive pay and benefits, as well as flexibility. Please email your resume (and sample jokes) to [drew@dglawfirmmpc.com](mailto:drew@dglawfirmmpc.com).

### **New Mexico Judicial Branch Judicial Standards Commission Executive Director (At Will) Position Announcement**

The Judicial Standards Commission (JSC) is currently accepting resumes from prospective candidates for the position of Executive Director. The position is exempt (not classified) and reports directly to the Judicial Standards Commission. The salary range for this position is \$120,000 to \$130,000 hourly and will be commensurate with experience. The JSC's Executive Director acts as the chief executive officer of the agency. In that capacity, the Executive Director is responsible for all aspects of agency operations including all investigations, prosecutions, and trials as may be deemed necessary by the Commission; the preparation, management, and administration of agency appropriations, contracts, and funds; the hiring and supervision of agency staff; and the development of policies and procedures for the effective management of the agency and other additional duties as assigned by the Commission. The position also requires supervision of all matters requiring prosecution of formal disciplinary charges as approved by the Commission; the supervision and preparation of all aspects of litigation before the Commission and before the New Mexico Supreme Court in hearings or other matters involving the Commission's recommendation of discipline, retirement, or removal of a judge in accordance with the New Mexico Constitution Article VI Section 32. Admission to the New Mexico State Bar is required at the time of hire. The position requires strong legal research, writing and communication skills, as well as experience in managing professional staff. A minimum of ten (10) years of experience in the practice of law is required, of which five (5) years must have been in a staff supervisory role. A high level of trustworthiness, discretion, and sound judgment is required for the position. Resume with cover letter, writing sample, and three (3) professional references must be received at the offices of the JSC by 4:00 p.m., on August 31, 2021. Position start date is set for November 29, 2021. Materials should be sent to the attention of Joyce Bustos, Chair-Hiring Committee, at 6200 Uptown Blvd. NE, Suite 320 Albuquerque, NM 87110-4159.

### **Trial Attorney 1st Judicial District Attorney**

The First Judicial District Attorney's Office is seeking an experienced attorney for the Santa Fe Office. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to [1stDA@da.state.nm.us](mailto:1stDA@da.state.nm.us).

### **Assistant City Attorney**

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

### **Senior Trial Attorney Trial Attorney Assistant Trial Attorney**

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

### **Associate Attorney**

Ortiz & Zamora, LLC, is growing and seeks a motivated New Mexico licensed attorney for an associate or senior associate position stationed in its Santa Fe office. Education law experience is preferred and civil litigation experience is a plus. The attorney will field daily school client inquiries, will manage an active civil litigation docket, will work directly with partners and other attorneys to develop and implement response and litigation strategies. Experience with presentations to clients, discovery, motion practice, hearings, and trial preparation desired. Salary D.O.E. Please email your resume to [nadine@ortiz-zamora.com](mailto:nadine@ortiz-zamora.com).



### Senior Assistant City Attorney

Fulltime professional position, involving primarily civil law practice. Under the administrative direction of the City Attorney, represents and advises the City on legal matters pertaining to municipal government and other related duties, including misdemeanor prosecution, civil litigation and self-insurance matters. Juris Doctor Degree AND three year's experience in a civil law practice; at least one year of public law experience preferred. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico, and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at [www.las-cruces.org](http://www.las-cruces.org). Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed. SALARY: \$73,957.99 - \$110,936.99 / Annually OPENING DATE: 07/07/2021 CLOSING DATE: Continuous

### 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](mailto:phxrecruiter@lewisbrisbois.com) and indicate "New Mexico Paralegal Position". All resumes will remain confidential.

### Paralegal/Legal Assistant

Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be friendly, honest, highly motivated, well organized, detail oriented, proficient with computers and possess excellent verbal and written skills. Duties include requesting & reviewing medical records, send out Letter of Protection & Letter of Representation, opening claims with insurance companies and preparing demand packages as well as meeting with clients. We are searching for an exceptional individual with top level skills. We offer a retirement plan funded by the firm, health insurance, paid vacation, and sick leave. Salary and bonuses are commensurate with experience. Please submit your cover letter and resume to [personalinjury2020@gmail.com](mailto:personalinjury2020@gmail.com)

### CLE Program Coordinator

New Mexico State Bar Foundation Center for Legal Education seeks a full-time, Continuing Legal Education (CLE) Program Coordinator. The State Bar Foundation is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community. The Center for Legal Education offers a full range of educational services including live seminars, live webcasts, live replays, national series teleseminars and online self-study videos. Visit <http://www.sbnm.org/CLE-Events>. The successful applicant must have excellent project administration, customer service, computer, and communication skills. Must be able to manage multiple projects and deadlines. Minimum high school diploma plus 1 year of related work experience required. Generous benefits package. \$16 per hour, depending on experience and qualifications. EOE. To be considered, submit a cover letter and resume to [HR@sbnm.org](mailto:HR@sbnm.org). Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

### Litigation Paralegal

Experienced full-time litigation paralegal wanted for busy downtown Santa Fe law firm. This position involves the performance of a variety of paralegal duties, including, but not limited to, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings. Knowledge of State and Federal District Court rules and filing procedures, performing legal research. Familiarity with the use of electronic databases and legal-use software technology a plus. Must be organized and detail-oriented, and the ability to multitask in addition to being a team player. Competitive salary and benefits provided. Please send your resume to [tgarduno@montand.com](mailto:tgarduno@montand.com).

### Legal Assistant

Montgomery & Andrews, P.A., is seeking an experienced legal assistant with good interpersonal skills as well as clerical and computer skills. Applicant must be organized, detail-oriented, able to multitask and have good verbal and written communication skills. Firm offers a congenial work environment, competitive compensation and a benefit package. Please send resume to [tgarduno@montand.com](mailto:tgarduno@montand.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](mailto:e_info@abrfirm.com) or Fax to 505-764-8374.

### Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$20.69 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$21.71 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

### Paralegal/Legal Assistant Talent Sought

Regional AV rated civil defense firm seeks an experienced litigation support professional for its uptown Albuquerque office. Ideal candidates should have a minimum of three years of experience, understand NM civil procedure and be able to work well in an often fast-paced environment with a large case load. We offer a competitive salary and full benefits, and all the perks of a friendly, supportive office setting. All resumes and cover letters can be sent directly to Cristina at [cray@raylaw.com](mailto:cray@raylaw.com).

### Equity in Justice Coordinator

The State Bar of New Mexico invites passionate, professional, and organized applicants to join our team as a full-time Equity in Justice Coordinator. The position will strategize for and implement diversity and equity in justice projects/initiatives. The position works alongside various groups and State Bar members engaged in eliminating biases and inequalities within New Mexico's justice system and promoting participation by minorities in State Bar programs and activities. Bachelor's degree in a related field and two or more years of experience with diversity initiatives or advocacy is required. Compensation commensurate with experience and qualifications. Qualified applicants should submit a cover letter and resume to [HR@sbnm.org](mailto:HR@sbnm.org). Visit <https://www.sbnm.org/News-Publications/Career-Center/State-Bar-Jobs> for full details and application instructions.

### Legal Secretary/Legal Assistant

Sole practitioner seeking experienced Legal Secretary/Legal Assistant. Duties include: preparation and filing of pleadings, maintenance of files, client communications, and basic bookkeeping. Must be highly organized and motivated and proficient in Word, Word Perfect, Adobe and familiar with State and Federal Court filing systems. Will train on office systems and procedures. Salary commensurate with experience. Send Resume with cover letter to [seligmanlaw@gmail.com](mailto:seligmanlaw@gmail.com).

### Full-time Paralegal

Immediate opening in downtown Albuquerque law firm for a full-time paralegal. Prior experience working in family law preferred, but not required. Spanish speaking abilities a plus. This position requires strong communication and organizational skills as well as the ability to effectively multi-task. Salary negotiable but largely based on experience. Competitive benefits offered. Please email resume and writing sample to [COBrien@familylawfirm.com](mailto:COBrien@familylawfirm.com)

## Service

### Forensic Genealogist

Certified, experienced genealogist: find heirs, analyze DNA tests, research land grants & more. [www.marypenner.com](http://www.marypenner.com), 505-321-1353.

### Legal Writer/Consultant

Briefs, motions, appeals, discovery, witness and depo prep, and case assessments. Civil litigation attorney with 17 years of experience successfully representing plaintiffs and defendants in state and federal court accepting assignments for legal research and writing projects big and small. Also available for consulting and human resource issues. Contact [rz@thelawgroup.com](mailto:rz@thelawgroup.com) or call 505-306-4246 to discuss. Fees negotiable.

## Office Space

### 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](mailto:davidm@osolawfirm.com)

### 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. Referral of cases is possible. Lease amount is \$1,000.00 per month. Please contact Kathy at either (505) 243-3500 or [ksmith@branchlawfirm.com](mailto:ksmith@branchlawfirm.com) to schedule a tour.

### Office for Rent

820 Second Street NW, office for rent, two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170

## Miscellaneous

### Want To Purchase

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

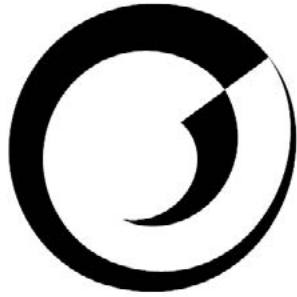
## 2021 Bar Bulletin Publishing and Submission Schedule

**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](mailto:mulibarri@sbnm.org)**

The publication schedule can be found at  
**[www.sbnm.org](http://www.sbnm.org).**



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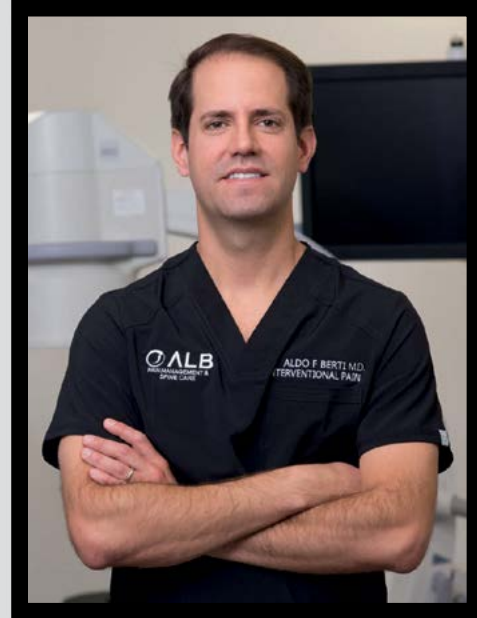
## PAIN MANAGEMENT & SPINE CARE

[www.albpainclinic.com](http://www.albpainclinic.com)

**ALB Pain Management & Spine Care (APMSC) is dedicated to the diagnosis and treatment of pain conditions related to an automobile accident. APMSC specializes in interventional pain medicine and neurology. Our providers are dedicated to restoring the health and comfort of our patients. Our mission is to provide the best evidence-based treatment options in an environment where patients will experience first-class medical care with compassionate staff.**

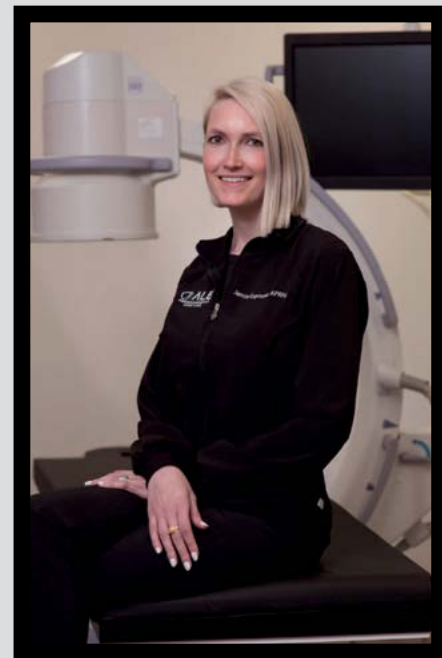
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