

# BAR BULLETIN

June 8, 2022 • Volume 61, No. 11



September, by L. Scooter Morris (see page 4)

[www.ecstaticsun.com/work](http://www.ecstaticsun.com/work)

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New Mexico State Bar Foundation  
Center for Legal Education

# CLE PROGRAMMING

from the Center for Legal Education



## JUNE 8

*Teleseminar*

### 2022 Ethics In Civil Litigation Update, Part 2

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

*Webinar*

### Animal Talk: Wildlife Corridors Act

1.0 G  
Noon–1 p.m.  
\$49 Standard Fee

## JUNE 9

*Webinar*

### Essential Workers, Essential Rights (2022)

1.0 G  
Noon–1 p.m.  
\$49 Standard Fee

## JUNE 10

*Webinar*

### The Mentally Tough Lawyer: How to Build Real-Time Resilience in Today's Stressful World

1.0 EP  
11 a.m.–noon  
\$89 Standard Fee

## JUNE 14

*Teleseminar*

### Drafting Stockholders' Agreements, Part 1

1.0 G  
11 a.m.–noon  
\$79 Standard Fee

## JUNE 15

*Teleseminar*

### Drafting Stockholders' Agreements, Part 2

1.0 G  
11 a.m.–noon  
\$79 Standard Fee

## JUNE 17

*Webinar*

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

1.0 EP  
9–10 a.m.  
\$55 Standard Fee

## JUNE 22

*Webinar*

### Elder Law: Probate Considerations in Estate Planning and Avoidance

1.0 G  
Noon–1 p.m.  
\$49 Standard Fee

## JUNE 24

*Webinar*

### 30 Things Every Solo Attorney Needs to Know to Avoid Malpractice

1.5 EP  
9–10:30 a.m.  
\$74 Standard Fee

## JUNE 28

*Teleseminar*

### Estate Planning For Liquidity

1.0 G  
11 a.m.–noon  
\$79 Standard Fee

*Webinar*

### 26 Ethical Tips from Hollywood Movies

2.0 EP  
1–3:05 p.m.  
\$139 Standard Fee

## JUNE 29

*Webinar*

### Cybersecurity: How to Protect Yourself and Keep the Hackers at Bay

1.0 EP  
Noon–1 p.m.  
\$49 Standard Fee

## JUNE 30

*Teleseminar*

### 2022 Sex Harassment Update

1.0 G  
11 a.m.–noon  
\$79 Standard Fee

*Webinar*

### Ethics of Social Media Research

1.5 EP  
1–2:30 p.m.  
\$129 Standard Fee

## JULY 8

*Webcast*

### REPLAY: 2022 Family Law Spring Institute: Managing High-Conflict Personalities and Cases, Part 1

3.0 G  
9 a.m.–12:15 p.m.  
\$147 Standard Fee

*Webinar*

### Find and Use Historical Web Information with the Internet Archive Wayback Machine

1.0 G  
11 a.m.–noon  
\$89 Standard Fee

## JULY 14

*Webinar*

### Overcoming Procrastination: How to Kick the Habit

1.0 EP  
11 a.m.–noon  
\$89 Standard Fee

## JULY 15

*Webinar*

### Your Inbox Is Not a Task List: Real World Task Management for Busy Lawyers

1.0 EP  
11 a.m.–noon  
\$89 Standard Fee

## JULY 20

*Webinar*

### Elder Law Summer Series: Communicating with Clients That Have Cognitive Impairment or Dementia

1.0 G  
Noon–1 p.m.  
\$49 Standard Fee

## JULY 22

*Webcast*

### REPLAY: 2022 Family Law Spring Institute: Managing High-Conflict Personalities and Cases, Part 2

3.0 G  
9 a.m.–12:15 p.m.  
\$147 Standard Fee

Register online at [www.sbnm.org/CLE](http://www.sbnm.org/CLE) or call 505-797-6020



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Est. 1886

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[www.sbnm.org](http://www.sbnm.org)



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## Meetings

### June

**10  
Prosecutors Section**  
noon, virtual

**14  
Appellate Practice Section**  
noon, virtual

**16  
Public Law Section**  
noon, virtual

**21  
Solo and Small Firm Section**  
noon, virtual/State Bar Center

**30  
Trial Practice Section**  
noon, virtual

### July

**5  
Health Law Section**  
9am, virtual

**6  
Employment and Labor Law Section**  
noon, virtual

**13  
Tax Section**  
noon, virtual

**19  
Solo and Small Firm Section**  
noon, virtual/State Bar Center

**28  
Trial Practice Section**  
noon, virtual

## Workshops and Legal Clinics

### June

**22  
Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., virtual

### July

**16  
Divorce Options Workshop**  
6-8 p.m., virtual

**27  
Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., virtual

### August

**3  
Divorce Options Workshop**  
6-8 p.m., virtual

**24  
Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., virtual

### September

**7  
Divorce Options Workshop**  
6-8 p.m., virtual

**28  
Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., virtual

### October

**5  
Divorce Options Workshop**  
6-8 p.m., virtual

**About Cover Image and Artist:** As a sensory illusionist, L. Scooter Morris gathers the experience of being in a moment, at a place, at a time and uses that information to create the image. It is the sense of how the light and the color filters through the image and the atmosphere you might be surrounded by at the moment. In that ultimate moment of sensory experience also exists the promise of something bigger than we are. "My goal is to make artwork that cuts to the heart of what is true, to create art that is of this moment, but exists as something timeless. It resonates with the person viewing the work as real, although it is not quite realistic. It has meaning, although that is not specifically stated because of its use of color, symbolism or imagery. Sculpted Paintings is the integration of color, light and texture with many surface variations and includes mixed media.

# 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>.

### Publication for Comment Regarding Amendments to the Local Rules of the District Court of the Second Judicial District Court

In accordance with Rule 23-106.1(C) NMRA, the Supreme Court has approved out-of-cycle amendments to Rule LR2-603 NMRA (Court-annexed arbitration). The amendments increase the arbitration limit from \$25,000 to \$50,000. Under the amended rule, all civil cases filed in the Second Judicial District shall be referred to arbitration when no party seeks relief other than a money judgment and no party seeks an amount in excess of \$50,000. The amendments to LR2-603 NMRA are effective for all cases pending or filed on or after June 1. You may view the full text of the amended rule and the associated order on the Supreme Court's website at <https://supremecourt.nmcourts.gov/2022-2/>. The Supreme Court will be accepting public comment on this rule amendment for 30 days, starting on June 1. If you wish to comment, you may do so electronically through the Supreme Court's website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx>, by email to [nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov), by fax to 505-827-4837 or by mail to Elizabeth A. Garcia, Chief Clerk, with the New Mexico Supreme Court, at PO Box 848 in Santa Fe, N.M. 87504-0848. Your comments must be received by the Clerk by June 30 to be considered by the Court. Please note any submitted comments may be posted on the Supreme Court's website for public viewing.

### Seeking Applications for Family Representation and Advocacy Commission

The Office of Family Representation and Advocacy is a new state agency with the focus of providing high-quality legal representation and services to children and families in the foster care system. The office was created by the New Mexico State Legislature in 2022 to serve children, parents, custodians and guardians in child abuse and neglect cases as well as eligible young adults who benefit from

## Professionalism Tip

**With respect to opposing parties and their counsel:**

I will not use litigation, delay tactics, or other courses of conduct to harass the opposing party or their counsel.

continued care under the Fostering Connections Act. OFRA is an independent adjunct agency of the Executive branch and will be overseen by a 13-member commission. The Family Representation and Advocacy Commission, which will be comprised of five members appointed by the New Mexico Supreme Court Chief Justice, will exercise independent oversight of OFRA and review and approve policies for the operation of OFRA. Persons interested in serving on the Commission may apply by sending a letter of interest to Elizabeth A. Garcia, Clerk of Court, by email to [nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov) or by first class mail to P.O. Box 848, Santa Fe, N.M. 87504. Applicants should limit their letters to two pages, indicate which of these five positions they are seeking and describe why they wish to serve on the Commission, what they bring to the Commission and their experience with the child welfare system. The deadline to apply is June 24.

### 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 1-5 p.m. For more information call: 505-827-4850, email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### Bernalillo County Metropolitan Court Announcement of Candidates

The Bernalillo County Metropolitan Court Judicial Nominating Commission convened on May 23 at the Metropolitan Courthouse, located at 401 Lomas NE, Albuquerque, NM, and completed its evaluation of the six candidates for the one vacancy on the Bernalillo County Metropolitan Court due to the retirement of the Honorable Judge Victor E. Valdez effective May 31. The Commission recommends **Steven Gary Diamond, Asra Intiaz Elliott, Veronica Hill** and **Claire Ann McDaniel** as candidates for Gov. Michelle Lujan Grisham's consideration.

### Fifth Judicial District Court Announcement of Vacancy

A vacancy on the Fifth Judicial District Court in Carlsbad will exist as of July 1, due to the creation of an additional judgeship by the Legislature. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Members can obtain applications from the Judicial Selection website: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for June 14 by 5 p.m. Applications received after that date and time will not be considered. The Fifth Judicial District Court Nominating Commission will meet at 9 a.m. on July 19 at the Fifth Judicial District Court Eddy County, 102 N Canal St, Carlsbad, N.M. 88220, to interview the applicants for this position. The Commission meeting is open to the public, and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard. All attendees of the meeting of the Fifth Judicial District Court Judicial Nominating Commission are required to wear a face mask at all times at the meeting regardless of their vaccination status.

### Fifth Judicial District Court Nominating Commission 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 Fifth Judicial District Court Judicial Nominating Commission. The Commission meeting is open to the public beginning at 9 a.m. on July 19 at the Fifth Judicial District Court

Eddy County, 102 N Canal St, Carlsbad, NM 88220. Please email Beverly Akin (akin@law.unm.edu) if you would like to request a copy of the proposed changes. All attendees of the meeting of the Fifth Judicial District Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

### **Thirteenth Judicial District Court Judicial Nominating Commission 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. The proposed changes will be discussed and voted on during the upcoming meeting of the Thirteenth Judicial District Court Judicial Nominating Commission. The Commission meeting is open to the public beginning at 9 a.m., June 10 at the Thirteenth Judicial District Court in Sandoval County, located at 1500 Idalia Rd, Bernalillo, NM 87004. Email Beverly Akin (akin@law.unm.edu) for a copy of the proposed changes. All attendees of the meeting of the Thirteenth Judicial District Court Judicial Nominating Commission are required to wear a face mask at all times at the meeting regardless of vaccination status.

### **Thirteenth Judicial District Court Announcement of Vacancy**

A vacancy on the Thirteenth Judicial District Court will exist as of July 1 due to the creation of an additional judgeship by the legislature. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information regarding election or retention, if appointed, should contact the Bureau of Elections in the Office of the Secretary of State. Members can obtain applications by visiting <https://lawschool.unm.edu/judsel/application.html> or emailed to you by contacting the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications was set for May 17. Applications received after that time will not be considered. The Thirteenth Judicial District Court Nominating Commission will meet at 9 a.m. on June 10 at the Thirteenth

Judicial District Court in Sandoval County to interview and evaluate the applicants for this position. The Commission meeting is open to the public, and members of the public who wish to be heard about the candidates will have an opportunity to be heard. All attendees of the meeting will be required to wear a face mask at all times at the meeting regardless of vaccination status.

### **Announcement of Applicants**

Six applications have been received in the Judicial Selection Office as of May 17 for the vacancy on the Thirteenth Judicial District Court, which will exist as of July 1 per the creation of an additional Judgeship by the Legislature. The Thirteenth Judicial District Court Nominating Commission will convene beginning at 9 a.m. on June 10 to interview applicants for the position at the Thirteenth Judicial District Court located at 1500 Idalia Rd., Bernalillo, NM 87004. The applicants include **Steven Paul Archibeque, Michael Eshleman, Sonya Kay Duke-Noel, Karl William Reifsteck, Simone M. Seiler** and **Matthew Wadsworth**. All attendees of the meeting will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

### **U.S. District Court, District of New Mexico U.S. Magistrate Judge Vacancy in Las Cruces**

The Judicial Conference of the U.S. has authorized the appointment of a full-time United States Magistrate Judge for the District of New Mexico in Las Cruces. The current annual salary of the position is \$205,528. The term of office is eight years. The U.S. Magistrate Judge Application form and full public notice with application instructions are available from the Court's website at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov) or by calling 575-528-1439. Applications must be submitted by June 24.

### **STATE BAR NEWS 2022 Annual Meeting Resolutions and Motions**

Resolutions and motions will be heard at 1 p.m. on Aug. 11 at the opening of the State Bar of New Mexico 2022 Annual Meeting at Hyatt Regency Tamaya Resort and Spa in Bernalillo. For consideration, resolutions or motions must be submitted in writing by July 1 to

— *Featured* —

## **Member Benefit**



**The Solutions Group**

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

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

Executive Director Richard Spinello, PO Box 92860, Albuquerque, N.M. 87199; fax to 505-828-3765; or email [Richard.spinello@sbnm.org](mailto:spinello@sbnm.org).

### **Equity in Justice Program Have Questions?**

Do you have specific questions about equity and inclusion in your workplace or in general? Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the *Bar Bulletin*. Go to [www.sbnm.org/eij](http://www.sbnm.org/eij), click on

the Ask Amanda link and submit your question. No question is too big or too small.

### **New Mexico Judges and Lawyers Assistance Program NMJLAP Committee Meetings**

The NMJLAP Committee will meet at 4 p.m. on July 7, Oct. 16 and Jan. 12, 2023. 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. 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.

### **Free Well-Being Webinars**

The State Bar of New Mexico contracts with The Solutions Group to provide a free employee assistance program to members, their staff and their families. Contact the Solutions Group for resources, education, and free counseling. Each month in 2022, The Solutions Group will unveil a new webinar on a different topic. Sign up for "Echopsychology: How Nature Heals" to learn about a growing body of research that points to the beneficial effects that exposure to the natural world has on health. The next webinar, "Pain and Our Brain" addresses why the brain links pain with emotions. Find out the answers to this and other questions related to the connection between pain and our brains. The final webinar, "Understanding Anxiety and Depression" explores the differentiation between clinical and "normal" depression, while discussing anxiety and the aftereffects of COVID-19 related to depression and anxiety. View all webinars at [www.solutionsbiz.com](http://www.solutionsbiz.com) or call 505-254-3555.

### **Monday Night Attorney Support Group**

The Monday Night Attorney Support Group meets at 5:30 p.m. on Mondays by Zoom. This group will be meeting every

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

### **Defenders in Recovery: Additional Meetings You Can Attend in the Legal Community**

Defenders in Recovery meets every Wednesday night at 5:30 p.m. The first Wednesday of the month is an AA meeting and discussion. The second is an NA meeting and discussion. The third is a book study, including the AA Big Book, additional AA and NA literature, including the Blue Book, Living Clean, 12x12 and more. The fourth Wednesday features a recovery speaker and monthly birthday celebration. These meetings are open to all who seek recovery. Who we see in this meeting, what we say in this meeting, stays in this meeting. For the meeting link, send an email to [defendersinrecovery@gmail.com](mailto:defendersinrecovery@gmail.com) or call Jen at 575-288-7958.

### **The New Mexico 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. The next upcoming meeting of the Committee is at 3 p.m. on July 26.

### **Young Lawyers Division Help New Mexico Wildfire Victims**

In partnership with the Federal Emergency Management Agency and the American Bar Association's Disaster Legal Services Program, the State Bar of New Mexico Young Lawyers Division is preparing legal resources and assistance for survivors of the New

Mexico wildfires. A free legal aid hotline will be available soon and we need volunteers! Individuals who qualify for assistance will be matched with New Mexico Lawyers to provide free, limited legal help in areas like securing FEMA benefits, assistance with insurance claims, help with home repair contracts, replacement of legal documents, landlord/tenant issues and mortgage/foreclosure issues. Volunteers do not need extensive experience in any of the areas listed below. FEMA will provide basic training for frequently asked questions. This training will be required for all volunteers. We hope volunteers will be able to commit approximately one hour per week. Visit [www.sbnm.org/wildfirehelp](http://www.sbnm.org/wildfirehelp) for more information and to sign up. You can also contact Lauren E. Riley, ABA YLD District 23, at 505-246-0500 or [lauren@batleyfamilylaw.com](mailto:lauren@batleyfamilylaw.com).

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

The UNM Law Library facility is currently closed to guests. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at [lawlibrary@unm.edu](mailto:lawlibrary@unm.edu) or phone at 505-277-0935.

### **OTHER NEWS New Mexico Women's Bar Association Announcing Virtual Celebration for the 2022 Henrietta-Pettijohn Awards**

The N.M. Women's Bar Association will hold a virtual celebration to honor the 2022 Award Winners, Torri Jacobus and Svitlana Anderson. Ms. Jacobus and Ms. Anderson will gather at the Modrall law firm with a few guests and address the gathering remotely. The evening will begin at 5 p.m., where virtual and in-person attendees can mingle and get to know their NMWBA room host, followed much anticipated remarks from the awardees themselves. This year, the N.M. Women's Bar Association will also conduct a virtual silent auction that evening as well. You can purchase tickets or sponsorships directly by visiting [www.nmwba.org](http://www.nmwba.org). Email Marisa Green at [nmwba1990@gmail.com](mailto:nmwba1990@gmail.com) for more information.

# Legal Education

## June

<p>8     <b>2022 Ethics In Civil Litigation Update, Part 2</b> 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>15    <b>Drafting Stockholders' Agreements, Part 2</b> 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>24    <b>30 Things Every Solo Attorney Needs to Know to Avoid Malpractice</b> 1.5 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>8     <b>Animal Talk: Wildlife Corridors Act</b> 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>15    <b>Elevate Your Practice: Court Review of the Case Plan and Juvenile Justice and the Probation Agreement</b> 3.0 G Live Program Administrative Office of the Courts www.nmcourts.gov</p>	<p>28    <b>26 Ethical Tips from Hollywood Movies</b> 2.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>9     <b>Essential Workers, Essential Rights (2022)</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>15    <b>Elevate Your Practice: Court Review of the Case Plan and Juvenile Justice and the Probation Agreement</b> 3.0 G Live Program Administrative Office of the Courts www.nmcourts.gov</p>	<p>28    <b>Estate Planning for Liquidity</b> 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>10    <b>The Mentally Tough Lawyer: How to Build Real-Time Resilience in Today's Stressful World</b> 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>17    <b>Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b> 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>29    <b>Cybersecurity: How to Protect Yourself and Keep the Hackers at Bay</b> 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>10    <b>Trust Accounting</b> 1.0 G Web Cast (Live Credits) New Mexico Defense Lawyers Association www.nmdla.org</p>	<p>17    <b>Cowen's Big Boot Camp</b> 5.5 G Live Seminar (San Antonio, Texas) Webinar Cowen Rodriguez Peacock, P.C. www.cowenlaw.com</p>	<p>30    <b>2022 Sex Harassment Update</b> 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>10-12 <b>Mediation Training</b> 20.0 G, 2.0 EP In-Person UNM School of Law lawschool.unm.edu</p>	<p>22    <b>Elder Law Summer Series: Probate Overview &amp; Considerations in Estate Planning</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>30    <b>Ethics of Social Research</b> 1.5 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>

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

## July

- |   |  |    |   |    |  |
|---|--|----|---|----|--|
| 8 | <b>REPLAY 2022: Family Law Spring Institute: Managing High-Conflict Personalities and Cases, Part 1</b><br>3.0 G<br>Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org | 14 | <b>Overcoming Procrastination: How to Kick the Habit</b><br>1.0 EP<br>Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org                          | 20 | <b>Elder Law Summer Series: Communicating with Clients that have Cognitive Impairment or Dementia</b><br>1.0 G<br>Teleseminar<br>Center for Legal Education of NMSBF<br>www.sbnm.org |
| 8 | <b>Find and Use Historical Web Information with the Internet Archive Wayback Machine</b><br>1.0 G<br>Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org                | 15 | <b>Your Inbox Is Not a Task List: Real World Task Management for Busy Lawyers</b><br>1.0 EP<br>Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org | 22 | <b>REPLAY: 2022 Family Law Spring Institute: Managing High-Conflict Personalities and Cases, Part 2</b><br>3.0 G<br>Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org   |

## August

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| 17 | <b>Elder Law Summer Series: Community Property and Debt Considerations</b><br>1.0 G<br>Webinar<br>Center for Legal Education of NMSBF<br>www.sbnm.org |
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## September

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| 20 | <b>Basic Financial Literacy for Lawyers</b><br>2.0 G<br>In-Person and Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org | 21 | <b>Elder Law Summer Series: Client Capacity, Diminished Capacity, and Declining Capacity. Ethical Representation and Tools for Attorneys</b><br>1.0 EP<br>Webinar<br>Center for Legal Education of NMSBF<br>www.sbnm.org |
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# Opinions

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

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

## Effective May 13, 2022

### PUBLISHED OPINIONS

A-1-CA-38429	A Trubow v. Real Estate Commission	Reverse	05/02/2022
A-1-CA-38754	State v. A Quintero	Affirm	05/04/2022

### UNPUBLISHED OPINIONS

A-1-CA-38644	A Nieto v. Lowe's Company Inc.	Affirm	05/03/2022
A-1-CA-40122	State v. P Leyba	Affirm	05/04/2022
A-1-CA-37940	State v. B Granillo	Affirm	05/05/2022
A-1-CA-39313	T Lambert v. W Gardner	Affirm	05/05/2022
A-1-CA-39862	S Dines v. J Wiederholt	Affirm	05/05/2022
A-1-CA-39972	B Grossetete v. US Eagle Federal Credit Union	Affirm	05/05/2022
A-1-CA-39809	CYFD v. Keely J	Affirm	05/09/2022
A-1-CA-37822	Deutsche Bank v. B Villegas	Affirm	05/10/2022
A-1-CA-39636	M Pelletier v. J Williams	Reverse	05/11/2022
A-1-CA-39962	State v. J Sanchez	Affirm	05/11/2022
A-1-CA-39273	R Vasquez v. NMCD Secretary of Corrections	Affirm	05/12/2022
A-1-CA-39953	C Montoya v. City of Albuquerque	Affirm	05/12/2022
A-1-CA-39986	K Weddle v. City of Truth or Consequences	Affirm	05/12/2022
A-1-CA-40061	J Bradley v. WCA	Dismiss	05/12/2022

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

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State Bar of New Mexico  
Young Lawyers Division

# Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-007**  
No: A-1-CA-37888 (filed October 1, 2021)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
MATTHEW CHAVEZ,  
Defendant-Appellant.

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

Cristina T. Jaramillo, District Judge

Certiorari Granted, January 13, 2022, No. S-1-SC-39058.  
Released for Publication March 1, 2022.

Hector H. Balderas, Attorney General  
Santa Fe, NM

Lauren J. Wolongevicz, Assistant  
Attorney General  
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender  
Santa Fe, NM

Steven J. Forsberg, Assistant  
Appellate Defender  
Albuquerque, NM

for Appellant

## OPINION

### IVES, Judge.

{1} This case involves an attempted robbery gone horribly awry. The State accused Defendant Matthew Chavez of, among other things, attempting to rob Tyler Lackey and then, in the fracas that ensued, murdering him. At trial, Defendant did not dispute that he shot and killed Mr. Lackey, and the State did not dispute that Mr. Lackey was pointing his own gun at Defendant immediately before Defendant shot Mr. Lackey. Defendant claimed he acted in self-defense and defense of another, but the jury rejected those claims and found him guilty of second degree murder.

{2} On appeal, Defendant argues that the district court erred by denying his request for a jury instruction on voluntary manslaughter. This error, Defendant claims, prevented the jury from deciding whether the killing was voluntary manslaughter—an act of *imperfect* self-defense—rather than murder. See generally *State v. Abeyta*, 1995-NMSC-051, ¶¶ 13-20, 120 N.M. 233, 901 P.2d 164 (explaining that a “claim of imperfect self-defense . . . presents an issue of mitigating circumstances that may reduce murder to manslaughter”), *abrogated on other grounds by State v. Campos*, 1996-NMSC-043, ¶ 32 n.4, 122 N.M. 148, 921 P.2d 1266.

{3} We agree. New Mexico law required the district court to instruct the jury on voluntary manslaughter, and the court’s failure to do so deprived Defendant of a fair trial. Whether Defendant committed voluntary manslaughter rather than murder was a question for the jury, and the district court erred by deciding, as a matter of law, that the killing was not voluntary manslaughter. This error requires us to reverse Defendant’s second degree murder conviction, as well as his convictions for tampering with evidence of second degree murder and conspiracy to tamper with evidence, and to remand for a new trial for second degree murder, voluntary manslaughter, tampering with evidence, and conspiracy to tamper with evidence.

{4} We also agree with Defendant that the district court erred by allowing a law enforcement officer to testify as to her opinion about whether a video recording showed that Defendant was carrying a firearm while trying to rob Mr. Lackey. Because this opinion testimony was not helpful to the trier of fact, it should not have been admitted.

{5} Finally, we reject Defendant’s argument that all of the charges against him should have been dismissed with prejudice because his trial was untimely under the Interstate Agreement on Detainers (IAD).

## BACKGROUND

{6} At trial, the State introduced video recordings of the encounter between Defendant and Mr. Lackey, which occurred in February 2016. The recordings do not include any audio, and the video is of limited use because of the camera perspectives and video quality. However, the videos collectively provide a general overview of what transpired.

{7} Defendant’s girlfriend, Veronica Trimble, emerged from the front passenger door of an orange and white sedan that was backed into a parking space. Approximately two minutes later, Ms. Trimble returned to the car and got back into the passenger’s seat, and a white pickup truck pulled into the parking lot and parked in a space parallel to an ATM at the end of the lot. As the truck’s driver, Mr. Lackey, exited the vehicle and walked toward the ATM, the white and orange sedan pulled out of its parking space, drove across the lot toward the exit, and stopped perpendicular to the truck and the ATM, approximately two car lengths away. Defendant exited the car through the driver’s door and walked toward the ATM, approaching Mr. Lackey from behind. Mr. Lackey looked over his left shoulder and then inserted his card into the ATM. He again turned to his left and looked behind him, where Defendant, wearing a mask, was standing. Defendant’s left hand was in his pocket. Mr. Lackey turned toward Defendant and drew a handgun. Defendant returned to the car he had been driving and got back into the driver’s seat, and Mr. Lackey pursued him with his gun drawn. The door on the driver’s side of the car closed, then opened again, as Mr. Lackey and his companion, Justin Overton, stood near the driver’s side door, with Mr. Lackey pointing his gun at Defendant all the while. Approximately one minute and twenty seconds later, Defendant drove away as Mr. Lackey fell to the ground.

{8} Although the police never found the gun that Defendant used to shoot Mr. Lackey, they did find a .380 semiautomatic pistol on the right side of Mr. Lackey’s body, near his head. The pistol contained five R-P brand .380 bullets—one in the chamber and four in the magazine. A single R-P .380 bullet casing was found near Mr. Lackey’s left foot.

{9} Mr. Lackey’s autopsy confirmed that gunshot wounds caused his death. The medical examiner observed two bullet holes, one in Mr. Lackey’s chest and another in his upper abdomen, and found two bullets lodged in his back. The examiner determined that the manner of death was homicide.

{10} Because Defendant conceded that he fired the fatal shots, the key questions at trial as to the killing were whether it was a crime at all and, if so, whether it was first degree murder or a less serious offense. The answers to those questions turned on exactly what happened during the encounter. To help the jury fill in the gaps left by the video recordings and physical evidence, the parties relied on the testimony of several witnesses. The most significant eyewitnesses for the purposes of this appeal were Mr. Overton, Ms. Trimble, and Randy Ulibarri, a construction supervisor who was spending the night at a nearby construction site. We summarize the testimony of each eyewitness in turn.

{11} Mr. Overton, who was Mr. Lackey's best friend, testified that shortly before the encounter with Defendant, the two men were eating dinner at a restaurant in Albuquerque and then drove to a nearby ATM to get money to tip the waitperson. When they arrived, Mr. Lackey parked the truck, got out, and approached the ATM to withdraw money. Mr. Overton testified that he did not see Defendant holding a gun at the ATM but that Defendant had his hands in his pockets and might have had a weapon in his pocket. Mr. Overton believed that Defendant was trying to rob Mr. Lackey and that Mr. Lackey was in danger. Mr. Lackey drew his .380 pistol, and Defendant ran back to his car, got inside, and closed the door, as Mr. Lackey followed him. From Mr. Overton's perspective, it did not appear that Defendant "was trying to get away" when he ran to his car. Mr. Overton believed that Mr. Lackey "was trying to stop" Defendant, not "trying to hurt" him.

{12} Mr. Overton testified that he exited the truck, approached the car, and, when Mr. Lackey was "fairly close to" the car with his gun pointed at Defendant, Mr. Overton brandished a pocketknife. Holding the knife at his side in order to protect his friend, Mr. Overton came within approximately three feet of Defendant. Mr. Lackey repeatedly yelled at Defendant, "Get out of the vehicle[!]" Mr. Lackey was in "the shooter stance[.]" pointing his gun at Defendant. Defendant repeatedly responded, "We're just kidding. We're just playing[.]" and Ms. Trimble made similar statements. Defendant removed a gun from the car's center console and, within seconds, fired it two or three times and quickly drove away. Before Defendant removed the gun from the console, Mr. Overton had a clear view of Defendant's hands and had not seen a gun. Mr. Overton testified that he was certain that Mr. Lackey did not fire his gun.

{13} Mr. Overton described Defendant's behavior during the interaction at the car as "very nonchalant" and insincere.

Mr. Overton believed that Defendant and Ms. Trimble had kept the conversation going to distract Mr. Overton and Mr. Lackey so that Defendant could get the gun, fire it, and speed off. Although Mr. Overton did not think Mr. Lackey intended to hurt Defendant, and Mr. Overton did not intend to do so, Mr. Overton did not know whether Defendant believed that. Mr. Overton's direct testimony was that Defendant feigned fear; he "tr[ie]d to get out of the situation by acting scared." But on cross-examination, Mr. Overton acknowledged that, during a pretrial interview, he had said that Defendant "appeared nervous and scared."

{14} Ms. Trimble testified about a slightly longer time period, beginning with what occurred before the encounter at the ATM—an explanation of what was happening in the video recording before Mr. Lackey approached the ATM. Ms. Trimble testified that Defendant had initially parked his car in the parking lot where the ATM was because he wanted to rob a nearby restaurant. While Defendant sat in the car, Ms. Trimble entered the restaurant and, upon returning to the car, told Defendant that there were customers, including children in the restaurant, and that she was concerned that someone might be harmed in a robbery. As Defendant began to pull out of the parking lot, Ms. Trimble noticed a truck parked at the ATM, and Defendant stopped the car near the ATM, got out of the car, and walked up behind Mr. Lackey, who was using the ATM.

{15} Ms. Trimble heard yelling and then saw Defendant return to the car and get inside. She did not see a gun in Defendant's hand at that time. Mr. Lackey pursued Defendant and pointed his gun at Defendant while Mr. Lackey and Mr. Overton, who was armed with a knife, repeatedly demanded that Defendant get out of the car. Both Mr. Lackey and Mr. Overton were angry; they were yelling and using profane language. Defendant did not get out of the car. He appeared to be scared.

{16} Ms. Trimble feared for Defendant's well-being. She told him not to get out of the car and, to stop him from doing so, she leaned over the middle console from the passenger seat and put part of her body on Defendant's right leg. She also told Mr. Lackey that she was pregnant. Mr. Lackey said, "So you think you're going to rob me[?]" Defendant said, "No, I was just playing. Just let us leave. Just let us leave[.]" and "[w]e just want to leave[.]" Ms. Trimble believed that Defendant intended to leave. But, by standing in the car's doorway with his gun pointed at Defendant, Mr. Lackey prevented them from leaving.

{17} Ms. Trimble saw a handgun on Defendant's lap, and, as Mr. Lackey held the car door open, Defendant drove away and fired his gun.

Ms. Trimble testified on direct examination that she was not sure whether Mr. Lackey also fired, but that, if he did, she believed that he fired after Defendant did. On cross-examination, she testified that she was not sure who fired first.

{18} Mr. Ulibarri also testified about the sequencing of the shots. He stated that there were three shots, that the first shot came from the man outside of the car, and that the second and third shots came from inside the car. He testified to these facts during direct examination, cross-examination, and redirect examination, although he acknowledged that on the night of the shooting, he had written that he saw a flash inside the car and that one of the men outside the car returned fire.

{19} Detective Leah Acata also testified about the fatal encounter. Because Detective Acata was not present for any part of the encounter, her testimony about what occurred was based exclusively on her interpretation of the video recordings that were admitted into evidence. The first part of Detective Acata's testimony about the recordings drew no objections and remains uncontroversial on appeal; she described undisputed facts. The dispute on appeal pertains to Detective Acata's testimony that, based on her review of the videos, Defendant had a gun throughout the encounter and that he brandished it while standing near Mr. Lackey at the ATM.

{20} The district court instructed the jury on the essential elements of first degree murder and one lesser included offense, second degree murder. Although the district court granted Defendant's request for jury instructions on self-defense and defense of another, the court refused to instruct the jury on whether the shooting was an act of "imperfect self-defense." Such an instruction would have allowed the jury to determine whether the killing, even if it was not legally justified as an act of self-defense or defense of another, was a crime less serious than either first or second degree murder—namely, voluntary manslaughter. *See Abeyta*, 1995-NMSC-051, ¶¶ 13-20. Without Defendant's requested instruction, the jury had the following options as to the murder charge: find Defendant not guilty of any homicide offense because the killing was an act of self-defense or defense of another, find him guilty of first degree murder, or find him guilty of second degree murder.

{21} The jury found Defendant guilty of second degree murder in violation of NMSA 1978, Section 30-2-1(B) (1994), rejecting his claimed self-defense and defense-of-another justifications. And the jury specifically found that he used a firearm in the commission of the crime, enhancing the basic sentence for second degree murder.

See NMSA 1978, § 31-18-16(A) (1993, amended 2020). The jury also found Defendant guilty of attempted robbery in violation of NMSA 1978, Sections 30-28-1(C) (1963) and 30-16-2 (1973); tampering with evidence in violation of NMSA 1978, Section 30-22-5(A), (B)(1) (2003); conspiracy to commit tampering with evidence in violation of Sections 30-28-2(A), (B)(3) (1979) and 30-22-5(A), (B)(1); and receiving or transferring a stolen vehicle in violation of NMSA 1978, Section 30-16D-4(A), (B)(1) (2009). The district court entered judgment and sentenced Defendant to twenty-three-and-a-half years of imprisonment, including sixteen years for the second degree murder conviction and firearm enhancement.

#### DISCUSSION

{22} Defendant argues that (1) the district court erred by denying his request for a voluntary manslaughter instruction; (2) the evidence does not suffice to support his convictions for tampering with evidence and conspiracy to commit tampering with evidence; (3) the district court erred by admitting into evidence Officer Acata's testimony about whether a firearm was visible in a video recording that was an exhibit at trial; and (4) the district court erred by denying his motion to dismiss all of the charges against him with prejudice because his trial was not timely under the IAD. We accept his first and third claims of error and reverse his convictions for second degree murder, tampering with evidence, and conspiracy to commit tampering with evidence. We otherwise reject Defendant's claims of error. We therefore remand for a new trial for second degree murder, voluntary manslaughter, tampering with evidence, and conspiracy to tamper with evidence but affirm his remaining convictions.

#### I. The District Court Erred by Denying Defendant's Request for a Jury Instruction on Voluntary Manslaughter

{23} Whether the district court erred by denying Defendant's requested jury instruction on voluntary manslaughter is an issue of both law and fact that we review de novo, and in doing so we look at the evidence in the light most favorable to giving the requested instruction. *State v. Skipplings*, 2011-NMSC-021, ¶ 10, 150 N.M. 216, 258 P.3d 1008. Because voluntary manslaughter is a lesser included offense of murder, *Abeyta*, 1995-NMSC-051, ¶ 17, our task is to determine whether there is any reasonable view of the evidence under

which voluntary manslaughter was the highest degree of homicide committed. *Skipplings*, 2011-NMSC-021, ¶ 10. In other words, if "a jury rationally could [have] acquit[ted]" Defendant of second degree murder but convicted him of voluntary manslaughter, then the district court erred by refusing to give Defendant's requested manslaughter instruction. *Id.* (internal quotation marks and citation omitted).

{24} Applying this standard of review entails two steps here. We begin by briefly describing the doctrine of imperfect self-defense under New Mexico law and the relationship between that doctrine and the offense of voluntary manslaughter. Then, using this legal lens to examine the evidence presented during Defendant trial, we explain why it was error to deny Defendant's request for a jury instruction on voluntary manslaughter.

{25} Unlike self-defense, which justifies a homicide so that it is no crime at all, imperfect self-defense mitigates a homicide so that the crime is voluntary manslaughter rather than murder. *Abeyta*, 1995-NMSC-051, ¶¶ 14-17; see also § 30-2-1 (defining first and second degree murder); NMSA 1978, § 30-2-3(A) (1994) (classifying voluntary manslaughter as a third degree felony). In other words, the defense is imperfect from the accused's perspective because, even if it is pursued successfully, the outcome is not an acquittal. And, not surprisingly, this imperfect outcome occurs when a claim of self-defense suffers from an imperfection—a missing element. Self-defense's three elements are: "(1) an appearance of immediate danger of death or great bodily harm to the defendant, (2) the defendant was in fact put in fear by the apparent danger, and (3) a reasonable person in the same circumstances would have reacted similarly." *Abeyta*, 1995-NMSC-051, ¶ 14. **The absence of the third element renders the defense imperfect. If the accused reacts unreasonably to fear caused by an appearance of danger of death or great bodily harm, a claim of self-defense will fail, but a claim of imperfect self-defense might still succeed. *Id.* ¶ 17. To prevail on a claim of imperfect self-defense and reduce the gravity of the offense from second degree murder to voluntary manslaughter, the accused's reaction to the fear of death or great bodily harm, though unreasonable, must be "a result of sufficient provocation[.]" UJI 14-220 NMRA; *State v. Jernigan*, 2006-**

NMSC-003, ¶ 18, 139 N.M. 1, 127 P.3d 537 ("[V]oluntary manslaughter is second[] degree murder committed with sufficient provocation."); see also *Abeyta*, 1995-NMSC-051, ¶ 17 n.4 (explaining that a manslaughter instruction is the means of submitting a claim of imperfect self-defense to the jury).

{26} This brings us to the ultimate question: Would the evidence in Defendant's case, viewed in the light most favorable to giving his requested instruction, allow a jury to find him not guilty of second degree murder but find him guilty of voluntary manslaughter because he killed Mr. Lackey based on sufficient provocation? Cf. *Jernigan*, 2006-NMSC-003, ¶¶ 23-25. Our answer is yes. The district court erred by determining, as a matter of law, that the evidence could not support a finding of sufficient provocation. The evidence raised a question of fact for the jury about whether Mr. Lackey sufficiently provoked Defendant by holding him at gunpoint while preventing him from fleeing. And, contrary to the State's argument on appeal, the evidence that Defendant initiated the encounter did not preclude Defendant from presenting the provocation theory to the jury. We explain each point in turn. {27} Viewing the evidence in the light most favorable to instructing the jury on sufficient provocation, we conclude that a rational jury could have found that Defendant acted based on sufficient provocation. New Mexico law defines provocation to include "any action, conduct or circumstances which arouse anger, rage, fear, sudden resentment, terror or other extreme emotions." UJI 14-222 NMRA (emphases added). However, not all provocation that causes the accused to have such emotional reactions will do. To suffice, "[t]he provocation must be such as would affect the ability to reason and to cause a temporary loss of self[-]control in an ordinary person of average disposition." *Id.* "Whether a particular set of circumstances is sufficient provocation is generally a question for the jury to decide." *State v. Munoz*, 1992-NMCA-004, ¶ 6, 113 N.M. 489, 827 P.2d 1303. This generalization holds true in Defendant's case; the jury, rather than the judge, should have determined whether sufficient provocation existed. Key facts were undisputed: Mr. Lackey drew a gun, pointed it at Defendant, pursued Defendant to his car, and held him at gunpoint while demanding that he get out of the car.

<sup>1</sup> Principles of double jeopardy bar retrial on the first degree murder charge. See *State v. Sosa*, 1997-NMSC-032, ¶ 33, 123 N.M. 564, 943 P.2d 1017 (recognizing that "[t]he jury's failure to convict" the defendant of two homicide charges, including first degree murder, "amount[ed] to an implicit acquittal of those charges" and concluding that double jeopardy barred retrial on those charges), abrogated on other grounds by *State v. Porter*, 2020-NMSC-020, ¶ 7, 476 P.3d 1201.

Although the parties disputed how to interpret the conduct of Mr. Lackey and Defendant and disputed other circumstances surrounding the shooting, we must view the evidence in the light most favorable to Defendant. See *Skippings*, 2011-NMSC-021, ¶ 10. Viewed in that light, the evidence could have allowed the jury to find that, when Defendant returned to the car and got into the driver's seat, he intended to retreat from Mr. Lackey; that Mr. Lackey held the car door open while angrily yelling commands and using profanity; and that Defendant retrieved a gun from the car and ultimately fired it at Mr. Lackey because Defendant was afraid that Mr. Lackey would shoot him. If the jury accepted this version of events, the jury could have determined that Mr. Lackey's conduct placed Defendant in fear, or even terror, that Mr. Lackey would seriously injure or kill Defendant and that Mr. Lackey's conduct would adversely impact the ability of an ordinary person of average disposition to reason and exercise self-control. This would amount to sufficient provocation, even if the jury determined that the force that Defendant used was unreasonable. See *Abeyta*, 1995-NMSC-051, ¶ 17.

{28} Precedent confirms that the evidence of provocation warranted a voluntary manslaughter instruction in Defendant's case. Our Supreme Court has concluded that less compelling evidence sufficed. In *Jernigan*, the Court reached that conclusion based on evidence that the person the defendant shot was reaching for his crotch area—conduct the defendant interpreted as an effort to get a gun with which to shoot the accused. 2006-NMSC-003, ¶¶ 5, 25 (reversing an attempted second degree murder conviction and concluding that the district court erred by denying the defendant's request for a jury instruction on attempted voluntary manslaughter); cf. *State v. Wright*, 1934-NMSC-056, ¶¶ 4-8, 38 N.M. 427, 34 P.2d 870 (concluding that testimony that the defendant was afraid that the person he shot would get a gun sufficed to support the defendant's conviction for voluntary manslaughter). Because precedent establishes that the accused's belief that a gun *might* be drawn and then used in a confrontation raises a jury question about whether the accused was sufficiently provoked, we conclude that a jury question also existed in Defendant's case based on evidence that Mr. Lackey actually drew a gun and pointed it at Defendant, that Defendant returned to his vehicle with Mr. Lackey in pursuit, that Mr. Lackey then held Defendant at gunpoint while angrily yelling, and that Defendant appeared to be scared shortly before he fired his gun at Mr. Lackey.

{29} Having concluded that the evidence presented a jury question as to whether Mr. Lackey's conduct amounted to sufficient provocation, we turn next to the State's argument that New Mexico law barred Defendant from presenting his provocation theory to the jury. Specifically, the State argues that the evidence that Defendant initiated the conflict with Mr. Lackey at the ATM barred Defendant from pursuing his theory that Mr. Lackey's subsequent actions amounted to provocation. The parties correctly focus their arguments on appeal, as they did at trial, on *State v. Gaitan*, 2002-NMSC-007, 131 N.M. 758, 42 P.3d 1207, in which our Supreme Court stated the governing rule: "the law does not permit one who intentionally instigates an assault on another to then rely on the victim's *reasonable response* to that assault as evidence of provocation sufficient to mitigate the subsequent killing of the victim from murder to manslaughter." *Id.* ¶ 13 (emphasis added).

{30} Even if we assume there was no jury question as to whether Defendant "intentionally instigate[d] an assault" through his actions at the ATM, *id.*, we conclude that the evidence raised a question for the jury about whether Mr. Lackey responded reasonably. Based on the conflicting testimony about exactly how Mr. Lackey and Defendant behaved during the encounter and the different ways of interpreting the behavior of the two men, the jury could have rationally accepted a variety of narratives. And depending on which narrative the jury accepted, the jury could have concluded that Mr. Lackey's response was reasonable or unreasonable.

{31} Some narratives suggest that Mr. Lackey responded reasonably, including by using a reasonable amount of force, in exercising his right to defend himself or his right to make a citizen's arrest. See *id.* (recognizing that no problem of provocation exists if the accused attacks the victim and the victim reacts "with no more force than he is privileged by law to use for his own protection" (internal quotation marks and citation omitted)); cf. *State v. Johnson*, 1996-NMSC-075, ¶¶ 1, 18, 122 N.M. 696, 930 P.2d 1148 (holding that when a defendant who is charged with assault seeks a jury instruction based on a theory of citizen's arrest, the defendant must present evidence that, among other things, "the defendant acted with reasonable force under the circumstances"); *Downs v. Garay*, 1987-NMCA-108, ¶ 18, 106 N.M. 321, 742 P.2d 533 (recognizing, in the context of a tort claim, that "the privilege[s] of citizen's arrest[ and] self-defense[ are] limited to the use of *reasonable force*" (emphasis added)).

The State offers an example of a self-defense narrative in its answer brief, asserting that Defendant accosted Mr. Lackey at the ATM with a gun; that Mr. Lackey reasonably believed that he was in danger and responded by drawing his gun; and that Defendant returned to his car but remained armed throughout and continued to pose a deadly threat to Mr. Lackey until he fired his gun at Mr. Lackey and sped away. Although this is a rational way of resolving the factual disputes and interpreting the undisputed facts, what matters for our purposes is that it is not the *only* rational way of doing so. The question we must answer is not whether there is a rational view of the evidence that would have allowed the jury to find that Mr. Lackey acted reasonably and therefore reject the imperfect self-defense theory. Instead, we must determine whether there is a rational view of the evidence under which the jury could have found that Mr. Lackey acted unreasonably. See *Skippings*, 2011-NMSC-021, ¶ 10 (requiring the appellate court to ask whether a jury "rationally could [have] acquit[ted]" the defendant of the more serious offense and found the defendant guilty of the less serious offense for which the defendant sought a jury instruction (internal quotation marks and citation omitted)).

{32} We conclude that there is. Specifically, a jury could have found that Mr. Lackey's conduct went beyond the bounds of legally justified self-defense or citizen's arrest, either because Mr. Lackey used unreasonable force, see *Gaitan*, 2002-NMSC-007, ¶ 13; cf. *Downs*, 1987-NMCA-108, ¶ 18, by pursuing Defendant with gun drawn and holding him at gunpoint or because his purpose was not to hold Defendant for the authorities but instead to engage in the kind of unreasonable self-help that amounts to vigilantism. Cf. *Johnson*, 1996-NMSC-075, ¶ 18; *State v. Emmons*, 2007-NMCA-082, ¶ 19, 141 N.M. 875, 161 P.3d 920. For example, a rational jury could have found that Defendant was not armed at the ATM; that, after Mr. Lackey drew his gun at the ATM, Defendant retreated to the car; that Defendant's actions indicated that he intended to withdraw from the encounter peacefully; but that Mr. Lackey nevertheless kept his gun drawn and pursued Defendant to the car and held Defendant, who was still unarmed, at gunpoint while Mr. Lackey loudly and profanely demanded that Defendant get out of the car. If a jury accepted this narrative, it could have determined that (1) Mr. Lackey acted unreasonably because the force he used was excessive or because his purpose was not to detain Defendant until police arrived but instead to exact justice himself, and (2) it was reasonable for Defendant to have had an extreme

emotional response to Mr. Lackey's conduct that, in turn, caused Defendant to lose self-control and act unreasonably in shooting Mr. Lackey. See generally *State v. Johnson*, 1998-NMCA-019, ¶ 16, 124 N.M. 647, 954 P.2d 79 (recognizing that "reasonableness in the use of force is generally a matter for the jury"); cf. *State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656, 964 P.2d 820 (explaining that intent is "generally . . . a question of fact for a jury to decide"). We therefore conclude that the evidence that Defendant initiated the encounter did not preclude him from presenting to the jury his theory that Mr. Lackey's unreasonable response amounted to provocation sufficient to mitigate the killing to voluntary manslaughter.

{33} Because the evidence, viewed favorably to Defendant, could have allowed a rational jury to conclude that Defendant shot Mr. Lackey as a result of sufficient provocation, the district court erred by prohibiting him from presenting his imperfect self-defense theory to the jury by way of a voluntary manslaughter instruction. We therefore reverse Defendant's second degree murder conviction and remand for a new trial on that charge. See *State v. Brown*, 1996-NMSC-073, ¶ 34, 122 N.M. 724, 931 P.2d 69 ("When evidence at trial supports the giving of an instruction on a defendant's theory of the case, failure to so instruct is reversible error.").

## II. The Jury Instruction Error Also Requires a New Trial on the Tampering and Conspiracy Charges

### A. Tampering with Evidence

{34} Our reversal of Defendant's second degree murder conviction requires us to reverse his conviction for third degree tampering with evidence because of the relationship between the two charges. The jury found Defendant guilty of tampering with evidence and returned a special verdict form finding that he committed that crime in relation to first or second degree murder. Pursuant to Section 30-22-5(B)(1), under which tampering with evidence is a third degree felony when it relates to a first or second degree felony, the district court entered a judgment of conviction for third degree tampering with evidence and imposed the basic sentence for a third degree felony, three years of imprisonment. NMSA 1978, § 31-18-15(A) (11) (2007, amended 2019). Defendant's conviction and sentence for third degree tampering were predicated on the jury's determination that the killing of Mr. Lackey was a second degree felony, but, as we have explained, that determination was made based on incomplete instructions that did not give the jury the alternative of determining that the killing was instead voluntary manslaughter.

Had the jury been instructed on voluntary manslaughter and returned a guilty verdict on that charge, which is a third degree felony, § 30-2-3(A), and acquitted Defendant of first and second degree murder, the jury's verdict would have amounted to a determination that Defendant tampered with evidence of a third degree felony, see generally *State v. Alvarado*, 2012-NMCA-089, ¶ 14, \_\_\_ P.3d \_\_\_ (explaining that it is the province of the jury to determine the crime to which its tampering verdict relates and, in so doing, the degree of tampering that the defendant committed), *overruled on other grounds by State v. Radosevich*, 2018-NMSC-028, ¶ 2, 419 P.3d 176, and any conviction for tampering would have been a fourth degree felony, rather than a third degree felony. Compare § 30-22-5(B)(2), with § 30-22-5(B)(1). Accordingly, Defendant's third degree felony conviction for tampering with evidence cannot stand.

{35} The reversal of Defendant's tampering conviction raises the question of whether he may be retried on that charge consistent with principles of double jeopardy. The answer depends on whether the tampering conviction is based on sufficient evidence; if the evidence suffices, there is no bar to retrial. *State v. Mascarenas*, 2000-NMSC-017, ¶ 31, 129 N.M. 230, 4 P.3d 1221. The question we must answer is "whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Cabezuela*, 2015-NMSC-016, ¶ 14, 350 P.3d 1145 (internal quotation marks and citation omitted). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532 (internal quotation marks and citation omitted). Our review entails two steps. We first "view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. Next we consider "whether the evidence, so viewed, supports the verdict beyond a reasonable doubt." *State v. Garcia*, 2016-NMSC-034, ¶ 24, 384 P.3d 1076. "The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured." *State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 (alterations, internal quotation marks, and citation omitted).

{36} The jury instruction for tampering described the essential elements at issue as (1) "[D]efendant placed and/or hid a Pontiac G6[.]" and (2) Defendant "intended to prevent the apprehension, prosecution or conviction of himself[.]"

Defendant contends that if we were to conclude that the evidence that Defendant left the scene of the shooting in the Pontiac suffices here, we would effectively be holding that "every crime involving a motor vehicle (or any other object) that is moved after a crime" involves tampering with evidence. But the State's evidence of tampering was not limited to testimony that Defendant moved the Pontiac. Ms. Trimble testified that after Defendant drove the Pontiac away from the parking lot, he left it parked in an alley and contacted an unidentified person; that Defendant, the unidentified person, and Ms. Trimble went to a gas station and then returned to the alley where the Pontiac was parked; and that Defendant and the unidentified person walked toward the car and then returned running. A person who lived near the alley testified that, on the night of the shooting, she witnessed a car on fire in the alley and saw two people standing near the car and then running from it. Finally, a police officer testified that he responded to a call about a car fire that same evening and that the burned Pontiac was towed to the crime lab because of its link to the shooting of Mr. Lackey. Based on this evidence, the jury rationally could have inferred that Defendant parked the car in the alley and returned to set it aflame and that his intent in doing so was to prevent his apprehension, prosecution, or conviction for the killing of Mr. Lackey. See *State v. Duran*, 2006-NMSC-035, ¶ 7, 140 N.M. 94, 140 P.3d 515 (explaining that intent is often established by circumstantial evidence). Because the evidence of tampering sufficed, principles of double jeopardy do not bar retrial on that charge.

### B. Conspiracy to Commit Tampering with Evidence

{37} The instructional error also requires us to reverse Defendant's conviction for conspiracy to tamper with evidence. Defendant was convicted of conspiracy to tamper with evidence in violation of Section 30-28-2(B)(3), which makes conspiracy a fourth degree felony when the "the highest crime conspired to be committed is a third degree felony or a fourth degree felony." In concluding that Defendant tampered with evidence of second degree murder, the jury determined that the tampering at issue was third degree tampering with evidence. See § 30-22-5(B)(1). However, the need to reverse Defendant's murder conviction renders the degree of tampering "conspired to be committed" indeterminate. Section 30-28-2(B). "[W]here a jury cannot or does not find the level of the underlying offense," its determination that the defendant tampered with evidence can only support a conviction for misdemeanor tampering with evidence.

*Radosevich*, 2018-NMSC-028, ¶¶ 27-29 (invalidating Section 30-22-5(B)(4) as unconstitutional to the extent that it imposes greater punishment than does Section 30-22-5(B)(3)). Therefore, because of the reversal of Defendant’s murder conviction, the highest degree of tampering he could have conspired to commit was misdemeanor tampering. But conspiring to commit a misdemeanor is not a crime in New Mexico; our conspiracy statute prohibits only conspiracy to commit felonies. *See* § 30-28-2. We therefore must reverse Defendant’s conspiracy conviction. {38} However, as with the tampering charge, principles of double jeopardy do not bar the State from retrying Defendant for conspiracy to commit tampering with a felony because the evidence of conspiracy suffices. The jury instruction for conspiracy described the elements at issue here as (1) “[D]efendant and another person by words or conduct agreed together to commit tampering with evidence[.]” and (2) “[D]efendant and the other person intended to commit tampering with evidence by destroying the Pontiac G6[.]” The evidence we summarized above in relation to the tampering charge amounts to substantial evidence of both elements. Based on that evidence, the jury rationally could have concluded that Defendant and the unidentified person who accompanied him to the gas station and the alley where the Pontiac was parked agreed by words or conduct to set the car on fire with the intent to tamper with evidence. Retrial is permitted.

### III. The District Court Erred by Admitting Officer Acata’s Testimony that a Video Exhibit Depicted Defendant in Possession of a Firearm

{39} Defendant also argues that this Court should reverse his murder conviction because the district court erred by allowing Officer Acata to testify to her interpretation of the surveillance footage and opine, based on that interpretation, about an important and disputed fact: whether Defendant was armed at the ATM. Because we have ordered a new trial on the murder charge, we need not determine whether the admission of the testimony at issue rises to the level of reversible or plain error and therefore warrants a new trial. However, we discuss whether the district court abused its discretion by admitting that testimony, *see State v. Garnenez*, 2015-NMCA-022, ¶ 29, 344 P.3d 1054, because the issue is likely to arise on remand. “An abuse of discretion occurs when [a] ruling is clearly against the logic and effect of the facts and circumstances of the case[.]” *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citation omitted), or when a ruling “indicate[s] a misapprehension of the law.” *State v. Vargas*, 2016-NMCA-038, ¶ 10, 368 P.3d 1232.

{40} The testimony Defendant challenges here was elicited when the State asked Officer Acata to describe what she saw as it played a black-and-white video captured by one of the two ATM cameras—a video that had been admitted into evidence as an exhibit. Officer Acata testified that the surveillance footage showed Defendant “draw a gun” while standing behind Victim at the ATM. Although she expressed her opinion as a matter of fact, Officer Acata came to it by inferring from her “training and experience” that “a dark object” in Defendant’s hand could only have been “one thing.” We agree with Defendant that the district court should not have allowed Officer Acata to testify to her own interpretation of the video evidence because the jury was just as capable as the officer of determining what the video depicted and the officer’s testimony was therefore unhelpful to the jury. {41} Our rules of evidence restrict admissible opinion testimony—from lay witnesses and experts alike—to opinions that benefit the fact-finder’s understanding or help the fact-finder determine a fact in issue. Rules 11-701(B), -702 NMRA. This restriction applies to a witness’s identification of a person or item in a video recording. It may be helpful to a jury, and thus permissible, for a witness to identify a person appearing in a surveillance video if the court is satisfied that the witness is more likely than the jury to make an accurate identification. *See generally* 6 Clifford S. Fishman & Anne T. McKenna, *Jones on Evidence* § 40:12 (7th ed. 2020). This Court accepted this general rule in *State v. Sweat*, 2017-NMCA-069, 404 P.3d 20, adopting the reasoning of the Illinois Supreme Court in *People v. Thompson*, 2016 IL 118667, 49 N.E.3d 393, and holding that a lay witness may identify a person appearing in a video recording when “there is some basis for concluding that the witness is more likely to correctly identify the [person] . . . than is the jury,” where any one of five factors can demonstrate that the witness is more likely than the jury to make a correct identification. *Sweat*, 2017-NMCA-069, ¶¶ 21-24 (quoting *Thompson*, 2016 IL 118667, ¶ 41). Illinois’s appellate courts have extended the general rule in *Thompson* to the identification of objects appearing in video evidence. *See People v. Gharrett*, 2016 IL App (4th) 140315, ¶ 76, 53 N.E.3d 332 (“[L]ay-opinion identification testimony is helpful when some basis exists to conclude that the witness is more likely to correctly identify the object from the surveillance recording than the jury.”). We find *Gharrett*, like *Thompson*, persuasive and conclude that a witness may identify an object appearing in a video when the witness is more likely than the jury to correctly identify the object—i.e., when the witness has a special familiarity with the object.

*See, e.g., id.* ¶¶ 69, 78 (concluding that, because the witness had bundled “\$303 cash on top of some checks” and thus had familiarity with the “particular size and shape” of that bundle, it was helpful to the jury for her to identify a bundle of cash that appeared vaguely in a video as the same bundle she had made); *United States v. Houston*, 813 F.3d 282, 287, 291-92 (6th Cir. 2016) (holding that the district court did not abuse its discretion in permitting a police officer to identify as a “Ruger Mini 14” a firearm that appeared in a video when there was foundation for the officer’s special ability to identify the firearm in his testimony that his relative owned a Ruger Mini 14).

{42} Applying these principles, we hold that Officer Acata’s testimony was unhelpful to the fact-finder because there is no basis for concluding that Officer Acata was more likely than the jury to correctly determine whether the video shows Defendant holding a handgun. Because a handgun is an ordinary object, and Officer Acata had no special familiarity with the visual appearance of the handgun in question, she was no more likely than the jury to be able to accurately determine whether a handgun was visible in the video, which had been admitted into evidence. Officer Acata’s *belief* that Defendant was armed has no bearing on what the video shows, and it was improper for her to testify that the video shows Defendant holding a gun; what the video does or does not depict was for the jurors to determine for themselves. *Cf. State v. Finan*, 881 A.2d 187, 193-94 (Conn. 2005) (stating that it had been improper to admit the testimony of several police officers purporting to identify the defendant in a surveillance video based on the officers’ “suspicion” that a man appearing in the video was the defendant). “A witness, lay or expert, may not form conclusions for jurors that they are competent to reach on their own.” *People v. McFee*, 2016 COA 97, ¶ 76, 412 P.3d 848. Here, the jury was competent to draw its own conclusion about whether the video depicts Defendant armed with a gun at the ATM, and Officer Acata was in no better position than the jury to draw those conclusions because she was not present on the night of the incident and therefore had no opportunity to observe whether Defendant was armed and because the record does not establish that she had knowledge of anything idiosyncratic about Defendant or his belongings. *See Mitchell v. State*, 641 S.E.2d 674, 677 (Ga. Ct. App. 2007) (explaining that it is “improper to allow a witness to testify as to the identity of a person in a video or photograph when such opinion evidence tends only to establish a fact which average jurors could decide thinking for themselves and drawing their own conclusions” (internal quotation marks and citation omitted)); *McFee*, 2016

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# A Call to *Serve*

*Chief Justice C. Shannon Bacon*

**I** appeal to all members of our legal community to support the efforts outlined below to ensure justice for all New Mexicans in these challenging times. We have made progress. Over 78% of New Mexicans have completed a primary series of COVID-19 vaccinations, and 46.3% have received a booster shot. Businesses have been able to resume activity, and schools and childcare centers have reopened.

However, the pandemic-constrained economy coupled with strong demand has resulted in increasing prices for consumers. Adding to this, the war in Ukraine has incited a supply shock that has increased energy and food prices. Collectively, the impact of these economic effects has been significant, particularly on low-income New Mexicans.

Historically, when people feel the effects of an economic downturn, their lives become increasingly vulnerable to legal problems like eviction, foreclosure, debt collection, loss of benefits, and domestic violence. The human impact in such cases can be very serious. Losing your home. Losing your benefits that keep you alive. Filing for a restraining order to protect yourself or loved ones from domestic violence. During the pandemic, the New Mexico Supreme Court realized that a wave of new civil legal cases—wherein parties may not fully understand their legal rights, let alone have the means to afford legal representation—was unavoidable. Accordingly, the Supreme Court and the New Mexico Access to Justice Commission (ATJ Commission) have initiated additional steps to alleviate the impact of these types of cases. **Please join us in these efforts.**

The legal community must ensure that all New Mexicans have the necessary resources to access the judicial system and to receive equal application of the law. Eliminating barriers to the civil legal system that deny justice and keep people in poverty, such as socioeconomic and racial inequities, is our shared legal and moral obligation. The ATJ Commission supports this mission by connecting people with the legal resources they need.

The ATJ Commission is an independent, statewide body dedicated to expanding and improving civil legal assistance to



New Mexicans living in poverty. The ATJ Commission's goals include expanding resources, increasing public awareness of the need for civil legal assistance, and encouraging more pro bono work by attorneys. The ATJ Commission works with stakeholders to connect them with resources such as self-help centers within the courts and connection to appropriate civil legal service providers. These legal service providers provide

legal assistance or representation at little to no cost. These nonprofit organizations manage over 20,000 cases each year.

Recently, the ATJ Commission conducted four (virtual) community listening sessions with representatives from community organizations in Silver City, Truth or Consequences, Las Vegas, and Shiprock to learn more about the civil legal needs in these communities and how to better partner with non-legal organizations. In response, the ATJ Commission produced informational webinars, accessible on its website, about civil legal topics, including public benefits, foreclosure and eviction, immigration issues and resources, and expungement. The most recent webinar, presented on March 23, 2022, addresses agricultural workers' rights and resources.

The ATJ Commission has engaged a public relations firm, Carroll Strategies, to inform the public about assistance available through New Mexico Legal Aid, and has collaborated with a national organization, Voices for Civil Justice, to develop a campaign, "1000 Lawyers for 1000 Cases," that will encourage pro bono assistance, particularly with pandemic-related legal needs. The ATJ Commission continues to collaborate with the Second Judicial District's Pro Bono Committee and New Mexico Legal Aid to provide twice-monthly tele-clinics for self-represented litigants. The telephone-based format allowed volunteer attorneys to assist people outside the Albuquerque area, greatly expanding access. In 2021, these clinics served 167 people.

The ATJ Commission also spearheaded the Court Navigator Pilot Project in Lea County and within the Second Judicial District to assist litigants there with the judicial process. With time, the Supreme Court hopes to expand the Court Navigator Project to additional courts.

*continued on page 5*

# Meet the Lawyers

## Stepping Up to Pro Bono Work

*The Access to Justice Commission would like to extend its sincere thanks and gratitude to the lawyers who are taking on pro bono work as a regular part of their practice. Two attorneys, who have committed to maintaining a pro bono caseload as a regular part of their practice, share their insight during a recent interview, on how to enrich access to justice in New Mexico.*



### Leslie McCarthy Apodaca

RODEY, DICKASON, SLOAN,  
AKIN & ROBB, P.A.

#### Tell us about your legal practice in New Mexico.

I am a Director at Rodey, Dickason, Sloan, Akin & Robb, P.A. My practice there focuses on general commercial

litigation and particularly class action cases and business disputes.

#### How did you get involved in pro bono work?

At the beginning of my career, I worked at a firm in Phoenix, Arizona with a strong pro bono culture. There, I would do over 200 hours a year of pro bono work. At that time, I was doing a variety of pro bono matters, including asylum cases for immigrants fleeing violence in Guatemala and El Salvador and matters for Planned Parenthood. When I came to New Mexico and began my work with the Rodey firm, one of the firm's partners, John Robb, was a huge proponent of pro bono work and providing legal services for the poor. He had a big impact on me, and many other attorneys at Rodey, and helped reaffirm my commitment to serving pro bono clients.

#### How do you get involved in pro bono work and cases?

Throughout my years of practice, I have gotten involved in pro bono cases through the State Bar referral program and for a number of poverty law initiatives that were supported by John Robb. However, since the 2016 election, I have been doing most of my pro bono work by volunteering with the New Mexico Immigrant Law Center (NMILC). I assist the NMILC by preparing U-Visa applications as well as going to court to obtain court orders necessary for the immigration attorneys. For example, I may have to go to family court and obtain a custody order for a single parent when the other parent is not in the United States. It is necessary piece of the application for a child to obtain special juvenile immigrant status.

#### How often do you have a pro bono case on your case load?

I almost always have at least one pro bono case on my case load.

#### How do you balance your pro bono work with your practice?

I treat my pro bono cases like any other case and make it happen. You can't think about it as different from your other cases – this person is just another client. You just have to get it

done, like everything else. Also, the associates at our firm get credit toward their billable hours for the time they spend on pro bono cases, in addition to other incentives.

#### What pro bono experiences have stood out for you?

Earlier in my career I was able to obtain asylum for two people from El Salvador who were fleeing the violence there. My clients were able to stay and be safe in the United States because of my legal work, which was obviously life-changing for them and very rewarding for me.

#### What would you say to encourage our colleagues to do pro bono work?

It is really easy not to do pro bono work because lawyers are always "too busy". Lawyers are always working more hours, giving up their nights, and working weekends. But once you get into the habit of doing it, you find that you really can fit this work in. The psychic and emotional rewards are enormous. In working on a discrete issue for a person in need, you can actually make a difference in their life. ■



### Meredith Baker

LAW OFFICE OF  
MEREDITH BAKER, LLC

#### Tell us about your legal practice in New Mexico.

I have my own law firm and am a solo practitioner. My practice includes family law, particularly divorce and custody proceedings and I often will serve as a Guardian Ad Litem for children in those cases. I also do federal criminal defense work.

#### How did you get involved in pro bono work?

Brian Colón was a big part of how I began doing pro bono work in New Mexico. In 2012 I had just moved to New Mexico from California and I met Brian. I watched Brian mentor people and he invited me to do some pro bono work with him. Growing up, community service was an important part of my life. However, I had always done community service through music as I was a musician. As an attorney, pro bono work became an easy way for me to continue my commitment to community service. Through pro bono, there was a structure in place for me to give back in a meaningful way.

### How do you get involved in pro bono work and cases?

I often participate in the pro bono clinics that Judge LaMarr runs in Santa Fe as well as those put on by Judge Levy in Albuquerque. There is also a pro bono clinic just for mediation which I sign up for as well. In addition, I receive requests directly from Legal Aide. The organization provides me with a synopsis of the issue and asks if I can take on the limited representation. Finally, I have been appointed by a few of the judges in Albuquerque as a Guardian Ad Litem in a kinship guardianship proceeding to serve in a pro bono capacity when the parties are unable to pay.

### How often do you have a pro bono case on your case load?

Currently I have approximately 5 pro bono cases. They are a mix of representing a party and serving as a court appointed Guardian Ad Litem. My pro bono work usually amounts to approximately 20 to 30 hours per month.

### How do you balance your pro bono work with your practice?

Representing persons without the ability to pay for legal services is an important priority for my business. It is also important work for my staff who share my values of serving the community. Also, I like to hire law clerks from the law school to help me in my practice. Rather than focusing on a students' grades or writing sample, I want to know about their dedication to the

community and to pro bono work. With a team of people who all feel this work is important, we are able to work hard on both our fee generating cases as well as work equally hard on the pro bono cases.

### What pro bono experiences have stood out for you?

I participated in a legal clinic in Santa Fe. At the clinic, they give you the option of if you want to take a case on after the clinic and to continue to assist the person in need. I decided to take on two clients who were victims of domestic violence and were struggling with trying to locate their spouses to serve them with legal paperwork. Both of these clients were monolingual Spanish speakers and they were struggling not only with the stress of their legal problems, but also with it being incredibly overwhelming to communicate and get help through access to legal help in their own language. My paralegal assisted with translation for these clients. I was able to get the legal work done for them and they also had access to a lawyer with whom they could communicate.

### What would you say to encourage our colleagues to do pro bono work?

You get what you give. As you give your time and expertise to those in need, your life will become enriched in important ways. ■

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## A Call to Serve *continued from page 3*

The Supreme Court is equally committed to access to justice. As a Court, we have connected our most vulnerable citizens to civil legal service providers and provided vital resources necessary for their cases. Some highlights of the Judiciary's work during past two years include:

- A new court-based program, the Eviction Prevention and Diversion Program, to assist New Mexicans facing eviction during the pandemic and to provide property owners with an alternative to evicting tenants unable to pay their rent. This program connects tenants and property owners with mediators and with the Emergency Rental Assistance Program's \$170 million in emergency rent payments. The Program will serve New Mexicans statewide by July 8th of this year.
- New court rules encouraging mortgage servicers to work with borrowers to try to prevent foreclosures.
- Expansion of the Volunteer Attorney Program to serve a larger number of New Mexicans in need.
- Leveraging technology to expand virtual appearances, making it easier for self-represented litigants to appear in court and for attorneys to engage in pro-bono representation statewide.
- Expanding the ability of self-represented litigants to electronically file pleadings.

When people have access to legal resources such as plain language forms, legal advice, self-help centers, or a pro-bono attorney,

they are empowered with knowledge about their full rights and the legal process, giving them access to the justice they deserve. Such access is also the focus of a Supreme Court-convened task force examining and addressing the lawyer shortage in rural New Mexico, as well as assessing the effects of the pandemic and the economic downturn. The lack of lawyers in rural New Mexico bolsters the need to make sure people are aware and knowledgeable about available legal services. New Mexico has large "legal deserts," where there are few to no options for legal representation in civil matters. For instance, three New Mexico counties do not have a single practicing lawyer, and more than one-third of the state's counties have ten or fewer attorneys.

This scarcity is a critical backdrop for the development of innovative programs and of partnerships with service providers to ensure access to justice. We need attorneys who have not engaged in pro bono services to step up to the plate and say, **"I'll take a case and I'll help out."**

I have pledged to continue to work with the ATJ Commission as Chief Justice of the Supreme Court to expand resources for all New Mexicans with civil legal needs. I hope that members of our bar will support, as a basic and ethical service, full access to justice for all New Mexicans, through removal of legal roadblocks to the basic needs of food, shelter, energy, and government benefits. Fortunately, critical information on how to volunteer your time and resources is easily available at [accesstojustice.nmcourts.gov](https://www.accesstojustice.nmcourts.gov). ■

# When Limited Legal Representation Makes a Big Difference

*While the COVID-19 pandemic impacted us all, many New Mexicans also suffered severe financial devastation. As a result of people being unable to work, many New Mexicans had to utilize the benefits and assistance meant to serve as a safety net for the people in our state and in some cases barriers and challenges frustrated the purpose of this safety net. We share three stories of circumstances in which an attorney's limited scope of representation and work on an isolated issue, led to a tremendous impact on the clients' lives.*

## Error From Unemployment Benefits

Client Gerges was a Lyft and Uber driver. In March of 2020, the COVID-19 pandemic hit, and the State of New Mexico implemented a shutdown of all but essential workers. As a result, Mr. Gerges went from having a livable income stream to almost no income whatsoever due to the shutdown. For the first time in his life, Mr. Gerges sought government assistance and applied for unemployment benefits. He had never gone through this process before and was careful to correctly complete the paperwork and provide the Department of Workforce Solutions with all necessary information. Based on his application, the government determined he was entitled to \$461 per week in unemployment benefits.

However, after some time, the state labor department made a mistake on Mr. Gerges file, resulting in a significant overpayment to him. When the department recognized an overpayment had been made, it immediately cut him off from receiving any unemployment benefits. The state also began to recoup Mr. Gerges ongoing benefits prior to providing him any avenue to appeal the decision. Once the state exhausted Mr. Gerges' ongoing benefits in the recoup it determined that he still owed the state over \$10,000 and prepared to send the illegal debt to collections.

Mr. Gerges was fortunate to have been referred to the New Mexico Center for Law and Poverty, whose attorneys undertook legal representation on his behalf. The Center for Law and Poverty's lawyers advocated for the state to adopt a federal option to waive overpayments that were caused by the state agency (i.e., those made through no fault of the party receiving the benefits). Through this legal advocacy and effort, Mr. Gerges successfully obtained a waiver for the overpayment and was not sent to collections for an illegal debt created by the state agency's error.



## Denial of Medicaid and SNAP Benefits

Client Sanchez<sup>1</sup> is a survivor of domestic violence and has immigration status under the Violence Against Women Act. As a result of significant economic hardship Client Sanchez became homeless during the COVID-19 pandemic and applied for Medicaid and the Supplemental Nutrition Assistance Program. His immigration status, along with his income level, met the

criteria for him to qualify for the needs-based food and medical assistance he sought. Despite clearly qualifying for these critical forms of assistance, the government improperly denied his application for Medicaid and SNAP.

Fortunately, Mr. Sanchez was able to receive assistance from an attorney with the New Mexico Center for Law and Poverty who was able to assist him in the limited scope of appealing the denial of these benefits. Despite Mr. Sanchez being represented by counsel and being a monolingual Spanish speaker, the state called him (without his attorney present) and, in English, convinced him to withdraw his appeal. Through the efforts of his lawyers with New Mexico Center for Law and Poverty, Mr. Sanchez's appeal was reinstated and ultimately, he was awarded Medicaid and SNAP. This limited engagement and advocacy by the New Mexico Center for Law and Poverty resulted in Mr. Sanchez receiving the critical benefits of food and medical care to which he was entitled.

## Denial of TANF Benefits and Kinship Guardianship Help for Grandparents Raising Grandchildren

Mr. and Mrs. Smith<sup>2</sup> began raising their three young grandchildren who were placed with them following intervention by the Children, Youth and Families Department (CYFD) as the children's mother was unable to keep them safe and meet their needs due to drug addiction. Through that process, Mr. and Mrs. Smith obtained legal guardianship over

*continued on page 10*



# New Mexico Needs YOU to Take on a Pro Bono Case

**L**ast year, civil legal service providers in New Mexico handled approximately 20,000 cases, benefiting approximately 40,000 people. These providers included Legal Aid, NM Center on Law and Poverty, Pegasus, Catholic Charities, Enlace Comunitario, Disability Rights NM, Southwest Women's Law Center, United South Broadway Center, NM Immigrant Law Center, Native American Disability Law Center, Senior Citizens' Law Center, and KWH Law Center. Despite the incredible work undertaken by these civil legal service providers and other volunteers a large percentage of New Mexicans are still without access to the civil justice system.

The New Mexicans who received legal assistance comprised less than 20% of those with needs as tens of thousands of New Mexicans cannot afford the legal help they need for critical life challenges nor have their civil legal needs met by the limited amount of resources. This lack of access to the civil justice system is compounded in rural areas of the state as there are counties in New Mexico with no lawyers at all. Other counties have just a handful of practicing attorneys and often those attorneys only handle criminal cases. Without additional help, the most vulnerable populations in New Mexico will be unable to access necessary legal help for ensuring access to essential needs such as food, housing, safety, economic security and healthcare.

While even before March, 2020 the need for access to civil legal services was great, the COVID-19 pandemic has caused the number of people with civil legal needs to increase significantly. As more people are applying for government benefits like unemployment, Medicaid, TANF, and SNAP, there are more people with legal issues associated with the application of those benefits. Vulnerable populations which may have been 'getting by' prior to COVID-19 were critically impacted by lockdown, shortages, and the closure of many small businesses. Families were also impacted by the loss of service providers and other resources which could not maintain during lockdown.

**"There simply are not enough resources to address the tremendous need for access to the civil justice system by New Mexicans."**

Early on in the pandemic, a moratorium or stay was placed on eviction proceedings and some foreclosures. There was a recognition that the financial impact was going to impact many people and it would be better for the community to ensure that people not lose housing during the pandemic. Those stays are lifting and the courts anticipate a large increase in the number of eviction and foreclosure filings. The NM Supreme Court, in collaboration with state agencies, local movements, property owners, housing advocates, and civil legal service providers, is implementing the Eviction Prevention and Diversion Program

to address the anticipated influx of eviction cases. The program, in addition to settlement facilitation, directs both landlords and tenants to available emergency rental assistance to try to help ensure tenants who have fallen behind do not become homeless while making landlords whole. However, even with the Eviction Prevention and Diversion Program's implementation, there is still a serious need for legal representation for those facing eviction.

In addition to financial legal issues, New Mexicans are also facing legal issues regarding children and families. People are put into a position in which they have to worry about how to protect the children in their lives when they cannot afford legal help. Currently,

Pegasus Legal Services for Children has a four month wait. "That means it takes four months just to have an intake done and even speak with an attorney", explains Mariel Willow, a staff attorney with Pegasus. The organization now has three full time attorneys dedicated to kinship guardianship cases and it is still unable to meet the current needs. The needs and this wait list will likely increase by August as children return to school as there will be more eyes on them, resulting in an increase in identified legal issues. Willow explained that Pegasus takes kinship guardianship cases statewide and is one of the primary providers of legal services in this area. "Many of the children for these kinship guardianship cases we are handling have been

*continued on page 10*

# How Can I Help

## FILL THE GAP

# in Access to the Civil Justice System?

*“A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”*

— Preamble to the New Mexico Rules of Professional Conduct

From the start of law school to the passing of the bar, each of us attorneys gained training and skills to utilize our legal system to solve problems for community members. For many New Mexicans access to this legal system is not a reality, they lack the financial resources to hire an attorney. New Mexico is fortunate to have many civil legal service organizations which provide free legal representation, including, but not limited to: Legal Aid; NM Center on Law and Poverty; Pegasus Legal Services for Children; and Disability Rights New Mexico. These organizations work hard every single day to serve New Mexicans who cannot afford counsel and otherwise lack meaningful access to the civil justice system. They cannot do it alone. No matter how hard they try, the level of need is too great for these organizations, to have the capacity and ability to serve all of those in need. Each of us must step forward and help in this effort and invest our time in assuring that everyone has equal access to the civil justice system.

There are many ways you can help, even with a limited time investment, in a meaningful way that will positively impact our community and ensure greater access to the civil justice system



### 1. Sign up for the Volunteer Attorney Program

Volunteer Attorney Program (“VAP”) is a program run by New Mexico Legal Aid in partnership with the State Bar of New Mexico and New Mexico’s 13 Judicial

District Pro Bono Committees. VAP connects low-income New Mexicans with members of the private bar. In signing up for VAP, you will receive an email when Legal Aid needs to find an attorney to consult with and possibly undertake representation of the pro se client. You are not obligated to take on the case, but rather have the opportunity to agree to consult and the option to provide limited representation.

**Contact VAP at 1-866-416-1922 or VAPreferrals@nmlegalaid.org.**

While the impulse to turn down a case that is outside of your area of expertise may be automatic instead pause and

consider whether, with the support of other persons who have expertise in the area of law, if it is a case you could take on. Your willingness to expand your wheelhouse can bring some relief to the pro bono client who may otherwise lacked any realistic legal remedy. There are many resources to help you navigate legal issues involving family law, landlord-tenant/housing, public benefits, expungement, unemployment, consumer/bankruptcy, wills/probate, contracts, and immigration at: <https://www.sbnm.org/For-Public/Other-Legal-Service-Providers>. The additional effort to expand your practice area can not only assist the pro bono client but it can also enrich your practice.



### 2. Sign up for A Legal Clinic Hosted in Your County or a Tele-Clinic.

The NM State Bar has information on upcoming legal clinics here:

<https://www.sbnm.org/For-Public/Workshop-Legal-Clinics>.



### 3. Partner Up

Reach out to your colleagues, partners, and associates to team up on working on a pro bono case together. Take on a VAP case with your State

Bar mentee and start the culture of pro bono work from their first year as a lawyer.



### 4. Volunteer Your Mediation and Guardian Ad Litem Services

In addition to pro bono legal representation, pro bono mediators are in significant need throughout the State of New Mexico. Courts throughout the State of New Mexico face significant shortages of attorneys to provide necessary Guardian ad Litem services in guardianship and family law cases. Contact the Court Appointed Attorney Program ([aoccaaff@nmcourts.gov](mailto:aoccaaff@nmcourts.gov)) or your local district court to volunteer.



## 5. Give Financial Contributions to Organizations Supporting Legal Service Providers

You can make financial contributions to the following organizations that support or provide direct civil legal services to New Mexicans:

- ▶ **Catholic Charities:** <https://www.ccasfnm.org/>
- ▶ **Disability Rights NM:** <https://drnm.org/>
- ▶ **Enlace Comunitario:** <https://www.enlacenm.org/>
- ▶ **Equal Access to Justice:** <https://www.eaj-nm.org/>
- ▶ **KWH Law Center:** <https://www.kwhlawcenter.org/>
- ▶ **Native American Disability Law Center:** <https://www.nativedisabilitylaw.org/>
- ▶ **NM Center for Law and Poverty:** <http://nmpovertylaw.org/>
- ▶ **NM Immigrant Law Center:** <https://www.nmilc.org/?locale=en>
- ▶ **NM Legal Aid:** <https://www.newmexicolegalaid.org/>
- ▶ **Pegasus Legal Services for Children:** <https://pegasuslaw.org/>
- ▶ **Senior Citizens' Law Office:** <http://sclonm.org/>
- ▶ **Southwest Women's Law Center:** <https://swwomenslaw.org/>
- ▶ **United South Broadway:** <https://www.unitedsouthbroadway.org/>



## 6. Change Your IOLTA Account to A Bank in The Leadership Circle

The interest on your IOLTA account is distributed by the Access to Justice Fund Grant Commission to fund civil legal service providers in New Mexico. Banking institutions in the "Leadership Circle" have committed to providing a significantly higher interest rate on attorney IOLTA accounts, resulting in more money to fund these important civil legal service providers. Banks in the Leadership Circle include:

- ▶ **Wells Fargo**
- ▶ **Enterprise Bank & Trust**
- ▶ **Century Bank of Santa Fe**
- ▶ **Pinnacle Bank**
- ▶ **BMO Harris**

There are many ways that we can help support efforts to ensure access to the civil justice system. If we each commit to doing at least one of the items listed above, we would make a significant impact on making sure each New Mexican has access to the civil justice system while complying with our professional obligations as attorneys. ■

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## When Limited Legal Representation Makes a Big Difference *continued from page 6*

these children, however the guardianship was not subsidized. To help them raise three young children, Mr. and Mrs. Smith applied for Temporary Assistance for Needy Families (TANF), which provides a monthly cash benefit to meet basic family needs such as housing, utilities and clothing.

In the spring of 2020, Mr. and Mrs. Smith received notification from the State of New Mexico that their TANF benefits were being suspended because they had not complied with filling out a form required by the Child Support Enforcement Division. Despite their attempts to contact the two different agencies responsible for this issue, Mr. and Mrs. Smith's benefits were suspended.

Concurrent to learning of their TANF benefits being stopped, the Children, Youth & Families Department contacted Mr. and Mrs. Smith as their daughter had another young child whose needs were not met due to the mother's drug addiction. Mr. and Mrs. Smith, on a fraction of the income they had prior to their TANF cutoff, now had another young child to raise. Even though Mr. and Mrs. Smith were fulfilling the critical role of raising four young children (a role that would have been left for the State of New Mexico through its foster care program had these

grandparents not been able to be a resource), they were severely financially stressed and quickly running out of their savings.

The Smiths were able to obtain pro bono legal representation of a private attorney. This attorney guided them through participating in the reinstatement process. Ultimately their legal counsel was able to prevail and have their TANF benefits reinstated and increased, as they had taken on another child to feed, clothe, and care for. In addition, their legal counsel assisted them in obtaining kinship guardianship over the youngest child. The grandparents were frightened that without legal guardianship the child's mother would reach out to law enforcement and try to get the child from them as they had no legal rights—without a formal guardianship order by the court. Mr. and Mrs. Smith endured significant hardship and stress as a result of the suspension of their benefits as well as the fear of their grandchild's mother taking the youngest child away. With some legal help and attention, within a few months, both the financial and custodial stressors were able to be solved for them. ■

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### Endnotes

<sup>1</sup> This Client's name has been changed to protect his identity.

<sup>2</sup> The Clients' names have been changed to protect their identity.

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## New Mexico Needs You to Take a Pro Bono Case *continued from page 7*

orphaned from a parent or guardian dying from COVID-19." A report issued by the Covid Collaborative in December of 2021 estimated that New Mexico ranked high in "COVID-19 bereaved children" and in particular identified significant impact for American Indian or Alaska Native (AI/AN) children. Due to the wait families have to wait four months just to get the process started which is four months without the caregiver having legal status to obtain services for the child and leaves them unable to provide legal protections for the child.

Pegasus also notes an increase in cases from youth who are seeking emancipation or who have either been kicked out of their home or have run away from an abusive home and lack shelter or other supports. Additionally, there has been significant rise in youth who identify as transgender seeking legal assistance where their parent or guardian is not accepting of their identity or needs including emotional support, stability, and/or medical care as a part of their transition. Five to ten percent of the cases that come into Pegasus originate from a young person identifying a need related to LGBTQ challenges.

Finally, Pegasus receives a significant number of calls for legal assistance for a service it does not provide – Guardian ad Litem in custody dispute cases. There is an incredible need for attorneys to agree to serve as a Guardian ad Litem in custody cases in order to provide unbiased insight to the court regarding the best interest of the children during a custody dispute. People with little to no financial resources get divorced and have custody disputes as frequently as those with the financial resources to pay for a Guardian ad Litem.

There simply are not enough resources to address the tremendous need for access to the civil justice system by New Mexicans. New Mexico's civil legal service providers, despite their incredible and nonstop work efforts, are only able to cover a fraction of the identified need. New Mexico needs more attorneys willing to take on pro bono cases which will assist with providing access to the civil justice system. ■

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# Help New Mexico Wildfire Victims

In partnership with the **Federal Emergency Management Agency** and the **American Bar Association's Disaster Legal Services Program**, the **State Bar of New Mexico Young Lawyers Division** is preparing legal resources and assistance for survivors of the New Mexico wildfires.

## **A free legal aid hotline will be available soon and we need volunteers!**

Individuals who qualify for assistance will be matched with New Mexico Lawyers to provide free, limited legal help.

- › Assistance with securing FEMA and other benefits available to disaster survivors
- › Assistance with life, medical, and property insurance claims
- › Help with home repair contracts and contractors
- › Replacement of important legal documents destroyed in the disaster
- › Assistance with consumer protection matters, remedies, and procedures
- › Counseling on landlord/tenant and mortgage/foreclosure problems

## **Volunteer Expectations**

Volunteers do not need extensive experience in any of the areas listed below. FEMA will provide basic training for frequently asked questions. This training will be required for all volunteers. We hope volunteers will be able to commit approximately one hour per week.

Visit [www.sbnm.org/wildfirehelp](http://www.sbnm.org/wildfirehelp) to sign up.  
You can also contact Lauren E. Riley, ABA YLD District 23,  
at 505-246-0500 or [lauren@batleyfamilylaw.com](mailto:lauren@batleyfamilylaw.com).



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COA 97, ¶¶ 75-76 (reasoning that the jury “was in precisely the same position” as a detective in its ability to interpret the audio of a video recording where the detective did not witness the statements on the recording firsthand and had no special familiarity with the speaker’s voice that made him more able to discern the recorded statements); *Gordon v. Commonwealth*, 916 S.W.2d 176, 179-80 (Ky. 1995) (holding that it was error to allow a witness to interpret a mostly inaudible audio recording rather than testify from personal recollection because it was “for the jury to determine as best it [could] what [was] revealed in the . . . recording without embellishment or interpretation by a witness”); see also 1 Kenneth S. Broun et al., *McCormick on Evidence* § 11 (8th ed. 2020) (“[B]efore admitting a lay witness’s inference, the judge must not only be convinced that the witness possesses firsthand knowledge about the topic of the opinion; the judge must also conclude that it is impractical for the witness to verbalize the underlying facts to the extent that the lay jurors themselves would just as readily decide whether to draw the inference.”).

{43} To the extent the State argues that Officer Acata’s testimony was helpful to the jury because her “law enforcement experience” made her more able to detect a concealed firearm, we disagree. Officer Acata did not testify to any specific experience that makes her particularly adept at detecting concealed firearms, and we have no basis to conclude that general experience in law enforcement gives one that skill. We thus conclude that, under the circumstances here, it was not helpful to the jury for Officer Acata to provide her interpretation of the video and that the admission of her interpretation was therefore an abuse of discretion.

#### IV. The Timing of Defendant’s Trial Did Not Violate the IAD

{44} Defendant argues that the district court erred by denying his motion to dismiss all of the charges with prejudice because his trial occurred outside of the 180-day time period generally prescribed by the IAD and because there was not good cause for a continuance. We hold that the district court acted within its discretion by granting the continuance and that the IAD therefore did not require the district court to grant Defendant’s motion to dismiss.

{45} Under the IAD’s speedy trial provisions, “if a prisoner demands disposition he must be brought to trial within 180 days of the delivery of the demand unless there is a continuance or tolling as determined by the court having jurisdiction of the matter. If he is not, his charges are to be dismissed with prejudice.” *State v. Aaron*, 1984-NMCA-124, ¶ 8, 102 N.M. 187, 692 P.2d 1336; see *NMSA 1978*, § 31-5-12, art. 3(A) (1971) (requiring that trial be held within 180 days unless a continuance is granted); § 31-5-12, art. 5(C) (providing that the remedy for a speedy trial violation is dismissal with prejudice). The IAD permits “necessary or reasonable continuance[s]” if they are based on “good cause shown in open court” in the presence of “the prisoner or his counsel[.]” Section 31-5-12, art. 3(A).

{46} When reviewing a trial court’s determination that good cause justified a continuance, we consider the totality of the circumstances. *State v. Livernois*, 1997-NMSC-019, ¶ 26, 123 N.M. 128, 934 P.2d 1057. Reversal is only warranted if the trial court abused its discretion. See *State v. Hill*, 760 S.E.2d 802, 807 (S.C. 2014) (“[W]e will reverse a circuit court’s decision to grant a continuance under the IAD only when it amounts to an abuse of discretion.”); accord *Harper v. State*, 472 A.2d 473, 475 (Md. 1984); *Johnson v. Commonwealth*, 450 S.W.3d 696, 701 (Ky. 2014), *abrogated on other grounds by Roe v. Commonwealth*, 493 S.W.3d 814 (Ky. 2015).

{47} We assume for argument’s sake,<sup>2</sup> as Defendant requests, that the 180-day period began on June 22, 2017, when the State filed an Agreement on Detainers, Form 7 in the metropolitan court. Under that assumption, the IAD deadline for trial was in December 2017, but the trial in the murder case did not occur until September 2018. The question before us then is whether the district court abused its discretion by concluding that there was good cause to conduct the trial approximately nine months after the 180-day period expired. We hold that it did not. Because of the complexity of the case and the volume of discovery, the district court acted within its discretion by setting the trial when it did.

{48} Under the IAD, the complexity of a case is an appropriate factor for courts to consider in setting a trial date. See *United States v. Whiting*, 28 F.3d 1296, 1307-08 (1st Cir. 1994) (recognizing that the complexity of a case is a valid consideration in determining whether to grant a continuance under the IAD); *Hill*, 760 S.E.2d at 807-08 (holding that the trial court did not abuse its discretion in concluding that there was good cause for a continuance under the IAD based in part on the complexity and magnitude of the case, which involved a double murder and a first degree burglary). And in Defendant’s case, a local rule of the Second Judicial District Court, Rule LR2-308(G)(3) NMRA (2017), required the district court to consider “the complexity of the case” and “the number of witnesses” as well as “the time needed reasonably to address any evidentiary issues[.]” The court did just that during a scheduling conference on September 28, 2017, finding that the case involved “voluminous discovery” and “numerous witnesses,” including experts.<sup>3</sup> Based on these findings, the court set trial for September 24, 2018, and ordered, among other things, that the parties complete witness interviews by July 20, 2018. In a series of subsequent motions, the State asked the district court to enter orders concluding, under the IAD, that good cause justified holding trial beyond the 180-day mark and asked the court to extend pretrial deadlines. The State’s reasons included the complexity of the case, consistent with the court’s findings at the outset, plus two changes of defense counsel, one in February 2018 and the second in June 2018. The State contended (and Defendant did not dispute) that each time Defendant changed counsel, the State was required to cancel pretrial interviews that had been scheduled and then reschedule those interviews with substitute counsel, which delayed the interviews and made it impossible to complete them by the July 2018 deadline the district court originally set. The court extended the pretrial motion deadlines and allowed the State until October 23, 2018, to bring the case to trial. The court held Defendant’s trial in September 2018, and we see no basis for concluding that this violated the IAD.

<sup>2</sup> We make two additional assumptions in favor of Defendant: (1) that he properly activated the IAD’s 180-day deadline; and (2) that his acquiescence, during the scheduling conference, to the district court setting his trial for September 2018 did not constitute a waiver of his speedy trial right under the IAD and did not toll the 180 days for any period of time.

<sup>3</sup> Defendant does not challenge these findings on appeal. The State points out that it identified over 100 witnesses, including an expert from the Office of the Medical Investigator. Defendant contends that prosecutors often identify far more witnesses than they actually intend to call, and that this results in an excessive number of pretrial interviews and unnecessary delay. To the extent that Defendant is inviting us to conclude that the prosecution listed an excessive number of witnesses in his case, his argument is unpreserved. See Rule 12-321(A) NMRA. Because Defendant does not argue that we should address the issue under any exception to the preservation requirement, we decline to do so.

We hold that the district court acted within its discretion by concluding that the complexity of the case and the need to complete pretrial interviews of the State's witnesses amounted to good cause for a continuance and that the court therefore did not err by denying Defendant's motion to dismiss.<sup>4</sup>

#### CONCLUSION

{49} We reverse Defendant's convictions for second degree murder, tampering with evidence, and conspiracy to commit tampering with evidence, and we remand for a new trial. We affirm in all other respects.

#### {50} IT IS SO ORDERED.

ZACHARY A. IVES, Judge

WE CONCUR:

J. MILES HANISEE, Chief Judge (concurring, writing separately)

SHAMMARA H. HENDERSON, Judge

HANISEE, Chief Judge (concurring, writing separately).

{51} I write separately<sup>5</sup> to address the aptly named doctrine of "imperfect" self-defense. The defense is factually imperfect in that a defendant who unreasonably fears or acts in fear of death or great bodily harm may nonetheless receive a step-down instruction from murder to which he would not otherwise be entitled. It is legally imperfect, in my view, because the defense's generic factual applicability is not curtailed under New Mexico law to eliminate its usage when felony murder is at issue, or more to the point as demonstrated by the facts of this case, where an initial aggressor begins a dangerous felony which culminates in the death of his chosen victim or of someone that acts to prevent the occurrence of the planned crime. It is the role of either our New Mexico Supreme Court or the New Mexico Legislature to repair imperfections in law, and I urge either or both to do so.

{52} A brief examination of sensible limitations placed on the availability of general—that is to say, reasonable, or "perfect"—self-defense in New Mexico, and then of other jurisdictions' similar such restriction to the availability of imperfect self-defense, reveals an approach that makes vastly more sense, and is more consistent with our Legislature's differing treatment of murders paired with underlying felonies, than does the outcome in this case.

First, our Supreme Court has held that a "claim of self-defense may fail if the defendant was the aggressor or instigator of the conflict." *State v. Lucero*, 1998-NMSC-044, ¶ 7, 126 N.M. 552, 972 P.2d 1143 (internal quotation marks and citation omitted). In *Lucero*, the defendant followed rival gang members to a vacant lot, discharged a gun into the air, and the rival gang members returned fire. *Id.* ¶¶ 8-9. The Court held that the defendant was the first aggressor, and as the instigator of conflict, was precluded from claiming self-defense as a justification or excuse for the shootings which occurred during the ensuing gun battle. *Id.* ¶ 9; *State v. Emmons*, 2007-NMCA-082, ¶¶ 12-13, 141 N.M. 875, 161 P.3d 920, (holding that a defendant who threatened repo men at gun point was not entitled to a self-defense instruction where the evidence reflected that the defendant was the initial aggressor and that there was no appearance of immediate danger or death before the defendant drew his gun).

{53} New Mexico courts have also found that defendants who are initial aggressors, particularly those whose aggressive acts are carried out during the commission of a felony inherently or foreseeably dangerous to human life, are not entitled to self-defense instructions. In *State v. Chavez*, 1983-NMSC-037, ¶ 6, 99 N.M. 609, 661 P.2d 887, our Supreme Court held that a defendant first aggressor who entered a convenience store with a knife intending to rob the store, and subsequently stabbed and killed a patron who tried to stop the robbery, could not claim self-defense. The court noted that it is "well established in this jurisdiction that a defendant who provokes an encounter, as a result of which he finds it necessary to use deadly force to defend himself, is guilty of an unlawful homicide and cannot avail himself of the claim that he was acting in self-defense." *Id.* The court upheld the defendant's convictions for armed robbery and felony murder, noting that the defendant killed the victim during the commission of a felony "inherently or foreseeably dangerous to human life." *Id.* (internal quotation marks and citation omitted).

{54} It is logical to conclude that a defendant who produces the conditions which make it seem necessary for them to kill or inflict serious bodily harm should be imputed the natural consequences of their own dangerous conduct.

This is particularly true where the would-be victim responds to a defendant's aggressive behavior with a lawful use of force. This Court in *State v. Lara* held that a defendant was not entitled to a self-defense instruction where he pulled a knife on two store clerks after they chased the defendant to recover items that were stolen from the store. 1989-NMCA-098, ¶¶ 8-9, 109 N.M. 294, 784 P.2d 1037, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110. In *Lara*, we stated that a juror "could infer that [the] defendant reasonably believed that [the clerks] were intending to seize him[.]" but that no reasonable juror could have viewed the clerks' actions as unlawful, and accordingly held that a self-defense instruction was not supported by the evidence. *Id.* ¶ 9.

{55} Here, similar to the dangerous circumstances initiated or crimes begun by the defendants in *Lucero*, *Emmons*, *Chavez*, and *Lara*, Defendant tried to rob Mr. Lackey at an ATM at night. He did so with immediate or nearby access to the gun he soon used to kill Mr. Lackey once Mr. Lackey turned out to be less helpless or compliant than Defendant foresaw. My view is that under these cases, Defendant was not entitled to the self-defense instruction he received and which the jury rejected. That is because in my view no reasonable juror could have concluded that Mr. Lackey's actions in defending himself were unlawful.

{56} Which necessarily brings up my second point, because the above-cited cases do not alone resolve Defendant's entitlement to a step-down instruction from the homicide with which he was charged, given that imperfect self-defense, rather than general self-defense, is at issue in this appeal. Imperfect self-defense is itself akin to a lesser included instruction insofar as an element of ordinary self-defense—that being the requirement that a defendant act reasonably in employing self-defense—is missing.<sup>6</sup> But in my view, prohibitions limiting the availability of general self-defense well illuminate why imperfect self-defense has no place in a case such as this, where felonious aggressors who ultimately, if not initially, take lives having first committed inherently dangerous felonies should not be provided a tool of law to escape full fault for the natural consequences of those acts.<sup>7</sup>

<sup>4</sup>In his brief in chief, Defendant argues that the district court erred in granting the continuance because its good cause determination was not based on evidence. It is not clear from Defendant's reply brief whether he has withdrawn this argument, but, in any event, it is contrary to our precedent. In *Aaron*, this Court explained that "there is no requirement for evidence in order to make a showing of good cause" and that "[i]n established practice such a showing is often made by statement of counsel." 1984-NMCA-124, ¶ 17. Although Defendant cites out-of-jurisdiction authority that requires evidence, Defendant has not asked us to overrule *Aaron*, and we therefore decline to reconsider its holding.

<sup>5</sup>To be clear, I assign no fault to today's Opinion which, following limited but established precedent, holds that entitlement to the defense of imperfect self-defense arises in New Mexico in all circumstances where a defendant "reacts unreasonably to fear caused by an appearance of danger of death or great bodily harm." Op. ¶ 25. Nor do I disagree that the facts of this case meet that threshold.

{57} I am not alone in this belief. Pennsylvania requires a claim of imperfect self-defense to satisfy all the requisites of justifiable self-defense (including that the defendant was not the aggressor and did not violate a duty to retreat safety), with the exception that imperfect self-defense involves an unreasonable, rather than a reasonable, belief that deadly force was required to save the actor's life. See *Com. v. Rivera*, 983 A.2d 1211, 1224-25 (Pa. 2009). The result is that a defendant is prohibited from claiming imperfect self-defense if the defendant was the aggressor, or if the defendant violated a duty to retreat or avoid danger. See *Com. v. Tilley*, 595 A.2d 575, 582 (Pa. 1991) (holding that the defendant was not entitled to a voluntary manslaughter instruction because he forcibly entered the home of the victim with the intention of committing a burglary, and when he believed he would be discovered, sprang from a hiding place and shot the victim three times).

{58} California has held that imperfect self-defense may not "be invoked by a defendant who, through his own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which his

adversary's attack or pursuit is legally justified[.]" *People v. Rangel*, 200 Cal. Rptr. 3d 265, 296 (2016) (internal quotation marks and citation omitted). This approach seems particularly instructive to the facts at hand in this case, given its application to circumstances where a victim successfully repels a felony crime and acts lawfully to prevent the defendant's escape or to otherwise seek police assistance or effectuate a citizen's arrest. See *State v. Arroyos*, 2005-NMCA-086, ¶ 5, 137 N.M. 769, 115 P.3d 232 ("Any person . . . may arrest another upon good-faith, reasonable grounds that a felony has or was being committed[.]").

{59} Another compelling approach is that taken by North Carolina, which has held that imperfect self-defense is available in felony murder cases only to the extent that self-defense relates to the applicable underlying felonies which give rise to the charge of felony murder. See *State v. Richardson*, 462 S.E.2d 492, 499 (N.C. 1995) ("[T]he purpose of the felony murder rule is to deter even accidental killings from occurring during the commission of a dangerous felony. To allow self-defense, perfect or imperfect, to apply to felony murder would defeat that purpose[.]"). In that case, where the

underlying felonies were discharging a firearm into occupied property and assault with a deadly weapon, the court held that because only perfect self-defense was applicable to the underlying felonies, the defendant could not argue imperfect self-defense to avoid the felony murder charge. *Id.*

{60} I conclude by noting that our New Mexico Supreme Court has stated that "[i]mperfect self-defense occurs when an individual uses excessive force while otherwise lawfully engaging in self-defense." *State v. Henley*, 2010-NMSC-039, ¶ 20, 148 N.M. 359, 237 P.3d 103 (emphasis added). I urge that the Court accept certiorari in this case and to clarify that acting lawfully in the context of imperfect self-defense excludes circumstances where an initial aggressor commits an underlying felony. In my view, New Mexico Supreme Court Justices or lawmakers should determine whether imperfect self-defense may be employed to mitigate the criminal liability of defendants who kill citizens who exercise lawful force to repel violent and felonious criminal acts. My answer would be no.

**J. MILES HANISEE, Chief Judge**

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<sup>6</sup> In contrast to perfect self-defense, which operates as a justification or excuse which entirely negates the criminal consequences of a killing, imperfect self-defense is neither a true defense nor an absolute one. See generally Abeyta, 1995-NMSC-051, ¶¶ 13-20 (explaining that a "claim of imperfect self-defense . . . presents an issue of mitigating circumstances that may reduce murder to manslaughter"); see also *People v. Rodarte*, 168 Cal. Rptr. 3d 12, 1168 (Ct. App. 2014) (describing imperfect self-defense as "a shorthand description of . . . voluntary manslaughter" and "a lesser offense included in the crime of murder" (internal quotation marks and citation omitted)).

<sup>7</sup> Indeed, this notion is manifest within the felony murder statute in New Mexico, NMSA 1978, § 30-2-1(A)(2), which holds perpetrators liable for deaths occurring "in the commission of or attempt to commit any felony" at the level of first-degree murder. See *Campos v. Bravo*, 2007-NMSC-021, ¶ 10, 141 N.M. 801, 161 P.3d 846 ("[T]he doctrine's purpose is to further the legislative intent of holding certain second-degree murders to be more culpable when effected during the commission of a felony." (emphases added) (internal quotation marks and citation omitted)). While Defendant was here acquitted of felony murder, the propriety of jury instructions, such as that at issue in this appeal, are resolved before deliberations and verdicts.



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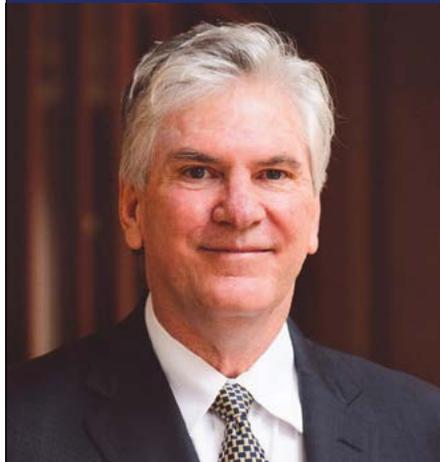
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### Associate Attorney – Civil Litigation

Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. The candidate must have at least 3 years of experience relevant to civil litigation, and must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to [sor@sutinfirm.com](mailto:sor@sutinfirm.com).

### Public Regulation Commission Chief Hearing Examiner (PRC # 49593)

Santa Fe; Salary \$36.47-\$58.36 Hourly; \$75,862-\$121,379 Annually; Pay Band LJ; This position is continuous and will remain open until filled. The Chief Hearing Examiner serves as the point of contact between the NMPRC Commissioners and the individual Hearing Examiners relating to public utility regulation cases. We need an experienced hearing examiner familiar with NMPRC litigation to effectively and efficiently manage the resources of the Hearing Examiner office. The Chief Hearing Examiner assigns cases to individual Hearing Examiners based upon experience, strengths, interests and existing schedules; monitors the progress of cases and provides guidance as requested; presides over the Chief Hearing Examiner's own caseload; and manages and performs supervisory functions for the Hearing Examiner office. The ideal candidate will have strong writing skills, experience in public utility regulation; experience as an administrative law judge or hearing officer; demonstrated interest and familiarity with recent NMPRC litigation and decisions; familiarity with NMPRC hearing procedures; educational experience in economics, accounting or engineering; and supervisory or managerial experience. Minimum Qualifications include a J.D. degree from an accredited school of law and eight years of experience in the practice of law. Licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license (Rules 15-301.1 and 15-301.2 NMR). For more information on limited practice licenses, please visit <http://nmexam.org/limited-license/> To apply please visit [www.spo.state.nm.us](http://www.spo.state.nm.us).

### Request For Proposal – Prosecutor Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual practicing attorney to provide prosecutorial legal services for adult criminal or juvenile delinquency cases when there is conflict of interest or unavailability of regular prosecutor. Reply by June 15, 2022. RFP details at: [www.lagunapueblo-nsn.gov/rfp\\_rfq/](http://www.lagunapueblo-nsn.gov/rfp_rfq/)

### Senior Assistant City Attorney (REVISED)

Two (2) fulltime professional positions, 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. This position will focus primarily on land use, water issues, public utilities, nuisances and other City interests. Represents the city in acquisition of property through negotiated purchase or condemnation proceedings. Reviews and/or drafts responses or position statements regarding EEOC claims asserted against the City. Pursues bankruptcy claims and represents the City's interest in bankruptcy court. Assists with revenue recovery. Juris Doctor Degree AND three year's experience in a civil law practice; at least one year of public law experience preferred. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico, and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at [www.las-cruces.org](http://www.las-cruces.org). Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. There are two current vacancies for this position. One position will be on a remote work assignment for up to one (1) year. This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed. SALARY: \$82,278.14 - \$119,257.01 / Annually CLOSING DATE: Continuous

### Santa Fe County – County Attorney

Santa Fe County is seeking an experienced attorney with a passion for public service to lead its internal legal office, which includes six other attorneys, two paralegals, and an administrative assistant. Salary range is from \$51.96/hr. to \$70.98/hr., depending upon qualifications and budget availability. Applicants must be licensed to practice law in the State of New Mexico and have ten (10) years of legal experience as an attorney, of which a minimum of two (2) years must have been in a supervisory capacity. The ideal candidate has experience in diverse practice areas, including litigation and transactional work, as well as a proven record of problem solving and working effectively with a diverse group of client constituents and Elected Officials. Candidates must apply through Santa Fe County's website, at [http://www.santafecountynm.gov/job\\_opportunities](http://www.santafecountynm.gov/job_opportunities).

### Supervisory City Attorneys

The City of Albuquerque Legal Department is hiring Supervisory City Attorneys for a number of positions. The work includes management, oversight and development of Assistant City Attorneys, paralegals and staff. Roles may require legal expertise in areas of municipal law such as: administrative and civil litigation; contract law; ordinance drafting; regulatory law; Inspection of Public Records Act; procurement; public works and construction law; real property; finance; labor law; and risk management. Attention to details, timelines and strong writing skills are essential. Five years' experience including at least one year of management experience is preferred. Applicants must be an active member of the State Bar of New Mexico in good standing. Please apply online at [www.cabq.gov/jobs](http://www.cabq.gov/jobs) and include a resume and writing sample with your application. Current open positions include: Deputy Director of Policy; Deputy City Attorney of Operations; Managing City Attorney of Property and Finance.

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

**Attorney and Senior Trial Prosecutor**  
The McKinley County District Attorney's Office is seeking applicants for an Assistant Trial Attorney, Trial Attorney and Senior Trial Prosecutor. Senior Trial Attorney position and Trial Attorney position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; computer skills; audio visual and office systems; ability to work effectively with other criminal justice agencies; ability to communicate effectively; ability to research/analyze information and situations. Assistant Trial Attorney position is an entry level position and requires basic knowledge and skills in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations, ability to draft legal documents; ability to work effectively with other criminal justice agencies. These positions are open to all persons who have knowledge in criminal law and who are in good standing with the New Mexico Bar or any other State bar. The McKinley County District Attorney's Office provides regular courtroom practice and a supportive and collegial work environment. Salaries are negotiable based on experience. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to [Bmartin@da.state.nm.us](mailto:Bmartin@da.state.nm.us). Position to commence immediately and will remain opened until filled.

### Associate Attorney

Chapman Law, P.C. seeks Associate Attorney to assist with increasing litigation case load. Candidates should have 5+ years civil defense litigation experience, good research and writing skills, as well as excellent oral speaking ability. Candidate must be self-starter and have excellent organizational and time management skills. Trial experience a plus. Please send resume, references, writing sample and salary requirements to [cassidyolguin@chapmanlawnm.com](mailto:cassidyolguin@chapmanlawnm.com).

### Legal Counsel Progression – 2 positions available

Ignite your career with New Mexico Gas Company! By joining the NMGC family, you can count on a safety-focused work environment, competitive pay and benefits and opportunities for training and personalized development to ignite your career. We embrace diversity and the inclusion of all; our difference, unique perspectives and talents are our strengths and integral to the success of our company. Position Concept: Provides professional legal guidance and assistance internally for the Company. Prepares legal research and analysis of issues. May represent the company in various proceedings. Education; Juris Doctorate. Licenses/Certifications: Membership in New Mexico State Bar, in good standing. Must maintain annual continuing legal education (CLE) requirements and must maintain state licensure. Must possess a valid driver's license and meet the acceptable driving record requirements of the Company. Experience: Visit [www.nmgco.com/careers](http://www.nmgco.com/careers) for more details on the duties and responsibilities of this position and the experience requirements for each level. Salary: Starting salary for a Legal Counsel is \$96,200 to \$120,250; Legal Counsel II is \$110,600 to \$138,250; and Senior Legal Counsel is \$127,200 to \$159,000. Benefits Package. \*Short Term Incentive Program \*401k Savings plan w/ company matching \* Pension plan \* PTO \* Paid Holiday time \* Medical, Dental and Vision Coverage \* Tuition Assistance Program \* Gym Subsidy \* Employee Common Share Purchase Plan

### Associate Attorney

Kennedy, Hernandez & Associates, P.C. is a small, Albuquerque-based firm with a focus on plaintiffs' civil litigation and civil rights, looking for attorneys with 0-5 years of experience who are eager to learn. As part of our collaborative team, you would gain experience in every aspect of our cases: meeting our clients, drafting pleadings, taking discovery and depositions, briefing motions, and working a case all the way through trial and appeal. Candidates should be hard-working and self-motivated with strong writing skills. Our firm is fast-paced but family-friendly, with competitive salary and benefits. Please send resumés and writing samples to [Lhernandez@kennedyhernandez.com](mailto:Lhernandez@kennedyhernandez.com).

### Assistant City Attorney

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

### Experienced Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 36 states, is currently seeking an experienced litigation attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The firm offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at [hhinton@cordelllaw.com](mailto:hhinton@cordelllaw.com)

### Assistant Federal Public Defender – Las Cruces

#### 2022-06

The Federal Public Defender for the District of New Mexico is accepting applications for a full-time Assistant Federal Public Defender in the Las Cruces office. The federal defender organization operates under the Criminal Justice Act, 18 U.S.C. §3006A, to provide criminal defense and related help in federal courts. More than one position may be filled from this posting. Job Description/Qualifications: This position is for a licensed attorney with three years minimum criminal trial experience preferred. Other equally relevant experience will be considered. Successful applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Responsibilities include, but are not limited to: managing an extensive caseload, developing litigation strategies, preparing pleadings, appearing in court at all stages of litigation, and meeting with clients, experts, witnesses, family members and others. Applicants must possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court and other agency personnel. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Requirements: Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, by the time of entrance on duty. The selected candidate will be required to obtain admission to the New Mexico State Bar and the Supreme Court within the first year of employment. Applicants must be eligible to work for the United States. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. Salary is dependent upon qualifications and experience, and is equivalent to salaries of Assistant U.S. Attorneys with similar qualifications and experience. Salary is payable only by electronic funds transfer (direct deposit). Conditions of Employment: Appointment to the position is contingent upon the successful completion of a background check and/or investigation including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at

will." You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters. Application Information: In one PDF document, please submit a statement of interest and resume describing your trial and appellate work, with three references to: Margaret A. Katze, Federal Public Defender, [FDNM-HR@fd.org](mailto:FDNM-HR@fd.org), Reference 2022-06 in the subject. Applications must be received by July 5, 2022. Writing samples will be required only from those selected for interview. Position(s) will remain open until filled and is subject to the availability of funding. The Federal Public Defender is an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

### Associate Attorney – Commercial

We are seeking to hire a full-time associate for our Commercial Group with tax, business/corporate law, and/or estate planning experience. The successful candidate must have excellent legal writing, research, and verbal communication skills. Must be licensed to practice in the state of New Mexico. Licensed to practice in the state of Colorado or the willingness to obtain Colorado licensure is a plus. Hybrid work schedule is an option. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to [sor@sutinfirm.com](mailto:sor@sutinfirm.com).

### Attorney (3+ years)

Well established (17+ years) civil defense firm is seeking an experienced attorney with 3+ years litigation experience for an associate position with prospects of becoming a shareholder. We are flexible, team oriented and committed to doing excellent work for our clients. We have long standing clients and handle interesting matters, including in the areas of labor/employment, construction, personal injury, medical malpractice, commercial litigation, civil rights, professional liability, insurance defense, and insurance coverage. We are looking for a team player with a solid work record and a strong work ethic. Excellent pay and benefits and opportunities for bonuses. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to Conklin, Woodcock & Ziegler, P.C. at: [jobs@conklinfirm.com](mailto:jobs@conklinfirm.com).

### Litigation Associate

The Santa Fe, New Mexico and Tempe, Arizona offices of Rothstein Donatelli, LLP are each seeking a litigation associate for their Indian law practice. Rothstein Donatelli has offices in Santa Fe and Albuquerque, New Mexico, and Tempe, Arizona. The Indian law practice in Santa Fe specializes in federal Indian law, including gaming, economic development, water rights, land rights, civil litigation, and transactional matters. Tempe specializes in federal Indian law, including gaming, economic development, Indian Child Welfare Act, Indian health law, labor and employment law, and transactional matters. Rothstein Donatelli is committed to advancing the sovereign rights of Native American tribes. More information about the firm is available at [www.rothsteinlaw.com](http://www.rothsteinlaw.com). The ideal candidate will have three or more years of experience with a demonstrated commitment to the highest quality of legal practice, excellent research and writing skills, and an interest in representing tribal Nations. Experience in Indian law is not required. Interested candidates should send a cover letter, resume, references, and writing sample to Manya Snyder at [info@rothsteinlaw.com](mailto:info@rothsteinlaw.com). The positions will remain open until filled. Salary competitive in the Santa Fe and Tempe markets and depending on experience. Rothstein Donatelli LLP provides equal employment opportunities to all employees and applicants for employment without regard to race, color, ancestry, national origin, gender, sexual orientation, marital status, religion, age, disability, sex or gender identity, results of genetic testing, or service in the military. Equal employment opportunity applies to all terms and conditions of employment, including hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training. The Firm expressly prohibits any form of unlawful employee harassment or discrimination based on any of the characteristics mentioned above. Improper interference with the ability of other employees to perform their expected job duties is absolutely not tolerated. The Firm is committed to achieving a diverse workforce and an inclusive environment.

### 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](mailto:david@ldplawfirm.com), Fax (575) 388-9228, P. O. Box 1289, Silver City, New Mexico 88062.

### Attorney (7+ years)

Well established (17+ years) civil defense firm is seeking an experienced attorney with 7+ years litigation with prospects of becoming a shareholder. We are flexible, team oriented and committed to doing excellent work for our clients. We have long standing clients and handle interesting matters, including in the areas of labor/employment, construction, personal injury, medical malpractice, commercial litigation, civil rights, professional liability, insurance defense, and insurance coverage. We are looking for a team player with a solid work record and a strong work ethic. Excellent pay and benefits and opportunities for bonuses. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to Conklin, Woodcock & Ziegler, P.C. at: [jobs@conklinfirm.com](mailto:jobs@conklinfirm.com).

### The Fourth Judicial District Court In Las Vegas, NM is currently recruiting for a Full-Time, At-Will, Term Position: Child Support Hearing Officer

#### Job ID: 00028004

The Fourth Judicial District Court is accepting applications for a Child Support Hearing Officer for matters in the Fourth, Eighth, and Tenth Judicial Districts. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico; and have 5 years of experience in the practice of law, with at least 20 percent of that practice having been in family law or domestic relations matters. The Child Support Hearing Officer will perform duties pursuant to the Child Support Hearing Officer Act, NMSA 1978, §§ 40-4B-1 through 40-4B-10, for the Fourth, Eighth, and Tenth Judicial District Courts, primarily on a remote basis. TARGET SALARY: \$103,522-\$110,760 annually. For full job description and to apply go to: <http://www.fourthdistrictcourt.nmcourts.gov>

### Associate Attorney

Immediate opportunity in downtown Albuquerque for an Associate Attorney. Practice area is Real Estate. Litigation and transactional experience are required. Experience with Home Owners Associations is a plus. WordPerfect knowledge and experience is highly desirable. Send resume and writing sample to: [Steven@BESTstaffJobs.com](mailto:Steven@BESTstaffJobs.com)

### Court Of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is accepting applications for one full-time permanent Associate Staff Attorney or Assistant Staff Attorney position. The position may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. The target pay for the Associate Staff Attorney positions is \$80,660, plus generous fringe benefits. The target pay for the Assistant Staff Attorney positions is \$75,755, plus generous fringe benefits. Eligibility for the Associate Staff Attorney positions requires three years of practice or judicial experience plus New Mexico Bar admission. Eligibility for the Assistant Staff Attorney positions requires one year of practice or judicial experience plus New Mexico Bar admission. The Associate Staff Attorney or Assistant Staff Attorney positions require management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required. The work atmosphere is congenial yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Resume Supplemental Form, along with a letter of interest, resume, law school transcript, and writing sample of 5-7 double-spaced pages to Aletheia Allen, Chief Appellate Attorney, c/o AOC Human Resources Division, [aochrdgrp@nmcourts.gov](mailto:aochrdgrp@nmcourts.gov), 237 Don Gaspar Ave., Santa Fe, New Mexico 87501, no later than 5:00 p.m. on Friday, June 17, 2022. More information is available at [www.nmcourts.gov/careers](http://www.nmcourts.gov/careers). The New Mexico Judicial Branch is an equal-opportunity employer. NOTE: This is a revised job posting from the one appearing in the prior Bar Bulletin. Please note: Prospectively, the New Mexico Judicial Branch is requiring full vaccination status as a condition of employment to being hired into the judiciary. Fully vaccinated means two weeks beyond the second Moderna or Pfizer vaccination or single dose of the Johnson and Johnson vaccination, and if eligible, must have received the COVID-19 Booster.

### Associate Attorney

The firm of MYNATT MARTÍNEZ SPRINGER P.C. is looking for associates. Our practice focuses primarily on the defense of public entities and their employees but runs the gamut on all civil matters. The pay and benefits are competitive, and the billable hours are manageable. We are located in the City of Las Cruces, sometimes known as the Paris of the Rio Grande. Here, for the price of a small hovel in Santa Fe, you can purchase a moderate-sized mansion. The weather is beautiful, the food is spicy (we are right next to Hatch after all), the crime is low (looking at you Albuquerque), and the sunsets are stunning. If you are interested in making a change, email us at [rd@mmslawpc.com](mailto:rd@mmslawpc.com).

### Associate Attorney

Terry & deGraauw PC, a divorce and family law firm, is seeking a qualified Associate Attorney to join our team. Experience in family law is preferred but not required. Salary DOE. Benefits include health, dental, vision, and disability insurance, 401K plan, profit sharing, and performance-based bonuses. Replies are confidential. Please email your resume to Kelly Squires at [kss@tdgfamilylaw.com](mailto:kss@tdgfamilylaw.com).

### Various Assistant City Attorney Positions

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 estate, 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 - Litigation (Tort/Civil Rights); Assistant City Attorney - Employment/Labor. For more information or to apply please go to [www.cabq.gov/jobs](http://www.cabq.gov/jobs). Please include a resume and writing sample with your application.

### Legal Secretary

The City of Albuquerque Legal Department (Litigation Division) is seeking a Legal Secretary to assist assigned attorneys in performing a variety of legal secretarial/administrative duties, which include but are not limited to: preparing and reviewing legal documents; creating and maintaining case files; calendaring; provide information and assistance, within an area of assignment, to the general public, other departments and governmental agencies. Please apply at <https://www.governmentjobs.com/careers/cabq>.

### Paralegal

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks sharp, energetic paralegal. Must be a self-starter, detail-oriented, organized, and have excellent communication skills. A four-year degree or paralegal degree, and insurance defense and/or personal injury experience required. Bilingual in Spanish a plus. Please e-mail your resume and list of references to [karrants@stiffllaw.com](mailto:karrants@stiffllaw.com)

### 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 \$21.31 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$22.36 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

### Request For Proposal - Defense Legal Services

Pueblo of Laguna seeks proposal from any law firm or individual practicing attorney to provide legal services for adult criminal defense or representation of juveniles in delinquency proceedings when there is conflict of interest or unavailability of regular defender. Reply by June 15, 2022. RFP details at: [www.lagunapueblo-nsn.gov/rfp\\_rfq/](http://www.lagunapueblo-nsn.gov/rfp_rfq/)

## Office Space

### Office Space For Rent

Newly renovated office space for rent. Two large offices and reception area available at 12th and Lomas. Please call Lisa for more information 505-979-7080.

### Sun Valley Executive Office Suites

Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Quick access to Downtown Courthouses. Our all-inclusive executive suites provide simplicity with short term and long-term lease options. Our fully furnished suites offer the best in class amenities. We offer a move-in ready exceptional suites ideal for a small law firm. Visit our website [SunValleyABQ.com](http://SunValleyABQ.com) for more details or call Jaclyn Armijo at 505-343-2016.

### Office Suites-ALL INCLUSIVE-

virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead and appear more professional. 505-796-9600/ [officealternatives.com](http://officealternatives.com).



## Zinda Law Group Is Hiring Attorneys!

Zinda Law Group, a nationwide personal injury law firm, is hiring attorneys of all experience levels in New Mexico and across the southwest.

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We cherish our co-counsel relationships. We've  
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SPENCE