

# BAR BULLETIN

October 26, 2022 • Volume 61, No. 20



*Blue Birds Lined Up*, by Valerie Fladager (see page 4)

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CENTER FOR LEGAL EDUCATION

**Santa Fe Helicopter  
Crash Lawsuit  
Resolved**

**Record Jury Verdict  
for Permian Basin  
Wrongful Death Case**

**8-Figure Settlement  
in Industrial Worksite  
Fatality**

**Manufacturer Ignored  
Safety Issues Causing  
Serious N.M. Trucking  
Crash**



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## Meetings

### October

**26**  
**Intellectual Property Law Section**  
 noon, JAlbright Law LLC

**27**  
**Trial Practice Section**  
 noon, virtual

**28**  
**Immigration Law Section**  
 noon, virtual

### November

**1**  
**Health Law Section**  
 9am, virtual

**2**  
**Employment and Labor Law Section**  
 noon, virtual

**4**  
**Prosecutors Section**  
 noon, virtual

**9**  
**Animal Law Section**  
 noon, virtual

**10**  
**Children's Law Section**  
 noon, virtual

**17**  
**Elder Law Section**  
 noon, virtual

## Workshops and Legal Clinics

### October

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

### November

**2**  
**Divorce Options Workshop**  
 6-8 p.m., virtual

### December

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

**14**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., virtual

**About Cover Image and Artist:** Valerie Fladager photographs a plethora of images that catch her interest and each image selected represents a series of a multitude. The best are chosen for their striking design, light and color which she often interprets with digital imaging, pastels or watercolor. Her work has been sold through several galleries and art and craft venues. She has taught art, science and is a member of the National League of American Pen Women. Additional work can be viewed on her website [valeriefladager@aol.com](http://valeriefladager@aol.com) or she can be contacted by email at [kvfladager@aol.com](mailto:kvfladager@aol.com)

# 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](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### Bernalillo County Metropolitan Court Judicial Nominating Commission Announcement of Candidates

The Bernalillo County Metropolitan Court Judicial Nominating Commission convened on Oct. 11 at the State Bar Center and completed its evaluation of the six candidates for the one vacancy on the Bernalillo County Metropolitan Court per the retirement of the Honorable Judge Sandra Engel effective Sept. 30. The Commission recommends candidates **Shonnetta Estrada**, **Ignacio V. Gallegos** and **Daniel Roberson** for Gov. Michelle Lujan Grisham's consideration.

### STATE BAR NEWS 2023 Budget Disclosure Deadline to Challenge Expenditures

The State Bar of New Mexico Board of Bar Commissioners has completed its budgeting process and finalized the 2023 Budget Disclosure, pursuant to the State Bar Bylaws, Article VII, Section 7.2, Budget Procedures. Starting Nov. 1, 2022, the budget disclosure will be available in its entirety on the State Bar website at [www.sbnm.org](http://www.sbnm.org) on the financial information page under the About Us tab. The deadline for submitting a budget

## Professionalism Tip

With respect to the courts and other tribunals:

I will refrain from filing frivolous motions.

challenge is on or before 5 p.m., Nov. 30, 2022, and the form is provided on the last page of the disclosure document. The BBC will consider any challenges received by the deadline at its Dec. 14, 2022, meeting. Address challenges to: Executive Director Richard Spinello, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199; or [info@sbnm.org](mailto:info@sbnm.org). Challenges may also be delivered in person to the State Bar Center, 5121 Masthead NE, Albuquerque, NM 87109.

### Committee on Women in the Legal Profession Membership Retreat Announcement

All interested New Mexico lawyers and law students are invited to participate in this strategic planning retreat. After 30 years, the committee is looking to realign its goals and activities to meet current and future needs for all women in the law. Join the Committee on Women on Nov. 5 from 9:30 a.m. – noon MST at the Albuquerque Country Club. To learn more and RSVP, please visit [www.sbnm.org/cwlp](http://www.sbnm.org/cwlp).

### Employee Assistance Program Lifelines: Information for Your Life

The Solutions Group and EAP invite you to read its Fall 2022 issue of Lifelines, which includes articles from various authors regarding stress relief and overall well-being. You can find the issue by visiting <https://www.sbnm.org/Member-Services/New-Mexico-Lawyer-Assistance-Program/Employee-Assistance-Program>. You may locate the issue under "The Solutions Group Lifelines Newsletter."

### October 2022 Newsletter

The October 2022 newsletter, which includes well-being-related tips for strong mental health for the workplace, is now available for members to read. Please visit <https://www.sbnm.org/Member-Services/New-Mexico-Lawyer-Assistance-Program/Employee-Assistance-Program> to find the October 2022 newsletter, found under "The Solutions Group Monthly Newsletters."

### Q4 Webinars

In collaboration with The Solutions Group, the EAP will be running four webinars in the fourth quarter of 2022, which are as follows:

- The Joys and Responsibilities of Pet Ownership: <https://attendee.gototraining.com/rt/6476623091943298818>
- Supporting your Mental Health with Self-Care: <https://attendee.gototraining.com/rt/3997356312703965186>
- Being Civil in an Uncertain World: <https://attendee.gototraining.com/rt/1923279359509323522>
- Secrets to Having More Fun and Less Stress During the Holidays: <https://attendee.gototraining.com/rt/3728360792968765698>

### 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](http://www.sbnm.org/eij), click on the Ask Amanda link and submit your question. No question is too big or too small.

### New Mexico Lawyer 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](http://www.sbnm.org/nmjwp).

### NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. on Jan. 12, 2023. The NM LAP 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 NM LAP 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 Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

### Free Well-Being Webinars

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

### Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at [pmoore@sbnm.org](mailto:pmoore@sbnm.org) or Briggs Cheney at [bcheney@dsc-law.com](mailto:bcheney@dsc-law.com) for the Zoom link.

### 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 Com-

mittee 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.

### Well-Being Committee The Great Pumpkin Chase KidsK/5K/10K

The State Bar's Well-Being Committee (WBC), in partnership with the Senior Lawyers Division (SLD) and the Young Lawyers Division (YLD), invite members and their immediate relatives to The Great Pumpkin Chase by IRUNFIT on Oct. 29 at 9 a.m. at the Kit Carson Park in Albuquerque. The WBC, SLD and YLD will cover the registration fee for the first 60 members of New Mexico's legal community. Please visit <https://irunfit.org/run-fit-events/great-pumpkin-chase> to sign up. The deadline for registration is Oct. 21.

### UNM SCHOOL OF LAW Law Library Hours

The Law Library is happy to assist attorneys via chat, email, or in person by appointment from 8 a.m. - 8 p.m. Monday through Thursday and 8 a.m. - 6 p.m. on Fridays. Though the Library no longer has community computers for visitors to use, if you bring your own device when you visit, you will be able to access many of our online resources. For more information, please see [lawlibrary.unm.edu](http://lawlibrary.unm.edu).

### OTHER BARS

#### The Center for Civic Values Judges Needed for Middle School Mock Trial Program at Bernalillo County Metropolitan Court

The upcoming New Mexico Middle School Mock Trial Program is an innovative, hands-on experience in the law for seventh and eighth grade middle school students, and it needs judges. This inaugural year, 20 teams from New Mexico will head to Albuquerque to try a case and learn about the judicial system. The trials will be held Nov. 11-12 at the Bernalillo County Metropolitan Court in Albuquerque. Those interested in attending may sign up at [— \*Featured\* —](https://civicval-</a></p>
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## Member Benefit



Fastcase is a free member service that includes cases, statutes, regulations, court rules and constitutions.

This service is available through [www.nmbar.org](http://www.nmbar.org). Fastcase also offers free live training webinars. Visit [www.fastcase.com/webinars](http://www.fastcase.com/webinars) to view current offerings. Reference attorneys will provide assistance from 8 a.m. to 8 p.m. ET, Monday–Friday.

Customer service can be reached at 866-773-2782 or [support@fastcase.com](mailto:support@fastcase.com). For more information, contact Christopher Lopez, [chris.lopez@sbnm.org](mailto:chris.lopez@sbnm.org) or 505-797-6018.

[ues.org/mock-trial/registration/middle-school-judge-volunteer-registration/](https://www.nmbar.org/mock-trial/registration/middle-school-judge-volunteer-registration/) by Nov. 1. If you have any questions, please contact Kristen Leeds at the Center for Civic Values at 505-764-9417 or [Kristen@civicvalues.org](mailto:Kristen@civicvalues.org).

### Judges Needed for Gene Franchini New Mexico High School Mock Trial Competition

The Gene Franchini New Mexico High School Mock Trial Competition, open to any and all high school students, needs judges for its next event. The qualifier competitions will be held Feb. 17-18, 2023 at the Bernalillo County Metropolitan Court in Albuquerque and the Third Judicial District Court in Las Cruces. Those interested in attending the event may sign up at <https://civicvalues.org/mock-trial/registration/judge-volunteer-registration/> by Feb. 4, 2023. Please email any questions to Kristen Leeds at [Kristen@civicvalues.org](mailto:Kristen@civicvalues.org) or by phone at 505-764-9417.

# Legal Education

## October

- |  |   |  |
|--|---|--|
| <p>26 <b>Ethics of Social Media Research</b><br/>1.5 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                         | <p>27 <b>Law Practice Management For New Lawyers</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                               | <p>30 <b>Fall Basic Mediation</b><br/>30.0 G, 4.5 EP<br/>In-Person<br/>UNM School of Law<br/>lawschool.unm.edu</p>                                   |
| <p>26 <b>Walk Away and Come Back: Strategies for Getting Unstuck</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>28 <b>8th Annual Symposium on Diversity and Inclusion</b><br/>4.0 G, 1.5 EP<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>31 <b>Responding to Demand Letters: Tone and Substance</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |

## November

- |  |   |  |
|--|---|--|
| <p>1 <b>The Forensic and Medical Evaluation of the Fatal and Near-Fatal Strangulation Patient and The Forens</b><br/>13.5 G<br/>Live Program/Teleconference<br/>New Mexico Coalition of Sexual Assault Programs<br/>www.nmscap.org</p> | <p>3 <b>Nuclear Verdicts</b><br/>1.0 G<br/>Webcast (Live Credits)<br/>New Mexico Defense Lawyers Association<br/>www.nmdla.org</p>  | <p>10 <b>The Paperless Law Firm: A Digital Dream</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   |
| <p>2 <b>2022 Business Law Institute</b><br/>5.0 G, 1.0 EP<br/>In-Person or Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p>4 <b>2022 Real Property Institute</b><br/>2.0 G, 1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>10 <b>15th Symposium From a Full House to Parenting Apart</b><br/>18.5 G<br/>Live Program<br/>Association of Family and Conciliation Courts<br/>www.afccnet.org</p>             |
| <p>3 <b>2022 Indian Law Conference</b><br/>5.0 G, 1.0 EP<br/>In-Person or Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>8 <b>Child Sexual Assault</b><br/>1.0 G<br/>Web Cast<br/>New Mexico Legal Aid<br/>www.newmexicolegalaid.org</p>  | <p>15 <b>A Changed Income Tax Landscape for New Mexico Families</b><br/>1.0 G<br/>Webinar<br/>New Mexico Legal Aid<br/>https://bit.ly/taxcle2022<br/>www.newmexicolegalaid.org</p> |
| <p>3 <b>Non-Capital Sentencing Mitigation Skill Workshop</b><br/>15.2 G<br/>Live Program<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p>   | <p>9 <b>Wait, My Parents Were Wrong? It's Not All About Me? (with Stuart Teicher)</b><br/>3.0 EP<br/>In-Person or Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>    | <p>16 <b>Developing Individual and Community Resiliency</b><br/>1.5 G<br/>Web Cast (Live Credits)<br/>Administrative Office of the US Courts<br/>www.uscourts.gov</p>              |
| <p>3 <b>2022 NAPABA Convention</b><br/>8.9 G, 5.0 EP<br/>Live Program<br/>National Asian Pacific American Bar Association<br/>www.napaba.org</p>   | <p>9 <b>Learn by Doing: An Afternoon of Legal Writing Exercises (with Stuart Teicher)</b><br/>3.0 G<br/>In-Person or Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>17 <b>Diversity, Equity &amp; Inclusion in Law Practice</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                              |

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

## November (cont.)

- |   |   |   |
|---|---|---|
| <p>17    <b>2022 Probate Institute</b><br/>6.25 G, 1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p>21    <b>Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>30    <b>Drug Testing and the Chain of Custody</b><br/>2.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>            |
| <p>18    <b>2022 Animal Law Institute: Animals, Agriculture, and the Planet</b><br/>3.0 G, 1.0 EP<br/>In-Person or Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>23    <b>Ethics of Identifying Your Client: It's Not Always Easy</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>     | <p>30    <b>Determining Competency and Capacity in Mediation</b><br/>2.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |

## December

- |  |  |   |
|--|--|---|
| <p>1    <b>Spanish for Lawyers I</b><br/>20.0 G<br/>In-Person<br/>UNM School of Law<br/>lawschool.unm.edu</p>  | <p>13    <b>Gain the Edge! Negotiation Strategies for Lawyers</b><br/>5.0 G, 1.0 EP<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>22    <b>Ethics in Negotiations - Boasts, Shading, and Impropriety</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>5    <b>Professionalism for the Ethical Lawyer</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p>14    <b>2022 New Mexico Tax Conference</b><br/>6.5 G, 1.0 EP<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                      | <p>27    <b>Ethics and Virtual Law Offices</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                            |
| <p>5    <b>Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                           | <p>14    <b>2022 Ethics Update, Part 1</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>28    <b>Lawyer Ethics of Email</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                    |
| <p>6    <b>"Let Me Ask You a Question. Suppose I was Considering ...": A Mock Meeting of the Ethics Advisory Board</b><br/>2.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>15    <b>2022 Ethics Update, Part 2</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>29    <b>Ethics and Conflicts with Clients, Part 1</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                 |
| <p>6    <b>Well That Seemed Like a Good Idea: Practical Best Practice Tips</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   | <p>19    <b>Equity &amp; Diversity in Law Practice: Best Practices for Law Firms</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>30    <b>Ethics and Conflicts with Clients, Part 2</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                 |

# Hearsay & In Memoriam

www.sbnm.org

**Jay F. Stein and James C. Brockmann of Stein & Brockmann, P.A.** have been named to Best Lawyers in America in the field of water law for 2023. **Mr. Brockmann** was named 'Lawyer of the Year' in that practice area.

**Dick Kisluk** passed away on Sept. 13 at the age of 77. Richard "Dick" Kisluk was born on Sept. 17, 1944 in Derby, Connecticut to Jane and Henry Kisluk, the second of four children. In his early years, Dick was an active member of the Boy Scouts of America and was also introduced to the hobby of coin collecting by his cousin, Robert. As he grew up, Dick left the Boy Scouts behind, but he remained an avid numismatist throughout his life. He started the Ansonia Coin Company at the age of 16 and continued operating the company over a six-year span. Dick had a keen intellect, which served him well in his academic achievements. He earned a Bachelor of Science degree in Accounting from Rutgers University in 1968 and a Juris Doctorate degree from the University of New Mexico School of Law in 1973. Between his degrees, Dick served his country in the U.S. Army from 1968 to 1969, including a stint in Vietnam during the war. Following

an honorable discharge, Dick returned home to work for two years as the general manager of his family's foundry business, the Kisluk Manufacturing Company. Dick made the decision to go to law school, and after being accepted by UNM Law School and visiting Albuquerque, he moved west from Connecticut to what would become his forever home. After graduating from law school, Dick eventually started his own law firm and worked as a solo practitioner attorney throughout his career. He proudly served many hundreds of clients during his decades-long law practice in Albuquerque. Dick greatly enjoyed traveling and was able to spend time on six continents. He also enjoyed frequenting the local VFW hall and socializing with friends until that was prevented by mobility and health challenges. He was an active member of the Albuquerque Coin Club for many years. Dick is preceded in death by his father, Henry Kisluk and his mother, Jane Kolakowski Kisluk. He is survived by his sisters, Barbara and Mary Ann and his brother, Edward. A military interment ceremony was held on Oct. 21 at the Santa Fe National Cemetery in Santa Fe, New Mexico (501 North Guadalupe Street, Santa Fe, New Mexico, 87501).



## ASK AMANDA!

**Do you have specific questions about equity and inclusion in your workplace or in general?**

Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month Dr. Parker will choose one or two questions to answer for the Bar Bulletin. Go to [www.sbnm.org/eij](http://www.sbnm.org/eij), click on the Ask Amanda link and submit your question.

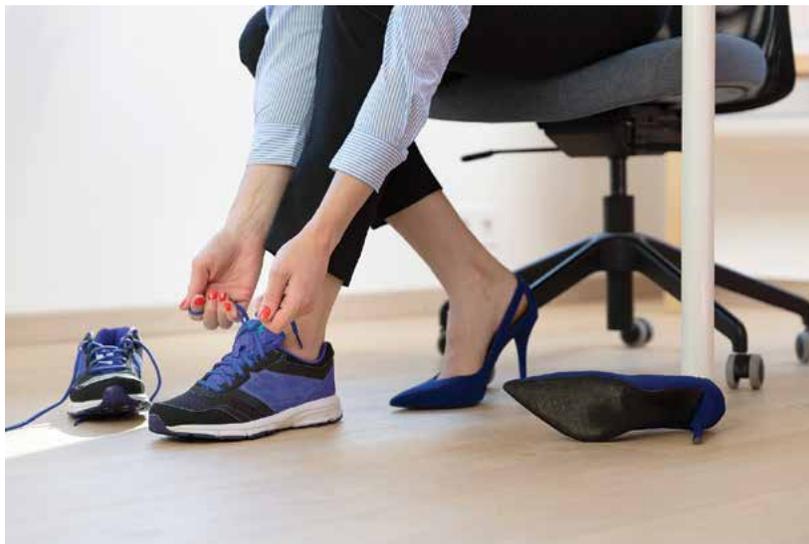
***No question is too big or small!***

# THE NEW MEXICO LAW OFFICES OF THE PUBLIC DEFENDER

Public defenders have been likened to emergency room doctors. Both are helpers who tend to thrive in intensity and adversity. But instead of fighting physical injuries, we fight systemic injustice one client at a time. They serve as a collective check and balance on the criminal legal system, making sure everyone's constitutional rights are protected. In addition to attracting tenacity, public defense tends to attract very giving, compassionate people who can give too much of themselves. We often sacrifice too much of our non-work life and lose our grasp on our work/life balance. We absorb an enormous amount of hurt and are the brunt of much abuse and contempt. Like all attorneys, public defenders face higher-than-average levels of addiction, depression, anxiety, stress and suicide than most other professions.

Why? Our job exposes us to a lot of trauma. We experience primary trauma: the horrible things we see first-hand happen to our clients and their families grinding through the criminal legal system or the inability to save someone from a grave injustice. We also experience secondary trauma - quite a bit, actually - by standing witness to terrible acts others perpetrate (think listening to audio or watching video of other people's traumatic events or autopsy photos or child pornography.) And we endure moral injury from the weight of participating in the hurtful systems our jobs are a part of. Additionally, moral injury arises when public defenders are so overworked, they cannot possibly give each client the adequate attention their case needs. It's a forced failure. With so many clients, time with one is time taken from another. Like the emergency room doctor, there is a system of triage that weighs heavily.

The weight has its costs. Symptoms of this trauma exposure include anxiety, hypervigilance, intrusive thoughts, chronic fatigue, sleeplessness, sadness, anger/irritability/impatience, poor concentration, second-guessing, detachment, emotional exhaustion, fearfulness, shame, physical illness, lateness,



absenteeism, difficulty sleeping, nightmares, stomachaches, headaches, strained relationships, disconnection from purpose and dreading work. Phew. Many of us experience some combination of these symptoms so frequently that we incorporate them into what we expect working in public defense to feel like.

“... department wellness leaders are fostering peer-to-peer community groups *and* leaders are asked to build wellness into department expectations.”

For decades, these symptoms, traumas, injuries and feelings went unnamed. That is changing. Now, younger generations of public defenders and attorneys have a specialized vocabulary for this work dynamic, and they have accompanying expectations of their working environment to address it. Public defense agencies across the nation, already buckling under high workload before the pandemic, are now centering wellness to not only take care of their teams but to *keep* their teams.

National public defense organizations hold classes on wellness. Prominent public defenders have carved out niches on social media which they use to keep wellness in the spotlight. And law schools across the nation – including New Mexico have begun building in curriculum about wellness. Here at the New Mexico Law Offices of the Public Defender, leaders (some of them in the generations who did not get formal wellness training in law school) are taking the rising collective awareness as an opportunity to model how to step away from work.

But stepping away isn't easy. Not only are people's literal lives depending on our skill and dedication but being a public defender has a *very* strong cultural identity. Toughness, dedication, a righteous and fighting spirit, tenacious, compassionate—being a public defender is a calling and a life's work. For so many of us, this is more than a job. It is a social and moral imperative. It is this conviction that powers us through late nights and weekends preparing for trial. It motivates us to call one more drug treatment facility to see if we can find a bed for our client. It prompts us to email colleagues to collect money to buy our homeless client a

tent or a bus ticket to a mother's funeral. It is how we pull ourselves back up after watching a young client shackled off to prison. How does one step away from that? How does one continue this endless, crushing work without that framework?

We are finding our way. The LOPD's strategic plan highlights Defender Wellness alongside vigorous client defense and other key goals. Employees themselves are asked to center wellness in their work, de facto department wellness leaders are fostering peer-to-peer community groups *and* leaders are asked to build wellness into department expectations.

#### Employees are asked to:

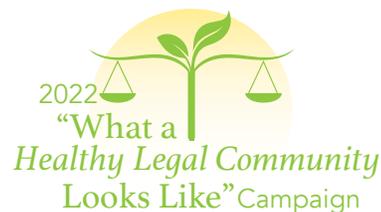
- Use their leave and strive to not check emails, calls or otherwise work while on leave
- Modify work schedules and telework schedules to accommodate personal work-related stressors; e.g. commuting times, having to drop-off/pick-up dependents, as long as a 40-hour workweek is being adhered to
- Practice self-care at work, using flex time to exercise, meditate or otherwise take a break during work hours
- Foster a sense of community by visiting during morning and afternoon break times away from the desk
- Personalize and optimize their work environment, maybe asking for a new chair, desk, screen or ergonomic assessment that will make their job easier
- Seek support from and offer it to coworkers

#### Leaders are asked to:

- Encourage the use of leave
- Attend to employee trauma with regular check-ins, options of mental health and substance misuse resources, such as NM LAP, EAP, and other appropriate resources; Provide safe, empathetic spaces for employees to decompress and discuss emotional and mental health
- Celebrate hard fights, not just wins with a focus in celebration will be zealous advocacy, not outcomes
- Model wellness by taking leave themselves

Just as the ER doctor can't control who comes to them each shift, we can't change the workload and nature of the work. But we can — and are — changing how we engage with it and respond to the harm it causes. ■

*By Maggie Shepard, Director of Communication at the New Mexico Law Offices of the Public Defender, with Public Defender Carlene Miller*



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## Mandatory Succession Planning Rule - effective October 1, 2022

- On the 2023 Annual Registration Statement, New Mexico Attorneys will be required to certify their compliance with Rule 16-119 NMRA.
- Rule 16-119 requires every attorney practicing law in New Mexico to have a written succession plan.
- Find out more regarding the Rule and its requirements by:
  - Listening to a succession planning podcast on *SBNM is Hear*
  - Attending a CLE webinar on Succession Planning on October 12, 2022

Contact the State Bar Professional Development Program at 505-797-6079 or the State Bar Regulatory Programs at 505-797-6059. Visit [www.sbnm.org/successionplanning](http://www.sbnm.org/successionplanning) for sample plans and resources.



State Bar of  
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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](mailto:memberservices@sbnm.org).

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-022**  
No: A-1-CA-36024 (filed January 31, 2022)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
LEO JIM,  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

John A. Dean Jr., District Judge

Released for Publication May 10, 2022.

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for Appellant

## OPINION

### DUFFY, Judge.

{1} Defendant Leo Jim asks us to determine whether a police inventory search of a locked gun safe inside his pickup truck violated his right to be free from an unreasonable search under Article II, Section 10 of the New Mexico Constitution. We hold that the search in this case violated the New Mexico Constitution and reverse the district court's denial of Defendant's motion to suppress.

#### BACKGROUND

{2} At around 8:00 p.m. in March 2015, Officer Mosley with the Farmington Police Department was dispatched to the San Juan Plaza shopping center in response to a report that a subject—Defendant—would not leave. Defendant had apparently been sitting inside a pickup truck in the parking lot for several hours. After observing Defendant, a security guard asked Defendant to leave; Defendant drove to Dunkin' Donuts on the other side of the parking lot but immediately returned. The security guard approached Defendant again and asked him to leave; Defendant would not, and the security guard called the police. Officer Mosley arrived about twenty minutes later.

{3} Defendant got out of the truck and walked toward Officer Mosley, at which point the officer placed Defendant in handcuffs and arrested him for trespassing, a misdemeanor offense. *See* NMSA 1978, § 30-14-1(B), (E) (1995). Officer Mosley advised Defendant that his truck would be impounded. The truck was locked but Officer Mosley used Defendant's keys to open the door and proceeded to inventory the truck's contents. Officer Mosley found a methamphetamine pipe, smoking straw, and tin foil with heroin residue underneath the driver's side floor mat and seized those items. He found a locked gun safe under the rear seat and removed it from the truck for safekeeping pending owner pickup. The officer found a key for the safe on Defendant's key ring and used it to unlock the safe; inside, he found a small handgun and a small amount of heroin.

{4} The State filed a criminal information charging Defendant with criminal trespass, contrary to Section 30-14-1(B); possession of a controlled substance (heroin), contrary to NMSA 1978, Section 30-31-23(E) (2011, amended 2021); and possession of drug paraphernalia, contrary to NMSA 1978, Section 30-31-25.1(A) (2001, amended 2019). Defendant moved to suppress all evidence illegally obtained as the fruit of an unreasonable

warrantless search and seizure in violation of the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. The State responded that the search following Defendant's arrest was a valid inventory search. The State pointed out that inventory searches are a well-established exception to the warrant requirement and are lawful if three requirements are satisfied: (1) the search is of a vehicle in police custody or control, (2) the search is conducted pursuant to established police regulations or procedures, and (3) the search is reasonable. The district court initially granted Defendant's motion, concluding the State had not established that the Farmington Police Department had a policy permitting Officer Mosley to unlock containers encountered during the inventory search. The court reversed its decision, however, after the State filed a motion to reconsider and introduced evidence of a police policy permitting the opening of locked containers.

{5} Defendant conditionally pled no contest to one charge of possession of a controlled substance (heroin) and received a conditional discharge, but reserved his right to appeal the district court's denial of his motion to suppress.

#### DISCUSSION

{6} At issue in this appeal is whether the warrantless search of a locked gun safe during the course of an automobile inventory search violated Article II, Section 10 of the New Mexico Constitution. Defendant argues that "the search was unreasonable under Article II, Section 10 because his legitimate expectation of privacy in the contents of his locked gun safe outweighed any purported governmental interest in conducting a warrantless inventory search of the locked gun safe." The State argues that we should not diverge from the federal inventory search standard and maintains that the search was reasonable under both the federal and state constitutions.

{7} "The constitutionality of a search or seizure is a mixed question of law and fact and demands *de novo* review." *State v. Ochoa*, 2009-NMCA-002, ¶ 6, 146 N.M. 32, 206 P.3d 143 (internal quotation marks and citation omitted). "When a defendant invokes our inherent power as a separate sovereign in our federalist system of government to provide more liberty under the New Mexico Constitution than is mandated by the United States Constitution," we utilize the interstitial approach to constitutional interpretation set forth in *State v. Gomez*, 1997-NMCS-006, ¶¶ 19, 22-23, 122 N.M. 777, 932 P.2d 1. *Ochoa*, 2009-NMCA-002, ¶ 6 (emphasis omitted).

The *Gomez* interstitial analysis requires us to answer three questions: (1) whether the right asserted by the defendant is protected under the federal constitution, (2) whether the defendant preserved the state constitutional claim, and (3) whether there exists any one of three reasons for diverging from federal precedent. *State v. Crane*, 2014-NMSC-026, ¶ 12, 329 P.3d 689.

#### **The Fourth Amendment Does Not Prohibit the Opening of a Locked Container During an Automobile Inventory Search**

{8} Automobile inventory searches are a well-defined but controversial exception to the warrant requirement. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). Nearly fifty years ago, the United States Supreme Court legitimized the “routine practice of securing and inventorying” the contents of an automobile after it had been impounded. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). *But see State v. Ingram*, 914 N.W.2d 794, 810 (Iowa 2018) (noting that “[t]he majority opinions in *Bertine* and *Opperman* were highly contested and provoked vigorous dissents”). In evaluating whether the practice violated the Fourth Amendment, the Court began by emphasizing that “less rigorous warrant requirements govern because the expectation of privacy with respect to one’s automobile is significantly less than that relating to one’s home or office.” *Opperman*, 428 U.S. at 367. The Court indicated that inventory procedures “developed in response to three distinct needs: the protection of the owner’s property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger[.]” *Id.* at 369 (citations omitted). In light of these purposes, the Court concluded that “inventories pursuant to standard police procedures are reasonable” under the Fourth Amendment. *Id.* at 372; *see Bertine*, 479 U.S. at 374 (holding that “inventory procedures administered in good faith satisfy the Fourth Amendment”); *Cady v. Dombrowski*, 413 U.S. 433, 446 (1973) (holding that the absence of a warrant did not render a community caretaking search of a vehicle’s trunk unreasonable under the Fourth Amendment). *But see Ingram*, 914 N.W.2d at 804 (noting that in *Bertine*, the Court indicated that “[a] warrantless inventory search and seizure might be invalid if the accused can show the government action was in bad faith or for the sole purpose of investigation, a very high bar” (internal quotation marks and citation omitted)).

{9} Since *Opperman*, the United States Supreme Court’s inventory search jurisprudence has focused on whether police followed standardized procedures during the search.

In *Bertine*, the Court noted the need for a single, familiar standard to guide police officers with limited time and expertise. 479 U.S. at 374-75. *But cf. People v. Bertine*, 706 P.2d 411, 418 (Colo. 1985) (en banc) (concluding that “the governmental interests served by the search were not substantial” and that “the defendant’s privacy interests in [closed containers] outweighed the government’s need to inventory their contents”). The Court has uniformly upheld inventory searches when police followed standard procedures, e.g., *Bertine*, 479 U.S. at 369 (affirming the search of a closed backpack found inside the defendant’s van after he was arrested for driving while under the influence of alcohol), and found them unconstitutional when they have not, *see Florida v. Wells*, 495 U.S. 1, 4-5 (1990) (concluding that the search of a locked suitcase in the defendant’s trunk violated the Fourth Amendment because “the Florida Highway Patrol had no policy [whatsoever] with respect to the opening of closed containers encountered during an inventory search . . . [and] absent such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment”).

{10} The Court remarked in *Wells* that “policies of opening all containers . . . are unquestionably permissible[.]” *Id.* at 4. After *Wells*, federal courts have broadly upheld inventory searches of locked containers inside automobiles where police followed their own inventory search procedures. *See, e.g., United States v. Thompson*, 29 F.3d 62, 64-66 (2d Cir. 1994) (upholding an inventory search of a locked briefcase, opened using the defendant’s key, because police did not search in bad faith and complied with the police’s standardized inventory search procedures); *United States v. Kordosky*, 921 F.2d 722, 723-24 (7th Cir. 1991) (holding that an inventory search of a locked compartment in a car’s trunk did not violate the Fourth Amendment because it complied with the unwritten policy of a sub-unit of a police department); *United States v. Evans*, 937 F.2d 1534, 1538-39 (10th Cir. 1991) (holding that an inventory search of a locked carry-on bag was reasonable because police inventory search policy required the opening of locked containers); *United States v. Trujillo*, 341 F. Supp. 3d 1280, 1286 (D.N.M. 2018) (“Because [the Bernalillo County Sheriff’s Deputy conducting an inventory search of a locked backpack] followed standardized criteria set forth by the Bernalillo Sheriff’s Department and acted in good faith pursuant to those established policies, the Court finds that the search of [the defendant’s] locked backpack was proper and did not violate his Fourth Amendment rights.”).

{11} In light of the foregoing, we agree with the parties that, on the record before us, the inventory search of the locked gun safe in Defendant’s truck did not violate the Fourth Amendment because the search was conducted pursuant to a standardized police policy and there is no claim of bad faith or pretext. The State presented evidence of the Farmington Police Department’s inventory search policies, which specifically state that the “inventory search will consist of documentation of all personal property with apparent value or . . . apparent significant importance to the owner which is contained inside or upon the vehicle, including property inside closed compartments or locked containers within the vehicle. In regard[] to locked containers, officers may not damage the vehicle or property in any way to enter these containers.” (Emphasis added.) Officer Mosley followed these policies and opened the locked gun safe using a key found on Defendant’s key ring. Defendant does not argue that this inventory was conducted in bad faith or for the sole purpose of investigation. *See Bertine*, 479 U.S. at 372. Accordingly, we turn to the New Mexico Constitution to evaluate whether Article II, Section 10 provides greater protection.

#### **Defendant Preserved His Claim Under the New Mexico Constitution**

{12} Because “[i]t is well-established that Article II, Section 10 provides more protection against unreasonable searches and seizures than the Fourth Amendment[.]” *State v. Leyva*, 2011-NMSC-009, ¶ 51, 149 N.M. 435, 250 P.3d 861, Defendant need only “(1) assert[] the constitutional principle that provides the protection sought under the New Mexico Constitution, and (2) show[] the factual basis needed for the trial court to rule on the issue” in order to preserve his claim. *Gomez*, 1997-NMSC-006, ¶ 22. In this case, Defendant asserted in his motion to suppress that the inventory search violated his right to be free from an unreasonable search under Article II, Section 10 and developed a factual record in his motion and at the suppression hearing. Neither party contests the preservation of the state constitutional claim here, and we agree that Defendant’s Article II, Section 10 claim was preserved.

#### **Article II, Section 10 Provides Greater Protection of Privacy Than the Fourth Amendment**

{13} Although New Mexico has long followed the federal approach, we are asked to consider for the first time whether the scope of an inventory search was unreasonable, and thus unconstitutional, under the New Mexico Constitution.<sup>1</sup>

New Mexico courts, relying on federal precedent applying the Fourth Amendment, have approved of automobile inventories as long as three requirements are met: (1) the automobile is lawfully in police custody or control; (2) the inventory is made pursuant to established police procedures; and (3) the search is reasonable. *State v. Ruffino*, 1980-NMSC-072, ¶ 5, 94 N.M. 500, 612 P.2d 1311. Under the third prong, New Mexico courts have applied the Fourth Amendment standard articulated in *Opperman* and have generally upheld inventory searches as reasonable “if they are made pursuant to an established procedure and in furtherance of any one of three purposes: (1) to protect the arrestee’s property while it remains in police custody; (2) to protect the police against claims or disputes over lost or stolen property; or (3) to protect the police from potential danger.” *Shaw*, 1993-NMCA-016, ¶ 10 (citing *Opperman*, 428 U.S. at 369).

{14} Defendant has not asked us to apply a different overall framework under our state constitution, and he concedes that the first two requirements of the *Ruffino* test are satisfied. His challenge is limited to the third requirement: reasonableness. Specifically, he argues that the inventory search was unreasonable in scope for purposes of Article II, Section 10 because it intruded upon his constitutionally protected expectation of privacy in the contents of his locked gun safe. We are persuaded that he is correct. For the reasons that follow, we conclude that the reasonableness of an inventory search under Article II, Section 10 is determined by balancing the need for the search in a particular case against the intrusion upon an individual’s privacy interest. See *State v. Ryon*, 2005-NMSC-005, ¶ 16, 137 N.M. 174, 108 P.3d 1032 (applying this standard in a community caretaker case). Because we conclude that the search of the locked gun safe had little, if any, utility for inventory purposes and that the search infringed upon a substantial privacy interest, we depart from federal precedent and conclude that the search was unreasonable under Article II, Section 10.

#### A. Reasons to Depart From Federal Jurisprudence

{15} “[A] state court may diverge from federal precedent for one of the following three reasons: a flawed federal analysis, structural differences between state and

federal government, or distinctive state characteristics.” *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 14, 130 N.M. 386, 25 P.3d 225 (internal quotation marks and citation omitted). In this case, we focus on two distinctive characteristics of New Mexico law: greater protection of privacy in the context of automobiles and a strong preference for warrants.

#### B. Article II, Section 10 of the New Mexico Constitution

{16} “Article II, Section 10 expresses the fundamental notion that every person in this state is entitled to be free from unwarranted governmental intrusions, and thus identified a broader protection to individual privacy under the New Mexico Constitution than under the Fourth Amendment.” *Leyva*, 2011-NMSC-009, ¶ 53 (internal quotation marks and citation omitted); see also *State v. Garcia*, 2009-NMSC-046, ¶ 31, 147 N.M. 134, 217 P.3d 1032 (“Article II, Section 10 is calibrated slightly differently than the Fourth Amendment”). The search and seizure provision of the New Mexico Constitution “is a foundation of both personal privacy and the integrity of the criminal justice system, as well as the ultimate regulator of police conduct.” *Garcia*, 2009-NMSC-046, ¶ 31.

{17} New Mexico courts have long held that our state constitution provides New Mexico’s motorists with a higher standard of protection from unreasonable searches and seizures than the Fourth Amendment. *Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15. In *Gomez*, our Supreme Court recognized that the automobile exception to the warrant requirement, like the inventory search exception at issue here, “was based, in part, on the notion that a motorist has a lesser expectation of privacy in an automobile.” *Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15. “In rejecting the federal automobile exception to the warrant requirement, [our Supreme] Court dismissed the notion that an individual lowers his expectation of privacy when he enters an automobile, and elected instead to provide motorists with a ‘layer of protection’ from unreasonable searches and seizures that is unavailable at the federal level.” *Id.* “The extra layer of protection from unreasonable searches and seizures involving automobiles is a distinct characteristic of New Mexico constitutional law.” *Id.*

{18} Our Supreme Court has also consistently emphasized a second distinctive characteristic of New Mexico’s constitutional protection against unreasonable searches and seizures that is significant to our analysis: a strong preference for warrants. See, e.g., *Crane*, 2014-NMSC-026, ¶ 16. A warrant is no meaningless formality. It “has a significant role to play in that it provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer[.]” *Id.* (internal quotation marks and citation omitted). Accordingly, our warrantless search analysis begins “with the bedrock principle . . . that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable[.]” *State v. Rowell*, 2008-NMSC-041, ¶ 10, 144 N.M. 371, 188 P.3d 95 (emphasis, internal quotation marks, and citation omitted). “Like all warrantless searches, . . . inventory searches are presumed to be unreasonable and the burden of establishing their validity is on the [s]tate.” *Shaw*, 1993-NMCA-016, ¶ 5.

{19} In the context of warrantless investigatory searches, New Mexico courts have rejected federal bright-line rules and have taken a more restrictive view of the permissible scope of such searches under the New Mexico Constitution. E.g., *Rowell*, 2008-NMSC-041, ¶¶ 14, 20 (declining to follow United States Supreme Court cases allowing for the search of an automobile incident to arrest and holding that the scope of such a search was “limited to the area from within which the arrestee might gain possession of a weapon or destructible evidence” (alteration, internal quotation marks, and citation omitted)); *Gomez*, 1997-NMSC-006, ¶¶ 34-35 (rejecting the federal bright-line rule allowing warrantless probable cause searches of automobiles and containers within the automobile and holding that a particularized showing of exigent circumstances was required). In *Rowell*, for example, our Supreme Court departed from federal precedent that allowed an officer to search an automobile “whenever an arrestee had been stopped in a car, even if he or she no longer had any access to it at the time of the search.” 2008-NMSC-041, ¶ 15. The Court limited the exception for searches incident to an arrest under the New Mexico Constitution to “the range of the arrestee’s potential ability to access any weapons, evidence or means of escape.” *Id.* ¶ 23.

<sup>1</sup> To the extent the State argues that this Court has previously decided inventory search cases under the state constitution, we disagree. The cases cited by the State—*State v. Lopez*, 2009-NMCA-127, ¶ 1, 147 N.M. 364, 223 P.3d 361, and *State v. Shaw*, 1993-NMCA-016, 115 N.M. 174, 848 P.2d 1101—“do not independently explore the reach of Article II, Section 10.” *State v. Gutierrez*, 1993-NMSC-062, ¶ 30, 116 N.M. 431, 863 P.2d 1052; see also *Ochoa*, 2009-NMCA-002, ¶ 29 (stating that none of the cases cited by the state “analyze the traffic stop under the state constitutional interstitial approach” and were therefore not conclusive on the state constitutional question).

The Court reasoned that this standard “was consistent with the established principle that a warrantless search should ‘be strictly circumscribed by the exigencies which justify its initiation[.]’” *id.* ¶ 14 (quoting *Terry v. Ohio*, 392 U.S. 1, 26 (1968)), and “provide[s] sufficient latitude in allowing searches incident to arrest where they can be justified on principle, while refusing to broaden exceptions to New Mexico’s constitutional warrant requirement beyond their own justifications.” *Id.* ¶ 23. In the Court’s view, the federal standard had stretched the exception beyond its breaking point. *Id.* ¶ 22; *Ochoa*, 2009-NMCA-002, ¶ 23.

{20} We have similar misgivings about the scope of the automobile inventory exception to the warrant requirement under the Fourth Amendment. The Fourth Amendment standard approaches a bright-line rule broadly authorizing routine inventory searches pursuant to standard police procedures. See *Bertine*, 479 U.S. at 372. In this way, police departments have been permitted to determine the scope of the search based on the policies and procedures adopted in the jurisdiction. See *Ingram*, 914 N.W.2d at 804-05 (“Under the federal approach, local law enforcement, and not independent and impartial judges, may set the contours of the substantive protections for liberty under the Fourth Amendment in the field of warrantless inventory searches through the crafting of local policy.”). As a result, police policies like those in this case, which permit the opening of all compartments and containers, all but eliminate the need for a warrant for a broad array of intrusive searches.

{21} Other state courts have been critical of the wide reach of Fourth Amendment inventory searches.<sup>2</sup> As the Oregon Court of Appeals observed, “[i]t would be anomalous to hold that a permissible warrantless [investigatory] search of an automobile . . . is more limited in scope than that permitted when a person’s car is simply impounded.” *Atkinson*, 669 P.2d at 346. More recently, the Iowa Supreme Court reasoned that the federal framework allowing police to obtain a broad inventory search of a vehicle runs counter to the warrant requirement and expressed concern that the exception has evolved beyond its initial benign purposes into a “powerful unregulated tool in crime control.” *Ingram*, 914 N.W.2d at 814-15 (observing that “[a] warrantless inventory search and seizure seems more like a law enforcement weapon than a benign service to citizens”); see also *Opperman*, 428 U.S. at 377, 379-80 (Powell, J., concurring) (noting that “[t]he central purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials” and cautioning that “the unrestrained search of an automobile and its contents would constitute a serious intrusion upon the privacy of the individual in many circumstances”). We share these concerns and believe the federal approach is inconsistent with New Mexico’s strong preference for warrants and the greater privacy protections afforded under Article II, Section 10. Therefore, departure from federal precedent is justified here.

{22} Having rejected the federal bright-line approach to automobile inventory searches, we now turn to the protections guaranteed under the New Mexico Constitution. Our evaluation of whether this

search was reasonable under Article II, Section 10 is guided by familiar principles: we must weigh the “governmental and societal interests advanced to justify [the] intrusion[] against the constitutionally protected interest of the individual citizen in the privacy of his effects.” *Opperman*, 428 U.S. at 377-78 (Powell, J., concurring); see *Leyva*, 2011-NMSC-009, ¶ 55; *Ryon*, 2005-NMSC-005, ¶ 16. This approach adheres to the fact-specific nature of reasonableness determinations under the New Mexico Constitution. See *Ochoa*, 2009-NMCA-002, ¶ 24 (stating that the New Mexico Constitution favors “an examination into the reasonableness of officers’ actions under the circumstances of each case”).

{23} We turn first to our evaluation of the privacy interest in a closed and locked container in an automobile. New Mexico has departed from federal precedent in evaluating the strength of the competing interests involved. While “[f]ederal caselaw has tended to minimize the strength of the privacy interest in the interior of automobiles,” *Ingram*, 914 N.W.2d at 816-17, New Mexico courts have rejected “the notion that an individual lowers his expectation of privacy when he enters an automobile[.]” *Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15. The State correctly points out that the privacy interest in an automobile is not equivalent to the privacy interest in a home. *State v. Bomboy*, 2008-NMSC-029, ¶ 12, 144 N.M. 151, 184 P.3d 1045. Nevertheless, New Mexico’s extra layer of protection from unreasonable searches and seizures involving automobiles recognizes and safeguards the substantial privacy interest New Mexico’s motorists have in the papers and effects that may be found inside an automobile.

<sup>2</sup> A number of state courts have departed from the federal approach and circumscribed the practice under their state constitutions, though their approaches vary. See, e.g., *State v. Daniel*, 589 P.2d 408, 416-17 (Alaska 1979) (holding that the warrantless inventory of closed, locked, or sealed luggage, containers, or packages in a vehicle is unreasonable and unconstitutional under the Alaska Constitution); *Nealy v. State*, 400 So. 2d 95, 97-98 (Fla. Dist. Ct. App. 1981) (holding that a warrantless inventory search was unreasonable under the Florida Constitution because police had not established the element of necessity); *State v. Lucas*, 859 N.E.2d 1244, 1251 (Ind. Ct. App. 2007) (evaluating an inventory search under the totality of the circumstances and holding that opening a locked container during the course of an inventory search was unreasonable under the Indiana Constitution); *Ingram*, 914 N.W.2d at 818 (setting out procedures police should follow before conducting an inventory search and requiring police to inventory containers as a unit under the Iowa Constitution); *State v. Sawyer*, 571 P.2d 1131, 1134 (Mont. 1977) (limiting inventory searches to items in plain view under the Montana Constitution), overruled on other grounds by *State v. Long*, 700 P.2d 153, 155 (Mont. 1985) (holding that the Montana Constitution’s privacy provision does not require the exclusion of evidence gathered by a private search); *State v. Hummel*, 179 A.3d 366, 373-74 (N.J. 2018) (evaluating the reasonableness of an inventory search by considering the scope of the search, the procedure used, and the availability of less intrusive alternatives); *State v. Mangold*, 414 A.2d 1312, 1318 (N.J. 1980) (“[I]f a vehicle is lawfully impounded and its owner or permissive user is present, that person must be given the option of either consenting to the inventory or making his own arrangements for the safekeeping of the property contained in the vehicle. Absent consent or alternative security provisions, an inventory may be not undertaken [and] . . . the vehicle owner or user will be presumed to have assumed the risk for any claims of property loss or theft arising from the impoundment.”); *State v. Atkinson*, 669 P.2d 343, 344-345 (Or. Ct. App. 1983) (in banc) (holding that a search of the glove compartment of an impounded car exceeded the scope of a permissible inventory search under the Oregon Constitution); *State v. Opperman*, 247 N.W.2d 673, 675 (S.D. 1976) (holding, on remand from the United States Supreme Court, that “noninvestigative police inventory searches of automobile[s] without a warrant must be restricted to safeguarding those articles which are within plain view of the officer’s vision”); *State v. White*, 958 P.2d 982, 986-87 (Wash. 1998) (holding that under Washington’s Constitution, opening of locked trunk was not permitted absent manifest necessity); *State v. York*, 506 S.E.2d 358, 363 (W. Va. 1998) (“[F]or an inventory search to be proper, the taking of the inventory itself must be prompted by a number of valuables in plain view inside the car[.]”).

This Court's early inventory search jurisprudence acknowledged as much, observing that "a routine police inventory of the contents of an automobile involves a substantial invasion into the privacy of the vehicle owner." *State v. Nemrod*, 1973-NMCA-059, ¶ 12, 85 N.M. 118, 509 P.2d 885 (quoting *Mozzetti v. Super. Ct. of Sacramento Cnty.*, 484 P.2d 84, 88 (Cal. 1971) (in bank)), *overruled on other grounds by State v. Vigil*, 1974-NMCA-065, ¶ 13, 86 N.M. 388, 524 P.2d 1004. Defendant also had an expectation of privacy with respect to the contents of his locked safe, one that was sufficient to invoke constitutional protections against unreasonable police intrusion. See *United States v. Chadwick*, 433 U.S. 1, 11 (1977) ("By placing personal effects inside a double-locked footlocker, respondents manifested an expectation that the contents would remain free from public examination. No less than one who locks the doors of his home against intruders, one who safeguards his personal possessions in this manner is due the protection of the Fourth Amendment Warrant Clause."). That expectation was not diminished because the safe was found inside an automobile. See *Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15.

{24} Against these interests we consider the governmental and societal need for the search. We evaluate the governmental need by considering the extent to which the search was reasonably necessary to accomplish any of the three legitimate governmental purposes that justify this type of administrative caretaking search. See *Ryon*, 2005-NMSC-005, ¶ 38 (applying this principle in the context of a community caretaking search); see also *Rowell*, 2008-NMSC-041, ¶ 14 (stating that "a warrantless search should be strictly circumscribed by the exigencies which justify its initiation" (internal quotation marks and citation omitted)). The State maintains that the search served two purposes: protecting Defendant's property and protecting the police from claims of loss or theft.<sup>3</sup> *Id.*

{25} With respect to the governmental interest in safeguarding Defendant's property, Defendant contends, and we agree, that his property was adequately protected by the nature of the container and the existence of the lock. While the State responds that "a thief could still steal the gun safe itself, along with its contents[,] that possibility becomes exceedingly unlikely where, as here, the officer removes the gun safe from the vehicle and takes it into police custody for safekeeping. Under the circumstances, the State has not shown that further intrusion into the locked safe was necessary to carry out the government's interest in safeguarding Defendant's property.

{26} The State also argues that it was necessary to open the safe to protect the police from false claims of lost or stolen property. To the extent police face liability for false claims,<sup>4</sup> we are not persuaded that opening and inventorying the contents of a locked container provides any more protection than inventorying the locked container as a unit, as a false claim can be made that items inside the safe were stolen regardless of whether police opened it or not. See *Ingram*, 914 N.W.2d at 818 ("A party determined to make a false claim may simply allege that the valuables were not included in the written inventory, either through mistake or design."); see also *Bertine*, 479 U.S. at 383 (Marshall, J., dissenting) ("[I]nventories are not a completely effective means of discouraging false claims, since there remains the possibility of accompanying such claims with an assertion that an item was stolen prior to the inventory or was intentionally omitted from the police records." (alteration, internal quotation marks, and citation omitted)). As the Iowa Supreme Court noted, sealing and storing containers "would provide at least as much protection to the remote threat as a warrantless inventory search of containers." *Ingram*, 914 N.W.2d at 818.

{27} The police department policy involved in this case further undermines any argument that it was necessary to open the safe here.

The policy prohibited opening locked containers by force, meaning that if Defendant had not had the key with him, the officer would have been able to do no more than remove the gun safe from the vehicle and inventory it as a unit. In essence, the policy recognizes that the legitimate purposes of the inventory search can be fully accomplished without opening a locked container, regardless of whether the owner has a key in his possession or not. For all of these reasons, we see little justification for opening the gun safe, particularly in light of Defendant's countervailing privacy interests.

{28} Finally, we note that the State had a reasonable opportunity to seek a warrant if it believed there was a basis for doing so. Defendant was in custody, his truck was impounded, and the gun safe had been removed for safekeeping. To the extent officers believed that probable cause existed to search the locked gun safe, they could have presented an affidavit to a neutral magistrate and waited to search the container until a warrant was in hand. This course of action not only safeguards the privacy interests of the citizen, it also provides a layer of protection for the fruit of valuable police work.

{29} In this case, we hold that the warrantless search of Defendant's locked gun safe violated Defendant's right to be free from an unreasonable search under the New Mexico Constitution. As the State has not advanced any other exception to the warrant requirement that would justify opening the locked container, we reverse the district court's denial of Defendant's motion to suppress and hold that all evidence obtained as a result of that search must be suppressed.

#### CONCLUSION

{30} We reverse the district court's denial of Defendant's motion to suppress and remand for further proceedings consistent with this opinion.

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

**MEGAN P. DUFFY, Judge**

**WE CONCUR:**

**ZACHARY A. IVES, Judge**

<sup>3</sup> The State does not argue that the search protected the police from potential danger. See *Shaw*, 1993-NMCA-016, ¶ 10.

<sup>4</sup> While New Mexico courts have referred to this oft-cited justification, see *State v. Byrom*, 2018-NMCA-016, ¶ 34, 412 P.3d 1109, no prior case has examined whether and how the police may be subject to a tort suit based on negligent loss or theft of a defendant's property while it is in police custody. For example, it remains an open question whether the New Mexico Tort Claims Act, NMSA 1978, § 41-4-12 (2020), waives immunity for such a claim. See *Mozzetti*, 484 P.2d at 89-90 (stating that "[t]he contention that the police inventory search is necessary to protect the police . . . from tort claims is even less convincing" because "the police are not liable for ordinary negligence in handling automobile contents"). Because the parties have not briefed the matter, we do not explore it further here.

# Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-023**

No: A-1-CA-38635 (filed February 1, 2022)

ELSA HERNANDEZ, as Personal Representative of the Wrongful  
Death Claim of Irisema Hernandez,  
Deceased,

Plaintiff-Appellant,

v.

MALIN PARKER, individually,  
ROOSEVELT COUNTY SHERIFF'S  
DEPARTMENT, and ROOSEVELT  
COUNTY BOARD OF COUNTY COMMISSIONERS,  
Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

Fred T. Van Soelen, District Judge

Released for Publication May 10, 2022.

Eric D. Dixon  
Portales, NM

for Appellant

Macke Law & Policy, LLC  
Daniel J. Macke  
Albuquerque, NM

for Appellees

## OPINION

**WRAY, Judge.**

{1} In this appeal, we are asked to consider whether collateral estoppel precludes state court litigation arising under the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -27 (1976, as amended through 2020) (TCA), when a federal district court has dismissed 42 U.S.C. § 1983 claims because the facts did not establish that a law enforcement officer used excessive force to effectuate an arrest in violation of the Fourth Amendment to the United States Constitution. Concluding it does not, we reverse.

### BACKGROUND

{2} According to the complaint filed in the state district court, law enforcement officers observed Irisema Hernandez's car, a white Lincoln, in a motel parking lot. Incorrectly believing that Irisema was violating her conditions of release by staying at the motel, Defendant Sheriff Malin Parker used his unmarked vehicle to block the Lincoln and prevent it from

leaving. Sheriff Parker, wearing a black hoodie, and another officer, who was in uniform, approached the Lincoln with guns drawn. With Irisema in the passenger seat, another individual (Driver) pulled the Lincoln out of the parking lot, striking Sheriff Parker in the process. Sheriff Parker returned to his unmarked vehicle and pursued for five minutes, at speeds between 80 and 90 miles per hour, in the rain, and on two-lane rural roads. Ultimately, Irisema's vehicle was forced off the road, possibly by contact from Sheriff Parker's vehicle, and hit a tree. Irisema died from injuries caused by the collision.

{3} Plaintiff, as the personal representative of Irisema's wrongful death Estate, brought an action in the United States District Court for the District of New Mexico (federal court) against Sheriff Parker, the Roosevelt County Board of County Commissioners, and the Roosevelt County Sheriff's Department (collectively, Defendants). Plaintiff alleged deprivations of Irisema's rights under the Fourth and Fourteenth Amendments through § 1983, as well as causes of action under the TCA. Sheriff Parker asserted qualified immunity

as a defense to Plaintiff's § 1983 claims. The federal court granted Sheriff Parker's motion, dismissed Plaintiff's federal claims against all Defendants, and declined to exercise supplemental jurisdiction over Plaintiff's state law claims.

{4} Shortly thereafter, Plaintiff filed a complaint in the state district court against the same Defendants and alleged claims for negligence and aggravated assault and battery under the TCA. Defendants moved to dismiss the TCA claims and argued that because the federal court had already determined that Sheriff Parker acted reasonably, Plaintiff was precluded from litigating the TCA claims. The district court agreed, determined that the issues decided by the federal court and raised in state court were "identical," and applied collateral estoppel to grant Defendants' motion to dismiss. Plaintiff appeals.

### STANDARD OF REVIEW

{5} We generally review the application of collateral estoppel for abuse of discretion, unless the facts are not in dispute, in which case we review the issue de novo. *Bank of N.Y. v. Romero*, 2016-NMCA-091, ¶ 23, 382 P.3d 991. Both parties suggest we review this matter as a motion to dismiss—accepting all well-pleaded facts as true and deciding questions of law de novo. The district court, however, considered facts outside the state pleadings to decide whether to apply collateral estoppel—specifically, the parties' federal court arguments, discovery, and the issues decided by the federal court. We therefore consider the district court's order as a grant of summary judgment and "construe all reasonable inferences in favor of the nonmoving party and will uphold a grant of summary judgment where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." See *Tunis v. Country Club Estate Homeowners Ass'n, Inc.*, 2014-NMCA-025, ¶ 17, 318 P.3d 713 (internal quotation marks and citation omitted) (reviewing a claim preclusion issue raised in a motion to dismiss as a motion for summary judgment). "Whether the elements of claim preclusion are satisfied is a legal question, which we review de novo." *Id.* ¶ 20 (internal quotation marks and citation omitted).

{6} Thus, we review the district court's grant of summary judgment, which was based on the application of collateral estoppel, de novo.

### DISCUSSION

{7} Defendants maintain that Plaintiff's TCA claims against Sheriff Parker are estopped by the federal court's determination that Sheriff Parker's actions were "objectively reasonable" in the context of a federal constitutional claim.

Specifically, Defendant observes that the federal court decided the “issue of objective reasonableness” and argues that the TCA claims are barred by collateral estoppel because the same standard of “objective reasonableness” must apply to Plaintiff’s TCA claims. We conclude that under these circumstances, collateral estoppel does not apply to preclude Plaintiff’s TCA claims. {8} Collateral estoppel, also called issue preclusion, “prevents a party from re-litigating ultimate facts or issues actually and necessarily decided in a prior suit.” *Romero*, 2016-NMCA-091, ¶ 23 (internal quotation marks and citation omitted). The party “invoking collateral estoppel has the burden to introduce sufficient evidence for the court to [determine] whether the doctrine is applicable.” *Reeves v. Wimberly*, 1988-NMCA-038, ¶ 15, 107 N.M. 231, 755 P.2d 75. In order for collateral estoppel to apply, four elements must be met:

- (1) the party to be estopped was a party to the prior proceeding,
- (2) the cause of action in the case presently before the court is different from the cause of action in the prior adjudication, (3) the issue was actually litigated in the prior adjudication, and (4) the issue was necessarily determined in the prior litigation.

*Romero*, 2016-NMCA-091, ¶ 23 (internal quotation marks and citation omitted). Once the movant “has produced sufficient evidence to meet all four elements, the district court must determine whether the party to be estopped had a full and fair opportunity to litigate the issue in the prior litigation.” *Tunis*, 2014-NMCA-025, ¶ 24 (internal quotation marks and citation omitted).

{9} To review the district court’s collateral estoppel determination, we must first examine the legal framework for Plaintiff’s federal and TCA claims.

### I. The Federal and TCA Claims

{10} In federal court, Plaintiff brought federal constitutional claims and state tort claims. Plaintiff’s federal claims invoked § 1983, which provides a “federal remedy for damages arising out of a constitutional violation by a person acting under color of state law.” *Wells v. Cnty. of Valencia*, 1982-NMSC-048, ¶ 6, 98 N.M. 3, 644 P.2d 517. Defendants’ invocation of qualified immunity shifted the “heavy burden” to Plaintiff to establish that (1) the facts demonstrated a violation of a constitutional right, and

(2) the right at issue was clearly established at the time of the violation. *Carabajal v. City of Cheyenne*, 847 F.3d 1203, 1208 (10th Cir. 2017). Only if a plaintiff meets this burden is the defendant required to establish the absence of disputed material facts. See *Clark v. Edmunds*, 513 F.3d 1219, 1222 (10th Cir. 2008).

{11} “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989) (internal quotation marks and citation omitted). The court determines whether the officer’s use of force was reasonable after assessing the “non-exclusive factors arising from the police-citizen encounter[.]” which are set forth in *Graham. Cavanaugh v. Woods Cross City*, 718 F.3d 1244, 1255 (10th Cir. 2013). Those factors, considered objectively from the officer’s perspective, include the severity of the suspected crime, the threat the suspect poses to safety, and whether the suspect is actively resisting or fleeing. See *Donahue v. Wihongi*, 948 F.3d 1177, 1187, 1196 (10th Cir. 2020). Based on these principles, the federal court reviewed the evidence objectively, from Sheriff Parker’s perspective: Driver had battered Sheriff Parker with the Lincoln, fled the scene, did not stop despite the danger, and put the public at risk. Based on this view of the evidence, the federal court concluded Sheriff Parker “was reasonable to end the pursuit and the danger it posed by bumping the back of the [Lincoln]” and that Irisema’s “rights under the Fourth Amendment were not violated.”

{12} In state court, Plaintiff brought claims arising under the TCA for negligence and assault and battery.<sup>1</sup> “Generally, the [TCA] provides governmental entities and public employees acting in their official capacities with immunity from tort suits unless the [TCA] sets out a specific waiver of that immunity.” *Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep’t*, 1996-NMSC-021, ¶ 6, 121 N.M. 646, 916 P.2d 1313. In the district court and on appeal, Plaintiff maintains that the TCA waives immunity for the negligent operation of a motor vehicle, Section 41-4-5 and, in relevant part, for “liability for . . . wrongful death . . . resulting from assault [and] battery, . . . when caused by law enforce-

ment officers while acting within the scope of their duties.” Section 41-4-12.<sup>2</sup> Plaintiff contends that collateral estoppel does not bar these TCA claims, because the relevant issues were not litigated and decided in federal court and there has been no opportunity to fully and fairly litigate the issues. We agree. {13} It is well-established that “[n]ot all tortious conduct amounts to a constitutional deprivation.” *Wells*, 1982-NMSC-048, ¶ 6. The *Wells* Court considered whether a plaintiff could pursue both a constitutional claim under § 1983 and a claim under the TCA. *Wells*, 1982-NMSC-048, ¶ 3. Although a constitutional deprivation “can grow out of tortious conduct, the two are distinct concepts compensable under different laws.” *Id.* ¶ 7.

Tortious conduct which does not amount to a constitutional violation does not state a cause of action under [§] 1983, but may be fully compensable under a state remedy for a tortious loss. In the case at bar, [the] plaintiff’s allegations may not be compensable under [§] 1983, but may be compensable under the [TCA].

*Wells*, 1982-NMSC-048, ¶ 7 (citation omitted). A tort, the *Wells* Court determined, “is separate and distinct from a constitutional deprivation.” *Id.* ¶ 8. While the *Wells* holding makes clear that tort claims and federal constitutional claims are legally distinct and may coexist, our collateral estoppel inquiry cannot end here. Whether the subject matter of the claims is different is only one element of collateral estoppel. See *Ulrich v. Blanchard*, 2007-NMCA-145, ¶ 19, 142 N.M. 835, 171 P.3d 774 (outlining the four collateral estoppel elements).

{14} The collateral estoppel doctrine “prevents a party from re-litigating ultimate facts or issues actually and necessarily decided in a prior suit,” *Deflon v. Sawyers*, 2006-NMSC-025, ¶ 13, 139 N.M. 637, 137 P.3d 577 (internal quotation marks and citation omitted), provided the party has “had a full and fair opportunity to litigate the issue in the prior litigation.” *Tunis*, 2014-NMCA-025, ¶ 24 (internal quotation marks and citation omitted). Defendants argue that Plaintiff’s tort claims are precluded because (1) “[t]he issue of objective reasonableness” was litigated and decided in federal court and (2) “the objectively reasonable standard is the applicable standard to be applied in the remaining [s]tate law claims[.]” We consider Defendants’ arguments in the context of Plaintiff’s TCA claims separately.

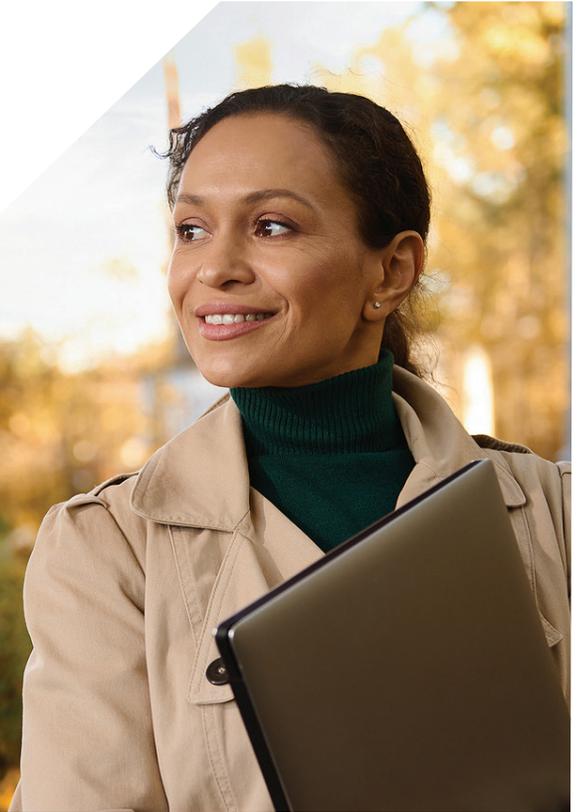
<sup>1</sup> Plaintiff additionally brought claims for loss of consortium and vicarious liability. The district court determined these claims were dependent on the tort claims and dismissed the dependent claims based on the dismissal of the tort claims. Plaintiff argues these claims are not estopped, but does not argue that the district court improperly determined the loss of consortium and vicarious liability claims are dependent on the survival of the tort claims. Thus, the loss of consortium and vicarious liability claims stand or fall based on our disposition of the tort claims.

<sup>2</sup> The Legislature’s 2020 amendments to Section 41-4-12 have no bearing on the present analysis, and so we cite the more recent statute.

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<sup>1</sup> *Subject to current public health guidelines.*

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**OCTOBER 27***Webinar***Law Practice Management for New Lawyers**

1.0 G

2 - 3 p.m.

**NOVEMBER 2***In-Person or Webcast***2022 Business Law Institute**

5.0 G, 1.0 EP

9 a.m. - 4:30 p.m.

*Teleseminar***Ethics in Discovery Practice**

1.0 EP

11 a.m. - Noon

**NOVEMBER 3***In-Person or Webcast***2022 Indian Law Institute**

5.0 G, 1.0 EP

9 a.m. - 4:30 p.m.

**NOVEMBER 4***Webinar***2022 Real Property Institute**

2.0 G, 1.0 EP

8:45 a.m. - Noon

**NOVEMBER 9***In-Person or Webcast***Wait, My Parents Were Wrong? It's Not All About Me? (Stuart Teicher)**

3.0 EP

9 a.m. - 12:15 p.m.

*In-Person or Webcast***Learn by Doing: An Afternoon of Legal Writing Exercises (Stuart Teicher)**

3.0 G

1 - 4:15 p.m.

**NOVEMBER 10***Webinar***The Paperless Law Firm: A Digital Dream**

1.0 EP

11 a.m. - Noon

**NOVEMBER 17***Webinar***2022 Probate Institute**

6.25 G, 1.0 EP

8:30 a.m. - 5:15 p.m.

**NOVEMBER 18***In-Person or Webinar***2022 Animal Law Institute: Animals, Agriculture, and the Planet**

3.0 G, 1.0 EP

9 a.m. - 1:15 p.m.

*Teleseminar***Ethics and Changing Law Firm Affiliation**

1.0 EP

11 a.m. - Noon

**NOVEMBER 21***Webinar***Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals****The Paperless Law Firm: A Digital Dream**

1.0 G

11 a.m. - Noon

**NOVEMBER 29***Teleseminar***Ethics for Business Lawyers**

1.0 EP

11 a.m. - Noon

**NOVEMBER 30***Webinar***Drug Testing and the Chain of Custody**

2.0 G

10 a.m. - Noon

*Teleseminar***Liquidation: Legal Issues When a Client Decides to Close a Business**

1.0 G

11 a.m. - Noon

*Webinar***Determining Competency and Capacity in Mediation**

2.0 G

2 - 4 p.m.

**DECEMBER 5***Webinar***Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204**

1.0 EP

Noon - 1 p.m.

*Teleseminar***Professionalism for the Ethical Lawyer**

1.0 EP

11 a.m. - Noon

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## DECEMBER 6

*Webinar*

"Let Me Ask You a Question. Suppose I Was Considering ...": A Mock Meeting of the Ethics Advisory Board

2.0 EP

10 a.m. - Noon

*Webinar*

Well That Seemed Like a Good Idea: Practical Best Practice Tips

1.0 EP

1 - 2 p.m.

## DECEMBER 7

*Teleseminar*

Rights of First Offer, First Refusal in Real Estate

1.0 G

11 a.m. - Noon

## DECEMBER 8

*Teleseminar*

Ethics of Beginning and Ending Client Relationships

1.0 EP

11 a.m. - Noon

## DECEMBER 9

*Teleseminar*

Selection and Preparation of Expert Witnesses in Litigation

1.G

11 a.m. - Noon

## DECEMBER 14

*In-Person or Webcast*

2022 Tax Law Institute

6.5 G, 1.0 EP

In-Person and Webcast

8 a.m. - 4:45 p.m.

*Teleseminar*

2022 Ethics Update, Part 1

1.0 EP

11 a.m. - Noon

## DECEMBER 15

*Teleseminar*

2022 Ethics Update, Part 2

1.0 EP

11 a.m. - Noon

## DECEMBER 19

*Teleseminar*

Equity & Diversity in Law Practice: Best Practices for Law Firms

1.0 EP

11 a.m. - Noon

## DECEMBER 22

*Teleseminar*

Ethics in Negotiations - Boasts, Shading, and Impropriety

1.0 EP

11 a.m. - Noon

## DECEMBER 27

*Teleseminar*

Ethics and Virtual Law Offices

1.0 EP

11 a.m. - Noon

## DECEMBER 28

*Teleseminar*

Lawyer Ethics of Email

1.0 EP

11 a.m. - Noon

## DECEMBER 29

*Teleseminar*

Ethics and Conflicts with Clients, Part 1

1.0 EP

11 a.m. - Noon

## DECEMBER 30

*Teleseminar*

Ethics and Conflicts with Clients, Part 2

1.0 EP

11 a.m. - Noon

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- ▶ December 6 **Let Me Ask a Question: Mock Meeting of the Ethics Advisory Board** (2.0 EP)
- ▶ December 8 **Ethics of Beginning and Ending Client Relationships** (1.0 EP)
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## II. Plaintiff's Negligence Claim Under the TCA Was Not Actually Litigated and Necessarily Decided in Federal Court

{15} Plaintiff's negligence claims arise from Section 41-4-5 of the TCA, which waives immunity, in relevant part, for the "damages resulting from . . . wrongful death . . . caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle." Liability for acts or omissions under the TCA is "based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." Section 41-4-2(B). A traditional tort claim "requires the existence of a duty from a defendant to a plaintiff, breach of that duty, which is typically based upon a standard of reasonable care, and the breach being a proximate cause and cause in fact of the plaintiff's damages." *Milliron v. Cnty. of San Juan*, 2016-NMCA-096, ¶ 11, 384 P.3d 1089 (internal quotation marks and citation omitted).

{16} Law enforcement officers are subject to the Section 41-4-5 immunity waiver and have a duty under the common law to exercise the care of a "reasonably prudent and qualified officer" in the same situation. *Wilson v. Grant Cnty.*, 1994-NMCA-001, ¶¶ 4, 9, 117 N.M. 105, 869 P.2d 293. In *Wilson*, this Court explained that Section 41-4-5 must be interpreted so that officers "are expected to exercise only the care that a reasonably prudent and qualified officer would exercise in the same situation." *Wilson*, 1994-NMCA-001, ¶ 9. We held that "if officers operate a motor vehicle more carelessly than a reasonably prudent officer would in the same circumstances, they will not be immune from suit if an accident results." *Id.* Defendants equate the "reasonably prudent officer" standard of care referenced in *Wilson* with the "objectively reasonable" standard applied in Fourth Amendment cases and contend that because the federal court determined the latter, the former must also be established. Plaintiff responds that no authority establishes that the Fourth Amendment standard is the same as the standard of care applicable under the TCA. We agree with Plaintiff. In *Wilson*, we did not define a standard of care for law enforcement, much less hold that the standard of care under Section 41-4-5 mirrored the Fourth Amendment standard to determine excessive force. Instead, we identified a duty to act as a reasonably prudent officer. Under traditional tort principles, whether that duty was breached would depend on the applicable standard of care. See § 41-4-2(B) (basing liability on "traditional tort concepts of duty" and the standard of care in performing that duty).

{17} "Where the defendant is a professional, the duty imposed by law is not the requirement to exercise 'ordinary care' under the same or similar circumstances but to apply the knowledge, care, and skill of reasonably well-qualified professionals practicing under similar circumstances." *Oakey, Estate of Lucero v. May Maple Pharmacy, Inc.*, 2017-NMCA-054, ¶ 25, 399 P.3d 939 (internal quotation marks and citation omitted). New Mexico views "statutes, regulations, and court rules imposing requirements on professionals [as] relevant to the determination of the standard of care required by the circumstances and whether it has been met, even if they do not necessarily suffice to establish a standard of care or provide a cause of action for their violation." *Id.* ¶ 26; see also *Rutherford v. Chaves Cnty.*, 2002-NMCA-059, ¶ 11, 132 N.M. 289, 47 P.3d 448 (explaining that the duty for claims brought under the TCA "must be found outside the [TCA] either at common law or by statute" (internal quotation marks and citation omitted). In the present case, Plaintiff maintains that Sheriff Parker was required to conform his pursuit conduct to the Law Enforcement Safe Pursuit Act, NMSA 1978, §§ 29-20-1 to -4 (2003) (LESPA).

{18} LESPA requires the chief law enforcement officer of every state to establish and enforce written policies "governing the conduct of law enforcement officers . . . who are involved in high speed pursuits." Section 29-20-4(A). LESPA further outlines the mandatory minimum policies and requirements to address safe pursuit. See § 29-20-4(C) (listing multiple mandatory considerations for law enforcement officers engaging in pursuit). LESPA imposes mandatory requirements for law enforcement and is relevant to determine the professional standard of care under these circumstances. Defendants argue that LESPA is irrelevant for four reasons.

{19} First, Defendants note that LESPA "does not provide the basis for a cause of action," but do not explain why a statute must itself establish a private cause of action to be relevant to the standard of care under the TCA. See *Torres v. State*, 1995-NMSC-025, ¶ 11, 119 N.M. 609, 894 P.2d 386 (noting that a statute imposing a duty to investigate crimes formed the basis for a cause of action under the TCA). The TCA provides for the cause of action if immunity is waived, and LESPA is relevant to establish the standard of care.

{20} Second, Defendants state that "LESPA does not set forth a standard of care applicable to a common-law claim of negligence" but instead only outlines "provisions to be embodied in a written policy of the local government agency. LESPA, however, requires departments to impose mandatory policies on law

enforcement officers' pursuit behavior and decision-making and is a statement of New Mexico's policy regarding police pursuits. As a result, LESPA is a statute "imposing requirements on professionals" and is relevant to determine the standard of care. *Oakey*, 2017-NMCA-054, ¶ 26.

{21} Third, Defendants argue that LESPA's provisions are just an embodiment of the "common-law" standard. We construe Defendants' third argument to be that LESPA's provisions outline what an objectively reasonable officer would do under the circumstances and that the federal court's finding of "objective reasonableness" actually and necessarily included the considerations outlined in LESPA. We disagree for two reasons. First, Defendants point to Section 29-20-4(C)(1) to suggest that the requirements of LESPA embody the common law. Section 29-20-4(C)(1) states as follows:

[A] law enforcement officer may initiate a high speed pursuit to apprehend a suspect who the officer has reasonable grounds to believe poses a clear and immediate threat of death or serious injury to others or who the officer has probable cause to believe poses a clear and immediate threat to the safety of others that is ongoing and that existed prior to the high speed pursuit[.]

Section 29-20-4(C) mandates that written policies "shall, at a minimum, require" four separate provisions, including the provision Defendants cite but also including three other specific requirements to which Defendants do not refer. See generally § 29-20-4(C) (listing four separate policy requirements linked by the "and" conjunction). Second, the federal court's "objectively reasonable" finding did not consider the state policy objectives set forth in LESPA but instead relied on federal constitutional policy.

{22} Based on the constitutional balance struck by the Supreme Court of the United States in *Scott v. Harris*, 550 U.S. 372 (2007), the federal court rejected Plaintiff's position that Sheriff Parker should have stopped the chase under the circumstances, explaining:

The Estate's underlying assumption that Sheriff Parker should have simply stopped chasing [Driver] and thereby ended the threat to [Driver and Irisema], and the public does not withstand scrutiny. As the Supreme Court explained in *Scott*, "there would have been no way to convey convincingly to [Driver] that the chase was off, and that he was free to go." *Scott*, 550 U.S. at 385. In fact, [Driver] "would have had no idea whether [police] were truly letting him get away, or simply devising a new strategy for capture." *Id.*

As a result, [Driver] ‘might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow.’ *Id.* Additionally, requiring Sheriff Parker to capitulate would create obvious, ‘perverse incentives’ that a ‘fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights.’ *Id.* As did the Supreme Court in *Scott*, [this] Court here rejects the Estate’s implication that Sheriff Parker was required to stop the chase and give up.

LESPA, however, sets forth New Mexico public policy governing law enforcement vehicle pursuits. Section 29-20-4(C)(2) states that written law enforcement policies shall require that “a law enforcement officer shall not initiate or continue a high speed pursuit when the immediate danger to the officer and the public created by the high speed pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large[.]” LESPA additionally outlines a number of factors that law enforcement must consider “when deciding whether to initiate or continue a high speed pursuit[.]” Section 29-20-4(C)(3). For example, under LESPA, in order to initiate and continue a pursuit, an officer considers factors like the road conditions, vehicle and pedestrian traffic, and the ability to locate the suspect at a later date. Section 29-20-4(C)(3)(c)-(e). LESPA reflects the state’s concerns about the dangers posed to the community by police chases. At its heart, the Fourth Amendment involves a “careful balancing” of individual protections and government interests. *Graham*, 490 U.S. at 396. LESPA strikes a different legal and factual balance than federal constitutional law and provides a different framework for a jury to consider the reasonableness of the decision to initiate and continue a pursuit.

{23} Fourth, Defendant appears to argue that LESPA is only relevant to the standard of care if Plaintiff pursues a negligence per se claim, which Defendant maintains Plaintiff cannot establish under LESPA. Defendant cites *Heath v. La Mariana Apartments*, 2008-NMSC-017, ¶ 22, 143 N.M. 657, 180 P.3d 664 and asserts “negligence per se is the same as simple negligence except that the standard of care is defined by statute rather than by common law.” The *Heath* Court, however,

considered potential conflicts between the common law and statutory standards and concluded “[t]he statutory standard serves to supplement the common law standard, and the jury may be instructed on negligence per se using the statutory standard.” *Id.* ¶ 22. *Heath* does not prohibit the use of a statutory standard of care for a simple negligence claim but instead, instructs on how a statutory standard of care supplements the common law to establish a standard of care for a negligence per se claim—when a negligence per se claim is made. We cannot find in the pleadings or briefs where Plaintiff argues for the application of negligence per se.<sup>3</sup>

{24} We return then to collateral estoppel. In *Deflon*, our New Mexico Supreme Court gave two reasons why an issue was not actually litigated and necessarily decided in a prior federal proceeding. One reason was that the “threshold showing” for the federal claims was “different from what [was] needed to establish” the state claims. 2006-NMSC-025, ¶ 17. Another reason was that “a substantial portion of [the p]laintiff’s evidence was excluded in federal court but would not be excluded in state court.” *Id.*

{25} In the present case, a Fourth Amendment claim under § 1983 and a negligence claim pursuant to Section 41-4-5 require different threshold showings. The relevant Fourth Amendment inquiry considers whether a policer officer used excessive force. The issue of excessive force turns on whether the officer’s actions were “objectively reasonable.” *Graham*, 490 U.S. at 396-97. For a TCA claim, the question is whether an officer exercised “the care that a reasonably prudent and qualified officer would exercise in the same situation.” *Wilson*, 1994-NMCA-001, ¶ 9. Despite similar phrasing, the standard of care for police pursuits, informed by LESPA, is broader than the Fourth Amendment standard applied to allegations of excessive force in effectuating a seizure. The federal court balances the nature of the crime committed by the suspect, the threat posed by the suspect, and whether the suspect is fleeing. *See Donahue*, 948 F.3d at 1196. The negligence claim, on the other hand, considers the conduct in the context of the professional standard of care for police pursuits. As a result, the issues were not actually litigated and necessarily decided, and collateral estoppel does not preclude Plaintiff’s negligence claim.

### III. Plaintiff’s Assault and Battery Claims Were Not Actually Litigated and Necessarily Decided in the Federal Court

{26} Plaintiff additionally brought a claim for aggravated assault and battery. Section 41-4-12 waives immunity for law enforcement officers where their actions result in liability for the enumerated torts of assault and battery. *Weinstein*, 1996-NMSC-021, ¶ 6; see § 41-4-12. Defendants continue to argue that the federal court’s determination that Sheriff Parker acted “objectively reasonably” precludes Plaintiff’s assault and battery claims.

{27} We again begin with identifying the “threshold showing” for assault and battery. As an initial matter, the parties cite different sources for the elements of assault and battery. Defendants cite *Fuerschbach v. Southwest Airlines Co.*, 439 F.3d 1197, 1208-09 (10th Cir. 2006), which in turn cites the Restatement (Second) of Torts § 18 (Am. L. Inst. 1965), to define battery. We agree that the Restatement (Second) of Torts § 18 appropriately defines the elements for civil battery and assault. *See Young v. Gila Reg’l Med. Ctr.*, 2021-NMCA-042, ¶¶ 28-29, 495 P.3d 620 (citing the Restatement (Second) of Torts to discuss civil battery defenses); *State v. Ortega*, 1992-NMCA-003, ¶ 12, 113 N.M. 437, 827 P.2d 152 (applying the Restatement (Second) of Torts § 18 to a criminal battery charge).

{28} According to the Restatement (Second) of Torts, the elements of civil battery are as follows:

- (a) [an] act[] intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
- (b) an offensive contact with the person of the other directly or indirectly results.

Restatement (Second) of Torts § 18. For assault, the actor need only intend to cause another to be put in imminent apprehension of harmful or offensive contact, but the contact need not occur. Restatement (Second) of Torts § 21 (Am. L. Inst. 1965) (defining assault). Defendants do not argue that Plaintiff is precluded from proving these elements. Instead, Defendants appear to argue that the federal court’s determination that Sheriff Parker did not violate the Fourth Amendment establishes a complete defense to Plaintiff’s civil assault and battery claims. With this, we disagree.

<sup>3</sup> Section 41-4-12 waives immunity for claims against law enforcement officers, in relevant part, for personal injury arising from the failure to comply with duties established under a statute. To the extent Plaintiff argues that violations of LESPA establish a claim under Section 41-4-12, we are unpersuaded that LESPA imposes a duty on law enforcement officers that creates a cause of action under Section 41-4-12. *See Torres*, 1995-NMSC-025, ¶ 11.

Defendants cite no authority establishing that a plaintiff's failure to satisfy the Fourth Amendment standard is a complete defense to claims for civil assault and battery. {29} In support of their argument that "no different standard" applies to evaluate claims under the Fourth Amendment and intentional torts, Defendants cite *Mead v. O'Connor*, 1959-NMSC-077, 66 N.M. 170, 344 P.2d 278, *State v. Gonzales*, 1982-NMCA-043, 97 N.M. 607, 642 P.2d 210, and *State v. Kraul*, 1977-NMCA-032, 90 N.M. 314, 563 P.2d 108. In *Mead*, our Supreme Court affirmed a jury's verdict against a defendant police officer, because though officers, within reasonable limits, judge "the force necessary to enable them to make arrests" and courts "afford them the utmost protection" when officers act in good faith, "it devolves upon the jury, under the evidence in the case and proper instructions of the court, to resolve these questions." 1959-NMSC-077, ¶ 4. This Court in *Gonzales* and *Kraul* considered self-defense instructions in the context of battery on a peace officer charges. *Gonzales*, 1982-NMCA-043, ¶¶ 1, 16-17; *Kraul*, 1977-NMCA-032, ¶¶ 1, 29, 31-32. In none of these cases did the Courts consider whether the plaintiff's inability to establish a violation of the Fourth Amendment in federal court either precluded claims for civil assault and battery or acted as a complete defense to such claims. Further, unlike *Gonzales* and *Kraul*, the present case does not involve justification for the use of force against a police officer or self-defense, but instead whether a police officer can be civilly liable for assault and battery when a federal court has determined that the officer did not exercise constitutionally excessive force.

{30} Defendants additionally looked to *Reynaga v. County of Bernalillo*, 64 F.3d 670 (10th Cir. 1995) (unpublished table decision).<sup>4</sup> In *Reynaga*, a plaintiff brought claims for excessive force under § 1983 and for battery. *Reynaga*, 64 F.3d at \*\*1-2. The plaintiff argued that the battery jury instruction improperly required the jury to find the officer used "unlawful force." *Id.* at \*2. The *Reynaga* court—citing *Kraul*, *Gonzales*, and *Mead*—determined that because the officer "was privileged to use reasonable force . . . , the court correctly instructed that the battery claim could prevail only if [the] plaintiff proved that [the officer] used 'unlawful force.'" *Reynaga*, 64 F.3d at \*2. Defendants do not argue that Plaintiff would have to prove Sheriff Parker's force was "unlawful" in order to establish civil assault and battery.

Rather, Defendants argue that the legal standards applied to the Fourth Amendment and for civil assault and battery are the same.

{31} The *Reynaga* court did not consider whether the standard for the Fourth Amendment and the standard for defending civil battery were the same. The *Reynaga* court determined the jury instruction requiring "unlawful force" comported with a "general rule," which the court quoted from 6 Am. Jur. 2d, *Assault & Battery* § 125 (1963): "a law enforcement officer 'is not civilly liable for' using 'such force as may be reasonably necessary in the enforcement of law and the preservation of order.'" *Id.* at \*2 (quoting 6 Am. Jur. 2d, *Assault & Battery* § 125 (1963)). The current iteration of a "general rule," or privilege, for law enforcement officers to use force, drawn from the same source that the *Reynaga* court quoted, states:

Police officers may not be held liable in an action for assault and battery for the use of reasonably necessary force in the enforcement of the law. Officers are privileged to use force or commit battery when making a lawful arrest. The test for qualified privilege in an assault and battery suit is both subjective and objective: the officer must subjectively believe that he or she used no more force than necessary, but the officer's judgment is compared to that of a hypothetical reasonable police officer placed in the same situation.

The use of deadly force by a peace officer is privileged where used to prevent death or serious bodily harm to the officer or other persons.

6 Am. Jur. 2d, *Assault & Battery* § 104 (2021) (footnotes omitted). Thus, the "general rule" that supported the *Reynaga* decision has been amended to include both an objective and a subjective test. The Fourth Amendment is famously a strictly objective test. As a result, *Reynaga* does not persuade us that a failure to establish a Fourth Amendment violation erects a defense to civil claims for assault and battery brought under the TCA.

{32} None of the cases cited by Defendants directly address the matter at hand: whether a plaintiff's failure to establish a Fourth Amendment claim for excessive force likewise establishes a defense for civil assault and battery claims brought

under the TCA. The parties do not propose, and we do not adopt, a specific privilege as a defense to a civil claim of assault and battery brought against a police officer. Nevertheless, the traditional defenses for law enforcement to assert in response to civil assault and battery claims are not the same as the "objectively reasonable officer" standard that is at the root of Fourth Amendment analysis. See, e.g., 6 Am. Jur. 2d, *Assault & Battery* § 104 (defining an objective and subjective test for the privileged use of force for police officers as a defense to civil assault and battery); Restatement (Second) of Torts § 131 (1965) (affording a privilege for the use of deadly force by a police officer if the officer reasonably believed the other committed a felony and reasonably believed the arrest could not "otherwise be effected"). We therefore reject Defendants' suggestion that the federal court's determination that Sheriff Parker's actions were objectively reasonable under the Fourth Amendment is a complete defense to civil assault and battery and hold that the issues pertaining to defenses to civil assault and battery were not actually litigated and necessarily decided by the federal court.

#### IV. Plaintiff Did Not Have A Full and Fair Opportunity to Litigate Her Claims in the Federal Court

{33} We further hold that Plaintiff did not have a full and fair opportunity to litigate the state law issues in the federal court proceeding. *Tunis*, 2014-NMCA-025, ¶ 19. We pause briefly to address the mechanism for collateral estoppel. Generally, we do not reach whether the parties had an opportunity to fully and fairly litigate if we determine that the other four elements of collateral estoppel were not met. See *Shovelin v. Cent. N.M. Elec. Coop., Inc.*, 1993-NMSC-015, ¶ 10, 115 N.M. 293, 850 P.2d 996 ("If the movant introduces sufficient evidence to meet all elements of this test, the trial court must then determine whether the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior litigation."). In the present case, however, the differences between the federal and the state proceedings merit our attention. *Id.* ¶ 15 (weighing, in relation to a full and fair opportunity to litigate, "countervailing factors including, but not limited to, the incentive for vigorous prosecution or defense of the prior litigation; procedural differences between the prior and current litigation, including the presence or absence of a jury; and the possibility of inconsistent verdicts").

<sup>4</sup> Defendants cite two unpublished federal cases, *Park v. Gaitan*, 680 F. App'x 724 (10th Cir. 2017) (unpublished table decision) and *Navarro v. N.M. Dep't of Pub. Safety*, No. 2:16-cv-1180, 2018 WL 4148452 (D.N.M. Aug. 30, 2018) (mem. and order). These courts cited *Gonzales*, *Mead*, and *Kraul* to dismiss state assault and battery claims after determining the plaintiff failed to establish a Fourth Amendment violation. *Park*, 680 Fed. App'x at 740, 743-44; *Navarro*, No. 2:16-cv-1180, 2018 WL 4148452 at \*\*12-13.

{34} First, in state court, the question of reasonableness is generally reserved for the jury, while the federal court decides the constitutional “reasonableness” question as a matter of law in the excessive force context. Under the Fourth Amendment, the question whether the force used was reasonable is a mixed question of law and fact. See *Cavanaugh*, 718 F.3d at 1254. At the summary judgment stage, the federal court considers “whether, under all the circumstances, the officer’s use of force was reasonable.” *Id.* at 1255. This question is “channeled” through the *Graham* factors. *Cavanaugh*, 718 F.3d at 1255. If the facts pertaining to these factors are disputed, the matter of excessive force goes to the jury. *Id.* at 1255. If the facts are not disputed, the court decides whether the officer’s conduct was reasonable as a matter of law. See *Donahue*, 948 F.3d at 1187 (“[W]here there are no disputed questions of historical fact such as on summary judgment, the court makes the determination of reasonable suspicion, probable cause, or excessive force on its own as a question of law.” (omissions, alterations, internal quotation marks, and citation omitted)). New Mexico courts, on the other hand, prefer reasonableness questions to be decided by a jury. See *Oakey*, 2017-NMCA-054, ¶ 24 (observing that “questions concerning whether the defendant has exercised proper care in the performance of a legal duty are

factual issues”); see also *Martinez v. N.M. Dep’t of Transp.*, 2013-NMSC-005, ¶ 47, 296 P.3d 468 (“Questions of ‘reasonableness’ are quintessential issues for a jury to resolve.”). Plaintiff therefore did not have a full and fair opportunity to have a jury determine reasonableness in relation to the TCA claims.

{35} Second, the federal and state causes of action allocate the burden of proof differently. The federal qualified immunity analysis shifts the entire burden of proof to the plaintiff. See *Carabajal*, 847 F.3d at 1208 (describing the heavy burden borne by the plaintiff to overcome qualified immunity at the summary judgment stage). For the TCA claims, to the extent “reasonableness” is a defense, the defendant bears the burden to establish the defense or privilege. See UJI 13-304 NMRA (assigning the burden of proof to the party relying upon a defense). In federal court, therefore, Defendants were required to shoulder none of the burden, whereas in state court, Defendants would have to prove their own defenses.

{36} Third, the federal court explicitly did not consider the facts in the context of the state claims. The federal court stated: “[t]he facts set forth here are those critical to the qualified immunity analysis and the background of the case, not to the state law claims that may well permit the parties to consider [Driver’s] state of mind as well as Sheriff Parker’s.” With this comment, the

federal court appears to be referring to the tort concept of comparative fault, in which those that contribute to an injury are held liable for only their own portion of the fault. See *Garcia v. Gordon*, 2004-NMCA-114, ¶ 8, 136 N.M. 394, 98 P.3d 1044 (“Pure comparative negligence denies recovery for one’s own fault; it permits recovery to the extent of another’s fault; and it holds all parties fully responsible for their own respective acts to the degree that those acts have caused harm.” (internal quotation marks and citation omitted)). The parties did not brief comparative fault or its relevance to the collateral estoppel analysis, and so we do not address it. Nevertheless, the federal court noted that the facts could be viewed differently in the context of the TCA claims, which suggests Plaintiff did not have a full and fair opportunity to litigate the TCA claims.

#### CONCLUSION

{37} Having concluded that collateral estoppel does not apply and Plaintiff’s state court claims brought pursuant to the TCA are not precluded by the federal court’s grant of summary judgment on the § 1983 excessive force claim, we reverse and remand for further proceedings.

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

**KATHERINE A. WRAY, Judge  
WE CONCUR:**

**J. MILES HANISEE, Chief Judge  
KRISTINA BOGARDUS, Judge**

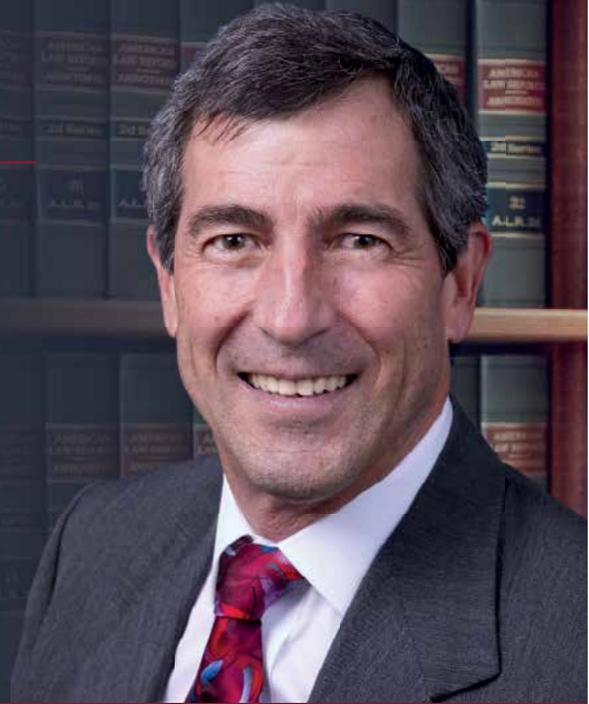
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| <b>October 11</b>   | Trauma-Informed Lawyering in Domestic Abuse Cases CLE  |
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| <b>October 25</b>   | Divorce and Custody in DV-Related DMs CLE  |
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| <b>November 4</b>   | Fourth Judicial District Telephonic Legal Fair   |
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**Senior Assistant City Attorney  
(REVISED)**

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

# Classified

## Positions

### Managing Attorney

DNA-People's Legal Services is a non-profit law firm providing high quality legal services to persons living in poverty on the Navajo, Hopi, and Jicarilla Apache Nations, and in parts of Northern Arizona, Northwest New Mexico, and Southern Utah. DNA is seeking to hire a Managing Attorney (State Licensed) for our Farmington, New Mexico office. The Farmington office Managing Attorney must be a graduate of an accredited law school, and must also be a member of the New Mexico Bar or able to gain admission to the New Mexico bar within one year by motion or reciprocity. Preference will be given to a state licensed attorney who is also licensed to practice law in Navajo, Hopi, or Jicarilla Apache Tribal Court. Preference is given to qualified Navajo and other Native American applicants. For a full position description and Employment Application go to: <https://dnalegalservices.org/career-opportunities-2/>. Submit an Employment Application, Resume, Cover Letter, Transcripts (if applicant graduated within the last two years) and Writing Sample (Attorney applicants only) to Email: [HResources@dnalegalservices.org](mailto:HResources@dnalegalservices.org) | Direct: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted)

### 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/>

### Briefing Attorney

Excellent licensed briefing attorney with strong education, experience and appellate qualifications. Practice includes Texas, New Mexico, and other states, State and Federal Courts. Expect an active trial practice for Nationally recognized Texas NM Plaintiff PI trial attorney in El Paso/Las Cruces. Full-time Salary range: \$80,000.00 - \$150,000.00 per year. Please submit resume and writing sample to [jimscherr@yahoo.com](mailto:jimscherr@yahoo.com)

### **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!

### **Associate Attorney**

Budagher & Tann, LLC, an Albuquerque law firm specializing in estate planning, probate, taxation, business, and real estate matters has an immediate opening for an associate attorney with 0-5 years of experience. We offer a collegial balanced work / life environment and do not track billable hours, vacation, or sick leave. Friendly working environment with opportunity to grow with the firm. Competitive salary and benefits. Please send letter of interest and resume to [adminassistant@budagherlaw.com](mailto:adminassistant@budagherlaw.com).

### **Commercial Liability Defense, Coverage Litigation Attorney P/T maybe F/T**

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

### **Associate Attorney**

Quinones Law Firm LLC, a well-established defense firm in search of a full-time associate attorney with 0-5 years' experience, preferably with current or past judicial clerkship experience. Primary practice in general defense litigation (employment law, civil rights, tort law). Please send resume to [quinoneslaw@cybermesa.com](mailto:quinoneslaw@cybermesa.com)

### **Various Assistant City Attorney Positions**

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

### **Associate Attorney**

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

### **Eleventh Judicial District Attorney's Office, Div II**

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 re-search/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 court-room practice and a supportive and collegial work environment. Salaries are negotiable based on experience. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to [Bmartin@da.state.nm.us](mailto:Bmartin@da.state.nm.us). Position to commence immediately and will remain opened until filled.

### **Personnel Hearing Officer**

The City of Albuquerque is soliciting responses from qualified firms or attorneys interested in serving as contract Personnel Hearing Officer for personnel hearings under the City's Merit System Ordinances, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994. The hearing officers may also provide services for other miscellaneous hearings under assorted City Ordinances. The full Request for Proposals can be accessed at: <https://cabq.bonfirehub.com/portal/?tab=openOpportunities> Proposals are due no later than January 4, 2023 @ 4:00pm Local Time.

### **Associate Attorney – Civil Litigation**

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

## Assistant Federal Public Defender – Las Cruces 2022-10

The Federal Public Defender for the District of New Mexico is accepting applications for a full-time Assistant Federal Public Defender in the Las Cruces office. The federal defender organization operates under the Criminal Justice Act, 18 U.S.C. §3006A, to provide criminal defense and related help in federal courts. Job Description/Qualifications: This position is for a licensed attorney with three years minimum criminal trial experience preferred. Other equally relevant experience will be considered. Successful applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Responsibilities include, but are not limited to: managing an extensive caseload, developing litigation strategies, preparing pleadings, appearing in court at all stages of litigation, and meeting with clients, experts, witnesses, family members and others. Applicants must possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court and other agency personnel. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Requirements: Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, by the time of entrance on duty. The selected candidate will be required to obtain admission to the New Mexico State Bar and the Supreme Court within the first year of employment. Applicants must be eligible to work for the United States. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. Salary is dependent upon qualifications and experience, and is equivalent to salaries of Assistant U.S. Attorneys with similar qualifications and experience. Salary is payable only by electronic funds transfer (direct deposit). Conditions of Employment: Appointment to the position is contingent upon the successful completion of a background check and/or investigation including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will." You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such

prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters. Application Information: In one PDF document, please submit a statement of interest and resume describing your trial and appellate work, with three references to: Margaret A. Katze, Federal Public Defender; FDNM-HR@fd.org; Reference 2022-10 in the subject. Applications must be received by November 14, 2022. Writing samples will be required only from those selected for interview. Position(s) will remain open until filled and is subject to the availability of funding. More than one position may be filled with this advertisement. The Federal Public Defender is an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

## Civil Litigation Defense Firm Seeking Associate and Senior Associate Attorneys

Ray | Pena | McChristian, PC seeks both new attorneys and attorneys with 3+ years of experience to join its Albuquerque office either as Associates or Senior Associates on a Shareholder track. RPM is an AV rated, regional civil defense firm with offices in Texas and New Mexico handling predominantly defense matters for businesses, insurers and government agencies. If you're a seasoned NM lawyer and have clients to bring, we have the infrastructure to grow your practice the right way. And if you're a new or young lawyer we also have plenty of work to take your skills to the next level. RPM offers a highly competitive compensation package along with a great office environment in Uptown ABQ and a team of excellent legal support professionals. Email your resume and a letter of interest to [cray@raylaw.com](mailto:cray@raylaw.com).

## 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).

## New Mexico Medical Board Executive Director Position

DESCRIPTION: The New Mexico Medical Board (Board) is the state agency responsible for the regulation and licensing of medical doctors (physicians), physician assistants, anesthesiologist assistants, genetic counselors, polysomnographic technologists, naprapaths and naturopaths. The Executive Director's primary responsibilities are to manage the Board's operations that includes a total of nineteen (19) staff and an annual budget of over \$2,500,000. The Director oversees licensing, compliance and investigations of Medical Professionals licensed in the State of New Mexico and provides direction to the agency staff. This position is responsible for recommending and drafting rules, policy and legislation as it relates to the Medical Board. The incumbent serves as the representative of the Medical Board to all local, state and national organizations. The incumbent shall have a strong knowledge of regulatory processes, to include the licensing, disciplining and ensuring compliance of medical professional rules and regulations; is familiar with legislative and educational processes related to the medical profession; and has a strong knowledge of the state and federal laws/regulations applicable to the medical profession. Has the ability to provide strong and ethical leadership and governance for the Board; possess strong communication, interpersonal and management skills; exercise sound judgment; and appropriately advise the Board on matters related to the regulation of the medical profession in New Mexico. QUALIFICATIONS: Educational requirements: Master's Degree in Public Administration, Public Health, Hospital Administration, Healthcare Administration or Management, and/or a Juris Doctorate. Experience Requirements: Ten (10) years executive level management experience in a medical or legal field which must include the oversight of credentialing of professionals, experience must also include working in the legislative process (recommending, drafting and reviewing legislation). APPLICATION PROCESS: In order to be considered for this position, qualified candidates should send a resume, CV and cover letter to: Gayle Mascarenas, New Mexico Medical Board, 2055 S. Pacheco Street, Building 400, Santa Fe, NM 87505; Phone (505) 476-7244; Email: [Gayle.Mascarenasl@state.nm.us](mailto:Gayle.Mascarenasl@state.nm.us)

## Associate Attorney

Santa Fe Law Group seeks an associate attorney with a strong interest in water law and real estate. Our boutique practice in Santa Fe also includes estate planning, business, construction, family law, and related litigation. Send your resume, statement of interest, transcript, and writing sample to [srf@santafelawgroup.com](mailto:srf@santafelawgroup.com). All levels considered, with ideal candidates having 1-4 years of practice experience.

### **The Office of the Second Judicial District Attorney**

The Office of the Second Judicial District Attorney improves the quality of life of the citizens of Bernalillo County by reducing crime through thoughtful enforcement of the law and the development of a criminal justice system. The Office is an Equal Employment Opportunity Employer and is seeking applicants for Assistant Trial Attorney, Trial Attorney, Senior Trial Attorney and Deputy District Attorney positions. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. Attorneys must be licensed to practice law in the State of NM or be able to obtain a limited law license. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a disability. Please submit resumes to: <https://berncoda.com/careers/>

### **Attorney with 2-5 Years' Experience**

Harrison, Hart & Davis, LLC, an Albuquerque-based law firm focusing on trials and appeals in wrongful death, class action, civil rights, and criminal defense cases, seeks an associate attorney with 2-5 years experience. Familiarity with federal court preferred. Judicial clerkship favored. We will also consider applications from more experienced attorneys looking to join our growing practice. We offer a competitive salary and benefits, including employer-paid health insurance, 401(k), and profit sharing. Applications should be submitted to [nick@harrisonhartlaw.com](mailto:nick@harrisonhartlaw.com), and must include a resume and at least one writing sample.

### **Litigation Attorney**

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

### **Attorney Associate (FT-At Will)**

**#10102478**

### **Center For Self Help and Dispute Resolution Foreclosure Settlement Program**

The Second Judicial District Court is accepting applications for a Full Time At Will Attorney Associate. This position will be assigned to the Foreclosure Settlement Program (FSP) and will operate under the direction of the Chief Judge, the Presiding Civil Judge, Managing Attorney, and upper level Court management. The Attorney Associate will facilitate settlement facilitation conferences between lenders and borrowers in residential foreclosure cases pending before the Court and will be responsible for conducting status conferences, settlement facilitations and reporting of statistical data to Court management. The majority of communication will take place via telephone and email, with occasional in-person or virtual settlement facilitations. The Attorney Associate is independent and impartial and shall be governed by the Rules of Professional Conduct, Mediation Procedures Act, NMSA 1978 §44-7B-1 to 44-7B-6, and Mediation Ethics and Standards of Practice. The Attorney Associate will coordinate with program administrative staff to support the FSP. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and have three (3) years of experience in the practice of applicable law, or as a law clerk. Experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: \$45,442 hourly, plus benefits. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at [www.nmcourts.gov](http://www.nmcourts.gov). Prospectively, the New Mexico Judicial Branch is requiring full vaccination status as a condition of employment. CLOSES: November 9, 2022 at 5:00 p.m.

### **Judge**

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time Judge for the Pueblo Court with at least 5 years of legal experience to adjudicate criminal and civil cases. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply by November 15. Application instructions and position details at: [www.lagunapueblo-nsn.gov/employment.aspx](http://www.lagunapueblo-nsn.gov/employment.aspx)

### **Associate Attorney**

Moses, Dunn, Farmer & Tuthill (MDFT) has an opening for a 2-to-6-year attorney. Our firm practices in a wide variety of civil practice areas including transactions, employment, litigation, and commercial legal advice, serving the needs of our world-wide business clientele and individuals from all walks of life. We are an AV Preeminent® firm serving New Mexico clients for more than 67 years. We offer a flexible billable hour requirement and compensation structure. At MDFT, you will be mentored by attorneys with decades of experience and be given ample opportunities to grow. Along with a collegial and collaborative environment from the top down, is the expectation that you will take ownership over your work and invest in the Firm and its clients just as they are investing in you. If you share our values and believe that you can thrive at MDFT, we look forward to talking with you about joining our team! Please send your resume to Lucas Frank, [lucas@moseslaw.com](mailto:lucas@moseslaw.com).

### **Part-Time Attorney**

Senior Citizens' Law Office, Inc. (SCLO) seeks a part-time (2 days a week) attorney to assist in handling our estate planning practice beginning January 3, 2023. SCLO provides simple wills, Transfer on Death Deeds, powers of attorney for health and finances, and non-contested probates to seniors with small estates. The ideal candidate should be patient with and sensitive to seniors and have some background in estate planning. Salary is DOE. Requirements: Licensed New Mexico Bar member. Proficiency in Spanish is a plus but not required. How to Apply: Applications should be emailed to [bdowning@sclonm.org](mailto:bdowning@sclonm.org) and must include a cover letter, and three references.

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

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

### Liquor License Hearing Officer

The City of Santa Fe, New Mexico is requesting letters of interest and resumes from attorneys who are interested in conducting adjudicatory hearings. The liquor hearing officer is responsible for conducting hearings related to liquor license applications and waivers of distance requirements from churches or schools, when applicable, for liquor license applications, special dispenser permits and public celebration permits. Interested applicants must be a licensed member of the New Mexico Bar. The hearing officer will conduct the hearings and submit a written report for the Governing Body no later than the seventh calendar day following any hearing, forward to the city clerk their recommendation of approval or denial, which shall be supported by findings and conclusions, together with a record, which shall be made of such hearing as provided by law. The hearings are generally held once or twice a month and can be conducted virtually, via Zoom. The City anticipates an average of two hearings per month at a rate of \$150 per hearing. The hearing officer does not need to attend the Governing Body meetings. Please send letters of interest and resumes to the City Clerk at [kmmihelcic@santafenm.gov](mailto:kmmihelcic@santafenm.gov), no later than 5 p.m. on Monday, October 31, 2022 or call (505)955-6520 for additional information.

### Full-time entry Level Attorney

The Judicial Education Center (JEC) at UNM School of Law seeks a full-time entry level Attorney to perform various tasks related to developing in-person and online law-focused judicial education programs, as well as legal research and writing for print and online educational resources. JEC provides education and resources for judges and other personnel in NM's state, county and municipal courts. Applicants should have 0-3 years of experience working as a licensed attorney. For best consideration, apply by November 3, 2022. For more details and to apply, go to <https://unm.csod.com/ux/ats/careersite/18/home/requisition/22133?c=unm>. Candidates with diverse experiences and backgrounds are encouraged to apply

### Associate Attorneys

Chavez Legal Group, In-house counsel for Loya Insurance Group, has openings for associate attorneys with 0-5 years of experience. We offer a collegial office environment; a good work / life balance, and many excellent related benefits. Our Albuquerque office is growing and offering a competitive salary as well. Please send your resume to: [Ulibarri@chavezlegalgroup.com](mailto:Ulibarri@chavezlegalgroup.com).

### Assistant City Attorney – Aviation Department

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

### Attorney with 2-5 Years' Experience

James Wood Law, a law firm in Albuquerque, NM specializing in Plaintiffs' medical malpractice cases, seeks an associate attorney with 2-5 years' experience. (We will also consider applications from more experienced attorneys.) We offer a competitive salary and benefits, including 401(k) and employer-paid health insurance. Please submit a resume and one writing sample to [jwood@jameswoodlaw.com](mailto:jwood@jameswoodlaw.com).

### Legal Counsel

New Mexico Gas Company has an opening for a Legal Counsel role in Albuquerque, NM. Ignite your career with New Mexico Gas Company! By joining the NMGC family, you can count on a safety-focused work environment, competitive pay and benefits and opportunities for training and personalized development to ignite your career. We embrace diversity and the inclusion of all; our difference, unique perspectives and talents are our strengths and integral to the success of our company. Position Concept: Provides professional legal guidance and assistance internally for the Company. Prepares legal research and analysis of issues. May represent the company in various proceedings. Candidate should have experience with drafting and negotiating contracts in one or more of the following subject matter areas: construction contracts; professional services agreements; procurement contracts; information technology (including software and SaaS) contracts; and real property. Limited experience in these areas does not necessarily preclude a candidate from consideration, however, the ideal candidate will possess at least some experience in a transactional field. Education: Juris Doctorate. Licenses/Certifications: Membership in New Mexico State Bar, in good standing. Must maintain annual continuing legal education (CLE) requirements and must maintain state licensure. Must possess a valid driver's license and meet the acceptable driving record requirements of the Company. Experience: Visit [www.nmgco.com/careers](http://www.nmgco.com/careers) for more details on the duties and responsibilities of this position and the experience requirements for each level. Salary Starting salary for a Legal Counsel is \$96,200 to \$120,250; Legal Counsel II is \$110,600 to \$138,250; and Senior Legal Counsel is \$127,200 to \$159,000. Benefits Package: \*Short Term Incentive Program \*401k Savings plan w/ company matching \* Pension plan \* PTO\* Paid Holiday time \* Medical, Dental and Vision Coverage \*Tuition Assistance Program \* Gym Subsidy\* Employee Common Share Purchase Plan

### Civil Litigation Attorney

Boutique firm in Albuquerque seeking a self-starter with an interest in civil litigation. Ideal candidate has strong drafting skills, proactive work style, and the ability to communicate compassionately with clients. You will be a valued member of our growing team. Must be licensed to practice in New Mexico. All experience levels welcome to apply. Competitive salary and benefits package. Please email your cover letter and resume to [whlaw.employment@gmail.com](mailto:whlaw.employment@gmail.com).

## City Attorney

**Job Description:** The City of Gallup is recruiting for a City Attorney. The City Attorney is one of two officers appointed by the Mayor and City Council. The City Attorney serves at the pleasure of the City Council and is an at-will employee. Essential responsibilities and duties may include, but are not limited to the following: Is responsible for providing legal representation and legal counsel in all matters to the City Council; its committees, boards and commissions; the City Manager; and to the departments within the City of Gallup. Prepares or assists in the preparation of City ordinances, resolutions, agreements, contracts, deeds, leases, joint powers agreements and approves the form of such instruments. Develops new ordinances and resolutions to implement the policies of the City Council. Analyzes changes in Federal and state law and court decisions to determine the impact on the City. Represents the City in legal actions and ensures that violations of the City Code are prosecuted. Retains outside counsel to provide legal counsel and representation in specialized areas of law and oversees and directs outside counsel. Represents the City in both administrative and judicial litigation and retains and works with outside counsel to represent the City in litigation in specialized areas of law. Performs other duties as may be required by the Charter, City Code, or the Mayor and City Council. **STARTING SALARY AND BENEFITS:** \$100,000 - \$130,000 annually, DOQ. The City provides excellent fringe benefits: PERA Retirement Plan; VOYA Deferred Compensation; and Health, Dental, Life & Vision Plan. **MINIMUM REQUIRED QUALIFICATIONS:** Graduation from an accredited law school with a possession of a Juris Doctorate degree; Five (5) years of experience practicing law; Valid driver's license. Must meet City's insurability requirements. **SPECIAL REQUIREMENTS:** Must be licensed to practice law in the State of New Mexico. **PREFERRED QUALIFICATIONS:** At least eight (8) years of experience practicing in areas of law relevant to the representation of New Mexico governmental entities; Experience representing New Mexico municipalities, or other similar governmental entities, either as an employee, contract attorney, or for a law firm that is contracted to do work for such entity; Legal experience in a broad range of areas of law including: open meetings, public records, government contracting, public procurement, labor and employee relations, civil rights, tort claims, land use, utilities, and prosecution of criminal offenses; Experience drafting legal documents including ordinances, resolutions, policies and procedures, contracts, joint powers agreements, leases and land conveyancing documents, administrative and judicial pleadings, and legal opinions. Applicants selected to interview will be asked to submit a writing sample. **CLOSING DATE:** Open until filled, however the first review of applications will occur on November 15, 2022. The City of Gal-

lup is an Equal Opportunity Employer that is committed to hiring qualified individuals and does not discriminate in employment or the provision of services on the basis of race, color, religion, national origin or ancestry, disability, age, gender, Vietnam Era or disabled veteran status, sexual orientation or medical condition. All applicants will be evaluated solely on the basis on job-related qualifications. For more information and to apply for this position, please visit the City of Gallup's website at: [www.GallupNM.gov](http://www.GallupNM.gov)

## Entry Level and Experienced Trial Attorneys

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. The 13th Judicial District has family friendly policies. Salary is depending on experience. Ranging from \$65,000- \$92,000 Contact Krissy Fajardo @ [kfajardo@da.state.nm.us](mailto: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!

## Attorneys

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

## Associate Attorney

Modrall Sperling is seeking an associate attorney to join our general litigation practice in Albuquerque. Preferred candidates will have 2 to 4 years of civil litigation experience with excellent research, writing, and oral skills. Experience working on large cases, including conducting legal research, drafting briefs, taking and defending depositions, and arguing in court preferred. Strong academic credentials required. Candidates must be admitted to, or eligible for admission to, the New Mexico Bar. As one of New Mexico's largest firms, we are able to offer associates high-quality, challenging work and outstanding career opportunities. Please send a letter of interest and resume to [attyapplicant@modrall.com](mailto:attyapplicant@modrall.com). All inquiries will be kept confidential.

## Deputy City Attorney

Fulltime professional position which will assure that civil and criminal actions are resolved within established guidelines; advises the City Attorney on operational and legal issues; assumes operational functions of the City Attorney in his/her absence; coordinates the management of legal issues with staff, contract law firms and independent counsel; represents the City in litigation, negotiations, settlements and other municipal legal proceedings; confers with and provides advice and counsel to City officials and staff. Reviews legal documents, contracts, leases and issues; conducts factual and legal analysis to determine criminal and civil liabilities based on the facts of law and evidence. Reviews legal documents, contracts, leases and issues; conducts factual and legal analysis to determine criminal strategies and civil liabilities based on the facts of law and evidence; reviews and approves resolution strategies; advises staff on negotiation and litigation tactics; conducts conferences with opposing parties and counsel concerning settlement of cases; defends civil cases in both federal and state District Court and represents the City in both Tenth Circuit and New Mexico appellate courts. Monitors trends in municipal law and risk management issues, and recommends operational, procedural and policy improvements. Juris Doctor Degree AND seven year's experience in a civil and criminal legal practice; at least one year of experience in municipal finance, land use, and public labor law is preferred. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico, and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at [www.las-cruces.org](http://www.las-cruces.org). Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed. **SALARY:** \$93,935.71 - \$136,743.36 / Annually **CLOSING DATE:** Continuous.

**Paralegal or Sr. Paralegal and Legal Assistant or Sr. Legal Assistant**

**JOB TITLE:** Paralegal or Sr. Paralegal; **CLASSIFICATION:** Non-Exempt; **DEPARTMENT/DIVISION:** County Attorney; **SUPERVISOR:** County Attorney; **Paralegal Salary Range:** \$63,751 - \$93,977; **Sr. Paralegal Salary Range:** \$70,286 - \$103,610. **Position Summary:** Under supervision of the County Attorney, or designee, performs the functions of a Certified Paralegal including routine and complex aspects of legal and factual research, data compilation and analysis, drafting legal documents and affidavits, and under supervision, conveying routine legal information to clients. Conducts research and analyze legal issues and matters, evaluates compliance with applicable laws and regulations, assists in implementation of new programs/systems. Maintains confidentiality of information as required by the Rules Governing Paralegal Services and County ordinances and policies. **Paralegal Minimum Qualifications:** Graduation from a paralegal program that is: (a) approved by the American Bar Association; or (b) completion of post-secondary legal assistant program which consists of a minimum

of sixty (60) semester hours or equivalent, as defined by the American Bar Association Guidelines; (c) an associate degree in Legal Studies or closely related field; **OR Certification** by the National Association of Legal Assistants, Incorporated, the National Federation of Paralegal Associations, Incorporated or other equivalent national or state competency examination plus at least one (1) year of substantive law-related experience under the supervision of a licensed attorney; **OR Graduation** from an accredited law school and not disbarred or suspended from the practice of law by the State of New Mexico or any other jurisdiction. Must possess or obtain and maintain membership as a Paralegal in New Mexico State Bar within 6 months of employment. Will be required to annually attend twelve (12) hours of Paralegal continuing education. **Sr. Paralegal Additional Minimum Qualifications:** Additional three years' experience as a legal secretary, legal assistant, or paralegal. **JOB TITLE:** Legal Assistant or Sr. Legal Assistant; **CLASSIFICATION:** Non-Exempt; **DEPARTMENT/DIVISION:** County Attorney; **SUPERVISOR:** County Attorney; **Legal Assistant Salary**

**Range:** \$48,732 to \$71,837; **Sr. Legal Assistant Salary Range:** \$53,727 to \$79,200; **Position Summary:** Under general supervision of the County Attorney, performs the functions of a Legal Assistant and independently manages the administrative procedures and processes of the Attorney's office. Maintains confidentiality of all privileged information.; **Legal Assistant Minimum Qualifications:** High School Diploma or GED. Two years of general administrative experience or two years of experience as a legal secretary, legal assistant, or paralegal. Must successfully complete computer skills test administered by Human Resources. **Sr. Legal Assistant Additional Minimum Qualifications:** •Additional three years' experience as a legal secretary, legal assistant, or paralegal. **Preferred Qualifications:** Notary Certification. Graduation from ABA approved legal assistant program. **Requisition numbers associated with these 2 positions are 23048 and 23050.** These 2 postings are set to close on 11/30/2022. The Los Alamos County website where you can apply is: <https://selfservice.losalamosnm.us/ess/employmentopportunities>

# eNews

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Contact Marcia Ulibarri,  
at 505-797-6058 or email [marcia.ulibarri@sbnm.org](mailto:marcia.ulibarri@sbnm.org)

### Experienced Paralegal

Jackson Law, a personal injury law firm, is looking for an experienced paralegal, who will be a shared employee with two other firms. The ideal candidate has paralegal experience and excellent references. Qualified candidates should email their resume and references to wes@legalactionnm.com with the subject line "paralegal position."

### Legal Assistant Supervisor – 13th Judicial District Attorney

The Sandoval County Office of the 13th Judicial District Attorney in Bernalillo, New Mexico has an opening for a Supervising Legal Assistant. This position requires extensive knowledge of the criminal justice system and office organization and tasks such as trial preparation, maintenance of calendars, customer service and general office administrative functions. The position requires the supervision and training of a staff of 10-13 legal assistants. Preferred qualifications include at least 3 years working in a District Attorney's Office or related Criminal Justice organization. Advanced knowledge of the Case Management System (CMS) and supervisory experience. Salary commensurate with experience within the FY2023 New Mexico District Attorney Classification Salary Schedule. Please apply @ <https://www.13th.nmdas.com/> where you will have access to our application. Email applications to kfajardo@da.state.nm.us

### 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.

### Legal Secretary

Downtown firm looking for legal secretary who is a team player with a great attitude. Top dollar wages to start with a sign-up bonus of \$1,000 after 30 days. Duties include calendaring, scheduling, preparation of pleadings and client interaction. Benefits include health, dental, disability, 401K, and parking. Contact NMLegalOffice15@gmail.com with resume and to set up interview.

### Firm Administrator

Albuquerque Law firm seeking a Firm Administrator to join our team. We are seeking a dynamic individual with strong interpersonal and leadership skills who is a problem-solver, has integrity, can multi-task, manage time effectively, and will nurture a team environment. Duties include, but are not limited to: supervise and train staff, HR duties, firm operations, equipment and office services management, vendor management, facilities management, strategic management, and event management. Extreme proficiency in Microsoft Office Suite required, experience with ProLaw and/or Centerbase a bonus. Bachelor's degree in HR, Business Administration, or other related field required. Master's degree in related field preferred. Prefer 3-5 years of law office management experience or in a senior management position. Benefits include health, dental, 401(k) plan, and PTO. Please email resume, professional references, and salary requirements to ewideman@pbwslaw.com. All replies are confidential.

### Paralegal

Are you driven, organized, and interested in civil litigation? We want to hire you! Albuquerque firm looking for a motivated and compassionate paralegal to join our hard-working team. Must demonstrate knowledge of State and Federal Court rules and procedures. Salary is dependent on experience. Telework not optional for this position. Open to full or part time. COVID-19 vaccination is required. Please email your cover letter and resume to whlaw.employment@gmail.com.

### Office Manager with Paralegal Experience

Small law firm looking to hire an office manager with paralegal experience. The ideal candidate will be responsible for full cycle bookkeeping duties, preparation of bank reconciliations, payroll, accounts payable, accounts receivable, tax filings (GRT, installments), and general office assistance as required. This role is key support to the entire office functions and is the secondary point of customer contact; providing ongoing customer service through problem solving, analyzing challenges, providing solutions, and completing jobs in a timely manner. If interested, email your resume to info@vozhlaw.com

### Experienced Legal Secretary

Peifer, Hanson, Mullins & Baker, P.A. is hiring a full time experienced legal secretary. The successful candidate must be a detail-oriented team player with strong organization and motivational skills. Salary DOE. Profit-sharing, health insurance, three weeks leave first year, and overtime available. Please send resume, references and salary requirements via email to Shannon Hidalgo at shidalgo@peiferlaw.com. No phone calls please.

### 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

### Paralegal/Legal Assistant

Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be friendly, honest, highly motivated, well organized, detail oriented, proficient with computers and possess excellent verbal and written skills. Duties include requesting & reviewing medical records, send out Letter of Protection & Letter of Representation, opening claims with insurance companies and preparing demand packages as well as meeting with clients. We are searching for an exceptional individual with top level skills. We offer a retirement plan funded by the firm, health insurance, paid vacation, and sick leave. Salary and bonuses are commensurate with experience. Please submit your cover letter and resume to santafelawoffice2@gmail.com

## Office Space

### Sun Valley Suites – All Inclusive North Valley Office Suites

Locally owned and operated. Move-in ready suite ideal for a solo attorney. Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Visit our web-site [www.sunvalleyabq.com](http://www.sunvalleyabq.com) for more details or call Jaelyn Armijo at 505-343-2016.

### Office Suites-ALL INCLUSIVE-

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

### Single Office Space

Single Office Space available in downtown Santa Fe. Starting at \$750.00/month. Walking distance to State-Supreme Courts, Federal Court, City, County and State Offices. Contact C.I.R. Properties, LLC at 505-920-5804.

### Santa Fe Office Space

Single office in professional suite with conference rooms. Share with three other attorneys. Quiet setting in converted residential structure. Walking distance to the Plaza. \$380/month + utilities. Available November 1st. [info@tierralaw.com](mailto:info@tierralaw.com)

### Private Office Suite for Rent

Private office suite in law building for rent. Includes separate clerical common area, access to conference room, and kitchenette. Only a few blocks from all court houses on Lomas. Contact Kim @ 505-331-3044 or email [baiamonte4301@gmail.com](mailto:baiamonte4301@gmail.com)

## Services

### Engineering Forensics and Investigation Services

Expert Witness, Engineering Forensics and Investigation Services: I can get to the bottom of your engineering investigation and explain it, so everyone can understand. Call/v-mail/text/email today, Prof. Anthony Menicucci PhD-Engr., forensics engineer with experience testifying in Federal & State court. [anthony@armatech.us](mailto:anthony@armatech.us), 505-249-2075 for more info.

## Miscellaneous

### Want to Purchase

Want to Purchase minerals and other oil/gas interests. Send Details to: PO Box 13557, Denver, CO 80201

# 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](mailto:marcia.ulibarri@sbnm.org)**

The publication schedule can be found at  
**[www.sbnm.org](http://www.sbnm.org).**



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