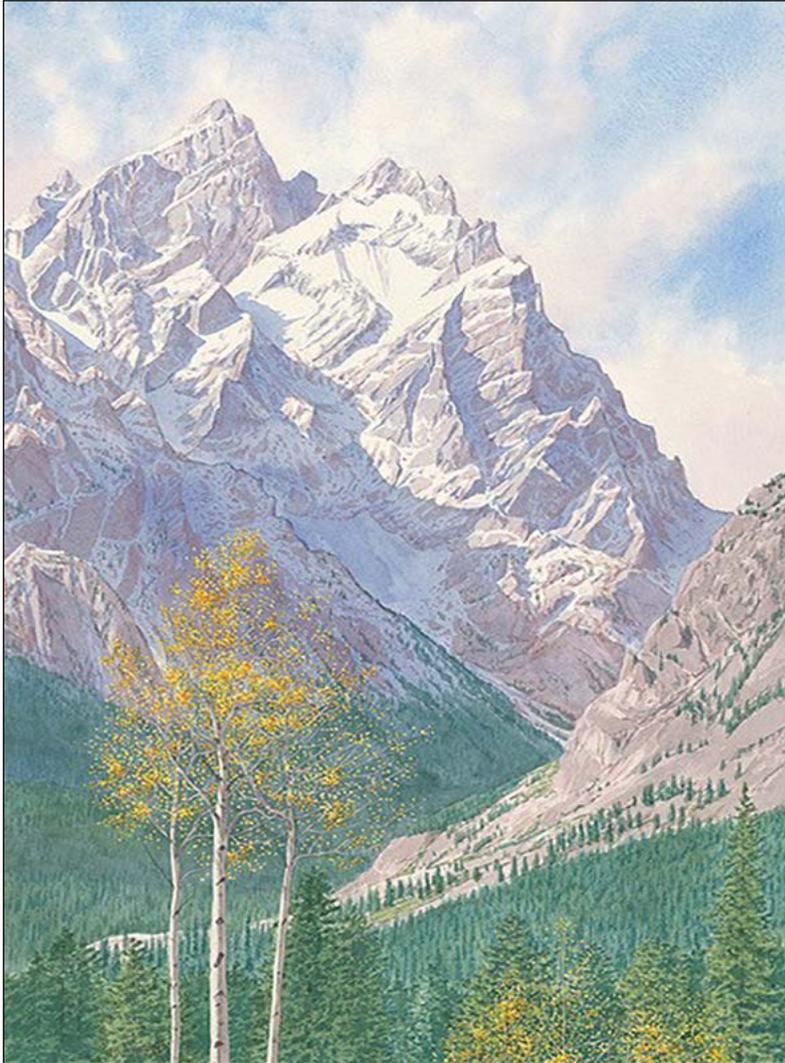


# BAR BULLETIN

June 22, 2022 • Volume 61, No. 12



September Snow in the Tetons, by Dan Stouffer (see page 3)

[danstouffer.com](http://danstouffer.com)

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## Meetings

### June

**24**  
**Immigration Law Section**  
noon, virtual/State Bar Center

**30**  
**Trial Practice Section**  
noon, virtual

### July

**5**  
**Health Law Section**  
9 a.m., 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

### August

**12**  
**Prosecutors Section**  
noon, virtual

**24**  
**Intellectual Property Law 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:** Dan Stouffer was born in Ohio and attended Ohio State University. His work has been shown in museums and corporate collections throughout the country. He has won over 60 awards and is listed in the *Who's Who in American Art*. His work has appeared in many publications. He is also a member of three national signature honor societies and in 2010, the Albuquerque Art Business Association designated him a local treasure. He is currently represented by The Weems Gallery.

# 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 refrain from excessive and abusive discovery, and I will comply with reasonable discovery requests.

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>.

### Second Judicial District Court Announcement of Candidates

The Second Judicial District Court Judicial Nominating Commission convened on June 7 at the State Bar Center located at 5121 Masthead Street NE, Albuquerque, New Mexico and completed its evaluation of the eight applicants to fill the vacancy on the Second Judicial District Court, which will exist as of July 1 due to the creation of an additional Judgeship by the Legislature. The Commission recommends **Michael Philip Fricke, David Allen Murphy and Rose Osborne** as candidates to Gov. Michelle Lujan Grisham.

### 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](mailto: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.

### **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 Board of Bar Commissioners Appointment to Risk Management Advisory Board**

Pursuant to Section 15-7-4 NMSA 1978, the President of the Board of Bar Commissioners makes one appointment to the Risk Management Advisory Board for a four-year term. The Advisory Board is charged with, among other duties, reviewing insurance policies, professional services and consulting contracts and agreements, companies and agents that submit proposals, rules and regulations promulgated, certificates of coverage and any other investments made by the state's Risk Management Division. Applicants must be licensed to practice law in New Mexico. Members who wish to apply to serve on the Board should send a letter of interest and brief resume by June 28 to [bbc@sbnm.org](mailto:bbc@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.

— *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.**

### **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 a 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 [defendersinrecovey@gmail.com](mailto:defendersinrecovey@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 providing legal resources and assistance for survivors of the New Mexico wildfires. The free legal aid hotline opened on June 6 and we need more volunteers. Fire survivors can call the hotline toll free at 888-985-5141 Monday through Friday, 9 a.m. to 1 p.m. MST. 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.

FREE SERVICE FOR MEMBERS!

## Employee Assistance Program

*Get help and support for yourself, your family and your employees.*

**FREE** service offered by NMJLAP.



State Bar of New Mexico  
Judges and Lawyers  
Assistance Program



The  
Solutions  
Group

Services include up to four **FREE** counseling sessions/issue/year for ANY mental 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, video counseling, and 24X7 call center. Providers are located throughout the state.

To access this service call 855-231-7737 and identify with NMJLAP. All calls are **CONFIDENTIAL**.

*Brought to you by the New Mexico Judges and Lawyers Assistance Program*

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

# Legal Education

## June

- |  |   |  |
|--|---|--|
| <p>22 <b>Elder Law Summer Series: Probate Overview &amp; Considerations in Estate Planning</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                    | <p>28 <b>26 Ethical Tips from Hollywood Movies</b><br/>2.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                              | <p>30 <b>2022 Sex Harassment Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>23 <b>Four Years After Carpenter: How to Keep Expanding Fourth Amendment Rights in the Digital Age</b><br/>1.2 G<br/>Web Cast<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p> | <p>28 <b>Estate Planning for Liquidity</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                   | <p>30 <b>Ethics of Social Research</b><br/>1.5 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>     |
| <p>24 <b>Ethics/Brady vs. Maryland</b><br/>0.0<br/>Live Program<br/>El Paso County Public Defender<br/>www.epcounty.com</p>  | <p>29 <b>Cybersecurity: How to Protect Yourself and Keep the Hackers at Bay</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |  |

## July

- |   |  |   |
|---|--|---|
| <p>7 <b>Special Immigrant Juvenile Status: An Update on Regulations and Deferred Action</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                  | <p>12 <b>2022 Ethics and Social Media Update</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>14 <b>The Andrea Taylor Sentencing Advocacy Workshop</b><br/>18.5 G<br/>Live Program<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p>                 |
| <p>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</p> | <p>12 <b>Understanding the Attorney Disciplinary System in New Mexico</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                      | <p>14 <b>Overcoming Procrastination: How to Kick the Habit</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                          |
| <p>8 <b>Find and Use Historical Web Information with the Internet Archive Wayback Machine</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                | <p>13 <b>Evidence Webinar Series - Part Four: The Busy Lawyer's Guide to Objections</b><br/>1.2 G<br/>Web Cast<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p> | <p>15 <b>Your Inbox Is Not a Task List: Real World Task Management for Busy Lawyers</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>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

- |   |   |  |
|---|---|--|
| <p>19    <b>2022 Family and Medical Leave Act Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>21    <b>Law &amp; Technology Series: Electronic Courtroom Presentation Workshop</b><br/>13.2 G<br/>Live Program<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p>             | <p>28    <b>30 Things Every Solo Attorney Needs to Know to Avoid Malpractice</b><br/>1.5 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>20    <b>Elder Law Summer Series: Communicating with Clients that have Cognitive Impairment or Dementia</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>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</p> |  |

## August

- |  |  |  |
|--|--|--|
| <p>2    <b>Due Diligence in Commercial Real Estate Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>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</p>         | <p>30    <b>Choice of Entity for Nonprofits &amp; Obtaining Tax Exempt Status, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>5    <b>Lawyer Ethics and Disputes with Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>             | <p>23    <b>LLC/Partnerships Interests: Collateral, Pledges, and Security Interests</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>31    <b>Choice of Entity for Nonprofits &amp; Obtaining Tax Exempt Status, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>8    <b>Persuasive Writing Workshop</b><br/>0.3 EP<br/>Live Program<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p>                 |  |  |

## September

- |   |   |
|---|---|
| <p>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</p> | <p>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</p> |
|---|---|

# Opinions

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

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

## Effective May 20, 2022

### PUBLISHED OPINIONS

|              |  |        |            |
|--------------|--|--------|------------|
| A-1-CA-38474 | In the Matter of: Elephant Butte Irrigation District   | Affirm | 05/16/2022 |
| A-1-CA-38478 | Turner Ranch Properties v. NM Water Quality Commission | Affirm | 05/16/2022 |

### UNPUBLISHED OPINIONS

|              |   |                |            |
|--------------|---|----------------|------------|
| A-1-CA-38686 | Board of Trustees of La Merced del Pueblo de Tajique<br>v. Board of Torrance County Commissioners | Reverse/Remand | 05/16/2022 |
| A-1-CA-39048 | L Smith v. NM Taxation & Revenue, MVD   | Reverse/Remand | 05/16/2022 |
| A-1-CA-39615 | C Streett v. J Finley   | Affirm/Reverse | 05/16/2022 |
| A-1-CA-39703 | State v. V Candelaria   | Affirm         | 05/16/2022 |
| A-1-CA-38707 | State v. T Grissom  | Reverse/Remand | 05/17/2022 |
| A-1-CA-38870 | City of Las Cruces v. R Apodaca   | Affirm         | 05/17/2022 |
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| A-1-CA-39627 | E Mottola v. L Martin   | Affirm         | 05/18/2022 |
| A-1-CA-39900 | State v. G Ferrell  | Affirm         | 05/18/2022 |
| A-1-CA-39994 | J Lowrey v. J Regan   | Reverse/Remand | 05/18/2022 |

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

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

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| A-1-CA-40020 | Tex-Mex Services v. G Garcia                          | Affirm         | 05/31/2022 |
| A-1-CA-39047 | In the Matter of the Estate of Lucy Romero            | Affirm         | 06/01/2022 |
| A-1-CA-39778 | A Lorenz v. J Bromberg                                | Affirm         | 06/01/2022 |
| A-1-CA-39852 | B Reddy v. NM Department of Transportation            | Affirm         | 06/01/2022 |
| A-1-CA-40011 | J Marquez v. Presbyterian Healthcare Services         | Affirm         | 06/01/2022 |

# Ready for checkers at Starbucks®?

By Briggs Cheney

(With introduction and post script by William Slease)

Below is a poignant discussion about one lawyer's internal dialogue about what retirement from the practice of law might mean to that lawyer. But don't be fooled into thinking, "well, too bad for him." We are all headed in that direction; some of us more quickly than others. More on that and its impact on well-being at the end of this article. For now, let's listen in to the internal dialogue of that one lawyer.



**A**m I ready for checkers at Starbucks®? I don't know. I don't think so. I'm not sure?

What follows is not so much about what I might do if it is Checkers at Starbucks® time for me. Rather, it is about how I'll know it's time for checkers at Starbucks and what it means for my well-being and sense of self.

In April this year, I started my 50th year of active practice. In August of this year, I turn 75. I am reasonably healthy, but for hitch in my gait – no pain – just makes me feel older. Money is not an issue; I have enough to go play checkers if I wanted to.

I know there is a time and place, a moment, when you have gone up and over the top of your bell-curve and you're headed down the right-hand side. For a while, cunning, wit and wisdom and reputation will slow the slide down. But I know there comes, or will come a point when, in the words of Simon & Garfunkel, "I've just been fakin it, not really makin it." In this day and age of Artificial Intelligence, you would think a "reminder" or "notification" would appear on the screen of my iPhone telling me, "It's time to go to Starbucks® and play checkers."

I have had a Plan, and that was to "not have a Plan". That is not intended to sound irresponsible – it truly has been My Plan. Rather than say, "I am done, I am retiring on Dec. 31, 2022" (I have pondered if a "date certain" or a "drop dead date", no pun necessarily intended, is possible), My Plan of having no plan was that I would know when it was time. One morning, I would go to work and there wouldn't be much (or enough) to do, all the cases would be pretty much done and I would know – it's time.

In my mind, that is still not a bad plan, but what if Simon & Garfunkel are right and, "I'm just fakin it, not really makin it"? Do I (or should I) rethink my plan?

Very recently, a good professional friend (a contemporary, temporally) passed away. Another lawyer I had worked with

years ago (fourteen years my junior) who I have not heard from in years (she is a judge in Colorado) but who had babysat for this departed lawyer and shared the same affection for him, sent me a one-liner text – "So sad, he didn't really get to enjoy retirement." My old friend's words made me more than pause.

I don't think it is ego that makes me want to keep going. I am sure at some point in my professional life I thought "being a lawyer" impressed others, but we all (hopefully) get disabused of that notion. But, even if I retired, I could still throw around the "lawyer" word and be reminded no one cares.

**Self-worth?** That gets closer. Is it about being productive? Making money? I have enough. It is not about the money – it is more elusive than money. I think it is about feeling **worthwhile** – that I am doing something that makes a difference. There have been moments in my professional life where I have questioned if what I did as a lawyer made a difference, or if it was worthwhile to society. But as I look back, I have had the opportunity to help others, and I cherish those opportunities. So, yes, no longer feeling self-worth is one of the culprits – one of the factors at play that makes stepping over that line into "playing checkers land" difficult.

But here is a conundrum for you. I am tired of **responsibility**. Figure that out – I want self-worth, but I don't want the responsibility. Doesn't that sound lawyer-like – talking out of both sides of my mouth!

**Fear.** Of what? Fear that if I take myself out of the game and go play checkers, that the wheels will come off. See, I must make light of it by using cute metaphors because I am afraid to say plainly what I am afraid of. That I will get old overnight. That I will be forgotten. I am afraid of that.

Pam Moore, putting on her Personal Coaching hat, recently asked me the following question: "what haven't you done that you want to do?" This wasn't an easy question because I thought I knew where she was going with it, but I was wrong.

There was some back and forth between us that clarified the question. I am not a Bucket List guy, and that is what I thought Pam was trying to draw out of me. For me, what I am struggling with is not Bucket List stuff - "I want to climb this whatever" or "travel to this place." What slowly came out as my answer was that I wanted to create some **space** in my life. I just want a **space** that is open to something else that is free of **responsibility**. I don't know what might fill that space - I just would like it to be there - to be filled with something else.

Anybody who knows me well, knows I love **magic lines** - one of my favorite metaphors. I need a conclusion to this article, and that is where I am headed - toward a **magic line**.

So everyone reading this knows, I had no idea where I was headed when I started writing this. I have been struggling with this for the last three years. I volunteered to write this article because I knew I needed to think this through, for me, and this was my opportunity.

So where does a **magic line** fit in? This is my hocus-pocus, but for me the **magic line** is that place that divides reality and the spiritual. I try not to overthink that. For ease, the **magic line** can be the dividing line between what you do understand and what you don't.

As I come to the end of this personal exercise, there are some things I do know (the left-hand side of the **magic line**, if you will) and those are 1) I am not ready to not be worthwhile and it is important to me to continue to help others; 2) I am tired of **responsibility** and of being in charge and out front; 3) there still is some wisdom in me, and I am capable of moments of semi-brilliance; 4) I can still play the game, but it's harder to get out on the field, and I sometimes have to dig down deep, and last 5) as my judge friend made me realize without knowing she was helping me, I want to find out what is on the other side of that **magic line** (the right hand side) and what could fill that empty space.

If I must come up with a conclusion, a final thought, it is the following: it is time for me to step over the **magic line** - with one foot.

Lawyers often romanticize what retirement will be like; the reduced stress, the slower pace, the relief from the constant demands, the control of our own calendars. This romantic notion is easily entertained when we are in the midst of a busy career and can sustain us and improve our well-being when the demands of practice seem overwhelming. But as the day we might actually retire draws nearer, romance gives way to reality; both positive and challenging as the discussion above reveals. Indeed, the above discussion shines a bright light on the themes that are common for every lawyer considering "retirement." "what's next; what is my next chapter; who am I if I am not a lawyer; what is my worth?" And the struggle with these questions, can send us into a tailspin, adversely impact our well-being and ultimately make us put off the thoughts and decision for another day.

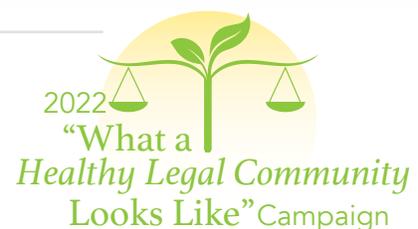
As lawyers, we are not alone in struggling with the fear of retirement. A recent survey by Zety discovered that 40% of those surveyed feared retirement more than death. See <https://zety.com/blog/afraid-of-retirement#death-illness>. Why? Some have opined that it stems from three basic emotional reasons: 1) the loss of professional status that is closely related to one's self-image; 2) change; and 3) concern over how to spend the extra time. See Sharon Jayson, *Are You Afraid to Retire?*, AARP online (October 31, 2017) (available at <https://www.aarp.org/retirement/planning-for-retirement/info-2017/retirement-fear-fd.html>). Notice, it's not the fear of running out of money that weighs on us. Rather, it's that fear of losing who we are and not knowing what to do with ourselves.

So how do we get there from here? How do we "retire" and maintain our sense of self, our self-worth, and our well-being? Here are some coping tips from someone who works with others for whom actually retiring has become the hardest part about retiring: 1) consider first slowing down rather than stopping completely. By reducing your workload, you can pursue the best of both worlds; i.e. continuing to engage in your profession while pursuing, enhancing or developing your personal passions; 2) explore new things. Don't limit yourself to the hobbies you already have. Consider developing new hobbies and look for volunteering opportunities; i.e. ways in which you can contribute without the attendant stress; 3) think about retirement as a journey, not a final destination. It's simply another chapter in your life; one that you can choose to enrich and one in which you will remain relevant; See Kara Duckworth, *Help, I'm Afraid to Retire Even Though I Can Afford To*, Kiplinger online (March 26, 2021) (available at <https://www.kiplinger.com/retirement/happy-retirement/602502/help-im-afraid-to-retire-even-though-i-can-afford-to>); one in which, you will be well. ■

Authors:

**William Slease**, *Professional Practice Program Director for the State Bar of New Mexico and member of the NM Well-Being Committee*

**Briggs Cheney, Esq.**, *Dixon•Scholl•Carrillo•P.A., and the Co-Chair to the NMJLAP Committee.*





## ASK AMANDA

### **Dear Amanda,**

*Sometimes, I find it difficult to effectively confront systemic racism in my social group, work setting, household, and other areas of my life. How can I confront systemic racism in an approachable way that doesn't cause others to shut down and perhaps sparks a desire to get involved in activism against systemic racism as well?*

### **Dear Member,**

It is our responsibility in our communities to educate our families, friends, and partners and to challenge the racism around us. The problem is that taking on these topics leads to a sense of isolation in many whites who don't find supportive communities or friendships that they can turn to while they are engaging the people closest to them. From my experience, it certainly changed the roles of people in my life and opened the door to new connections that I value deeply. To speak to this question, I have some suggestions for how to focus on your growth and engage with other people.

### **Focus on your own learning and action you want to take**

There is work you need to do before you start engaging in challenging racial dialogues and confronting the racism around you<sup>1</sup>. It is most important that you focus on your own growth and learning before you can start educating others. Without a firm foundation of knowledge of racial justice issues and skills for how to have these conversations, you can end up alienating people who are genuinely trying to learn or allowing insults to people of color in an effort to seem neutral. Get involved in groups that are trying to institute change. Go to a training or take a class. These spaces are vital to learning about the history and current issues with racism, and they will also connect you to people who are doing the same thing.

### **Set boundaries**

Communicate boundaries to the people around you about what you will and will not tolerate. You may or may not change them, but you can tell them that you don't like where a conversation is going, you don't like the way they are talking about a group or person, or why what they are doing is racist. Some racist behaviors are unconscious, but many people knowingly say things that are racist or engage in racist behaviors. If you have pointed out racist slurs, speech, or ideas and the person is not receptive, you can assume they are invested in their behavior and you should probably remove yourself from the situation. Some of our relationships are voluntary and others are foundational to our lives. If these relationships are important or not one you can remove yourself from, hold your boundaries and let the person know how their behavior is impacting your relationship with them. They might not care about the big picture, but if they care about you, they may at least monitor some of their behavior around you.

**Some things cannot wait.** As I write this, many are still reeling from another mass murder in Buffalo that took the lives of 10 people that was motivated by racial hatred<sup>2</sup>. For me, it is hard not to be angry at the many failings in our families, schools, and institutions to specifically address racial hatred and work to end racial violence. It is vital that we familiarize ourselves with extremist rhetoric and how it is showing up in the mainstream. For example, the murderer in Buffalo was motivated by

*(continued on next page)*

the “replacement theory,” an antisemitic and white supremacist belief that there will be a “white genocide” and whites will be replaced by people of color<sup>3</sup>. It is not harmless, and you need to have your ears open around friends and family for these arguments. Learn about how you can talk to people who are invested in racist conspiracy theories. For suggested reading, visit the Equity in Justice Resource Library at [www.sbnm.org/eij](http://www.sbnm.org/eij).

### **Find Common Ground and Acknowledge Shared Experiences**

If you are in the same family or went to the same schools, you probably got similar messages about who you are in relation to who others are. If you are choosing to learn more about racism, acknowledge what led you there. Why are you pulling away from the pack and what experiences, understandings, and realizations have you had that are different from the people around you? Why are they interpreting their lives and social position so differently from you? Are they afraid to learn something different because it could cause distance between themselves and others? Were they raised not to question? If you are attempting to educate, you have to find common ground and center compassion.

It is much more effective to be honest about the things that we used to believe or were told about people of color even though it creates a deep sense of shame. If we pretend that we really don't know why our peers believe what they believe, we will not show up authentically enough to delve into these topics. We will be too busy denying we ever participated in the problem, and it is a lost opportunity to build on common experiences even if you have taken divergent paths. Whites must unlearn a lot. As much as we would like to distance ourselves from white people without antiracist consciousness, we can't really do that and expect society to change. Phrases like “I used to believe that too, but then I learned...” can be helpful.

**Humiliation, shaming, condescension, or treating people like they cannot learn are never effective tools for social change. You can confront and demand accountability without compromising the dignity of others.** I say this because when I first began this work, I participated in the behaviors I just listed, and I regret it. I damaged relationships and it certainly didn't make the world a more just place. Projecting all of your anger about a system that has been in place for hundreds of years onto one person is counterproductive at best and dehumanizing at its worst.

### **Play the long game**

**Keep in mind, racial justice is about dismantling racism in all its forms because of the impact it has on people of color.** The stakes are high and learning how to move and organize white people is important. Educating yourself and doing inner work better prepares you for the long haul of taking on these issues with people in your life. You never know when someone will have a realization and want to join you. Leave the door open so they can.

*Dr. Amanda Parker is the new Equity in Justice Manager at the State Bar of New Mexico. To submit a question to Ask Amanda or find out more about the program go to [www.sbnm.org/eij](http://www.sbnm.org/eij).*

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### **Endnotes**

<sup>1</sup> Winters, Mary (2020) *Inclusive Conversations: Fostering Equity, Empathy, and Belonging Across Differences*. Berrett-Koehler Publishers, Inc. Oakland, CA 94612.

<sup>2</sup> <https://www.npr.org/2022/05/16/1099034094/what-is-the-great-replacement-theory>

<sup>3</sup> Lavin, Talia (2020) *Culture Warlords: My Journey into the Dark Web of White Supremacy*. Hatchett, New York, NY.

Ask your questions about diversity, equity, and inclusion issues  
in the office, courtroom, and larger society at [www.sbnm.org/eij](http://www.sbnm.org/eij)



**Isaac A. Leon**, a lawyer with Sutin, Thayer & Browne, has earned his Tax LL.M. from the University of Denver Sturm College of Law Graduate Tax Program. Leon is a member of the Firm's commercial group, where his practice focuses on taxation, mergers and acquisitions and public finance. Leon holds an M.B.A. from the UNM Anderson School of Management and J.D. from the UNM School of Law. Leon currently serves on the Board of Directors of the State Bar's Business Law Section.

**Eric R. Burris**, of Brownstein Hyatt Farber Schreck, was recognized in the 2022 Chambers Rankings by Publisher Chambers & Partners. He was recognized for his work in General Commercial litigation for the Litigation Department on behalf of New Mexico. The 2022 Chambers Rankings recognized 21 practice areas of Brownstein Hyatt Farber Schreck in total as well as 50 Brownstein attorneys



The New Mexico Judicial Performance Evaluation Commission has appointed **Clay Campbell** of Albuquerque as a new member. Campbell retired from the Second Judicial District Court in 2021 after serving as a civil judge for 16 years. He was appointed to the Court in 2005. Campbell graduated from the University of Florida in 1985 and earned his law degree from William & Mary Law School in 1990.



The New Mexico Tribal-State Judicial Consortium has honored retired **Supreme Court Justice Barbara J. Vigil** for her leadership and counsel as a member of the organization and as the Court's liaison to it. Former Justice Vigil was a member of the Supreme Court from 2012 to 2021, and was the Court's liaison to the Consortium. She also served on the Consortium from 2000 to 2010 as a district court judge in the First Judicial District. The governor announced her appointment as the CYFD cabinet secretary in Aug. 2021.

# In Memoriam

www.sbnm.org

**William Hugh Carpenter**, age 81, a resident of Albuquerque, NM, died Friday, Oct. 1, 2021. He is survived by his beloved spouse, Patricia; son, Joseph Carpenter and his wife, Christine; daughter, Kathleen Carpenter Lucero and her husband, Brennan and their two children, William and Alora; son, Jonathan Carpenter and his wife, Jenean, and their six children Mary, Jacob, Margaret, Rebekah, Michael and John Henry. He is also survived by his sister and best friend, Kathleen Griffin; and his recent fiancée, Mary Ann Teresa Garcia. He was recently preceded in death by his first grandchild, Meaghan; his sister, Joyce Malley; and his sister, Patricia Brandt. Bill was born in Hobbs, N.M., and later graduated from Carlsbad high school. He attended the University of New Mexico for his undergraduate and again later for Law School in 1966. Bill's remains will be cremated and spread in a place special to him. Other people who knew him may pay their respects later at the Centennial Urn Garden, located at Sunset Memorial Park Cemetery. No one person could ever tell Bill's full story. He touched the lives of so many people, as do we all, whether we know it or not. His dad was a milk farmer, an ambulance driver and a mortician. His mother Dorothy was raised by her mother and grandmother, and like them, Dorothy ran a photo studio as one of the early women owned businesses of that time. Strong women were always a part of Bill's life. You all know who you are. Bill was his dad's right hand man, even as a boy. He tragically lost his dad at age 15 to an airplane crash. This event clearly influenced the man he was to become. He started out after high school in mortuary school, because he wanted to fill his father's shoes and help his mother with the family business. Well, it turns out those shoes did not fit Bill just right, so he changed careers and with his wife Patricia's help, he put himself through law school. There are those among us who knew more about Bill's legal career than I, but I will share a few remarks prepared with the help of Bill's friend and partner, Ed Chavez, who could not attend this Celebration of Life due to a prior commitment. Bill was a skilled trial lawyer who devoted his life to improving safety in our communities. His folksy style and common-sense cross-examination of prestigious engineers and scientists, persuaded juries more times than not to hold big businesses and governments accountable for their intentional or negligent behavior that caused catastrophic injuries or death. Bill was never interested in recognition, was not a self-promoter, yet he was recognized by State, National and International organizations for his lawyering skills and devotion to the practice of law. The University of New Mexico School of Law recognized Bill's contributions to the law and the profession by awarding him in 2008 its Distinguished Achievement Award. On the plaque which hangs in the law school the following offers a fitting tribute: "After graduation from the UNM School of Law in 1966, Bill Carpenter began a life-long law practice devoted to injured victims of negligence and those wronged by abuses of corporate and governmental power. Through his cases and as a leader of the New Mexico Trial Lawyers Association, Bill Carpenter had a profound influence on the progressive development of New Mexico law. In a career marked by excellence in service to his clients, commitment to high ethical standards and a winsome good humor, he is highly respected by all lawyers with whom he has come in contact. He leaves in his wake a new generation of trial lawyers who are guided by his high standards and respect for the law and its institutions." Bill was a loving and faithful son to his mother Dorothy. He cherished her and protected her and modeled for us the kind of familial devotion that is worth

following. The values of his parents were passed through him to all who knew him. I encourage you to speak to his sister Kathleen Griffin or my mother to hear more about what Bill was like as a brother. But I can tell you that I know he was close to all three of his sisters in different ways. He took care of them if they were having a hard time. He helped them and also their children in more ways than I will probably ever know. Because he never bragged about it. He just did it. I have not had an opportunity to meet many men who are as loving and loyal to their wife as my father. Growing up, I observed my parents in moments of love and anger and joy and tenderness. He was not always the most patient man. However, through times that were difficult and through times that were plentiful they got through it together. Bill led the office life, and Patricia led the home life. That was the arrangement they had and it worked well. After many years, circumstances beyond their control changed the nature of their relationship. Bill remained loyal to serving and protecting Patricia and loved her deeply until his dying day. All of that is true. It is also true Bill found another love in his relationship with Teresa Garcia. But that was not to be. Patricia is his widow. Yet it important to recognize his love for Teresa was not a simple affair. Bill truly loved both of these women. His heart was so big and full of love that he had plenty to spare. He will be mourned by them both. Just as he loved the other people he cared for and cared about, Bill loved his children and grandchildren fiercely. Bill's children and grandchildren never doubted that he loved them. He was sometimes a little intense with how he expressed his love, but we all learned to decipher these "passionate pleas" as his strong desire for us to be safe, and happy, and well. He was always there when someone needed him and was boisterous with his pride in his children and grandchildren. He was a complicated man, but love is simple and our family has never been short on love. We will miss him very much and love and remember him always. His best adventures were brought to him by his friends. When I was about age 10 or so, Bill had seen enough success that it made him worry that his kids might miss something critical in their character development. Something that comes from hard work. So with advice from his friend Rex Clemmer, may he rest in peace, he bought an alfalfa farm in Estancia, NM and moved us all out to the sticks. Patricia took this move in stride and they quickly became prominent members of the community, with Bill announcing at the local rodeos where my sister competed in barrel racing. I have many memories of Bill working on the tractor or the hay baler and cursing loudly when he banged his fingers. His CB handle at the time was Cityfarmer, which describes him pretty well because even as he continued his career as a prominent big city attorney, he never lost sight of his small town roots. If you wanted to summarize Bill Carpenter into one or two words you might struggle a bit. I recommend "Caring" and "Generous" as fine choices. We've talked a little bit about caring, so I'll focus on generous next. Bill would take a shine to certain clients and do much more than just represent them in court. He would take them under his wing and become a true counselor to them. Taking phone calls at all hours of the day and night to help them resolve things when they just didn't know what to do. He did this without any thought of compensation. He just did it. Once upon a time I was struggling with whether or not I should loan my friend \$100 bucks to get him through a hard time, and at the time \$100 dollars was a lot of money for me. I asked my dad for advice, and this is what he told me, "Never loan money that you can't afford to give." So I gave my friend \$100 dollars and I'll never forget that advice.

My sister recounted in the past couple of days, “Dad was about you pay it back by paying it forward. He was about paying it forward long before that was turned into a movie.” Bill gave time and money to so many people over the years there’s no way I could recount all of those stories. Some were friends, some were family, and some were perfect strangers. Many of those stories live within you who are hearing this now, or those who may read this later. I hope that you’ll share those stories with each other and maybe also go to the French Mortuary website and post them to the comments on his obituary page so we can all share them in perpetuity. My brother told me something a few days ago that I didn’t know. Bill would randomly do things like go purchase 50 lb. bags of beans and take them to the food bank. He did that and other similar things often. Just drop off donations and not even wait around for a thank you. He would just do it. You can do things like that to honor Bill. Bill would take every opportunity to support any effort to buy school supplies or books for children. He supported the Albuquerque Zoo, partly because he enjoyed it and also because his mother had enjoyed it so much. He gave of his time to causes which he believed in. Working to improve the lives of people all throughout New Mexico, and even to clean up the river waters so that more people could enjoy what he enjoyed most outside his law practice and his family, which was fly fishing. To say that Bill was an avid flyer fisherman was about right. Some of the people here today have had the privilege of going fishing with him and witnessing his joy. I’d like to say that he slapped the water on many rivers, and if you know anything about fly fishing you know that you’re not supposed to slap the water. But nobody could ever tell Bill Carpenter what to do. All jokes aside, he was a pretty good fisherman and he enjoyed it so much. Exploring beautiful places, and fishing beautiful rivers was his ideal way to spend time. It is what he wanted to do more, and what he would have done more had he not left us all too soon. If there’s a heaven made just for him, it’s going to be near a courthouse at the fork of several rivers with big beautiful fish to catch, and then release, so he can go catch them again another day. I have so much more I can say about Bill Carpenter. He was my father. He was my employer and later my client for most of my adult career. He was my business partner for a goodly portion the last 20 years. And as all of those relationships evolved he was also my close personal friend. He will always be a part of me, and I will miss him so. We will all miss him so. Durkin Julian Manning passed away

**Kathleen Marie Winslow (Kak)** died on April 30, 2022, at age 74 of complications after a long illness. The world has lost a wonderful human being. Kathleen had a boundless energy and curiosity for all things living and philosophical. She photographed thousands of interesting things she’d spot in nature. She never seemed to get bored, as life was her smorgasbord. Her travels took her to Russia, England, Italy, France, Korea, Egypt, South Africa, Ireland and throughout the United States. She was a collector with an attachment to hundreds of varied items, all of which had a story to tell. She gardened and she harvested. She knew how to do so many things, skills learned both from her accomplished parents, and her creative groups, and classes knitting, quilting, cooking, composting, arboriculture, history, book club, fashion dolls and wordsmithing. Everyone it seems was invited to share a cup of tea served with her homemade scones and cherry pies. If you made her laugh, you’d be invited back. She was a mentor to many, and she was everyone’s biggest fan; she was good at seeing the promise in people. She had nicknames for everyone and every animal in her life, and

we will all miss hearing her call us our pet names. Her Precious Beauty chihuahua Amazon also misses her very much. She was smart, and ethical, and honest, and moral, qualities that permeated her personal and professional life, to the benefit of us all. She believed in and fought for democracy and justice all her life. She managed to be both frugal and very generous in her life. And she was kind. She was a good and true friend. Kathleen enjoyed a very full life. She cared deeply about women’s issues and cultivated a wide circle of close friends and pooches. She was at once a beloved mother, grandmother, daughter, sister, auntie, friend. Kathleen was born to Orville G. and Theresa G. (Hines) Winslow in Bremerton, Washington in 1947, the second of three daughters. Her early years were spent in rural Washington until the family relocated in 1954 to Los Alamos, New Mexico, where her father had been recruited to work at the Los Alamos National Laboratory. She was educated in the public schools there and went on to the University of New Mexico where she earned an undergraduate degree in biology. After a stint working in research labs at the UNM School of Medicine, she entered UNM School of Law. During her law school years, she worked with several classmates to establish the Rape Crisis Center in Albuquerque. Upon graduation, she spent a year with the Legal Aid Society in Cedar Rapids, Iowa, under the auspices of the Reginald Heber Smith Community Lawyer Fellowship Program. On her return to Albuquerque, she opened a private law practice. She was instrumental in the establishment of the Albuquerque shelter for the victims of domestic abuse as a member of a group of women which included her sister Mary. After leaving the practice of law, she moved on to begin her career as a financial advisor. The firm eventually became known as, Winslow Wood & Associates, from which she retired, leaving her dear friends Marilyn and Jack Wood to continue the work that was important to her. Her advocacy for women and children via her work with many organizations including Crossroads for Women, an organization that serves women emerging from incarceration helping them to rebuild their lives was incredibly important to her before and after retirement. Kathleen was predeceased by her father in 2015 and her mother in 2017. She is survived by her daughter, Jennifer Keeney (Aaron Nix-Gomez) and granddaughter Lorelei. Also surviving are her sisters Mary Winslow and Laura Burr. She was the beloved “Auntie Kak” of nephews Tony White (Judith Wallace), Steve White (Anna) and Dylan Gilbert (Erica) and niece Ann Adams; grand nieces and nephews Kelsie, Jane, Oliver, Gus, and Viola; and great grandnephew Areyu. In addition to Kathleen’s family, many friends will mourn her loss, including two with a special place in her heart, Terry Keeney, and Sheila Rason. She left us all too soon.

Well-known attorney **Robert “Bob” Kinney** of Mesilla, N.M., died suddenly on Feb. 16, 2022. Kinney lived in the Las Cruces area for 27 years, where he was head of the Las Cruces Office of the Federal Public Defender. Bob was born on Sep. 13, 1946 at Yakima, Wash. where he spent his first 18 years. His parents, Robert E. Kinney, Sr., an electrician, and Erma Marie Kinney (nee Headley), a homemaker, passed in 1991 and 2009, respectively. Bob is survived by his wife, Rosa Rodriguez of Mesilla, N.M., and by siblings Patricia Aragon (Joe) of Greeley, Colo., and his brother and best friend, Gregory Kinney of Sebring, Fla. Two other siblings predeceased him, Sharon Lee Genson (Jerome) in 2007 and Linda McAleer (Michael) in 2021. Rosa, the love of Bob’s life, became close friends with him in the early 1990s.

After some intervening years they reunited in 2013. Rosa has been a wonderful companion and mate for Bob -- fun-loving, unique, smart, beautiful, and caring. They were married on Sep. 20, 2014. Rosa brought beauty and grace to their life. They enjoyed traveling the world together. Bob was a veteran of the U.S. Army Reserve from the 1960s. He received a B.A. from Central Washington University, then earned a Juris Doctor degree from the University of Idaho in 1976. Bob was a solo law practitioner in Orofino, Idaho for 19 years. In 1995, he was hired as an Assistant Federal Public Defender in Las Cruces where he diligently defended indigent people accused of crimes in Federal court, and in May 1996, became that office's branch chief. Bob trained and supervised many lawyers and other employees until 2014 when he retired. He was a long-time member of several criminal defense organizations. At the time of his passing he was an active member of the New Mexico Parole Board, having been appointed by Governor Michelle Lujan Grisham with the consent of the New Mexico State Senate. Bob also leaves nieces, nephews and many friends in the U.S. and abroad. During the last three years he especially enjoyed the Wednesday evening meetings with the "Yacht Club" at the Double Eagle in Mesilla. His view of his friends may be summed up by a song line from Tom Paxton: "Thanks for the company. The honor was all mine." His life also was enriched by the hundreds of clients he was honored to represent. Bob viewed their stories as lessons in human frailty and in strength. Bob gave additional significant time to public service. For weeks at a time he voluntarily taught and assisted young lawyers in Mongolia and in Bulgaria under the sponsorship of the Soros Open Society Foundations. He believed strongly in the Rule of Law. Bob logged 46 years as a licensed lawyer. He was a top-rated criminal defense lawyer, admired by clients, judges, prosecutors, co-workers, other criminal defense attorneys and countless friends. He was proud to have served as court-appointed counsel in nine State and Federal death penalty cases. He was among an elite of the relatively few "death-qualified" lawyers. None of his clients received the death penalty. Bob was a calm, intelligent person who loved horse racing, quality gin, travel, BMWs, New Mexico, scuba diving, ice hockey and lawyering. He believed that his life was a hell of a ride. He suffered the heart attack which took his life while with Rosa shortly after they had spent a fine day at the Sunland Park Racetrack. Bob's friends always were inspired both by his smiling determination to fully live life despite his Parkinson's disease and by Rosa's devotion to him. A memorial gathering will be held at a later time. Memorial contributions in his name may be made to the Parkinson's Support Group of Southern New Mexico by using [www.pmdalliance.org](http://www.pmdalliance.org), then selecting the green donation button and adding Bob's name and "for the benefit of PDSGSNM.org." Arrangements by Getz Funeral Home, 1410 E. Bowman Ave. Las Cruces, N.M. 88001. Please visit [www.getzcares.com](http://www.getzcares.com) to sign the local online guest book.

**Durkin Julian Manning** passed away on May 10, 2022, peacefully surrounded by family and friends in his home in Veguita, New Mexico, at the age of 78 after a long battle with several ailments with the heart and lungs. Durkin came to the Rio Grande Valley in the early 1960s and fell in love with the Southwest. He was born in Staten Island, New York to Julian Franklin Manning and Leonora Beverly Durkin. Most of his childhood was spent in Westport, Connecticut and Fort Lauderdale, Florida. He attended all Catholic schools from elementary school through college. He attended Norte Dame University and finished at Georgetown Law in Washington D.C. with a law degree. Durkin

was an active member of the New Mexico Bar Association since 1978 and held many positions on the Navajo Reservation as an educator and as an attorney to several Native American tribes throughout his career. He is survived by his love of 37 years, Belinda Jo Hadley of Veguita, N.M.; Sister, Pamula B. Hurley of Fort Lauderdale, Florida; Daughter, Jamie Roberge and husband Jeff Roberge of Houston, Texas; Son, Monty Hadley Singer of Los Lunas, N.M.; Daughter-in-law, Peggy Lynn Singer of Los Lunas, N.M.; Daughter, Lisa Marie Hadley Edwards of Tucson, Ariz.; Granddaughter, Emya Marie Hadley Edwards of Phoenix, Ariz.; Grandson, Keon Monte Hadley of Tucson, Ariz.; Grandson, Lason Lamar Johnson of Tucson, Ariz.; Grandson, Zach Munjas of Houston, Texas; Granddaughter, Claire Elizabeth Roberge of Houston, Texas; Niece, Leonora Hurley Bravo and family of Fort Lauderdale, Florida; Niece, Margaret Lancaster and family of Fort Lauderdale, Florida; Along with many friends in the community whom he held dear to his heart. The family extends their appreciation to the Belen Hospice team. Services for Durkin took place at the San Jose Catholic Church on May 12, 2022. Arrangements are being handled by the caring professionals at the Noblin Funeral Service Belen Chapel, 418 W. Reinken Ave., (505) 864-4448, where an online guest register is available at [www.noblin.com](http://www.noblin.com).

**Max H. Proctor**, 72, beloved Husband, Father, Brother, and Grandfather, was called to his eternal resting place on March 3, 2022. He entered this world on June 30, 1949, in Denton, Texas, born to Billy and Alice Proctor. He is survived by his wife Tami Proctor; daughters Keely Smith and Haley Carr; son Zachary Proctor; brother Joel Proctor; grandchildren Dylan Smith, Jude Smith, Jacoby Carr, Crosby Carr, and Teagan Proctor, three loved step children Ashton Zembas, Kristen Stegemoeller, Kolin Zembas, and grandsons Landon Tanier Zembas and Harper Lee Stegemoeller (expected 04/22). Max was a proud former Hobbs Eagle. His fondest memories were of his time playing basketball for the Eagles from 1965-1967. Max went on to play basketball for Fort Lewis College and was inducted into the Fort Lewis College Athletic Hall of Fame in 1995. After coaching J.V. Basketball for Clovis H.S. from 1971-1973, he attended Texas Tech University Law School. Prior to the start of his law career, Max had a professional try-out with the San Antonio Spurs of the American Basketball League. Max began practicing law in Texas and New Mexico in 1976. Max practiced law for the last 40 years. In 2012, he co-authored the book, "The Hobbs Eagle Press", to honor his beloved former coach, Ralph Tasker. Max was preceded in death by his parents Billy and Alice Proctor; grandson Fitz Carr.

It is with great sadness that the family of **Raymond A. Baehr** announced his passing on May 29, 2021, after a brief battle with cancer. Ray, 82, a longtime resident of Albuquerque, passed away at his home surrounded by loving family. Ray was born in Queens, New York in 1938. After graduating from Hackensack High School in New Jersey, Ray worked as a draftsman for Boswell Engineering Company before serving in the United States Army. While in the Army, Ray served overseas duty in Libya, North Africa and a year in Iran participating as a member of the Topographic Team performing surveying and large-scale mapping. In 1964, Ray participated in the tristate "Mustang Road Rally" event celebrating the release of the Ford Mustang automobile. Ray met his future wife, Lynne, when sitting across the table at the luncheon for the Road Rally participants in the Catskills Mountain, New York. They

married in 1966. Following his stint in the Army, Ray returned to Boswell Engineering and continued to work on design and drafting projects while earning a Bachelor of Science with honor from Fairleigh Dickinson University in 1970. That summer, Ray and Lynne moved with their two daughters to Albuquerque so he could attend the University of New Mexico Law School. Ray received his law degree from UNM in 1973. During law school, Ray began work as a law clerk with the firm now known as Butt Thornton & Baehr PC in 1972 and became a Shareholder and Director of the Firm in 1977. He served as Secretary of the firm from 1977 to 1985. Ray's legal work concentrated in the practice areas of commercial transactions, real estate, trusts, and probate. Ray was admitted to the New Mexico Bar in 1973, the U.S. Supreme Court in 1980; the U.S. Court of Appeals, 10th Circuit in 1981; and the New York bar in 1985. Ray served as the Editor-In-Chief of the N.M. Real Estate Law Reporter from 1987-1991; Legislative Assistant to the Governor, New Mexico Legislature 1972-1973; Director, Vice President, and General Counsel for Trace Industries Inc.; Director and General Counsel for Western Plumbing Supply; Director, Vice President, Secretary & General Counsel for Kibco, Inc.; Member of the Montessori School Board; Legal Advisor to the Assistance League of Albuquerque Board; and Owner, High Desert Provisions. Ray was known for his strong work ethic, loyalty and generosity with his time and expertise. He assisted many with his keen intellect and legal knowledge. He also kept people entertained with his wit. Ray was preceded in death by his parents Clara and Harry, and brother Robert Baehr. Ray is survived by his loving and devoted wife of 54 years, Lynne; children Susan (Mike Viracola); Karen (Joe O'Neill); sister Roberta Wanninger; grandchildren Christian and Avery Viracola; and niece Nicole Stabile. A Celebration of Life was held on June 19, 2021, at Sandia Presbyterian Church, 10704 Paseo del Norte N.E.

Long-time Artesia attorney and rancher **Joel M. Carson II** passed away on July 23, 2021. Joel was born on January 25, 1938 at Hotel Dieu in El Paso, Texas to Joel M. Carson and Mary Lou (Graham) Carson. Not long after his birth, Joel's parents returned to Southeast New Mexico where the family owned and operated ranches in Lea and Eddy Counties. After surviving the "Time It Never Rained" in the late 1940s and early 1950s, Joel's father passed at age 52, when Joel was just fifteen years old. Following his father's passing, Joel's mother, Mary Lou, raised Joel and his sister Cynthia in Lovington. There Joel lived the life of a small-town teenager, hunting, playing football, and forming lifelong friendships. Although the drought of the late 1940s ended his parent's ranching operation, Joel worked often with his Uncle, Mason Graham, on the family ranch just south of Lovington gathering, branding, and doctoring cattle. It is rumored that Joel and his lifelong friend Tom Black blew the bottom out of a stock tank on Mason's ranch with a stick of dynamite - a story neither would ever confirm or deny. After graduating from Lovington High School in 1955, Joel spent a year at New Mexico Military Institute. He attended NMMI with hopes of playing polo, but as luck would have it, the polo team disbanded the year he arrived. With those hopes dashed, Joel packed his bags and headed to Waco, Texas where he enrolled in Baylor University with plans of graduating and attending medical school. But during a medical emergency in which one of the Graham Ranch hands crushed his hand in a well pump, Joel nearly passed out at the sight of blood. After this experience, he changed course and set his sights on a career in the law. He graduated from Baylor in 1959 and next attended

the University of New Mexico School of Law where he graduated in 1962. Upon graduating, Joel accepted a position with New Mexico's attorney general, where he served for six years as an Assistant Attorney General-including a time as Bureau Chief of what was then Bureau of Revenue. During that time, Joel developed a passion for drafting legislation. He drafted many bills ultimately passed by the New Mexico legislature including portions of New Mexico's gross receipts tax law and the Unfair Practices Act. Over the years he also drafted or contributed to many bills involving oil, gas, and energy matters. After six years with the Attorney General's office, he moved his practice to Artesia, New Mexico to join prominent oil and gas attorney A.J. "Jerry" Losee. Joel and Jerry practiced for many years together and their law firm, Losee and Carson, continued in one iteration or another for many years. Joel maintained a diverse law practice in Artesia assisting everyone from pro bono clients to publicly traded companies. For many years, until making the decision to cut back on his working hours, he was a primary attorney for New Mexico's largest oil refiner, one of Artesia's largest employers, and the Artesia Hospital District. He even appeared from time to time for Hollywood stars who invested in oil but later found themselves in lawsuits. As interesting as his complex clients were, he always made time to represent kids, persons trying to escape abusive relationships, and local people who needed advice and counseling. And he did all of this with his stalwart legal assistant Beverly King, with whom he worked for forty-eight years. But the return to Southeast New Mexico was more than just professionally fulfilling. It was there he found true love when Jerry Losee's legal secretary introduced him to her daughter Eireen Marshall - later to be Carson. Joel met Eireen and her four young children Stephen, Ron, Reese and Michelle (ages 4-10) and the rest is history. After Joel and Eireen would return from dates, the kids allegedly asked Eireen: "Mom, are we going to marry Joel?" Well, they did - on April 10, 1969. Joel and Eireen had one more child in 1971 - Joel III - and raised their family in Artesia. They were particularly pleased that each of their children graduated debt-free with a college degree. Joel and Eireen lived their love affair until she preceded him in death in 2007. The return to Southeast New Mexico also allowed Joel to live the western lifestyle he so loved. Being part of a Lea County ranching family instilled a drive in Joel to get back into the cattle business, which he did in 1976, with some leased ground near Hobbs. He later moved his cattle operation to Hope, New Mexico when he and Eireen purchased the J.C. Ward Ranch. Ranching and horses were a passion for Joel. He tried team roping for a while - but decided to switch equestrian disciplines when legendary team roper Jerold Camarillo complimented him on how well he "roped on the ground." He owned some great horses over the years, including Star O Lena and Holly Leo 74, but he made sure his kids were the ones to compete on them. Joel III on the former and Michelle on the latter. But he did own and show a great horse himself - Scatter N Dust - a cutting horse his friend Dee Merritt found him. Joel and Scatter N Dust won many cutting horse buckles in New Mexico. Joel loved people and, after Eireen's death, he rekindled many old relationships with high school and law school friends. He was fortunate to spend several good years with his friend Linda Murphy, whom he met at his son Ron's wedding. And through his law school roommate Wayne Wolf, Joel met Almira Whiteside. Joel and Almira traveled the world together and never missed the opportunity to watch Joel's grandchildren or great grandchildren show horses and work cattle together. When asked after Joel's death how long they were together, Almira said

“not long enough.” Her statement reflected a sentiment shared by all of his friends and family. Joel was predeceased by his wife Eireen, his son Stephen, and his grandson James Matthews. He is survived by his sister Cynthia Duchatschek and her husband Duke of Belleville, Illinois, son Ron Carson and his wife Ann of Roswell, son Reese Carson of Las Cruces, daughter Michelle Matthews of Artesia and son Joel Carson III and his wife Karen of Roswell. He is also survived by his grandsons Jacob Matthews, Reese Carson II, Kenz Price, Joel Carson IV, and Chris Carson and great-grandson Case Ray Matthews. Not to be left out, Joel is also survived by his faithful dog of more than ten years “Big John.” Joel always joked about certain friends being on his “Permanent Pallbearers List” - and so it is. Serving as honorary pallbearers will be his friends Tom Black, T.E. “Tom” Brown, Bill Gray, Jimmy Mason, Dee Merritt, Johnny Nelson, Jack Reid and James Rogers. Pallbearers will be his grandsons Jacob Matthews, Reese Carson II, Joel Carson IV and Chris Carson along with Chris Pruitt and Chance Chase.

It is with great sadness that we announce the death of **Caroline Duvall** (Jacksonville, Fla.), who passed away on April 11, 2022, leaving to mourn family and friends. Leave a sympathy message to the family on the memorial page of Caroline Duvall to pay them a last tribute.



**Harry (Pete) Sinclair Connelly Jr.**, a brilliant lawyer, mentor, scholar, self-taught chef and devoted husband, departed this life at age 88 after an extended illness on Saturday, May 28, 2022. He was in his home in Las Cruces, N.M. with his wife, Minnette Connelly, by his side. Pete is survived by his wife, Minnette, two sons, Scott Connelly in Albuquerque, N.M. and Peter Connelly in Livingston, Wyo., one sister, Colleen Moss in Phoenix, Ariz., one brother Denis Connelly in Marble Falls, Texas, one grandson,

Chase Connelly, and two granddaughters, Olaia and Neve. He is also survived by his extended family, Don and Dawn Marketto, grandsons, Dominic, Drew, and Devin Marketto and two great grandchildren, Max and Lucy who called him “Great Pete,” all living in Las Cruces, N.M. Pete was born in Houston, Texas on April 25, 1934. His father was in the oil business and moved his family to Wichita, Kan. where Pete grew up. He went to high school at Missouri Military Academy in Mexico, MO where he graduated in 1952 as the Cadet Lieutenant Colonel of the school’s battalion. He graduated from the University of MO in 1956 and served his country from 1956 to 1958 on active duty with the United States Army Artillery as a Forward Observer. He was honorably discharged as a 1st Lieutenant on November 6, 1958 and served in the Military Reserves until 1962. Pete graduated from the Washburn School of Law in Topeka, Kan. in 1962 with honors in Constitutional Law. Thereafter, he received his Masters Degree from Georgetown University Law Center in Washington D.C. in 1963. While in DC, he worked for the Legal Aid Agency as a clerk for the Prettyman Scholarship Students at the Law Center. He moved to Santa Fe in 1963 and began his law career, joining a private firm where he soon became a partner of the firm, Stephenson, Campbell, Olmsted and Connelly. While living in Santa Fe, Pete was City Attorney for the City of Santa Fe, was a Special Assistant Attorney General and was in private practice specializing in land development. He was Santa Fe’s City Attorney

for over five years. While in Santa Fe, Pete was engaged as City Attorney for the far reaching case of “City of Santa Fe v. Sangree de Christe Development Co. which went all the way to the Supreme Court of the United States and established that a city in N.M. was immune from suit unless a specific statute allowed suit. This case required the N.M. Legislature to enact the N.M. Tort Claims Act. After moving to Las Cruces in 1992, Pete worked for twenty two years for the City of Las Cruces as Deputy City Attorney, Acting City Attorney, Interim City Attorney and City Attorney until he retired in 2016. In Las Cruces, Pete was the principal City Attorney engaged in the municipalization of the El Paso Electric Co and its settlement. He was also the City’s chief negotiator in the City’s early negotiation with the creation of the new Municipal Labor law. In addition, he served in the City Attorney’s office through at least five City Managers. Between his employment as the City of Attorney of Santa Fe and the City Attorney of Las Cruces, Special Attorney General, and private practice, he had over fifteen reported cases in the NM Supreme Court, the NM Court of Appeals, the 10th US Circuit Court of Appeals, and the US District Court for NM. Pete was also a regular speaker at the NM Municipal Attorney Seminars and was President of that entity in 2011-2012. He had a passion for the constitution, justice, and fairness. His colleagues and friends could always depend on Pete for photographic recall of past cases, good counsel, respect, and loyal friendship. While Pete’s primary passion was for the law, he also had other leisure interests. He was a gentleman who loved fashion and even opened a men’s clothing store called Harry’s Haberdashery in Santa Fe. It remained open until 2018. He was an enthusiastic cyclist and participated in the National Senior Olympics. All the while, he found time to be an avid reader and self-taught chef. Those close to him hoped to be invited over for dinner to enjoy a masterful culinary experience! He was even featured in the “New Mexican” in Santa Fe for his special recipes and cooking advice. Pete captivated those close to him with his light hearted sense of humor and charming manner. In his last years, Pete grew to know, love, and follow Jesus Christ. Pete is predeceased by his parents, four brothers, one sister, and his previous wife, Susan Connelly. A celebration of Pete’s life will be held at Immaculate Heart of Mary Cathedral on Saturday, July 9, 2022 at 10am. There will be a reception following the service. Interment will take place in a private ceremony at the Santa Fe National Veteran’s Cemetery in Santa Fe, NM. Arrangements by Getz Funeral Home, 1410 E. Bowman Ave. Las Cruces, NM 88001.

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Elizabeth A. Garcia, Chief Clerk of the New Mexico Supreme Court  
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

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## CLERK'S CERTIFICATE OF AMENDED LIMITED ADMISSION

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Effective April 30, 2022:  
**Richard O'Neal**  
Office of the State Engineer  
P.O. Box 25102  
130 S. Capitol (87501)  
Santa Fe, NM 87504  
505-827-5091  
505-827-3806 (fax)  
richard.oneal@state.nm.us

Effective May 2, 2022:  
**Parker Pollard**  
New Mexico Legal Aid, Inc.  
P.O. Box 25486  
505 Marquette Avenue NW,  
Suite 700 (87102)  
Albuquerque, NM 87125  
505-243-7871  
parkerp@nmlegalaid.org

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective April 19, 2022:  
**Kevin Donald O'Leary**  
P.O. Box 998  
Cannon Beach, OR 97110  
503-436-4207  
oleattnys@gmail.com

Effective April 25, 2022:  
**Kim Romero-Oak**  
8560 Second Avenue, #1616  
Silver Spring, MD 20910  
505-934-0620  
kromero1918@comcast.net

Effective May 4, 2022:  
**William S. Cassel**  
53 Paseo Del Coyote  
Santa Fe, NM 87506  
505-988-9149  
wscassel@gmail.com

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## CLERK'S CERTIFICATE OF WITHDRAWAL

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Effective December 31, 2021:  
**Michael W. Brennan**  
1585 Luisa Street  
Santa Fe, NM 87505

Effective March 22, 2022:  
**Michael Quinten Martin**  
1015 N. West Street  
Silver City, NM 88061

Effective March 30, 2022:  
**Hon. Michael E. Vigil (ret.)**  
107 San Salvador  
Santa Fe, NM 87501

**Ruth Tamara Yodaiken**  
7707 Wisconsin Avenue #512  
Bethesda, MD 20814

Effective April 8, 2022:  
**Michele Huff**  
4412 Tierra Granada Drive,  
Unit 2B  
Walnut Creek, CA 94595

Effective April 17, 2022:  
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# Advance Opinions

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

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-008**  
No: A-1-CA-37486 (filed October 24, 2021)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
LEE WALDO GARCIA,  
Defendant-Appellant.

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

Briana H. Zamora, District Judge

Certiorari Denied, January 16, 2022, No. S-1-SC-39085.  
Released for Publication March 1, 2022.

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## OPINION

### IVES, Judge.

{1} Defendant Lee Waldo Garcia appeals his conviction and sentence for homicide by vehicle while under the influence of intoxicating liquor, contrary to NMSA 1978, Section 66-8-101(A), (C) (2016). Defendant argues that his conviction was the result of fundamental error because the jury instructions did not accurately present the law of proximate causation and that it is not supported by sufficient evidence of causation. Should his conviction stand, Defendant argues that his sentence must be reversed because it violates his right against double jeopardy. We disagree with Defendant regarding the validity of his conviction, but, because the district court increased Defendant's sentence after he had formed a reasonable expectation in its finality, we reverse his sentence.

#### BACKGROUND

{2} While drunk, Defendant crashed his truck into Victim as Victim was attempting to cross the street in his motorized wheelchair. After Victim had been in the hospital for approximately two weeks, Victim's family decided to remove him from life support, and he died.

{3} The State prosecuted Defendant for

driving while under the influence (DWI), aggravated DWI, and vehicular homicide. The jury found Defendant guilty of two crimes: (1) homicide by vehicle while under the influence of intoxicating liquor, contrary to Section 66-8-101(A), (C), a second-degree felony; and (2) aggravated DWI, contrary to NMSA 1978, Section 66-8-102(D)(1) (2016). The district court initially sentenced Defendant to an actual prison term of ten years but twice resentenced Defendant, and the ultimate sentence includes a fifteen-year term of incarceration. Defendant appeals.

#### DISCUSSION

##### I. The Jury Instruction for Vehicular Homicide Did Not Result in Fundamental Error

{4} Defendant argues that his conviction must be reversed because the phrase "outside event," as used in the uniform jury instruction defining proximate cause, UJI 14-251 NMRA, and in the given instructions, was not defined for the jury. Because Defendant did not raise the issue in the district court, we review for fundamental error. *State v. Cabezuela*, 2015-NMSC-016, ¶ 37, 350 P.3d 1145. Our analysis "begins at the same place as [the] analysis for reversible error[:]" we ask whether "a reasonable juror would have been confused or misdirected by the jury instruction."

*State v. Barber*, 2004-NMSC-019, ¶ 19, 135 N.M. 621, 92 P.3d 633; see *State v. Grubb*, 2020-NMCA-003, ¶ 7, 455 P.3d 877 ("In a fundamental error analysis, we begin by considering whether reversible error exists[.]" ). Jury instructions cause confusion or misdirection when, "through omission or misstatement," they do not provide "an accurate rendition" of the essential elements of a crime. *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134. But if an instruction "accurately presents the law[.]" it "is proper, and nothing more is required[.]" *State v. Laney*, 2003-NMCA-144, ¶ 38, 134 N.M. 648, 81 P.3d 591. To the extent Defendant's argument requires us to analyze whether UJI 14-251 accurately states the law, our review is de novo. *Laney*, 2003-NMCA-144, ¶ 38. {5} Defendant contends that, by using the phrase "outside event" to refer to something that could interrupt the chain of events between a defendant's act and a victim's death, the UJI departs from conventional notions of proximate causation in criminal law. We disagree.

{6} When causation is at issue in a homicide case, the jury must determine whether an act of the defendant was (1) a factual cause of the victim's death and (2) the proximate cause of the victim's death. See UJI 14-251, use note 1; *State v. Montoya*, 2003-NMSC-004, ¶ 22 n.1, 133 N.M. 84, 61 P.3d 793. Proximate causation is a question of whether the death was a "natural and probable consequence of[] the accused's conduct." *State v. Simpson*, 1993-NMSC-073, ¶ 14, 116 N.M. 768, 867 P.2d 1150 (internal quotation marks and citation omitted). To be a proximate cause, a defendant's conduct need not "be the sole cause of the [death,]" *id.*, and a coinciding event that contributed to a victim's death "to an insignificant extent" cannot relieve a defendant of liability. *Montoya*, 2003-NMSC-004, ¶ 19 (internal quotation marks and citation omitted). Even an event that significantly contributes to a victim's death does not relieve a defendant of liability, *id.*, unless "it is a superseding cause that negates the defendant's conduct." *Simpson*, 1993-NMSC-073, ¶ 14.

{7} We presume that our Supreme Court's uniform instruction regarding causation in homicide cases, UJI 14-251, is correct, see *State v. Ortega*, 2014-NMSC-017, ¶ 32, 327 P.3d 1076, and our Supreme Court has recognized that UJI 14-251 encompasses both factual and proximate causation. *Montoya*, 2003-NMSC-004, ¶ 22 n.1. Our own review of the text of UJI 14-251 confirms that the instruction adequately conveys the necessary causation concepts.

The instruction requires the jury to determine whether an “act of the defendant was a significant cause of the death . . . without which the death would not have occurred” and whether “[t]he death was a foreseeable result of” that act—i.e., whether the death resulted from that act “in a natural and continuous chain of events, uninterrupted by an outside event[.]” *Id.* Defendant asserts that the phrase “outside event” is ambiguous and should have been defined for the jury. We conclude that no such definition was necessary because “outside event” has a common meaning, see *State v. Munoz*, 2006-NMSC-005, ¶ 24, 139 N.M. 106, 129 P.3d 142, and a reasonable jury would understand the meaning of the phrase in the context of the given instruction. We therefore reject Defendant’s argument that, without a definition of “outside event,” the given instructions may have confused the jury and were thus erroneous.<sup>1</sup> See *Laney*, 2003-NMCA-144, ¶ 38. Because it would not have been reversible error for the district court to decline to instruct the jury on the meaning of “outside event” if Defendant had requested such an instruction at trial, we hold that the lack of an instruction defining that phrase was not fundamental error. See *State v. Adamo*, 2018-NMCA-013, ¶ 27, 409 P.3d 1002 (holding that, where “there was no reversible error” “in the instructions[.]” “there was no fundamental error”).

## II. The Evidence Suffices to Support Defendant’s Conviction

{8} Defendant argues that the evidence did not suffice to show that Victim’s death resulted from Defendant’s act, uninterrupted by an outside event, and that it only sufficed to show that he caused great bodily harm, not homicide. Defendant contends that (1) the evidence demonstrates that Victim’s own negligence in attempting to cross the street caused the collision, and (2) the subsequent decision to remove Victim from life support relieves Defendant of liability for Victim’s death. We disagree with both contentions. {9} In reviewing the sufficiency of the evidence, 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. We then consider “whether the evidence, so viewed, supports the verdict beyond a reasonable doubt.” *State v. Garcia*, 2016-NMSC-034, ¶ 24, 384 P.3d 1076.

“We do not reweigh the evidence or substitute our judgment for that of the fact[-]finder as long as there is sufficient evidence to support the verdict.” *State v. Gipson*, 2009-NMCA-053, ¶ 4, 146 N.M. 202, 207 P.3d 1179.

{10} “We will affirm a conviction if supported by a fair inference from the evidence regardless of whether a contrary inference might support a contrary result.” *State v. Barrera*, 2002-NMCA-098, ¶ 10, 132 N.M. 707, 54 P.3d 548. A fair inference “is a conclusion arrived at by a process of reasoning which is a rational and logical deduction from facts admitted or established by the evidence.” *State v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930 (alterations, internal quotation marks, and citation omitted). Inferences and evidence contrary to the verdict “[do] not provide a basis for reversal because the jury is free to reject [the d]efendant’s version of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. “[I]n the determination of proximate cause[,] common sense is not to be eliminated.” *State v. Landgraf*, 1996-NMCA-024, ¶ 31, 121 N.M. 445, 913 P.2d 252 (internal quotation marks and citation omitted).

{11} The State presented sufficient evidence for the jury to conclude, under the given instructions, that Defendant’s act of “operat[ing] a motor vehicle while under the influence of intoxicating liquor” caused Victim’s death “in a natural and continuous chain of events, uninterrupted by an outside event[.]” See UJI 14-240B NMRA; UJI 14-251; see generally *State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” (alterations, internal quotation marks, and citation omitted)). We reject the first of Defendant’s two arguments to the contrary because the State presented sufficient evidence that Defendant was responsible for the collision. One of the State’s eyewitnesses, Melissa Jacobsen, testified that she was driving approximately one car length behind Defendant, who had been swerving and driving at inconsistent speeds, when she noticed Victim begin to cross the street. Recognizing that it was dangerous for Victim to cross when Defendant had been driving so erratically, Ms. Jacobsen screamed out her car window and honked the horn repeatedly.

And, in the time that Ms. Jacobsen was screaming and honking her car horn, Defendant did not change his speed, apply his brakes, or take any other action to avoid colliding with Victim. Based on Ms. Jacobsen’s testimony regarding everything she did to warn of the danger she perceived, it was reasonable for the jury to conclude that Defendant had enough time to avoid the collision and indeed could have avoided the collision had he not been drunk. Cf. *State v. Munoz*, 1998-NMSC-041, ¶¶ 19-22, 126 N.M. 371, 970 P.2d 143 (explaining that “a jury’s guilty verdict in a vehicular homicide case is its determination that the defendant had the power to prevent the victim’s death by driving lawfully”).

{12} We reject Defendant’s second argument because the State also presented sufficient evidence that Victim’s injuries from the collision caused his death. This evidence consisted of the testimony of two experts: Dr. Jasmeet Singh Paul, the attending surgeon when Victim arrived at the University of New Mexico Hospital (UNMH), and Dr. Hannah Kastenbaum, the medical investigator who declared the cause of Victim’s death. Dr. Paul testified that, upon Victim’s arrival at UNMH, hospital staff determined that Victim was likely to die of his injuries within two to three weeks. Acknowledging that Victim died after he was taken off life support at the direction of Victim’s family, Dr. Paul explained that, from the collision, Victim suffered “multisystem trauma” including thirteen rib fractures, which in turn caused pneumonia, and a severe brain injury and that the combination of Victim’s injuries and resulting complications was what “really” “led to his death.” In addition, Dr. Kastenbaum testified that “blunt trauma” from “being struck by a vehicle” was the cause of Victim’s death. Dr. Kastenbaum elaborated that there was no reason to conclude that Victim “would have died when he did” “but for [those] injuries[.]” And Dr. Kastenbaum testified that, while Victim’s preexisting health problems contributed to his death and that it was impossible to determine the extent to which each underlying factor caused Victim to die when he did, his injuries from the collision were a “tipping point” in bringing about his death.

{13} Contrary to Defendant’s arguments on appeal, the evidence at trial gave the jury a reasonable basis for concluding that

<sup>1</sup> Defendant urges us to apply the rule of lenity, see generally *State v. Ogden*, 1994-NMSC-029, ¶ 25, 118 N.M. 234, 880 P.2d 845 (“The rule of lenity counsels that criminal statutes should be interpreted in the defendant’s favor when insurmountable ambiguity persists regarding the intended scope of a criminal statute.”), and cites *State v. Crain*, 1997-NMCA-101, ¶ 20, 124 N.M. 84, 946 P.2d 1095, for the proposition that the rule of lenity applies to uniform jury instructions. Crain does not support that proposition. Even assuming the rule of lenity is applicable to the interpretation of jury instructions as a general matter, that rule only comes into play when the language at issue is ambiguous, and, as we have explained, the language of UJI 14-251 is not ambiguous.

no outside event—whether it be Victim’s own negligence or his family’s decision to remove him from life support—interrupted the natural and continuous chain of events that foreseeably resulted from Defendant’s act of drunk driving. See *Montoya*, 2003-NMSC-004, ¶ 19 (explaining that a defendant’s act “may be a legal cause of death” even when there are “other significant causes” of the death); *Rojo*, 1999-NMSC-001, ¶ 19 (explaining that the jury is free to reject a defendant’s portrayal of the facts). Put simply, the evidence was sufficient for the jury to find that (1) Defendant would have been able to avoid the collision if he had not been drunk; (2) Victim would not have died when he did but for the injuries he suffered as a result of Defendant’s drunk driving; and (3) the manner of Victim’s death was a foreseeable consequence of Defendant’s actions. Accordingly, we hold that the evidence suffices to sustain Defendant’s conviction.

### III. Defendant’s Sentence Violates His Right Against Double Jeopardy

{14} We now turn to Defendant’s double jeopardy challenge to his sentence. We begin by describing the relevant procedural background, then explain our analysis.

#### A. Procedural Background

{15} At sentencing on April 3, 2018, Defendant admitted that this was his fourth conviction for DWI, and the State offered proof, for the purposes of the habitual-offender statute, NMSA 1978, § 31-18-17(A), (D)(1) (2003), that Defendant had a 2011 felony conviction for selling or giving alcoholic beverages to minors. See generally NMSA 1978, § 60-7B-1(A), (F) (2004, amended 2013). The district court orally sentenced Defendant, at the highest end of its jurisdiction, to a total of seven-teen-and-a-half years: eighteen months for aggravated DWI, see § 66-8-102(G) (mandating an eighteen-month sentence upon a fourth conviction for DWI), to be served consecutively to a sixteen-year sentence for vehicular homicide, which included a one-year habitual offender enhancement. See NMSA 1978, § 31-18-15(A)(4) (2016) (setting the basic sentence for a second-degree felony “resulting in the death of a human being” at fifteen years); § 31-18-17(A), (D)(1) (increasing the basic sentence for a noncapital felony by one year when the person convicted is deemed a habitual offender based on one prior conviction or conditional discharge for a felony that was part of a separate transaction or occurrence and less than ten years has passed since the person completed the sentence for the prior felony). The court suspended seven-and-a-half years of the sentence for an actual term of ten years. Nothing in the district court’s oral pronouncement of sentence indicated that the sentence was tentative.

Thereafter, the court entered an order remanding Defendant “to the custody of the Metropolitan Detention Center” (MDC) because he had been “[s]entenced to the custody of the [New Mexico Corrections Department (NMCD)]” “to serve a term of [ten years].” The district court memorialized its sentence in a letter to counsel sent two days later.

{16} Before entry of judgment and sentence—which the district court delayed because the parties’ proposed judgment and sentence did not reflect the sentence of actual incarceration corresponding to each of Defendant’s convictions—Defendant moved to reconsider his sentence and vacate the aggravated DWI conviction. Defendant argued that his conviction for both crimes subjected him to double jeopardy. The district court agreed and, at a hearing on April 11, vacated the aggravated DWI conviction and resentenced Defendant on the vehicular homicide conviction, as a habitual offender, to sixteen years with six years suspended for an actual term of ten years. The court also, for the first time, designated Defendant’s crime a serious violent offense at the April 11 sentencing. See generally NMSA 1978, § 31-18-15(F) (2016, amended 2019) (directing the sentencing court to determine whether any felony for which it has imposed a sentence of imprisonment is a serious violent offense that, under NMSA 1978, Section 33-2-34 (2015), is eligible for fewer merit-based sentence reductions than are nonviolent offenses).

{17} The district court orally resentenced Defendant a second time on April 19, 2018. In a later order clarifying its judgment and sentence, the district court explained that it held the April 19 hearing because the parties had not submitted a proposed judgment and sentence following the April 11 sentencing. At the April 19 hearing, the district court determined that it had lacked the discretion to designate Defendant’s conviction for second-degree vehicular homicide a serious violent offense due to what it perceived as a legislative oversight. See §§ 31-18-15(F), 33-2-34(L)(4) (o)(14) (granting trial courts discretion to determine that a person convicted of third-degree—but not second-degree—homicide by vehicle has committed a serious violent offense). Attempting to compensate for this perceived error, the court resentenced Defendant to fifteen years, which included a one-year habitual offender enhancement. The district court did not suspend any part of the sentence and did not designate the crime a serious violent offense. The net result was to change the actual term of imprisonment from ten to fifteen years.

{18} Defendant argues that his current sentence violates principles of double jeopardy because, after his original sentencing, he began serving the original sentence with a reasonable expectation in its finality. Specifically, Defendant contends that the second resentencing subjected him to double jeopardy because the sentence imposed at that time and currently in place is fifteen years, whereas his prison term had been ten years under the previous two sentences. Reviewing this claim of error de novo, *State v. Soutar*, 2012 NMCA-024, ¶ 11, 272 P.3d 154; *State v. Yazzie*, 2018-NMCA-001, ¶ 9, 410 P.3d 220, we agree.

#### B. Resentencing Defendant Violated a Double Jeopardy Principle Because He Had a Reasonable Expectation That His Original Sentence Would Not Be Increased

{19} The double jeopardy clauses of the United States and New Mexico Constitutions protect a criminal defendant’s “reasonable expectation of finality” in a sentence. *State v. Porras*, 1999-NMCA-016, ¶¶ 1, 13-14, 126 N.M. 628, 973 P.2d 880. That protection is the basis of a “well-established principle of New Mexico law that a trial court generally cannot increase a valid sentence once a defendant begins serving that sentence.” *Id.* ¶ 7 (citing, among other cases, *State v. Cheadle*, 1987-NMSC-100, ¶¶ 10-16, 106 N.M. 391, 744 P.2d 166); see also 6 Wayne R. LaFave et al., *Criminal Procedure* § 26.7(c) (4th ed. 2020) (recognizing that, under the double jeopardy clause of the United States Constitution, “a defendant’s legitimate expectation of finality in an imposed sentence” may “stand as a bar to resentencing” (internal quotation marks and citation omitted)). This principle protects against an increase in the actual term of incarceration in which a defendant has a reasonable expectation of finality. See *Porras*, 1999-NMCA-016, ¶¶ 3-5, 12-13 (holding that the defendant had a “reasonable expectation in the finality of the length and structure” of his sentence that was violated when the district court modified his sentence to suspend less imprisonment than it had originally suspended).

{20} Straightforward application of these principles leads to the conclusion that upon remand to custody for the purpose of serving the originally-imposed sentence, Defendant began serving his sentence, with a reasonable expectation in its finality, before his resentencings on April 11 and April 19. See *id.* ¶ 14 (holding that the defendant had a reasonable expectation of finality in an oral sentence from the moment “the trial court remanded him to the custody of the sheriff” and he began serving the sentence). Seeking to avoid this conclusion, the State makes three arguments. We address each in turn.

### C. The State's Arguments Are Unavailing

{21} First, the State argues that Defendant could not have had a reasonable expectation of finality in his sentence because it had not yet been incorporated into a final judgment. This argument is contrary to New Mexico precedent. Under New Mexico law, a defendant can form a reasonable expectation of finality in an otherwise interlocutory sentence such as an oral sentence. *Id.* An oral pronouncement of sentence does not always give rise to a reasonable expectation of finality. *See, e.g., Soutar*, 2012-NMCA-024, ¶¶ 13-15. Our courts have instead drawn a bright line at the commencement of service of sentence; a defendant can reasonably rely on the finality of a sentence—oral or written—once the defendant has begun serving the sentence. *See Porras*, 1999-NMCA-016, ¶ 14; *Cheadle*, 1987-NMSC-100, ¶ 16 (“[I]t is . . . improper for a trial court in New Mexico to set aside a valid sentence after a defendant has been committed thereunder[] and impose a new or different sentence increasing the punishment.” (internal quotation marks and citation omitted)).<sup>2</sup>

{22} We also reject the State's second argument—that Defendant did not have a reasonable expectation of finality in his sentence because he filed a motion labelled a motion for reconsideration of his sentence after the April 3 sentencing<sup>3</sup>—because it relies on the dubious premise that when defendants ask trial courts to *decrease* their sentences, they must reasonably expect that the courts might *increase* their sentences. This defies common sense and, as we will explain, is inconsistent with New Mexico law.

{23} The only avenue available for a discretionary reconsideration of sentence following the April 3 sentencing was Rule 5-801,<sup>4</sup> regarding motions for reduction of sentence, and its availability did not prevent Defendant from forming a reasonable expectation of finality because the Rule's plain language and history demonstrate that it only permits sentencing courts to reduce a defendant's sentence. In construing a rule of criminal procedure, our appellate courts employ “the same rules of construction [as those] applicable to the interpretation of statutes.” *State v. Aslin*, 2020-NMSC-004, ¶ 9, 457 P.3d 249 (internal quotation marks and citation omitted).

We examine “the plain language of the rule as well as the context in which it was promulgated, including the history of the rule and [its] object and purpose.” *Id.* (internal quotation marks and citation omitted). The plain language of Rule 5801 is clear as to the scope of authority it confers. The applicable part of the Rule, Subsection A, discusses only “[a] motion to reduce a sentence” and, fittingly, is entitled “[r]eduction of sentence.” We see nothing in the Rule stating or implying that a district court has the authority to increase a sentence upon the filing of a motion to reduce the sentence.

{24} The history of Rule 5-801 confirms that its plain language means what it says. This Court discussed that history in *State v. Torres*, 2012-NMCA-026, 272 P.3d 689, which involved a prior version of the rule, Rule 5-801(A) (1989). *Torres*, 2012-NMCA-026, ¶ 13. In *Torres*, this Court recognized that, with the 1989 amendment to Rule 5-801, New Mexico abolished a common-law principle that gave sentencing courts inherent authority to correct illegal sentences. *Torres*, 2012-NMCA-026, ¶¶ 13-15, 17, 37-38.<sup>5</sup>

<sup>2</sup> We recognize that some New Mexico precedent invokes the “well[ ] established” rule that “the trial court can change [an oral sentence] at any time before the entry of written judgment.” *State v. Diaz*, 1983-NMSC-090, ¶ 4, 100 N.M. 524, 673 P.2d 501. But cf. 6 LaFave, *supra*, § 26.4(d) (“Unfortunately, it is not unusual for a trial judge to announce one sentence and enter another. Jurisdictions have taken various approaches to resolving this inconsistency, with the majority noting that the oral pronouncement controls, based in part on the defendant's right to be present at sentencing.”); *State v. Stejskal*, 2018-NMCA-045, ¶ 14, 421 P.3d 856 (discussing Rule 5-113(B) NMRA, which permits courts to correct clerical mistakes in written sentencing orders, and recognizing a defendant's “a constitutional right to be present when [the defendant] is sentenced”). But those precedents recognize that the rule applies only up to the point at which a defendant begins serving that sentence. *See Diaz*, 1983-NMSC-090, ¶¶ 5-6 (holding that the district court had the authority to resentence the defendant because the defendant had not yet served any portion of the original, oral sentence); *Soutar*, 2012-NMCA-024, ¶¶ 13-15 (holding that the defendant did not have a reasonable expectation of finality in an oral sentence where the district court's revocation of the defendant's plea agreement was justified by the defendant's failure to abide by its terms and the defendant's appellate argument that he had begun serving his sentence was baseless); *State v. Rushing*, 1985-NMCA-091, ¶¶ 5, 10, 103 N.M. 333, 706 P.2d 875 (holding that double jeopardy principles did not prevent resentencing in part because the defendant had made misrepresentations at the original sentencing and in part because the defendant had not commenced serving the original, oral sentence).

<sup>3</sup> We note that, although Defendant's motion was styled a motion to reconsider sentence, the contents of the motion pertain only to the question of whether the double jeopardy bar against multiple convictions and punishments for the same offense precluded convicting Defendant of both vehicular homicide and aggravated DWI and sentencing him for both offenses. Based on its substance, we believe the motion is best understood exclusively as a request to vacate Defendant's conviction for aggravated DWI and his sentence for that crime. *See State v. Roybal*, 2006-NMCA-043, ¶ 17, 139 N.M. 341, 132 P.3d 598 (“[I]t is the substance of the motion, and not its form or label, that controls.”).

Insofar as the State's argument is that the filing of the motion signals that the sentence was interlocutory, *see State v. Romero*, 2014-NMCA-063, ¶¶ 5, 8, 327 P.3d 525 (explaining that a defendant's timely postjudgment motion for reconsideration of sentence under Rule 5-801 NMRA suspends the finality of the judgment for the purposes of appeal), we reiterate that the reasonableness of a defendant's expectation of finality in a sentence is not dependent on the entry of a written final judgment. *Porras*, 1999-NMCA-016, ¶ 14. As we will explain, it is perfectly reasonable for a defendant who has begun serving a prison sentence and who moves under Rule 5-801 for a purely discretionary reduction of that sentence to expect the district court to take one of only two actions on the motion: (1) grant the motion and reduce the sentence, or (2) deny the motion, leaving the original sentence in place.

<sup>4</sup> We are aware of one circumstance under which a district court must modify its sentence regardless of the defendant's expectations: where the habitual offender statutes require an increase to the sentence. *See NMSA 1978*, §§ 31-18-19 (1977), 31-18-20 (1983); *State v. Diaz*, 2007-NMCA-026, ¶ 11, 141 N.M. 223, 153 P.3d 57. But that circumstance is not present here because the district court imposed the habitual-offender enhancement at Defendant's original sentencing. And, in any event, it is clear under our precedent that a defendant may have a reasonable expectation of finality in an underlying sentence regardless of the possibility of later habitual-offender enhancement. *Porras*, 1999-NMCA-016, ¶ 13.

<sup>5</sup> This case does not present a question about the district court's authority to correct an illegal sentence. The State does not argue, and we are aware of no basis for concluding, that the district court increased Defendant's original sentence to correct any illegality.

This Court explained that the evolution of Rule 5-801 has “closely tracked” that of Federal Rule of Criminal Procedure 35, which, in the interest of “mak[ing] prisoner release dates more certain and sentences imposed in the public forum more final,” Congress amended it in 1984 specifically “to remove any historical common law jurisdiction the federal district courts once enjoyed with respect to correction of illegal sentences.” *Torres*, 2012-NMCA-026, ¶¶ 17-27. New Mexico has “[f]ollow[ed] the federal lead,” *id.* ¶ 20, by “continually narrow[ing] the scope of Rule 5-801.” *Torres*, 2012-NMCA-026, ¶ 27.

{25} The narrowing has continued since *Torres*. Our Supreme Court amended the Rule again in 2014, upon the recommendations of a committee it had appointed to review various rules of criminal procedure. See Supreme Court Order No. 148300-014 (Nov. 1, 2014). See generally Max Minzner, *Habeas Corpus in New Mexico*, 46 N.M. L. Rev. 43 (2016). The amendment to Rule 5-801 further narrowed the scope of the rule to “motions where the defendant seeks a discretionary reduction in sentence from the district court judge.” Minzner, *supra*, at 65. Prior to the 2014 amendment, Rule 5-801(A) (2009) permitted sentencing courts to “correct a sentence imposed in an illegal manner” within ninety days of the imposition of sentence. The current version, as amended, only permits motions “to reduce a sentence.” Rule 5-801(A). The change reflects a deliberate effort to remove any ambiguity regarding whether Rule 5-801 permits motions to correct illegal sentences, Minzner, *supra*, at 64-65, which, since 1989, it has not. *Torres*, 2012-NMCA-026, ¶¶ 13, 17. The Rule’s plain language and history thus demonstrate that Rule 5-801 does not authorize a sentencing court to *increase* a sentence on a defendant’s motion to reconsider sentence. Therefore, Defendant’s motion requesting his aggravated DWI conviction be vacated on double jeopardy grounds had no bearing on whether he had a rea-

sonable expectation that his actual prison term would be no longer than the ten years imposed at his original sentencing.

{26} The State’s third argument is that Defendant had not begun serving his sentence because he was incarcerated at the local jail rather than the prison facility where he could expect to serve the greater part of his sentence. We are not persuaded. In our view, Defendant’s expectation of finality in his sentence was no less reasonable than that of the defendant in *Porras*—where this Court held that the defendant began serving a ninety-day jail sentence when he was remanded to the local jail, 1999-NMCA-016, ¶ 14—simply because Defendant, though incarcerated pursuant to the original sentence the district court imposed, had not yet been transported from the jail to an NMCD facility.

{27} To accept the State’s position, we would have to draw two distinctions that we perceive as untethered from the purpose of the double jeopardy principle at issue here. The first distinction is between two defendants who are remanded to the custody of the local jail but who will serve their sentences in different types of facilities. See generally NMSA 1978, § 31-20-2(A), (D), (E) (1993) (identifying the circumstances under which a sentence must be served in a facility under NMCD jurisdiction). Under the rule the State proposes, the defendant who is sentenced to serve time in the local jail would have a reasonable expectation of finality upon remand to the local jail, but the defendant who is sentenced to a prison term would not. The second distinction is between two defendants who are remanded to the custody of the local jail and have received sentences that will be served in NMCD facilities but who arrive at those facilities at different times. Under the State’s proposed rule, the defendant who is transported to an NMCD facility first would obtain a reasonable expectation of finality upon transport, but the defendant who remains in the

local jail awaiting transport to an NMCD facility would have no such expectation. We are aware of no basis in New Mexico law for such distinctions. And we think those distinctions are arbitrary; they are driven not by the reasons for the double jeopardy rule but instead by happenstance. *Where* a particular defendant happens to be incarcerated when a trial court decides to increase the sentence it has imposed bears no meaningful relationship to whether it is reasonable for that defendant to expect that the sentence is final and will not be increased.

{28} We conclude that defendants who have heard the district court impose sentence in open court, in no uncertain terms, and who are then remanded into custody for the purpose of beginning to serve that sentence have a reasonable expectation that their sentences will not be increased, regardless of whether they subsequently request a discretionary reduction to their sentences and regardless of whether they are incarcerated in an institution operating under the authority of NMCD or under the authority of a county or local government. We therefore hold that Defendant began serving the sentence originally imposed by the district court when he was remanded to the custody of the MDC and that, from then on, he had a reasonable expectation that his sentence would not be increased. Because the subsequent imposition of an actual term of imprisonment greater than ten years violated Defendant’s right to be free from double jeopardy, Defendant’s sentence cannot stand.

#### CONCLUSION

{29} We affirm Defendant’s conviction but reverse the judgment and sentence and remand for entry of a judgment and sentence consistent with this opinion.

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

**ZACHARY A. IVES, Judge**

**WE CONCUR:**

**JENNIFER L. ATTREP, Judge**

**MEGAN P. DUFFY, Judge**

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-009**

No: A-1-CA-38469 (filed December 6, 2021)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,

v.

GREGORY A. WOOD,  
Defendant-Appellant

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

Angie K. Schneider, District Judge

Released for Publication March 1, 2022.

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## OPINION

### HANISEE, Chief Judge.

{1} This opinion, in which we resolve three consolidated appeals arising from two distinct cases, entails one issue of first impression: whether our Supreme Court's 2012 holding in *State v. Office of Public Defender ex rel. Muqqddin*, 2012-NMSC-029, 285 P.3d 622, applies retroactively to bar use of Defendant's prior felony burglary conviction to enhance a subsequent sentence arising from unrelated charges under the Habitual Offender Act (the Act), NMSA 1978, Section 31-18-17 (2003). Separately, Defendant argues that (1) the district court lacked jurisdiction to resentencing him as a habitual offender; (2) his sentencing was impermissibly delayed; (3) his rights to a speedy trial were violated; (4) the district court erred in denying his motion to suppress evidence; (5) the district court erred in awarding him presentence confinement credit; and (6) the State improperly questioned him during cross-examination. Defendant appeals three district court orders: the denial of his petition for post-sentence relief under Rule 5-803 NMRA (Defendant's Rule 5-803 petition) following a 2010 case in which Defendant was convicted of burglary of a vehicle; the judgment and sentence in

a 2015 case in which Defendant was convicted of possession of marijuana and methamphetamine; and the amended judgment and sentence for Defendant's convictions in the 2015 case in which his sentence was enhanced under the Act. We affirm in part and reverse in part.

#### BACKGROUND

##### The 2010 Case

{2} In November 2010, Defendant was charged with burglary of a vehicle, contrary to NMSA 1978, Section 30-16-3(B) (1971); possession of burglary tools, contrary to NMSA 1978, Section 30-16-5 (1963); and resisting, evading or obstructing an officer, contrary to NMSA 1978, Section 30-22-1(C), (D) (1981). Defendant pleaded guilty to the burglary and resisting, evading or obstructing an officer charges, and was sentenced to approximately two-and-a-half years of probation. Defendant's burglary conviction was premised upon his siphoning gasoline from a vehicle's gas tank.

{3} In January 2016, following completion of his sentence related to his 2010 convictions, Defendant filed pro se a Rule 5-803 petition challenging his conviction for burglary in light of *Muqqddin*, which Defendant argued should be applied retroactively. In *Muqqddin*, the Court held for the first time that the act of penetrating a vehicle's gas tank and removing

gas therefrom did not constitute burglary under Section 30-16-3. *Muqqddin*, 2012-NMSC-029, ¶¶ 1, 12, 63. The district court held a hearing on Defendant's Rule 5-803 petition at which the district court concluded that *Muqqddin* announced a new rule that did not apply retroactively to Defendant's past felony burglary conviction. The district court subsequently denied Defendant's Rule 5-803 petition. On August 22, 2016, Defendant filed a pro se appeal from the district court's denial of his Rule 5-803 petition.

##### The 2015 Case

{4} In January 2015, Defendant was charged with resisting, evading or obstructing an officer, contrary to Section 30-22-1(B); failure to yield right-of-way while entering highway from private road or driveway, contrary to NMSA 1978, Section 66-7-331 (1978); possession of marijuana (one ounce or less), contrary to NMSA 1978, Section 30-31-23(A) (2011, amended 2021); possession of a controlled substance (felony—methamphetamine), contrary to Section 30-31-23(F); possession of drug paraphernalia, contrary to Section 30-31-25.1(A); and two counts of nonresidential burglary, contrary to Section 30-16-3(B).

{5} The charges arose from a December 18, 2014, callout in which law enforcement responded to an alarm at an auto shop. The first officer to arrive at the scene witnessed a man with white or blonde hair and wearing a black jacket jump over the fence behind the auto shop. Another officer at the scene located a person who matched that description in an adjacent parking lot, but the subject got into a white Chevrolet Camaro and fled the scene. Officers ran the license plate of the white Camaro and learned the vehicle was registered to a Carl Wood, Defendant's father. After the white Camaro fled the scene, officers received a tip that Defendant was driving the vehicle and pursued the vehicle to an address—an address for which a search warrant was later granted and that was eventually identified as Defendant's home. Back at the auto shop, officers learned that two locks had been cut off two different storage sheds. One officer found items belonging to the auto shop—including a gas tank and a vehicle stereo—on the ground near the auto shop property. Officers did not find the missing locks during their search of the auto shop property. Officers executed the search warrant of Defendant's home, and found baggies containing green leafy substances appearing to be marijuana, and white crystal substances appearing to be methamphetamine, as well as pipes and a digital scale. Defendant was arrested.

{6} Following a jury trial, Defendant was found guilty of all charges except the two counts of nonresidential burglary. On September 26, 2017, the State filed an amended supplemental criminal information in which it sought enhancement of Defendant's sentence in the 2015 case under the Act, NMSA 1978, Sections 31-18-17 to -20 (1977, amended 2003). The enhancement was based on Defendant's 2010 felony vehicle burglary conviction as well as an unrelated felony trafficking conviction arising from an unrelated 2013 case. The district court entered an amended judgment and sentence on August 15, 2019, determining Defendant to be a habitual offender as alleged by the State and enhancing Defendant's sentence in the 2015 case. Thereafter, on August 27, 2019, Defendant filed his notice of appeal from the district court's amended judgment and sentence.

#### DISCUSSION

{7} On appeal, Defendant argues the district court failed to apply *Muqqddin* retroactively and erred in a variety of ways related to the 2015 case and his enhanced sentence therein. We address the *Muqqddin* question first, followed by each remaining issue in turn.

##### I. *Muqqddin* Announced a New Rule That Applies Retroactively

{8} Defendant argues that the district court erred by relying on his felony burglary conviction in the 2010 case to enhance his sentence in the 2015 case under the Act.<sup>2</sup> Specifically, Defendant contends that *Muqqddin* applies retroactively, as argued in his Rule 5-803 petition, because the conduct underlying Defendant's felony auto burglary conviction—siphoning gas out of a vehicle's gas tank—would by 2015 only have constituted a misdemeanor and, therefore, could not have been used to enhance his sentence. If correct, Defendant's felony conviction should be disqualified as an enhanced felony under the Act.

{9} “We review the retroactive application of a judicial opinion de novo.” *Ramirez v. State*, 2014-NMSC-023, ¶ 9, 333 P.3d 240. Here, we must resolve whether *Muqqddin* applies retroactively to Defendant's Rule 5-803 collateral attack on his 2010 conviction. See *State v. Otero*, 2020-NMCA-030, ¶¶ 2, 4, 464 P.3d 1084 (clarifying that Rule 5-803 formalized the concept of coram nobis, a type of request for relief in a post-judgment challenge); see also *State v. Gutierrez*, 2016-NMCA-077, ¶ 29, 380 P.3d 872 (explaining that a petition for coram nobis was a “collateral attack . . . similar to a petition for a writ of habeas corpus” (citation omitted)).

In *Kersey v. Hatch*, 2010-NMSC-020, 148 N.M. 381, 237 P.3d 683, our New Mexico Supreme Court established that we rely on the framework set forth by the United States Supreme Court in *Teague v. Lane*, 489 U.S. 288 (1989), when determining whether a particular case shall be given retroactive effect in a collateral proceeding. *Kersey*, 2010-NMSC-020, ¶¶ 25-26. The *Kersey* Court—faced with the question of whether *State v. Frazier*, 2007-NMSC-032, 142 N.M. 120, 164 P.3d 1, should apply retroactively to habeas corpus proceedings—clarified that *Teague* modified the “approach to retroactivity for cases on collateral review” and concluded that *Teague* provided “the proper standard by which to determine whether new rules should apply retroactively to habeas corpus proceedings.” *Kersey*, 2010-NMSC-020, ¶¶ 1, 23, 25.

{10} There are two circumstances in which a judicial opinion may apply retroactively: the first arises when an opinion announces a new rule. See *Teague*, 489 U.S. at 301; see also *Kersey*, 2010-NMSC-020, ¶ 15 (“An appellate court's consideration of whether a rule should be retroactively or prospectively applied is invoked only when the rule at issue is in fact a new rule.” (internal quotation marks and citation omitted)). The second circumstance arises when an opinion reiterates or applies a preexisting “old” rule. See *State v. Trammell*, 2016-NMSC-030, ¶¶ 19, 21-22, 387 P.3d 220 (explaining that where an opinion reiterated an attorney's obligation to advise the defendant regarding implications of a guilty plea for charged sex offenses, such opinion did not set forth a new rule under the *Teague* framework, but rather stated a preexisting rule placing an affirmative duty on counsel and would thus be applied retroactively); see also *State v. Ramirez*, 2012-NMCA-057, ¶¶ 16-17, 278 P.3d 569 (concluding the same regarding reiteration of an attorney's obligation to advise the defendant regarding the risk of immigration consequences associated with a plea).

{11} Accordingly, in order to determine whether *Muqqddin* might apply retroactively, we must first determine as a threshold matter whether the case either announced a new rule or reiterated a preexisting rule. *Kersey*, 2010-NMSC-020, ¶ 15; see *Trammell*, 2016-NMSC-030, ¶¶ 19, 21-22. “A case generally announces a new rule when it

breaks new ground or imposes a new obligation on the [s]tates or the [f]ederal [g]overnment.” *Kersey*, 2010-NMSC-020, ¶ 16 (internal quotation marks and citation omitted). Stated differently, “a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final” or when an appellate court's “decision is flatly inconsistent with the prior governing precedent and is an explicit overruling of an earlier holding.” *Id.* (internal quotation marks and citations omitted). {12} In *Muqqddin*, the Court explained that existing precedent regarding burglary of a vehicle wrongly expanded the scope of what could constitute the “prohibited space” of a vehicle under the burglary statute. 2012-NMSC-029, ¶¶ 1, 22-23, 32, 34. The *Muqqddin* Court concluded that New Mexico case law had “gone astray,” stating that its opinion “alter[ed] the course” of burglary law by “look[ing] behind the words of the burglary statute, searching for the thoughts that gave birth to the text” in order to adhere to the intent of the statute. *Id.* ¶ 1. As well, the Court abrogated and explicitly rejected further use of or reliance on *State v. Rodriguez*, 1984-NMCA-034, ¶ 3, 101 N.M. 192, 679 P.2d 1290, which the Court credited for establishing the misguided view that “any part of a vehicle equals an entry of that vehicle for the purposes of [the] burglary” statute. *Muqqddin*, 2012-NMSC-029, ¶¶ 36, 38. The Court went on to specify that it disagreed with the “unworkable standard” presented by the “notion that any penetration of a vehicle's perimeter constitutes a penetration of the vehicle itself[.]” *Id.* ¶ 46, and advised lower courts that the conduct at issue—penetrating a gas tank and removing gas therefrom—should be prosecuted under alternative statutes in order to avoid any further expansion and misapplication of the burglary statute. *Id.* ¶¶ 50-53, 63. {13} Here, Defendant first argues that *Muqqddin* did not announce a new rule but rather reiterated a preexisting rule by “interpreting the [L]egislature's intent in enacting the burglary statute.” While the *Muqqddin* Court did, in fact, interpret the legislative intent of the burglary statute, as Defendant correctly asserts, the Court also expressly abrogated existing precedent and imposed new obligations on the State and lower courts to narrow the scope of what conduct is prosecuted under the burglary statute.

<sup>1</sup> The State filed a supplemental criminal information on August 23, 2017, and subsequently filed the amended supplement criminal information in which it corrected Defendant's date of conviction.

<sup>2</sup> Defendant does not argue that the district court erred by relying on his felony trafficking conviction from the unrelated 2013 case to enhance his sentence and our discussion in this regard, therefore, focuses solely on Defendant's argument regarding the district court's reliance on his felony burglary conviction.

See *id.* ¶¶ 38, 46, 50-53, 63; see also *Teague*, 489 U.S. at 301 (setting forth the definition of a new rule as one that “breaks new ground or imposes a new obligation”). Moreover, *Muqddin*’s holding was not dictated by precedent that existed when Defendant’s 2010 conviction became final. See 2012-NMSC-029, ¶¶ 36-38; see also *Teague*, 489 U.S. at 301 (stating that “a case announces a new rule if the result was not dictated by precedent existing at the time the defendant’s conviction became final”). As such, under applicable jurisprudence delineating whether a precedential opinion announces a new rule, we conclude that *Muqddin* announced a new rule.

{14} Having concluded that *Muqddin* announced a new rule, we must next determine whether that new rule should be given retroactive effect. See *Kersey*, 2010-NMSC-020, ¶ 15. A new rule will be applied retroactively only if “it falls within one of the two exceptions established . . . in *Teague*: (1) it is a substantive [new] rule that alters the range of conduct or the class of persons that the law punishes, or (2) it is a [new] watershed rule of criminal procedure.” *Kersey*, 2010-NMSC-020, ¶ 31. Of relevance here is the substantive new rule exception, which refers to new rules that “narrow the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State’s power to punish.” *Welch v. United States*, 578 U.S. 120, \_\_\_, 136 S. Ct. 1257, 1264-65 (2016) (internal quotation marks and citation omitted); see also *Schriro v. Summerlin*, 542 U.S. 348, 351-52 (2004) (explaining that a substantive new rule “narrow[s] the scope of a criminal statute by interpreting its terms”).<sup>3</sup>

{15} Defendant next contends that if *Muqddin* announced a new rule, that rule is a substantive rule that “alters the range of conduct . . . that the law punishes.” *Kersey*, 2010-NMSC-020, ¶ 31. With this we agree. In holding that puncturing a vehicle’s gas tank and removing gas therefrom could no longer be charged as burglary, the *Muqddin* Court explicitly narrowed the scope of New Mexico’s burglary statute as interpreted by prior caselaw. *Muqddin*, 2012-NMSC-029, ¶¶ 50-53, 63.

In *Schriro*, the United States Supreme Court emphasized that substantive new rules are given retroactive effect because such rules “carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose on him.” 542 U.S. at 352 (internal quotation marks and citation omitted). Defendant’s position epitomizes the importance of the above proposition from *Schriro*: were Defendant to be prosecuted today for the act of siphoning gas from a vehicle’s gas tank, he could not be convicted of the crime of burglary. Were this Court to hold that *Muqddin*’s new rule did not apply retroactively, our ruling would conflict with both *Schriro* and *Kersey* because Defendant would be punished in a manner contrary to that allowed under law—specifically, he would receive an enhanced sentence based on a felony burglary conviction that the *Muqddin* court made clear should never have been prosecuted as a felony charge.

{16} We therefore hold that the substantive new rule announced in *Muqddin* applies retroactively and, therefore, Defendant’s burglary conviction was erroneously relied upon to enhance his sentence in the 2015 case. In light of this holding, we decline to address Defendant’s argument regarding the district court’s jurisdiction to resentence Defendant as a habitual offender.

## II. The District Court Did Not Err in Denying Defendant’s Motions to Dismiss on Speedy Trial or Speedy Sentencing Grounds

### A. Speedy Trial

{17} Defendant argues that his right to a speedy trial was violated in the 2015 case and that the district court erred in denying his motions to dismiss on speedy trial grounds. “In determining whether a defendant’s speedy trial right was violated, [New Mexico] has adopted the United States Supreme Court’s balancing test in” *Barker v. Wingo*, 407 U.S. 514 (1972). *State v. Smith*, 2016-NMSC-007, ¶ 58, 367 P.3d 420. “Under the *Barker* framework, courts weigh the conduct of both the prosecution and the defendant under the guidance of four factors: (1) the length of the delay; (2) the reasons for the delay; (3) the timeliness and manner in which the defendant asserted his speedy trial right; and (4) the particular prejudice that the defendant actually suffered.” *Id.* (internal quotation marks omitted).

Our courts emphasize that “the heart of the right to a speedy trial is preventing prejudice to the accused.” *State v. Serros*, 2016-NMSC-008, ¶ 4, 366 P.3d 1121 (alteration, internal quotation marks, and citation omitted). When “reviewing a district court’s ruling[s] on a speedy trial violation claim, we defer to the court’s findings of fact, and we weigh and balance the *Barker* factors de novo.” *Serros*, 2016-NMSC-008, ¶ 20.

{18} Here, the total length of delay in the 2015 case was approximately twenty-nine months, spanning the date of Defendant’s arrest on December 18, 2014, through the third jury trial on June 1, 2017. Throughout the delay, and despite the occurrence of a trial in 2016 and 2017, Defendant filed five motions to dismiss on speedy trial grounds. On December 7, 2016, the district court issued a written order in response to Defendant’s fourth motion to dismiss, finding that the case was of intermediate complexity. Neither party challenges the district court’s finding of intermediate complexity. We therefore conclude that the length of delay is presumptively prejudicial and weighs heavily in Defendant’s favor. See *State v. Flores*, 2015-NMCA-081, ¶ 5, 355 P.3d 81 (explaining that in a case of intermediate complexity, a delay of fifteen months or more is presumptively prejudicial and weighs heavily in a defendant’s favor).

{19} This threshold determination of a presumptively prejudicial length of delay would typically trigger a full analysis of the *Barker* factors. See *State v. Dorais*, 2016-NMCA-049, ¶ 22, 370 P.3d 771. Where the *Barker* factors—length of delay, reason for delay, and assertion of the right—weigh heavily in favor of a defendant, the defendant need not prove prejudice for a court to conclude that the defendant’s right to a speedy trial has been violated. *State v. Garza*, 2009-NMSC-038, ¶ 39, 146 N.M. 499, 212 P.3d 387. Such is not the case here. Rather, while the length of delay in this case weighs heavily in Defendant’s favor, the reasons for the delay do not.

{20} Our review of the record—including the district court’s order denying Defendant’s fourth motion to dismiss on speedy trial grounds—indicates that of the approximate twenty-nine months of total delay, twelve months were attributable to the State, eleven months

<sup>3</sup> Defendant does not argue that *Muqddin* announced a new watershed procedural rule, nor does our own review of the facts or record indicate that such is the case. Indeed, the narrow exception pertaining to watershed procedural rules allows retroactive application of new rules “that are necessary to the fundamental fairness or accuracy of a criminal proceeding.” *Dominguez v. State*, 2015-NMSC-014, ¶ 20, 348 P.3d 183; see also *State v. Frawley*, 2007-NMSC-057, ¶ 42, 143 N.M. 7, 172 P.3d 144 (“The watershed exception is extremely narrow; since *Teague*, the [United States] Supreme Court has rejected every claim that a new rule satisfied the requirements for watershed status.” (internal quotation marks omitted), superseded by statute on other grounds by *State v. Quintana*, 2021-NMSC-013, 485 P.3d 215. Indeed, new watershed procedural rules “regulate only the manner of determining the defendant’s culpability[,] . . . alter the range of permissible methods for determining whether a defendant’s conduct is punishable[,]” *Welch*, 136 S. Ct. at 1265 (internal quotation marks and citations omitted), and is inapplicable to the case at hand.

were attributable to Defendant, and approximately six months were attributable to neutral delay.<sup>4</sup> On balance, the second *Barker* factor of reasons for the delay does not weigh heavily in Defendant's favor. See *State v. Brown*, 2017-NMCA-046, ¶ 28, 396 P.3d 171 (explaining that where forty-two months of delay occurred—of which five months weighed in favor of the state, approximately eighteen months weighed in favor of the defendant, and approximately nineteen months weighed neutrally—the reasons for delay factor weighed only slightly to moderately, but not heavily, in favor of the defendant).

{21} In a speedy trial analysis, if any one of the three *Barker* factors does not weigh heavily in favor of a defendant, as is the case here, Defendant must show particularized prejudice in order to prove their speedy trial was violated. See *Garza*, 2009-NMSC-038, ¶¶ 39-40; see also *State v. Prieto-Lozoya*, 2021-NMCA-019, ¶ 46, 488 P.3d 715 (“Ordinarily, a defendant bears the burden of proof on this factor by showing particularized prejudice when claiming a speedy trial violation.” (internal quotation marks and citation omitted)); *Dorais*, 2016-NMCA-049, ¶ 22 (stating that a defendant's failure to show particularized prejudice may preclude review of the *Barker* factors). “We analyze prejudice to a defendant in a speedy trial case in light of three defense interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *State v. Smith*, 2016-NMSC-007, ¶ 60, 367 P.3d 420 (internal quotation marks and citation omitted). **A defendant claiming prejudice due to a speedy trial violation must demonstrate “a nexus between the undue delay and the prejudice claimed.”** *Dorais*, 2016-NMCA-049, ¶ 23 (internal quotation marks and citation omitted).

{22} Here, Defendant's sole argument as to prejudice is that, as a result of the delay in adjudicating the 2015 case, he was unable to locate Mike Cook, a witness who Defendant contends would have been able to corroborate Defendant's reasons for being at the scene of, but not involved in the burglary on December 18, 2014. Defendant claims that without Mr. Cook's testimony, Defendant's presence at the scene of the burglary “became more suspicious, and less likely in the jury's minds

to be merely coincidental.” But Defendant makes no claim that Mr. Cook's testimony bore upon any count for which Defendant was convicted. Indeed, Defendant was acquitted of both counts of commercial burglary without Mr. Cook's testimony. “If the defendant asserts that the delay caused the unavailability of a witness and impaired the defense, the defendant must state with particularity what exculpatory testimony would have been offered, and the defendant must also present evidence that the delay caused the witness's unavailability.” *Garza*, 2009-NMSC-038, ¶ 36 (alterations, internal quotation marks, and citation omitted). Defendant has failed to demonstrate either. We conclude that Defendant has not made a particularized showing of prejudice and hold that the district court did not err in denying his motion to dismiss on speedy trial grounds.

### **B. Speedy Sentencing**

{23} Defendant argues as well that the State's pursuit of an enhanced sentence in the 2015 case caused an impermissible delay in his sentencing. “The New Mexico appellate courts have on several occasions analyzed cases where defendants have faced delays in the imposition of a sentence or in the enforcement of a sentence[,]” although our appellate courts have never explicitly recognized a right to speedy sentencing. *State v. Lopez*, 2018-NMCA-002, ¶ 10, 410 P.3d 226; see also *State v. Todisco*, 2000-NMCA-064, ¶ 18, 129 N.M. 310, 6 P.3d 1032 (assuming, without deciding that the right to speedy sentencing applies to sentencing proceedings).

{24} The most recent case in which our appellate courts addressed an asserted right to speedy sentencing was *Lopez*, 2018-NMCA-002, ¶¶ 10-16. There, we weighed conflicting methods of addressing speedy sentencing claims, concluding that the analysis set forth in *United States v. Lovasco*, 431 U.S. 783 (1977), provided the most useful framework for analyzing such claims. *Lopez*, 2018-NMCA-002, ¶¶ 10-13. “Under [*Lovasco*], the question of whether a delay in sentencing violates a defendant's due process rights would be answered by looking to: (1) the reasons for the delay; and (2) what prejudice the defendant has suffered as a result of the delay.” *Lopez*, 2018-NMCA-002, ¶ 13 (internal quotation marks and citation omitted). As stated in *Lopez*, the *Lovasco* framework requires us to determine only

“whether the action complained of violates those fundamental conceptions of justice which lie at the base of civil and political institutions, and which define the community's sense of fair play and decency.” *Lopez*, 2018-NMCA-002, ¶ 13 (internal quotation marks and citation omitted). The *Lopez* court further clarified that under *Lovasco*—as under any of the various conflicting methods of analyzing speedy sentencing claims—“the burden uniformly remains on the defendant to prove that the delay in sentencing was prejudicial” for a speedy sentencing claim to be meritorious. *Lopez*, 2018-NMCA-002, ¶ 14.

{25} Here, as in his speedy trial arguments, Defendant has failed to articulate with any specificity that a delay in sentencing was prejudicial. Indeed, the only argument Defendant makes on this issue is that he was prejudiced by being put in the position to challenge an enhanced sentence based on what he contended was an improper use of his 2010 conviction. Defendant's argument in this regard is unavailing and does not prove prejudice in a manner that relates to the timing of his sentencing, and, therefore, we hold that the district court did not err in denying his motion to dismiss on speedy sentencing grounds.

### **III. The District Court Did Not Err in Denying Defendant's Motion to Suppress Evidence in the 2015 Case**

{26} Defendant argues the district court erred in denying his motion to suppress evidence discovered in the search of his home in the 2015 case, which Defendant contends was illegal because the search warrant was unsupported by probable cause. Our review of a trial court's order on a motion to suppress presents “a mixed question of fact and law.” *State v. Leyva*, 2011-NMSC-009, ¶ 30, 149 N.M. 435, 250 P.3d 861. “In reviewing a district court's ruling denying a motion to suppress, the appellate courts draw all reasonable inferences in favor of the ruling and defer to the district court's findings of fact as long as they are supported by substantial evidence.” *State v. Murry*, 2014-NMCA-021, ¶ 10, 318 P.3d 180. “[W]e then review de novo the [district] court's application of law to the facts to determine whether the search or seizure were reasonable.” *Leyva*, 2011-NMSC-009, ¶ 30.

{27} Resolution of this issue centers on the question of whether the search warrant

<sup>4</sup> Defendant devotes only a single paragraph in his brief in chief to the reasons for delay, broadly asserting that he “caused little, if any, of the delay in adjudicat[ion of] th[e] case[.]” and arguing that the State caused delay by requesting a continuance to conduct DNA testing of evidence and making plea offers. Defendant's argument in this regard does not set forth any specific attack on the district court's findings in its order denying Defendant's fourth motion to dismiss on speedy trial grounds, and, therefore, we consider those findings to be conclusive. See Rule 12-318(A)(4) NMRA (stating that the appellant's argument “shall set forth a specific attack on any finding, or the finding shall be deemed conclusive”); see also *State v. Steinmetz*, 2014-NMCA-070, ¶ 26, 327 P.3d 1145 (stating that where the district court finds that a period of delay weighs against the defendant, such finding is conclusive when it remains unchallenged on appeal).

issued in the 2015 case was supported by probable cause. In reviewing whether a search warrant was supported by probable cause, the “reviewing court must determine whether the affidavit as a whole, and the reasonable inferences that may be drawn therefrom, provide[d] a substantial basis for determining that there [wa]s probable cause to believe that a search [would] uncover evidence of wrongdoing.” *State v. Price*, 2020-NMSC-014, ¶ 12, 470 P.3d 265 (internal quotation marks and citation omitted). “Probable cause exists when there are reasonable grounds to believe an offense has been or is being committed in the place to be searched.” *State v. Nyce*, 2006-NMSC-026, ¶ 10, 139 N.M. 647, 137 P.3d 587, *overruled on other grounds by State v. Williamson*, 2009-NMSC-039, 145 N.M. 488, 212 P.3d 376. {28} Here, the affidavit establishes that the affiant officer witnessed an individual who fit Defendant’s description flee the scene of the burglary and learned from the owner of the auto shop that two storage shed locks had been cut and were missing. The suspect was described as having blonde or white hair and wearing a black jacket, hat, and jeans. Defendant contends that this description did not match his appearance on the day of the burglary because Defendant was not wearing a black jacket, and argues as well that while the affidavit listed the burglary suspect as having white or blonde hair, Defendant’s hair is actually gray. These assertions fail to undermine the affiant officer’s sworn statement that he observed the individual fleeing the scene of the burglary, and was able to confirm through a booking photo that the individual was Defendant. Further, the affidavit in support of the application for a search warrant established that the vehicle used to flee the scene of the burglary was registered in Defendant’s father’s name and that vehicle was found parked in the driveway of the house for which the warrant was issued.

{29} Here, the similarity in physical description along with the fleeing vehicle being registered to Defendant’s father, as set forth in the affidavit, presented “sufficient facts upon which to conclude that there [was] a reasonable probability that evidence of a crime [would] be found in the place to be searched.” *State v. Gonzales*, 2003-NMCA-008, ¶ 12, 133 N.M. 158, 61 P.3d 867; *see also Williamson*, 2009-NMSC-039, ¶ 31 (stating that review of whether an affidavit “provided

a substantial basis for the issuing court’s determination of probable cause . . . is limited to the four corners of the search warrant affidavit”).<sup>5</sup> We therefore hold that the search warrant was supported by probable cause and the district court, therefore, did not err in denying Defendant’s motion to suppress.

#### IV. The District Court Did Not Err in Awarding Defendant’s Presentence Confinement Credit

{30} Defendant argues the district court erred by granting him only twenty-two days of presentence confinement for the time in which he was incarcerated during the pendency of the 2015 case. Defendant contends that he should have been granted additional presentence confinement credit for the time during which he was incarcerated on charges in the unrelated 2013 case. Under NMSA 1978, Section 31-20-12 (1977), “[a] person held in official confinement on suspicion or charges of the commission of a felony shall, upon conviction of that or a lesser included offense, be given credit for the period spent in presentence confinement against any sentence finally imposed for that offense.” (Emphasis added.) Section 31-20-12 “requires courts to award presentence confinement credit for time spent in official custody before the disposition of charges, as long as the presentence confinement is related to the charge on which the conviction is based.” *State v. Barrios*, 1993-NMCA-138, ¶ 5, 116 N.M. 580, 865 P.2d 1224; *see also State v. Laskay*, 1986-NMCA-008, ¶ 7, 103 N.M. 799, 715 P.2d 72 (stating that Section 31-20-12 “does not authorize credit for presentence confinement that is not actually related to the charges of the particular offense” at issue). While we have held that “it is not necessary that the confinement in question relate *exclusively* to the charges against which a defendant seeks credit[,]” they must relate in some way. *Barrios*, 1993-NMCA-138, ¶ 6. (Emphasis added.)

{31} Here, Defendant provides no argument or evidence that his confinement in the unrelated 2013 case was sufficiently related to his charges in the 2015 case. We will not make such an argument on his behalf, *State v. Fuentes*, 2010-NMCA-027, ¶ 29, 147 N.M. 761, 228 P.3d 1181, and our own review of the record confirms that Defendant’s confinement in the unrelated 2013 case was in no way related to his charges in the 2015 case. We therefore hold that the district court did not err in its award of presentence confinement credit.

#### V. We Decline to Review Defendant’s Unpreserved Argument Regarding His Cross-Examination by the State

{32} Defendant argues that the district court erred by allowing the State to cross-examine Defendant in a manner contrary to Rules 11-403 and 11-404 NMRA. Specifically, Defendant claims it was improper to question Defendant about whether a pipe found in his home contained methamphetamine, and further contends that the State’s questioning in this regard constituted prosecutorial misconduct. Defendant asserts that this argument is preserved, but fails to direct our attention to any portion of the record to support this assertion. Our own review of the record makes clear that defense counsel failed to object or otherwise put the district court on notice of alleged error during the relevant portion of the State’s cross-examination of Defendant. We therefore consider this argument to be unpreserved. Because Defendant has not asked us to review this claim of error under any exception to our preservation rules, such as plain or fundamental error, we decline to develop such an argument for him and, therefore, do not reach the merits of his claims of error. *See State v. Montoya*, 2015-NMSC-010, ¶ 45, 345 P.3d 1056 (“In order to preserve an issue for appeal, a defendant must make a timely objection that specifically apprises the trial court of the nature of the claimed error and invokes an intelligent ruling thereon.” (internal quotation marks and citation omitted)); *see also* Rule 12-321(A) NMRA (“To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.”); *State v. Leon*, 2013-NMCA-011, ¶ 33, 292 P.3d 493 (“We generally do not consider issues on appeal that are not preserved below.” (internal quotation marks and citation omitted)).

#### CONCLUSION

{33} For the reasons stated above, we (1) affirm the district court’s denial of Defendant’s motion to dismiss on speedy trial grounds, its denial of Defendant’s motion to suppress, and its determination of Defendant’s presentence confinement; (2) reverse the district court’s denial of Defendant’s Rule 5-803 petition and vacate Defendant’s burglary conviction as well as his habitual offender enhancement associated with his 2015 case; and (3) remand with instructions to enter an amended judgment and sentence consistent with this opinion.

<sup>5</sup> To the extent Defendant argues as well that the information described in the affidavit was stale, alleging that the burglary took place on December 14, 2014, while the search warrant was not issued until December 18, 2014, we note that the record reflects that the burglary occurred on December 18, 2014, the same day the search warrant was issued and Defendant was arrested. Additionally, the affidavit lists “[a] Master Lock belonging to” the business among the items to be seized and Defendant argues that a missing lock is an inherently disposable item without value. Defendant fails, however, to explain with argument or support from authority how or why that assertion, even if true, would invalidate a search warrant and supporting affidavit for such an item. Finding no indication of staleness of information within the record, we decline to further entertain Defendant’s argument of staleness.

{34} **IT IS SO ORDERED.**  
**J. MILES HANISEE, Chief Judge**  
**WE CONCUR:**  
**ZACHARY A. IVES, Judge**  
**GERALD E. BACA, Judge**  
**IVES, Judge (concurring, writing**  
**separately).**

{35} I concur, writing separately only to point out that one of this court's precedents, *Dorais*, 2016-NMCA-049, includes an inaccurate description of the legal standard courts must use to determine whether a defendant's constitutional right to a speedy trial has been violated. Fortunately, the panel in Defendant's case does not rely on the erroneous standard articulated in *Dorais*, and neither the State nor Defendant relies on *Dorais*. Nevertheless, having encountered the incorrect statement of law in *Dorais* while working on Defendant's appeal, I feel obligated to identify that statement to reduce the risk that courts and counsel will rely on it in the future.

{36} The *Dorais* court stated that "[w] here there is no evidence of prejudice caused by the delay," it is not necessary to "assess [the other speedy trial] fac-

tors, because the absence of prejudice outweighs other factors that may weigh in a defendant's favor." 2016-NMCA-049, ¶ 22 (internal quotation marks and citation omitted). In other words, under *Dorais*, the absence of particularized prejudice is fatal to a defendant's speedy trial argument, even if all of the other factors weigh heavily in the defendant's favor.

{37} But that proposition is directly contrary to *Garza*, in which our Supreme Court held that "generally a defendant must show particularized prejudice," but that, "if the length of delay and the reasons for the delay weigh heavily in [the] defendant's favor and [the] defendant has asserted his right and not acquiesced to the delay, then the defendant need not show prejudice for a court to conclude that the defendant's right has been violated." 2009-NMSC-038, ¶ 39. *Garza* relied heavily on the United States Supreme Court's recognition that "'affirmative proof of particularized prejudice is not essential to every speedy

trial claim.'" 2009-NMSC-038, ¶ 38 (quoting *Doggett v. United States*, 505 U.S. 647, 655 (1992)). Both our Supreme Court and this Court have followed *Garza*. See, e.g., *State v. Samora*, 2016-NMSC-031, ¶ 23, 387 P.3d 230 ("To find a speedy trial violation without a showing of actual prejudice, the Court must find that the three other *Barker* factors weigh heavily against the [s]tate."); *Serros*, 2016-NMSC-008, ¶ 87; *Flores*, 2015-NMCA-081, ¶ 37 ("Because the first three *Barker* factors weigh so heavily in Defendant's favor, we presume undue prejudice and no further showing of prejudice is required."). And my research has not revealed a single opinion that follows *Dorais* rather than *Garza*.

{38} Although *Dorais* is an outlier that cannot be reconciled with precedent from our Supreme Court, our appellate courts have not explicitly said as much. I do so here in the hope that counsel and courts will avoid taking the novel path cut by *Dorais*—an apparent shortcut that will lead those who follow it astray.

**ZACHARY A. IVES, Judge**

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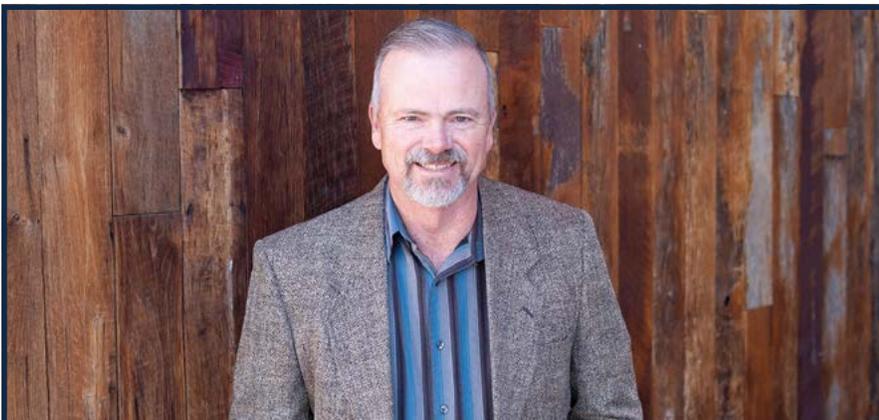
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### **Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys**

The Third Judicial District Attorney's Office in Las Cruces is seeking a Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys. You will enjoy the convenience of working in a metropolitan area while gaining valuable trial experience alongside experienced Attorney's. Please see the full position descriptions on our website <http://donaanacountyda.com/> Submit Cover Letter, Resume, and references to Whitney Safranek, Human Resources Administrator at [wsafranek@da.state.nm.us](mailto:wsafranek@da.state.nm.us).

### **Senior Trial Attorney/Chief Deputy District Attorney**

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

The First Judicial District Attorney's Office is seeking an experienced Senior Trial Attorney in the Espanola office and a Chief Deputy District Attorney. Must have experience in criminal prosecution. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via email to [1stDA@da.state.nm.us](mailto:1stDA@da.state.nm.us).

### Civil Assistant U.S. Attorney

The U.S. Attorney's Office for the District of New Mexico is recruiting for two Civil Assistant U.S. Attorney (AUSA) in the Albuquerque office. The attorneys selected will represent the Government in defensive and affirmative litigation. Civil AUSAs defend the Government in tort, employment discrimination, administrative law, immigration, bankruptcy, and other miscellaneous actions and enforce the Government's interests in civil rights, public lands, and combating fraud against the Government. Applicants must be able to independently manage all aspects of their assigned cases, including overall strategy, preparing pleadings and motions, taking depositions, preparing and answering discovery, negotiating settlements, and trying cases. If you are interested in serving the public and representing the people of the United States in a manner that will instill confidence in the fairness and integrity of the USAO and the judicial system, and have the experience necessary to do so, please apply before the vacancy closes on July 5, 2022. Qualification: Applicants must possess a J.D. Degree, be an active member in good standing of a bar (any jurisdiction), and have at least one (1) year of post-J.D. legal or other relevant experience. Salary: AUSA pay is administratively determined based, in part, on the number of years of professional attorney experience. The pay for this position is \$66,750 - \$174,590 including locality pay. The complete vacancy announcement may be viewed at <https://www.justice.gov/usao-nm/job/assistant-united-states-attorney> or at <https://www.usajobs.gov/job/655616900> (USAJobs). All applicants must apply through USAJobs.

### Attorneys – Advising APD

The City of Albuquerque Legal Department is hiring attorneys with the primary responsibility of advising the Albuquerque Police Department (APD). Duties may include: representing APD in the matter of United States v. City of Albuquerque, 14-cv-1025; reviewing and providing advice regarding policies, trainings and contracts; reviewing uses of force; drafting legal opinions; and reviewing and drafting legislation, ordinances, and executive/administrative instructions. Attention to detail and strong writing skills are essential. Additional duties and representation of other City Departments may be assigned. Salary and position 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.

### Attorney Opportunities Available in West Texas

Cotton Bledsoe Tighe & Dawson, P.C., is a well-known law firm in Midland, Texas, one of the leading energy centers of the Southwest. Cotton Bledsoe is highly regarded both by the oil and gas industry and among other law firms in Texas and surrounding states. Known particularly for our expertise in oil and gas transactions and oil and gas litigation, we also provide exceptional legal representation in the following areas: Commercial Litigation; Insurance Defense Litigation; Labor and Employment Law; Probate and Estate Planning; Business and Entity Law Cotton Bledsoe is currently seeking associate and of counsel attorneys to join our litigation section. Successful candidates must be self-starters, team players, and capable of handling projects with minimal supervision. Cotton Bledsoe prides itself on being a family oriented law firm and believes in a strong work/life balance. Salary commensurate with experience. For additional information, please visit our website at [www.cottonbledsoe.com](http://www.cottonbledsoe.com) or email [bwrangham@cbsd.com](mailto:bwrangham@cbsd.com).

### New Mexico Gas and Oil Attorney

Kiefaber & Oliva LLP, a Houston-based energy law firm, is looking for a talented New Mexico oil and gas attorney who is passionate about their career to join our team. Primarily, you'll be working on projects with a team of excellent attorneys who are driven to provide an unparalleled client experience.

Licensed in New Mexico; At least 3 years of experience drafting title opinions in New Mexico; OR at least 5 years of experience working on regulatory matters in New Mexico; Familiarity preparing large unit-wide division order ownerships with tract and allocation factors; Positive attitude, great work ethic and loves working as part of a team; Remote work OK. 401k, Healthcare, Dental, Vision. Team-based bonus system. Please send resume to Dilmar Morato at [dmorato@kolawllp.com](mailto:dmorato@kolawllp.com).

### Commercial Transactions Attorney

Meow Wolf seeks a commercial transactions attorney with 5+ years of experience drafting, negotiating, and advising on a wide variety of commercial contracts and legal matters. This attorney will facilitate the prompt execution and enforcement of the company's commercial contracts to support Meow Wolf's mission to inspire creativity through art. To learn more about the position and apply, visit [meowwolf.com/careers](http://meowwolf.com/careers). WFH flexible with time in the Santa Fe office.

### 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 – Employment/Labor; Assistant City Attorney – Litigation (Tort/Civil Rights); Assistant City Attorney – Municipal Affairs; Assistant City Attorney – Property and Finance. 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.

### Policy Analyst City of Santa Fe

The Santa Fe City Attorney's Office, Office of Legislation and Policy Innovation, seeks a full-time Policy Analyst. The selected candidate will research, analyze, and recommend legislative and policy solutions to the City's policy makers; collect and analyze data related to policy solutions; and draft policy memos and legislation. The City Attorney's Office seeks applicants with excellent written and verbal communications skills, a high aptitude for working with a wide variety of people, experience in developing and analyzing public policy, and a dedication to public service. Three years experience in related work is required. A bachelor's degree in public policy, public administration, government, or a related field is required; a juris doctorate or a graduate degree in public policy or a related field is preferred but not required. Attending evening meetings may be required up to a few times a month. The pay and benefits package are excellent and are partially dependent on experience. The position is based in downtown Santa Fe at City Hall and reports to the Legislation and Policy Innovation Manager. The position is classified and open until July 6, 2022. Qualified applicants are invited to apply online at [https://www.santafenm.gov/job\\_opportunities](https://www.santafenm.gov/job_opportunities).

### 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.

### 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@BESstaffJobs.com](mailto:Steven@BESstaffJobs.com)

### Associate Attorney

Millich Law seeks an associate attorney to become an integral part of a dynamic litigation firm. The firm practices in the areas of trust, estate, guardianship, and conservatorship litigation. Collegial environment. Learning while swearing is acceptable. Salary and benefits negotiable. Please email resume to [lisa@millichlaw.com](mailto:lisa@millichlaw.com)

### New Mexico Public Regulation Commission - Attorney III, Job ID-#123449

Position # 00034576, Santa Fe, Salary Range: \$66,338 - \$106,141 annually, Pay Band - LH. This is an attorney position within the Office of General Counsel ("OGC") of the New Mexico Public Regulation Commission ("PRC" "Commission"). OGC acts as legal counsel to the Commissioners of the PRC, providing advice concerning adjudicatory, rulemaking and legislative matters, as well as internal agency issues. This position advises the Commission with regard to procedural and substantive legal issues involving the regulation of public utilities, telecommunications carriers and motor carriers. The attorney will prepare legal memoranda and appear at public meetings to present and provide advice on proposed orders. OGC attorneys also represent the Commission in court proceedings, including appeals before the New Mexico Supreme Court. The position may also draft agency policies and provide advice on internal agency administrative matters. Strong oral advocacy and writing skills are required. Experience in administrative law, regulatory/environmental law and litigation preferred. Minimum qualifications include a J.D. from an accredited school of law and four (4) years of experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for a limited practice license (Rules 15-301.1 and 15-301.2 NMRA). To apply please visit [www.spo.state.nm.us](http://www.spo.state.nm.us).

### 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>.

### 8TH Judicial District Attorney (Taos County)

Prosecuting Attorney Opportunities  
The 8th Judicial District Attorney Office is accepting applications for a full-time Associate Trial Attorney, Trial Attorney, Senior Trial Attorney, and Deputy District Attorney. Requirements: Associate Trial / Full Trial Attorney. New prosecutor: Licensed attorney to practice law in New Mexico with zero (0) through two (2) years of relevant prosecution experience. Senior Trial Attorney: Career track prosecutor who is a Licensed attorney to practice law in New Mexico with three (3) through five (5) years of relevant prosecution experience. Deputy Trial Attorney: Career prosecutor: Licensed attorney to practice law in New Mexico, plus eight (8) or more years of relevant prosecution experience, including three (3) or more years of administrative/management experience. Work performed: Incumbent may prosecute all cases, including complex high level and high-profile cases. Incumbent possesses expertise in one or more areas of criminal prosecution; leads special prosecutions assigned by the District Attorney; supervises or mentors other attorneys and directs staff. Salary: Based upon experience and the current District Attorney Personnel and Compensation Plan. Range of salary begin with Associate Trial Attorney at \$65,000 upwards to \$100,000 for Deputy District Attorney. Please submit resumes and letters of interest to Victoria Bransford, District Office Manager by mail to 105 Albright Street, Suite L, Taos, NM 87571 and/or by email to [vbransford@da.state.nm.us](mailto:vbransford@da.state.nm.us)

### Litigation Attorneys

Priest & Miller LLP is seeking two Litigation attorneys to join our staff immediately. Priest & Miller focuses upon litigation defense work involving highly complex matters in Medical Malpractice, Wrongful Death, Oil & Gas, Trucking and General Insurance. If you are looking to run your own cases, and develop your own clients, we are the place for you learn and grow in the practice of the law. Experienced candidates will have 3-6 years' experience litigating in State and Federal Court. We are also seeking Attorneys with 0-2 years' experience who are looking learn litigation skills from our highly experienced attorneys. We offer highly competitive salaries and benefits packages to include generous PTO, sick leave, and paid holidays. All inquiries will be kept confidential. Email a resume and cover letter to [Greg@PriestMillerLaw.com](mailto:Greg@PriestMillerLaw.com).

### 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>.

### Legal Assistant/ Secretary

Conklin, Woodcock & Ziegler, P.C, a medium-sized downtown litigation firm is accepting resumes for a full-time legal assistant position. We are seeking a motivated, team-orientated person with experience in civil litigation, court rules and filing procedures. Candidates must have solid clerical, organizational, computer and word processing skills. Excellent benefits, including 401K, health insurance benefits, paid vacation and sick leave, as well as year-end bonus opportunities. Salary will be based on experience and skills. Please respond to this ad with your resume and references to [jobs@conklinfirm.com](mailto:jobs@conklinfirm.com).

### 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

Personal Injury/Civil litigation firm in the Journal Center area is seeking a Paralegal with minimum of 5+ years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, and online research, is technologically adept and familiar with use of electronic databases and legal-use software. Qualified candidates must be organized and detail-oriented, with excellent computer and word processing skills and the ability to multi-task and work independently. Experience in summarizing medical records is a plus. Salary commensurate with experience. Please send resume with references and a writing sample to [paralegal3@bleuslaw@gmail.com](mailto:paralegal3@bleuslaw@gmail.com)

## 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.

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