Official Publication of the State Bar of New Mexico

Bar Bulletin

September 8, 2021 • Volume 60, No. 17

Bryce Canyon Sunset by Robert Martin (see page 3) flickr.com/photos/94779902@N00/

Inside This Issue

New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education

In-person programs subject to current public health guidelines. Should changing guidance make meeting in-person not possible, registrants will be transferred to virtual format or given a refund. 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 in the public areas of the building, regardless of vaccination status.

SEPTEMBER 10

Webcast:
32nd Annual Appellate Practice Institute
5.9 G, 1.0 EP
8:30 a.m.–5 p.m.
$297 Standard Fee

SEPTEMBER 15

Teleseminar:
Retail Leases: Restructurings, Subleases, and Insolvency
1.0 G
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 16

Teleseminar:
Offices Leases: Current Trends & Most Highly Negotiated Provisions
1.0 G
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 16-17

In-Person or Webcast:
2021 Employment & Labor Law Institute
5.4 G, 1.3 EP
1–4:45 p.m.
$291 Standard Fee

SEPTEMBER 17

Teleseminar:
The Ethics of Representing Two Parties in a Transaction
1.0 EP
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 21

Teleseminar:
Employment Investigations: Figuring It Out & Avoiding Liability
1.0 EP
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 22

Webinar:
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

Webinar:
Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation
1.0 EP
11 a.m.–Noon
$89 Standard Fee

Teleseminar:
IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements
1.0 G
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 24

Webinar:
Changing Minds Inside and Out of the Courtroom
1.0 G
11 a.m.–Noon
$89 Standard Fee

SEPTEMBER 28

In-Person or Webcast:
2021 Family Law Fall Institute
5.8 G, 1.0 EP
8:45 a.m.–5 p.m.
$293 Standard Fee

Webinar:
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 29

Webinar:
10 Steps to Client Relationship Mastery
1.0 EP
11 a.m.–Noon
$89 Standard Fee

Teleseminar:
Trust and Estate Planning for Collectibles, Art & Other Unusual Assets
1.0 G
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 30

Teleseminar:
Ethics, Disqualification and Sanctions in Litigation
1.0 EP
11 a.m.–Noon
$79 Standard Fee

Webinar:
Basics of Trust Accounting
1.0 EP
2–3 p.m.
$55 Standard Fee

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

ALB

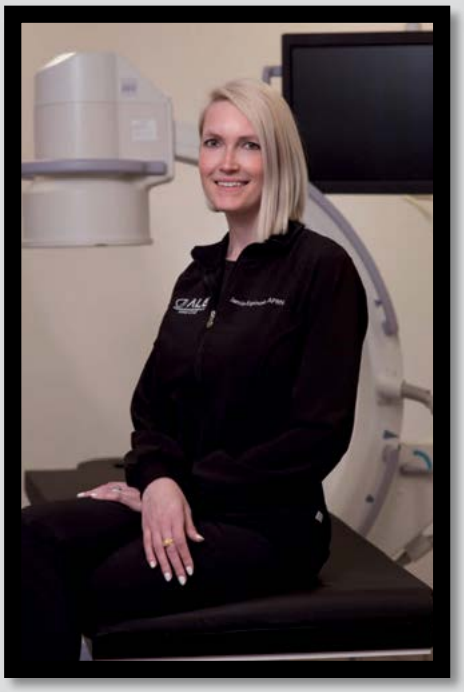
PAIN MANAGEMENT & SPINE CARE

www.albpainclinic.com

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

Letters of protection accepted.

Aldo F. Berti, MD
Board Certified in Pain Medicine & Neurology



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State Bar of New Mexico
Est. 1886

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www.sbnm.org

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Meetings

September

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Animal Law Section Board
11:30 a.m., State Bar Center

8
Children's Law Section Board
Noon, Children's Court, Albuquerque

8
Tax Section Board
9 a.m., teleconference

9
Business Law Section Board
4 p.m., teleconference

10
Prosecutors Section Board
Noon, teleconference

13
Real Property, Trust and Estate Section Real Property Division Board
Noon, State Bar Center

14
Appellate Practice Section Board
Noon, teleconference

Workshops and Legal Clinics

September

22
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

October

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

27
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

November

3
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6022

About Cover Image and Artist: Robert Martin began taking photographs at eight years old and continued into his eighth decade. Martin enjoys photographing a wide variety of subjects. Martin is a member of the State Bar of New Mexico, practicing from 1967-2002. Martin also believes in traveling extensively.

Notices

Court News

New Mexico Supreme Court

Rule-Making Activity

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

Supreme Court Law Library

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

New Mexico Court of Appeals Judicial Nominating Commission

Mask Mandate

The current rule in effect at all courthouses in New Mexico is that all judicial employees, including judges, must wear a face mask in all public areas and at all times when interacting with the public, regardless of their vaccination status. Consistent with this rule, and due to the ongoing public health crisis, all attendees of the meeting of the New Mexico Court of Appeals Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting. The New Mexico Court of Appeals Nominating Commission met in-person at 9 a.m. on Aug. 23 at the New Mexico Court of Appeals satellite office located at 2211 Tucker NE, Albuquerque, to evaluate the applicants for this position. The commission meeting was open to the public. Any individual who wished to be heard about any of the candidates had an opportunity to be heard at the meeting.

Proposed Changes to the Rules Governing Judicial Nominating Commissions

The New Mexico Supreme Court's Equity and Justice Commission's subcommittee on judicial nominations has proposed changes to the rules governing New Mexico Judicial Nominating Commissions. These proposed changes, will be discussed and voted on during the upcoming meeting of the New Mexico Court of Appeals Judicial Nominating Commission. The Commission meeting was open to the public at 9 a.m. on Aug. 23 at the New Mexico Court of Appeals satellite office located at 2211 Tucker NE, Albuquerque. Please email Beverly Akin at akin@law.unm.edu if you would like to request a copy of the proposed changes. Consistent with the governor's recent mask mandate, all attendees of the meeting of the New Mexico Court of Appeals Judicial Nominating Commission were required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Judicial Nominating Commission Candidate Announcement

The New Mexico Court of Appeals Judicial Nominating Commission convened on Aug. 23 in person, and completed its evaluation of the eight candidates for the one vacancy due to the appointment of Judge Briana Zamora to the New Mexico Supreme Court, effective Aug. 7. The commission recommends the following candidates to Governor Michelle Lujan Grisham. The names of the applicants in alphabetical order: **Aletheia V.P. Allen, Lauren Keefe, Mark Daniel Standridge, Nick Sydow** and **Katherine Anne Wray**.

Ninth Judicial District Court

Judicial Nominating Commission Mask Mandate

The current rule in effect at all courthouses in New Mexico is that all judicial employees, including judges, must wear a face mask in all public areas and at all times when interacting with the public, regardless of their vaccination status. Consistent with this rule, and due to the ongoing public health crisis, all attendees of the meeting of the Ninth Judicial District Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting. The Ninth Judicial District Court Judicial Nominating Commission met in-person at 9 a.m. on Aug. 25 at the Curry County Courthouse located at 700 N. Main, Clovis, to evaluate the applicants for this position. The commission meeting was open to the public. Any individual who wished to be heard about any of the candidates had an opportunity to be heard at the meeting.

Proposed Changes to the Rules Governing Judicial Nominating Commissions

The New Mexico Supreme Court's Equity and Justice Commission's subcommittee on judicial nominations has proposed changes to the Rules Governing New Mexico Judicial Nominating Commissions. These proposed changes, will be discussed and voted on during the upcoming meeting of the Ninth Judicial District Court Judicial Nominating Commission. The commission meeting was open to the public at 9 a.m. on Aug. 25 at the Curry County Courthouse located at 700 N. Main, Clovis. Please email Beverly Akin at akin@law.unm.edu if you would like to request a copy of the proposed changes. Consistent with the governor's recent mask mandate, all attendees of the meeting of the New Mexico Court of Appeals Judicial Nominating Commission were required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Professionalism Tip

With respect to other judges:

I will endeavor to work with other judges to foster a spirit of cooperation and collegiality.

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 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

- Sept. 13 at 5:30 p.m.
- Sept. 20 at 5:30 p.m.
- Sept. 27 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., emotional intelligence; Kristin Neff, Ph.D., self-compassion; and David Katz, M.D., stress, diet and emotional eating.
- **Webinars:** Covering a variety of topics including A Step Forward: Living Through and With the Grief Process, Creating a Mindfulness Practice, and Re-entering the Workforce.

Call 505-254-3555, 866-254-3555, or visit www.solutionsbiz.com 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:

- Sept. 22: Stigma & Counseling
- Oct. 27th: Lawyering By Video Pt. 2

Legal Services and Programs Committee

Seeking Sponsors for Breaking Good High School Video Contest

The Legal Services and Programs Committee will host the sixth annual Breaking Good Video Contest for 2021. The video contest aims to provide an opportunity for New Mexico high school students to show

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

UNM School of Law

Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty and staff, and limited in-person classes are in session. All other 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.

The Legal Specialization Commission of the State Bar of New Mexico is considering approval of the area of **Family Law as a Legal Specialization**.

In order to move forward, the application requires both **50 signatures** of attorneys licensed in New Mexico declaring their support of the specialty as well as **15 signatures** from attorneys intent on applying as a specialist. Please note: attorneys declaring support of the creation of Family Law as a specialty are not required to practice Family Law.

If you would like to declare your support,
please do so by completing the brief forms found here:
www.sbnm.org/Licensing-Regulatory/Legal-Specialization/Seeking-New-Specialty

Comments and questions may be emailed to Kate Kennedy,
Director of Special Programs, at kkennedy@sbnm.org.

State Bar *of* New Mexico
Legal Specialization

Board of Bar Commissioners Election Notice 2021

State Bar of New Mexico
Est. 1886

Notice is hereby given for the 2021 Board of Bar Commissioners election of eight (8) commissioners for the State Bar of New Mexico. Nominations to the office of bar commissioner shall be by written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice (address of record) is in the respective district, or outside the state of New Mexico for the Out-of-State District position (see footnote at the end of the Nomination Petition). **Note: Due to COVID restrictions, we will accept emails in lieu of signatures.** Members of the State Bar may nominate and sign for more than one candidate. (See the Nomination Petition on the next page.) The below terms will expire Dec. 31 and need to be filled in the upcoming election. All of the positions are three-year terms and run from Jan. 1, 2022-Dec. 31, 2024. The election opens Nov. 10 and closes at noon Nov. 30.

Pursuant to Supreme Court Rule 24-101, the Board of Bar Commissioners is the elected governing board of the State Bar of New Mexico.

Primary Responsibilities of Board of Bar Commissioners:

- Carry out the organization's mission and purposes.
- Ensure effective organization planning and evaluate the State Bar's programs and operations in line with the strategic plan and budget.
- Ensure financial accountability for the organization.
- Promote the programs and activities of the State Bar and communicate regularly with constituents regarding State Bar activities.
- Attend Board meetings (up to six per year), including the Annual Meeting of the State Bar.
- Establish and enforce bylaws and policies.
- Represent the State Bar at local bar-related meetings and events.
- Select, support and annually evaluate the Executive Director.
- Participate on internal Board and Supreme Court committees and boards.

First Judicial District – One Position

Los Alamos, Rio Arriba, and Santa Fe counties

- Currently held by Constance G. Tatham

Second Judicial District – Two Positions

Bernalillo County

- One currently held by Allison H. Block-Chavez
- One currently held by Judge Kevin L. Fitzwater (ret.)

Fourth and Eighth Judicial Districts – One Position

Taos, Colfax, Union, Mora, San Miguel, and Guadalupe counties

- Currently held by Ernestina R. Cruz *

* Ineligible for reelection

Seventh and Thirteenth Judicial Districts – Two Positions

Catron, Sierra, Socorro, Torrance, Cibola, Sandoval, and Valencia counties

- One currently held by Elias Barela
- One currently held by Jesus L. Lopez

Eleventh Judicial District – One Position

McKinley and San Juan counties

- Currently held by Joseph F. Sawyer

Out-of-State District – One Position

Principal place of practice (address of record) in New Mexico

- Currently held by Michael Eshleman

Send nomination petitions to:
Executive Director Richard B. Spinello, Esq.
State Bar of New Mexico
PO Box 92860, Albuquerque, NM 87199-2860
5121 Masthead St. NE, Albuquerque, NM 87109
or Email: info@sbnm.org

— PETITIONS MUST BE RECEIVED BY 5 P.M., OCT. 11 —

Direct inquiries to 505-797-6038 or kbecker@sbnm.org.

Nomination Petition for Board of Bar Commissioners

Judicial District Nomination Petition: We, the undersigned, members in good standing and who have a principal place of practice (address of record) in the _____ Judicial District, hereby nominate_____ , whose principal place of practice (address of record) is located in the _____ Judicial District.
Due to COVID restrictions, we will accept emails in lieu of signatures.

Out-of-State District Nomination Petition: We, the undersigned, members in good standing and who have a principal place of practice (address of record) outside the State of New Mexico[1], hereby nominate _____ , whose principal place of practice (address of record) is located in the _____ Judicial District.
Due to COVID restrictions, we will accept emails in lieu of signatures.

(1) _____ _____
Signature *Type or print name*

_____
Address

(2) _____ _____
Signature *Type or print name*

_____
Address

(3) _____ _____
Signature *Type or print name*

_____
Address

(4) _____ _____
Signature *Type or print name*

_____
Address

(5) _____ _____
Signature *Type or print name*

_____
Address

(6) _____ _____
Signature *Type or print name*

_____
Address

(7) _____ _____
Signature *Type or print name*

_____
Address

(8) _____ _____
Signature *Type or print name*

_____
Address

(9) _____ _____
Signature *Type or print name*

_____
Address

(10) _____ _____
Signature *Type or print name*

_____
Address

[1]*Members whose principal place of practice is located in El Paso County, Texas, are represented by, nominate and vote in the Third and Sixth Judicial District and are not eligible to nominate or vote for the out-of-state representative.*

STATE BAR OF NEW MEXICO

2021 ANNUAL MEETING and *Member Appreciation Event*

State Bar Center • Albuquerque
Friday, Oct. 8 • 8:30 a.m. – 3:45 p.m.

FREE!

*Streamed Virtually and Limited In-Person Attendance**

4.0 G, 1.0 EP

Opening remarks from:

Chief Justice
Michael E. Vigil,
New Mexico Supreme Court

President
Carla C. Martinez,
State Bar of New Mexico

President
Reggie Turner,
American Bar Association

Topics:

The Commission on Equity and Justice • Stop Missing Your Life
Mapping Out Important Problems in Access to Justice
Building a Thriving Law Practice with Family Friendly Workplace Policies

Plus:

Live music at lunch • Guided meditation session
Recognition of the 2021 Annual Award recipients

Sponsorship and exhibitor packages are available.

To register and learn more, visit www.sbnm.org/annualmeeting

State Bar of New Mexico
Est. 1886

*We have reached capacity for in-person attendance and are no longer taking in-person registrations.
To be placed on a waiting list for in-person attendance, email cleonline@sbnm.org. Virtual attendance is still available.
As state health orders continue to develop, in-person attendance is subject to change.

A Message from Chief Justice Michael E. Vigil

Dear Colleagues:

The Supreme Court of New Mexico is now seeking applications to fill vacancies on committees, boards, and commissions. Our committees, boards, and commissions play a vital role in assisting the Court with its regulation of the practice and procedures within our courts and the broader legal community. These panels have a wide range of responsibilities and functions. They regulate the practice of law, oversee continuing legal education for lawyers, administer funds to assist individuals unable to pay for legal services, and advise on long-range planning, just to name a few. Anyone who has ever served on one of the Court's committees, boards, or commissions can attest to how challenging and rewarding this work can be.

In filling these vacancies, the Court strives to appoint attorneys and judges who are able to attend committee meetings regularly and who are committed to generously volunteering of their time, talent, and energy to this important work. The Court also strives to solicit volunteers from throughout the state who will bring geographical balance and seeks to ensure that each committee, board, and commission contains a balanced representation from the various practice segments of our bar. To achieve these goals, we need volunteers representing the broad spectrum of our bench and bar who come from all corners of this great state.

If you would like to be considered to serve on a committee, board, or commission, please send your letter of interest and resume by October 1, 2021, to Jennifer Scott, Clerk of Court. The letter of interest should describe your qualifications and prioritize up to three committees of your interest. A complete list of vacancies on committees, boards, and commissions can be found on the Supreme Court's website at https://supremecourt.nmcourts.gov/current-vacancies.aspx.

On behalf of the Supreme Court, I extend our sincere appreciation to all of you who volunteer and serve in this important function within our legal system.

Sincerely yours,
Michael E. Vigil, Chief Justice

New Mexico Supreme Court Committees, Boards, and Commissions
Notice of 2021 Year-End Vacancies

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

Appellate Rules Committee (1 general member position)
Board Governing the Recording of Judicial Proceedings (1 attorney position)
Board of Bar Examiners (2 general member positions)
Children's Court Rules Committee (1 attorney at CYFD with experience in abuse and neglect issues, 1 defendant's attorney with experience in delinquency issues, 1 general member position)
Client Protection Fund Commission (2 general member positions)
Code of Judicial Conduct Committee (1 magistrate judge position, 2 general member positions)
Code of Professional Conduct Committee (3 general member positions)
Disciplinary Board (1 attorney position)
Domestic Relations Rules Committee (1 general member position)
Judicial Branch Personnel Grievance Board (1 attorney with employment law experience)
Magistrate Judge Advisory Committee (5 magistrate judge positions)
Rules of Civil Procedure for State Courts Committee (2 general member positions)
Rules of Criminal Procedure for State Courts Committee (1 general member position)
Rules of Evidence Committee (3 general member positions)
Statewide Alternative Dispute Resolution Commission (2 district judge positions, 2 general member positions, 1 metropolitan court ADR representative)
Uniform Jury Instructions-Civil Committee (1 general member position
Uniform Jury Instructions-Criminal Committee (1 general member position)
UJI-Criminal Committee (4 general member positions)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by sending a letter of interest and resume to Jennifer L. Scott, Chief Clerk, by email to nmsupremecourtclerk@nmcourts.gov, or by first class mail to P.O. Box 848, Santa Fe, NM 87504. The letter of interest should describe the applicant's qualifications and may prioritize no more than three (3) committees of interest.

The deadline for applications is Friday, October 1, 2021.

In Memoriam

John Newton Patterson, a brilliant "gentleman's" lawyer and mentor, historian, scholar, and worldwide traveler departed this life on July 28 at his home in Santa Fe after quietly dealing with cancer since February of 2019. John embraced life to the fullest and enriched the lives of many. He is survived by his traveling companion and wife of 38 years, Janice (Jan) M. Ahern. John was born in Taylor, Texas in October of 1943, the only child of Herbert Patterson and Helga Engstrom Patterson, and embarked on a life's journey full of curiosity and diverse interests. He received his B.A. degree from the University of Virginia and his J.D. degree from the University of Texas. Following graduation from the University of Texas, John arrived in Santa Fe in 1970 planning on a temporary stay as a law clerk to Court of Appeals Judge Waldo Spiess. The temporary stay became his permanent home in his beloved Santa Fe after admission to the State Bar of New Mexico in 1971. Early in his career he joined the partnership of Bryd, Connelly & Patterson and later joined the firm of White, Koch, Kelly & McCarthy as a partner. He was a shareholder in the firm of Scheuer, Yost & Patterson, P.C. for approximately 20 years. He completed his career at Rodey, Dickason, Sloan, Akin & Robb, P.A. In 1981 and 1982, John and Jan, his colleague and later wife, worked together in the New Mexico legislature, resulting in the adoption of the New Mexico Condominium Act. He authored with Jan "Condominium Law: The New Mexico Condominium Act", 15 New Mexico L. Review 203 (1985), now considered the authority on New Mexico condominium law. John's practice focused on real estate and commercial matters representing individual real estate developers, lending institutions and title insurance companies. A major focus of his practice was representation of owners converting real property to the condominium form of ownership and assisting community associations. John was a member of the State Bar of New Mexico and the Opinion Letters Task Force, Lawyers' Opinion Letters in Mortgage Loan Transactions New Mexico of the Real Property, Probate and Trust Law Section. He was a fellow of the American College of Real Estate Lawyers and the American College of Mortgages Attorneys. He was recognized by *Best Lawyers in America* and designated twice as the Santa Fe Real Estate Lawyer of the Year. John was also recognized by *Chambers USA, Southwest Super Lawyers* and Martindale-Hubbell – AV rated. John enjoyed conducting seminars and sharing his extensive expertise with lawyers, members of community associations, real estate brokers, surveyors and others. He enjoyed most the mentoring of younger lawyers and was always available to engage in esoteric discussions of obscure legal issues with younger lawyers and his law partners. Such interactions with the younger lawyers might include target practices on Friday afternoons. He was known to treat younger lawyers as his peers. John was a model of what the best in the law and in humanity offer. His intellect and his mastery of the law were unmatched. He truly cared about his clients and searched for all relevant information, in order to uncover every fact in play, to reach an appropriate and often practical resolution. John had a wonderful sense of humor, a dry and quick wit and was occasionally quite irreverent. John was a "Renaissance man," clever and curious and interested in so many different things outside the law. John's most pleasurable leisure interests included meticulous planning for his travels, WWI and WWII history, archeology, genealogy, searching for indigenous rock art, scuba diving in remote locations, and the preparation of many sophisticated meals as a self-taught chef. John and Jan traveled the world together including extensive areas of the United States. Travels in the Southwest resulted in John being blessed with many dear Hopi and Zuni friends who encouraged him to attend ceremonies over the years. Travels in the Southwest also engendered an interest in indigenous art including Hopi weavings and Kachina dolls, Hopi and Navajo plaques and baskets, Navajo rugs, pueblo pottery and, of course, belt buckles for John and unique jewelry for Jan. John will be missed by the many people whose lives he touched and enriched. John is survived by Jan's many nieces and nephews who loved and enjoyed "Tio John." John is predeceased by his parents and his first wife, Janet Taylor Patterson, who passed in 1980.

Legal Education

September

9 **APA Litigation: How to Take USCIS Denial to Federal Court**
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org

10 **32nd Annual Appellate Practice Institute**
5.9 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

10-12 **Taking and Defending Depositions**
31.0 G, 4.5 EP
Live Seminar
UNM School of Law
505-277-0609

14 **Advanced Strategies for EB-1 RFEs**
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org

15 **Retail Leases: Restructurings, Subleases, and Insolvency**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 **Offices Leases: Current Trends & Most Highly Negotiated Provisions**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16-17 **2021 Employment & Labor Law Institute**
5.4 G, 1.3 EP
In-Person and Live Webcast
Center for Legal Education of NMSBF
www.sbnm.org

17 **The Ethics of Representing Two Parties in a Transaction**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Employment Investigations: Figuring It Out & Avoiding Liability**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Cannabis Conversations: Cannabis Regulation Act and Expungement**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.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

22 **Clear and Present Danger! Protecting Your Firm from Malpractice Exposure**
1.0 EP
Live Webinar
Attorney Protective
www.attorneyprotective.com

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

23 **IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Breaking Through the Backlog: Employment-Based Visa Interviews After COVID**
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

28 **2021 Tax Law Symposium**
5.8 G, 1.0 EP
In-Person and Live Webcast
Center for Legal Education of NMSBF
www.sbnm.org

24-26 **Taking and Defending Depositions**
31.0 G, 4.5 EP
Live Seminar
UNM School of Law
505-277-0609

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

28 **2021 Family Law Fall Institute**
5.8 G, 1.0 EP
In-Person and Live Webcast
Center for Legal Education of NMSBF
www.sbnm.org

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.

29 **10 Steps to Client Relationship Mastery**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

29 **Trust and Estate Planning for Collectibles, Art & Other Unusual Assets**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

30 **Ethics, Disqualification and Sanctions in Litigation**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.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

30 **Crafting a Winning Direct Examination: Practical Tips and Examples**
1.5 G
Live Webinar
American Immigration Lawyers Association
www.aila.org

October

1 **Balloon Fiesta CLE**
11.0 G, 1.0 EP
Live Webinar
Destination CLEs
907-231-2111

1 **2021 Health Law Symposium**
6.5 G
In-Person and Live Webcast
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

8 **NMSB 2021 Annual Meeting & Member Appreciation Event**
4.0 G, 1.0 EP
In-Person and Live 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

13 **Child Sex Abuse Cases: Pretrial Strategies and Proceeding to Trial**
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

14 **Immigration Law: Economic Opportunities Through Entrepreneurship Regardless of Immigration Status**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

15 **2021 Procurement Code Institute**
3.0 G, 1.0 EP
In-Person and Live Webcast
Center for Legal Education of NMSBF
www.sbnm.org

20 **Whistleblowers Are Heroes: Bringing Medicaid Fraudsters and Elder Abusers to Justice**
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

21 **Annual New Mexico Family Law Retreat**
8.0 G
Live Webinar
New Mexico Legal Group
505-843-7303

21 **2021 Solo and Small Firm Institute**
4.0 G, 2.0 EP
In-Person and Live Webcast
Center for Legal Education of NMSBF
www.sbnm.org

25 **Rural New Mexico, Agriculture, and International Trade**
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

27 **Recent Developments in International Trade Law: Opportunities for New Mexico's Indian Country**
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

28-31 **Mediation Training**
30.0 G, 2.0 EP
Live Seminar
UNM School of Law
lawschool.unm.edu/cle/upcoming.html

November

2 **The O.J. Simpson Trial: Attorney Blunders, Bungles and Bloopers – PLUS Amazing PowerPoint Trial Tips**
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

4 **Copyright + Art: Told Through Colorful Stories and Original Artwork**
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

4-7 **Mediation Training**
30.0 G, 2.0 EP
Live Seminar
UNM School of Law
lawschool.unm.edu/cle/upcoming.html

5 **Cross-Examination: The Big Picture and the Three Keys to Question Formation at Trial and at Depositions**
1.5 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

5 **60 Tips, Tricks, Apps & Websites in 60 Minutes**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

9 **How To Make Cross-Examination An Open Book Exam at Trial and at In-Person or Online Depositions**
1.5 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

16 **Strategies and Techniques for Rural Community Organizing and Legal Advocacy**
1.5 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

30 **Me Too: Sexism, Bias, and Sexual Misconduct in the Legal Profession**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org

Opinions

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

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Effective August 20, 2021

PUBLISHED OPINIONS

A-1-CA-36624	D Sandoval v. Board of Regents of UNM	Affirm	08/18/2021
A-1-CA-38218	State v. S Jackson	Affirm/Reverse	08/19/2021

UNPUBLISHED OPINIONS

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A-1-CA-38189	State v. M Marshall	Affirm	08/09/2021
A-1-CA-38218	State v. S Jackson	Affirm/Reverse	08/09/2021
A-1-CA-38647	N La Salle v. County of Otero	Reverse	08/09/2021
A-1-CA-38704	State v. E Mountain Sheep	Affirm	08/09/2021
A-1-CA-38821	State v. F Lucero	Affirm	08/09/2021
A-1-CA-38179	State v. M Stevens	Reverse/Remand	08/10/2021
A-1-CA-38501	State v. N Luna	Affirm	08/10/2021
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A-1-CA-38626	L Juarez v. J Rodriguez	Affirm	08/16/2021
A-1-CA-39248	State v. B Ashmore	Affirm	08/16/2021
A-1-CA-38600	State v. R Keller	Affirm	08/17/2021
A-1-CA-39135	State v. S Medina	Affirm	08/17/2021
A-1-CA-39217	State v. J Loyd	Reverse/Remand	08/17/2021
A-1-CA-38437	State v. J Johnson	Affirm	08/18/2021
A-1-CA-38770	M Baca v. J Apodaca	Affirm	08/18/2021
A-1-CA-39006	State v. A Silva Guerrero	Affirm	08/18/2021
A-1-CA-39382	CYFD v. William S	Affirm	08/18/2021
A-1-CA-39500	State v. E Perez	Affirm	08/18/2021
A-1-CA-39612	CYFD v. Daniel O	Affirm	08/18/2021
A-1-CA-37460	A Romero v. St. Vincent Hospital	Affirm/Reverse/Remand	08/19/2021
A-1-CA-38206	State v. B Pritchett	Affirm	08/19/2021
A-1-CA-38690	State v. A Torrez-Hernandez	Affirm	08/19/2021
A-1-CA-39447	F Gallegos v. Office of the Attorney General	Reverse/Remand	08/19/2021

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

From the New Mexico Supreme Court

Opinion Number: 2020-NMSC-009
No: S-1-SC-37021 (filed June 11, 2020)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
ROY D. MONTANO,
Defendant-Respondent,
and
No. S-1-SC-37098
STATE OF NEW MEXICO,
Plaintiff-Respondent,
v.
WILLIAM DANIEL MARTINEZ,
Defendant-Petitioner.

ORIGINAL PROCEEDINGS ON CERTIORARI
District Judges FRED T. VAN SOELEN and KAREN L. TOWNSEND

Released for Publication August 11, 2020.

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Opinion

Michael E. Vigil, Justice.

{1} These consolidated cases give us the opportunity to define "uniformed law enforcement officer" and "appropriately marked law enforcement vehicle" under NMSA 1978, Section 30-22-1.1(A) (2003), which defines the crime of aggravated fleeing from a law enforcement officer.[1] Violation of Section 30-22-1.1 is a fourth-degree felony that "consists of a person willfully and carelessly driving his vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by *a uniformed law enforcement officer* in an *appropriately marked law enforcement vehicle* in pursuit in accordance with the provisions of the Law Enforcement Safe Pursuit Act." (Emphasis added.)

{2} We granted certiorari (1) in *State v. Montano*, 2018-NMCA-047, 423 P.3d 1, to review the reasoning of *Montano* and consider whether the law enforcement officer was "uniformed" under Section 30-22-1.1(A) and (2) in *State v. Martinez*, A-1-CA-35111, mem. op. (May 14, 2018) (nonprecedential), to review the *Montano* reasoning and consider whether the law enforcement officers in *Martinez* and *Montano* were each in an "appropriately marked law enforcement vehicle" under Section 30-22-1.1(A). We affirm the Court of Appeals determination of what constitutes a "uniformed law enforcement officer" and reject its determination of what constitutes an "appropriately marked law enforcement vehicle" and therefore conclude that the officer in *Montano* was not a "uniformed law enforcement officer" and that neither the officer in *Montano* nor the officer in *Martinez* was in an "appropriately marked law enforcement vehicle."

I. BACKGROUND

A. *State v. Montano*

{3} After an automobile pursuit, Curry County Sheriff's Deputy Glenn Russ arrested Defendant Roy Montano. The State charged Defendant Montano with one count of aggravated fleeing from a law enforcement officer, § 30-22-1.1, and one count each of driving with a revoked license, NMSA 1978, § 66-5-39.1 (2013), driving with an expired motor vehicle registration, NMSA 1978, § 66-3-19 (1995), and driving with no insurance, NMSA 1978, § 66-5-205(B) (2013).

{4} In his statement of probable cause, Deputy Russ wrote that he began to follow Defendant Montano after seeing a Hispanic male he initially believed to be an individual he knew to have had "a warrant in the past" get into a four-door Saturn and begin driving. Deputy Russ stated that his purpose in following this individual was to verify the driver's identity. After catching up to the Saturn and running the license plate, Deputy Russ learned that the plate was expired. Deputy Russ wrote that he then activated the emergency lights on his vehicle "to [e]ffect a traffic stop for the violation and positively identify the driver." Deputy Russ stated that the vehicle did not stop, ran multiple stop signs, and drove in a manner that posed a safety risk to the public before sliding through an intersection, striking a curb, and coming to rest on an easement.

{5} Defendant Montano waived his right to a jury trial. At the bench trial the evidence included testimony from Deputy Russ that he worked as an "investigator" with the Curry County Sheriff's office and wore the clothing required of investigators: "a dress shirt with tie, dress slacks, and dress shoes." Deputy Russ wore his badge displayed on the breast pocket of his shirt, but there was no testimony describing

[1]Defendant Roy Montano died on May 20, 2017. We appointed a substitute for the deceased defendant to allow the appeal to proceed, per Rule 12-301(A) NMRA. This Court, "on its own initiative," can "appoint a substitute for a deceased party-defendant" if resolving an appeal is "in the best interests of . . . society." *State v. Salazar*, 1997-NMSC-044, ¶ 25, 123 N.M. 778, 945 P.2d 996.

the badge itself, its wording, or the size of the wording. Deputy Russ drove a Ford Expedition that had no decals, striping, insignia, or lettering anywhere on the vehicle. However, the vehicle was equipped with wigwag headlights, red and blue flashing lights mounted in the front grill and the top rear window, flashing brake lights, and a siren. The vehicle also had a government license plate. The district court took judicial notice that the vehicle "was not a marked vehicle."

{6} At the close of the State's case-in-chief, Defendant Montano moved for a directed verdict on the aggravated fleeing charge, asserting that the State failed to prove that Deputy Russ was uniformed or in an appropriately marked law enforcement vehicle, as required by Section 30-22-1.1(A), when Deputy Russ attempted to stop him. The district court ruled that displaying a badge was sufficient to be considered in uniform and that Deputy Russ's vehicle was "appropriately marked" because motorists understand that they are required to pull over and stop when they see emergency lights. The district court therefore denied Defendant Montano's motion, found Defendant Montano guilty of aggravated fleeing, and imposed the maximum sentence of eighteen months imprisonment. Montano appealed to the Court of Appeals.

{7} The Court of Appeals reversed Defendant Montano's conviction. *Montano*, 2018-NMCA-047, ¶ 1. The Court of Appeals concluded that Deputy Russ's vehicle was an "appropriately marked law enforcement vehicle" as required by Section 30-22-1.1(A) but that the clothes that Deputy Russ was wearing "did not constitute a uniform" and therefore did not comply with the statute. *Montano*, 2018-NMCA-047, ¶ 1. We granted the State's petition for a writ of certiorari seeking review of the Court of Appeals conclusion that Deputy Russ was not uniformed at the time of the stop as required by Section 30-22-1.1(A).

B. *State v. Martinez*

{8} Defendant William Daniel Martinez was arrested pursuant to an arrest warrant and charged with one count of aggravated fleeing from a law enforcement officer, § 30-22-1.1. The affidavit in support of the arrest warrant states that on July 14, 2014, San Juan County Sheriff's Deputy Andrew Gilbert received information alleging that Defendant Martinez, who had several active felony and misdemeanor warrants, was at a residence in Farmington. When Deputy Gilbert arrived in that area, he observed a car matching the description of the vehicle Defendant Martinez allegedly drove that was pulling out of a trailer park. Deputy Gilbert recognized Defendant Martinez as the driver through several previous contacts with him. Apparently recognizing that Deputy Gilbert was driving behind him, Defendant Martinez ran a stop sign and made several evasive maneuvers. Deputy Gilbert initiated the emergency equipment on his "unmarked patrol vehicle" and pursued Defendant Martinez who ran additional stop signs, swerved to avoid hitting pedestrians, and on several occasions slid into intersections and drove down oncoming traffic lanes. Deputy Gilbert eventually abandoned the pursuit. Defendant Martinez was subsequently arrested pursuant to the arrest warrant.

{9} Prior to trial, Defendant Martinez filed a motion to dismiss the criminal information, asserting that that Deputy Gilbert "was in an unmarked vehicle, no more conspicuous than any other lay vehicle" when he attempted to stop Defendant Martinez. Defendant Martinez contended that Deputy Gilbert was therefore not in an appropriately marked law enforcement vehicle as required by Section 30-22-1.1(A).

{10} After an evidentiary hearing, the district court granted Defendant Martinez's motion and dismissed the criminal information without prejudice. The district court found that the following facts were undisputed. Deputy Gilbert was on duty "driving a tan colored Ford Explorer law enforcement vehicle." The vehicle was specifically furnished for covert operations intended to evade detection. "By design, the vehicle bore no insignias, stripes, decals, labels, seals, symbols or other pictorial signs or lettering indicating its identity as a law enforcement vehicle." The vehicle was also equipped with "red and blue LED lights located within the grill area that were visible through the grill even when not activated." In addition, the vehicle had a siren with speakers located inside the grill as well as "an antenna that is not common to civilian vehicles."

{11} Under these facts the district court made the following conclusions of law. "To be marked, much less 'appropriately marked,' requires at minimum some type of readily observable insignia or lettering that conveys the identity or ownership of the vehicle." In addition, "[t]he red and blue lights and the siren speakers located within the grill area of the vehicle were signaling devices, not identifying marks. To the extent the State argues these signaling devices satisfy" the requirement of Section 30-22-1.1(A) "that the pursuing law enforcement vehicle be appropriately marked," the district court disagreed. Specifically, the district court stated that Section 30-22-1.1(A) requires a signal to stop by means of "emergency light, flashing light, siren or other signal" made by an officer driving "an appropriately marked law enforcement vehicle." The district court continued, "If the lights and siren themselves constituted the required marking, it would render the requirement that the vehicle be appropriately marked a mere surplusage in the statute which statutory construction does not favor." The district court ruled that in the absence of "evidence that Deputy Gilbert's vehicle was marked at all, the State cannot make a prima facie showing of all elements of the crime of aggravated fleeing a law enforcement officer . . . as a matter of law." The State appealed.

{12} Relying on the reasoning in *Montano*, 2018-NMCA-047, ¶¶ 35-47, the Court of Appeals summarily reversed the district court. *Martinez*, A-1-CA-35111, mem. op. ¶¶ 1-2. Defendant Martinez filed a petition for a writ of certiorari, which this Court granted, seeking review of the Court of Appeals conclusion that Deputy Gilbert was driving an "appropriately marked law enforcement vehicle" as required by Section 30-22-1.1(A).

II. STANDARD OF REVIEW

{13} These cases require us to construe Section 30-22-1.1(A). "[W]e review all questions of . . . statutory interpretation de novo." *State v. Ameer*, 2018-NMSC-030, ¶ 9, 458 P.3d 390. "Our primary goal when interpreting a statute is to determine and give effect to the Legislature's intent." *State v. Suazo*, 2017-NMSC-011, ¶ 15, 390 P.3d 674 (internal quotation marks and citation omitted). "Under the rules of statutory construction, we first turn to the plain meaning of the words at issue, often using the dictionary for guidance." *State v. Boyse*, 2013-NMSC-024, ¶ 9, 303 P.3d 830. We give effect to the plain meaning of the statute "unless the language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity or contradiction, in which case the statute is to be construed according to its obvious spirit or reason." *State v. Tafoya*, 2010-NMSC-019, ¶ 10, 148 N.M. 391, 237 P.3d 693 (internal quotation marks and citation omitted). "When application of the plain meaning of the statute fails to result in a reasonable or just conclusion, we examine legislative history and the overall structure of the statute and its function in the comprehensive legislative scheme." *Id.* (internal quotation marks and citation omitted). The language of a statute "may not be considered in a vacuum, but must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter." *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939 (internal quotation marks and citation omitted). When possible, "we must read different legislative enactments as harmonious instead of as contradicting one another." *Id.* (internal quotation marks and citation omitted).

III. UNIFORMED LAW ENFORCEMENT OFFICER

{14} The State argues that when he stopped Defendant Montano, Deputy Russ was a "uniformed law enforcement officer" as required by Section 30-22-1.1(A). The State asserts that this conclusion is supported by the plain meaning of "uniform," by the purpose of Section 30-22-1.1(A), and by related statutes and case law discussing what constitutes a uniformed police officer. Defendant Montano in turn contends that the Court of Appeals correctly concluded that Deputy Russ was not a "uniformed law enforcement officer" at the time of the stop.

A. Court of Appeals Opinion

{15} In concluding that Deputy Russ was not uniformed at the time he attempted to stop Defendant Montano, the Court of Appeals organized its analysis around four topics: (1) the plain meaning of "uniform," (2) New Mexico statutes related to the subject matter of Section 30-22-1.1, (3) related New Mexico case law, and (4) whether applying the plain meaning of "uniform" to Section 30-22-1.1 leads to an absurd result or one that is clearly contrary to the intent of the Legislature. *See Montano*, 2018-NMCA-047, ¶¶ 10, 14, 21, 31.

1. Plain meaning of "uniform"

{16} In *Montano*, the Court of Appeals began its analysis by considering the plain meaning of "uniform." *Id.* ¶ 11. Looking to the definition stated in *Webster's Third New International Dictionary* 2498 (unabr. ed. 1986), the Court of Appeals observed that the meaning of "uniform" is "*dress* of a *distinctive* design or fashion adopted by or prescribed for members of a particular group . . . and serving as a means of identification." *Montano*, 2018-NMCA-047, ¶ 11 (omission in original) (internal quotation marks omitted). The Court of Appeals further observed that *Webster's Third New International Dictionary* 689 (unabr. ed. 1986) defines "dress" as "utilitarian or ornamental covering for the human body: as . . . clothing *and* accessories suitable to a specific purpose or occasion." *Montano*, 2018-NMCA-047, ¶ 11 (omission in original) (internal quotation marks omitted).

{17} The Court of Appeals found these definitions significant for two reasons. The first is that "a uniform consists of clothing, as distinguished from, for example, only a law enforcement officer's badge." *Id.* ¶ 12. In other words, the Court of Appeals noted that "equipment alone, without distinctive clothing, is not 'dress of a distinctive design or fashion[,]' i.e., it is not a uniform." *Id.* (alteration in original) (citation omitted). In support of the conclusion that there is a meaningful distinction between a uniform and a badge, the Court of Appeals cited 2.110.3.8(B)(2) NMAC, which distinguishes "[guns,] holsters, . . . uniforms, belts, badges and related apparatus" for use by law enforcement officers "as items eligible for purchase with funds from the Law Enforcement Protection Fund Act, NMSA 1978, §§ 29-13-1 to -9 (1993, as amended through 2017)." *Montano*, 2018-NMCA-047, ¶ 12 (omission in original) (internal quotation marks omitted). The second significant aspect of the meaning of "uniform" noted by the Court of Appeals is that "a uniform is clothing that distinguishes the wearer from the general public, i.e., identifies him or her as a member of a particular group." *Id.*

{18} Under this construction of the plain meaning of "uniform," the Court of Appeals determined that Deputy Russ was not uniformed at the time he initiated the stop of Defendant Montano because the Deputy's "clothing was not of a distinctive design or fashion and did not serve to identify him as a law enforcement officer." *Id.* ¶ 13. Rather, "the purpose of his outfit was, if anything, to allow him to blend in with the general public." *Id.* Further, while acknowledging that a badge or even handcuffs and a holstered firearm may identify the person as a law enforcement officer, they are not "clothing" and therefore not a uniform. *Id.*

2. Related New Mexico statutes

{19} The Court of Appeals next considered Section 30-22-1.1(A) in relation to several other statutes that address law enforcement officers' uniforms and officers' authority to stop motorists. *See Montano*, 2018-NMCA-047, ¶¶ 14-15. The Court of Appeals focused on the following statutes:

- NMSA 1978, § 29-2-13 (1989) (stating that the secretary of public safety shall "provide and issue" to all New Mexico state police officers "a *uniform and an appropriate badge* which shall contain in plain legible letters the words 'New Mexico state police'" (emphasis added)).
- NMSA 1978, § 29-2-14(A) (2015) (defining the crime of unauthorized wearing of a uniform or badge as "the wearing or requiring the wearing, without authorization by the secretary, of a *uniform or badge or both* whose material, color or design, or any combination of them, is such that the wearer appears to be a member of the New Mexico state police" (emphasis added)).
- NMSA 1978, § 30-22-1(C) (1981) (defining the crime of resisting, evading or obstructing an officer, as "willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle").
- NMSA 1978, § 66-8-124(A) (2007) (stating that "[*n*]*o person shall be arrested for violating the Motor Vehicle Code* or other law relating to motor vehicles punishable as a misdemeanor *except by a commissioned, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating the peace officer's official status*" (emphasis added)).
- NMSA 1978, § 66-8-125(C) (1978) (stating that "[m]embers of the New Mexico state police, sheriffs, and their salaried deputies and members of any municipal police force may not make [a warrantless] arrest for traffic violations *if not in uniform*" (emphasis added)).
- NMSA 1978, § 66-7-332(A) (2005, amended 2017) (stating that "[u]pon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal . . . , the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer); NMSA 1978, § 66-8-116(A) (2016, amended 2019) (assessing a $50 fine for violation of Section 66-7-332 (2005)).

See Montano, 2018-NMCA-047, ¶¶ 6, 16-20.

{20} Construing the statute "in accordance with the plain meaning of 'uniform[,]'" the Court of Appeals concluded that Section 30-22-1.1(A) is "harmonious" with the foregoing statutes. *Montano*, 2018-NMCA-047, ¶ 15. First, the Court of Appeals observed that Section 29-2-13 and Section 29-2-14, which address the uniforms and badges of the New Mexico State Police and the crime of unauthorized wearing of a uniform or badge, each "distinguish between a uniform and a badge." *Montano*, 2018-NMCA-047, ¶ 16. This distinction, the Court of Appeals continued, reflects "the Legislature's understanding that, while a uniform and badge are both indicia of law enforcement officer status, the two are different—i.e., a badge is not simply a part of a uniform." *Id.*

{21} Second, the Court of Appeals noted that the legislative history of Section 66-8-124(A) is consistent with the distinction between a uniform and a badge. *Montano*, 2018-NMCA-047, ¶ 17. When the statute was enacted in 1961 under the prior compilation, it stated, "In the Motor Vehicle Code, 'uniform' means an official badge prominently displayed, accompanied by a commission of office." NMSA 1953, § 64-22-8.1 (1961). However in 1968, also under the prior compilation, this sentence was removed from the statute, and it was amended to include the current language that no person shall be arrested for a violation of the Motor Vehicle Code except by a law enforcement officer "who, at the time of arrest, is wearing *a uniform* clearly indicating his official status." NMSA 1953, § 64-22-8.1 (1968) (emphasis added). Based on these changes, the Court of Appeals stated, "The most logical inference to be drawn from the 1968 amendment is that . . . the Legislature determined that a badge should not be considered part of a uniform and instead is a separate indicia of law enforcement officer status." *Montano*, 2018-NMCA-047, ¶ 17; *compare* NMSA 1953, § 64-22-8.1 (1961), *with* NMSA 1953, § 64-22-8.1 (1968).

{22} Third, the Court of Appeals noted that Section 66-8-125(C), requiring any law enforcement officer making an arrest for traffic violations to be "in uniform," tracks the language of Section 66-8-124(A). *Montano*, 2018-NMCA-047, ¶ 18.

{23} Finally, the Court of Appeals observed that Section 66-7-332, Section 66-8-116, Section 30-22-1(C), and Section 30-22-1.1(A), when viewed together, evince "a common general legislative intent: enforcing, by means of progressively greater sanctions for disobedience, the public policy imperative that a motorist must promptly pull off to the side of the road and stop when he or she notices a law enforcement vehicle that has its emergency lights and/or sound equipment engaged." *Montano*, 2018-NMCA-047, ¶ 20. The Court of Appeals noted that compared to penalties for violation of traffic laws such as Section 66-7-332, the greater penalties for violating Section 30-22-1(C) (a misdemeanor) or Section 30-22-1.1(A) (a fourth-degree felony under Section 30-22-1.1(B)) stem in part from the fact that the motorist's failure to stop was willful and "objectively clear (based on visual and audible signals, a uniform, and appropriate markings on a vehicle) that it is a law enforcement officer who is signaling the motorist to stop." *Montano*, 2018-NMCA-047, ¶ 20.

3. Related New Mexico case law

{24} considering the related case law, the Court of Appeals focused its analysis on *State v. Archuleta*, 1994-NMCA-072, 118 N.M. 160, 879 P.2d 792, and *State v. Maes*, 2011-NMCA-064, 149 N.M. 736, 255 P.3d 314. *Montano*, 2018-NMCA-047, ¶¶ 21-30.

{25} In *Archuleta*, the defendant was stopped for speeding. 1994-NMCA-072, ¶ 2. The officer who made the stop was in plain clothes. *Id.* Before approaching the driver, the officer retrieved his Albuquerque Police Department windbreaker from the back seat of his car. *Id.* The windbreaker had a cloth shield on the front that read "Albuquerque Police" and a patch on the shoulder with the state of New Mexico emblem and the words "Albuquerque Police" on it. *Id.* "Recognizing that there may be a problem with [the d]efendant signing the citation," the officer radioed for a fully uniformed officer to be present before issuing the citation to the defendant. *Id.* ¶ 3. Two fully uniformed, on-duty officers arrived, and the officer who made the stop issued the citation. *Id.* The defendant was found guilty of speeding and appealed, arguing for reversal pursuant to NMSA 1978, Section 66-8-137(B) (1978, recompiled from NMSA 1953, Section 64-8-137 (1968)) (providing that for purposes of an alleged violation of the Motor Vehicle Code, the fact "that the person making the arrest was not in uniform at the time is a defense to the charge"). *Archuleta*, 1994-NMCA-072, ¶ 6.

{26} On appeal, the Court of Appeals, looking to the history of Section 66-8-124, observed that the pre-1968 version of the statute (NMSA 1953, § 64-22-8.1 (1961)) included an additional sentence stating that in the Motor Vehicle Code, "'uniform' means an official badge prominently displayed, accompanied by a commission of office." *Archuleta*, 1994-NMCA-072, ¶ 10 (internal quotation marks omitted). The Court of Appeals stated, "We believe that the deletion of that language suggested that the legislature intended the definition of 'uniform' to be less restrictive, no doubt recognizing that modern day police officers may have more than one uniform or may on occasion wear combinations thereof." *Id.* The Court of Appeals noted, "It seems clear enough that the intention of the legislature in requiring the officer to wear a uniform plainly indicating his official status was to enable the motorist to be certain that the officer who stops him is, in fact, a police officer." *Id.* ¶ 9. Given the definition, history, and intent of Section 66-8-124, the Court of Appeals established two alternative tests to determine whether an officer is uniformed for purposes of the statute: (1) "whether there are sufficient indicia that would permit a reasonable person to believe the person purporting to be a peace officer is, in fact, who he claims to be" or (2) "whether the person stopped and cited either personally knows the officer or has information that should cause him to believe the person making the stop is an officer with official status." *Archuleta*, 1994-NMCA-072, ¶ 11 (stating that the former, "objective test best suits more populated areas or persons traveling through the state" while the latter, "subjective test may be appropriate in small towns where everyone knows the constable and recognizes his official status").

{27} Reasoning that by wearing the windbreaker bearing the words "Albuquerque Police" in two places, a reasonable person would have inferred that the officer was in fact a peace officer. *Id.* ¶¶ 11-12. Accordingly, the Court of Appeals concluded that the facts established the objective test. *Id.* ¶ 12. In so concluding the Court of Appeals also rejected the defendant's argument that public policy supports the requirement that an officer making arrests or stops to issue citations must be in full uniform based on the risk of danger that citizens may be stopped by police impersonators. *Id.* ¶ 15. The Court of Appeals stated, "While we recognize that there is that risk, we are not persuaded that in this day and time when law enforcement uniforms are probably readily available, the risk would be that much lessened by requiring the officer to wear his or her full attire before making a stop or arrest." *Id.*

{28} Similarly in *Maes*, the Court of Appeals considered whether the New Mexico State Police Basic Duty Uniform (BDU) constituted a "uniform" as used in Section 66-8-124 and Section 66-8-125. *Maes*, 2011-NMCA-064, ¶ 1. A BDU is comprised of the following components:

> black pants; black boots; a black vest to which is attached an electronic communication device with a chord; a black long-sleeve shirt with the words "STATE POLICE" in large bold yellow lettering on the sleeves, the word "POLICE" in large bold white lettering on the right shoulder area, a smaller triangular cloth patch with the words "STATE POLICE" also on the right shoulder; and, on the back of the shirt, the word "POLICE" in large bold white lettering in two places; an equipment belt, holster, and firearm; and a metal police badge hung from one of the front pockets.

Id. ¶ 11. Wearing BDUs and driving an unmarked vehicle, two New Mexico State Police officers stopped the defendant when they witnessed him engage in multiple traffic infractions. *Id.* ¶ 3. During the stop, the officers discovered that the defendant had outstanding warrants, conducted a search incident to arrest, and discovered imitation drugs and drug paraphernalia while carrying out their search. *Id.* The defendant filed a motion to suppress

the drugs and paraphernalia, arguing in pertinent part that the stop was unlawful because the officers were not uniformed within the meaning of Sections 66-8-124(A) and 66-8-125(C). *Maes*, 2011-NMCA-064, ¶ 4. The district court agreed and suppressed the evidence, concluding that the BDUs were not uniforms as contemplated by Sections 66-8-124(A) and 66-8-125(C). *Maes*, 2011-NMCA-064, ¶ 5. On appeal and applying *Archuleta*, the Court of Appeals concluded that under the objective test, a reasonable person would believe that an individual wearing a BDU is, in fact, a police officer. *Maes*, 2011-NMCA-064, ¶ 11. The Court of Appeals reasoned, "The word police is printed in large lettering in several locations on the garments comprising a BDU and an individual donning a BDU has equipment on their person consistent with what a police officer would possess." *Id.*

4. Absurd results

{29} Finally, the Court of Appeals considered whether applying the plain meaning of "uniform" to Section 30-22-1.1(A) necessarily leads to unreasonable or absurd results. *Montano*, 2018-NMCA-047, ¶ 32. The Court of Appeals began with the proposition that "[r]equiring as an element of the crime that the pursuing officer be in uniform, i.e., clothing that in addition to a badge objectively identifies him or her as a law enforcement officer, is unreasonable only if one assumes that the intent of the statute is to criminalize all refusals to comply with a signal to stop, even by a nonuniformed officer." *Id.* Such a construction, the Court of Appeals continued, "would render meaningless . . . the word 'uniformed' in the statute." *Id.* This construction would further conflict with Sections 29-2-13 and 29-2-14, which draw a distinction between uniforms and badges. *Montano*, 2018-NMCA-047, ¶ 32. "Thus, if anything, the absurd or unreasonable result is reached by *not* applying the plain meaning of 'uniform.'" *Id.*

{30} The Court of Appeals concluded by stating that it was immaterial that "an argument might be made that it would be better policy to allow nonuniformed law enforcement officers to make arrests for violation of Section 30-22-1.1(A)" because the courts are required to give effect to the law as its written, "not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration." *Montano*, 2018-NMCA-047, ¶ 34 (internal quotation marks and citation omitted).

B. Analysis

{31} We conclude that the Court of Appeals interpretation of what constitutes a uniform under Section 30-22-1.1(A) is legally accurate, and we adopt its reasoning stated above as our own. We add the following additional observations.

{32} There is no indication in Section 30-22-1.1, or in the other criminal offense statutes in Chapter 30, Article 22 governing interference with law enforcement, that the Legislature intended the word uniform to be construed as meaning anything other than its common meaning. *See* NMSA 1978, § 12-2A-2 (1997) ("Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage."). In addition, defining "uniform" as used in Section 30-22-1.1(A) to mean "clothing *and* accessories" that are "of a *distinctive* design or fashion adopted by or prescribed for members of a particular group . . . and serving as a means of identification" resonates with the ordinary understanding of what a uniform is. *Montano*, 2018-NMCA-047, ¶ 11 (omission in original) (internal quotation marks and citations omitted). That is, a "uniform" is clothing in which one dresses to identify for a particular purpose, office, or profession. *See id.* Case law in other jurisdictions construing similar statutes comes to the same conclusion.

{33} In *People v. Mathews*, 64 Cal. App. 4th 485, 490-91 (Ct. App. 1998), the California Court of Appeal considered whether a police officer in plain clothes donning a badge and displaying a firearm on his belt was in uniform for purposes of the California Vehicle Code statute prohibiting flight from a pursuing peace officer. The statute, Cal. Veh. Code § 2800.1(a)(4) (West 2019), provides, "Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle" is guilty of a misdemeanor if, among other essential elements, "[t]he peace officer's motor vehicle is operated by a peace officer . . . and that peace officer is wearing a distinctive uniform." *Mathews*, 64 Cal. App. 4th at 488 (omission in original). In interpreting "distinctive uniform," the court applied the plain meaning of the word "uniform" defined in *Webster's Third New International Dictionary* 2498 (unabr. ed. 1986) as "dress of a distinctive design or fashion adopted by or prescribed for members of a particular group and serving as a means of identification." *Mathews*, 64 Cal. App. 4th at 490 (citing *People v. Estrella*, 31 Cal. App. 4th 716, 724 (Ct. App. 1995) (adopting the dictionary definition of "uniform" to interpret "distinctive uniform")). The court therefore concluded that a police officer's uniform is "clothing prescribed for or adopted by a law enforcement agency which serves to identify or distinguish members of its force." *Mathews*, 64 Cal. App. 4th at 490. Reasoning under the facts of the case that "a badge is not an article of clothing, [although] it may help to distinguish a law enforcement officer," the court concluded that the plain clothes officer with a badge was not in uniform for purposes of the California statute that prohibits willful fleeing from a police officer in pursuit. *Id.* at 491.

{34} The Appellate Court of Illinois reached a similar conclusion in *People v. Williams*, 2015 IL App (1st) 133582, ¶ 1, 44 N.E.3d 534. In *Williams*, a police officer driving a marked police vehicle but wearing "civilian dress" apprehended the defendant who fled from the officer when the officer pursued him for not fully coming to a stop at a stop sign. *Id.* ¶ 3. The defendant was convicted of "aggravated fleeing or attempting to elude a peace officer" in violation of 625 Ill. Comp. Stat. Ann. 5/11-204(a) (2004), which provides in part, "Any driver or operator of a motor vehicle who, having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to stop, willfully fails or refuses to obey . . . is guilty of a . . . misdemeanor" if, among other essential elements, the peace officer is in uniform. *Williams*, 2015 IL App (1st) 133582, ¶¶ 6-8, 11. Because the evidence established that the officer was in "civilian dress" when he attempted to apprehend the defendant, the court concluded that "there can be no doubt that the [s]tate failed to prove an essential element [of fleeing a peace officer], namely, that of the officer being in uniform." *Id.* ¶ 15.

{35} The State argues that the Court of Appeals reliance on a definition of "uniform" in *Webster's Third New International Dictionary* 2498 (unabr. ed. 1986) fails to support the Court's own conclusion that a badge, by itself, is not a uniform. Specifically, the State asserts that to define a uniform as "'clothing and accessories' of a 'distinctive design . . . serving as a means of identification'" does not mean "that the clothing alone must be distinctive." The State asserts instead that the definition means "the clothing and accessories must be distinctive *when considered together*." In other words, the State asserts that even under the Court of Appeals definition of uniform, Deputy Russ's dress "need not be the sole, or even primary means" of identifying him as a police officer. We reject the State's alternative construction.

{36} Defining the word uniform, as the Court of Appeals did, to mean "*dress* of a *distinctive design* . . . serving as a means of identification," *Montano*, 2018-NMCA-047, ¶ 11 (citation omitted), is significant in two ways. First, because "[d]ress" means "clothing *and* accessories[,]" in order to qualify as a uniform, an individual's attire

must be composed of both clothing and accessories. *See id.* (citation omitted). The conjunctive use of "'and'" in a statute "requires an interpretation that [all] elements . . . must be present." *Stevenson v. Louis Dreyfus Corp.*, 1991-NMSC-051, ¶ 14, 112 N.M. 97, 811 P.2d 1308. Second, from a purely grammatical perspective, "of a distinctive design" modifies "dress" for purposes of what constitutes a uniform. Therefore, both the clothing and the accessories that constitute an individual's dress must be of a "distinctive design" that serves "as a means of identification" in order to stand as a uniform. *See Garcia v. Schneider, Inc.*, 1986-NMCA-127, ¶ 9, 105 N.M. 234, 731 P.2d 377 ("Statutes must be read according to their grammatical sense.").

{37} In the context of Section 30-22-1.1(A), both the clothing and accessories worn by a law enforcement officer must be of a "distinctive design" that serves to identify the individual wearing them as a law enforcement officer. It follows that a badge alone□which undoubtedly constitutes an accessory that serves, in part, to identify the individual wearing it as a law enforcement officer□is not sufficient to constitute a uniform without distinctive clothing identifying the wearer as a law enforcement officer. We therefore reject the State's argument that under the Court of Appeals definition of uniform, an officer's clothing and accessories need to be distinctive only "*when considered together*."

{38} We therefore conclude that Deputy Russ's attire which included "a dress shirt with tie, dress slacks, and dress shoes" was not a uniform as required by Section 30-22-1.1(A). His clothing—professional attire—did not in any way distinguish Deputy Russ as a law enforcement officer. Moreover, while a police officer's badge is a distinctive accessory that identifies a police officer, it is not, standing alone, a uniform. We are particularly persuaded by the fact that in the 1968 change to Section 66-8-124 the Legislature could have used the definition "badge or uniform" but it did not. Instead, it deleted "badge" and used "uniform." We affirm the Court of Appeals conclusion that Defendant Montano's conviction for aggravated fleeing a law enforcement officer must be reversed because Deputy Russ was not in uniform at the time he attempted to stop Defendant Montano.

IV. APPROPRIATELY MARKED LAW ENFORCEMENT VEHICLE

{39} Defendant Martinez argues that the Court of Appeals interpretation of "appropriately marked law enforcement vehicle" in *Montano*, 2018-NMCA-047, was flawed in view of the plain meaning of Section 30-22-1.1. Specifically, Defendant Martinez asserts that principles of statutory construction "substantiate that the Legislature meant for 'appropriately marked law enforcement vehicle' to require lettering, decals, insignia, and coloring clearly identifying the vehicle as a law enforcement vehicle." Defendant Martinez accordingly contends that, in applying its reasoning from *Montano*, the Court of Appeals erred in concluding that Deputy Gilbert's unmarked tan Ford Explorer was an "appropriately marked law enforcement vehicle" under the statute prohibiting aggravated fleeing a law enforcement officer. The State responds by asserting that the Court of Appeals was correct in concluding that Deputy Gilbert's Ford Explorer was an "appropriately marked law enforcement vehicle" considering the plain meaning of that term, the legislative purpose of Section 30-22-1.1(A), and the rules of statutory construction. We agree with Defendant Martinez.

A. Court of Appeals Opinion

{40} To reiterate, the district court ruled that Deputy Gilbert was not in an "appropriately marked law enforcement vehicle" when he attempted to stop Defendant Martinez. Deputy Gilbert was driving a tan colored Ford Explorer, an "unmarked patrol vehicle" used in covert operations to evade detection. "By design, the vehicle bore no insignias, stripes, decals, labels, seals, symbols, or other pictorial signs or lettering indicating its identity as a law enforcement vehicle." However, Deputy Gilbert's vehicle was equipped with red and blue LED lights within the grill area that were visible through the grill even when not activated, as well as a siren with speakers inside the grill, and an antenna not common to "civilian" vehicles. The Court of Appeals summarily reversed the district court ruling based on its holding in *Montano* that the vehicle Deputy Russ drove in pursuit of Defendant Montano was an "appropriately marked law enforcement vehicle." *Martinez*, A-1-CA-35111, mem. op. ¶¶ 1-2. In *Montano*, Deputy Russ "was driving a Ford Expedition that had no decals, striping, insignia, or lettering" anywhere on the vehicle. 2018-NMCA-047, ¶ 2. However, "[his] vehicle had wigwag headlights, red and blue flashing lights mounted on the front grill and the top rear window, flashing brake lights, and a siren." *Id.* We must address the opinion in *Montano* in order to resolve the issue brought before us by Defendant Martinez.

{41} In *Montano* the Court of Appeals began its analysis of whether an unmarked police car may constitute an "'appropriately marked' law enforcement vehicle" by looking to the plain meaning of "appropriately marked." 2018-NMCA-047, ¶¶ 35-36. Using *Webster's Third New International Dictionary* 1382 (unabr. ed. 1986), the Court of Appeals observed that "mark" may be defined as "something that gives evidence of something else" or "a character, *device*, label, brand, seal, or other sign put on an article esp[ecially] to show the maker or owner, to certify quality, or for identification." *Montano*, 2018-NMCA-047, ¶ 36 (alteration in original) (internal quotation marks omitted). Based on these definitions the Court of Appeals stated, "In the context of Section 30-22-1.1(A), we understand the plain meaning of 'appropriately marked' to be that the vehicle in question is marked in a manner that is suitable for being driven by a law enforcement officer and identified as such." *Montano*, 2018-NMCA-047, ¶ 37. The Court of Appeals considered it "significant that the Legislature did not specifically refer to insignia or lettering, and instead used only the broader term, 'mark.'" *Id.* The Court of Appeals said that the emergency lights and the siren on Deputy Russ's vehicle are devices that evidence and otherwise identify Deputy Russ's Ford Expedition as a law enforcement vehicle. *Id.* As such, the Court of Appeals concluded, Deputy Russ's vehicle was "appropriately marked" as required by Section 30-22-1.1(A). *Montano*, 2018-NMCA-047, ¶ 37.

{42} The Court of Appeals also recognized that a "marked" police vehicle "commonly refers to a vehicle with lettering, insignia, or striped paint that would indicate the driver of the vehicle is a law enforcement officer" and that an "unmarked" police vehicle "refers to a vehicle without any such graphic markings on the exterior." *Id.* ¶ 38. Thus, the Court of Appeals concluded that the phrase "appropriately marked" is ambiguous and cited this ambiguity as a basis for *not* applying the plain meaning of the words. *Id.* ¶ 39. The Court of Appeals therefore looked to legislative intent as an alternative for determining what "[appropriately] marked law enforcement vehicle" means under Section 30-22-1.1(A). *Montano*, 2018-NMCA-047, ¶¶ 39-40.

{43} The Court of Appeals concluded that "the intent of Section 30-22-1.1(A)'s requirement that the police vehicle be 'appropriately marked' is . . . to establish that the motorist knows that he is fleeing a law enforcement officer." *Montano*, 2018-NMCA-047, ¶ 40. The Court of Appeals then referred to the version of NMSA 1978, Section 66-7-332(A) (2005) applicable to Defendant Montano's conviction:

> Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-

> hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

See Montano, 2018-NMCA-047, ¶ 19. Based on this statutory language, the Court of Appeals stated, "[A] motorist who sees a vehicle with flashing emergency lights and/or hears its sirens must pull off the road and stop." *Id.* ¶ 42. "[W]hether the motorist can differentiate a police vehicle from, say, an ambulance is of no consequence for purposes of establishing the initial obligation to stop." *Id.* "Stated another way, a law enforcement vehicle is 'appropriately marked' so long as it has sufficient equipment to trigger the motorist's obligation under Section 66-7-332 [(2005)] to come to a stop." *Montano*, 2018-NMCA-047, ¶ 42. Based on this rationale, the Court of Appeals concluded that "a vehicle equipped with emergency lights, flashing lights, and siren, i.e., one consistent with the plain meaning of 'appropriately marked,' also meets the legislative intent underlying Section 30-22-1.1(A)." *Montano*, 2018-NMCA-047, ¶ 42. Therefore, the Court of Appeals concluded, "the siren along with the combination of flashing and alternating lights on [Deputy] Russ's vehicle were sufficient to enable Defendant [Montano] to know immediately, not only that it was an emergency vehicle, but that it was a law enforcement vehicle in particular." *Id.* ¶ 43.

{44} Finally, the Court of Appeals considered whether its conclusion that the siren and combination of flashing and alternating lights, with which Deputy Russ's Ford Expedition was equipped, satisfied the "appropriately marked" requirement of the aggravated fleeing statute, thereby rendering the additional language in the statute surplusage and meaningless contrary to the canons of statutory construction. *Montano*, 2018-NMCA-047, ¶ 44. To reiterate once again, Section 30-22-1.1(A) requires not only that the pursuing law enforcement officer be "in an appropriately marked law enforcement vehicle" but also that the perpetrator be driving in a reckless manner that is a danger to the life of another "after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal" by the officer.

{45} In a brief analysis of this question, the Court of Appeals concluded that its construction of the statute did not render another portion of the statute superfluous. *Montano*, 2018-NMCA-047, ¶ 45. The Court of Appeals gave three reasons in support of its conclusion. First, the Court of Appeals stated that the "visual or audible signal to stop" required by Section 30-22-1.1(A) "may be given by any number of means, including hand or voice," and "[t]hus, the flashing lights and/or siren that satisfy the appropriately marked vehicle element will not necessarily be the, or at least the only, visual or audible signal to stop that the officer gives." *Montano*, 2018-NMCA-047, ¶ 45. Second, the Court of Appeals stated that because Section 30-22-1.1(A) sets out examples of the visual or audible signal to stop in the disjunctive (i.e., "hand, voice, emergency light, flashing light, siren or other signal"), not all of the equipment activated by Deputy Russ during his pursuit of Defendant Montano (i.e., "siren, flashing red and blue lights, *and* wigwag lights") was required to signal Defendant Montano to stop. *Montano*, 2018-NMCA-047, ¶ 45. Third, the Court of Appeals stated that the same evidence may be used to satisfy both requirements of Section 30-22-1.1(A): the "visual or audible signal to stop" and the "appropriately marked law enforcement vehicle." *Montano*, 2018-NMCA-047, ¶ 45. The Court of Appeals relied on the dissenting opinion in *People v. Hudson*, 136 P.3d 168, 177 (Cal. 2006) for this proposition, in which Justice Moreno wrote that "the requirement that a police vehicle must be distinctively marked can be satisfied, in part, by the same evidence used to establish the additional requirements that the vehicle exhibit a red lamp that is visible from the front and that the suspect reasonably should have seen, and sound a siren as reasonably necessary." *See Montano*, 2018-NMCA-047, ¶ 45.

{46} As an aside, the Court of Appeals concluded its discussion by stating that it was "sensitive to the public concern expressed . . . about persons posing as law enforcement officers in vehicles equipped with emergency lights and sirens who stop and prey upon other motorists." *Id.* ¶ 46. The Court of Appeals added that it has "no evidence that this consideration entered into the motivation of any of the members of our Legislature in enacting Section 30-22-1.1[, and f]or this reason, it does not inform our construction of Section 30-22-1.1(A)." *Montano*, 2018-NMCA-047, ¶ 46.

B. Analysis

{47} "[I]t is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. Judicial responsibility compels our conclusion that the Court of Appeals analysis of Section 30-22-1.1(A) is flawed in three ways: (1) While defining the statutory term "mark," the analysis fails to fully appreciate the significance of "appropriate" in the statutory element "appropriately marked law enforcement vehicle," (2) the analytical resolution of ambiguity in the statutory phrase "appropriately marked" is overbroad in light of the import of related statutes in the Motor Vehicle Code, and (3) the analysis renders statutory language surplusage and meaningless in violation of canons of statutory construction. We consider each of these flaws in turn, in light of the weight of authority in other jurisdictions.

1. Plain meaning of "appropriately marked"

{48} In considering the plain meaning of "appropriately marked," the Court of Appeals focused on "mark" as "something that gives evidence of something else" or "a character, device, label, brand, seal, or other sign put on an article esp[ecially] to show the maker or owner, to certify quality, or for identification." *Montano*, 2018-NMCA-047, ¶ 36 (alteration in original) (emphasis omitted) (internal quotation marks and citation omitted). Acknowledging that an "appropriately marked" law enforcement vehicle means "the vehicle in question is marked in a manner that is suitable for being driven by a law enforcement officer and identified as such," *id.* ¶ 37, the Court of Appeals glossed over the significance of "appropriate" as a statutory element of Section 30-22-1.1(A).

{49} *Webster's Third New International Dictionary* 106 (unabr. ed. 1986) states that "appropriate" means "specially suitable" including "specially suitable to [a] use." It follows that a plain meaning construction of "appropriately marked law enforcement vehicle" contemplates that such a vehicle must bear "a character, device, label, brand, seal, or other sign" that not only makes it suitable to be driven by a law enforcement officer, but also that sets it apart as specially suitable to law enforcement use. *See id.* at 106, 1382. As discussed further below, even assuming that a siren and lights constitute devices that fall into the category of markings, such markings alone are insufficient to set apart a vehicle as specially suitable to law enforcement use and therefore do not satisfy the requirement of Section 30-22-1.1(A) that a pursuing officer under the statute be in an "appropriately marked law enforcement vehicle." Instead, as Defendant Martinez argues in his brief, in order to be set apart as specially suitable to law enforcement use, a police vehicle must bear decals or other prominent and highly visible insignia that identify for the public the vehicles that are in fact "law enforcement vehicles used in police pursuits."

2. Ambiguity in the Court of Appeals construction of "appropriately marked"

{50} The Court of Appeals acknowledged the patent ambiguity in its construction of "appropriately marked" as including

Deputy Russ's Ford Expedition that bore no decals, striping, insignia, or lettering anywhere on the vehicle. *See Montano*, 2018-NMCA-047, ¶¶ 38-43. In its attempt to resolve the ambiguity, the Court of Appeals looked to the legislative intent of Section 30-22-1.1(A) and read the aggravated fleeing statute in conjunction with Section 66-7-332(A) (2005) to conclude that "the siren along with the combination of flashing and alternating lights on [Deputy] Russ's vehicle were sufficient to enable Defendant [Montano] to know immediately, not only that it was an emergency vehicle, but that it was a law enforcement vehicle in particular." *Montano*, 2018-NMCA-047, ¶¶ 42-43.

{51} Defendant Martinez asserts that the Court of Appeals analysis is contrary to the "history, background, structure of the statute, and its interplay with other [related] statutes" aimed at effectuating the Legislature's goal of making police vehicles engaged in pursuits highly visible to both defendants and to the general public—"a goal which is best served by interpreting 'appropriately marked law enforcement vehicle' in accordance with its commonly understood meaning" under Section 30-22-1.1(A). We agree.

{52} The Court of Appeals relied heavily on Section 66-7-332(A) (2005) for the proposition that "a motorist who sees a vehicle with flashing emergency lights and/or hears its siren must pull off the road and stop" and that "a vehicle equipped with emergency lights, flashing lights, and siren, i.e., one consistent with the plain meaning of 'appropriately marked,' also meets the legislative intent underlying Section 30-22-1.1(A)" of ensuring that defendants understand that they are fleeing a law enforcement officer. *Montano*, 2018-NMCA-047, ¶¶ 40, 42.

{53} The Court of Appeals analysis of the legislative intent of Section 30-22-1.1(A) that includes Section 66-7-332 (2005) is overbroad and therefore flawed. Section 66-7-332(A) (2005) requires all drivers to pull over and stop "[u]pon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren[.]" An "authorized emergency vehicle" is in turn defined as "any fire department vehicle, police vehicle and ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the director of the New Mexico state police division of the department of public safety or local authorities." NMSA 1978, § 66-1-4.1(F) (2017). The obvious purpose of these statutes is to require traffic to pull over to allow an emergency vehicle to attend to its emergency call as quickly and safely as possible. Once the emergency vehicle passes, traffic can resume moving. This does not compare to a police officer's nonconsensual traffic stop of a single driver based on reasonable suspicion or probable cause of a crime. Emergency vehicles such as fire trucks and ambulances are easily identifiable and not outfitted to avoid detection. Additionally, pursuant to NMSA 1978, Section 66-3-835(C) (2019), [f]lashing lights are prohibited except . . . on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment."

{54} Even assuming that it is reasonable for members of the public to infer that all vehicles equipped with flashing lights alone or flashing lights and a siren are "authorized emergency vehicles," there is no basis for a member of the public to infer from the same characteristics that such a vehicle must be a law enforcement vehicle. *See* D'Val Westphal, *Rainbow of flashing vehicle lights confusing*, *Albuquerque J.*, July 16, 2018, https://www.abqjournal.com/1197014/rainbow-of-flashing-vehicle-lights-confusing.html (last visited February 3, 2020) (discussing the confusion of the public concerning what vehicles and departments/organizations can use which type of vehicle lights and how a driver should respond based on the myriad of vehicles that currently use flashing lights).

{55} Deputy Russ's unmarked tan Ford Expedition may be unmarked for good reasons, including the ability to conduct covert investigations while avoiding detection by the public and, more importantly, by those being investigated. The stealthy functioning of Deputy Russ's vehicle is admittedly different than the functioning of the marked vehicles used by police who conduct regular traffic stops and interact with the public on a regular basis. Reiterating the definition of "mark" as that which provides identification, we cannot conclude that lights or a siren are unique in identifying a police officer's vehicle where emergency vehicles, tow trucks, and even civilian vehicles may be equipped with these same signaling devices.

{56} Rather, in accordance with the plain meaning of the phrase "appropriately marked," the only meaningful way to set apart a law enforcement vehicle as specially suitable for police use, and in so doing to ensure that members of the public understand in a given situation that they are being pursued by a law enforcement officer, is to construe "appropriately marked law enforcement vehicle" for purposes of Section 30-22-1.1(A) to mean a police vehicle bearing decals or other prominent and visible insignia identifying it as such. The weight of authority in other jurisdictions supports this conclusion, as described later in this analysis.

3. Surplusage in Section 30-22-1.1(A) resulting from the Court of Appeals construction of the statute

{57} Finally, the Court of Appeals concluded that its interpretation of Section 30-22-1.1(A) does not render language in the statute surplusage or otherwise meaningless. *Montano*, 2018-NMCA-047, ¶¶ 44-45. Defendant Martinez argues that "the Court of Appeals interpretation conflates distinct requirements . . . in violation of well-established canons of statutory construction." Specifically, Defendant Martinez asserts, "If all the Legislature had meant to require was flashing lights and a siren, then there would have been no need to describe the vehicle itself as 'appropriately marked' and then separately require a stop signal using lights and a siren." We agree.

{58} In support of its conclusion, as noted previously the Court of Appeals relied on the dissent in *Hudson*, 136 P.3d at 177, in which Justice Moreno wrote that "the requirement that a police vehicle must be distinctively marked can be satisfied, in part, by the same evidence used to establish the additional requirements that the vehicle exhibit a red lamp that is visible from the front and that the suspect reasonably should have seen, and sound a siren as reasonably necessary." Because this was neither the majority view of the California Supreme Court nor a position consistent with the view any other case addressing the issue has taken, we are unpersuaded. To the contrary, the opposite conclusion was reached by the Court of Appeals of Maryland in *Williams v. State*, 24 A.3d 210, 233-34 (Md. Ct. Spec. App. 2011) (concluding that an unmarked police car equipped with only lights and sirens did not constitute an appropriately marked police vehicle within the meaning of the state statute that prohibits "attempting to elude a police officer" because reading the statute to permit an officer's activation of lights and sirens to satisfy the requirement that the officer give a visual or audible signal to stop and also the requirement that the officer be in an appropriately marked police vehicle would render the language requiring the marking of a police vehicle superfluous and meaningless (citation omitted)).

{59} Nor are we persuaded by the Court of Appeals alternatively stated rationale in support of its conclusion: (1) Flashing lights and a siren may not be the police officer's only visual signal to stop or (2) not all of the equipment Deputy Russ activated during his pursuit of Defendant Montano (i.e., siren, flashing red and blue lights, and wigwag headlights) was required to signal Defendant Montano to stop. *See Montano*, 2018-NMCA-047, ¶ 45. Simply put, if under the plain meaning of "appro-

priately marked," lights and a siren do not set a vehicle apart as specially suitable law for law enforcement use, such equipment in any combination can in no case stand as evidence of appropriate markings for a law enforcement vehicle for purposes of Section 30-22-1.1(A). Any construction to the contrary renders essential language in the aggravated fleeing statute surplusage and otherwise meaningless.

4. The law in other jurisdictions

{60} For all the foregoing reasons, we conclude that the Court of Appeals erred in its conclusion in *Montano* that the vehicle driven by Deputy Russ was an "appropriately marked law enforcement vehicle." The weight of authority from other states gives added support to our conclusion.

{61} Under a 1983 version of Washington law, the crime of eluding a police officer required, in part, that the officer the perpetrator was eluding be in a "vehicle [that] shall be appropriately marked showing it to be an official police vehicle." Wash. Rev. Code Ann. § 46.61.024(1) (1983, amended 2003, 2010); *see State v. Argueta*, 27 P.3d 242, 244 & n.3 (Wash. Ct. App. 2001). Construing the language in the statute prohibiting attempts to elude a police officer, the Court of Appeals of Washington concluded that emergency equipment was insufficient "to render a police vehicle appropriately marked for purposes of the eluding statute." *Argueta*, 27 P.3d at 245-46. The court reasoned that based on the plain meaning of the dictionary definitions of "appropriate" and "mark"□which respectively mean "specially suitable" and "a character, device, label, brand, seal, or other sign put on an article esp. to show the maker or owner, to certify quality, or for identification"□"[e]mergency equipment is a signaling device, not an identifying device." *Id.* at 245 & ns.11-14 (internal quotation marks omitted) (quoting *Webster's Third New International Dictionary* 106, 1382-83 (unabr. ed. 1993)). The court continued that

> we must assume that the [l]egislature intended to require something more than the presence of activated emergency equipment in order to render a police vehicle appropriately marked for purposes of the eluding statute. That "something more" the [l]egislature required is a "mark," which, under the ordinary meaning of the term, means an insignia identifying the vehicle as an official police vehicle.

Argueta, 27 P.3d at 245-46.

{62} Other states, including Louisiana, Maryland, North Dakota, Pennsylvania, Wisconsin, and California have reached similar conclusions construing their fleeing and eluding a police officer statutes. *See State v. Harris*, 261 So. 3d 149, 154-56 (La. Ct. App. 2018) (determining under the Louisiana statute criminalizing flight from an officer, which requires the use of a marked police vehicle, that a police car equipped with emergency lights, a siren, and spotlights but no other marking or insignia did not constitute a marked police vehicle); *Williams*, 24 A.3d at 234) (concluding that an unmarked police car equipped with only lights and sirens did not constitute an appropriately marked police vehicle within the meaning of the Maryland statute prohibiting knowing failure to stop a vehicle when signaled by a police officer in an appropriately marked police vehicle because "[r]eading the statute to permit an officer's activation of lights and sirens to satisfy [both] the requirement that the officer give a visual or audible signal to stop and the requirement that the officer be in" an appropriately marked police vehicle would render the language requiring the marking of a police vehicle superfluous and meaningless); *State v. Erdman*, 422 N.W.2d 808, 809-10 (N.D. 1988) (concluding that the defendant, pursued by plain-clothed officers driving unmarked vehicles, could not be convicted of fleeing or attempting to elude police officers for willfully refusing to stop a vehicle under the North Dakota statute that required uniformed officers driving official marked police vehicles); *Commonwealth. v. Durrett King*, 195 A.3d 255, 262 (Pa. 2018) (determining, for purposes of the Pennsylvania statute prohibiting attempts to elude a pursuing police vehicle, that the term "markings" does not include the lights and siren on a police car and only includes the "graphics or decals identifying the department or agency of the vehicle"); *State v. Opperman*, 456 N.W.2d 625, 626-28 (Wis. Ct. App. 1990) (concluding that a police vehicle equipped with only red lights and a siren and no police department insignia or decals was not a "marked police vehicle" for purposes of the Wisconsin statute prohibiting a knowing attempt to elude or flee a police officer in a marked police vehicle, notwithstanding that the defendant accelerated his vehicle when he saw the vehicle with red lights engaged); *see also Hudson*, 136 P.3d at 175 (stating that in order to establish that a police vehicle is distinctively marked for purposes of the California statute that prohibits willful fleeing or attempting to a elude a police officer's motor vehicle, "a pursuing police vehicle must have distinguishing features *in addition to* a red light and siren").

{63} Additionally, the Indiana Court of Appeals acknowledged the importance of police officer recognition in protecting the public from police impersonators. In doing so, it cited its statute requiring an officer to be "(1) wearing a distinctive uniform and a badge of authority; or (2) operating a motor vehicle that is clearly marked as a police vehicle[] that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle[.]" *Ervin v. State*, 968 N.E.2d 315, 318 (Ind. Ct. App. 2012). "The statute seeks to help distinguish law enforcement officers from those individuals on our highways who, for illicit purposes, impersonate law enforcement officers." *Id.* (citing *Maynard v. State*, 859 N.E.2d 1272, 1274 (Ind. Ct. App. 2007)).

{64} A minority of jurisdictions, including Kansas, Massachusetts, and Ohio have reached the opposite conclusion concerning whether lights and a siren on an otherwise unmarked police vehicle are sufficient markings for purposes of those state statutes that prohibit fleeing and eluding a law enforcement officer. *See State v. Parker*, 430 P.3d 975, 984 (Kan. 2018); *Commonwealth v. Ross*, 896 N.E.2d 647, 649-50 (Mass. App. Ct. 2008); *State v. Bradley*, 55 N.E.3d 580, 584-85 (Ohio Ct. App. 2015). We do not find this minority of cases persuasive.

5. Result

{65} Applying the foregoing analysis to the facts in the case of Defendant Martinez, we hold that the district court correctly concluded that the vehicle Deputy Gilbert was driving when he attempted to stop Defendant Martinez was not "an appropriately marked law enforcement vehicle" as required by Section 30-22.1.1(A). Deputy Gilbert himself described that vehicle as "my unmarked patrol vehicle." The vehicle "bore no insignias, stripes, decals, labels, seals, symbols or other pictorial signs or lettering indicating its identity as a law enforcement vehicle." While the vehicle was equipped with "red and blue LED lights located within the grill area that were visible through the grill even when not activated" and had a siren with speakers located inside the grill, as well as "an antenna that is not common to civilian vehicles," there is nothing distinctive about this equipment to identify the vehicle as a police vehicle.

{66} Without more, like the Ford Expedition Deputy Russ drove in *Montano*, the lights, siren, and antenna that equipped Deputy Gilbert's Ford Explorer were insufficient to constitute appropriate markings indicating to the public that the vehicle was in fact a law enforcement vehicle in accordance with the plain meaning of the statute and legislative intent underlying Section 30-22-1.1(A). Moreover, activating the red and blue LED lights and siren located within the grill of a vehicle that has no insignias, stripes, decals, labels, seals, symbols, or other signs or lettering identifying the vehicle as a law enforcement vehicle does not automatically transform an unmarked police vehicle into a

marked police vehicle. Because Deputy Gilbert's vehicle was not appropriately marked, we conclude that the Court of Appeals erred in reversing the district court dismissal of his aggravated fleeing charge.

V. CONCLUSION

{67} We affirm the holding of the Court of Appeals in *Montano* in part, and we reverse in part. Specifically, we affirm the holding that Deputy Russ was not "a uniformed law enforcement officer" as required by Section 30-22-1.1(A), and we reverse the holding that Deputy Russ was "in an appropriately marked law enforcement vehicle" as required by Section 30-22-1.1(A). In accordance with this holding and the statute, we also reverse the Court of Appeals holding in *Martinez* that Deputy Gilbert was "in an appropriately marked law enforcement vehicle."

{68} IT IS SO ORDERED.
MICHAEL E. VIGIL, Justice

WE CONCUR:
BARBARA J. VIGIL, Justice
C. SHANNON BACON, Justice
DAVID K. THOMSON, Justice

NAKAMURA,
Chief Justice (dissenting).

{69} Imagine a driver looks in his side mirror as he approaches a stop sign and recognizes, behind him, a law enforcement officer whom the driver personally knows. The driver then rolls through the stop sign and takes off. When the driver takes off, the officer engages his vehicle's red and blue lights and siren, signaling the driver to stop. Instead of pulling over, the driver continues to speed away, revving his engine and taking wide turns at intersections, locking up his brakes. There are many other vehicles on the road, including one with a child in an infant seat, and several bystanders. The officer pursues the driver, but ultimately abandons the chase as too dangerous. Later, the driver is arrested for aggravated fleeing. These are the facts in Defendant Martinez's case.

{70} The majority holds that Defendant Martinez is not criminally liable for aggravated fleeing under these circumstances, because the pursuing officer's vehicle did not bear "decals or other prominent and visible insignia," *Maj. op.* ¶ 56, and was therefore not "appropriately marked" within the meaning of the statute. Similarly, in the companion case of Defendant Montano, the majority holds that a prominently displayed badge, together with professional attire, is not a "uniform" within the meaning of the statute, because a uniform must include *clothing* of a distinctive design. *Maj. op.* ¶¶ 37-38. Thus, the majority treats an officer's appropriately marked vehicle and uniform as elements of the crime of aggravated fleeing, and relies primarily upon dictionary and technical regulatory definitions to interpret those elements. In doing so, the majority places some defendants who know that their pursuer is law enforcement—a defendant like Martinez—beyond the reach of the aggravated fleeing statute.

{71} I respectfully dissent. The terms at issue are not standalone elements of the crime of aggravated fleeing; rather, they are identifying factors bearing on the defendant's knowledge that he is evading law enforcement. I would therefore adopt a test similar to the test established by the Court of Appeals in *Archuleta*, 1994-NMCA-072, ¶ 11: namely, that a jury may find the knowledge element of the statute to be satisfied where an officer's uniform, vehicle, and other circumstances surrounding the interaction between the officer and the defendant are sufficient to notify a reasonable person that he has been signaled to stop by law enforcement. A jury may also consider evidence of a defendant's subjective knowledge that his pursuer was police. Explained in further detail below is why the construction I propose (1) is contextual; (2) furthers, rather than compromises the intent of the legislature to protect the public from drivers who knowingly and recklessly evade law enforcement; and (3) is consistent with our interpretation of other statutory uses of similar terms. Next, explained under this standard, is why I would affirm Defendant Montano's conviction and remand Defendant Martinez's case for further proceedings consistent with this dissent.

I. CONTEXTUAL INTERPRETATION

{72} "[I]t is a fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used[.]" *Yates v. United States*, 574 U.S. 528, 537 (2015) (internal quotation marks and citation omitted). Context may, and often does, explain why dictionary definitions are plainly inapplicable. *Id.*; *accord Cummings v. X-Ray Assocs.*, 1996-NMSC-035, ¶ 45, 121 N.M. 821, 918 P.2d 1321. Here, the statutory context of the terms before us is as follows:

> A. Aggravated fleeing a law enforcement officer consists of a person willfully and carelessly driving his vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed law enforcement officer in an appropriately marked law enforcement vehicle in pursuit in accordance with the provisions of the Law Enforcement Safe Pursuit Act [LESPA] [NMSA 1978, § 29-20-1 to -4 (2003)].

Section 30-22-1.1(A). We previously interpreted this language to require proof of the defendant's knowledge that (1) a person who is a law enforcement officer, as designated by his uniform and marked vehicle, (2) signaled the defendant to stop. *Padilla*, 2008-NMSC-006, ¶ 15, 143 N.M. 31, 176 P.3d 299. We described the officer's uniform and appropriately marked car as part of the "backdrop" against which the defendant's knowledge is evaluated. *Id.* ¶ 15. In my view, this context supports an interpretation of "uniform" and "appropriately marked" not as elements of the crime, but as descriptions bearing on an attendant circumstance in the statute—namely, the pursuer's identity.

{73} An attendant circumstance is "[a] fact that is situationally relevant to a particular event or occurrence." Circumstance, *Black's Law Dictionary* (11th ed. 2019). "A fact-finder often reviews the attendant circumstances of a crime to learn, for example, the perpetrator's motive or intent." *Id.* Our appellate courts have addressed attendant circumstances in the context of a crime with significant similarities to aggravated fleeing: aggravated battery upon a peace officer. NMSA 1978, § 30-22-25 (1971). Aggravated battery upon a peace officer is defined as "the unlawful touching or application of force to the person of a peace officer with intent to injure that peace officer while he is in the lawful discharge of his duties." Section 30-22-25(A). Examining this provision, the Court of Appeals held that a "requirement of knowledge attaches to the attendant circumstance of the victim's status as a peace officer." *State v. Nozie*, 2007-NMCA-131, ¶ 11, 142 N.M. 626, 168 P.3d 756, *aff'd*, 2009-NMSC-018, ¶ 11, 146 N.M. 142, 207 P.3d 1119. This Court agreed, explaining that our "Legislature intended knowledge of the victim's identity as a peace officer to be an essential element of the crime." *Nozie*, 2009-NMSC-018, ¶ 30. However, we emphasized that "it is the defendant's mental state, rather than the victim's conduct, that is the touchstone of the knowledge requirement." *Id.* ¶ 32. We also noted that "[b]ecause an individual's intent is seldom subject to proof by direct evidence, intent may be proved by circumstantial evidence." *Id.* (alteration in original) (citation omitted). We explained that "[s]uch circumstantial evidence may include, but is not limited to, the fact that the victim was in full uniform, had a badge visibly displayed, was driving a marked police vehicle, or had identified himself or herself as a peace officer." *Id.* In other words, the defendant's intent must be discerned from the totality of the circumstances bearing on the victim's identity as a peace officer.

{74} Aggravated fleeing likewise requires proof of an *act toward an officer* (fleeing) as an attendant circumstance, and the knowledge requirement of the statute carries over

to that circumstance. *Padilla*, 2008-NMSC-006, ¶ 15-16. Uniforms and appropriately marked cars are obvious identifiers of law enforcement, and thus their inclusion in the statute is unsurprising, particularly because the statute specifically addresses reckless evasion by vehicle. However, that is no reason to treat these identifiers as elements of the crime, much less to define them strictly. Rather, as in the aggravated battery context, the defendant's mental state—not the officer's conduct or even appearance—must be the touchstone of the knowledge requirement. *See id.* ¶ 11 ("Criminal liability is typically defined by the conduct of the accused, not the conduct of the police officer or the law enforcement agency tasked to enforce the criminal code.").

II. LEGISLATIVE INTENT AND AVOIDING ABSURD RESULTS

{75} Legislative intent, the lodestar of statutory construction, *State v. Chavez*, 1966-NMSC-217, ¶ 7, 77 N.M. 79, 419 P.2d 456, also favors the pragmatic framework proposed in this dissent. The purpose of the aggravated fleeing statute is to avoid the public hazard created by drivers who knowingly and recklessly evade law enforcement. *Padilla*, 2008-NMSC-006, ¶ 21 ("The statute appears to be designed to protect the general public from the dangers of a high speed chase."); *see* Aaron Baca, *State v. Padilla: An Aggravated Reading of the State's Aggravated Fleeing a Police Officer Statute*, 39 N.M. L. Rev. 485, 488 (2009) (citing Leslie Linthicum, *Wrong Place, Wrong Time*, Albuquerque J., Sept. 9, 2001, at A1 and David Miles, *Bill Beefs Up Penalties for Fleeing From Officers*, Albuquerque J., Feb. 15, 2002, at A10) (discussing that, two years before the aggravated fleeing statute's enactment, six people were killed in traffic accidents caused by defendants fleeing officers). In *State v. Vest*, 2018-NMCA-060, ¶ 8, 428 P.3d 287, *cert. granted* (S-1-SC-37210, Sept. 24, 2018), the Court of Appeals noted that, upon passing the aggravated fleeing statute, a fourth-degree felony, the Legislature nevertheless retained, as a misdemeanor offense, the statute criminalizing resisting, evading, or obstructing an officer, including vehicular flight from an officer, in Section 30-221. The State is required to prove, under any of the subsections in the misdemeanor statute, that the defendant took some resistive, evasive, or obstructive action knowing that the person resisted, evaded, or obstructed was an officer. *See State v. Jimenez*, 2017-NMCA-039, ¶ 28, 392 P.3d 668 (citing UJI 14-2215 NMRA). What distinguishes *aggravated* fleeing from other forms of evading or obstructing law enforcement is, then, the "legislative intent to more severely punish people who jeopardize the safety of others while fleeing from law enforcement officers." *Vest*, 2018-NMCA-060, ¶ 8

{76} Given this purpose, it is difficult to conceive that the Legislature intended only defendants pursued by vehicles with decals or insignias and officers in sufficiently distinctive clothing to come within the ambit of the aggravated fleeing statute, especially where—as in Defendant Martinez's case—there is evidence of the defendant's subjective knowledge that he was being pursued by police. Nor do I think Defendant Martinez's case is an isolated one. Many of our citizens live in "small towns where everyone knows the constable and recognizes his official status." *Archuleta*, 1994-NMCA-072, ¶ 11. Even in larger counties, drivers may recognize officers with whom they have had past encounters. I also note that, while the statute provides that any pursuit which may form the basis of an aggravated fleeing charge shall be "in accordance with the provisions of the [LESPA]," Section 30-22-1.1(A), the LESPA does not contemplate that only officers in vehicles with prominent insignias, logos, or decals will engage in high-speed pursuits of those evading law enforcement. The statute simply states that an "authorized emergency vehicle," may engage in such pursuit, Section 29-20-2, and the guidelines for pursuit policies make no provision for use of a particular law enforcement vehicle. Section 29-20-4.

{77} Beyond this, I am compelled to point out the absurd results—results contradictory to the statute's intent—posed by the majority's narrow interpretation of the terms at issue. This Court has long held that "[n]o rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences." *State v. Davis*, 2003-NMSC-022, ¶ 13, 134 N.M. 172, 74 P.3d 1064 (quoting *United States v. Brown*, 333 U.S. 18, 27 (1948)). "[T]he principles of strict statutory construction of penal statutes must not override common sense and the evident statutory purpose." *Id.*; *see also State v. Llewellyn*, 1917-NMSC-031, ¶¶ 42-44, 23 N.M. 43, 167 P. 414. Officers are required by the LESPA to terminate vehicular pursuit if the danger to the community outweighs whatever benefits might flow from immediate capture of a fleeing suspect. *See* § 29204(C)(2), (3). This is, of course, what occurred in Defendant Martinez's case. Accordingly, defendants may never be in a position to see markings on the body of a pursuing vehicle, particularly at night, given that this will usually entail a law enforcement vehicle following behind a defendant's vehicle. Nevertheless, the majority insists that "appropriately marked" must include prominent insignias, logos, or decals on the body of the vehicle itself, rather than emergency lights, sirens, or other "signaling" equipment. *Maj. op.* ¶ 55. The distinction is perplexing. For the reasons just stated, the *only* identifying feature of a law enforcement vehicle may be flashing red and blue lights in the defendant's rearview mirror, perhaps accompanied by a siren. The fact that other emergency departments, such as the fire department, may also have vehicles equipped with flashing lights and/or sirens (though we have no record before us demonstrating that other emergency vehicles have the same array of equipment as the law enforcement vehicles in these cases) does not alter this reality. In short, the majority's interpretation of "appropriately marked" excludes as insufficient the only markings perceivable to a large percentage of those pursued by a law enforcement vehicle.

{78} Similar problems attend the majority's construction of "uniform." Again, defendants may never see the pursuing officer's uniform during flight. Yet, according to the majority, the defendant may only be convicted of aggravated fleeing if the State proves that the officer was wearing sufficiently distinctive clothing rather than a badge or other law enforcement equipment. *Maj. op.* ¶ 37-38.

{79} The majority maintains that a strict construction is necessary, because to do otherwise would render the terms at issue superfluous. One element of aggravated fleeing is the defendant's failure to heed a signal to stop. Section 30-22-1.1(A). The majority concludes that signaling equipment must not, therefore, constitute an "appropriately marked" vehicle because the manner of signaling and appropriate markings could then be one in the same. *Maj. op.* ¶¶ 56-58. The first problem with this argument is of course the majority's treatment of a uniform and appropriate markings as elements. Moreover, the statute itself gives an array of other examples of possible signals (separate from light or sound equipment), including signals by hand or voice. Section 30-22-1.1(A). In any event, overlapping evidence on two elements (knowledge of a signal to stop and knowledge that the signal was from law enforcement) still requires the jury to find that each was proved beyond a reasonable doubt. In the statute before us, the overlap is a natural one; it is commonsense that one of the primary identifiers of law enforcement (blue and red lights and a siren) may likewise be a means of signaling to a driver that he or she must stop. This reality does not render "appropriately marked" superfluous. Juries have the sophistication to understand that evidence may bear on multiple elements of an offense.

III. CONSTRUCTION OF SECTION 66-8-124(A)

{80} For their interpretation of "uniform," both the Court of Appeals and the majority also distinguish prior caselaw interpreting this word in the context of the statute regulating arrests for violations of the motor vehicle code. *Montano*, 2018-NMCA-047, ¶¶ 21-30; *Maj. op.* ¶¶ 24-28. However, nothing in that statute or related caselaw compels

the conclusion that the Legislature intended the word "uniform" to be read strictly in the aggravated fleeing context. Rather, the caselaw interpreting "uniform," in Sections 66-8-124(A) and 66-8-125(C) support the interpretation offered here.

{81} Sections 66-8-124(A) and 66-8-125(C) provide that no person shall be arrested for a traffic or motor vehicle violation except by an officer wearing a "uniform." In *Archuleta*, the Court of Appeals construed the term "uniform" to have a functional significance, given that "the intention of the legislature in requiring the officer to wear a uniform plainly indicating his official status was to enable the motorist to be certain that the officer who stops him is, in fact, a police officer." 1994-NMCA-072, ¶ 9. The Court determined that the uniform requirement is satisfied if there are either objective criteria to put the defendant on notice that an officer was indeed an officer, or subjective reasons unique to the particular defendant that established the defendant knew the arresting officer was police. *Id.* ¶ 11.

{82} Arguably, a similar test is *more* fitting in the aggravated fleeing context for the following reasons. The uniform requirement in Section 66-8-124(A) is not an aspect of the substantive motor vehicle law for which an arrest might be appropriate. No matter what an officer is wearing, speeding is speeding. By contrast, in the aggravated fleeing statute, the defendant's knowledge that the officer is law enforcement is an element of the crime, and therefore the officer's uniform is described in the statute as directly relevant to the element of knowledge. This difference between the statutes matters because, even though the Court of Appeals did not strictly construe the uniform requirement in Section 66-8-124(A), there would be some rational justification for doing so. Requiring officers who make traffic stops to dress formally gives those caught speeding or perpetrating other minor traffic crimes assurance that they are in fact dealing with a police officer during the traffic stop. This assurance comes at the marginal cost that a few speeders will avoid punishment for illegal conduct if there is not an adequate supply of uniformed officers to make traffic stops and issue citations. However, the motoring public is aware of the risk of punishment, and this potential sanction assures compliance with traffic laws generally. The same dynamic is not present if "uniform" in the aggravated fleeing statute is strictly construed. Instead, a strict construction has the pernicious effect of permitting some offenders who knowingly disobey officer commands and then flee in a manner that endangers the public to avoid criminal punishment simply because an officer's uniform and/or vehicle were not sufficiently distinctive.

{83} It is important to clarify that neither the test posed here, nor the test in *Archuleta*, eliminates a jury's authority to assess and judge what a defendant knew at the time of flight. The jury is free to find, as a matter of fact, that a defendant fleeing an officer could not be expected to discern that the person fled was police. What I do not accept is the notion that our Legislature meant to embed in the aggravated fleeing statute the presumption that a defendant can only know that he or she is fleeing police when police are formally attired and operating a vehicle with decals or insignia.

IV. APPLICATION OF A PRAGMATIC CONSTRUCTION IN THE CONSOLIDATED CASES BEFORE US

A. *Montano*

{84} The district court in *Montano* shared the conclusions reached in this writing. 2018-NMCA-047, ¶¶ 40-42. The court concluded that *Padilla* viewed the statute's uniform and vehicle provisions as "the backdrop against which the defendant's knowledge is evaluated because it's the defendant's knowledge of the officer that's the important thing under the statute." The court further determined that the adequacy of the lights, sirens, or other markings on the police vehicle had to be evaluated given "the purpose of the law." Looking to that purpose, the court found that the officer's vehicle (equipped with wig wag headlights, red and blue flashing lights, a siren, and flashing brake lights) was appropriately marked "because when the lights turn on, people have the understanding they are to pull over, pull to the side of the road when they see law enforcement lights turn on." The court then explained that "when the lights turned on . . . the defendant did not stop. He actually accelerated. When [the officer] turned on his siren, the defendant accelerated more." The court also concluded that the officer's prominently-displayed badge sufficed as a uniform. The court concluded, following a bench trial, that Defendant Montano knew he was evading a police officer who had signaled him to stop.

{85} Because the deputy's vehicle's lights and siren would give a reasonable person notice that law enforcement was signaling him or her to stop, as would—to the extent it was observed by Defendant Montano—the deputy's prominently displayed badge, and because Defendant Montano's stepped acceleration suggests that he knew he was being signaled to stop by law enforcement, I would find that his conviction was supported by substantial evidence and should be affirmed.

Martinez

{86} The facts in Defendant Martinez's case were described at the outset of this dissent. Prior to his trial, Defendant Martinez filed a motion to dismiss, arguing that the officer's allegedly inconspicuous vehicle was not appropriately marked. After a hearing, the district court determined that the aggravated fleeing statute requires the "pursuing officer be in an appropriately marked law enforcement vehicle." Thus, although the district court had "no doubt about the veracity of [the officer's] testimony that" Defendant Martinez "recognized that he was being followed by a law enforcement vehicle even before the Deputy activated his lights and siren," the court was not persuaded that the officer's car was "appropriately marked," for reasons similar to those articulated by the majority, and dismissed the case.

{87} Because I would hold that an appropriately marked car is not a statutory element, that the lights and sirens on Defendant Martinez's car would notify a reasonable person of the officer's identity as law enforcement, and that evidence of Defendant Martinez's subjective knowledge should be weighed by the fact-finder, I would reverse the district court's order and remand Defendant Martinez's case for further proceedings consistent with this dissent.

V. CONCLUSION

{88} The interpretation set forth in this dissent is not an attempt to judicially amend a legislative enactment. Rather, I believe it furthers the intent of our Legislature to suppress a meaningful social evil. As Justice Holmes wisely observed, "the general purpose [of legislation] is a more important aid to the meaning than any rule which grammar or formal logic may lay down." *United States v. Whitridge*, 197 U.S. 135, 143 (1905). Thus, "despite the 'beguiling simplicity' of parsing the words on the face of a statute, we must take care to avoid adoption of a construction that would render the statute's application absurd or unreasonable or lead to injustice or contradiction." *State v. Strauch*, 2015-NMSC-009, ¶ 13, 345 P.3d 317 (citation omitted). There is no reason to believe that our Legislature intended to provoke abstract debates about whether a badge is a part of a uniform or is instead an item falling into some other category of indicia of official status, nor whether a vehicle with affixed signaling equipment is "appropriately marked." Our Legislators are pragmatic people tasked with solving real-world problems. Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Columb. L. Rev. 527, 536 (1947) ("[Statutes are] written to guide the actions of men. . . . If a statute is written for ordinary folk, it would be arbitrary not to assume that Congress intended its words to be read with the minds of ordinary men."). The standard I propose in this dissent attempts to give effect to the Legislature's real-world solution: to criminalize high-speed chases initiated by persons who know they have been signaled to stop by law enforcement.

JUDITH K. NAKAMURA, Chief Justice

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-033
No. A-1-CA-36044 (filed January 28, 2020)

TODD LOPEZ, as Personal Representative of the ESTATE OF FERNANDO FLORES, and CATALINA FLORES RICO,
Plaintiffs-Appellants,
v.
DEVON ENERGY PRODUCTION COMPANY, L.P.,
Defendant-Appellee,
and
MCVAY DRILLING CO. and ARMANDO ARENIVAS,
Defendants,

ACUITY, a mutual insurance company,
Plaintiff-In-Intervention,
v.
TODD LOPEZ, as Personal Representative of the ESTATE OF FERNANDO FLORES; CATALINA FLORES RICO; MCVAY DRILLING CO.; ARMANDO ARENIVAS; DEVON ENERGY PRODUCTION COMPANY, L.P.; BATTLE ENERGY CORP.; PLASTER & WALD CONSULTING, CORP.; BRUCE HOLMAN; SIERRA ENGINEERING, LLC; and ALLEN WHITEPLUME,
Defendants-In-Intervention.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
DAVID K. THOMSON, District Judge

Certiorari Denied, April 28, 2020, No. S-1-SC-38161.
Released for Publication August 11, 2020.

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Opinion

Briana H. Zamora, Judge.

{1} Plaintiffs Todd Lopez, in his capacity as the personal representative of the Estate of Fernando Flores, and Catalina Flores Rico (collectively, the Estate) sued Defendant Devon Energy Production Co., L.P. and others not parties to this appeal for the wrongful death of Fernando Flores, who was electrocuted while working for a subcontractor of Defendant. Following a trial on the merits, a jury returned a verdict of "no negligence" and the district court entered judgment for Defendant. This appeal followed.

{2} The Estate contends the district court erred by failing to instruct the jury that Defendant owed duties of care to the decedent, failing to admit certain evidence and improperly excluding other evidence, and permitting Defendant to engage in an improper and prejudicial closing argument. Defendant contends the Estate failed to preserve the errors complained of, the district court did not commit reversible error, and the Estate cannot demonstrate prejudice. Concluding the district court erred in instructing the jury, we reverse and remand for a new trial.

BACKGROUND

{3} This case arises from an accident on May 23, 2013, that caused the death of Fernando Flores. At the time of the accident, Defendant had just concluded drilling at a wellsite in New Mexico known as Antares 23 4H well site (Antares 23). Defendant had engaged several subcontractors to undertake the project, including McVay Drilling Co. (McVay) and Battle Energy Services (Battle). McVay provided drilling services for Defendant, using its own rigging equipment. Battle provided "rigging down" services, a process of dismantling the drilling rig so that it may be moved to a different location. On the day of the accident, Mr. Flores was working for Battle as a helper, a position known in the industry as a "swamper."

{4} After completing drilling at Antares 23, Defendant planned to drill at Aquila 22, a site located a short distance away. In preparation for the transfer of drilling operations, Defendant engaged Battle to provide "nipple-down services" for a blowout preventer (BOP) attached to the rig at Antares 23. In the nippling down process, a team removes the BOP from the rig and relocates it to the edge of the current wellsite. In a typical rig move, a second contractor then moves the BOP and other components of the rig from their location on the old wellsite to the new wellsite using a flatbed truck.

{5} On the day of the accident, two teams of Battle employees removed the BOP from the head of the rig and secured it to the hitch of a gin-pole truck. A gin-pole truck is a vehicle equipped with an A-frame style crane that can be raised or lowered as needed. The crane was in the raised position to allow it to hold and transport the attached BOP. A member of one of the Battle teams, Luis Perez Pinon, then began driving the truck to the edge of the wellsite, while Mr. Flores walked behind to ensure the BOP remained stable, was not damaged by the move, and did not cause the truck to tip.

{6} While the truck was moving, a McVay employee, Armando Arenivas, instructed Perez to transport the BOP to Aquila 22, instead of to the edge of Antares 23 as originally planned. Arenivas was McKay's "toolpusher"—the second-in-command on the wellsite behind the "company man[,]" who supervised operations on behalf of Defendant. Perez testified that he initially resisted Arenivas' instruction, because it contradicted the instruction of his crew chief, and because he was not trained to transport a BOP offsite. However, after speaking with the Battle crew chief, Perez acquiesced to Arenivas and began driving the gin-pole truck toward Aquila 22 along a road, as Mr. Flores continued to walk behind it. As the truck approached the entrance to Aquila 22, the extended crane struck an overhead power line and Mr. Flores was electrocuted.

{7} The Estate brought a wrongful death action against Arenivas and McVay, and later amended its complaint to add Defendant.[1] The complaint alleged negligence by all defendants and sought damages for wrongful death, intentional infliction of emotional distress, and loss of consortium, as well as punitive damages. The allegations against Defendant were grounded in theories of vicarious and direct liability and specifically identified claims of premises liability and negligent supervision. The Estate settled with McVay and Arenivas prior to trial. Following a six-day trial, the jury returned a verdict in favor of Defendant, and the Estate appealed.

DISCUSSION

I. The Jury Instructions

{8} The Estate argues the district court erred by failing to instruct the jury that Defendant owed Mr. Flores duties, "pursuant to the Restatement[] [(Second) of Torts]." They contend that, under *Rodriguez v. Del Sol Shopping Center Associates, L.P.*, 2014-NMSC-014, 326 P.3d 465, the district court should have decided the duty question as a matter of law, instructed the jury that Defendant owed duties to Mr. Flores, and "submitted all related factual disputes as questions of breach of those duties." Defendant argues that the Estate is estopped from arguing that the duty question should have been decided by the district court because the Estate relied on authorities calling for fact-based determinations of duty in its opposition to Defendant's motion for summary judgment. Defendant further argues *Rodriguez* is not as sweeping as the Estate contends, and it merely stands for the proposition that foreseeability analysis should be assigned to the jury, not that all duty determinations should be rendered by the court.[2] Finally, Defendant contends that, even if the instructions were in error, the Estate cannot demonstrate prejudice.

{9} We review jury instructions de novo, seeking to determine whether the instructions correctly stated the law and were supported by the evidence presented at trial. *Benavidez v. City of Gallup*, 2007-NMSC-026, ¶ 19, 141 N.M. 808, 161 P.3d 853. "The purpose of instructions is to enlighten the jury." *Gerrard v. Harvey & Newman Drilling Co.*, 1955-NMSC-034, ¶ 23, 59 N.M. 262, 282 P.2d 1105. "An instruction is correct, and thus proper to submit to a jury, when the instruction is consistent with the law and articulates fairly, completely, and succinctly the relevant law applicable to the facts[.]" *Mireles v. Broderick*, 1994-NMSC-041, ¶ 15, 117 N.M. 445, 872 P.2d 863 (citation omitted). We will affirm "if, as a whole, [the instructions] fairly represent the law applicable to the issue in question." *Kennedy v. Dexter Consol. Sch.*, 2000-NMSC-025, ¶ 28, 129 N.M. 436, 10 P.3d 115.

A. The Estate Is Not Estopped From Arguing the Duty Issue on Appeal

{10} We first consider Defendant's argument that the Estate should be estopped from arguing duty is a question of law to be decided by the district court because, in response to Defendant's motion for summary judgment, the Estate relied on New Mexico authorities that "based duties for the controllers of land or employers of independent contractors on several sections of the Restatement (Second) of Torts [Sections] 343, 411, and 414 [(Am. Law Inst. 1965)]." According to Defendant, because the determination of duties under these authorities is "necessarily based on case-specific facts[,]" the Estate's earlier reliance upon them precludes its argument on appeal that the district court erred in failing to instruct the jury on duty. The Estate asserts that it argued "[t]he [district] court should decide the duty question" and crafted proposed jury instructions "reflect[ing] its position that the jury should not be instructed to determine duty[,]" adequately preserving the issue for appeal. We agree with the Estate.

{11} The record reflects that the Estate argued repeatedly below that the determination of a duty of care is a matter for the district court to decide. The record also reflects that the Estate first submitted instructions based on the Uniform Jury Instructions (UJIs) before crafting instructions based on sections of the Restatement (Second) of Torts in response to the district court's statement that it was inclined to "stick with the Restatement with regard to these duties." Indeed, the Estate asserted that it preferred the UJIs over the Restatement language in part because the latter failed to adequately distinguish determinations of duty, breach, and liability. There is no question that the district court was sufficiently alerted to the parties' arguments and disagreements about whether the jury or court decides the question of duty and the nature and source of the duty owed by Defendant to Mr. Flores. Based on our review of the record, the district court was fully aware of the issues presented and took full advantage of the parties' arguments prior to making its rulings. *See* Rule 12-321(A) NMRA ("To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked."). Accordingly, the Estate adequately preserved its argument that duty should be decided as a matter of law through its arguments and proffered instructions. It cannot be estopped from raising the issue simply because it argued that issues of fact precluded summary judgment using the few authorities available to it in New Mexico involving similar factual scenarios.

B. The Instructions Did Not Accurately Reflect New Mexico Law on the Question of Duty

{12} We next determine whether the jury instructions accurately reflected New Mexico law on the issues of duty and breach of duty under the circumstances of this case. Because the Estate had settled with McVay and Arenivas, its vicarious claims arising under the doctrine of respondeat superior were no longer viable and only its direct

[1]The Estate subsequently amended its complaint to name additional defendants, who were dismissed prior to trial and who are not parties to this appeal.

[2]We note that Defendant, save for a two-sentence footnote, seems to abandon on appeal its position advanced below that it owed no duty to Mr. Flores. Given this undeveloped argument, we do not consider it further. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed.").

liability claims against Defendant remained at trial. Accordingly, our analysis addresses only the law governing the determination of duty under direct liability theories of negligence.

{13} The district court issued thirty-seven jury instructions, five of which relate to the question of whether Defendant owed Mr. Flores a duty of care. Instruction 16 stated, "[g]enerally speaking, the employer of an independent contractor is not liable for injuries to an employee of the independent contractor" and that exceptions to the rule would follow in subsequent instructions. Instructions 17, 18, and 19 explained the three exceptions, tracking Restatement (Second) of Torts rules governing premises liability (Restatement (Second) of Torts Section 343), negligent selection of a contractor (Restatement (Second) of Torts Section 411), and negligence in exercising retained control (Restatement (Second) of Torts Section 414), respectively. Instruction 21 included language from the UJI for the general duty of ordinary care. *See* UJI 13-1604 NMRA.

{14} The duty instructions were the end product of numerous discussions during the hearing on Defendant's motion for summary judgment, the arguments offered during trial on Defendant's motion for directed verdict, and the jury instruction conferences held after the close of evidence. The nature of the duty owed—if any—by Defendant was discussed in detail at each stage of the case. For example, in denying Defendant's motion for a directed verdict, the district court explained its inclination to frame the Estate's claims as potential exceptions to the no-duty rule governing contractors stating:

> [*Sherman v. Cimarex Energy Co.*, 2014-NMCA-026, ¶ 8, 318 P.3d 729,] lays out the general rule in the case, which I am applying: "Generally speaking, the employer of an independent contractor is not liable for injuries to an employee of an independent contractor.". . . I disagree with [the Estate] that we lump this into a negligence basket. I think the obligation is a little separate than the claim made here and the general rules to be followed absent the exceptions, which I have provided.

At the jury instruction conference, Defendant proposed a modified uniform instruction defining "independent contractor[,]" UJI 13-404 NMRA, along with several non-uniform instructions concerning the liability of hirers of independent contractors. The Estate did not propose language concerning independent contractors and instead submitted UJIs on premises liability, negligence per se, negligent hiring, supervision, and retention. *See* UJI 13-1309 NMRA; UJI 13-1501 NMRA; UJI 13-1647 NMRA. The Estate stated it would agree to an instruction defining independent contractor, provided the instructions on duty "stay[ed] with the [UJI]s."

{15} Having earlier stated that it would frame the Estate's claims in terms of the Restatement (Second) of Torts Sections 343, 411, and 414, the district court approached the parties' proposed instructions in terms of their comportment with those provisions. However, the court noted that it had found little guidance in New Mexico authorities on the proper formulation of jury instructions in such circumstances:

> The duty, as I read the cases, *Talbott* [*v. Roswell Hospital Corp.*, 2008-NMCA-114, 144 N.M. 753, 192 P.3d 267], I guess is one of the few—I think it's *Talbott* that talks about the actual jury instructions on these. In the other cases I've read, it's you should stick with the Restatement with regard to these duties, so that is what I'm inclined to do.

The resulting instructions combined elements of the rules from the Restatement (Second) of Torts with language from New Mexico case law bearing on the liability of hirers of contractors and subcontractors. The Estate contends the district court's order to craft instructions based on the sections of the Restatement (Second) of Torts was "contrary to the New Mexico Supreme Court's determination in *Rodriguez*[, 2014-NMSC-014, ¶ 25, that] duty is [a question of law] to be determined based on policy considerations."

{16} New Mexico courts have long held that duty is a matter of law to be determined by the court. *See Tafoya v. Rael*, 2008-NMSC-057, ¶ 11, 145 N.M. 4, 193 P.3d 551; *Lester ex rel. Mavrogenis v. Hall*, 1998-NMSC-047, ¶¶ 9-10, 126 N.M. 404, 970 P.2d 590. This is in part because determinations of duty, including limited-duty and no-duty determinations, are a function of policy and courts are better positioned than juries to make policy determinations in light of "legal precedent, statutes, and other principles comprising the law." *Calkins v. Cox Estates*, 1990-NMSC-044, ¶ 8, 110 N.M. 59, 792 P.2d 36.

{17} Our Supreme Court reaffirmed and elaborated upon these principles in *Rodriguez*. 2014-NMSC-014, ¶¶ 1, 5-10, 22-25; *see also Oakey, Estate of Lucero v. May Maple Pharmacy, Inc.*, 2017-NMCA-054, ¶ 22, 399 P.3d 939 (quoting *Rodriguez* for the proposition that " 'courts should focus on policy considerations when determining the scope or existence of a duty of care' "). In *Rodriguez*, the Court examined the question of what duty of care applied to claims arising from a vehicle crash into the front glass of a medical clinic located in a shopping center. 2014-NMSC-014, ¶¶ 2-3. The crash killed three people and injured several others, and the plaintiffs sued the owners and operators of the shopping center, alleging negligence based on premises liability. *Id.* ¶ 2. The original actions were dismissed by two separate district courts on the grounds that no duty existed as a matter of law because the accident was not foreseeable. *Id.*

{18} This Court affirmed dismissal "not based on the foreseeability-driven duty analysis employed by the district courts, but based on the policy-driven duty analysis advanced by the Restatement (Third) of Torts[.]" *Rodriguez v. Del Sol Shopping Ctr. Assoc., L.P.*, 2013-NMCA-020, ¶ 1, 297 P.3d 334, *rev'd on other grounds*, 2014-NMSC-014. We noted that New Mexico courts had moved away from the foreseeability rule embraced by Chief Judge Cardozo in *Palsgraf v. Long Island Railroad Co.*, 162 N.E. 99 (N.Y. 1928), toward the minority approach advocated by Judge Andrews, which would have imposed a general duty of care limited only by policy imperatives. *Rodriguez*, 2013-NMCA-020, ¶¶ 6-10. However, we asserted that foreseeability continued to play some role in determining duty, based on our Supreme Court's holding in *Edward C. v. City of Albuquerque*, 2010-NMSC-043, ¶ 18, 148 N.M. 646, 241 P.3d 1086, *overruled on other grounds by Rodriguez*, 2014-NMSC-014.

{19} Our Supreme Court in *Rodriguez* agreed that we had properly framed the duty analysis as a question of policy, but found that we had erred in relying upon some determinations of foreseeability in applying the framework. 2014-NMSC-014, ¶¶ 3, 24. Importantly, the Court indicated that it disapproved of courts engaging in foreseeability analyses in making no-duty or modified-duty determinations because doing so "often leads toward a discussion of the facts in a particular case" and therefore "is not a discussion of policy." *Id.* ¶ 13. Such an approach, the Court reasoned, "is inconsistent with the Restatement [(Third) of Torts] approach[.]" *Id.*

{20} Defendant would have us read *Rodriguez* solely for the proposition that foreseeability should not be part of a court's duty analysis. The Estate's position is that *Rodriguez* requires courts to determine the existence of duties as a matter of law based on policy determinations and that, to the extent liability is dependent upon case-specific facts, those factual determinations should be sent to the jury as questions of breach or causation. We conclude that Defendant's interpretation is too narrow and the Estate's is too broad. *Rodriguez* affirms New Mexico's adoption of the duty framework of the Restatement (Third) of

Torts. That framework establishes a general duty of care, which fundamentally alters the approach New Mexico courts should take in determining the duty owed by hirers of contractors. But that change does not necessarily mean all prior case law is simply swept away. We explain.

{21} *Rodriguez* is one in a line of cases marking the progressive adoption of modern tort doctrine by New Mexico courts, with important consequences for the determination of duty. In *Scott v. Rizzo*, 1981-NMSC-021, ¶ 15, 96 N.M. 682, 634 P.2d 1234, *superseded by statute as stated in Safeway, Inc. v. Rooter 2000 Plumbing & Drain SSS*, 2016-NMSC-009, ¶ 18, 368 P.3d 389, for instance, our Supreme Court adopted comparative fault principles, holding that "the contributory negligence rule ha[d] long since reached [the] point of obsolescence[.]" In *Klopp v. Wackenhut Corp.*, 1992-NMSC-008, ¶¶ 10-12, 113 N.M. 153, 824 P.2d 293, the Court held that the "open and obvious danger" doctrine would no longer act as a bar to premises liability, and in *Ford v. Board of County Commissioners of County of Doña Ana*, 1994-NMSC-077, ¶¶ 8, 12, 118 N.M. 134, 879 P.2d 766, it also rejected the traditional, status-based scheme of premises liability—a scheme the United States Supreme Court had decried as a "semantic morass" grounded in "a heritage of feudalism." *Id.* ¶ 8 (internal quotation marks and citation omitted). In each of these cases, our Supreme Court rejected traditional doctrines that foreclosed recovery for entire categories of plaintiffs in favor of broad negligence principles that define the duty of care in terms of the risks posed by an actor's conduct. *See Ford*, 1994-NMSC-077, ¶ 12 (holding that "[a] landowner or occupier of premises must act as a reasonable man in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to another, the seriousness of the injury, and the burden of avoiding the risk"); *Scott*, 1981-NMSC-021, ¶ 29 (stating that comparative negligence "holds all parties fully responsible for their own respective acts to the degree that those acts have caused harm"); *see also Klopp*, 1992-NMSC-008, ¶ 12 (stating that "[s]imply by making hazards obvious to reasonably prudent persons, the occupier of premises cannot avoid liability to a business visitor for injuries caused by dangers that otherwise may be made safe through reasonable means").

{22} The broader, more generally applicable concept of duty found in cases such as *Scott*, *Klopp*, and *Ford* is reflected in Section 7(a) of the Restatement (Third) of Torts (Am. Law Inst. 2010): "An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm." Subsection (b) of that provision establishes that this presumption of duty may be modified or eliminated by a court "when an articulated countervailing principle or policy warrants [doing so] in a particular class of cases[.]" Restatement (Third) of Torts § 7(b).

{23} In *Rodriguez*, our Supreme Court embraced this duty framework. *See* 2014-NMSC-014, ¶ 1. While the role of foreseeability analysis was undoubtedly the central issue in *Rodriguez*, the Court spoke clearly about the proper approach courts should take in examining duty as a matter of law, emphasizing conformity with the Restatement (Third) of Torts' approach. 2014-NMSC-014, ¶¶ 8-9, 11-13, 16, 23. Because the *Rodriguez* Court "overrule[d] prior cases insofar as they conflict with this opinion's clarification of the appropriate duty analysis in New Mexico[,]" *id.* ¶ 3, the question before this Court today is whether the district court's approach in instructing the jury on duty can be reconciled with the Restatement (Third) of Torts Section 7 framework.

{24} In this case, Defendant was engaged in drilling for oil, an activity that undoubtedly creates a risk of harm to others if not undertaken with due care. *See Tipton v. Texaco, Inc.*, 1985-NMSC-108, ¶¶ 27-28, 103 N.M. 689, 712 P.2d 1351; *Hinger v. Parker & Parsley Petroleum Co.*, 1995-NMCA-069, ¶¶ 4-8, 22, 120 N.M. 430, 902 P.2d 1033. Pursuant to the framework endorsed in *Rodriguez*, this imposed upon Defendant a duty to exercise ordinary care. *See* Restatement (Third) of Torts § 55 cmt. a (Am. Law Inst. 2012) ("When an actor hires an independent contractor for an activity that creates a risk of physical harm, the actor is subject to [Section] 7.").

{25} The Restatement (Third) of Torts, like the Restatement (Second) of Torts, includes specific rules for the hirers of independent contractors, recognizing the policy-based modifications of duty that arose under the Restatement (Second) of Torts' approach. However, the Restatement (Second) of Torts' approach is grounded in a "general principle" that, subject to numerous exceptions, one who hires an "independent contractor is not liable for physical harm caused" by the contractor. Restatement (Second) of Torts § 409 (Am. Law Inst. 1965). In contrast, the Restatement (Third) of Torts begins with the imposition of a general duty of care and then crafts limitations based on "considerations of policy and principle that warrant limiting the duty of care owed by the hirer." Restatement (Third) of Torts § 55 cmt. a.

{26} Instruction 16 framed the jury instructions on the Estate's theories of liability as exceptions to a general rule exempting hirers of independent contractors from liability. It stated: "Generally speaking, the employer of an independent contractor is not liable for injuries to an employee of the independent contractor. As with any general rule, however, there are exceptions. I will explain three of those exceptions to you in subsequent instructions." In drafting this instruction, the district court relied in part on language found in *Sherman*, a case decided prior to *Rodriguez*. *See Sherman*, 2014-NMCA-026, ¶ 8 ("Generally speaking, the employer of an independent contractor is not liable for injuries to an employee of the independent contractor." (internal quotation marks and citation omitted)). In *Sherman*, we noted "there are exceptions" to the rule that hirers of independent contractors are generally not liable for injuries to employees of the contractor, including (1) where the hirer of the contractor controls the premises on which the work is performed; and (2) where the hirer retains control over the independent contractor's performance of the work. *Id.* The district court in this case then added a third "exception" to the rule: a hirer may be subject to liability for negligence in hiring or supervising an independent contractor. *See* Restatement (Second) of Torts § 411.

{27} This framing of the instructions was in error. Consistent with Restatement (Third) of Torts, while the instruction on retained control was properly framed as an exception to a rule of no liability for hirers of contractors, *see* Restatement (Third) of Torts § 56 (Am. Law Inst. 2012), the instructions on premises liability, *see* Restatement (Third) of Torts *§ 51 (Am. Law Inst. 2012), and negligent selection/retention, see* Restatement (Third) of Torts *§ 55, should not have been described as exceptions to a no-liability rule of law. We address each instruction in turn.*

1. Premises Liability

{28} Instruction 17 stated:

> The first exception applies if Plaintiffs prove by a preponderance of evidence the following:
> [Defendant] is subject to liability for physical harm caused to its invitees by a condition on the land if, but only if, Plaintiffs prove that [Defendant]:
> (a) knew or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> (b) should have expected that it will not discover or realize the danger, or would have failed to protect themselves against it, and
> (c) failed to exercise reasonable care to protect them against the danger.
> The extent of the duty owed by [Defendant] varies according to the visibility or the obviousness

> of the potential jobsite hazard and according to the degree of control [Defendant] exercised over the premises.

Instruction 17 hewed closely to Restatement (Second) of Torts Section 343, although the last paragraph was drawn from *Tipton*, 1985-NMSC-108, ¶ 20. In *Tipton*, our Supreme Court reversed a district court decision dismissing a well site operator's third-party claims against several contractors, holding that the jury should have been instructed to determine the extent of the operator's control over the worksite and the work of the contractors to determine whether they should be subject to liability for an employee's injuries. *Id.* **¶¶ 6, 28. Although the Court in** *Tipton* sometimes described the relevant inquiry in terms of liability and sometimes in terms of duty, the language quoted by the district court in Instruction 17 concerned duty. *Id.* **¶ 20.**

{29} At the conclusion of trial, the Estate's theory of premises liability was that a condition on the land—the power lines—posed a risk of harm to Mr. Flores, and that, in its capacity as the land possessor, Defendant owed duties of care to Mr. Flores as it did to all visitors. The parties understood this claim to arise under Restatement (Second) of Torts Section 343. The Estate did not claim that either McVay or Battle created the dangerous condition—this would have been advanced under Restatement (Second) of Torts Section 414. Had the latter been the case, an instruction describing Defendant's duties as an exception to the general rule that landowners are not liable for dangerous conditions created by subcontractors would have been appropriate. *See* Restatement (Third) of Torts § 51 cmt. g ("Ordinarily, a possessor of land does not owe a duty of reasonable care for risks arising from the conduct of transients and independent contractors while on the possessor's land."). Instead, the Estate was asserting a direct premises liability claim, which under Restatement (Third) of Torts is based on "a specific application of [Restatement (Third) of Torts Section 7(a)]." Restatement (Third) of Torts § 51 cmt. b. It was therefore error to describe Defendant's duties as an exception to a no-liability rule.

{30} The error was compounded by the district court's inclusion of language from *Tipton*. The reference to the visibility and obviousness of hazards invoked the jury's consideration of foreseeability in the determination of Defendant's duties, which was clearly improper under *Rodriguez*. *See* 2014-NMSC-014, ¶ 4. Put simply, if the land posed a danger to visitors, Defendant owed a duty of care. *See* Restatement (Third) of Torts § 51; *see also* UJI 13-1309 ("An [owner] [occupant] owes a visitor the duty to use ordinary care to keep the premises safe for use by the visitor[, whether or not a dangerous condition is obvious]."). If the district court determined that Defendant's duty ought to have been modified or limited based on its status as a hirer of independent contractors, the court was required to make that determination based on policy considerations and not the foreseeability of the risk of harm or the openness or obviousness of the hazards. *See Rodriguez*, 2014-NMSC-014, ¶¶ 1, 4; *see also* Restatement (Third) of Torts § 51 cmt. k ("[T]he fact that a dangerous condition is open and obvious bears on the assessment of whether reasonable care was employed, but does not pretermit the land possessor's liability.").

{31} On remand we see no reason why UJI 13-1309, which lays out the general duty of care owed by a landowner or possessor to visitors, would not adequately instruct the jury on the issue of premises liability in this case. *See* Rule 1-051(D) NMRA ("Whenever New Mexico Uniform Jury Instructions Civil contains an instruction applicable in the case and the trial court determines that the jury should be instructed on the subject, the UJI Civil shall be used unless under the facts or circumstances of the particular case the published UJI is erroneous or otherwise improper, and the trial court so finds and states of record its reasons."); *see also Benavidez*, 2007-NMSC-026, ¶ 19 (stating that applicable UJIs shall be used unless waived by the parties).

2. Negligent Selection/Retention of Contractor

{32} Instruction 18 stated:

> The second exception applies if Plaintiffs prove by a preponderance of evidence the following:
> [Defendant] is subject to liability for physical harm to third persons caused by its failure to exercise reasonable care to employ a competent and careful contractor to do work which will involve a risk of physical harm unless it is skillfully and carefully done.
> The words "competent and careful contractor" denote a contractor who possesses the knowledge, skill, experience, and available equipment which a reasonable man would realize that a contractor must have in order to do the work which he is employed to do without creating unreasonable risk of injury to others, and who also possesses the personal characteristics which are equally necessary.
> The amount of care which should be exercised in selecting an independent contractor is that which a reasonable man would exercise under the circumstances, and therefore varies as the circumstances vary.
> Certain factors are important: (1) the danger to which others will be exposed if the contractor's work is not properly done; (2) the character of the work to be done—whether the work lies within the competence of the average man or is work which can be properly done only by persons possessing special skill and training; and (3) the existence of a relation between the parties which imposes upon the one a peculiar duty of protecting the other.

Instruction 18 was crafted partly from Restatement (Second) of Torts Section 411(a) and partly from the comments and illustrations to Section 411. Although the reference to "duty" renders the import of the last paragraph somewhat unclear, the commentary to Section 411 indicates that the "peculiar duty" language refers to heightened or added duties of care, not the general duty of care, as described in Section 7 of the Restatement (Third) of Torts. *See* Restatement (Second) of Torts § 411 cmt. c (stating that "there are a number of relations . . . in which peculiar care is required" and citing examples of additional duties owed from masters to servants and from common carriers to passengers).

{33} Like the theory of premises liability, the theory of negligent selection/retention of a contractor flows directly from the general duty of care attributable to any actor whose conduct gives rise to a risk of harm. *See* Restatement (Third) of Torts § 55 cmt. a ("Direct-negligence claims against one who hires an independent contractor entail a specific application of the negligence principles of this Restatement."); Restatement (Third) of Torts § 55 cmt. i ("Under this Section and [Section] 56, when A hires B, A is subject to liability if A is under a duty of care and negligently causes harm within the scope of liability. The involvement of additional independent contractors (or subcontractors) is a fact that may be relevant to the determination of negligence, factual cause, or scope of liability, but not to the existence of a duty of reasonable care."). Accordingly, the jury should have been instructed that Defendant owed a duty to select and retain a competent contractor, unless the district court determined that its duty should have been limited or modified on the basis of policy imperatives. In that case, the district court would have been obligated to articulate the reasons for that determination for the record. *See Rodriguez*, 2014-NMSC-014, ¶ 25.

{34} On remand we see no reason why the balance of Instruction 18—all but the first paragraph identifying the duty of care as contingent and exceptional—could not be used to fairly instruct the jury as to the facts bearing on breach, causation, and scope of liability.

3. Negligence as to Work Over Which the Hirer Has Retained Control

{35} Instruction 19 stated:

> The third exception applies if Plaintiffs prove by a preponderance of the evidence that [Defendant] entrusted work to its independent contractor, McVay Drilling, but retained control of any part of the work, and is subject to liability for physical harm to others for whose safety [Defendant] owes a duty to exercise reasonable care, which is caused by its failure to exercise its control with reasonable care.
>
> [Defendant] must have retained at least some degree of control over the manner in which the work is done. It is not enough that it has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work, or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

The first paragraph of Instruction 19 was derived from Restatement (Second) of Torts Section 414, while the duty portion of the instruction was taken from the comments to that section. Unlike its framing of Instructions 17 and 18, the district court's framing of Instruction 19 as an exception to the general rule of no-liability for hirers of contractors was largely consistent with the approach taken by the Restatement (Third) of Torts, which explicitly limits a hirer's duty to exercise care in the performance of work undertaken by a contractor, provided that the hirer does not retain control over the work. *See* Restatement (Third) of Torts § 56.

{36} The difficulty posed by this rule is that it requires a factual determination as to the extent and nature of retained control prior to the determination of whether a duty exists. New Mexico courts have held that, where there are predicate factual determinations that bear on the existence of a duty of care, it is improper for the district court to determine duty as a matter of law at the summary judgment stage. *See Valdez v. Cillessen & Son, Inc.*, 1987-NMSC-015, ¶ 27, 105 N.M. 575, 734 P.2d 1258; *Sherman*, 2014-NMCA-026, ¶ 7; *Pollard v. Westinghouse Elec. Corp.*, 1995-NMCA-038, ¶ 6, 119 N.M. 783, 895 P.2d 683. The district court relied upon these authorities in declining to determine as a matter of law whether a duty existed in this case.

{37} The Estate urges us to find that a court may *never* instruct the jury to make factual determinations bearing on the existence of a duty of care. We decline to do so. Indeed, Section 56 explicitly contemplates such a scenario. Restatement (Third) of Torts § 56 cmt. g ("Determining whether a duty limit applies under this Section may involve a dispute over the existence of retained control. Most courts characterize the issue of retained control as a question for the fact[-]finder."). In this case, the district court should have issued an instruction that clearly set apart the factual determinations necessary to the determination of the duty, if any, owed by Defendant to Mr. Flores based on retained control. *See Sherman*, 2014-NMCA-026, ¶¶ 17-18, 20. This might have been accomplished with alternative instructions based on whether the facts supported imposing a duty or not. *See* Restatement (Third) of Torts § 7 cmt. b ("When resolution of disputed adjudicative facts bears on the existence or scope of a duty, the case should be submitted to the jury with alternative instructions."); *see also Eckhardt v. Charter Hosp. of Albuquerque, Inc.*, 1998-NMCA-017, ¶¶ 35-36, 124 N.M. 549, 953 P.2d 722 (holding that the district court's use of a special interrogatory to determine predicate fact necessary to determination of duty was proper).

C. Plaintiffs Were Prejudiced by the Improper Instruction

{38} Defendant contends that, even if the instructions were in error, the Estate cannot demonstrate prejudice. More specifically, Defendant argues the factual questions that determined the existence of a duty are the same questions that would have been posed to the jury under breach or causation, and it does not matter to a jury whether the questions are considered under a duty rubric or a breach/causation rubric. We disagree.

{39} Defendant is correct that we will not reverse a jury verdict in a civil trial as a result of error in the instructions unless we determine the error is "inconsistent with substantial justice or affects the substantial rights of the parties." *Kennedy*, 2000-NMSC-025, ¶ 26 (internal quotation marks and citation omitted). However, reversal is compelled where "the complaining party provides the slightest evidence of prejudice." *Id.* The existence of a duty is a threshold inquiry of particular importance to a plaintiff's claim of negligence. *See Schear v. Bd. of Cty. Comm'rs*, 1984-NMSC-079, ¶ 4, 101 N.M. 671, 687 P.2d 728 ("A finding of negligence . . . is dependent upon the existence of a duty on the part of the defendant."). Where, as here, there were multiple potential tortfeasors, the question of whether any particular defendant owed a duty of care to the decedent was especially important. Indeed, the thrust of Defendant's closing argument was that other actors—specifically, McVay and its employee Arenivas—were the truly responsible parties, and that holding Defendant liable for Mr. Flores's wrongful death would permit double recovery. Because the district court simultaneously instructed the jury that hirers of contractors generally owe *no* duty of care to employees (with certain exceptions) and that "[e]very person has a duty to exercise ordinary care for the safety of the person and property of others[,]" we conclude that the jury might well have been confused about the proper starting point of its analysis of the Estate's negligence claims. This constitutes more than "the slightest evidence" that the error was prejudicial. *Kennedy*, 2000-NMSC-025, ¶ 26; *see Adams v. United Steelworkers of Am., AFL-CIO*, 1982-NMSC-014, ¶ 29, 97 N.M. 369, 640 P.2d 475 (holding improper instruction was prejudicial because "the jury might well have overlooked [the defendant's] most valuable theory").

{40} We conclude that the jury instructions given were erroneous and prejudicial, and therefore reverse and remand for a new trial.

II. Remaining Issues

{41} Because we reverse for jury instruction error, we do not reach the Estate's remaining issues pertaining to evidentiary rulings in the first trial. It is possible that these evidentiary issues will not present themselves in the same way they were presented at the first trial, and we think it unwise to foreclose the district court judge from examining these issues in the context presented on retrial. Nevertheless, we take this opportunity to express concern with several matters raised by the Estate.

A. The District Court's Exclusion of Defendant's Post-Incident Communications

{42} The Estate argues that the district court erred in excluding two exhibits at trial concerning Defendant's actions following the May 23, 2013 accident. The first, Exhibit 15, is a December 16, 2013, safety alert describing eight incidents involving overhead power lines in that year and suggesting six corrective actions. The suggested corrective actions include pre-move route assessments, the use of flags and signs marking overhead power

lines, the use of spotters, communication about overhead hazards in pre-task safety meetings, the requirement of at least a ten-foot clearance for stationary equipment, and the requirement of at least a four-foot clearance when traveling under energized power lines. The second, Exhibit 16, consists of an August 2013 email thread involving several employees of Defendant. The correspondence directs the recipients' attention to a June 2013 presentation on overhead power line safety and instructs that "we need to comply 100% with these guidelines for every rig move involving power lines. Anyone who does not comply will be subject to disciplinary action up to and including termination of employment." The email specifically refers to the "electrocution fatality [that] occurred recently in New Mexico[.]"

{43} The district court addressed Exhibits 15 and 16 in conjunction with its ruling on the proposed exhibits concerning *prior* incidents involving overhead power lines. After it admitted fifteen of the thirty-three exhibits concerning prior incidents, the district court excluded the two exhibits describing post-incident corrective actions, finding the exhibits constituted evidence of subsequent remedial measures and were barred under Rule 11-407 NMRA and Rule 11-403 NMRA.

{44} The Estate argues that the district court erred because the excluded exhibits do not constitute evidence of subsequent remedial measures implicating Rule 11407 and even if they do, they were admissible as evidence of Defendant's control over the premises and personnel at issue in the litigation. Defendant counters that the exhibits do concern subsequent remedial measures and that the exception does not apply because the evidence does not demonstrate Defendant's control of the power lines.

{45} We first consider whether the exhibits at issue constituted evidence of subsequent remedial measures. The Estate argues that the safety policies implemented after the May 23, 2013, accident were not subsequent remedial measures. Relying on our decision in *Williams v. BNSF Railway Co.*, 2015-NMCA-109, 359 P.3d 158, the Estate argues that "[Defendant] knew about the danger of moving equipment under overhead power lines long before Mr. Flores's death, just as the *Williams* defendant developed and used [a safety measure] before the injury-causing incident." Defendant contends this is a misreading of *Williams* and that "[a]t most, [the Estate] can assert only that [Defendant] used *other* safety plans and *other* corrective actions in the past."

{46} In *Williams*, we were presented with the question of whether a specific corrective action known to and in use by the defendant at other railyard locations could be considered a subsequent remedial measure when it was adopted by the defendant at the railyard where the injury occurred. *Id.* ¶ 11. Here, the Estate seeks to admit evidence of several different corrective actions, some of which were known to Defendant prior to the incident, and others of which appear to have been introduced only after the incident. For example, several pre-accident incident reports admitted at trial refer to actions listed in Exhibits 15 and 16, including pre-move route assessments, proper clearances for equipment, and the use of signs around power lines. These corrective actions do not appear to qualify as subsequent remedial measures because, like the safety measure in *Williams*, they were known and available to Defendant prior to the incident giving rise to the litigation. *See id.* (holding that a handbrake trailer that was "developed and used" prior to the incident at issue "was not a subsequent remedial measure"). However, the Estate fails to identify any evidence in the record that other measures identified in the correspondence—including a requirement that worksite visitors be given an orientation about potential hazards, a policy mandating repeat measurements of loads and power lines during the day prior to any move, and a proposal to test a "high voltage power line proximity alarm device for trucks and cranes"—were in use prior to the accident. Moreover, because the correspondence specifically refers to the "recent electrocution in New Mexico," there is a strong inference that the measures identified therein were intended to address the risks that gave rise to the accident at issue in the litigation and were therefore within the scope of Rule 11-407. *See Williams*, 2015-NMCA-109, ¶ 10 (noting that one essential purpose of Rule 11-407 is to encourage repairs and modifications after an accident).

{47} Even if the exhibits were considered subsequent remedial measures, such evidence may still be admissible if offered "another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures." Rule 11-407. Defendant claims that the excluded exhibits were not probative of Defendant's control over the premises but, instead, "pertain[ed] to how, in the future, labeling and flagging power lines might avoid incidents like the one involving Mr. Flores." This argument seems to overlook that the excluded exhibits constitute evidence that Defendant could *require* drillers and movers to abide by rules governing use of the premises; the correspondence in Exhibit 16 mandates "100% compl[iance]" upon penalty of "disciplinary action up to and including termination of employment."

{48} Given this, the evidence seems admissible under the "control" exception of Rule 11-407. The district court still could exclude the evidence if it determined that "its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Rule 11-403. Here, the district court determined that the exhibits were prejudicial to Defendant because of the cumulative effect of the evidence already admitted concerning *prior* incidents:

> In addition, as part of my consideration, . . . I balance this document with other exhibits that I have just let in. I have just let in a lot of exhibits that talk about safety plans on separate incidents, separate incidents, fatalities from separate incidents. So a lot of that I have allowed in for the jury on prior accidents. And I think now to allow this, on a balancing test of [Rule 11-]403, I think it is certainly prejudicial to [D]efendant, especially in the application of [Rule] 11-407.

Although the record is unclear, in finding Exhibits 15 and 16 cumulative of the evidence of prior incidents, the district court seems to have failed to apprehend a critical difference between the legal significance of each—the former was offered by the Estate to demonstrate that Defendant had notice of the dangers existing on the premises, while the latter was offered to demonstrate Defendant's control of the premises.

{49} We are unable to tell, on the record before us, the precise basis of the district court's determination. For example, it is possible the district court determined that the evidence of prior incidents was probative of both notice and control, in which case its determination that Exhibits 15 and 16 were cumulative fell within its discretionary authority. *See City of Albuquerque v. Westland Dev. Co.*, 1995-NMCA-136, ¶ 27, 121 N.M. 144, 909 P.2d 25 (stating that there was no abuse of discretion where the trial court refused to permit multiple witnesses to testify on substantially the same matter). However, if it found that the exhibits amounted to cumulative evidence without regard for the differential legal effect of pre-incident and post-incident communications, such a determination would constitute error. *See N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 7, 127 N.M. 654, 986 P.2d 450 (stating that "we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law" (alteration, internal quotation marks, and citation omitted)).

{50} On remand and consistent with our discussion above, the district court should make a specific finding as to whether evidence of subsequent remedial measures, considered in light of any admitted evidence of prior similar incidents, presents a potential risk of unfair prejudice to Defendant. *See Williams*, 2015-NMCA-109, ¶ 26 ("The purpose of Rule 11-403 is not to guard against any prejudice whatsoever, but only against the danger of *unfair* prejudice." (internal quotation marks and citation omitted)).

B. Defendant's Argument in Closing Regarding the Settlement Agreement

{51} Although the Estate's contention that Defendant engaged in an improper and prejudicial closing argument is unpreserved, we believe defense counsel's use of the settlement agreement in closing warrants admonition. The Estate contends that, having successfully moved for admission of the settlement agreement for the purpose of casting doubt on McVay's credibility, Defendant's subsequent use of the evidence for a different and improper purpose during closing argument was error.

{52} Specifically, in closing, Defendant used the settlement agreement to (1) cast doubt on the validity of the Estate's claim by pointing to the "doubtful and disputed" claim language in the settlement agreement, which is typical in any release agreement; (2) attack the testimony of one of the Estate's witnesses who testified that Mr. Flores's mother could not receive therapy because she did not have the money to pay for it; (3) suggest that McVay and Arenivas were improperly released from the claims against them and that it was wrong for counsel for the Estate to suggest that nobody would be held accountable for the accident; and (4) allege that a witness was biased against Defendant. Only the last of these uses was authorized by the district court in its decision to admit the settlement agreement.

{53} We agree with the Estate that Defendant's use of the settlement agreement during closing argument was at times improper and may have been calculated to cast aspersions upon the Estate's counsel and Mrs. Flores. Had the Estate tendered a proper objection during Defendant's closing argument, the district court could have appropriately limited Defendant's argument or instructed the jury to disregard its improper use of the evidence. *See Fahrbach v. Diamond Shamrock, Inc.*, 1996-NMSC-063, ¶ 13, 122 N.M. 543, 928 P.2d 269 (stating that the policy behind Rule 11-408 "applies with equal force to the comments of the court or of counsel made in argument to the jury or in voir dire" (internal quotation marks and citation omitted)). However, the Estate failed to make such an objection and thereby deprived the district court of an opportunity to rule on the issue.

CONCLUSION

{54} For the foregoing reasons, we reverse and remand for proceedings consistent with this opinion.

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

WE CONCUR:
JENNIFER L. ATTREP, Judge
MICHAEL D. BUSTAMANTE, Judge Pro Tempore

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Short Deadlines Accommodated

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Classified

Positions

Managing City Attorney

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

Senior Assistant City Attorney

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

New Mexico Court of Appeals Staff Attorney

The New Mexico Court of Appeals is accepting applications for one or more Associate Staff Attorney or Assistant Staff Attorney positions. The positions may be located in Santa Fe or Albuquerque, depending on the needs of the Court and location of successful applicants. Target pay for Associate Staff Attorney positions is $73,000, plus generous fringe benefits. Target pay for Assistant Staff Attorney positions is $66,259, plus generous fringe benefits. Eligibility for Associate Staff Attorney positions requires three years of practice or judicial experience. Assistant Staff Attorney positions requires one year of practice or judicial experience. Court of Appeals staff attorneys have a large impact on the development of law in the state and manage a caseload of appeals covering all areas of law. Extensive legal research and writing is involved. The work atmosphere is congenial and intellectually demanding. Interested applicants should submit a (1) resume, (2) completed New Mexico Judicial Branch Resume Supplemental Form, (3) letter of interest, (4) law school transcript, and (5) writing sample of 5-7 double-spaced pages to: Aletheia Allen, coaava@nmcourts.gov, 2211 Tucker Ave., NE, Albuquerque, New Mexico 87106. More information and resume supplemental form is available at www.nmcourts.gov/careers.

Deputy City Attorney

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

Entry Level and Experienced Trial Attorneys

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

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.

Lawyers – 2-6 Years Experience

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

Full-time Associate Attorney

Davis & Gilchrist, PC, is an AV-rated boutique litigation and trial law firm focused on healthcare False Claims Act cases, physician privilege suspension cases, government whistleblowers, general employment, and legal malpractice cases, is seeking a full time associate attorney to help with brief writing, discovery, depositions, and trials. We offer a work-life balanced approach to the practice of law. We do not have billable hour requirements. We do not track vacation or sick leave. We do require that our lawyers do excellent work in a timely fashion for our clients. We are looking for someone with 1-5 years of litigation experience, including taking and defending depositions, drafting and answering discovery, solid research and writing skills, ability to go with the flow, and a sense of humor. We offer a competitive salary with the potential for performance-based bonuses, health insurance, and a 401K plan. Learn more about us at www.davisglichristlaw.com. Send resume and writing sample to lawfirm@davisgilchristlaw.com.

Trial Attorney Eleventh Judicial District Attorney's Office, Div II

The Eleventh Judicial District Attorney's Office, Division II, Gallup, New Mexico is seeking qualified applicants for Trial Attorney. The Trial Attorney position requires advanced knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure, trial skills, computer skills, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations. Applicants must hold a New Mexico State Bar license. The McKinley County District Attorney's Office provides a supportive and collegial work environment. Salary is negotiable. Submit a letter of interest and resume to District Attorney Bernadine Martin, Office of the District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us. Position will remain opened until filled.

Water & Environmental Law

Law & Resource Planning Associates, P.C., ("LRPA"), an AV-rated law firm, is accepting resumes for an experienced, personable Attorney with strong academic and technical credentials to work primarily in the area of natural resource law and environmental and water law. Competitive salary commensurate with experience. Excellent benefits package. All inquiries kept confidential. Please submit a cover letter, resume, transcript(s), and writing samples to Hiring Coordinator, LRPA, P.C., P.O. Box 27209 Alb., NM 87125 E-mail responses may be submitted to J. Brumfield at jb@lrpa-usa.com

Assistant City Attorneys

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real es-tate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney - APD Compliance; Assistant City Attorney - Office of Civil Rights; Assistant City Attorney – Environmental Health; Assistant City Attorney – Employment/Labor. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

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.

Associate Attorney

Dixon Scholl Carrillo PA is seeking an associate attorney with 3 or more years of experience to join them in their thriving litigation practice. We seek a candidate with excellent writing and oral advocacy skills and a strong academic background who is ready to be part of a hard-working team in a fun and friendly office. For consideration, please submit your resume to lcarrillo@dsc-law.com.

Senior Trial District Attorney and Deputy District Attorney

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

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 position at Rebecca Kitson Law

Amazing bilingual advocate needed! We are seeking an Associate Attorney with passion and commitment to help immigrants in all areas of relief. Full-time, full benefits, position will be based out of our Albuquerque location. Can be admitted to practice in any state, but NM law license preferred. Must be fluent in Spanish. No experience necessary. Depending upon experience, duties will include case work, drafting appeals/motions, legal research, case opening, representing clients at hearings/USCIS interviews. Salary DOE. We are proud to be an inclusive, supportive firm for our staff and our clients. Salary DOE. Please email Resume, Letter of Intent, and Writing Sample to L. Becca Patterson, Assistant Office Manager at lp@rkitsonlaw.com. Full fluency in Spanish and English required. Law License required

Litigation Attorney

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

Associate Attorney

Scott & Kienzle, P.A. is hiring an Associate Attorney (0 to 8 years experience). Practice areas include insurance defense, collections, creditor bankruptcy, and Indian law. Associate Attorney needed to undertake significant responsibility: opening a file, pretrial, trial, and appeal. Lateral hires welcome. Please email a letter of interest, salary range, and résumé to john@kienzlelaw.com.

Experienced Prosecutor

The 13th Judicial District Attorney's Office has created a new position. We are looking for an experienced prosecutor who is self-motivated, can handle a smaller but complex case load covering different types of felony's with little to no supervision. This position will carry cases in all three of our district offices so travel will be required. This position can be based in the county office of choice (Belen, Bernalillo or Grants). Schedule will be flexible but dependent upon scheduled court hearings. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us for an application.

Chief Children's Court Attorney Position

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

Compliance Specialist

UNM's Office of Compliance, Ethics & Equal Opportunity (CEEO) seeks a Compliance Specialist to investigate alleged civil rights violations and provide civil rights and policy training to the UNM community. Bilingual in Spanish and English preferred. Work history demonstrating: Civil rights / employment law experience; Effective communication, both written and oral; Ability to manage a complex case load; Commitment to diversity, social justice, civil rights. Apply via UNMJobs, req16925. EEO employer

Domestic Relations Hearing Officer Family Court

The Second Judicial District Court is accepting applications for a full-time, term At-Will Domestic Relations Hearing Officer in Family Court (position #00000530). Under the supervision of the Pre-siding Family Court Judge, applicant will be assigned a child support caseload. May also be as-signed caseloads to include domestic relations and domestic violence matters. Consistent with Rule 1-053.2 duties may include: (1) review petitions for indigency; (2) conduct hearings on all petitions and motions, both before and after entry of the decree; (3) in child support enforcement division case, carry out the statutory duties of a child support hearing officer; (4) carry out the statutory du-ties of a domestic violence special commissioner and utilize the procedures as set for in Rule 1-053.1 NMRA; (5) assist the court in carrying out the purposes of the Domestic Relations Mediation Act; and (6) prepare recommendations for review and final approval by the court.matters consistent with Rule 1-053.2. duties Qualifications: J.D. from an accredited law school, New Mexico licensed attorney in good standing, minimum of (5) years of experience in the practice of law with at least 20% of practice having been in family law or domestic relations matters, ability to establish effective working relationships with judges, the legal community, and staff; and to communicate complex rules clearly and concisely, respond with tact and courtesy both orally and in writing, extensive knowledge of New Mexico and federal case law, constitution and statutes; court rules, policies and procedures; manual and computer legal research and analysis, a work record of dependability and reliability, attention to detail, accuracy, confidentiality, and effective organizational skills and the ability to pass a background check. SALARY: $53.25 hourly, 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 on the employment application will be rejected. Application and resume supplemental form may be obtained on the NM Judicial Branch web page at www.nmcourts.gov. CLOSES: September 24, 2021 at 5:00 p.m. EOE. Applicants selected for an interview must notify the Human Resource Division of the need for an accommodation.

Attorney

Opening for Associate Attorney in Silver City, New Mexico. No experience necessary. Thriving practice with partnership opportunities with focus on criminal defense, civil litigation, family law, and transactional work. Call (575) 538-2925 or send resume to Lopez, Dietzel & Perkins, P. C., david@ldplawfirm.com, Fax (575) 388-9228, P. O. Box 1289, Silver City, New Mexico 88062.

Assistant Santa Fe County Attorney I and II

Santa Fe County is soliciting applicants for an Assistant County Attorney (ACA) I and II. The successful candidate will focus their practice in areas assigned based upon experience, need, and interest. The ideal candidates are those with strong analytical, research, communication, and interpersonal skills, who enjoy working hard in a collaborative, fast-paced environment on diverse and topical issues that directly impact the community. The salary ranges for the positions are $28.8461-$38.4134 and $38.4615- $45.6730/hr. respectively, depending upon qualifications and budget availability. Applicants must be licensed to practice law in the State of New Mexico or obtain a limited license prior to the start of employment. Individuals interested in joining our team must apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities.

Commercial Liability Defense, Coverage Litigation Attorney P/T Maybe F/T

Our well-established, regional, law practice seeks a contract or possibly full time attorney with considerable litigation experience, including familiarity with details of pleading, motion practice, and of course legal research and writing. We work in the are of insurance law, defense of tort claims, regulatory matters, and business and corporate support. A successful candidate will have excellent academics and five or more years of experience in these or highly similar areas of practice. Intimate familiarity with state and federal rule of civil procedure. Admission to the NM bar a must; admission to CO, UT, WY a plus. Apply with a resume, salary history, and five-page legal writing sample. Work may be part time 20+ hours per week moving to full time with firm benefits as case load develops. We are open to "of counsel" relationships with independent solo practitioners. We are open to attorneys working from our offices in Durango, CO, or in ABQ or SAF or nearby. Compensation for billable hours at hourly rate to be agreed, generally in the range of $45 - $65 per hour. Attorneys with significant seniority and experience may earn more. F/T accrues benefits. Apply with resume, 5-10p legal writing example to revans@evanslawfirm.com with "NM Attorney applicant" in the subject line.

Public Defender – Pueblo of Santa Ana

The Pueblo of Santa Ana is accepting contractual bids for the position of the Public Defender(32 hour a week). Please see the RFP for the position at https://santaana-nsn.gov/tribalcourt-front-page/ . The bid process will close on October 15, 2021.

Notice of Request for Proposal (RFP)

Sandoval County invites proposals for General Legal Services. Sealed proposals must be clearly marked on the outside of the package with the Offeror's Name and: "General Legal Services FY22-LEGAL-01" and must include (1) original, (3) copies and (1) USB drive and will be accepted by the Sandoval County Finance Division – Purchasing Office, Attention: Joyce Roybal, 1500 Idalia Road NE, Building D, 2nd Floor (NW corner of NM 528 and Idalia) in Bernalillo, NM until September 21, 2021 at 3:00 p.m. MST. The detailed RFP may be obtained at www.sandovalcountynm.gov Sandoval County reserves the right to reject any and all proposals, waive any and all informalities or irregularities and the right to disregard all non-conforming or conditional proposals and to contract in a manner deemed in the best interest of the County.

Attorneys

The Third Judicial District Attorney's Office in Las Cruces is looking for: Chief Deputy District Attorney; Deputy District Attorney; 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 District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad, Hobbs 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.

Attorney

The Law Office of Adam Oakey, LLC is a rapidly growing law firm that is located in downtown Albuquerque. We are looking for an attorney who is passionate, is willing to work diligently for their clients and wants to fight for the people of New Mexico. This is a great opportunity for the right lawyer if you are interested in long term benefits. We would prefer someone with 2-4 years experience. We need an attorney to help with Family Law and Civil Law, including Personal Injury. We can help train if needed and experience will determine annual wage. Please email all resumes to mflucero@oakeylawoffice.com and cc oakey.nm@gmail.com. We will respond as soon as possible!

Contract Civil Legal Attorney

PROGRAM: Peacekeepers, Espanola NM; STATUS: Contract/Part Time/Exempt; BENEFITS: No; RATE OF PAY: DOE; EDUCATION: Bachelor's Degree in Sociology, Social Work, Criminal Justice. EXPERIENCE: Three years in domestic violence, shelter or advocacy work. PREFERRED CERTIFICATES: None. Practice civil and family law with an emphasis on domestic violence orders of protection within the Eight Northern Pueblos. EIGHT NORTHERN INDIAN PUEBLOS COUNCIL, INC., 327 Eagle Drive, PO Box 969, Ohkay Owingeh, NM 87566. www.enipc.org (to access application) Submit applications to: Desiree Hall/HR Specialist, Desiree@enipc.org, 505-753-6998 (Fax), Or call 505-747-1593 ext. 110 for information

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.

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
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.

Legal Assistant
Dixon Scholl Carrillo PA is seeking a full time legal assistant with a minimum of 5 years experience in litigation support. Must be self-motivated, have strong writing, organizational, calendaring and multitasking skills. Knowledge of Office 365, Worldox and WordPerfect is preferred. We offer a great work environment, competitive salary and excellent benefits. Submit your resume to Michaela O'Malley at momalley@dsc-law.com.

Paralegal
Paralegal receptionist needed criminal defense firm. Start immediately for part-time 32 hours/wk. Potential full-time as needed. Phones, legal drafting, transcription, case and client management. Court/legal experience preferred. $14.00 to $18.00/hr DOE. Call: Frechette 505-379-0544

Paralegal/Legal Assistant
Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be honest, highly motivated, detail oriented, organized, proficient with computers & excellent writing skills. Duties include requesting and reviewing medical records and bills, meeting with clients, opening claims with insurance companies and preparing demand packages. We offer a very competitive salary, a retirement plan funded by the firm, full health insurance benefits, paid vacation and sick leave, bonuses and opportunities to move up. We are a very busy law firm and are looking for an exceptional assistant who can work efficiently. Please submit your resume to personalinjury2020@gmail.com

Paralegal
Coyte Law P.C. has a position available for an experienced litigation paralegal. This is a civil rights practice with an emphasis on solitary confinement and human rights violations. We are looking for someone capable of dealing with unpleasant and at times shocking fact patterns. This is an opportunity to work in a very interesting and difficult area of the law. The position requires experience with federal court filings and procedures. Please send a letter of interest, salary requirements and resume to mcoyte@me.com. Applications will be kept confidential.

Public Finance Paralegal
Sutin, Thayer & Browne is looking to hire a full-time Public Finance Paralegal. Please visit our website for full job description, https://sutinfirm.com/our-firm/careers/. Competitive salary and full benefits package. Send resume to sor@sutinfirm.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:
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.

Service

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

Legal Researcher & Writer
A licensed attorney available to GHOSTWRITE for your law firm! Email lriver@lucyriverlaw.com for contract legal RESEARCH and WRITING services.

Miscellaneous

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

Search for Will
I am looking for a Will and or Family Trust done by Luis A. Segarra, deceased, If you have done the original of either and or have the originals or copies please call me @505-892-4855. I represent the current Personal Representative of the Estate which was filed as an intestate estate. Dennis M. Feld, Attorney, 505-892-4855

Search for Will
Seeking information concerning the Will of Sharon A Jones and of Sam P Jones, Placitas, NM. Contact Richard Gale 307-689-3736

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

Now Hiring

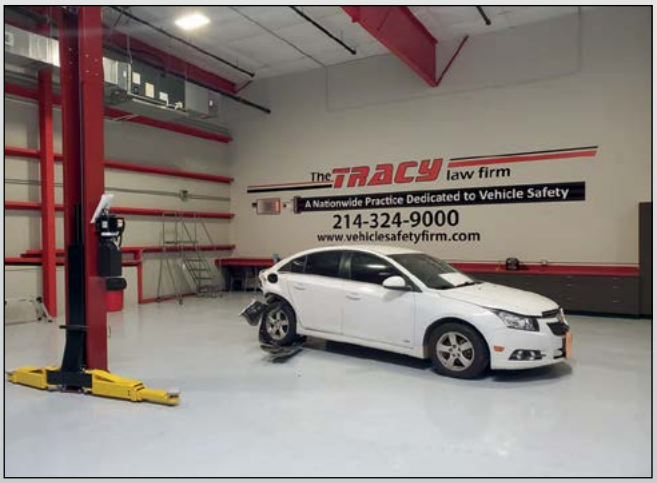
We only do one thing — fight for people — and we do it well. And we need your help. The Spence Law Firm New Mexico, LLC, is growing: this is your chance to join our team in Albuquerque and make a difference out there! Must be ready to hit the ground running — you will be part of a team working integrally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

recruiting@spencelawyers.com

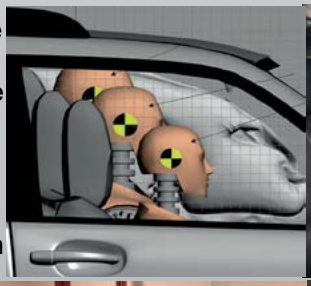
SPENCE

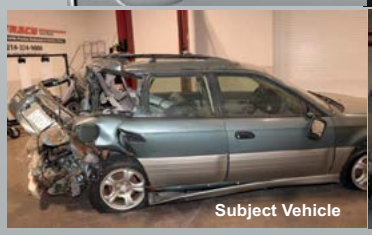
CRASHWORTHINESS:

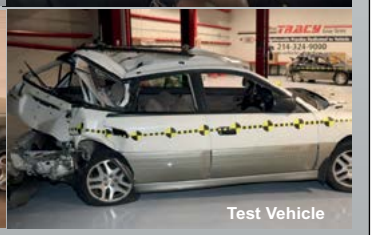
We Didn't Invent the Word; We DEFINED it.



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







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

The TRACY law firm

A Nationwide Practice Dedicated to Vehicle Safety

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