

BAR BULLETIN

July 13, 2022 • Volume 61, No. 13



Red Chiles, by Angelique Chacon (see page 3)

AngeliqueChacon.com

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Fax: 505-828-3765 • address@sbnm.org

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Meetings

July

13
Tax Section
noon, virtual
19
Solo and Small Firm Section
noon, virtual/State Bar Center
21
Public Law Section
noon, virtual
28
Trial Practice Section
noon, virtual
29
Immigration Law Section
noon, virtual

August

2
Health Law Section
9 a.m., virtual
11
Children's Law Section
noon, virtual
12
Prosecutors Section
noon, virtual
19
Family Law Section
9 a.m., virtual

Workshops and Legal Clinics

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
26
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

About Cover Image and Artist: Angelique Chacon's photography is focused mainly on animals, flowers and landscape scenes. Her goal for the viewer is for them to perceive the image of the flower as an abstract art form. She finds that getting right into the heart of a flower expresses a beauty not otherwise seen. Macro photography of flowers, for example, captures for the viewer both the grandeur and the complexity of a simple flower, rich in color, structure and texture. Her "vision" as an artist is to bring to you the natural occurrences as I saw them. Each of her photographs is a graphic presentation of my vision.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

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

Supreme Court Law Library

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

Fifth Judicial District Court Announcement of Applicants

Four applications were received in the Judicial Selection Office as of June 14, for the vacancy on the Fifth Judicial District Court, which existed as of July 1 due to the creation of an additional Judgeship by the Legislature. The Fifth Judicial District Court Nominating Commission will convene at 9 a.m. on July 19 at the Fifth Judicial District Court Eddy County, 102 N Canal St, Carlsbad, NM 88220, to interview the applicants for this position. The applicants are **AnneMarie Cherokee Lewis, Alan Daniel Ostrovsky, D'Ann Read and Hessel Edward Yntema IV**. 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.

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 Govern-

Professionalism Tip

With respect to opposing parties and their counsel:

In depositions, negotiations and other proceedings, I will conduct myself with dignity, avoiding groundless objections and other actions that are disrupting and disrespectful.

ing New Mexico Judicial Nominating Commissions. These proposed changes will be discussed and voted on during the upcoming meeting of the Fifth Judicial District Court Judicial Nominating Commission. The Commission meeting is open to the public beginning at 9 a.m. on July 19 at the Fifth Judicial District Court Eddy County, 102 N Canal St, Carlsbad, NM 88220. Please email Beverly Akin (akin@law.unm.edu) if you would like to request a copy of the proposed changes. All attendees of the meeting of the Fifth Judicial District Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Thirteenth Judicial District Court Candidate Announcement

The Thirteenth Judicial District Court Judicial Nominating Commission convened on June 10 in person at the Sandoval County Commission Chambers located at 1500 Idalia Road, Building D, Bernalillo, NM, and completed its evaluation of the six applicants to fill the vacancy on the Thirteenth Judicial District Court which exists as of July 1 due to the creation of an additional Judgeship by the Legislature. The Commission recommends candidates **Steven Paul Archibeque, Sonya Kay Duke-Noel, Karl William Reifsteck and Simone M. Seiler** to Gov. Michelle Lujan Grisham for consideration.

Bernalillo County Metropolitan Court Reassignment of Criminal Cases

Bernalillo County Metropolitan Court Chief Judge Maria I. Dominguez announced that, as a result of the recent appointment of Judge Asra I. Elliott by Gov. Lujan Grisham to Division I, effective July 5, all criminal cases previously assigned to Division I will be reassigned to Judge Elliott.

STATE BAR NEWS

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*. Visit 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 The Judicial Wellness Program

The newly established Judicial Wellness Program aids in focusing on the short-term and long-term needs of the New Mexico Judicial Community. The New Mexico Judicial Wellness Program was created to promote health and wellness among New Mexico Judges by creating and facilitating programs (educational or otherwise) and practices that encourage a supportive environment for the restoration and maintenance of overall mental, emotional, physical and spiritual health of judges. Learn more about the program at www.sbnm.org/nmjwp.

NMJLAP Committee Meetings

The NMJLAP Committee will meet at 4 p.m. on 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 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 or Briggs Cheney at bcheney@dsc-law.com for the Zoom link.

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

Defenders in Recovery meets every Wednesday night at 5:30 p.m. The first Wednesday of the month is an AA meeting and discussion. The second is an NA meeting and discussion. The third is a book study, including the AA Big Book, additional AA and NA literature, including the Blue Book, Living Clean, 12x12 and more. The fourth Wednesday features a recovery speaker and monthly birthday celebration. These meetings are open to all who seek recovery. Who we see in this meeting, what we say in this meeting, stays in this meeting. For the

meeting link, send an email to defendersinrecovery@gmail.com 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 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.

UNM SCHOOL OF LAW Law Library Hours

The UNM Law Library facility is currently closed to guests. Reference services are available remotely Monday

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through Friday, from 9 a.m.-6 p.m. via email at lawlibrary@unm.edu or phone at 505-277-0935.

OTHER BARS

Colorado Bar Association The Annual Rocky Mountain Regional Elder Law Retreat

The Colorado Bar Association will be hosting the 14th Annual Rocky Mountain Regional Elder Law Retreat, co-sponsored by the Colorado Bar Association Elder Law Section. The retreat will include both in-person and online formats and will offer up-to-date information and recent developments in the Elder Law industry. The annual event will take place Aug. 25-27 at the Grand Hyatt Vail on 1300 Westhaven Dr., Vail, CO 81657. The deadline to RSVP for a room at the hotel is Aug. 8. Otherwise, people may register up to the day of the event. For more information, visit cle.cobar.org.

Legal Education

July

- | | | |
|--|--|--|
| <p>13 Evidence Webinar Series - Part Four: The Busy Lawyer's Guide to Objections
1.2 G
Web Cast
Administrative Office of the US Courts
www.uscourts.gov</p> | <p>19 2022 Family and Medical Leave Act Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>22 REPLAY: 2022 Family Law Spring Institute: Managing High-Conflict Personalities and Cases, Part 2
3.0 G
Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>14 The Andrea Taylor Sentencing Advocacy Workshop
18.5 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov</p> | <p>20 Elder Law Summer Series: Communicating with Clients that have Cognitive Impairment or Dementia
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>22 The Weed Update 2: The Strain Between Recreational Cannabis and Federal Immigration Laws
1.0 G
Live Webinar
UNM School of Law
lawschool.unm.edu</p> |
| <p>14 Anatomy of a Winning Suppression Hearing
1.2 G
Web Cast (Live Credits)
Administrative Office of the US Courts
www.uscourts.gov</p> | <p>21 Judicial Philosophy: Ethics & Professionalism in Appellate Decision-Making
2.0 EP
In-Person
UNM School of Law
lawschool.unm.edu</p> | <p>25 NADCP RISE22
23.2 G, 11.7 EP
Live Program
NADCP National Association of Drug Court Professionals
www.nadcp.org</p> |
| <p>14 Overcoming Procrastination: How to Kick the Habit
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Law & Technology Series: Electronic Courtroom Presentation Workshop
13.2 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov</p> | <p>28 30 Things Every Solo Attorney Needs to Know to Avoid Malpractice
1.5 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>15 Your Inbox Is Not a Task List: Real World Task Management for Busy Lawyers
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | | |

August

- | | | |
|---|---|--|
| <p>2 Due Diligence in Commercial Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>8 Persuasive Writing Workshop
17.2 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov</p> | <p>18 How to Avoid Making the Techno-Ethical Mistakes That Put You on the Front Page
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>5 Lawyer Ethics and Disputes with Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>17 Elder Law Summer Series: Community Property and Debt Considerations
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>19 The Ethics of Delegation
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

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

August (cont'd)

- | | | |
|---|--|---|
| <p>23 LLC/Partnerships Interests: Collateral, Pledges, and Security Interests
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>25-27 14th Annual Rocky Mountain Regional Elder Law Retreat
14.0 G, 1.7 EP, 1.2 EDI
In-Person
Colorado Bar Association (CBA-CLE)
www.cobar.org</p> | <p>30 Choice of Entity for Nonprofits & Obtaining Tax Exempt Status, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| | <p>25-Dec. 1
Spanish for Lawyers I
20.0 G
Live Webinar
UNM School of Law
lawschool.unm.edu</p> | <p>31 Choice of Entity for Nonprofits & Obtaining Tax Exempt Status, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

September

- | | | |
|--|---|--|
| <p>1 Parking: Special Issues in Commercial Leases
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>15 2022 Employment and Labor Law Institute - Day 1
2.8 G, 1.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Elder Law Summer Series: Client Capacity, Diminished Capacity, and Declining Capacity. Ethical Representation and Tools for Attorneys
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>9-11 Taking and Defending Depositions
23-25 31.0 G, 4.5 EP
In-Person
UNM School of Law
lawschool.unm.edu</p> | <p>16 2022 Employment and Labor Law Institute - Day 2
2.8 G, 1.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 Selling to Consumers: Sales, Finance, Warranty, & Collection Law, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>13 Special Lease Issues for Medical/Dentist Offices
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>20 Basic Financial Literacy for Lawyers
2.0 G
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 Selling to Consumers: Sales, Finance, Warranty, & Collection Law, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>14 Ethics for Business Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | | |

October

- 21-23 **Taking and Defending Depositions**
28-30 20.0 G, 2.0 EP
In-Person
UNM School of Law
lawschool.unm.edu

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 June 10, 2022

PUBLISHED OPINIONS

A-1-CA-38870	City of Las Cruces v. R Apodaca	Affirm	06/08/2022
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UNPUBLISHED OPINIONS

A-1-CA-39519	J Marquez v. NM Dept Transportation	Reverse	06/06/2022
A-1-CA-39599	State v. O Brown	Affirm	06/06/2022
A-1-CA-39613	D Gonzales v. E Salcido	Affirm	06/06/2022
A-1-CA-39720	W Gardner v. NM Board of Dental Healthcare	Affirm	06/06/2022
A-1-CA-39721	State v. W Harriger	Affirm	06/06/2022
A-1-CA-39843	B Kokinadis v. K Duffy	Affirm	06/06/2022
A-1-CA-39907	State v. D Jackson	Affirm	06/06/2022
A-1-CA-40048	In the Matter of Petition for Expungement for Shelly Blevins	Affirm	06/06/2022
A-1-CA-40078	State of New Mexico HSD v. C Caballero	Affirm	06/06/2022

Effective June 17, 2022

PUBLISHED OPINIONS

A-1-CA-39144	B Juarez v. Thi of New Mexico At Sunset Villa	Reverse/Remand	06/15/2022
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UNPUBLISHED OPINIONS

A-1-CA-38154	First Horizon Home Loans v. W Olmsted	Affirm	06/13/2022
A-1-CA-39089	State v. M Espino	Affirm	06/13/2022
A-1-CA-39608	State v. P Scala	Affirm	06/13/2022
A-1-CA-39645	State v. K Smiley	Reverse	06/13/2022
A-1-CA-39681	State v. M Perea	Affirm	06/13/2022
A-1-CA-39845	F Garcia v. NM Human Services Dept	Reverse	06/13/2022
A-1-CA-39951	State v. L Aguilar	Affirm	06/13/2022
A-1-CA-40300	CYFD v. Ericka G.	Affirm	06/13/2022
A-1-CA-38848	B Franklin v. NM Corrections Department	Affirm/Reverse/Remand	06/14/2022
A-1-CA-39861	State v. M Madrid-Schleicher	Affirm	06/14/2022
A-1-CA-39981	Bank of New York Mellon v. R Vigil	Affirm	06/14/2022
A-1-CA-39748	S Counce v. Dreamspring	Reverse/Remand	06/15/2022
A-1-CA-39821	State v. A Carrasco	Affirm	06/15/2022
A-1-CA-38646	J Lyden v. Paloma Blanca Health	Affirm	06/16/2022

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

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

Effective June 24, 2022

PUBLISHED OPINIONS

A-1-CA-39379	In the Matter of A Maestas	Affirm/Remand	06/22/2022
A-1-CA-39025	State v. K Penman	Affirm/Reverse/Remand	06/23/2022

UNPUBLISHED OPINIONS

A-1-CA-38518	P Kinzelman v. Stewart Title Guarantee	Affirm/Reverse/Remand	06/21/2022
A-1-CA-38931	K Eaton v. SolarCity	Affirm	06/21/2022
A-1-CA-39424	C Chapman v. WW Healthcare, LLC	Affirm	06/21/2022
A-1-CA-39607	State v. P. Loring	Affirm	06/21/2022
A-1-CA-40073	In the Matter of the Estate of Eric G Padilla	Affirm	06/21/2022
A-1-CA-40311	State v. B Sanders	Affirm	06/21/2022
A-1-CA-38981	W Gardner v. New Mexico Board of Dental Health Care	Affirm	06/22/2022
A-1-CA-39591	State v. C Ferrier	Affirm	06/22/2022
A-1-CA-39817	City of Roswell v. J Sanchez	Affirm	06/22/2022
A-1-CA-38529	State v. J Yocum	Affirm	06/23/2022
A-1-CA-38633	State v. J Chapin	Reverse	06/23/2022

Rules/Orders

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

From the New Mexico Supreme Court

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

IN THE MATTER OF ANGEL L. SAENZ, ESQ.

Disciplinary No. 2021-08-4499

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

FORMAL REPRIMAND

In addition to being indefinitely suspended - a suspension which was deferred and a two year probation imposed-you are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline which was approved by a Hearing Committee and a Disciplinary Board Panel.

You admit having violated the following Rules of Professional Conduct:

- 16-108(E) - by providing financial assistance to a client in connection with pending or contemplated litigation;
- 16-108(J)- by having sexual relations with a client when no consensual sexual relationship existed when the client-lawyer relationship commenced;
- 16-703(A) - by contacting potential clients by live telephone to solicit professional employment with the significant motive of pecuniary gain; and
- 16-804(D)- by engaging in conduct that is prejudicial to the administration of justice.

You brought your misconduct to the attention of the Office of Disciplinary Counsel self-reporting that you had engaged in a sexual relationship with a client that began after representation, that you directed your staff to make telephone calls to persons identified in police reports to solicit legal representation, and that you advanced monies to five (5) clients.

You were retained by your client, "EO", to represent her in a suit against her landlord. You then hired EO to work in your office. You then began a consensual sexual relationship with EO in or about late summer of 2020 which ended approximately November 2020.

In that same matter, which had evolved into a class action suit, you paid five (5) clients each \$1,000.00 for "advance on settlement". You informed the Office of Disciplinary Counsel that you "advanced \$1,000 to each of the five named class representatives as an advance on any recovery they might receive on the case, to

defer any hardship caused by the time they spent assisting with the case."

The comment to Rule I 6-I 08 states in pertinent part, "Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation." Additionally, the comment to Rule 16-108 further states, "Because of the significant danger of harm to client interest and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client." In not one, but two instances, you allowed yourself to become inexorably and improperly entwined in your clients' matters. These lapses in judgment will hopefully be addressed by your deferred suspension and probation as well as education in sexual harassment/misconduct.

While the COVID- 19 pandemic has been stressful for everyone both emotionally and financially, your decision to seek new business by soliciting potential clients in violation of Rule 16-703(A) was improper. Persons who are already likely feeling overwhelmed by the circumstances they find themselves in due to an accident or arrest will likely find it difficult to fully evaluate all that is being told to them on the telephone leaving ample room for misunderstanding and possible abuse. It is hoped that during your probationary period you carefully review not only this Rule of Professional Conduct, but the rules in their entirety to ensure no further unethical conduct in your practice.

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

Dated: April 15, 2022

The Disciplinary Board of the New Mexico Supreme Court

By

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



A Message from State Bar President Carolyn Wolf

Dear Colleagues:

While COVID is still with us, we are hopefully able to begin assessing the losses and damage of the last two years and build on lessons learned during this time. We in the legal profession were perhaps more fortunate than other businesses; as essential business, most of us were able to continue our practices and the courts were able to operate. But the practice of law, like most professions and businesses, has changed.

The State Bar remained operational and provided services to our members throughout this time. In fact, it grew two new areas of service: diversity and equity programs and professional development resources. Dr. Amanda Parker was hired as the State Bar's first Equity in Justice program manager, and she has created educational programs and is consulting with the Supreme Court's Commission on Equity and Justice and with law firms. William Sease, former Chief Disciplinary Counsel, was hired to develop the Professional Development Program with resources and personal advice to help New Mexico lawyers have successful and ethical practices.

After two years of mostly virtual annual meetings, this year's Annual Meeting will return to in-person programming over three days, Aug. 11-13 at the Hyatt Regency Tamaya Resort & Spa. It will be a time to reconnect in-person with friends and colleagues from around the state, to talk about your experiences and where your practice is going post-pandemic and to learn about the State Bar's programs and some of the judiciary's plans. We've planned plenary and breakout sessions that we hope will be challenging and provide something relevant for everyone. This year, we will have five distinct breakout tracks. Two of our tracks, the Administrative Law Institute and the Cannabis Law Institute were produced by the Public Law Section and Cannabis Law Section, respectively. The other tracks will focus on professional development, equity in justice and the dynamics of law. You can learn more at www.sbnm.org/annualmeeting2022. Please join me, President-Elect Ben Sherman, Secretary-Treasurer Erin Atkins, Past President Carla Martinez and the Board of Bar Commissioners at the Annual Meeting this year. It's time to catch up!

Sincerely,

A handwritten signature in black ink that reads "Carolyn Wolf". The signature is written in a cursive, flowing style.

Carolyn Wolf,
President, State Bar of New Mexico



EQUAL ACCESS TO JUSTICE

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Equal Access to Justice was started in 1988 by concerned attorneys who saw firsthand how many New Mexicans with civil legal problems could not get legal help. Today, EAJ continues to raise vital funds from the legal community to break down barriers to justice for low-income New Mexicans. As a result, EAJ provides *unrestricted, noncompetitive funds* to **New Mexico Legal Aid, the New Mexico Center on Law and Poverty, and DNA- People's Legal Services**, granting them critical flexibility to cover costs excluded by other funding sources, to meet unanticipated needs in the community, and to help leverage other sources of funding. Learn more by visiting: www.eaj-nm.org

THANK YOU, DEFENDERS OF JUSTICE!

Your generosity and belief in the essential need for civil legal services helped raise over **\$274,566** during Equal Access to Justice's 2021/22 Annual Campaign! Special thanks to the **25 committee members** for their dedication, time, and collaboration on the annual campaign. EAJ is equally grateful for the partnership of **310 attorneys, law firms, and community members** who came together to support EAJ's longstanding efforts to increase access to justice for all New Mexicans. **Thank you** for investing in our community and positively impacting the lives of countless families.

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Thank you to the following individuals who contributed \$1,000+ to this year's annual campaign:

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Thank you to the many firms & solo practitioners listed below who are members of the 2021-22 Leadership Society at the indicated per attorney levels.

Special recognition and appreciation to **Rodey Law Firm** and **Modrall Sperling** who continue to inspire and lead the state in their contributions. Their significant support of civil legal services and systemic advocacy helps resolve problems, change unfair policies, and ultimately, promotes family and economic stability.

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CY PRES AWARDS

Special recognition and thanks to **Feferman, Warren & Mattison**, for directing **cy pres** funds to Equal Access to Justice this year. By directing a class action cy pres award to civil legal aid, they continue to make equal access to justice a reality for New Mexicans.

Expanding resources and advocacy for New Mexico's legal aid programs is a collective effort. EAJ values and recognizes our partners in this critical work: New Mexico Access to Justice Commission, New Mexico State Bar and Foundation, the New Mexico Civil Legal Services Commission, policymaker champions, Volunteer Attorney Program, all the civil legal services providers, and you. Thank you!

To view the full campaign report, including a complete list of donors, please visit www.eaj-nm.org

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-010
No: A-1-CA-37314 (filed March 30, 2021)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
FRANKLIN D. BEGAYE,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

John A. Dean, Jr., District Judge

Certiorari Granted, December 27, 2021, No. S-1-SC-38797.
Released for Publication March 22, 2022.

Hector H. Balderas, Attorney General
Santa Fe, NM
Walter M. Hart, III, Assistant
Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Mary Barket, Assistant Appellate
Defender
Santa Fe, NM

for Appellant

OPINION

HANISEE, Chief Judge.

{1} Defendant Franklin Begaye appeals his convictions for non-residential burglary, contrary to NMSA 1978, Section 30-16-3(B) (1971); breaking and entering, contrary to NMSA 1978, Section 30-14-8 (1981); and possession of burglary tools, contrary to NMSA 1978, Section 30-16-5 (1963). On appeal, Defendant requests that we vacate his convictions for breaking and entering and possession of burglary tools and contends that (1) his convictions for burglary and breaking and entering violate his right to be free from double jeopardy; and (2) there was insufficient evidence to support his conviction for possession of burglary tools. We affirm in part and reverse in part.

BACKGROUND

{2} Defendant was arrested on February 28, 2017, following a report of a break-in at Ram Signs, a business in Farmington, New Mexico. Testimony established that around 8:00 p.m. that night, Ram Signs co-owner Michael Mordecki heard a loud bang coming from the front of the building.

Soon thereafter, Mr. Mordecki discovered that the front window had been smashed in and called the police. Officer Justin Nichols arrived at the scene, verified that the intruder was not in the building, and inspected the area. Inside the building, Officer Nichols observed a broken window, an overturned cash box, and disarray around an employee's desk. Nothing had been taken by the intruder, but the front office area had been rifled through. Outside the building, Officer Nichols noticed shoe prints leading to and from the nearby fence line, as well as an area where it appeared someone had crawled under the fence.

{3} Security footage provided by Monica Mordecki, also a co-owner of Ram Signs, revealed that the suspect was a male wearing light shoes, dark pants, and a dark jacket over a light hoodie. In searching nearby areas, Officer Nichols observed Defendant, who matched the description of the individual in the video, walking along Farmington's main street, and upon approach, Officer Nichols saw what appeared to be shards of glass on Defendant's jacket and noticed that Defendant's pants and shoes were muddy. Officer Nichols

detained and searched Defendant, finding a pair of black mechanic's gloves, and a small red flathead screwdriver in the front pocket of Defendant's pants. Officer Nichols also collected several of Defendant's clothing items, including his hat, boots, jacket, hoodie, and pants.

{4} Defendant was charged with fourth degree felony offenses of non-residential burglary, breaking and entering, and possession of burglary tools. At Defendant's jury trial, the State presented testimony from, among other witnesses, Mr. and Mrs. Mordecki and Officer Nichols. The State also played the security camera footage, presented photographs of the scene, and admitted the clothing, boots, gloves, and screwdriver that Officer Nichols collected from Defendant on the night of the incident. Defendant was convicted on all charges. This appeal followed.

DISCUSSION

I. Defendant's Convictions of Burglary and Breaking and Entering Do Not Violate Double Jeopardy

{5} Defendant argues that his convictions for burglary and breaking and entering violate his right to be free from double jeopardy because both convictions are premised on the same act of a single unauthorized entry. Defendant's argument "presents a constitutional question of law, which we review de novo." *State v. Gonzales*, 2019-NMCA-036, ¶ 14, 444 P.3d 1064. Double jeopardy protects defendants from receiving multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6, 112 N.M. 3, 810 P.2d 1223. {6} Here, Defendant raises a double-description double jeopardy claim, "in which a single act results in multiple charges under different criminal statutes[.]" *State v. Bernal*, 2006-NMSC-050, ¶ 7, 140 N.M. 644, 146 P.3d 289. "In analyzing double-description challenges, we employ the two-part test, set out in *Swafford* . . . , in which we examine: (1) whether the conduct is unitary, and, if so, (2) whether the Legislature intended to punish the offenses separately." *Gonzales*, 2019-NMCA-036, ¶ 14. "Only if the first part of the test is answered in the affirmative, and the second in the negative, will the double jeopardy clause prohibit multiple punishment in the same trial." *State v. Silvas*, 2015-NMSC-006, ¶ 9, 343 P.3d 616 (internal quotation marks and citation omitted). Here, the State does not dispute Defendant's contention that the conduct—the single unauthorized entry—was unitary. Accordingly, we consider the first part of the *Swafford* test to be satisfied and move directly to our analysis of the second.

{7} Where, as here, Defendant's conduct is unitary, we next analyze legislative intent, looking first to the language of the statutes. See *Silvas*, 2015-NMSC-006, ¶ 11. "Absent a clear intent for multiple punishments, we apply the *Blockburger* test." *Silvas*, 2015-NMSC-006, ¶ 11; see *Blockburger v. United States*, 284 U.S. 299, 304(1932). *Blockburger* provides that "the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." 284 U.S. at 304. "If one statute requires proof of a fact that the other does not, then the Legislature is presumed to have intended a separate punishment for each statute without offending principles of double jeopardy." *Silvas*, 2015-NMSC-006, ¶ 12. "That presumption, however, is not conclusive and it may be overcome by other indicia of legislative intent." *Id.* ¶ 13 (internal quotation marks and citation omitted).

{8} Since its adoption, the New Mexico Supreme Court has modified the *Blockburger* test, clarifying that application of the test "should not be so mechanical that it is enough for two statutes to have different elements." *State v. Swick*, 2012-NMSC-018, ¶ 21, 279 P.3d 747. When discerning legislative intent for the purpose of the modified *Blockburger* test, we may look to the "language, structure, history, and purpose" of the relevant statutes. *State v. Franco*, 2005-NMSC-013, ¶ 12, 137 N.M. 447, 112 P.3d 1104. "If the statutes can be violated in more than one way, by alternative conduct, the modified *Blockburger* analysis demands that we compare the elements of the offense, looking at the [s]tate's legal theory of how the statutes were violated." *State v. Porter*, 2020-NMSC-020, ¶ 8, 476 P.3d 1201. We may ascertain the state's legal theory "by examining the charging documents and the jury instructions given in the case." *Swick*, 2012-NMSC-018, ¶ 21.

{9} Here, Defendant argues that the modified *Blockburger* test should apply to our analysis of Defendant's double jeopardy claim. Defendant contends that within a modified *Blockburger* analysis and under the State's legal theory of the case, breaking and entering was subsumed within the burglary conviction, therefore, double jeopardy bars his conviction under the breaking and entering statute. Defendant further claims, in the alternative, that even if the elements of each statute are distinct, other indicia of legislative intent make clear that the Legislature did not intend to permit separate convictions under both the burglary and the breaking and entering statutes based on a single unauthorized entry.

The State argues, in turn, that under either a strict or modified *Blockburger* test, Defendant's convictions are not barred by double jeopardy because both offenses require proof of an element the other does not and the Legislature intended to permit separate convictions under the two statutes.

{10} While there is no stated intent that the burglary and breaking and entering statutes allow for multiple punishments, we can presume the Legislature intended to allow separate punishment under the statutes because each provision requires proof of a factual element that the other does not. See *Silvas*, 2015-NMSC-006, ¶ 12. Section 30-16-3, prohibiting non-residential burglary, reads in pertinent part, "[b]urglary consists of the unauthorized entry of any . . . dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein." Meanwhile, Section 30-14-8(A) prohibits breaking and entering and reads, in pertinent part, "[b]reaking and entering consists of the unauthorized entry of any . . . dwelling or other structure, movable or immovable, where entry is obtained by fraud or deception, or by the breaking or dismantling of any part of the . . . dwelling or other structure[.]" While both offenses require an unauthorized entry into a dwelling, the burglary statute requires a defendant to have a specific intent "to commit any felony or theft therein." Section 30-16-3. Further, the breaking and entering statute requires the unauthorized entry to be effectuated by a specified means, which the burglary statute does not. Section 30-14-8(A). Therefore, under the *Blockburger* strict elements test, both offenses require proof of an element the other does not, and we can infer therefrom that the Legislature intended to authorize separate punishments under the burglary and breaking and entering statutes. See *State v. Hernandez*, 1999-NMCA-105, ¶ 29, 127 N.M. 769, 987 P.2d 1156 (explaining that breaking and entering and aggravated burglary each required an element not included in the other, as burglary can be accomplished by any unauthorized entry with the intent to commit a theft, while breaking and entering requires that the unauthorized entry be by a specified means, such as breaking or dismantling); see also *Swafford*, 1991-NMSC-043, ¶ 12 ("The rationale underlying the *Blockburger* test is that if each statute requires an element of proof not required by the other, it may be inferred that the [L]egislature intended to authorize separate application of each statute.").

{11} This inference, however, is not conclusive because the breaking and entering statute includes alternative means of entry, such as "by fraud or deception, or by . . . breaking or dismantling." Section 30-14-8(A). In light

of the alternative means presented by the breaking and entering statute, we apply the modified *Blockburger* test to examine other indicia of legislative intent. See *State v. Ramirez*, 2016-NMCA-072, ¶ 18, 387 P.3d 266 (explaining that "[w]hen applying *Blockburger* to statutes that are vague and unspecific or written with many alternatives, we look to the charging documents and jury instructions to identify the specific criminal causes of action for which the defendant was convicted" and to determine whether the Legislature intended to allow separate punishments under multiple statutes).

{12} Although we recognize that the purpose of "New Mexico's breaking[] and[] entering statute is itself grounded in common law burglary[.]" *State v. Holt*, 2016-NMSC-011, ¶ 15, 368 P.3d 409 (internal quotation marks and citation omitted), each statute presents distinct objectives that we rely on to guide our analysis. To reiterate, breaking and entering requires an unauthorized means of entry, such as an actual "breaking." See § 30-14-8(A); see, e.g., *State v. Contreras*, 2007-NMCA-119, ¶ 17, 142 N.M. 518, 167 P.3d 966 (explaining that "entering by breaking the window" met the requirements of an unauthorized entry). In *State v. Sorrellhorse*, 2011-NMCA-095, ¶ 21, 150 N.M. 536, 263 P.3d 313, we held that the offense of criminal damage to property was a lesser included offense of breaking and entering because both offenses require actual property damage. *Sorrellhorse* indicates that, where entry is obtained by breaking or dismantling physical property, the evident purpose of the breaking and entering statute is to punish unauthorized entry accomplished by physical damage to property. See *id.* ¶ 15.

{13} In comparison, while the burglary statute is likewise intended to safeguard possessory property interests, *State v. Rubio*, 1999-NMCA-018, ¶ 15, 126 N.M. 579, 973 P.2d 256, the evolution of common law burglary in New Mexico leads us to believe that the Legislature intended to authorize separate punishments under the statutes. See generally *Sorrellhorse*, 2011-NMCA-095, ¶¶ 18-20 ("To be sure, the common law is the backdrop for the Legislature's enactments, and courts therefore can rely on the common law to construe unclear or ambiguous statutes."). At common law, "[b]urglary consisted of breaking and entering a dwelling of another in the night time with the intent to commit a felony." *Id.* ¶ 19. Initially, the crime required some physical act or element of force but did not specifically require damage to property. *Id.* However, as the common law developed, the "breaking" component of common law burglary could be satisfied by a constructive breaking and did not necessarily require a physical act. *Id.*

For example, this Court held that “entry by fraud, deceit, or pretense was sufficient to constitute the ‘unauthorized entry’ requirement, which had been adopted by the New Mexico Legislature instead of the common law requirement of ‘breaking.’” *Id.* Therefore, we conclude the purpose of the breaking and entering statute is sufficiently distinct from the purpose of the burglary statute. The crime of burglary punishes the broader criminal conduct of any unauthorized entry when there is specific criminal intent. See § 30-16-3; *Sorrelhorse*, 2011-NMCA-095, ¶ 20 (“The Legislature departed from the common law burglary concepts in enacting Section 30-14-8(A).”); see also *State v. Off. of Pub. Def. ex rel. Muqqddin*, 2012-NMSC-029, ¶¶ 42-43, 285 P.3d 622 (discussing the broader privacy interests the burglary statute is aimed at protecting).

{14} Having concluded that the Legislature intended to allow separate punishments under the two statutes, we turn next to the State’s theory of the case. See *Porter*, 2020-NMSC-020, ¶¶ 7-8. A comparison of the instructions tendered to the jury for the two offenses establishes that the breaking and entering charge was not subsumed into the burglary charge. To convict Defendant of breaking and entering, the jury was required to find, in pertinent part, that (1) “[D]efendant entered a structure without permission”; and (2) “[t]he entry was obtained by the breaking of a window[.]” See UJI 14-1410 NMRA. Meanwhile, a guilty verdict on the burglary charge required the jury to find, in pertinent part, that Defendant (1) “entered a structure without authorization[.]” and did so (2) “with the intent to commit a theft when inside.” See UJI 14-1630 NMRA.

{15} Although it agrees on appeal that Defendant’s entrance through the window of Ram Signs constituted unitary conduct for the purposes of both statutes, at trial the State did not suggest that the jury rely on the unauthorized entrance as the sole basis for conviction of each crime. Cf. *Silvas*, 2015-NMSC-006, ¶¶ 18-21 (holding that, where a defendant was convicted of trafficking drugs with intent to distribute and possession with intent to distribute, the state’s theory of the case was based on the unitary conduct of selling drugs and violated the defendant’s right to be free from double jeopardy). Here, the crucial distinction in the two crimes is that the unauthorized entrance required by the burglary charge jury instruction also included the specific intent “to commit a theft when inside.” UJI 14-1630(2). Hence, the State’s theory of the case for burglary required the jury to find something more than what was required for breaking and entering.

Similarly, although the unauthorized entrance through the broken window was a common element of both charges, to convict Defendant of breaking and entering, the jury had to find that the unauthorized entrance was effectuated by breaking the window. That additional element—one that was not required by the burglary instruction—establishes that Defendant’s conviction for breaking and entering could not have been subsumed within the aggravated burglary conviction. See *Ramirez*, 2016-NMCA-072, ¶ 23 (explaining that, even where two offenses share a common element, the offenses are not necessarily subsumed within the other, particularly where the defendant can commit one of the offenses and not the other).

{16} The charging documents specifically relied on the “breaking or dismantling” component of the breaking and entering statute in charging Defendant with breaking and entering, § 30-14-8(A), and relied on the “intent to commit a felony or theft therein” component of the burglary statute in charging Defendant with burglary, § 30-16-3. As such, the State’s theory of the case regarding the conduct required by the two charges was adequately distinguishable and not solely premised on the unitary conduct. Therefore, we hold that Defendant’s convictions for breaking and entering and aggravated burglary did not offend his right to be free from double jeopardy.

II. There Was Insufficient Evidence Supporting Defendant’s Conviction for Possession of Burglary Tools

{17} Defendant argues there was insufficient evidence supporting his conviction for possession of burglary tools; specifically contending that the State did not present sufficient evidence to show that the gloves or the screwdriver were items designed for or commonly used to gain entry during a burglary, or that Defendant intended to use the items for the purpose of committing a burglary. Defendant further contends that, legally, gloves are not “device[s]” or “instrumental[ities]” as contemplated by Section 30-16-5. The State answers that the evidence was sufficient to establish Defendant’s actual use of the gloves and intended use of the screwdriver to facilitate his unauthorized entry into Ram Signs.

{18} “The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Ford*, 2019-NMCA-073, ¶ 7, 453 P.3d 471 (internal quotation marks and citation omitted). Under this test, “we

view the evidence in the light most favorable to the state, resolving all conflicts and making all permissible inferences in favor of the jury’s verdict.” *State v. Ledbetter*, 2020-NMCA-046, ¶ 6, 472 P.3d 1287 (alteration, internal quotation marks, and citation omitted). “Jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” *Id.* (internal quotation marks and citation omitted).

{19} “Our appellate courts will not invade the jury’s province as fact-finder by second-guessing the jury’s decision concerning the credibility of witnesses, reweighing the evidence, or substituting its judgment for that of the jury.” *State v. Gwynne*, 2018-NMCA-033, ¶ 49, 417 P.3d 1157 (internal quotation marks and citation omitted). However, while we do not “substitute our own judgment for that of the jury in weighing the evidence,” we must “ensure that, indeed, a rational jury could have found beyond a reasonable doubt the essential facts required for a conviction.” *Ledbetter*, 2020-NMCA-046, ¶ 6 (internal quotation marks and citation omitted). In reviewing the sufficiency of evidence, “our responsibility is to ensure that the jury’s decisions are supportable by evidence in the record, rather than mere guess or conjecture[.]” and we are required to “distinguish between conclusions based on speculation and those based on inferences.” *Ford*, 2019-NMCA-073, ¶ 8 (alteration, internal quotation marks, and citations omitted); see UJI 14-6006 NMRA (providing that a jury’s “verdict should not be based on speculation, guess or conjecture”). “A reasonable 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.” *Ford*, 2019-NMCA-073, ¶ 8 (internal quotation marks and citation omitted).

{20} Here, in order to convict Defendant of possession of burglary tools, the jury had to find beyond a reasonable doubt that: (1) “[D]efendant had in his possession gloves and a screwdriver”; (2) “[g]loves and a screwdriver are designed for or commonly used in the commission of a burglary”; and (3) “[D]efendant intended that the gloves and/or screwdriver be used for the purpose of committing a burglary[.]” The parties do not contest the sufficiency of the evidence supporting the first element of the jury instructions regarding Defendant’s possession of the gloves and screwdriver. Regarding the second element, Defendant argues that the State did not present sufficient evidence to establish beyond a reasonable doubt that gloves or a screwdriver were commonly used as burglary tools.

In our view, the State's argument in response assumes that Defendant used the screwdriver and gloves in committing the burglary and such actual use renders a finding that the gloves or screwdriver are "commonly used in the commission of [a] burglary" unnecessary. To support this claim, the State cites *State v. Jennings*, 1984-NMCA-051, ¶ 12, 102 N.M. 89, 691 P.2d 882. To benefit from *Jennings*, however—and thereby avoid the need to show common usage of the items in question during burglaries—the State was required to present sufficient evidence establishing that Defendant actually used the gloves and screwdriver during commission of the burglary. See *id.* (explaining that where evidence establishes actual use of an item as a burglary tool, evidence that the item is commonly used as a burglary tool is unnecessary).

{21} In *Ford*, we clarified that because the crime of "burglary is completed upon entry, it is at the moment of entry or prior to the entry that the use or intended use of burglary tools matters. It therefore follows that burglary tools must be used, or intended to be used, to facilitate entry." 2019-NMCA-073, ¶ 14 (emphasis omitted). In light of *Ford*, the question of Defendant's actual or intended use of the gloves and screwdriver at the time of entry into Ram Signs is central to our analysis of the sufficiency of the evidence supporting his conviction for possession of burglary tools.¹

{22} We begin with the screwdriver. Regarding it, the *only* evidence presented to the jury was Officer Nichols' testimony that he found the screwdriver in Defendant's pocket, wrapped inside the gloves. The State presented no other evidence that could establish that Defendant used or intended to use the screwdriver at the time of entry, or that a screwdriver is designed for or commonly used in the commission of a burglary. Moreover, the security camera footage from inside the lobby of Ram Signs shows that the window was initially struck by an object that is unmistakably larger in size than a screwdriver. Even Mrs. Mordecki's testimony suggested that a screwdriver most likely was *not* used in the burglary of Ram Signs, given her belief that the security camera footage showed something like "a crowbar [or] flashlight" was used to hit the window. Not only did neither of the parties nor the district court express an ability to discern from the security camera footage what object was used to break the window, the State acknowl-

edged the window was made of safety glass which is "kind of hard to break," rendering use of the screw driver even less probable at the time Defendant entered Ram Signs. Indeed, there is no indication from the security camera footage that Defendant used or attempted to use a screwdriver outside or inside the building. Nor did it show that Defendant ever used an object resembling the size or shape of a screwdriver. Further, no scratches or signs of tampering were found in or around Ram Signs that could suggest such use or attempted use at the time of entry.

{23} The State nonetheless asserts that "based on the totality of the circumstances," the mere discovery of the screwdriver within Defendant's pocket is enough to prove not only possession, but also that Defendant intended to use the screwdriver to commit a burglary and a screwdriver is commonly used in the commission of a burglary. But the State presented no evidence regarding such common usage, and in any event, there is no evidence regarding the screwdriver other than it having been discovered by Officer Nichols during his search of Defendant *after* the burglary. *Ford* is therefore instructive, and for the jury here to have reached the conclusions necessary to yield a guilty verdict, it would have had to speculate as to the screwdriver's presence and use at the time of Defendant's entry into Ram Signs. See 2019-NMCA-073, ¶ 18; see also *Ledbetter*, 2020-NMCA-046, ¶ 14 (explaining that evidence establishing only the defendant's physical presence at the scene of an alleged residential burglary was insufficient to support the specific intent requirement contemplated by the burglary statute); *State v. Montoya*, 2020-NMCA-____, ¶ 29, ____ P.3d ____ (No. A-1-CA-37676, Dec. 10, 2020) (holding that the defendant's possession of a tool designed for the purpose of burglary was insufficient to establish proof of intent to actually use the tool in committing a burglary). "While evidence of intent can be based on circumstantial evidence, we will not uphold a conviction based on mere speculation." *Ledbetter*, 2020-NMCA-046, ¶ 14.

{24} The State additionally cites *State v. Hernandez*, 1993-NMCA-132, 116 N.M. 562, 865 P.2d 1206, for the proposition that "[a]ctual use of a utilitarian tool such as a screwdriver is not required to establish possession of burglary tools where there is evidence of possession and intent to use the tool in the commission of a burglary." The State's reliance on *Hernandez* is unper-

suasive. There, the defendant challenged the sufficiency of the evidence supporting his convictions of auto burglary and possession of burglary tools. *Id.* ¶ 1. The evidence established that the defendant purchased a screwdriver inside a Kmart, opened an unlocked door of a car parked in the store's parking lot, and attempted "to start the car by inserting something into the ignition." *Id.* ¶ 2. At trial, the defendant testified that "he had tried to start the car by jamming a screwdriver into the ignition." *Id.* We stated that the "[t]heft of the car itself may be an offense committed within the vehicle[,] as required by the auto burglary statute, and held there was sufficient evidence to support the defendant's convictions even though the defendant did not use the screwdriver to gain entry to the vehicle and instead used the screwdriver to attempt to steal the vehicle itself. *Id.* ¶¶ 6-8.

{25} Unlike in *Hernandez*, the jury here only heard testimony that Defendant had a screwdriver in his pocket when searched by Officer Nichols and heard no evidence regarding Defendant's intent to use the screwdriver to commit burglary. Such is not enough for a rational jury to find beyond a reasonable doubt—and without speculation—that Defendant used or intended to use the screwdriver when breaking into Ram Signs. We therefore conclude there was insufficient evidence supporting Defendant's conviction of possession of burglary tools as it relates to the screwdriver.

{26} Our review of the sufficiency of the evidence concerning the gloves found by Officer Nichols in Defendant's pocket, and their possible use when the break-in took place, is a more challenging task. Again, the trial evidence rested exclusively on security camera footage and after-the-fact testimony. Officer Nichols stated that he found the gloves in Defendant's pocket following the burglary and offered his opinion that the security camera footage capturing the window being broken displayed a marked contrast between the "absolute black, dark" color of Defendant's hands and the lighter color of his face, suggesting to Officer Nichols that Defendant was wearing gloves. Though not itself evidence, during its closing statement the State argued that Officer Nichols' testimony and the security camera footage established that Defendant was wearing gloves at the time of the burglary in part to protect his hands from broken glass, stating:

¹ In *Ford*, the defendant was convicted of receiving or transferring a stolen vehicle and possession of burglary tools. *Id.* ¶ 1. We held that there was insufficient evidence to support the defendant's possession of burglary tools conviction because, although a screwdriver was discovered inside the stolen vehicle, there was no evidence that the defendant possessed the screwdriver prior to entering the vehicle or that he had any intent to use the screwdriver to enter the vehicle. *Id.* ¶ 18.

It's notable that in the video, the officer testified, and you can check it out yourself, that the individual appears to be wearing gloves during the commission of the burglary. Why wear gloves during the commission of the burglary if not to protect one's hands from glass, if not to avoid leaving fingerprints? . . . Defendant had gloves on during the commission of the burglary. And yet, when he is stopped by the police . . . was he wearing gloves? The answer is "no," he was not wearing gloves. He was not wearing gloves to protect him from the cold. He did not have gloves because it was February. They were in his pocket. They were wrapped around a screwdriver when the police encountered him. Gloves in one's pocket do not protect one's hands from the cold. The gloves in the pocket did protect his hands while he was committing a burglary. They protected his hands from the glass and from leaving fingerprints.

{27} Although we safeguard the jury's fact-finding role by reconciling conflicts and making inferences based on evidence in the record in a manner supportive of the verdict, we must also ensure its determinations are properly rooted in the evidentiary record. See *Ledbetter*, 2020-NMCA-046, ¶ 6. To this end, several aspects of the evidence upon which the verdict must have rested are troubling. First, Officer Nichols' testimony regarding the gloves—in which he explained what he believed to be depicted by the security camera footage—failed to specify at what point in the security camera footage he believes Defendant can be seen wearing gloves. Importantly, video footage depicts both the moment of break-in and its aftermath, as well as Defendant moving within the Ram Signs facility. The State likewise did not elicit testimony about whether Officer Nichols believed Defendant was wearing gloves at the time of entry into the store, as would be required under *Ford*. See 2019-NMCA-073, ¶ 14. Officer Nichols' opinion testimony, therefore, bore only the

capacity to inform the jury that it appeared to him that Defendant wore gloves *at some point* during the security camera footage, but not during Defendant's entry into Ram Signs, as suggested by the State in its closing argument.

{28} In our view, a determination of guilt based on the use of gloves as a burglary tool required clarity from the security camera footage viewed by the jury. Our own review of that footage—particularly of Defendant's approach and entry into Ram Signs, reveals that it is grainy, blurry, generally unclear, and inconclusive. Indeed, it is not possible to discern details of these pivotal moments from the footage, and as such we cannot verify that a rational juror could determine from such footage alone, whether Defendant was wearing gloves at the time of entry without engaging in impermissible conjecture. See *State v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930 (explaining that if a reasonable inference "must be buttressed by surmise and conjecture in order to convict, the conviction cannot stand" (internal quotation marks and citation omitted)).

{29} While the State offered in its closing argument a hypothetical explanation about when and why Defendant wore gloves during the break-in portion of burglary, suggesting that it would have been to protect his hands from glass, counsel's closing argument is not evidence. See *State v. Cordova*, 2014-NMCA-081, ¶ 10, 331 P.3d 980 ("[A]rgument of counsel is not evidence." (internal quotation marks and citation omitted)); see also UJI 14-104 NMRA (stating that "[w]hat is said in the [closing] arguments is not evidence"). Moreover, the State's theory as presented in closing required the jury to make the ultimate inference that, as suggested generally by Officer Nichols' testimony, Defendant *was actually* wearing the gloves at the time of entry. That ultimate inference was necessarily premised upon a series of additional inferences that were not supported by any evidence, such as hypothetical explanations as to why Defendant might wear gloves and have subsequently removed them given internal surveillance does not show Defendant wearing gloves inside the store. We do not permit this kind of inference succession when considering whether sufficient evidence supports a defendant's conviction. See *Slade*, 2014-NMCA-088, ¶ 14 ("An ultimate inference may not be based on a series of inferences.").

Given the indeterminate nature of the surveillance video; the failure of specificity within Officer Nichols' opinion testimony, which could nonetheless have been mistakenly relied on by the jury; the State's closing arguments, which assumed Officer Nichols was discussing the color of Defendant's hands at the time of the break-in; and the overall speculative nature of the State's contention that Defendant wore the gloves at the time he would have had to in order to sustain a conviction for possession of burglary tools; we cannot conclude that the conviction was supported by substantial evidence. And indeed, in a criminal trial, "[t]he jury must have a sufficient evidentiary basis to conclude that the defendant actually committed the criminal act he is accused of, not just that he may have done it among a range of possibilities or that it cannot be ruled out among other possible explanations, or even that it is more likely than not." *State v. Consaul*, 2014-NMCA-030, ¶ 70, 332 P.3d 850 (internal quotation marks omitted); see *Slade*, 2014-NMCA-088, ¶ 14 ("[E]vidence from which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition." (internal quotation marks and citation omitted)).

{30} We hold that there was insufficient evidence upon which the jury could find Defendant guilty of possession of burglary tools as it relates to the gloves, without impermissibly relying on speculation, conjecture, and multiple inferences. Given our resolution of this issue, we do not reach Defendant's additional argument that, under the possession of burglary tools statute, gloves are not "a device or instrumentality designed or commonly used for the commission of burglary." Section 30-16-5.

CONCLUSION

{31} For the above reasons, we affirm Defendant's convictions for breaking and entering and burglary and reverse Defendant's conviction for possession of burglary tools. We remand to the district court for entry of an amended judgment and sentence in accordance with this opinion.

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

J. MILES HANISEE, Chief Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

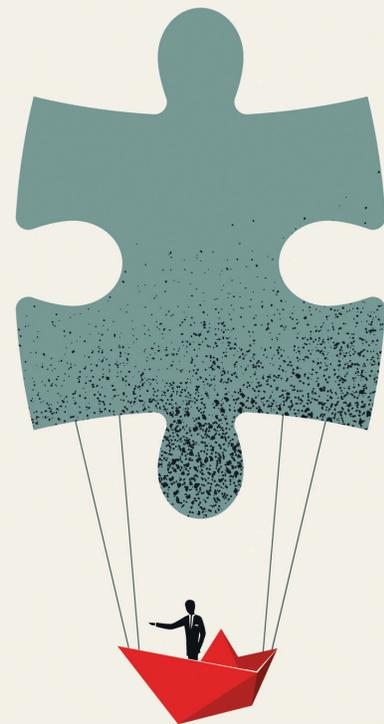
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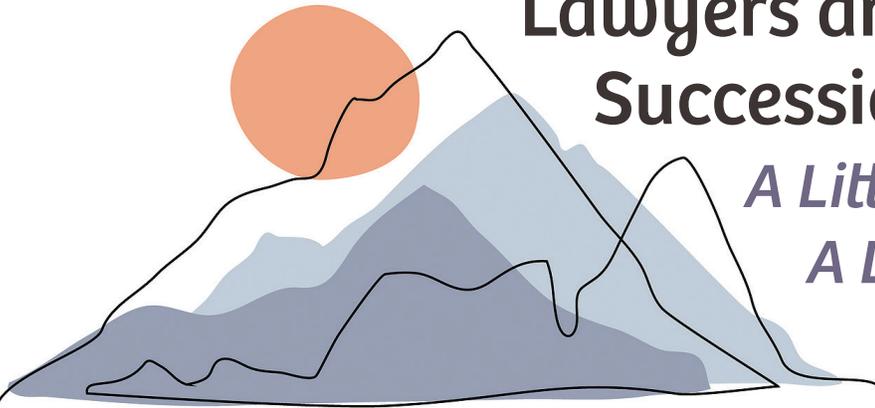
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Lawyers and Succession Planning

A Little Planning Now, A Lot Less Panic Later

By William D. Slease



Lawyers face many challenges every day: client demands, constant deadline pressure, the stress of operating a business and practicing law. Most find it rewarding. Most also plan on retiring someday. And most, like every other person, are at risk for an unplanned event such as an injury, illness, incapacitation, disability or death, which makes it temporarily or permanently impossible to continue in practice of law. An interruption or cessation of practice, voluntary or otherwise, carries with it a substantial risk that clients will be abandoned by their lawyer in the middle of the clients' matters. It also creates a risk that colleagues, staff, friends and family will be left scrambling to make sense of the lawyer's practice at a time of great personal stress.

Of course, the duties that a lawyer owes to his or her client under the Rules of Professional Conduct, including duties of competence, diligence, communication and the safekeeping of confidences and property, mandate that a lawyer not abandon a client and the client's legal needs. Thus, the need for every lawyer to take affirmative steps to plan for an interruption or cessation of practice, voluntary or otherwise, cannot be overstated, particularly for those practicing in a solo practice setting. By doing so, you can protect your clients, your family, your staff and your reputation in times of uncertainty and, hopefully, avoid personal and financial strife as well as unnecessary disciplinary complaints.

Effective Oct. 1, 2022, every lawyer practicing in New Mexico is required to have a succession plan, either alone, or as part of a law firm plan. *See* Rule 16-119 NMRA. The succession plan must have, at a minimum, the steps to be taken in the event a lawyer dies, or becomes disabled or incapacitated. *Id.* The plan must identify the lawyer or law firm designated to carry out the succession plan, the location of and information necessary to access the lawyer's current list of active clients and cases, including client files, as well as computer files and related passwords, and information on and the records attendant to the lawyer's bank accounts, both trust and operating. *Id.* Notice

Thus, the need for every lawyer to take affirmative steps to plan for an interruption or cessation of practice, voluntary or otherwise, cannot be overstated, particularly for those practicing in a solo practice setting.

of the plan, and written consent and agreement to serve under the plan, must be given to and obtained from the lawyer or law firm designated to carry out the succession plan. *Id.* Clients must also be given notice that their lawyer has developed a succession plan. *Id.* Beginning with the licensing registration statement in the Fall of 2022, lawyers will have to certify compliance with the mandatory succession planning rule. *Id.*

The Rule itself sets out the minimum requirements for compliance. There are many things that you might consider in developing a plan for your expected or unexpected cessation of practice. Some of the issues include, but are not limited to:

- who will close or manage my practice if I am away for an extended period of time or never return?
- will that person take over the representation of clients (with the clients' permission) or simply inventory my files and funds and distribute them to the clients and substitute counsel?
- do I have an updated client list and an updated list of closed matters and can they be easily located?
- does the person who will step in to close or manage my practice, or some other responsible party:
 - know where my files are located, physically and on computers, and can they access the files (does anyone know my computer password)?
 - know where my calendars are located so that all deadlines can be tracked and either met or conveyed to clients and any substitute counsel?
- have access to my time and billing records and know how to generate bills and collect fees that may be due to me or my estate?
- have access to my unpaid invoices and instructions on how to make payments that may be outstanding?
- know where my bank accounts, operating and trust, are held, and where the trust ledgers, reconciliations, and other bank operating account and trust account records are located?

- do I need to execute a limited springing power of attorney or some other legal document to allow someone to sign on my bank accounts and will my banker accept such a power of attorney?
- what sort of other written agreements should I enter into with the person or persons who I would like to close or operate my practice?
- how will clients, courts and opposing counsel be notified of my interruption or cessation of practice?
- should I consider disability and/or practice interruption insurance, including overhead expense coverage, and monthly disability income insurance?

By engaging in thoughtful preparation now, a lawyer can not only comply with Rule 16-119, but can ensure that today's planning avoids tomorrow's panic.

resources to assist lawyers in New Mexico with succession planning. Those materials can be accessed through the State Bar of New Mexico website at www.sbnm.org/pdp and www.sbnm.org/successionplanning. Moreover, many malpractice carriers are starting to insist that a lawyer provide information to the carrier about the lawyer's succession planning. Counsel for these carriers may be able to help you design a plan that works for your situation and complies with the Rule. There are also a number of articles and forms available online that lawyers can use as a resource in succession planning; just search for "lawyer succession planning."

This list is not intended to be exhaustive. The point is to begin thinking about and planning now, while you have time and the ability to carefully consider the issues and craft a plan for succession, rather than leave others to manage a stressful and chaotic crisis in your professional and personal life without any guidance from you.

Fortunately, there are many good resources available to you to help with succession planning. For starters, long before Rule 16-119 was enacted by the New Mexico Supreme Court, the now sunsetted New Mexico Lawyers Succession and Transition Committee developed a handbook and associated materials and

Every New Mexico lawyer is encouraged to use these resources and take action now to plan for the future. By engaging in thoughtful preparation now, a lawyer can not only comply with Rule 16-119, but can ensure that today's planning avoids tomorrow's panic. ■

William D. Slease is the Professional Development Program Director of the State Bar of New Mexico. PDP offers services and resources to State Bar members in the area of law practice management. This includes continuing education courses, "how-to" manuals and workshops, and information, sample forms, checklists, and assessments on best practices for lawyers. Prior to the State Bar, he served as Chief Disciplinary Counsel for the Disciplinary Board of the New Mexico Supreme Court.

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Have You Heard?

It Makes More Than Good "Cents" to Maintain Malpractice Insurance

By Briggs Cheney

Introduction

This article first appeared in 2006 in a series of articles on professional liability insurance. It was part of the State Bar's Lawyer Professional Liability and Insurance Committee's effort to encourage lawyers who did not have liability insurance to reconsider that decision. Much has happened since 2006. The New Mexico Supreme Court enacted Rule 16-104 NMRA requiring all lawyers who are engaged in the private practice of law and who do not maintain professional liability insurance in specified minimum amounts (minimum \$100,000 per claim/\$300,000 aggregate coverage) to provide their clients with written notice of that fact and obtain a client signature acknowledging the lawyer's lack of minimum professional liability insurance.

Rule 16-104 is, in and of itself, a strong incentive for the lawyer to purchase professional liability insurance, but if that incentive is not enough or more prodding is required, this updated article focuses on the economics which justify having professional liability insurance and the basics on obtaining coverage.

The Mathematics of Professional Liability Insurance

$$y = \frac{cd + dd + (3lr)}{gb}$$

- y** = Years you have to practice without a claim for "going bare" to make sense
- cd** = Cost of defending yourself in a legal malpractice action
- dd** = Cost of responding to or defending a disciplinary complaint
- lr** = Lost revenue during the pendency of a legal malpractice claim
- gb** = Savings from "going bare"

For purposes of this equation, the following assumptions have been made: the minimum cost of defending a no liability/slam dunk legal malpractice claim is \$25,000. For a claim where there is possible liability, defense costs can run from \$50,000 to \$350,000. For a claim where there is real liability, the cost of defense can be

much higher. It is difficult to provide an average cost of defense for a legal malpractice lawsuit; it's not your average rear-end collision case. For that reason, \$100,000 fairly represents a cost of defense for an average legal malpractice claim.

The average life span of a legal malpractice claim is three years, but I've tried legal malpractice cases which were much older. Indeed, one that was eight years old and another which was almost twelve years old. While three years as an average is reasonable, it can be much longer.

A lawyer who has been sued for legal malpractice will experience an annual 10-20% decrease in his or her gross revenues. If you have not experienced a malpractice suit, this comment may seem unusual. If you have been sued, you understand. Dealing with the emotions of the claim and the frustration of the legal system that all our clients have to endure, having to respond dutifully to defense counsel, the lingering feelings of embarrassment and uncertainty of how it will end, all impact the lawyer's ability to practice law. Using as an example a lawyer grossing \$300,000 a year, the loss of revenue can translate to as much as \$135,000.

Almost every lawyer in his or her legal career will have to respond to a disciplinary complaint filed by a disgruntled client. The cost of responding to a disciplinary complaint is not an insignificant expense. Most professional liability policies issued today provide for some form of coverage for disciplinary matters, generally reimbursement coverage with a cap ranging from \$2,500 to \$25,000. This reimbursement coverage allows the lawyer to retain his/her own attorney and the company will reimburse the lawyer up to the coverage cap. The coverage is another benefit of having professional liability insurance and one which should not be ignored.

There has been a marked increase in the filing of disciplinary complaints. The reason for the increase is not clear but being confronted with a disciplinary complaint is a very real possibility. That a lawyer will be confronted with at least one disciplinary complaint in his or her career is a fair assumption. The average cost for responding to such a complaint is \$10,000

The average annual premium for professional liability insurance can range from \$2,500 to \$6,000. It is difficult to estimate an average annual premium because the premium depends on the limits of

coverage, whether coverage is defense inside or outside of limits (“Pac Man” coverage), the nature of a lawyer’s practice, and various other factors. Premiums also are subject to being skewed by past claim histories, years in practice, the type of practice, and other factors. For present purposes, \$4,000 is used as a reasonable annual premium.

Applying the above assumptions to the formula, to make any economic sense, a lawyer would have to practice **81 years without a claim** to justify not purchasing malpractice insurance. And remember, that number does not take into consideration the cost of paying a settlement or judgment.

Shopping for Professional Liability Insurance Shop early and everywhere.

The first art of shopping for legal malpractice insurance is to shop early. If you wait until the eve of the renewal date of your policy, you lose the opportunity to shop for the best policy at the best price. Begin shopping no later than 60 days before your current policy’s renewal date; 90 days is better.

The current professional liability insurance market is not a tight market.

Enough companies provide coverage to New Mexico lawyers. A list of professional liability insurance carriers and brokers can be found on the State Bar website at www.sbnm.org/lplic. But the number of companies should not lull a lawyer into complacency. The application process has become more labor-intensive. If the lawyer applies to more than one company (which is encouraged), the process of comparing and negotiating coverage can be very time-consuming. You should solicit a quote from several companies. While the lawyer’s staff may assist, the lawyer should be intimately involved in this process.

Renewing with the same company is often desirable.

Regardless, it is wise to shop the market. Price is seldom a good reason for choosing one carrier over another. The reason you want to shop every year is for policy and coverage features (e.g., defense within limits, amount of indemnity coverage, disciplinary coverage, tail or prior acts coverage). Has your existing carrier eliminated a coverage feature that another carrier is now offering and that is important to you?

Use the brokers.

Develop relationships with them. Be honest with them. You want them to know all your problems. The underwriting process has evolved over the years into a sophisticated negotiation process and the broker is best trained in that kind of negotiation. The broker may have relationships with a company for which he or she is writing which may prove invaluable to a lawyer (or firm) who has a problem (e.g., a past claim, a new practice area viewed a higher risk

by a company, a problem lawyer in the firm). Use your insurance broker just as you hope your client uses your professional services.

Where the malpractice market has changed is in the decision to aggressively engage in underwriting. For years, malpractice carriers seemed to pay little attention to the details of an individual lawyer’s or firm’s claim history and instead relied on regional loss data. Companies are now focusing on each insured and through the application process, companies are gathering detailed information on claims, losses, cost of defense on past claims, information on disciplinary complaints, and more precise information on an applicant’s areas of practice. Based on this information, companies are making decisions on whether to insure and adjusting premiums accordingly.

The preceding point warrants additional comment. The application has become critically important in the process of purchasing malpractice insurance. As noted, this is not a task the lawyer should delegate to the legal assistant or office manager. It is critical that the information provided on any application be completely accurate. Neglecting to report a disciplinary complaint or a past claim or mischaracterizing the firm’s areas of practice can result in the carrier challenging coverage through a declaratory judgment action when a claim is later filed. There was a time when insurance companies were extremely hesitant to challenge a lawyer on its professional liability coverage. Those days are over. Companies have experienced large losses in the legal malpractice arena, and they may seek to avoid coverage where a lawyer insured has not fulfilled the lawyer’s duties and obligations in the application process.

A final note on shopping for insurance and about what **is not** discussed in this article. There much more to consider when shopping for insurance that is not addressed here—the limits of coverage, the deductible, defense within and outside of coverage, tail coverage, disciplinary coverage. For more on those topics, consider the reviewing the summary and article from the Lawyers Professional Liability and Insurance Committee that discusses such topics, which you can read at <https://bit.ly/3OBcOK3>.

Conclusion

Whether maintaining professional liability insurance should be every lawyer’s professional responsibility and obligation is the subject of considerable debate. Regardless of which side of that debate you favor, the mathematics (i.e., the economics) strongly suggest that having professional liability coverage only makes sense. ■

Briggs F. Cheney is Of Counsel with Dixon, Scholl, Carillo P.A. He attended the University of New Mexico (Bachelor of Business, 1969; and J.D., 1972). He has long been involved with the State Bar of New Mexico’s Lawyers Professional and Liability Insurance Committee and the Judges and Lawyers Assistance Program.

Almost every lawyer in his or her legal career will have to respond to a disciplinary complaint filed by a disgruntled client. The cost of responding to a disciplinary complaint is not an insignificant expense.



A Quick Primer on the New Mexico Client Protection Fund

Written as a collaborative effort by the Client Protection Fund Commission

What is the Client Protection Fund?

The Commission on Client Protection was established by the New Mexico Supreme Court in 2005 as a permanent commission of the State Bar of New Mexico. The Commission oversees the Client Protection Fund (CPF or the Fund). CPF's stated purpose is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of New Mexico. The Rules Governing the Client Protection Fund are Rules 17A-001 et seq. NMRA.

“... the legal profession is collectively responsible for the protection of the integrity of the profession and its clients.”

How is CPF Funded?

CPF is funded by an annual assessment of \$15 per actively licensed lawyer in New Mexico.

What is an Eligible Claim?

To be eligible for reimbursement by the Fund, the claimant's loss must be caused by the dishonest conduct of a lawyer and must have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship between the lawyer and the claimant.

Is Death Really Considered Dishonest Conduct?

What constitutes dishonest conduct for purposes of CPF paying a valid claim may not be as obvious as one would think. Certainly, if a lawyer ignores the cardinal rule—it is not the lawyer's money until it is earned—and takes unearned client funds for the lawyer's own use, that would constitute dishonest conduct. But what about a lawyer who dies leaving an empty trust account and insufficient trust accounting records to determine whether the trust funds that clients claim should be on deposit, were actually earned or properly disbursed by the lawyer before his/her death? In other words, does the scenario of “my lawyer died, my case is still going, there should be money in trust, and the trust account is empty” constitute “dishonest conduct” by the deceased lawyer? CPF has determined that the definition of

“dishonest conduct” under the CPF governing rules is met when a lawyer dies leaving improperly maintained trust records to demonstrate the proper expenditure or earning of expected but missing trust funds.

To be eligible for reimbursement by the Fund, the claimant’s loss must be caused by the dishonest conduct of a lawyer and must have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship between the lawyer and the claimant.

What are the Current Issues Facing CPF?

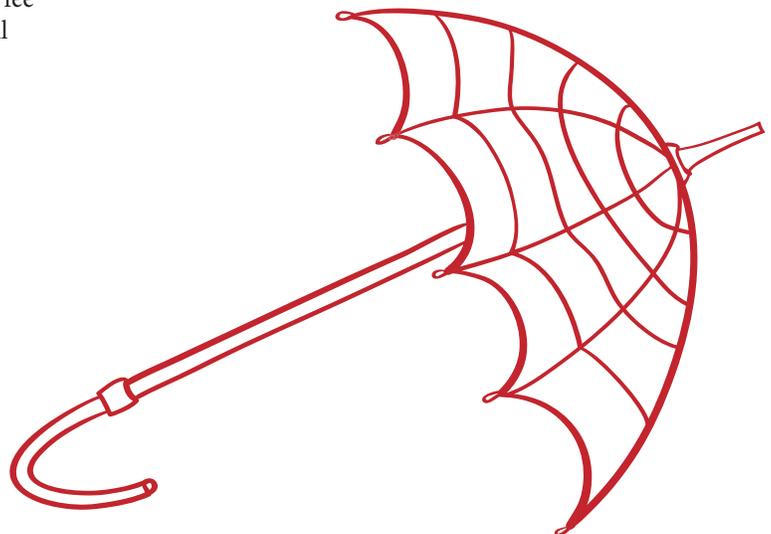
The main issues currently facing CPF are whether the \$15 annual assessment is sufficient to sustain the Fund for the next several years, and how to impress upon lawyers the importance of understanding, observing, and complying with the rules governing trust accounting and the safekeeping of client property. At the end of 2020, the Fund had more than \$1 million in its bank account. Historically, the Fund has typically paid less than \$100,000 annually in claims. Recently, however, the number of meritorious claims and the resulting CPF payments have been significantly higher. Specifically, the first three months of 2022 saw the CPF pay more than \$150,000 to clients. The overwhelming majority of this money went to clients of deceased lawyers who had zero balances in their trust accounts and insufficient records to demonstrate the proper expenditure or earning of expected trust funds. In some cases, the trust account general ledger and individual client ledgers were missing. There was no evidence of monthly reconciliations as required by Rule 17-204 NMRA. There were no invoices or entries documenting when and why trust account deposits were made or when and why trust account withdrawals were made and what work supported the withdrawals. Moreover, some lacked a written fee agreement outlining the scope of work (e.g., “I will

represent you through a trial but not an appeal”), and the fees and costs associated with the work (“my hourly rate is \$275 per hour plus GRT, and you have agreed to pay a retainer of \$X” or, in a flat fee arrangement, “I will represent you in this matter for a refundable flat fee of \$X” incrementally earned in accordance with the following benchmarks).

Of course, if a lawyer ignores the rules of trust accounting and safekeeping, by failing to have written fee agreements, by not depositing and keeping unearned fees in trust, and by failing to maintain proper trust account records to demonstrate when fees are earned, the lawyer puts himself/herself at risk of not just a meritorious CPF claim, but a disciplinary complaint. If the lawyer dies and his/her records are deficient or non-existent, the lawyer leaves clients in a particularly precarious position; not only have the clients they lost their lawyer, they may have also lost the very funds they need to continue absent a payout from the Fund. But even in that case, it will take some time while the claims are investigated, and the Disciplinary Board and CPF try to sort out the deceased lawyer’s trust account. Unfortunately, that might be time that the clients cannot spare.

The bottom line is that the legal profession is collectively responsible for the protection of the integrity of the profession and its clients. Compliance with basic trust accounting rules and strictly observing the concept of safekeeping client funds is not only the required thing to do, but also the right thing to do; for the lawyer, for the lawyer’s business, for the lawyer’s estate in the event of death, and most importantly, for the lawyer’s clients. ■

Learn more about the Client Protection Fund at www.sbnm.org/cpf.



Interest on Lawyer's Trust Accounts (IOLTA)

By Kate Kennedy



Imagine there was a way for New Mexico attorneys to close the Justice Gap by continuing to do one common, healthy business practice every day. In accordance with Supreme Court Rule¹, every attorney must maintain unearned fees and other client funds in an IOLTA. By banking at an institution offering voluntarily higher interest rates an attorney's IOLTA will generate considerable funds for the underserved populations in New Mexico.

Ok, but what is "IOLTA?"

IOLTA is an acronym for 'Interest on Lawyers' Trust Accounts.' When an attorney receives unearned fees such as a retainer or holds other client funds, this money is required to be held in an IOLTA, a pooled trust account, separate from operating and personal funds. While the funds sit in this mandatory, specialized account, they earn interest.

In the late 60s and early 70s, IOLTA programs were established as a method to generate funds for civil legal services provided to low-income and underserved populations in Australia and Canada. By the late 1970s, the Florida Bar, among other organizations, began establishing IOLTA programs in the United States. Currently, IOLTA programs exist in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands.²

These funds, at no expense to attorneys or the public, generate significant resources, enumerated below, to support organizations whose mission it is to provide civil legal services to the underserved and under-represented populations in New Mexico.

Imagine there was a way for New Mexico attorneys to close the Justice Gap by continuing to do one common, healthy business practice every day.

The Justice Gap in the United States

According to the Legal Services Corporation (LSC), nearly a million people seeking legal help for civil services are turned away each year due to a lack of resources.³ This justice gap is the difference between civil legal assistance available and that which is necessary to meet the needs of low-income individuals.

The LSC estimates that 92% of low-income Americans cannot get sufficient, if any, legal assistance for civil legal problems. They also note that, "Nearly three quarters (74%) of low-income households experienced at least one civil legal problem in the previous year."⁴ Additionally, "a third (33%) of low-income Americans had at least one problem they attributed to the COVID-19 Pandemic."⁵

The 2022 Justice Gap Study reported that civil legal service organizations "...are unable to provide any or enough legal help for an estimated 1.4 million civil legal problems (or 71% of problems) that are brought to their doors in a year."⁶

Simply put, there are not enough resources to help everyone in need.

New Mexicans, suffering from these statistics, need help. Your IOLTA interest can facilitate that aid.

Where exactly does the money go?

This summer marks the end of the Access to Justice Fund Grant Commission 2022-2023 Awards cycle.

The ATJ Fund Grant Commission is a commission of the State Bar of New Mexico whose mission is to be the financial steward of the New Mexico Supreme Court Fund for Access to Justice (ATJ Fund). The ATJ Fund consists of funds generated from Interest on Lawyer's Trust Accounts (IOLTA), Pro Hac Vice fees, and donations by attorneys on their license renewal forms.

Annually, the Commission solicits grant applications from qualified civil legal service providers showcasing new and on-going projects, that, as nonprofit organizations, provide civil legal services to low-income New Mexicans.

In the 2022-2023 Grant cycle a total of \$900,000 was awarded; of that, \$600,000 came from IOLTA generated funds. The following civil legal service providers were awarded grants:

- Access to Justice Commission
- Disability Rights NM:
- DNA People's Legal Services
- El Calvario United Methodist Church
- Enlace Comunitario
- NM Center on Law and Poverty
- NM Immigrant Law Center
- NM Legal Aid
- Pegasus Legal Services for Children
- Santa Fe Dreamers Project

Where Lawyers Bank Matters

It truly matters where attorneys hold their IOLTA funds. The State Bar, as part of its role in administering the IOLTA program, certifies banks that are authorized to hold IOLTAs. The interest from these specialized accounts is remitted by the banks to the State Bar of New Mexico for yearly disbursement to civil legal service providers through the annual Access to Justice Fund Grant Commission awards cycle. In New Mexico, IOLTA approved financial institutions are required to pay interest rates as defined in Rule 24-109(B) NMRA. Leadership



Circle Banks are banks that go above and beyond those requirements.

For example, in 2021, many banks paid .1% interest on IOLTAs. During that same time, banks in the Leadership Circle were paying .35% interest on IOLTAs. The interest paid on an IOLTA holding \$100,000 in a Leadership Circle Bank, compounding monthly, over the course of a year would be \$4,281.80 as opposed to a non-Leadership bank where accumulated interest would be \$1,281.80. The Leadership Circle Bank offers more than a three times increase in value.

In light of the recent changes to the Federal Funds Rate, this difference will continue to increase. For example, at a 1% interest rate, the annual interest on the same account would be \$12,682.50. At a low interest rate, IOLTA generated \$600,000 for the 2022 ATJ Grant Fund distribution. If every New Mexico IOLTA account, which hold millions of IOLTA dollars, was held at a Leadership Circle Bank, the revenue generated and subsequent impact would be extraordinary.

Choosing a bank that opts to pay a higher interest rate on IOLTA funds, is choosing to advocate for underserved New Mexicans as well as supporting a healthy business practice. Consider choosing one of the following State Bar of New Mexico Leadership Circle banks for your business and IOLTA needs: BMO Harris, Century Bank of Santa Fe, Enterprise Bank and Trust, Pinnacle Bank and Wells Fargo.

The State Bar regularly reaches out to certified IOLTA banks to invite them to join the Leadership Circle. If the bank where your IOLTA is held is not in the Leadership Circle, please encourage them to join the Circle. ■

Kate Kennedy is the director of special programs at the State Bar of New Mexico where she implements regulatory programs such as IOLTA, Bridge the Gap Mentorship and MCLE. She has been with the State Bar since 2018.

Endnotes

¹Rule 16-115 NMRA, Rule 17-204 NMRA, Rule 24-109 NMRA

² <https://iolta.org/what-is-iolta/iolta-history/#:~:text=IOLTA%20programs%20were%20first%20established,Rico%2C%20and%20the%20Virgin%20Islands.>

³ <https://justicegap.lsc.gov/resource/executive-summary>

⁴ <https://www.lsc.gov/initiatives/justice-gap-research>

⁵ <https://www.lsc.gov/initiatives/justice-gap-research>

⁶ <https://justicegap.lsc.gov/resource/executive-summary/>

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Help New Mexico Wildfire Victims

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

A free legal aid hotline is available and we need volunteers!

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

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

Volunteer Expectations

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

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



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Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-011

Nos: A-1-CA-38952 and A-1-CA-38967 (consolidated) (filed September 30, 2021)

STATE OF NEW MEXICO,
Plaintiff-Appellant,

v.

JUELISSA LARAYANA
FAITH MCWHORTER
a/k/a JUELISSA BROWN,
Defendant-Appellee.

and

STATE OF NEW MEXICO,
Plaintiff-Appellant,

v.

CHRISTIAN CASTANEDA,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Daniel J. Gallegos, District Judge

Certiorari Denied, January 6, 2022, No. S-1-SC-39047.

Released for Publication March 22, 2022.

Hector H. Balderas, Attorney General
Van Snow, Assistant Attorney
General
Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender
Charles D. Agoos, Assistant
Appellate Defender
Santa Fe, NM

for Appellees

OPINION

HANISEE, Chief Judge.

{1} This Court issued an opinion on September 29, 2021, which is hereby withdrawn and replaced with this opinion. In this consolidated opinion,¹ we interpret a provision of the second judicial district court's special pilot rule governing time limits in criminal cases, Rule LR2-308 NMRA. The State appeals the district court's orders dismissing charges against Defendants Juelissa McWhorter and Christian Castaneda without prejudice, arguing that the district court erred in relying on the date the bind-over orders

for Defendants were filed in metropolitan court rather than in district court, and abused its discretion in dismissing the charges in both cases. For the reasons that follow, we reverse.

BACKGROUND

{2} On December 14, 2019, McWhorter was arrested and charged with two counts of possession of a controlled substance, contrary to NMSA 1978, Section 30-31-23(A) (2019, amended 2021), and one count of possession of drug paraphernalia, contrary to NMSA 1978, Section 30-31-25.1(A) (2019). McWhorter remained in custody until February 26, 2020, when she agreed to waive her preliminary examination and plead guilty to one count of at-

tempted drug possession. On that same day, the bind-over order for McWhorter was filed in metropolitan court, noting that McWhorter would remain in custody until arraignment. The bind-over order was not filed in district court until March 2, 2020.

{3} On February 11, 2020, Castaneda was arrested and charged with possession of heroin, contrary to NMSA 1978, Section 30-31-23(A) (2019, amended 2021).² On February 12, 2020, the State filed an expedited motion for pretrial detention of Castaneda. On February 26, 2020, the bind-over order for Castaneda was filed in metropolitan court, noting that Castaneda would remain in custody until arraignment. The bind-over order was not filed in district court until March 2, 2020.

{4} Arraignment was scheduled in both cases for March 10, 2020, at which time the district court, on motions from Defendants, dismissed the charges against Defendants without prejudice because more than seven days had passed since the bind-over orders for each Defendant were filed in metropolitan court. Under Rule LR2-308(B)(1), when a defendant is in custody, as Defendants were here, arraignment "shall be held not later than seven (7) days after the filing of the bind-over order, indictment, or date of arrest, whichever is later." The district court order set forth the requirements from LR2-308(B)(1) as well as an explanation of the procedural timeline in each case, but did not include any further findings regarding its order of sanctions for violation of the rule. The State appeals the district court's orders dismissing the charges in both cases.

DISCUSSION

{5} The State's primary argument in both cases is that the district court erred in relying on the bind-over order's filing date in metropolitan court instead of its filing date in district court. Had the district court relied on the bind-over order's filing date in district court, the State contends, arraignment would have occurred within the seven-day timeline required by LR2-308. The State argues in the alternative that even if the district court properly relied on the bind-over order's metropolitan court filing date, the district court abused its discretion by dismissing the charges without prejudice as a sanction for violating Rule LR2-308. We address each argument in turn.

¹ This opinion consolidates two appeals: Case Nos. A-1-CA-38967 and A-1-CA-38952. Because these cases each raise the same determinative issue, we consolidate the cases for decision. See Rule 12-317(B) NMRA.

² Castaneda was charged as well with aggravated battery against a household member, contrary to NMSA 1978, Section 30-3-16(C) (2018), but the State did not pursue this charge in light of Castaneda's waiver of his right to a preliminary hearing.

I. The District Court Did Not Err in Relying on the Bind-Over Order's Metropolitan Court Filing Date in Determining That the Delay in Filing Violated LR2-308 and Warranted Dismissal

{6} In interpreting LR2-308, we adopt the same approach as when we interpret legislative enactments, that is by “seeking to determine the underlying intent” of the rule. *H-B-S P'ship v. Aircoa Hosp. Servs., Inc.*, 2008-NMCA-013, ¶ 5, 143 N.M. 404, 176 P.3d 1136. “Since the issues we address involve interpretation of court rules . . . , our standard of review is de novo.” *State v. Lohberger*, 2008-NMSC-033, ¶ 18, 144 N.M. 297, 187 P.3d 162. “[W]e will give effect to the plain meaning of the rule if its language is clear and unambiguous[,]” and “[w]e will read all parts of the rule together to determine its intent.” *State v. Montoya*, 2011-NMCA-009, ¶ 8, 149 N.M. 242, 247 P.3d 1127 (internal quotation marks and citation omitted).

{7} To resolve the State's first argument, we analyze whether LR2-308 requires the district court to rely on a bind-over order's filing date in metropolitan court or district court when, as in this case, those filing dates are distinct. The rule does not specify to which court's filing date it refers. Rather, LR2-308(B)(1) states that “the arraignment of a defendant in custody at the Bernalillo Metropolitan Detention Center on the case to be arraigned shall be held not later than seven (7) days after the filing of the bind-over order, indictment, or date of arrest, whichever is later[.]” Here, of those possible dates, the filing of the bind-over orders in the metropolitan and district courts were the latest procedural events in either case prior to Defendants' scheduled arraignments. However, the rule only contemplates a *single* bind-over filing date—not a potential scenario like that in this case where there are two distinct bind-over order filing dates. There is no language in LR2-308(B)(1) that could indicate an intent to consider multiple bind-over order filing dates.

{8} Moreover, while LR2-308(B)(1) does not contemplate multiple bind-over filing dates or specify to which court's filing date it refers, other provisions of LR2-308 specifically refer to and rely on particular, alternative dates within a case's proceedings that may affect scheduling and time limits. See LR2-308(G)(1)-(10) (specifying dates that shall be considered “triggering events” that may “extend the time limits for commencement of trial” and allow for amended scheduling orders). An axiomatic principle of statutory interpretation is that “the Legislature knows how to include language in a statute if it so desires.” *State v. Greenwood*, 2012-NMCA-017, ¶ 38, 271 P.3d 753 (alteration, internal quotation

marks, and citation omitted). Applying the principles of statutory interpretation to our analysis, *H-B-S P'ship*, 2008-NMCA-013, ¶ 5, we presume that the omission of specific filing dates for either district or metropolitan courts in LR2-308(B)(1) was intentional, given that LR2-308(G)(1)-(10) includes specific, alternative dates that may affect a particular case's proceedings. See *State v. Jade G.*, 2007-NMSC-010, ¶ 28, 141 N.M. 284, 154 P.3d 659 (explaining that “when the Legislature includes a particular word in one portion of a statute and omits it from another portion of that statute, such omission is presumed to be intentional”).

{9} Our primary goal in analyzing the language in LR2-308(B)(1) is to “determine the underlying intent” of the rule. *H-B-S P'ship*, 2008-NMCA-013, ¶ 5. LR2-308 governs time limits for criminal proceedings, and LR2-308(B)(1) provides an expedited timeline in which arraignment must occur when a defendant is in custody. In part, LR2-308 is intended to limit the time a defendant remains in custody. It follows that consequently the timeline should run from the decision to keep the defendant in custody—here, the filing date in metropolitan court—and not from the filing date in the district court. Moreover, the district court filing date is inherently variable—as evinced in this case where the district court filing date happened to occur later than the metropolitan court filing date—and reliance on such an inherently variable date would undercut the specific number of days a defendant could remain in custody as set forth by the rule.

{10} Indeed, were we to conclude that the district court filing date controls when a bind-over order is filed in metropolitan and district court on different dates, as the State asks us to do, the district court filing date could potentially occur significantly later than the metropolitan court filing date and a defendant would necessarily remain in custody for longer than the rule intends. Cf. *State v. Davis*, 2003-NMSC-022, ¶ 13, 134 N.M. 172, 74 P.3d 1064 (stating that “[n]o rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences[,]” and that we do not construe statutes, or in this case rules, “in a manner contrary to the intent of the [promulgating entity] and in a manner that leads to absurd or unreasonable results” (internal quotation marks and citations omitted)).

{11} Lastly, to the extent the State argues that the district court should rely on the bind-over order's filing date in district court in order to limit conflict between LR2-308 and other relevant rules of criminal procedure, we note that both the local rule and applicable precedent make clear that the local rule should control where

there is a conflict with either the rules of criminal procedure or existing case law. See LR2-308; see also *State v. Lewis*, 2018-NMCA-019, ¶ 5, 413 P.3d 484 (explaining that “[t]he rules of criminal procedure and existing case law apply . . . only to the extent they do not conflict” with the local rule (internal quotation marks omitted)). Thus, the State's argument that our interpretation of LR2-308 would improperly “override” the 30-day deadline for filing an information under Rule 5-201 NMRA and “abrogat[e] Rule 5-201 by implication,” is unconvincing given the conflict between the local rule and the rule of criminal procedure.

{12} We therefore hold that (1) the district court did not err in relying on the bind-over order filing dates in metropolitan court, and (2) when, as here, there is a delay in filing the bind-over order in district court following its filing in metropolitan court, for the purposes of measuring the timeline provided by LR2-308(B)(1), the district court should rely on the bind-over order's filing date in metropolitan court.

II. The District Court Abused Its Discretion in Dismissing the Charges Without Prejudice as a Sanction for Violation of LR2-308

{13} The State argues that even if the district court properly relied on the bind-over order's metropolitan court filing date, as we hold above, the district court abused its discretion by dismissing the charges as a sanction for violating LR2-308. Specifically, the State contends that the district court was required by both the local rule and applicable precedent to consider certain factors on the record in order to explain its reasoning for ordering the sanction of dismissal without prejudice. We agree and explain.

{14} “We review the district court's imposition of sanctions for an abuse of discretion.” *Lewis*, 2018-NMCA-019, ¶ 5. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case.” *State v. Le Mier*, 2017-NMSC-017, ¶ 22, 394 P.3d 959 (internal quotation marks and citation omitted). Under LR2-308, “[i]f a party fails to comply with any provision of [the] rule, . . . the court shall impose sanctions as the court may deem appropriate in the circumstances and taking into consideration the reasons for the failure to comply.” LR2-308 (H)(1). Dismissal with or without prejudice is one of many available sanctions the court may impose when a party violates LR2-308. LR2-308(H)(4). Under LR2-308(H)(2), when the district court is “considering the sanction to be applied[,] the court shall not accept negligence or the usual press of business as sufficient excuse for failure to comply.”

The rule also requires that “[t]he sanction of dismissal, with or without prejudice, shall not be imposed” when either (1) “the state proves by clear and convincing evidence that the defendant is a danger to the community[.]” or (2) “the failure to comply with [the] rule is caused by extraordinary circumstances beyond the control of the parties.” LR2-308(H)(6)(a) (b). Notably, LR2-308(H)(6) requires as well that “[a]ny court order of dismissal with or without prejudice . . . shall be in writing and include findings of fact regarding the moving party’s proof of and the court’s consideration of the above factors.” {15} As an initial matter, we conclude that the district court’s orders dismissing the charges against Defendants without prejudice did not satisfy the requirements of LR2-308(H)(6) because the district court failed to include in its written order any findings about the Defendants’ danger to the community or extraordinary circumstances that may have caused violation of the rule. We note that neither party advanced arguments implicating the LR2-308(H)(6) factors, but we nonetheless conclude that the district court must consider such factors in its written order. {16} Beyond the factors provided by LR2-308(H)(6), the district court must also consider the factors set forth in *State v. Harper*, 2011-NMSC-044, ¶¶ 16-20, 150 N.M. 745, 266 P.3d 25, in which our Supreme Court set out clear limitations on the scope of a district court’s discretion when ordering the dismissal of charges as a sanction. When a party violates a discovery or scheduling order, *Harper* “instructs our courts to

assess (1) the culpability of the offending party, (2) the prejudice to the adversely affected party, and (3) the availability of lesser sanctions.” *Le Mier*, 2017-NMSC-017, ¶ 15. Following *Harper*, in *Lewis*, we held that the *Harper* framework—as well as our Supreme Court’s application and interpretation thereof in *Le Mier*, 2017-NMSC-017—applied to the district court’s ordering of sanctions in response to a party’s violation of a previous version of LR2-308. See *Lewis*, 2018-NMCA-019, ¶ 8. In *Lewis*, this Court confirmed that when faced with a party’s violation of the rule, “*Le Mier* requires the district court to not only weigh the degree of culpability and extent of prejudice, but also explain its decision regarding applicability of lesser sanctions on the record.” *Lewis*, 2018-NMCA-019, ¶ 12.

{17} LR2-308(A) provides that “[t]he rules of criminal procedure and existing case law apply . . . to the extent they do not conflict with the [local] rule.” *Lewis*, 2018-NMCA-019, ¶ 5 (internal quotation marks and citation omitted). The *Harper/Le Meir* framework provides appropriate tools for evaluating the type of sanction that the district court may impose. While *Harper*, *Le Mier*, and *Lewis* are all addressed toward severe sanctions such as dismissal with prejudice or witness exclusion, the analytical framework articulated in these cases does not occur after the fact based on the level of sanction the district court deems appropriate; instead, it is the framework the court must work through to arrive at the appropriate sanction, and this analysis may in some instances lead the court to lesser sanctions.

The analysis is no less appropriate or important in these instances.

{18} Here, the district court failed to make either the written findings required by LR2-308 and the *Harper/Le Mier* framework. We find no conflict between the mandatory nature of the LR2-308(H)(6) factors, that are required to appear in a district court’s written findings supporting an order of dismissal, and the on-the-record requirement of the *Harper/Le Mier* framework. Rather, where a district court finds itself in the position of necessarily ordering sanctions in response to a violation of LR2-308, we hold that the court must fulfill both the requirements of the *Harper/Le Mier* framework as well as the LR2-308 factors.³ While there may exist a certain amount of overlap between the two sources’ requirements, we do not consider them to be duplicative. Rather, unless and until the local rule is amended to more directly mirror the *Harper/Le Mier* framework, the district court must make the necessary considerations as required by LR2-308 as well as *Harper/Le Mier*.

CONCLUSION

{19} For the reasons stated above, we reverse the district court’s orders dismissing the charges without prejudice and remand for further proceedings consistent with this opinion, LR2-308(H)(6), and the *Harper/Le Mier* framework.

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

J. MILES HANISEE, Chief Judge

WE CONCUR:

ZACHARY A. IVES, Judge

JANE B. YOHALEM, Judge

³ Our holding in this regard does not include a determination regarding whether the district court’s dismissal of the charges without prejudice were appropriate sanctions in this case, and “does not preclude the possibility that the district court could have developed an adequate record” contemplating both the *Harper/Le Mier* framework as well as, in writing, the LR2-308(H)(6) factors. *Lewis*, 2018-NMCA-019, ¶ 16.



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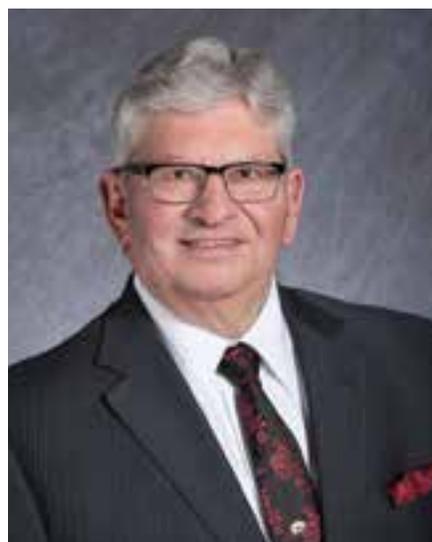


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Ann Conway Named to Southwest Super Lawyers in Legislative and Government Affairs



Congratulations to our partner Ann Conway who was recognized by Southwest Super Lawyers in New Mexico for her work in legislative and government affairs. For more than 35 years, Ann has represented clients in the New Mexico Legislature and before state and federal agencies.

Ann can be contacted at amc@jhkmlaw.com or 505.346.1385

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Apply to become the Democratic Nominee for Vacant Judicial Positions on the November Ballot

The Governor will appoint judges to fill vacancies in District Courts (and Bernalillo County Metropolitan Court) this summer. Democratic Party of New Mexico Central Committee members (per NM statute) will elect the candidates who appear on the November ballot.

Vacant Democratic Party Judicial positions on the November ballot:

- **2nd, 5th & 13th Judicial District Court**
- **Bernalillo County Metropolitan Court**

If you wish to be a candidate on the Democratic Party Central Committee ballot:

1.) Fill out a Declaration of Candidacy form

(include your Candidate's Statement, up to 1,500 words)

- District Court Judge form (<https://tinyurl.com/DistrictCourtJudgeForm>)
- Metropolitan Court Judge form (<https://tinyurl.com/MetroCourtJudgeForm>)

2.) Participate in an online Candidate Forum (Date TBD)

All candidates & Central Committee electors will be invited to the forum.

Eligible candidates must meet NM constitutional qualifications.

Early August: Central Committee members will vote by Absentee Balloting to select each nominee for the November ballot.

Late August: DPNM nominees will be certified to the proper filing authorities

If you have questions, email DPNM staff at PartyAffairs@nmdemocrats.org



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State Bar of New Mexico
Senior Lawyers Division

2022 Attorney In Memoriam Recognition

The State Bar of New Mexico Senior Lawyers Division is honored to host the annual Attorney In Memoriam Ceremony. This event honors New Mexico attorneys who have passed away during the last year (November 2021 to present) to recognize their work in the legal community. If you know of someone who has passed and/or the family and friends of the deceased (November 2021 to present), please contact memberservices@sbnm.org.

MADISON, MROZ, STEINMAN, KENNY & OLEXY, P.A.

We are pleased to announce

Wan Erh Chen

has joined the Firm as an Associate

Ms. Chen earned her Bachelor of Arts degree in International Business Management in 2017 from The University of New Mexico and her Doctor of Jurisprudence and Master of Business Administration in 2021 from The University of New Mexico School of Law and The Anderson School of Management.

We welcome her to our practice.

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Positions

New Mexico Medical Review Commission

Director of the Commission

We need a Director! The New Mexico Medical Review Commission is responsible for assembling panels made up of physicians and lawyers to screen medical malpractice claims against independent providers qualified for coverage under the Medical Malpractice Act. The Director will oversee the panel process, chair panel hearings and appoint and supervise substitute panel hearing chairpersons. The Director is responsible for adopting and implementing the rules and procedures that govern the panel process. This is a part-time position with an anticipated average of 20 hours per week at the outset. After the first several months, the average hourly commitment is expected to be 5-10 hours per week; primarily weekday evenings. Rate of pay is \$150 per hour billed on a monthly basis. View the full job posting, requirements, and application instructions at <https://www.sbnm.org/Portals/NMBAR/NMMRC.pdf>.

Associate Attorney

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

Associate Attorney – Civil Litigation

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

Associate Attorney

Sutin, Thayer & Browne is seeking a full-time Associate Attorney with interest in renewable energy, the cannabis industry, and administrative and regulatory law. The candidate must have at least 3 years of experience and must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to sor@sutinfirm.com.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is a successful and established Albuquerque-based complex civil commercial and tort litigation firm seeking motivated and talented associate attorney candidates with great academic credentials. Join our small but growing focused Firm and participate in litigating cases from beginning to end with the support of our nationally recognized, experienced attorneys! Come work for a team that fosters development and growth to become a stand-out civil litigator. Highly competitive compensation and benefits. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or Careers@abrfirm.com. Please reference Attorney Recruiting.

Senior Assistant City Attorney (REVISED)

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

Attorney (7+ years)

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

Associate Attorney

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

Attorney

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

Eleventh Judicial District

Attorney's Office, Div II

Assistant Trial Attorney, Trial

Attorney and Senior Trial Prosecutor

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

Various Attorney Positions

The New Mexico Office of Attorney General is recruiting various attorney positions. The NMOAG is committed to attracting and retaining the best and brightest in the workforce. NMOAG attorneys provide a broad range of legal services for the State of New Mexico. Interested applicants may find listed positions by copying the URL address to the State Personnel website listed below and filter the data to pull all positions for Office of Attorney General. <https://www.spo.state.nm.us/view-job-opportunities-and-apply/applicationguide/>

Associate Attorney – Commercial

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

Experienced Litigation Attorney

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

Legal Director

The New Mexico Foundation for Open Government (FOG) seeks a full-time Legal Director/Litigator. The ideal candidate will be a highly motivated self-starter with substantial civil trial court experience. The Legal Director will strategically select and pursue lawsuits that will advance FOG's mission, which includes enforcing and protecting the New Mexico Inspection of Public Records Act (IPRA), Open Meetings Act (OMA), and The First Amendment. Candidates are asked to send a cover letter detailing experience, education and background and a sample legal brief to info@nmfog.org. Full details at www.nmfog.org

Attorney (3+ years)

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

Associate Attorney

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

Attorneys and Paralegals

New Mexico Legal Aid has positions open for both new and experienced attorneys and paralegals in various locations throughout the state. The organization represents low income New Mexico residents in a variety of civil legal matters including housing issues, public benefits, consumer debt relief, and legal issues facing survivors of domestic and sexual violence. NMLA is the home of the successful volunteer attorney program that has drawn on the experiences of the New Mexico bar to assist countless New Mexicans. NMLA's assistance ranges from phone advice all the way up to complex litigation and appeals. NMLA offers a collaborative work environment with excellent benefits, and an opportunity to make a real difference in people's lives. NMLA has paid holidays, generous leave and employer financed benefits. NMLA is unionized. Salary is competitive and based on experience. To learn more about available positions, please visit our website at www.newmexicolegalaid.org

Attorney

JGA is seeking an attorney, licensed/good standing in NM with at least 3 years of experience in Family Law, Probate, and Civil Litigation. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

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 and include a resume and writing sample with your application.

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 and include a resume and writing sample with your application.

Immigration Attorney

Catholic Charities of Southern New Mexico is seeking an Immigration Attorney. The attorney will supervise the cases of legal staff and will also maintain their own caseload. Candidate must have graduated from an accredited law school and be licensed to practice law. Fluency in written and oral Spanish and English is required. Prior experience in immigration law strongly preferred. Competitive salary including benefits. Cover letter detailing qualifications, CV and three professional references should be sent to: Catholic Charities of Southern New Mexico, Immigration Attorney Search, 125 West Mountain Avenue, Las Cruces, New Mexico 88005 or kf@catholiccharitiesdlc.org.

Patent Attorney (Software & Licensing) – IRC11112

The Los Alamos National Laboratory Office of General Counsel (OGC) is seeking an experienced Patent Attorney (Software & Licensing) to join the Intellectual Property Group to provide legal counsel to the Lab's senior management and technology transfer division on IP-related transactions and establish relationships with federal agencies including DOE/NNSA and other similarly situated national labs and businesses. The attorney will work on strategic/substantive issues, manage Triad's broad-reaching IP portfolio in various technical areas, draft/review agreements for technology transfer and licensing mechanisms and conduct/participate in negotiations with outside persons to resolve intellectual property issues. The attorney will be a member of ABA and have 5-7 years' knowledge/experience of IP licenses including patent, copyright and hybrid licenses and computer hardware/software. This position also requires the ability to obtain 'Q' security clearance, which involves a background investigation, and must meet eligibility requirements for access to classified matter. Apply online at: www.lanl.jobs. Los Alamos National Laboratory is an EO employer – Veterans/Disabled and other protected categories. Qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, disability or protected veteran status.

Litigation Attorney

Priest & Miller LLP is seeking a litigation attorney to join our team. Priest & Miller is a dynamic defense firm that handles complex cases involving claims of medical negligence, wrongful death, catastrophic injury and negligence in the trucking and oil and gas industries. We are seeking attorneys with 0-5 years of experience and who will thrive in a collaborative, flexible and fast paced environment. We offer highly competitive salaries and a generous benefits package. All inquiries will be kept confidential. Please email your resume and cover letter to Greg@PriestMillerLaw.com.

Litigation Attorney – IRC111263

The Los Alamos National Laboratory Office of General Counsel (OGC) is seeking an early career litigation attorney to perform legal work on a wide range of interesting litigation, including general commercial, construction, contract disputes, employment, labor and other disputes. You will prepare case assessments, update management on status of litigation, evaluate potential outcomes and propose litigation approaches that meet institutional objectives. Qualified candidates will be a member of a Bar in good standing and have experience with administrative litigation, administrative hearings and enforcement proceedings. This position also requires the ability to obtain a DOE security clearance. Apply online using IRC111263 at: www.lanl.jobs. Los Alamos National Laboratory is an EO employer – Veterans/Disabled and other protected categories. Qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, disability or protected veteran status.

Request For Proposal – Defense Legal Services

Pueblo of Laguna seeks proposal from any law firm or individual practicing attorney to provide legal services for adult criminal defense or representation of juveniles in delinquency proceedings when there is conflict of interest or unavailability of regular defender. Reply by August 1, 2022. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfq/

Request For Proposal – Prosecutor Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual practicing attorney to provide prosecutorial legal services for adult criminal or juvenile delinquency cases when there is conflict of interest or unavailability of regular prosecutor. Reply by August 1, 2022. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfq/

Associate Attorney

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

Managing Attorney (FT - At-Will) #00049341

Children's Court

The Second Judicial District Court, Children's Court Division is accepting applications for an At-Will Managing Attorney. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and eight (8) years of experience in the practice of children's court matters, of which four years must have been as a supervisor. The Managing Attorney will be responsible for overseeing the operations and administration of the Children's Court Division. Responsibilities include, but are not limited to, overseeing information provided to the Presiding Judge on behalf of the Children's Court; implement and oversee substantive procedural matters and judicial operations at the direction of the Presiding Judge; legal research and analysis; prepares reports, memoranda and orders; legislative analysis; analyze reports and data and interpret trends or patterns; serve as a subject matter expert; supervise four or more staff; and work with ten judicial officers, court personnel, the Administrative Office of the Courts, and the Supreme Court. Target Range: \$92,556 - \$113,125 annually, plus benefits. Send application or resume supplemental form, proof of education and a writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSSES: August 1, 2022, at 5:00 p.m.

Entry Level and Experienced Trial Attorney Positions

The Thirteenth Judicial District Attorney's Office is seeking both entry level and experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties. Enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, providing the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo @ kfajardo@da.state.nm.us or visit our website for an application @ <https://www.13th.nmdas.com/> Apply as soon as possible. These positions will fill up fast!

Assistant Tribal Prosecutor

Pueblo of Isleta, NM – The Pueblo of Isleta is seeking a Part-Time Assistant Tribal Prosecutor who represents the Pueblo of Isleta as plaintiff in actions based on violations of the POI laws, ordinance, resolutions and other directives as they apply. Applicants must be licensed to practice and in good standing with New Mexico state bar or other state bar. To apply please visit isletapueblo.com/careers.

Managing Attorney (FT – At-Will) #00054444

Civil Division

The Second Judicial District Court, Civil Court is accepting applications for an At-Will Managing Attorney. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and eight (8) years of experience in the practice of civil law, of which four years must have been as a supervisor. The Managing Attorney will be responsible for overseeing the operations and administration of the Civil Division. Responsibilities include, but are not limited to, overseeing information provided to the Presiding Judge on behalf of the Civil Division; implement and oversee substantive procedural matters and judicial operations at the direction of the Presiding Judge; legal research and analysis; prepares reports, memoranda and orders; legislative analysis; analyze reports and data and interpret trends or patterns; serve as a subject matter expert; supervise four or more staff; and work with ten judicial officers, court personnel, the Administrative Office of the Courts, and the Supreme Court. Target Range: \$92,556 - \$113,125 annually, plus benefits. Send application or resume supplemental form, proof of education and a writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSSES: August 1, 2022, at 5:00 p.m.

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 or email bwrangham@cbsd.com.

Family Services Presenting Officer

Pueblo of Isleta, NM- The Family Services Presenting Officer will be responsible to act as the legal representation for the Pueblo of Isleta Social Services, Truancy Department, and Intervention Officer in matters where court and/or legal interventions are needed to ensure the safety and well-being of the Pueblo of Isleta community members. Three or more years of relevant work experience such as family law preferred. Applicants must be licensed to practice and in good standing with New Mexico state bar or other state bar. To apply please visit isletapueblo.com/careers.

Associate General Counsel I & II

Pueblo of Isleta, NM- Under the direction of General Counsel, provides professional legal counsel in the areas of tribal government, federal-tribal relations, jurisdiction issues, environmental and natural resources law and policy, economic development, tribal business enterprise, and employment issues. Works to protect tribal assets and preserve tribal sovereignty. Zero - Five years of experience in the practice of law, including Indian Law and tribal court, federal and constitutional law, litigation, environmental and natural resources, employment law, and closely related fields dealing with tribal interests. Member of the New Mexico State Bar Association or admitted to practice in another state bar, with the ability to obtain NM state bar within one year of employment

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. Please include a resume and writing sample with your application.

Administrative Assistant

The State Bar of New Mexico invites qualified and knowledgeable applicants to join our team as a full-time (40 hours per week) Administrative Assistant for four of its Programs: The New Mexico Judges and Lawyers Assistance Program (NMJLAP), the Professional Development Program (PDP), the Judicial Wellness Program (JWP) and the State Bar Well Being Committee. The successful applicant will provide clerical and administrative support to the aforementioned programs including but not limited to scheduling meetings, operating virtual meeting platforms, taking meeting minutes, maintaining statistics, coordinating monthly podcasts and articles, monitoring and tracking online surveys and assessments, maintaining and updating resource materials, assisting in responding to and tracking inquires and responses from attorneys, judges or law students seeking services from any of the four previously mentioned programs. This position may require conversing by phone or in person with somebody struggling with addiction, suicide, and/or a mental health condition. \$17/hour. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

Judicial Wellness Program Manager

The New Mexico Judges and Lawyers Assistance Program (NMJLAP) invites qualified and knowledgeable applicants to join our team as a full-time (40 hours per week) Judicial Wellness Program Manager. The successful incumbent will focus on judges, judicial staff, and their immediate family members who are affected by a wide range of personal and professional issues. NMJLAP seeks a motivated program manager with a passion for and experience working with high-functioning professionals, preferably legal professionals. Knowledge of the NM legal system is a plus, particularly as it pertains to the process of becoming a judge and the stressors of that unique job. \$40,000 to \$50,000 per year, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

CLE Program Coordinator

New Mexico State Bar Foundation Center for Legal Education seeks a full-time, Continuing Legal Education (CLE) Program Coordinator. The Foundation is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community; including live seminars, webcasts, replays, national series teleseminars and online self-study videos. The successful applicant must have excellent administration, customer service, computer, and communication skills. Must be able to manage multiple projects and deadlines. Minimum high school diploma plus 1 year of related work experience required. Generous benefits package. \$17 per hour. To be considered, submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

Legal Assistant/Paralegal

Santa Fe law firm, whose attorneys primarily practice in medical malpractice and personal injury, is accepting resumes for a legal assistant/paralegal position. Candidate must possess excellent organizational skills, demonstrate initiative, resourcefulness and flexibility. The ability to work in a fast-paced environment, multi task and assess priorities is a must. Responsible for calendaring. High school diploma or equivalent and a minimum of three years' experience as a legal assistant or paralegal in litigation is preferred. Proficiency in Microsoft Office products and electronic filing. Paralegal skills a plus. Competitive salary dependent on experience. Send resume to lee@huntlaw.com and cynthia@huntlaw.com.

Legal Assistant -

Job Duties - Receptionist tasks to include client and court calls to include fielding calls, checking calendars, sending and receiving documents from clients and other parties; and some assistance with invoicing and collection of payments. Pay rate: Depends on experience. Prior Experience: Prior work for a law firm is preferred or with any office dealing with customer service. Location: Office has a physical office but remote work is also permitted. Part time or full time is optional to the selected applicant. Contact: Salcedo Law PC at willstandwithyou@gmail.com and 505 610-6904 with your resume and in the email, provide information on how soon you can start and your preferences for work schedules and any other information I should know related to your application please.

Paralegal

Pueblo of Isleta, NM – The Pueblo of Isleta is seeking a Paralegal which supports General Counsel Office with tasks, including conducting legal research, drafting, reviewing, and managing of legal documents. Responsible for communicating with clients, preparing for hearings, trials, and meetings, and organizing and maintaining files. Performs specialized administrative services, including but not limited to case management and budget oversight. Associate's Degree in Paralegal Studies required with two or more years' experience in a law firm or court setting. To apply please visit isletapueblo.com/careers.

Paralegal

A United States Circuit Judge on the Court of Appeals for the Tenth Circuit is seeking qualified applicants to serve as a Paralegal. This position is a temporary to permanent position within chambers and is responsible for managing the daily operation of chambers as well as providing substantive legal and administrative support to the judge. For the full announcement and application instructions, please visit: <https://www.ca10.uscourts.gov/hr/jobs>. Open until filled.

Paralegal

Peifer, Hanson, Mullins & Baker, P.A., is seeking an experienced commercial litigation paralegal. The successful candidate must be a detail-oriented, team player with strong organizational and writing skills. Experience in database and document management preferred. Please send resume, references and salary requirements via email to Shannon Hidalgo at shidalgo@peiferlaw.com.

Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$21.31 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$22.36 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

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/Paralegal.

Bristol Family Law is seeking a contract Legal Assistant/Paralegal to work 16 to 20 hours a week in a busy family law office—the current paralegal is retiring. We are seeking someone who is self motivated, good at interacting with people, capable of addressing billing and time entries, performing substantive administrative legal work and some paralegal duties, such as managing legal documents, preparing discovery, drafting simple pleadings, maintaining a calendar with deadlines, etc. Please submit resumes and letters of interest to Bristol Family Law, LLC, 117 N. Guadalupe Street, Santa Fe, NM or email jeb@bristolfamilylaw.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

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

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2022 Bar Bulletin Publishing and Submission Schedule

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

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

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

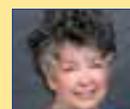
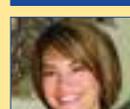
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