

BAR BULLETIN

August 11, 2021 • Volume 60, No. 15

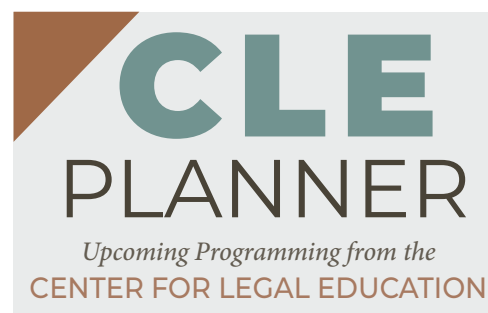


Las Conchas Trail, by Daniel Macy

www.instagram.com/dlawrencemacy

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ALB

PAIN MANAGEMENT & SPINE CARE

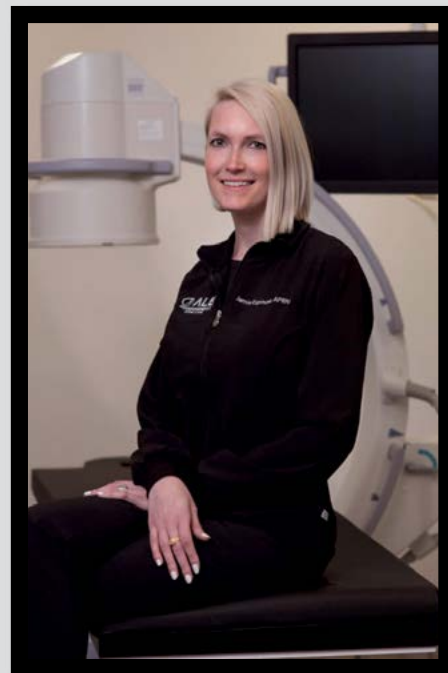
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ALB Pain Management & Spine Care (APMSC) is dedicated to the diagnosis and treatment of pain conditions related to an automobile accident. APMSC specializes in interventional pain medicine and neurology. Our providers are dedicated to restoring the 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.

Letters of protection accepted.



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Board Certified in Pain Medicine & Neurology



Jamie Espinosa, APRN

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Meetings

August

- 11**
Children's Law Section Board
Noon, Children's Court, Albuquerque
- 11**
Tax Section Board
9 a.m., teleconference
- 12**
Business Law Section Board
4 p.m., teleconference
- 13**
Cannabis Law Section Board
9 a.m., State Bar Center
- 13**
Prosecutors Section Board
Noon, teleconference
- 17**
Solo and Small Firm Section Board
10:30 a.m., teleconference

Workshops and Legal Clinics

August

- 17**
Common Legal Issues for Senior Citizens Workshop
Presentation: 10-11 a.m., POA/AHCD
Workshop: 11-11:30 a.m., Placitas Community Center, Placitas, 505-797-6005
- 24**
Common Legal Issues for Senior Citizens Workshop
Presentation: 10:30-11:30 a.m., POA/AHCD
Workshop: 11:30 a.m.-12 p.m., Bosque Farms Community Center, Bosque Farms, 505-797-6005
- 25**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

About Cover Image and Artist: Daniel Macy was born and raised in Albuquerque. He has worked in the legal services and nonprofit sectors of the State Bar of New Mexico for more than 10 years and is currently the intake manager for the State Bar Foundation's Legal Resources for the Elderly Program. In 2020 he received his masters degree in public administration and will use the knowledge and skills he has acquired to help the most vulnerable people in our society. Macy enjoys spending time with his family and friends and is an avid outdoor enthusiast and nature photographer. He enjoys capturing the beauty and colors of the state of New Mexico. Through his photography, he hopes to inspire others to never give up and realize anything is possible.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

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

Supreme Court Law Library

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

U.S. District Court, District of New Mexico Public Notice Concerning Reappointment of Incumbent United States Magistrate Judge

The current term of office of part-time U.S. Magistrate Judge B. Paul Briones is due to expire on March 20, 2022. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. The duties of a magistrate judge in this court include the following: (1) conducting most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) conducting various pretrial matters and evidentiary proceedings on delegation from a district judge, and (4) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to MJMSP@nmcourt.fed.us. Questions or issues may be directed to Monique Apodaca by calling 575-528-1439. Comments must be received by Sept. 6.

Public Notice Concerning Reappointment of Incumbent U.S. Magistrate Judge

Professionalism Tip

With respect to other judges:

I will be courteous, respectful and civil in my opinions.

The current term of office off full-time U.S. Magistrate Judge Steven C. Yarbrough is due to expire on May 6, 2022. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term. The duties of a magistrate judge in this court include the following: (1) conducting most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) conducting various pretrial matters and evidentiary proceedings on delegation from a district judge, and (4) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to MJMSP@nmcourt.fed.us. Questions or issues may be directed to Monique Apodaca by calling 575-528-1439. Comments must be received by Sept. 6.

New Mexico Court of Appeals Announcement of Vacancy

A vacancy in the New Mexico Court of Appeals exists due to the appointment of the Honorable Judge Briana Zamora to the New Mexico Supreme Court. The New Mexico Court of Appeals Nominating Commission will meet in-person beginning at 9 a.m. on Aug. 23 at the Albuquerque New Mexico Court of Appeals satellite office located at 2211 Tucker NE, Albuquerque, New Mexico 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 New Mexico Court of Appeals Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at akin@law.unm.edu. The deadline

for applications has been set for Aug. 9 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.

Second Judicial District Court Notice of Mass Reassignment

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

Seven applications were received in the Judicial Selection Office at 5 p.m. on July 16. The vacancy occurred, due to the retirement of the Honorable Judge Lisa C. Schultz, effective June 30. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. The Third Judicial District Court Judicial Nominating Commission convened on July 28 and occurred exclusively by Zoom. The commission meeting was open to the public, and anyone who wished to be heard about any of the candidates had an opportunity to be heard. The names of the applicants in alphabetical order: Amy B. Bailey, Dania Reidun Gardea, Isabel Denise Jerabek, Judge Casey Bruce Fitch, Robert Lara Jr., Judge Jeanne H. Quintero and Judge G. Alexander Rossario.

Candidate Announcement

The Third Judicial District Court Nominating Commission meeting convened by ZOOM on Wednesday, July 28, 2021, at 9:00 a.m., and completed its evaluation of the seven applicants to fill the vacancy on the Third Judicial District Court due to the retirement of the Honorable Judge Lisa C. Schultz, effective June 30, 2021. The Commission recommends the following candidates to Governor Michelle Lujan Grisham (in alphabetical order): **Amy B. Bailey, Casey, Bruce Fitch, Robert Lara Jr. and Jeanne H. Quintero.**

Ninth Judicial District Court Announcement of Vacancy

A vacancy in the Ninth Judicial District Court will exist due to the retirement of the Judge Matthew Chandler. 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. 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.

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 <https://www.sbnm.org/covid> 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

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response to the coronavirus situation, please email Executive Director Richard Spinello at rspinello@sbnm.org.

Resolutions and Motions

Resolutions and motions will be heard at 8 a.m. on Friday, Oct. 8, 2021, at the opening of the State Bar of New Mexico 2021 Annual Meeting and Member Appreciation Event. To be presented for consideration, resolutions or motions must be submitted in writing by Sept. 8 to Executive Director Richard Spinello PO Box 92860, Albuquerque, NM 87199; fax to 505-828-3765; or email 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. 16 at 5:30 p.m.
- Aug. 23 at 5:30 p.m.
- Aug. 30 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 or Briggs Cheney at 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. 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:

- **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., emo-

tional 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 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:

- 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.

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 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/

UNM SCHOOL OF LAW Law Library Hours

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

OTHER BARS Seeking to Form New Mexico Chapter

Seeking interest in forming a New Mexico chapter/affiliate of the Asian American Bar Association or South Asian American Bar Association. Interested individuals should email rnandy@bhfs.com.

Legal Education

August

- | | | |
|---|---|---|
| <p>11 ADTA Annual Meeting
6.5 G
Live Webinar
Association of Defense Trial Attorneys
360-748-9281</p> | <p>13 REPLAY: 2021 Health Law Legislative Roundup (2021)
1.5 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>26 What on Earth is the Wage? The State of Play on Prevailing Wages
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org</p> |
| <p>11 Trust and Estate Planning for Cabins, Boats, and Other Family Recreational Assets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>13 Advanced Oratorical Cross-Examination Techniques That Work Best Against Experts at Trial and at Depositions
1.5 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 REPLAY: A Look at the Practice of Law Through the Decades: A Panel Discussion of Women Attorneys Practicing Law in New Mexico from 1980 to the Present (2020)
1.5 G
Live Replay Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>12 International Law & How It Impacts on Immigration
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>17 Privacy Law, Issues and Trends
1.0 G
Live Webinar
MWH Law Group LLP
414-436-0354</p> | <p>29 Current Issues 2021
14.7 G
Live Webinar
Center for Public Utilities NMSU
business.nmsu.edu</p> |
| <p>12 Key Issues In International Trade Law 2021
1.0 G
Live Webinar
District of Columbia Bar
www.dcbbar.org</p> | <p>19-20 14th Annual Legal Service Providers Conference
10.0 G, 2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>31 Trust and Estate Planning for Firearms
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>12 Adjustment Exceptions that Feel Like Magic
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org</p> | <p>20 Hot Topics in Copyright Law: Artificial Intelligence, Computer Code, Fair Use (Google v. Oracle), and NFTs (Non-Fungible Tokens)
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>31 Hot Topics in Marriage-Based Adjustment of Status
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org</p> |
| <p>13 NM Defense Lawyers Association and West Texas TADC Joint Seminar
4.2 G, 1.0 EP
Live Webinar
New Mexico Defense Lawyers Association
www.nmdla.org</p> | <p>24 TN Strategies and Trends: Consular and Ports-of-Entry
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org</p> | |

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

September

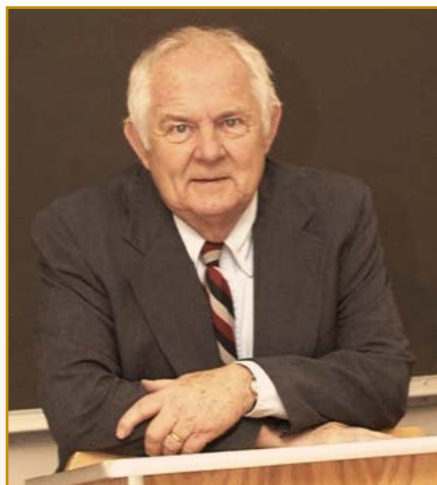
2	Solutions for “Stuck” Employment-Based Cases 1.5 G Live Webinar American Immigration Lawyers Association www.aila.org	22	Mandatory Succession Planning: It Has To Happen, But It Doesn’t Have To Be That Difficult 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org	28	Staying Out of the News: How To Avoid Making the Techno-Ethical Mistakes that Put You on the Front Page 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org
9	APA Litigation: How to Take USCIS Denial to Federal Court 1.5 G Live Webinar American Immigration Lawyers Association www.aila.org	22	Clear and Present Danger! Protecting Your Firm from Malpractice Exposure 1.0 EP Live Webinar Attorney Protective www.attorneyprotective.com	29	10 Steps to Client Relationship Mastery 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org
10	32nd Annual Appellate Practice Institute 5.9 G, 1.0 EP In-Person and Live Webinar Center for Legal Education of NMSBF www.sbnm.org	23	Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org	30	Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org
14	Advanced Strategies for EB-1 RFEs 1.5 G Live Webinar American Immigration Lawyers Association www.aila.org	23	Breaking Through the Backlog: Employment-Based Visa Interviews After COVID 1.5 G Live Webinar American Immigration Lawyers Association www.aila.org	30	Crafting a Winning Direct Examination: Practical Tips and Examples 1.5 G Live Webinar American Immigration Lawyers Association www.aila.org
		24	Changing Minds Inside and Out of the Courtroom 1.0 G Live Webinar Center for Legal Education of NMSBF www.sbnm.org		

October

1	Balloon Fiesta CLE 11.0 G, 1.0 EP Live Webinar Destination CLEs 907-231-2111	8	2021 Annual Meeting and Member Appreciation Event 4.0 G, 1.0 EP Live and Webcast Center for Legal Education of NMSBF www.sbnm.org	12	“The Tiger King Case” - Murder for Hire: The Prosecution of Joseph Maldonado-Passage 3.0 G Live Webinar Center for Legal Education of NMSBF www.sbnm.org
5	How To Stay “Professional” When Videoconferencing: It’s Not As Hard As You Think! 1.0 EP Live Webinar Center for Legal Education of NMSBF www.sbnm.org				

In Memoriam

FREDERICK M. HART, former dean of the University of New Mexico Law School, revered teacher and legal scholar, beloved husband of Joan Monaghan Hart, and devoted father of eight children, died peacefully on Sunday surrounded by family and friends.



Fred arrived in New Mexico in 1966 for a one-year visiting professorship at UNM Law School, but so loved New Mexico and the school that he stayed to raise his family and educate thousands of law students. One year after he arrived in New Mexico, Fred was asked to start a summer program for Indigenous students, with the goal of increasing the number of Indigenous lawyers. He initially declined, but ultimately accepted after conferring with Joan. The program, now called the Pre-Law Summer Institute for American Indians and Alaska Natives (PLSI), was wildly successful, and has significantly increased the number of Indigenous lawyers by providing not only the skills and confidence to succeed in law school, but also mentors, networks, and the sense of belonging crucial to legal practice.

The PLSI was part of a commitment to diversity that underpinned Fred's life and career. He worked tirelessly to open the doors of the legal profession to underrepresented populations, and, as dean, he hired the school's first Hispanic faculty member, and first female faculty member. Fred was also a champion of UNM Law's Clinical Program, which was at the forefront of legal education, a first of its kind to be required of every graduate and one of the only programs in the nation that made positions in the clinic tenure-track.

In addition to his work at UNM, Fred was a force in legal education on the national level holding leadership positions in the American Bar Association, the Law School Admission Council, the Association of American Law Schools, the Council on Legal Education Opportunity, and the Council on Legal Education for professional opportunity, and he was a founding partner in the SMH Bar Review. Fred's scholarship resulted in the authorship or co-authorship of many books on legal education, legal writing, and the Uniform Commercial Code including Forms and Procedures Under the Uniform Commercial Code.

However, Fred will be most remembered for less quantifiable achievements. Scores of New Mexico's most accomplished lawyers and politicians credit him with changing their lives encouraging them to start or finish law school, making them feel they belonged, or showing them how law could be wielded to create policy and serve and protect marginalized and disenfranchised individuals and populations. His guidance and encouragement helped colleagues become better teachers,

and as an administrator he had a talent for bringing together generous professionals who cared more about the institution than their own advancement and who were dedicated to making UNM Law a humane institution. He was a fierce competitor at the bridge table and on the softball field where he played for many years for The Bad Guys. Most important to Fred, he was the foundation of the family he and Joan created- providing constant love, humor, wisdom, and support to his eight children, their spouses and partners, and to more than 20 grandchildren and great grandchildren.

Fred Hart was born in Flushing New York on December 5, 1929. His parents were Doris (Laurian) Hart, a seamstress and pianist, and Frederick Joseph Hart, a shoe inspector. In elementary school, a teacher recognized Fred's talent and tutored him so that he could win a scholarship to Brooklyn Preparatory School. Though neither had gone to college, Fred's parents never questioned whether he would spend all their savings to pay for his freshman year at Georgetown University. During the summer after his first year, as he was casting about to find a college in New York to attend, he got a call from Georgetown offering him a job that included room and board, so he returned to finish his B.S. After college, Fred served in the Air Force during the Korean War, and then returned to Georgetown for Law School. After graduation, he spent a year teaching at NYU; during that year, he married the love of his life, Joan Monaghan. Fred and Joan spent the following year in Frankfurt Germany where Fred had a fellowship to study food law. Fred taught law at Albany Law School and Boston College before joining the UNM Law faculty as a visiting professor in 1966.

Fred was preceded in death by Joan and by a son-in-law, Reg Fitz, and he is survived by eight children and their spouses: Joan Marie Hart, Ellen Hart and Rob Woodruff, Christiane and Carlton Cuse, F. Michael and Alisa Hart, Maggie Hart Stebbins and Eric Stebbins, Andy Hart and Tracy Brooks, Brigid and George Ovitt, and Patrick and Joanna Hart; twenty grandchildren and their spouses: Jamie and Jason Cloyes, Nelia Peña and Daniell Williams, Cristina Peña and Scott Baitz, Ryan Peña, Caroline Cuse and Sean Duncan, Nicholas Cuse, Conor Cuse, Sarah Hart, Michael Hart, Willis Stebbins, Margaret Stebbins, Elizabeth Stebbins, Lucy Stebbins, Andrew Hart, Samuel Hart, Molly Hart, Dorothy Ovitt, Ada Ovitt, Sofia Hart, and Norah Hart; and two great grandchildren: Bodie and Noelle Cloyes.

Fred's family would like to thank Sylvia Hayes, and caregivers Cristina Bullerwell, Stephanie Moralez, Judy Hallmark, and Margie Robertson, for their hard work, and for the love and care they shared with our parents and with all of us.



STATE OF NEW MEXICO EXECUTIVE OFFICE SANTA FE, NEW MEXICO

Proclamation

WHEREAS, paralegals provide a vital link between lawyers and the clients they represent; and

WHEREAS, paralegals make invaluable contributions through the drafting and analysis of legal documents, case planning, research, client interviews, and the development of legal pleadings; and

WHEREAS, due to the rapidly evolving nature of our legal system, the responsibilities of New Mexico's paralegals are constantly growing and expanding, including providing pro-bono services to the underserved; and

WHEREAS, the Paralegal Division of the State Bar of New Mexico, which was created in 1995, represents the paralegal profession and works toward enhancing professional development; and

WHEREAS, the goals of the Paralegal Division include providing efficient administration to accommodate growth, and development of paralegals through education; and

WHEREAS, the Paralegal Division supports the delivery of legal services in an economic and efficient manner;

NOW THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, do hereby proclaim August 26, 2021 as:

"Paralegal Day"

throughout the state of New Mexico.

Attest:

Maggie Toulouse Oliver

Maggie Toulouse Oliver
Secretary of State

Done at the Executive Office this
5th day of May 2021.

Witness my hand and the Great Seal
of the State of New Mexico.

Michelle Lujan Grisham

Michelle Lujan Grisham
Governor



Judicial Clerkship Program Wins

ABA 2020-2021 EMBRACING DIVERSITY CHALLENGE



students who are members of traditionally underrepresented groups in the legal profession, particularly within the judiciary. An additional goal of the program is to prepare underrepresented individuals with the tools necessary to obtain judicial clerkships. The program provides opportunities to underrepresented students, which may include, but is not limited to, members of racial or ethnic minorities, women, identify as LGBTQ, students with disabilities, students who are economically disadvantaged.

We are very proud to have received recognition for this program which has enjoyed a successful first year. Special thanks to the Judicial Clerkship Program planning committees, judges and justices and participants.

The State Bar of New Mexico's Judicial Clerkship Program received a \$1,500 sub grant for winning the American Bar Association YLD EMBRACING Diversity Challenge. The program recognizes and awards top young lawyer organizations that increase diversity in the legal profession. The Judicial Clerkship Program is a combined effort of the State Bar Committee on Diversity in the Legal Profession and Young Lawyers Division and the New Mexico Supreme Court and Court of Appeals. The purpose of this jointly initiated program is to provide opportunities to



Committee on Diversity in the
Legal Profession
Young Lawyers Division
Modrall Sperling

2021 COHORT

Lauren Chavez
Denisse Enriquez
Cody Jeff
Amber Morningstar Byars
Huong Nguyen
Natalie Saing

JUDGES AND JUSTICES

Justice David Thomson
Justice C. Shannon Bacon
Justice Barbara Vigil
Judge Zach Ives
Judge Shammara Henderson
Judge Megan Duffy

SPONSORS

Appellate Practice Section
Family Law Section
Health Law Section
NREEL Section

Prosecutors Section
Trial Practice Section
Cannabis Law Section

To view the students currently participating and information about the program, visit www.sbnm.org/judicialclerkship.

VOLUNTARY BAR HIGHLIGHT

Doña Ana County Bar Association



The Doña Ana County Bar Association invites all members of the Bench and Bar residing or practicing in Doña Ana County to our Re-Activation and Meet and Greet event!

This event will be held on Thursday, August 19 starting at 5:30 p.m. RSVP by Thursday, August 12.

Amador Patio Bar and Grill

302 S Main St Suite B, Las Cruces, NM 88001

This event will be the start of a series of monthly events intended to allow all members of the Doña Ana County legal community to meet their fellow attorneys and judges, share ideas and learn new skills, and provide opportunities for professional development and community service for the members of the Doña Ana County Bar Association.

The purpose of the Doña Ana County Bar Association is to promote collegiality and professionalism within the Doña Ana County legal community. We welcome all Bench and Bar members and provide a forum for the Doña Ana County legal community. We aim to educate the local Bench and Bar members about issues affecting the practice of law in Doña Ana County.

Chair: Casey Fitch

Email: donaanabarassociation@gmail.com

Mailing Address: PO Box 1971, Sunland Park, NM 88063



Proposed Licensing and MCLE Rule Changes

A rule change that would streamline and unify the minimum continuing legal education compliance and license renewal processes has been published for comment by the New Mexico Supreme Court. We encourage members to review the proposed rule changes.

The proposed rule changes and online comment form can be found on the Supreme Court's website at <https://supremecourt.nmcourts.gov/>.

Proposal 2021-028

Attorney licensing and MCLE [Rules 15-302, 16-104, 17-202, 18-101, 18-102, 18-201, 18-203, 18-204, 18-301, 24-102; Withdrawn Rules 18-103, 18-202, 18-302; New Rules 24-102.1, 24-102.2]

Proposed amendments to the Supreme Court's Rules of Practice and Procedure are posted above. To view any of the proposals published for comment, click on the link to the proposal. You may submit a comment electronically using the Rule Proposal Comment Form below, or you may submit your comment by email to nmsupremecourtclerk@nmcourts.gov, by fax to 505-827-4837, or by mail to

Joey D. Moya, Clerk
New Mexico Supreme Court
P O Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before Aug. 16, 2021, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.



Jesse D. Hale, a lawyer with Sutin, Thayer & Browne, has been appointed to serve as co-chair of the ABA Health Law Section's Membership Committee. He had most recently served two consecutive terms as one of the committee's vice chairs. Hale is a lawyer in Sutin's Albuquerque office, where his practice focuses on healthcare law, commercial litigation, and real estate law. He

advises and represents healthcare clients in litigation, regulatory and compliance matters, fraud and abuse matters, government investigations, billing and payment issues, payor auditing, credentialing, licensing, contract formation, and purchasing and procurement. In his commercial litigation and real estate practice, Jesse represents businesses and individuals in disputes relating to contracts, leases, and real estate matters. His term as co-chair will run from Sept. 1, through Aug. 31, 2022.



Wade L. Jackson, a lawyer with Sutin, Thayer & Browne, was voted the best corporate attorney in this year's Albuquerque Journal Readers' Choice Awards. For nearly 20 years, Jackson's clients have relied on his legal acumen in the areas of real estate, business, tax, corporate, economic development, public finance, and tax incentives, and state and local government law. Before joining the

firm, he served as general counsel and legislative coordinator for the New Mexico Economic Development Department. He helped lead the 2013 tax reform effort in New Mexico, testifying before numerous legislative committees and meetings with legislators of both parties. Jackson also helped negotiate the 2015 Tribal-State Gaming Compacts with five tribes. He currently serves as chair of Sutin's Commercial Practice Group.



This month marks WBMH Law's **David Walther's** 60th anniversary in the law. While the longevity is news in itself (Walther is one of the longest serving lawyers in New Mexico), the content of his career is more interesting. It began well: Walther was first in his class at Wisconsin's prestigious Marquette University School of Law in Wisconsin.

Post-graduation, Walther served as a clerk at the Wisconsin State Supreme Court, then began working on the many civil rights cases in Milwaukee that had arisen out of the rampant housing and school segregation of the era. Walther was involved in the work of the noted civil rights activist, Father James Groppi and in the cases emanating from the riots in the summer of 1967. In addition, he successfully blocked an interstate freeway from running along Milwaukee's fabled lake front park, a park that was considered the jewel of the Milwaukee during 70 years of Socialist administrations. A life-long Democrat, Walther ran for Mayor of Milwaukee in 1968 as an anti-war candidate and championing school and housing integration. Although he survived a five-candidate primary election, he lost to the incumbent mayor, who continued to serve as Milwaukee mayor for a total of 28 years. After that, Walther and his brother Stephen Walther created a magazine for amateur astronomers, *Astronomy Magazine*, which survived Stephen's death in 1977 and continues to be published

in Milwaukee. By the time Walther moved to New Mexico in 1985, he already had more than 50 reported cases and two articles cited by the United States Supreme Court. Once in New Mexico, he was one of eight lawyers chosen by the prestigious American Academy of Matrimonial Lawyers to create *The Bounds of Advocacy* – a work that remains the standard for ethical behavior in the practice of Family Law. He also participated in the creation of the American College of Family Trial Lawyers, whose membership is limited to the top 100 Divorce lawyers in the United States. He remains a member of its executive committee. As partner or sole owner of several law firms in the state, Walther's work has created employment for many New Mexicans – from office personnel to paralegals to other lawyers, many of whom he personally mentored. But Walther's contributions to the law also had a more personal component: He is the father of six, four of whom are now lawyers, and two years ago, he attended his grandson's admission to the Wisconsin Bar. Continuing the family tradition, Walther now also has a granddaughter in law school. After 60 years, Walther's enduring respect for the law continues and he can still be found at his desk on Marcy Street, practicing the profession he has loved since his second day of law school.



Brownstein Hyatt Farber Schreck is pleased to announce that **Reema Nandy**, an associate in its Albuquerque office, was elected to the board of directors of Ethos Literacy. The non-profit organization is a reading and learning center that aims to help adults secure gainful employment, advance in their education and thereby give their children financial security and a greater chance for their own academic success. In her role, Nandy will participate in the strategic and financial planning for Ethos Literacy's mission and act as an ambassador for the organization. She looks forward to contributing to an organization that serves a vital need in her community.

Seven of **Sutin, Thayer & Browne's** lawyers have been recognized as leading individuals in five Chambers-designated practice areas. In addition, the firm itself was recognized in the following areas: corporate/commercial; litigation: general commercial; and real estate. Sutin's Chambers-recognized lawyers for this year are: Anne P. Browne, Eduardo A. Duffy, Robert G. Heyma and Jay D. Rosenblum (corporate/commercial). Barbara G. Stephenson (labor and employment). Benjamin E. Thomas (litigation: general commercial). Anne P. Browne (real estate). Suzanne Wood Bruckner (tax).

Nicholas Nunez joined Butt, Thornton and Baehr in March 2021. Nunez was born and raised in Albuquerque. He attended the University of New Mexico for both his undergraduate and law degrees. During law school, he was professional articles editor for the *New Mexico Law Review*. He also participated in the Marshall Brennan Constitutional Literacy Project where he taught constitutional law to high school students in Albuquerque. After law school, he worked at the city attorney's office primarily in the areas of labor & employment and administrative law. He then worked at the Second Judicial District Attorney's Office in where he prosecuted violent crime and gained valuable courtroom and trial experience. When not practicing law, he enjoys spending time with his family, being outdoors, and cheering on the New Mexico Lobos.

Durham, Pittard & Spalding is proud to announce that all of the attorneys in its Santa Fe office have been listed in the 2021 edition of *Southwest Super Lawyers*. Rosalind B. Bienvenu was named a Rising Star in the Appellate category. Bienvenu, who received her Bachelor's magna cum laude from Harvard and her Juris Doctorate cum laude from NYU, is an accomplished appellate lawyer who is frequently asked by trial lawyers to handle complex briefing, strategy, and appeals. Bienvenu clerked for the Honorable Paul Kelly in the United States Court of Appeals for the Tenth Circuit. She sits on the Board of Directors of the Appellate Practice Section and is a member of the Oliver Seth American Inn of Court. Justin R. Kaufman is highly sought after by plaintiffs' counsel throughout the country for his expertise in providing strategic litigation support at trial and on appeal. Kaufman has been recognized in the Products Liability (plaintiff) category for the past five years and is one of only two New Mexico attorneys in this category in 2021. Caren I. Friedman was listed in the appellate category, an honor that she has received for the last fifteen years. Friedman serves on the New Mexico Supreme Court's Appellate Rules Committee.

Rebecca Kitson, owner of Rebecca Kitson Law with offices in Albuquerque and Santa Fe was recently elected chair of the Executive Committee for the Texas, New Mexico & Oklahoma chapter of the American Immigration Lawyers Association. She has sat on the executive committee for AILA's Texas, New Mexico & Oklahoma chapter since 2018.

Renee Mascareñas joined Butt, Thornton and Baehr in May. Mascareñas is admitted to practice in the State of New Mexico and the Federal District Court for the District of New Mexico. Before transitioning into civil practice she was an assistant district attorney for the Second Judicial District Attorney's Office, prosecuting misdemeanor and felony crimes. As a litigator, she has defended both individual and corporate clients in a wide variety of cases. Practice areas for Mascareñas include personal injury, medical negligence and malpractice, insurance coverage issues, complex civil litigation, construction litigation and general liability litigation. Mascareñas received her Bachelor of Business Administration from New Mexico Highlands University and her Juris Doctor from the Phoenix School of Law in 2012.

In Memoriam

www.sbnm.org



Carl A. Calvert carried on despite multiple myeloma as he had lived his life, fighting the whole way, but on June 16 he finally gave up the fight and passed peacefully surrounded by his loving family at the age of 76. Carl was a consummate philomath. He began his lifelong pursuit of learning in Albuquerque graduating from Highland High School before proceeding on to the University of New

Mexico. His first love was philosophy, earning a B.A. from UNM in 1965, an M.A. in 1968 and then a Ph.D. in 1973, both from the University of Washington. With the lack of teaching positions due to the Vietnam War he turned his attention to the law returning to New Mexico and UNM in 1974. He earned his J.D. from UNM in 1977. He devoted his legal career to the construction industry for thirty-three years serving as an advocate, teacher and arbitrator. He was recognized as pre-eminent in his preferred field having been selected to both the American College of Commercial Arbitrators and the American College of Construction Attorneys. Retiring from the practice of law he finally found time to pursue other of his educational interests including archaeology and history serving as a docent at the Mesa Pietra Petroglyph Project and being active in various archaeology, history and art groups in Taos, New Mexico. He is survived by his loving wife of 57 years, Becky, his sister Carolyn Clark, his two children, Sean and Heather, three grandchildren Grace, Julian and Connor and his beloved fishing partner, Goldberry. In lieu of flowers anyone wanting to pay their respects to Carl is asked to make a contribution to the fight against Multiple Myeloma in his name with the Leukemia & Lymphoma Society.



Susan Jane Strelitz was born on Nov. 8, 1960, passed away in Austin, Texas, on March 26, 2020 after a year-long battle with cancer. Those who knew Susan well remember her as a loving, intelligent, engaging parent, relative, friend, and colleague who lived life to its fullest. Susan was predeceased by her parents Fred Strelitz and Nancy McAllister, and by her step-father George McAllister,

and is survived by her sons Samuel and Joseph Lerma; former spouse Octavio Lerma; siblings Angie Hermann, Joseph Strelitz and wife Marlyn Strelitz of El Paso; niece and nephew, Mia Strelitz and Jacob Strelitz; Aunt and Uncle Angeline Mason and Harry Mason of Bakersfield, Calif.; step-mother Sally Strelitz and cousins Joanne Bogart of Falls Church, VA, Barbara Corliss of Carrollton, Texas, and numerous other cousins and friends - all of whom supported her during her brave and long battle with cancer. Susan was born and raised in El Paso where she went to Mesita Elementary School and El Paso High School. She attended Smith College in Northampton, Mass., where she earned a degree in Government and a minor in Latin American Studies in 1981. Upon graduation from Smith, Susan worked at a halfway house in Massachusetts, and later moved to New Mexico where she worked as a legal assistant and attended law school at the University of New Mexico where she earned a JD in 1992. Susan was licensed to practice law in Texas and New Mexico. Her primary practice areas were probate, estate planning, guardianship, and real estate. Susan was a successful and respected attorney in her field, working as a solo practitioner and as a partner in Neill, Strelitz, Moore-Duarte PC. Simultaneously with her professional career, Susan ran a non-profit organization promoting greater awareness among medical professionals, and providing direct support to women suffering from post-partum depression.

Robert G. Sloan, faithful citizen of Albuquerque, passed away in his home on May 11. He is survived by nieces and nephews, Mark, Jennifer, Laura, Olivia, David, sister-in-law Karen, as well as many great nieces and nephews, cousins, and countless wonderful friends. He was the youngest of three children of father, William A. Sloan, and mother, Olive G. Sloan, whom with his siblings, Geoffrey and Diane, preceded him in death. Robert attended the UNM School of Law and began a law practice in the 1970s at which he worked continuously until retirement in 2020. Robert will be greatly missed by family and friends alike.

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 16, 2021

PUBLISHED OPINIONS

A-1-CA-37468	McFarland Land and Cattle v. Caprock Solar	Reverse/Remand	07/14/2021
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UNPUBLISHED OPINIONS

A-1-CA-38216	W Davis v. Board of Education of Las Cruces	Affirm	07/12/2021
A-1-CA-38280	City of Roswell v. G Segura	Affirm	07/12/2021
A-1-CA-38285	K Anderson v. R Anderson	Affirm	07/12/2021
A-1-CA-38291	State v. W Taylor	Affirm	07/12/2021
A-1-CA-39138	State v. T Gutierrez	Affirm	07/12/2021
A-1-CA-39341	State v. K Vollenweider	Affirm	07/12/2021
A-1-CA-38782	State v. B Blanton	Affirm	07/13/2021
A-1-CA-39511	J Medina v. J Salazar	Affirm	07/14/2021
A-1-CA-39354	CYFD v. Patricia Y	Affirm	07/15/2021

Effective July 23, 2021

PUBLISHED OPINIONS

A-1-CA-39128	CYFD v. Josie G	Affirm	07/19/2021
A-1-CA-36757	State v. J Cabral	Reverse/Remand	07/20/2021

UNPUBLISHED OPINIONS

A-1-CA-36974	F Dombos v. R Stewart	Affirm	07/19/2021
A-1-CA-38219	State v. E Benavidez	Affirm	07/19/2021
A-1-CA-38377	K Rumba v. S Meyer	Affirm	07/19/2021
A-1-CA-38588	T Gill v. E Padilla	Reverse/Remand	07/19/2021
A-1-CA-38665	State v. R Amador	Affirm	07/19/2021
A-1-CA-39412	State v. P Villanueva	Affirm	07/19/2021
A-1-CA-38226	State v. M Medina	Dismiss	07/20/2021
A-1-CA-38428	Deutsche Bank v. L Lucero	Affirm	07/20/2021
A-1-CA-38691	State v. G Spears	Affirm	07/20/2021
A-1-CA-38824	Wells Fargo Bank v. M Coello-Pagan	Affirm	07/21/2021
A-1-CA-37853	New Mexico Top Organics v. L Gallagher	Affirm	07/22/2021
A-1-CA-38014	O Haynes v. I Lujan	Affirm	07/22/2021
A-1-CA-38421	S Donaldson v. Bridge Investment Group	Affirm	07/22/2021
A-1-CA-39018	J Contreras v. Miller Bonding, INC	Affirm	07/22/2021
A-1-CA-39208	B Bailey v. N Borsello	Affirm	07/22/2021
A-1-CA-39315	State v. M Karimi	Affirm	07/22/2021

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

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF WITHDRAWAL AND CHANGE OF ADDRESS

Effective April 30, 2021:
William Scott Rode
11800 Montgomery Blvd., NE
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Albuquerque, NM 87111

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective June 30, 2021:
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CLERK'S CERTIFICATE OF ADMISSION

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CLERK'S CERTIFICATE OF ADMISSION

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CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective March 16, 2021:
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Albuquerque, NM 87112

Effective March 17, 2021:
Robert H. Fritz III
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Dripping Springs, TX 78620

Effective March 22, 2021:
Michael Antal Tighe
630 N. Robberson Avenue
Springfield, MO 65806

Effective March 29, 2021:
Joseph A. Gruner
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Effective March 30, 2021:
Kasey McGough
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Minot, ND 58701

Effective March 30, 2021:
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Effective March 31, 2021:
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Brian Libby
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San Tan Valley, AZ 85140

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Effective April 26, 2021:
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Takoma Park, MD 20912

Effective April 27, 2021:
Mark Anthony Acuna
2828 Goliad Road,
Suite 125
San Antonio, TX 78223

Judith Ferrell-Holbrook
PO Box 93997
Albuquerque, NM 87199

Effective April 27, 2021:
**Allison L.E. Tungate Miku-
lecky**
12257 S. Wadsworth Blvd.
Littleton, CO 80125

Effective April 28, 2021:
Angie Buchanan
1309 E. Third Avenue,
Suite 20B
Durango, CO 81301

Chiara Tattiana Kinahan
580 Taylor Ave, APOD-A3
Annapolis, MD 21401

Effective April 30, 2021:
F. Leighton Durham III
PO Box 224626
Dallas, TX 75222

Effective April 30, 2021:
Charles W. Rogers
827 Headley Court
Northfield, MN 55057

Effective May 1, 2021:
James D. Albright
1624 Market Street,
Suite 202
Denver, CO 80202

Effective May 3, 2021:
W. Daniel Schneider
735 Sandy Point Lane
North Palm Beach, FL 33410

Effective May 4, 2021:
Katharine Anna Moisan
5500 S. Quebec Street,
Suite 300
Greenwood Village, CO
80111

Effective May 5, 2021:
John Robert Holguin
3615 N. Swan Street
Silver City, NM 88061

Effective May 6, 2021:
Sara Sheikh
3718 206th Place, SW
Lynnwood, WA 98036

Effective May 27, 2021:
**Elizabeth Guerrero-
Southard**
7515 Peppervine Lane
San Antonio, TX 78249

Effective July 1, 2021:
Thomas R. Figart
36 Sparrow Road
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Leonard S. Katz
123 E. Marcy Street,
Suite 200
Santa Fe, NM 87504

CLERK'S CERTIFICATE OF SUSPENSION

Effective June 25, 2021:
Austin Cole
Tjornehoj & Hack LLC
636 Coffman Street,
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Longmont, CO 80501
and
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Denver, CO 80206

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and
Law Office of Marcus E
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and
Crenshaw, Dupree & Milam
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Albuquerque, NM 87120

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CLERK'S CERTIFICATE OF SUSPENSION

Effective June 25, 2021:
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Taos, NM 87571

Richard A. Madril
PO Box 504
Tucson, AZ 85702

Disciplinary Quarterly Report

Final Decisions

Final Decisions of the NM Supreme Court 2

Matter of Mary “Molly” Schmidt-Nowara, Esq. (S-1-SC-38595).

The New Mexico Supreme Court issued an order on May 3, 2021, indefinitely suspending Respondent from the practice of law for no less than five (5) years, retroactively effective February 28, 2021.

Matter of William Ferguson, Esq., (No. S-1-SC-38741). The New Mexico Supreme Court issued an order on May 6, 2021, suspending Respondent from the practice of law for 90 days effective 5/6/2021, if Respondent successfully passes the MPRE. This matter was brought before the Court on the Disciplinary Board's request to adopt its recommendation for discipline.

Summary Suspensions

Total number of attorneys summarily suspended 0

Administrative Suspensions

Total number of attorneys administratively suspended..... 0

Disability Inactive Status

Total number of attorneys removed from disability inactive states 1

Charges Filed

Charges were filed against an attorney for allegedly revealing information relating to the representation of a client without the client's informed consent.

Charges were filed against an attorney for allegedly failing to competently represent the client, failing to act with reasonable diligence and promptness, failing to communicate, failing to give reasonable notice and allowing time for employment of other counsel upon termination of representation, and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to competently represent a client, failing to diligently represent a client, failing to reasonably consult with his client about the means by which the client's objectives could be accomplished, failing to cooperate with disciplinary counsel, and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to timely respond to a lawful demand for information from a disciplinary authority, failing to give full cooperation and assistance to disciplinary counsel, and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to competently represent a client, by failing to properly limit the scope of representation by seeking informed consent, failing to keep a client reasonably informed about the status of a matter, failing to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding representation, failing to communicate his/her fee agreement in writing, failing to effect an orderly termination, filing a proceeding which has no good faith basis, failing to make reasonable effort to ensure that another lawyer under his supervisory control conformed to the Rules of Professional Conduct, and engaging in conduct intended to disrupt a tribunal, and engaging in conduct prejudicial to the administration of justice.

Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law 0

Reinstatement from Probation

Petitions for reinstatement filed 2

Formal Reprimands

Total number of attorneys formally reprimanded 1

Informal Admonitions

Total number of attorneys admonished 2

Letters of Caution

Total number of attorneys cautioned 8

Attorneys were cautioned for the following conduct: (1) meritless claims or defenses; (2) lack of fairness to opposing party / counsel; (3) lack of competence, (3) dishonesty, deceit, fraud, misrepresentation (4) lack of diligence, (5) excessive or improper fees.

Complaints Received

Allegations.....	No. of Complaints
Trust Account Violations.....	0
Conflict of Interest.....	1
Neglect and/or Incompetence.....	39
Misrepresentation or Fraud.....	16
Relationship with Client or Court.....	7
Fees.....	8
Improper Communications.....	0
Criminal Activity.....	1
Personal Behavior.....	0
Other.....	70
Total number of complaints received.....	142

Rules/Orders

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

From the New Mexico Supreme Court

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

IN THE MATTER OF SANTIAGO E. JUAREZ, ESQ.

Disciplinary No. 2021-03-4489

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

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Not Contesting the Allegations and Consent to Discipline which was approved by a Hearing Committee and a Disciplinary Board Panel.

You did not contest that the facts as pled do evidence violations of the following Rules of Professional Conduct:

- a. 16-101, failing to provide competent representation to a client;
- b. 16-102(C) –failing to properly limit the scope of representation by seeking informed consent;
- c. 16-104(A)(3) –failing to keep a client reasonably informed about the status of a matter;
- d. 16-104(B) –failing to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding representation;
- e. 16-105(B) –failing to communicate your fee agreement in writing;
- f. 16-116(D) –failing to effect an orderly termination;
- g. 16-301 –filing a proceeding which has no good faith basis;
- h. 16-501(B) –failing to make reasonable effort to ensure that another lawyer under your supervisory control conformed to the Rules of Professional Conduct; and
- i. 16-804(D) –engaging in conduct that is prejudicial to the administration of justice.

The misconduct occurred during your representation of an immigration client who first sought your assistance in 2016. You did file an Entry of Appearance, but you asserted you were retained for only a limited purpose. Despite this assertion you did not obtain informed consent to limit the scope of your representation, nor did you provide your client with a written fee agreement. During

the course of this matter, you failed to adequately explain the scope of your representation, leading to confusion as to who exactly was counsel in the immigration matter from March of 2016 through March of 2019. Such failure to clarify your role is inexcusable. Even though you or a member of your firm represented the client for a significant period of time you personally only met with the client or her husband two times other than to provide documents. One attorney who worked for your firm and on this matter informed the Office of Disciplinary counsel that you did direct their work, but you alleged that you did not formally oversee the attorney's work. Once again, such confusion as to who performed the work and what was done in a client's matter is unacceptable.

You did acknowledge that an improper immigration filing was done on behalf of the client which had no possibility of success, resulting in unnecessary cost, confusion, and time for your client. You did refund your client for this improper filing. Finally, you did not take the appropriate steps to effect an orderly transfer of this immigration matter to new counsel when the client terminated your attorney/client relationship.

Although you have substantial experience in the practice of law, an aggravating factor, you fully cooperated in this disciplinary proceeding and have agreed to a one-year period of probation wherein you will work with a fellow member of the bar to carefully review your immigration practices.

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

Dated: July 16, 2021

The Disciplinary Board of the New Mexico Supreme Court

By

Hon. Cynthia A. Fry (ret'd)
Board Chair

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

IN THE MATTER OF MICHAEL E. CAIN, ESQ.

Disciplinary No. 2020-11-4471

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

FORMAL REPRIMAND

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

This matter arises from a complaint from a State District Court Judge based on a child custody/visitation hearing on July 13, 2020. At the start of the hearing, the respondent ("SR") requested a continuance so that her recently-retained lawyer could appear. You had been retained by SR but had not entered an appearance; SR gave you notice of the hearing. The Judge denied the motion for continuance and suggested that SR call you for your telephonic appearance.

Once you appeared via telephone, you immediately asked for a continuance because you had just been retained and hadn't had time to prepare, and because of, as you put it, "the Court's ongoing conflict with me." The Judge denied the request for a continuance. In a loud voice, you argued with and interrupted the Judge for at least ten minutes, stating repeatedly that she had a conflict with you and that she should recuse. At one point, you stated: "You can't

find that you're going to be fair, your Honor. That's ridiculous." The Judge repeatedly denied any bias or grounds for recusal, but you continued to argue with her. Your continuous argument prompted opposing counsel to interrupt to ask you to give attention to the merits of the case.

Towards the end of the hearing, the Judge stated: "I do find that I can be and am fair and impartial." You laughed out loud, but then, after the Judge said: "Mr. Cain. Mr. Cain," you apologized. Your conduct violated the following Rules of Professional Conduct: 16-305(D), by engaging in conduct intended to disrupt a tribunal, and 16-804(D), by engaging in conduct prejudicial to the administration of justice.

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

Dated April 16, 2021

The Disciplinary Board of the New Mexico Supreme Court

By

Hon. Cynthia A. Fry (ret'd)
Board Chair

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

IN THE MATTER OF ROBERT D. MUELLER, ESQ.

Disciplinary No. 2021-03-4490

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

FORMAL REPRIMAND

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

On January 21, 2020, you were waiting in the Second Judicial District Court for a scheduling conference in a landlord-tenant lawsuit which you brought on behalf of yourself and your wife as tenants. The attorney for the landlord was present. You were upset that the scheduling conference was not going to be recorded; you demanded that the conference be recorded. The courtroom bailiff ("Bailiff") arranged for a court reporter to come to the courtroom to record the scheduling conference.

As they waited, Bailiff observed that the landlord's attorney was visibly uncomfortable with you being so close to her—the two of you were sitting at the same table—particularly as you had a large German Shepherd with you. The landlord's attorney felt physically threatened by you and the dog. Bailiff asked you to be seated at the other table; you expressed anger that you were not sitting at the table you believed was traditionally saved for plaintiffs.

After initially refusing to move you did finally move to the other table. You asked Bailiff why she was treating you the way that she was. Bailiff told you, "I am not a fan of yours." You asked why. She responded, "Because you have not been nice." He said, "Well, I'm going to tell the judge about that." She said, "I already have." When the Judge came in and took the bench, you told him about the statement and said that it was "certainly prejudicial." The Judge asked: "Would you like me to get off the case?" You said, "Yes, sir." The Judge did recuse himself.

By letter dated March 3, 2020 to the Clerk of the Second Judicial District Court, you complained about Bailiff and requested an investigation. The title of the letter indicated your belief that the Bailiff should be fired. By letter dated March 7, 2020, the Clerk wrote that he "formally investigated this matter. Second Judicial

District Court Administration has taken such action as I believe is necessary. Court Administration considers this matter closed."

On May 1, 2020, you filed a lawsuit on behalf of yourself against Bailiff and the Clerk ("Lawsuit"); the Clerk had by then been appointed to the Bench for another judicial district. The Complaint for the Lawsuit contained three Counts: one for Declaratory Judgment; one for Defamation; and one for Intentional Interference with Prospective Economic Relations. The Complaint sought damages against Bailiff, and asked that the Court issue its Order, in part, "[f]ully addressing [the Clerk's] actions incompletely resolving the matter in the case at bar." The Complaint alleged that Bailiff's statements harmed your "good name and character among [your] clients, associates, fellow attorneys, judicial officers, and acquaintances" and "were made intentionally to inflict harm upon [you] and [your] business"; and that you suffered "Personal humiliation; . . . [d]eceased social activities and loss of life's pleasures [and m]ental anguish and suffering."

The County of Bernalillo retained counsel, who moved to dismiss the County from your Lawsuit; the Court granted the motion.

On March 9, 2021, after you received the disciplinary complaint, you voluntarily dismissed the former Clerk, then-Judge. Later, at the request of disciplinary counsel, you subsequently dismissed the Lawsuit with prejudice.

Your conduct violated the following Rules of Professional Conduct: Rule 16-301, by filing a frivolous lawsuit; Rule 16-305(D), by engaging in conduct intended to disrupt a tribunal; and 16-804(D), by engaging in conduct prejudicial to the administration of justice.

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

Dated July 16, 2021

The Disciplinary Board of the New Mexico Supreme Court

By

Hon. Cynthia A. Fry (ret'd)
Board Chair

CLE PLANNER

Your Guide to
Continuing Legal
Education

August 11, 2021



WELCOME BACK

The **Center for Legal Education** is preparing to welcome back members for in-person programs this September.¹

Until then, all CLE courses will be available remotely through webinar, teleseminar, or on demand. Refer online for registration and more information.

All visitors to the State Bar Center are encouraged to read the latest COVID information at the CDC website and take any actions to keep themselves and others comfortable and healthy as we continue to transition out of the pandemic. NOTE: Face masks must be worn at all times for unvaccinated visitors, with the exception of eating and drinking. Vaccinated individuals are not required to wear masks.

¹ Subject to current public health guidelines.

INSIDE THIS ISSUE

- ▶ August and September Courses
- ▶ Save the Date
- ▶ Fall Season Pass 2021

The Center for Legal Education is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community. CLE offers a full range of educational services. For more information, contact us or visit us online.

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New Mexico State Bar Foundation
Center for Legal Education

AUGUST AND SEPTEMBER COURSES



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AUGUST 11



Trust and Estate Planning for Cabins, Boats, and Other Family Recreational Assets

1.0 EP
11 a.m.-noon
\$79 Standard Fee



International Law & How It Impacts on Immigration

1.0 G
noon-1 p.m.
\$49 Standard Fee

AUGUST 13



Replay: 2021 Health Law Legislative Roundup (2021)

1.5 G
9-10:30 a.m.
\$74 Standard Fee



Advanced Oratorical Cross-Examination Techniques That Work Best Against Experts at Trial and at Depositions

1.5 EP
11 a.m.-12:30 p.m.
\$129 Standard Fee

AUGUST 20



Hot Topics in Copyright Law: Artificial Intelligence, Computer Code, Fair Use (Google v. Oracle), and NFTs (Non-Fungible Tokens)

1.0 G
11 a.m.-Noon
\$89 Standard Fee

AUGUST 27



Replay: A Look at the Practice of Law Through the Decades: A Panel Discussion of Women Attorneys Practicing Law in New Mexico from 1980 to the Present (2020)

1.5 G
9-10:30 a.m.
\$74 Standard Fee

AUGUST 31



Trust and Estate Planning for Firearms

1.0 G
11 a.m.-Noon
\$79 Standard Fee

SEPTEMBER 22



Mandatory Succession Planning: It Has to Happen, But It Doesn't Have to be that Difficult

1.0 EP
11 a.m.-Noon
\$49 Standard Fee

SEPTEMBER 23



Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation

1.0 EP
11 a.m.-Noon
\$89 Standard Fee

SEPTEMBER 24



Changing Minds Inside and Out of the Courtroom

1.0 G
11 a.m.-Noon
\$89 Standard Fee

SEPTEMBER 29



10 Steps to Client Relationship Mastery

1.0 EP
11 a.m.-Noon
\$89 Standard Fee

SEPTEMBER 28



Staying Out of the News: How to Avoid Making the Techno-Ethical Mistakes that Put You on the Front Page

1.0 EP
11 a.m.-Noon
\$89 Standard Fee

SEPTEMBER 30



Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204

1.0 EP
2-3 p.m.
\$55 Standard Fee

COMING SOON!

Most programs available in both in-person and virtual formats.

- ▶ September 10 **Appellate Law Institute**
- ▶ September 16-17 **Employment Law Institute**
- ▶ September 24 **Tax Law Institute**
- ▶ September 28 **Family Law Fall Institute – Fall Edition**
- ▶ October 1 **Health Law Section**
- ▶ October 13 **Child Sex Abuse Cases: Pretrial Strategies and Proceeding to Trial** (webinar only)
- ▶ October 15 **Procurement Code Institute**
- ▶ October 20 **Whistleblowers are Heroes: Bringing Medicaid Fraudsters and Elder Abuse to Justice** (webinar only)
- ▶ October 21 **Solo and Small Firm Institute**
- ▶ October 22 **Elder Law Institute**
- ▶ October 28 **Pay Equity Program** (with Women's Bar Association)
- ▶ October 29 **7th Annual Symposium on Diversity & Inclusion** (CDLP)



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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-030

No. A-1-CA-37742 (filed February 25, 2020)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MIGUEL OTERO,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

ALISA A. HART, District Judge

Certiorari Denied, April 22, 2020, No. S-1-SC-38194.

Released for Publication June 23, 2020.

HECTOR H. BALDERAS,
Attorney General
MARIS VEIDEMANIS,
Assistant Attorney General
Santa Fe, NM
for Appellee

LISA TORRACO
Albuquerque, NM
for Appellant

Opinion

Briana H. Zamora, Judge.

{1} Defendant appeals from the district court's denial of his petition to withdraw his plea. On appeal, Defendant argues that he was not advised of the loss of his constitutional Second Amendment right to bear arms that resulted from the plea and that he should now be permitted to withdraw his plea on that basis. We affirm.

DISCUSSION

{2} In 2001 Defendant entered a plea to six counts of armed robbery, each with a firearm enhancement; false imprisonment; second degree kidnapping; and resisting, evading, or obstructing an officer. In 2018, four years after his sentence was fully served, including probation, and two years after he had been arrested and charged in federal court for being a felon in possession of a firearm, Defendant filed a coram nobis motion in the present case under "Rule 1-060 [NMRA] and/or Rule 5-803 [NMRA]" for relief from judgment and to withdraw his plea. See Rules 1-060, 5-803; *State v. Tran*, 2009-NMCA-010, ¶ 15, 145 N.M. 487, 200 P.3d 537 ("The writ of error coram nobis is an appropriate procedure for a postjudgment challenge to a guilty plea allegedly induced by mistake, fraud, or coercion." (internal quotation marks

and citation omitted)). Specifically, Defendant sought to withdraw his plea based on his contention that he was never advised of the consequences to his Second Amendment right to bear arms at the time of the plea; that this lack of advisement constituted ineffective assistance of counsel; and that the judgment was void as a matter of law because it was not knowing, intelligent, and voluntary. The district court denied his motion to withdraw the plea, concluding that the Second Amendment advisement was not required at the time of Defendant's plea, and that Defendant presented insufficient evidence supporting his claim of ineffective assistance of counsel.

I. Standard of Review

{3} "The decision of whether a defendant should be permitted to withdraw a plea is discretionary with the trial court; thus, on appeal we review the trial court's ruling to determine whether, under the facts offered in support of the motion, the trial court abused its discretion." *State v. Lozano*, 1996-NMCA-075, ¶ 9, 122 N.M. 120, 921 P.2d 316. "A court abuses its discretion when it is shown to have acted unfairly, arbitrarily, or committed manifest error." *State v. Hunter*, 2006-NMSC-043, ¶ 11, 140 N.M. 406, 143 P.3d 168 (internal quotation marks and citation omitted). "A denial of a motion to withdraw a guilty plea constitutes manifest error when the undisputed

facts establish that the plea was not knowingly and voluntarily given." *Id.* (internal quotation marks and citation omitted).

II. Timeliness of Defendant's Coram Nobis Application

{4} As a preliminary matter, we address the timeliness of Defendant's coram nobis application. Rule 5-803 formalized the common law concept of coram nobis and "is deemed to have superseded former Rule 1-060(B) for post-sentence matters involving criminal convictions, including the writ of coram nobis." *State v. Gutierrez*, 2016-NMCA-077, ¶ 30, 380 P.3d 872 (quoting Rule 5-803 comm. cmt.) (omission and emphasis omitted). "Rule 5-803 is 'effective for all cases filed on or after December 31, 2014.'" *Gutierrez*, 2016-NMCA-077, ¶ 30 (internal quotation marks omitted) (quoting N.M. S. Ct. Order No. 14-8300-014).

{5} The State argues that Defendant's motion may only be brought under Rule 5-803(C), which requires that such a motion be brought "within a reasonable time after the completion of the petitioner's sentence[.]" Rule 5-803(C). The State thus argues that Defendant's coram nobis motion from 2016 was untimely because it was not brought within a reasonable time and Defendant provided no explanation for his years of delay. Conversely, Defendant argues Rule 5-803 does not apply to his case because his underlying criminal case was filed long before Rule 5-803 was effected. Defendant further argues that his motion was filed under Rule 1-060 because he claims that the judgment was void, and, as such, there was no time limit to bringing the motion. See *Gutierrez*, 2016-NMCA-077, ¶ 20 (reiterating that "there is no limitation of time within which a motion must be filed under the provisions of Rule 1-060(B)(4)" because "[a] judgment which is void is subject to direct or collateral attack at any time" (alteration, internal quotation marks, and citations omitted)).

{6} We dealt with a similar argument in *Gutierrez*; however, in that case, "Rule 5-803 was not in effect at the time of [the d]efendant's motion." *Gutierrez*, 2016-NMCA-077, ¶ 30. Although this Court's reference to "the time of [the d]efendant's motion" might indicate that the file date of the coram nobis motion is the applicable reference point, we did not determine whether the effective date in fact relates to the motion or the original, underlying criminal case in which it was filed. *Id.* (emphasis added). Instead, we concluded that the district court properly considered the defendant's motion under Rule 1-060(B)

(4), which was the only rule in effect at the time the defendant's motion had been filed. See *Gutierrez*, 2016-NMCA-077, ¶ 20.

{7} In the present case, the district court denied Defendant's petition for post-sentence relief on the merits and did not address the timeliness question. Accordingly, we need not resolve which rule applies in the present case. Either Rule 1-060 would apply, in which case timeliness is not a concern, or Rule 5-803 would apply, in which case the district court could have determined that Defendant's delay in filing the coram nobis motion was reasonable, based on an argument that the conviction is void for his counsel's failure to inform him of his Second Amendment rights. Given that the district court ruled on the merits of the coram nobis motion, we review the same. Cf. *L.D. Miller Constr., Inc. v. Kirschenbaum*, 2017-NMCA-030, ¶ 15, 392 P.3d 194 (stating that "the district court would have been within its discretion to determine that the late motion was not simply an attempt to evade the time for appeal"; and declining to engage in an independent assessment of the defendants' motives).

III. Second Amendment Advisement

{8} Turning to the merits, Defendant argues that, because his counsel should have informed him of the impact of his guilty plea on his Second Amendment rights, Defendant's plea was not knowing, intelligent, and voluntary. See *State v. Paredes*, 2004-NMSC-036, ¶ 5, 136 N.M. 533, 101 P.3d 799. Although a requirement that a defendant be advised of the loss of his Second Amendment rights to possess firearms when he pleads guilty was first promulgated in 2007, Defendant argues that he should have nevertheless been advised of the loss of his Second Amendment rights prior to his 2001 plea. See Rule 5-303(F)(6) NMRA.

{9} Defendant urges us to adopt the reasoning in *Paredes* and *Ramirez v. State*, 2014-NMSC-023, 333 P.3d 240, in his case. In *Paredes*, our Supreme Court analyzed whether the failure to advise a client of the immigration consequences of a plea constituted ineffective assistance and held that it does, remanding to the district court for an evidentiary hearing to determine whether the defendant's counsel in that case was, in fact, effective. See 2004-NMSC-036, ¶¶ 13-15, 16, 24. The Court reaffirmed that, when "a defendant is represented by counsel during the plea process and enters his or her plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Id.* ¶ 13 (alteration, internal quotation marks, and citation omitted).

{10} Ten years later, our Supreme Court considered whether the rule announced in *Paredes* should apply retroactively. See *Ramirez*, 2014-NMSC-023, ¶ 9. The Court in *Ramirez* reiterated that "New Mexico does not give retroactive effect to a new criminal procedure rule" and explained that the pertinent test is "whether a previously issued judicial opinion introduced a new rule of criminal procedure or merely expanded upon an already established rule." *Id.* ¶ 11. In identifying when an exception to the general rule should apply, the Court stated that "new rules generally should not be afforded retroactive effect unless (1) the rule is substantive in nature, in that it alters the range of conduct or the class of persons that the law punishes, or (2) although procedural in nature, the rule announces a watershed rule of criminal procedure." *Id.* (internal quotation marks and citation omitted).

{11} We first address the second exception. Defendant contends the mandate to advise a criminal defendant of the loss of his Second Amendment rights is a watershed rule. We disagree.

[W]atershed rules of criminal procedure implicate[] the fundamental fairness and accuracy of the criminal proceeding. Whatever the precise scope of this exception, it is clearly meant to apply only to a small core of rules requiring observance of those procedures that are implicit in the concept of ordered liberty.

Graham v. Collins, 506 U.S. 461, 478 (1993) (omission, internal quotation marks, and citations omitted). However, our Supreme Court reiterated in *Kersey v. Hatch* that "[t]he watershed exception is extremely narrow[.]" noting that, since the United States Supreme Court identified the two exceptions to the "general rule of nonretroactivity for cases on collateral review[.]" it "has rejected every claim that a new rule satisfied the requirements for watershed status." 2010-NMSC-020, ¶¶ 24-25, 148 N.M. 381, 237 P.3d 683 (internal quotation marks and citation omitted). Based on this standard, we hold that the requirement that a criminal defendant be advised of the impact of a guilty plea on his or her right to bear arms does not implicate the "fundamental fairness and accuracy of the criminal proceeding[.]" and is, thus, not a watershed rule. *Graham*, 506 U.S. at 478; see *Paredes*, 2004-NMSC-036, ¶ 9 (stating that the trial court is not obligated to "inform defendants of all possible consequences flowing from a guilty plea").

{12} We therefore turn to the first exception of nonretroactivity: a new rule that is substantive in nature. See *Ramirez*, 2014-NMSC-023, ¶ 11. Defendant contends that Rule 5-303(F)(6), requiring

that a defendant be advised of the impact of a guilty plea on his or her right to bear arms, is not a new rule because it existed at the time he entered his plea. He argues that, because the amendment to the rule to include Subsection F, "which mandates the district court judge to advise the defendant that his guilty plea will affect his constitutional right to bear arms, should apply retroactively because it is a constitutional right in which [Defendant] can claim the benefits of the plain error doctrine." We again disagree.

{13} As our Supreme Court explained in *Kersey*, a "new rule" is one that "breaks new ground or imposes a new obligation on the [s]tates or the [f]ederal [g]overnment. To put it differently, a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." 2010-NMSC-020, ¶ 16 (internal quotation marks and citation omitted). "Thus, a court establishes a new rule when its decision is flatly inconsistent with the prior governing precedent and is an explicit overruling of an earlier holding." *Id.* (internal quotation marks and citation omitted). "A rule that is not deemed a 'new rule' by this test may apply retroactively." *Ramirez*, 2014-NMSC-023, ¶ 11. Although it is true that the right to bear arms is not a new right, the rule requiring that a defendant be advised of the impact of a guilty plea on his right to bear arms was new as of the amendment of the rule in 2007. See Rule 5-303 comm. cmt. (describing the addition of Subsection (F)(6) in 2007). Defendant has provided no authority indicating that this rule existed in common law earlier than 2007, so we assume no such authority exists. See *State v. Casares*, 2014-NMCA-024, ¶ 18, 318 P.3d 200 (stating that "[w]e will not consider an issue if no authority is cited in support of the issue, because absent cited authority to support an argument, we assume no such authority exists").

{14} Defendant nonetheless argues that the advice of the loss of his right to bear arms is at least as crucial as advice of immigration consequences, so his case should "have the same result" as cases that "support[] the withdrawal of a plea for failure to advise a criminal defendant of the statutory immigration consequences[.]" However, although it is true that our Supreme Court determined that a defendant must be informed of the immigration consequences of a guilty plea, it applied its ruling retroactively only to 1990, when the requirement to advise of immigration consequences was first included in the plea colloquy in New Mexico. See *Ramirez*, 2014-NMSC-023, ¶¶ 14, 17 (highlighting that *Paredes* does nothing more than apply an existing rule). As such, even applying *Ramirez* to the present case, Defendant

is afforded no relief. The rule requiring advisement of the impact of a plea on a defendant's right to bear arms applies from when the rule first made such a requirement in 2007. As Defendant entered his plea in 2001, several years prior to the pertinent amendment of Rule 5-303, we hold that Defendant's counsel was not ineffective for not advising Defendant of the impact of his plea on his right to bear arms; Defendant's plea was not involuntary, unknowing, or unintelligent based on the fact that he was not so advised; and the district court did not abuse its discretion in denying Defendant's motion to withdraw his plea on these grounds. *See Paredes*, 2004-NMSC-036, ¶ 5; *see also Ramirez*, 2014-NMSC-023, ¶ 8.

{15} To the extent Defendant argues that the district court's failure to advise Defendant was a violation of due process, we are likewise unpersuaded. As our Supreme Court explained in *Paredes*, due process does not require the trial court to "inform defendants of all possible consequences flowing from a guilty plea." 2004-NMSC-036, ¶ 9. Rather, "[t]he trial court only has a duty to ensure that the defendant understands the 'direct' consequences of the plea but is under no duty to advise the defendant of the plea's 'collateral' consequences."

Id. The fact that a federal court might use the consequences of Defendant's 2001 guilty plea in a 2016 federal prosecution is a collateral consequence, and the district court was under no obligation to advise Defendant of this collateral consequence in 2001. *See id.*

{16} Finally, Defendant argues that because his right to bear arms is a constitutional right, he is entitled to advice on the loss of that right as a result of his plea, and the failure to advise him on such loss necessarily means his counsel was ineffective. However, Defendant provides no authority for such a proposition, and we are aware of none. *See Casares*, 2014NMCA024, ¶ 18 (stating that "[w]e will not consider an issue if no authority is cited in support of the issue, because absent cited authority to support an argument, we assume no such authority exists"). Indeed, we note that a defendant also loses voting rights and is not informed of such prior to a guilty plea, and we are aware of no authority that requires that a constitutional right be discussed and identified prior to a defendant entering in a plea, particularly as it is a collateral consequence. *See id.*; *see also Paredes*, 2004-NMSC-036, ¶ 9 (noting that the trial court only has a duty to ensure that a defendant understands

the *direct* consequences of a plea); *see generally* Rule 5-303(F) (identifying only a handful of the consequences resulting from a guilty plea that must be discussed with a defendant prior to entry of a plea). We therefore hold that the district court did not violate Defendant's due process rights by failing to advise him regarding the impact of a guilty plea on his Second Amendment rights in 2001. *Cf. Paredes*, 2004-NMSC-036, ¶¶ 10-11 (stating that deportation is not within the control and responsibility of the district court and is, hence, collateral to a conviction; a "district court's silence regarding the immigration consequences of a defendant's guilty plea does not violate that defendant's federal constitutional right to due process"; and, as such, advising the defendant that his plea "could" affect his immigration status was, likewise, not constitutionally defective).

CONCLUSION

{17} For the foregoing reasons, we affirm

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

BRIANA H. ZAMORA, Judge

WE CONCUR:

LINDA M. VANZI, Judge

JACQUELINE R. MEDINA, 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-031
No. A-1-CA-37331 (filed March 11, 2020)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.

NATHANIEL HERTZOG a/k/a
a/k/a NATHANIEL V. HERTZOG
a/k/a NATHANIEL VINCE HERTZOG
a/k/a NATHANIAL HERTZOG a/k/a
JEFFREY HERTZOG a/k/a JEFFERY
HERTZOG,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

BRETT R. LOVELESS, District Judge

Released for Publication June 23, 2020.

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Opinion

J. Miles Hanisee, Chief Judge.

{1} Nathaniel Hertzog (Defendant) appeals his conviction for leaving the scene of an accident (great bodily harm or death) in the fourth degree, contrary to NMSA 1978, Section 66-7-201(B) (1989). On appeal, Defendant argues (1) the district court erred in failing to properly instruct the jury regarding the definition of “accident”; and (2) the State presented insufficient evidence to support Defendant’s conviction. We affirm.

BACKGROUND

{2} On the evening of September 12, 2015, Defendant and his girlfriend, Stephanie Frost (Victim), visited the home of their friends, Steve and Samantha Rogers. Over the course of the visit (approximately two and a half hours), Defendant had a “couple of beers,” and Victim had five or six shots of hard liquor. Defendant and Victim then left the Rogers’ home in seemingly good spirits with Defendant driving his Chevy Avalanche truck.

{3} During the drive an argument erupted between Defendant and Victim. Victim punched Defendant in the face and then jumped out of the moving truck near Lomas and Wyoming Boulevards. The truck was traveling at approximately forty miles per hour at the time. Defendant braked momentarily following the event, and although he was aware that Victim had jumped out of the truck, he did not stop at or near the scene to investigate Victim’s condition, report the incident, provide identification, or render assistance. According to Defendant, he continued driving and turned around at the next intersection, but as he drove past the area where Victim had jumped out, he believed he saw her sitting up on the sidewalk with people around her. Instead of stopping, Defendant departed the area. Defendant then called Steve to ask that he pick up Victim, explaining that she “freaked out[,]” “started punching [Defendant],” “jumped out of the truck[,]” and “was [now] sitting up . . . on the curb.” Steve told Defendant,

“Don’t worry about it.” He and Samantha would pick Victim up and “give her a ride home.”

{4} When Steve and Samantha arrived at the scene about ten minutes after Defendant’s call, there were multiple police officers at the scene, and there was a blanket over Victim. Based on witness testimony, it came to light that when Victim jumped out of Defendant’s truck, she fell to the ground, and the truck’s rear passenger tire ran over her head, crushing her skull and killing her instantly, after which her body rolled toward the curb in the far right lane. After the incident, Defendant told the investigating officer that he did not know that he had run over Victim and did not learn that Victim had died until the following day.

{5} In June 2016 Defendant was charged with knowingly leaving the scene of an accident resulting in great bodily harm or death, contrary to Section 66-7-201(A), (C), and alternatively, the lesser charge of leaving the scene of an accident resulting in great bodily harm or death, contrary to Section 66-7-201(A), (B). At trial, a motorist who witnessed the entire incident from thirty yards away testified that Defendant appeared to be driving the speed limit of forty miles per hour and did not exhibit any signs of unusual driving or swerving. Thereafter, the investigating officer testified that he did not have any evidence that would contradict the motorist-witness’s testimony regarding Defendant’s driving or his speed and that Defendant’s statements were consistent with information from other sources. The investigating officer also testified that Defendant told him that, on previous occasions, Victim had jumped out of the vehicle abruptly, but only when the vehicle was stopped, and Defendant’s attempts to speak with Victim on those occasions “didn’t go well.”

{6} The medical examiner thereafter testified that he determined the cause of Victim’s death was a blunt head injury, but he was unable to determine whether the manner of death was an accident, homicide, or suicide. An expert in accident reconstruction testified that it was unusual that Victim’s body fell underneath Defendant’s vehicle, but not unusual that Defendant may not have felt a noticeable vibration when his vehicle went over Victim’s body considering he drove a 5,400 pound truck and there are asphalt and concrete cracks on Lomas Boulevard. The expert further testified that any driver may have attributed such vibration to normal driving conditions. However, the expert also admitted that it was more likely than not that an individual who jumps out of

a moving vehicle would be injured, but that the extent of the injury would depend on how the individual lands. Following a three-day trial, the jury convicted Defendant of the lesser charge of leaving the scene of an accident resulting in great bodily harm or death, a fourth degree felony, and Defendant was sentenced to a term of incarceration of eighteen months, of which nine months were suspended, for a total incarceration term of nine months. Defendant appeals from his conviction.

DISCUSSION

I. The District Court Did Not Err in Its Instruction Regarding Leaving the Scene of an Accident

{7} Defendant's primary argument on appeal is that the given jury instruction for leaving the scene of an accident was improper because it failed to define what constitutes an "accident." The parties stipulated that a conviction for leaving the scene of an accident requires, as a threshold matter, that Defendant knew he was involved in an accident. Defendant contends an accident is limited to circumstances in which a driver is aware that his or her vehicle collided with or struck another vehicle, person, stationary object, or animal, and that a definitional instruction was necessary to ensure that the jury understood such. Because we conclude that the term accident encompasses a circumstance where a passenger jumps from a moving vehicle, we disagree.

{8} Section 66-7-201(A) provides:

The driver of any vehicle *involved in an accident* resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of [NMSA 1978,] Section 66-7-203 [(1978)].¹

(Emphasis added.) Defendant was convicted of violating Subsection (B) of Section 66-7-201, which makes it a fourth degree felony to fail to stop or to comply with the requirements of Section 66-7-203, "where the accident results in great bodily harm or death." Section 66-7-201(B).

{9} Because there are no uniform jury instructions for the crimes that Section 66-7-201 defines, the State and Defendant proposed competing instructions, and ultimately, the district court gave the following instruction for the offense for which Defendant was convicted:

1. [D]efendant was the driver of a motor vehicle involved in an accident which resulted in the death of [Victim];
2. [D]efendant knew that there was an accident;
3. [D]efendant knowingly failed to stop his vehicle at the scene of the accident or as close as possible without obstructing traffic more than necessary, [and] knowingly failed to comply with the requirements of . . . Section 66-7-203[.]²

{10} Defendant's proposed instructions were materially the same except for the second element: instead of stating, "[D]efendant knew there was an accident[.]" the proposed instructions attempted to define what constituted the accident, stating, "[D]efendant knowingly collided with or otherwise injured another person/or [D]efendant knew that there was an accident that occurred involving his car and [Victim]" and "the accident resulted in great bodily harm or death to [Victim]." After lengthy discussion regarding the statute and the appropriate jury instruction, the district court declined to include Defendant's proposed language.

{11} Since the issue was preserved, we review the jury instructions for reversible error. See *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134 ("The standard of review we apply to jury

instructions depends on whether the issue has been preserved. If the error has been preserved we review the instructions for reversible error."). Our inquiry seeks "to determine whether a reasonable juror would have been confused or misdirected by the jury instruction[.]" and whether the instruction "through omission or misstatement, fail[s] to provide the juror with an accurate rendition of the relevant law." *State v. Luna*, 2018-NMCA-025, ¶ 19, ___ P.3d ___ (internal quotation marks and citations omitted). "The propriety of jury instructions given . . . is a mixed question of law and fact[.]" which we review *de novo*. *State v. Lucero*, 2010-NMSC-011, ¶ 11, 147 N.M. 747, 228 P.3d 1167 (internal quotation marks and citation omitted). Moreover, "[w]hen evidence at trial supports the giving of an instruction on a defendant's theory of the case, failure to so instruct is reversible error." *State v. Brown*, 1996-NMSC-073, ¶ 34, 122 N.M. 724, 931 P.2d 69.

{12} The term "accident" is not defined within the definition section of the New Mexico Motor Vehicle Code, and our courts have yet to define the word; therefore, the question before us is one of first impression. See NMSA 1978, §§ 66-1-1 to -5 (1978, as amended through 2019); see also § 66-7-203 (requiring a driver to give information and render aid when involved in an accident resulting in injury to or death of any person or damage to any vehicle). "The meaning of language used in a statute is a question of law that we review *de novo*." *State v. McWhorter*, 2005-NMCA-133, ¶ 5, 138 N.M. 580, 124 P.3d 215. "Our primary goal when interpreting statutory language is to give effect to the intent of the [L]egislature." *State v. Torres*, 2006-NMCA-106, ¶ 8, 140 N.M. 230, 141 P.3d 1284. We accomplish such by giving effect to the ordinary and plain meaning of the words of statute, unless this leads to an absurd or unreasonable result

¹Section 66-7-203 further provides that "[t]he driver of any vehicle *involved in an accident* resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person." (Emphasis added.)

²We note that the parties stipulated at trial that knowledge of the accident and "*knowingly* fail[ing] to stop" were required for conviction under Subsection (B). The language of the statute does not support such a requirement for a conviction under Subsection (B). Section 66-7-201(A) sets out an obligation to stop when a driver is "involved in an accident[.]" but Section 66-7-201(A) and (B) are silent as to the requisite mens rea. While we express our doubt as to this aspect of the parties' interpretation of the statute, we need not consider this further because the jury indeed found that Defendant *knew* he was involved in an accident *and* that he *knowingly* failed to stop, thereby satisfying a stricter burden of proof than that seemingly required by the statute. See *Jackson v. State*, 1983-NMSC-098, ¶ 18, 100 N.M. 487, 672 P.2d 660 ("[T]here was no prejudice to the defendant because the jury instruction given without objection required a stricter burden of proof."). Moreover, since the parties have not briefed this issue for our review, we decline to address the issue on the merits. See *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("It is of no benefit either to the parties or to future litigants for [an appellate court] to promulgate case law based on [its] own speculation rather than the parties' carefully considered arguments."). Accordingly, we need not further discuss any error pertaining to this issue.

and “unless the [L]egislature indicates a different interpretation is necessary.” *McWhorter*, 2005-NMCA-133, ¶ 5. “If the language of the statute is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” *Id.* However, “[i]f the relevant statutory language is unclear, ambiguous, or reasonably subject to multiple interpretations, then the Court should proceed . . . [to consider] the history, background, and overall structure of the statute, as well as its function within a comprehensive legislative scheme.” *State v. Almanzar*, 2014-NMSC-001, ¶ 15, 316 P.3d 183 (internal quotation marks and citations omitted).

{13} Defendant’s challenge to the jury instruction requires us to interpret the phrase “involved in an accident” under Section 66-7-201(A). Defendant urges us to equate “accident” with “collision”—a construction that is consistent with the jury instruction he proposed and his defense that he did not know that his vehicle had collided with Victim. The State, in contrast, argues that “accident” should be construed more broadly and that the given jury instruction was adequate.

{14} To determine the appropriate construction, we first consider the ordinary and plain meaning of the term “accident.” See *McWhorter*, 2005-NMCA-133, ¶ 5. *Black’s Law Dictionary* (*Black’s*) defines “accident” as “[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated [and] any unwanted or harmful event occurring suddenly, as a collision, spill, fall, or the like, irrespective of cause or blame.” *Black’s Law Dictionary* (11th ed. 2019). However, *Black’s* also defines “automobile accident” and “car accident” as “[a]n accident in which a motor vehicle collides with another vehicle or with a person, animal, or object, usu[ally] causing damage or injury.” *Id.* (emphasis added). Notably, Section 66-7-201(A) uses the broader language of “involved in an accident[,]” instead of specifying a *motor vehicle* accident, signaling the Legislature’s intent to cover more than a vehicle colliding with something. The Legislature’s choice of the general term “accident” rather than a more specific term (car, automobile, or motor vehicle accident) indicates that it did not intend the narrow construction Defendant urges us to adopt. See *State v. Ramos*, 2013-NMSC-031, ¶ 15, 305 P.3d

921 (observing that when the Legislature knew how to include something, and did not, we assume the choice was deliberate); *State v. Hubble*, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579 (noting that “[w]e will not read into a statute language which is not there”). Thus, our view is that the plain meaning of the language within the context of the statute as a whole applies to more than collisions.³

{15} Even if we assume for purposes of discussion that the term “accident” is susceptible to different interpretations, the statute’s history and purpose require us to reject Defendant’s interpretation. See *Almanzar*, 2014-NMSC-001, ¶ 15. Our hit and run statute, Section 66-7-201, is derived from the Section 10-102(a) of the Uniform Vehicle Code (UVC), which states:

The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until such driver has fulfilled the requirements of §10-104. Every such stop shall be made without obstructing traffic more than is necessary.

National Committee on Uniform Traffic Laws & Ordinances (NCUTLO), *Uniform Vehicle Code & Model Traffic Ordinance* ch. 10, § 10-102(a), (2000), <http://iamtraffic.org/wp-content/uploads/2013/01/UVC2000.pdf>. An annotation to UVC Section 10-102 further explains that New Mexico, along with thirty-one other states, enacted the statute in verbatim or in substantial conformity with UVC § 10-102. *Traffic Laws Annotated* (TLA) § 10-102, at 30 (1979). Only Kentucky and Massachusetts modified the statutory language to “require stops only by drivers whose vehicles actually collide with other vehicles or persons, while the [UVC] requires such stops by any driver ‘involved’ in an accident, even though there is no collision or striking of another vehicle or person.” *Id.* at 29. Our Legislature elected not to modify our statute in such a manner, which indicates that it intended for the statute to apply more broadly. See *Ramos*, 2013-NMSC-031, ¶ 15.

{16} Our interpretation of “involved in an accident” also recognizes that the underlying policy objectives of our hit-and-run statutes are to prohibit drivers from

evading criminal or civil liability, to ensure people receive necessary aid or medical attention, and to deter drivers from thwarting or impeding investigations and avoiding liability for the harm they cause by failing to stop or failing to comply with Section 66-7-203. See *Wylie v. State*, 797 P.2d 651, 657-58 (Alaska Ct. App. 1990) (interpreting statutory phrase “involved in an accident” broadly based in part on recognition that the purposes of hit-and-run statute include preventing drivers from evading civil and criminal liability by escaping before their identities can be established and protecting injured persons from distress or danger due to lack of treatment); *State v. Rodgers*, 909 P.2d 445, 446-49 (Ariz. Ct. App. 1995) (interpreting statutory phrase “involved in an accident,” rejecting construction limiting scope to collisions, and recognizing that hit-and-run statute is designed to prevent drivers from thwarting investigations and evading civil or criminal liability and to ensure that injured victims receive aid immediately). We would undermine these objectives by construing the term “accident” to include only collisions, thereby excluding other types of accidents that seriously injure or, as in this case, kill a person.

{17} We also find persuasive the decisions of other courts in states with hit-and-run statutes nearly identical to New Mexico’s. See TLA § 10-102 at 30. Courts in those states have rejected overly narrow constructions of the sort advanced by Defendant. In *Rodgers*, 909 P.2d at 446, the defendant’s hit-and-run conviction was based on him leaving the scene when a passenger in his vehicle jumped out of his vehicle, which was traveling over fifty miles per hour, and suffered a fatal head injury from either her fall or from being run over by a second vehicle. The Arizona Court of Appeals held that the text of its hit-and-run statute “does not support the assertion that the statutory duties are triggered only by the occurrence of a collision” and concluded that “the defendant was ‘involved in an accident’ from the moment the victim leapt from [the defendant’s] car.” *Id.* at 448; see *Sheldon v. State*, 100 S.W.3d 497, 501-02 (Tex. App. 2003) (rejecting the defendant’s argument that he was not involved in an accident because the victim’s death was not caused by a collision).

{18} Based on the plain meaning of the term, the history of Section 66-7-201, the purposes of the hit-and-run statute, and guidance from courts in other jurisdictions, we conclude that the Legislature intended for the term “accident” to have

³Defendant also argues that Sections 66-7-201 and 66-7-203 should be read together as supporting his contention that an accident requires a “collision.” However, contrary to Defendant’s argument, Section 66-7-203 does not specify that an accident requires a collision; instead, the statute outlines the obligation to provide information in the event of a collision as well as the duty to render reasonable assistance in the event a person is injured.

a broader meaning than “collision.”⁴ See *State v. Lovato*, 2011-NMCA-065, ¶ 16, 150 N.M. 39, 256 P.3d 982 (“When this Court engages in the judicial construction of a statute it is explaining its understanding of what the statute has meant continuously since the date when it became law.” (internal quotation marks and citation omitted)). Accordingly, the district court did not err by refusing to give Defendant’s proposed instruction, which purported to limit the definition of accident to collision. Rather than preventing the jury from being confused and misled, Defendant’s proposed instruction would itself have confused and misled the jury.

II. The State Presented Sufficient Evidence to Support Defendant’s Conviction

{19} Defendant further contends that his conviction for leaving the scene of an accident is not supported by sufficient evidence because “[t]here was absolutely no evidence presented that Defendant had any knowledge that his car was in a collision with the [V]ictim or that his car ‘struck’ the [V]ictim.” We disagree.

{20} We review a challenge to the sufficiency of the evidence to determine “whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a

reasonable doubt with respect to every element essential to a conviction.” *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). The reviewing court “view[s] the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. “Our appellate courts will not invade the jury’s province as fact-finder by second-guessing the jury’s decision concerning the credibility of witnesses, reweighing the evidence, or substituting its judgment for that of the jury.” *State v. Gwynne*, 2018-NMCA-033, ¶ 49, 417 P.3d 1157 (internal quotation marks and citation omitted), *cert. denied*, ___-NMCERT-___ (No. S-1-SC-36926, Apr. 10, 2018). “Jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” *State v. Smith*, 1986-NMCA-089, ¶ 7, 104 N.M. 729, 726 P.2d 883.

{21} Per its instructions, in order to convict Defendant of leaving the scene of an accident, the jury had to find that: (1) “[D]efendant was the driver of a motor vehicle involved in an accident which resulted in the death of [Victim]”; (2) “[D]efendant knew that there was an accident”; and (3)

“[D]efendant knowingly failed to stop his vehicle at the scene of the accident or as close as possible without obstructing traffic more than necessary, [and] knowingly failed to comply with the requirements of . . . Section 66-7-203.”

{22} The testimonial evidence at trial conclusively established the only element challenged on appeal: whether Defendant knew his vehicle was involved in an accident. Indeed, Defendant admitted that he was aware that Victim jumped from his vehicle while it was traveling approximately forty miles per hour—an event that qualifies as an accident for purposes of New Mexico’s hit-and-run statute. Because a reasonable juror could conclude that Defendant was “involved in an accident,” we must reject Defendant’s claim that the evidence is not sufficient to support his conviction.

CONCLUSION

{23} For these reasons, we affirm Defendant’s conviction.

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

WE CONCUR:
MEGAN P. DUFFY, Judge
ZACHARY A. IVES, Judge

⁴We decline Defendant’s invitation to apply the rule of lenity because his argument does not involve an “insurmountable ambiguity” pertaining to “the intended scope of [the hit-and-run] statute.” *State v. Johnson*, 2009-NMSC-049, ¶ 18, 147 N.M. 177, 218 P.3d 863 (internal quotation marks and citation omitted). “[L]enity is reserved for those situations in which a reasonable doubt persists about a statute’s intended scope even after resort to the language and structure, legislative history, and motivating policies of the statute.” *Id.* (emphasis, internal quotation marks, and citation omitted). No such situation exists here.



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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.

Attorney

O'Brien & Padilla, P.C., is seeking an experienced and self-motivated attorney to join our growing AV-rated insurance defense law firm. Duties include all aspects of litigation, such as preparing pleadings and motions, taking and defending depositions, participating in mediations and arbitrations, and handling hearings and trials. We handle all types of insurance matters at all stages of the case, but the firm's primary practice areas include defense of bad faith, uninsured motorist, personal injury, and workers' compensation cases. Attention to detail, good time management skills and the ability to work independently are necessary to succeed in this position. Attorneys with at least two years of experience in civil litigation are highly encouraged to apply. We offer a competitive salary and benefits for the right candidate. Please submit your cover letter, resume, references, and writing sample to rpadilla@obrienlawoffice.com.

Assistant City Attorney

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

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 annually 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 judgement 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.

Senior Trial Attorney Trial Attorney Assistant Trial Attorney

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

Assistant City Attorney – City of Rio Rancho

The Assistant City Attorney position provides support and assistance in planning, zoning, land development, contract negotiation and drafting, criminal procedure, policy evaluation and development, real estate and commercial transactions, civil rights, public finance, and public services. Position represents the City in legal proceedings before city, state and federal courts and agencies, including particularly criminal misdemeanor prosecution. May also assist in providing advice to the Mayor, Governing Body, City Manager and Department Directors regarding various legal matters and administrative concerns. Juris Doctor from an accredited and ABA-approved college or university law school; Three (3) years of experience in the areas of laws related to municipal government, public relations, litigation, bonds, land use, contracts, tort liability, planning, zoning, property, labor and personnel law, and criminal procedures; Prior experience working in a municipality, prior experience prosecuting misdemeanor and felony cases and working as an attorney in a federal, state, or local public agency. Must be a member in good standing of the State Bar of New Mexico; license to practice law in the State of New Mexico. For more information and to apply, visit: <https://rrnm.gov/196/Employment-and-Volunteer-Opportunities>

Attorney Associate #10102473 Civil Court (FT At-Will)

The Second Judicial District Court is accepting applications for an At-Will Attorney Associate. This position will be assigned to the Civil Division. Summary of position: Under direction review cases, perform legal research, evaluation, analysis, writing and making recommendations concerning the work of the Court. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico. Must have three (3) years of experience in the practice of applicable law, or as a law clerk; SALARY: \$28.690 hourly to \$46.622 (pay range LL) plus benefits. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at www.nmcourts.gov. CLOSES: August 13, 2021 at 5:00 p.m.

Associate Attorneys

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

Full-time Associate

Bardacke Allison LLP seeks an associate attorney. Our commercial litigation and intellectual property firm prioritizes teamwork, mentorship, and growth to provide representation at the highest levels. Send your resume, statement of interest, transcript, and writing sample to nancy@bardackeallison.com. Submissions will be kept confidential.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is an aggressive, successful Albuquerque-based complex civil commercial and tort litigation firm seeking an extremely hardworking and diligent associate attorney with great academic credentials. This is a terrific opportunity for the right lawyer, if you are interested in a long term future with this firm. Up to 3-5 years of experience is preferred. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad and Roswell offices. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to 5thDA@da.state.nm.us.

Managing Attorney for Statewide Consumer Law Practice Group

New Mexico Legal Aid Currently has an opening for a Managing Attorney for our Statewide Consumer Law Practice Group. Full job advertisement is available on our website. Send resume and cover letter to jobs@nmlegalaid.org or apply online at www.NewMexicoLegalAid.org. Position open until filled.

Attorney, Paralegal and Director of Communications Opening

New Mexico Legal Aid currently has opening for Attorneys, Paralegals, and a Director of Communication. Positions work closely with the courts and State Bar Leaders. Full job advertisements available on our website. Send resume and cover letter to jobs@nmlegalaid.org or apply online at www.NewMexicoLegalAid.org.

Litigation Paralegal

Sutin, Thayer & Browne is looking to hire a full-time Litigation Paralegal. The successful candidate must have at least 3 years of related experience. Please visit our website for full job description, <https://sutfirm.com/our-firm/careers/>. Competitive salary and full benefits package. Send resume to sor@sutfirm.com.

Legal Assistant

Modrall Sperling – Leading New Mexico law firm has an excellent opportunity for an experienced legal assistant in one of our business practice groups. In this role, you will provide a broad range of legal assistant services to two or more attorneys in our Santa Fe office. Candidates with experience in public finance, including bond transactions, highly preferred. Key Responsibilities: Provide administrative support to attorneys; Handle communications with clients and others; Organize transactional materials; Draft and file legal documents; Manage attorney calendars; Assist with client billing; Maintain client contacts. Basic Requirements: 2 or more years' experience as a legal secretary, legal assistant, or paralegal in a business practice group; Strong Word, PDF, Outlook, and calendaring skills; Excellent communication and client service skills; Editing and proofreading skills; Strong organizational and document assembly skills. This position requires a legal assistant who is self-motivated, detail-oriented, and able to multi-task and work pressure. Modrall Sperling offers an outstanding compensation and benefits package. Please forward your resume to Susan Harris: susanh@modrall.com

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.

Paralegal

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

Paralegal

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.

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

Litigation Paralegal

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

Paralegal

We seek an energetic, organized, efficient, and friendly full-time paralegal to join our growing civil litigation firm. Job duties include preparing correspondence, opening and organizing files, requesting medical records from providers, preparing discovery, communicating with clients, drafting pleadings, subpoenas and medical record and bill summaries. We offer competitive wages and benefits. Please submit cover letter and resume to rpadilla@obrienlawoffice.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.

Judicial Wellness Program Manager

The New Mexico Judges and Lawyers Assistance Program (NMJLAP) invites qualified and knowledgeable applicants to join our team as a full-time (30 hours per week) Judicial Wellness Manager. The successful incumbent will focus on judges, judicial staff, and their immediate family members who are affected by a wide range of personal and professional issues. NMJLAP seeks a licensed clinician (LADAC, LMHC, LPCC, LISW, or LMSW) who has previously worked with high-functioning professionals. Knowledge of the legal system in NM is a plus, particularly as it pertains to the process of becoming a judge and the stressors of that unique job. \$40,000-\$45,000 per year, depending on experience and qualifications. Generous benefits package included. EOE. Qualified applicants should submit a resume and cover letter to HR@sbnm.org. Visit https://www.sbnm.org/Portals/NMBAR/PubRes/State%20Bar%20Careers/Judicial%20Wellness%20Program%20Manager.pdf?ver=rK_s2TWDGH4CpS9tPHx-1w%3d%3d for full details and application instructions.

Service

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A licensed attorney available to GHOST-WRITE for your law firm! Email lrivier@lucyrivierlaw.com for contract legal RESEARCH and WRITING services.

Office Space

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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 to schedule a tour.

Miscellaneous

Want To Purchase

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

2021 Bar Bulletin Publishing and Submission Schedule

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

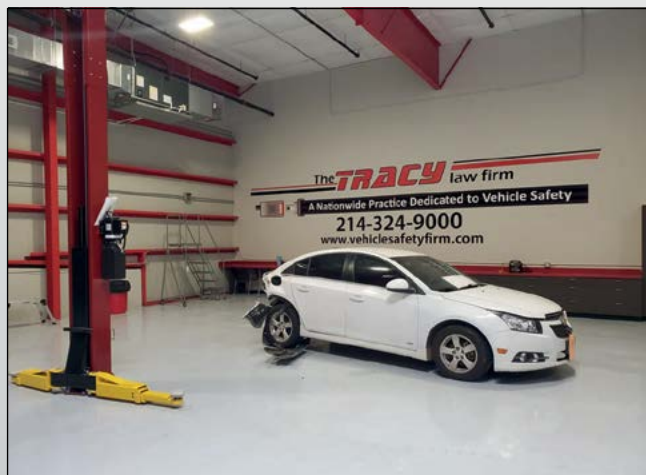
Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication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

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

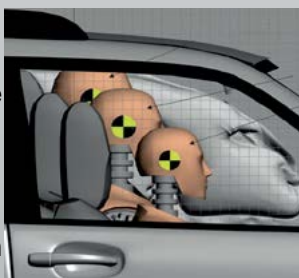
The publication schedule can be found at
www.sbnm.org.

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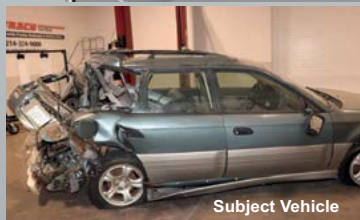
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