

BAR BULLETIN

February 22, 2023 • Volume 62, No. 4



Church, by Michael Rizzo Jr. (see page 3)

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— SPECIAL INSERT —
2023 Board of Bar
Commissioners



New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education



FEBRUARY 22

Webinar

Maxims, Monarchy and Sir Thomas More

2.25 EP
9 am – 10 am

Teleseminar

Lawyer Ethics and Texting

1.0 EP
11 am – Noon

Webinar

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

1.0 EP
9 am – 10 am

FEBRUARY 23

Webinar

Disorder in the Court: An Attorney's Guide to Judicial Misconduct

2.0 EP
11 am – 1 pm

FEBRUARY 28

Teleseminar

How to Fix a Broken Trust: Decanting, Reformation & Other Tools

1.0 G
11 am – Noon

Webinar

Identifying and Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV

1.0 EP
11 am – Noon

MARCH 1

Teleseminar

Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice & More

1.0 EP
11 am – Noon

MARCH 2

Webinar

Avoiding Malpractice and Staying Ethically Compliant: The Good, The Bad and The Ugly of Legal Technology

1.0 EP
11 am – Noon

MARCH 7

Teleseminar

Ethical Issues in Contract Drafting

1.0 EP
11 am – Noon

MARCH 14

Teleseminar

Franchise Agreements: What You Need to Know Before Your Clients Signs, Part 1

1.0 G
11 am - Noon

MARCH 15

Teleseminar

Franchise Agreements: What You Need to Know Before Your Clients Signs, Part 2

1.0 G
11 am - Noon

MARCH 21

Teleseminar

Mother Nature & Leases: Drafting Issues to Protect Against Storm & Other Damage

1.0 G
11 am - Noon

MARCH 28

Teleseminar

Trust and Estate Planning with Rising and Volatile Interest Rates

1.0 G
11 am – Noon

Webinar

Ethics, Attorneys, and Social Media: How to Keep the Disciplinary Counsel from Knocking at Your Door

1.0 EP
11 am - Noon

MARCH 29

Webinar

The Paperless Law Firm – A Digital Dream

1.0 EP
11 am – Noon

MARCH 31

Webinar

Ethics: Practical and Budget-Friendly Cybersecurity for Lawyers

1.0 EP
11 a.m. - Noon

March Women's History Month

MARCH 2

Webcast

REPLAY: Visibility for Women of Color: A Crucial First Step Toward Equality and Inclusion (2022)

1.75 EP
Noon–1:45 pm

MARCH 9

Webinar

REPLAY: Pay Equity and Gender: Women and Fair Pay in the Workplace (2021)

1.0 G
11 am–noon

MARCH 16

Webinar

REPLAY: Gender Discrimination and Sexual Harassment Complaints (2021)

1.0 EP
Noon–1 pm

MARCH 23

Webinar

REPLAY: Women in the Court Room (2021)

1.0 G
Noon–1 pm

MARCH 30

Webinar

REPLAY: Structural Impediments to Equal Pay (2021)

1.0 EP
9 a.m.–10 a.m.

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



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New Mexico**
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www.sbnm.org



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Meetings

February

24
Immigration Law Section
noon, virtual

28
Intellectual Property Law Section
noon, virtual

March

1
Employment and Labor Law Section
12:30 p.m., virtual

3
Elder Law Section
noon, virtual

8
Animal Law Section
noon, virtual

10
Cannabis Law Section
9 a.m., virtual

14
Business Law Section
11 a.m., virtual

17
Indian Law Section
noon, virtual

17
Family Law Section
9 a.m., virtual

20
Children's Law Section
noon, virtual

Workshops and Legal Clinics

February

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

March

1
Divorce Options Workshop
6-8 p.m., virtual

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

April

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

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

May

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

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

June

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

About Cover Image and Artist: Michael Rizzo Jr. works in several mediums. He started out in film photography and now works digitally and enjoys the freedom of Photoshop. He also creates serigraphs using some of those digital images and finds the rich colors of screen printing exciting to experiment. For more information, contact Rizzo at rizzo_art@hotmail.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 or visit <https://lawlibrary.nmcourts.gov>.

Bernalillo County Metropolitan Court Announcement of Formal Investiture

A formal Investiture for Judge Shonnetta R. Estrada will take place on Friday, March 10 at 5:15 p.m. (MT) in the Metropolitan Court Rotunda. Participating Justices and Judges are asked to please bring their robe and report to the Viewing Room by 5 p.m. (MT). Contact Camille Baca at 505-401-6149 for more information.

Eleventh Judicial District Court Announcement of Vacancy

A vacancy on the Eleventh Judicial District Court will exist as of Feb. 1 due to the retirement of the Honorable Judge Robert Aragon, effective Jan. 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. The Eleventh Judicial District Court Judicial Nominating Commission will meet beginning at 9:30 a.m. on Feb. 27 to interview applicants for the position at the Eleventh Judicial District Court, located at the McKinley County-Gallup District Court, located at 207 W Hill Ave #100, Gallup, N.M., to evaluate the applicants for this position. The Committee meeting is open to the public and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard.

Professionalism Tip

With respect to the courts and other tribunals:

I will avoid the appearance of impropriety at all times.

U.S. District Court, District of New Mexico Judicial Portrait Unveiling Announcement

Please join us for the official unveiling of the Honorable Judith C. Herrera's Judicial Portrait on March 3 from 3 to 5 p.m. (MT) in the Rio Grande Courtroom at the Pete V. Domenici United States Courthouse in Albuquerque, N.M. (333 Lomas Blvd NW, Third Floor). A reception hosted by the Federal Bench and Bar of the United States District Court for the District of New Mexico will follow the unveiling. All members of the Federal Bench and Bar are cordially invited to attend; however, reservations are requested. R.S.V.P., if attending, to Cynthia Gonzales at 505-348-2001, or by email to usdcevents@nmd.uscourts.gov.

STATE BAR NEWS Access to Justice Fund Grand Commission Request for Proposals Open

The Access to Justice Fund Grant Commission announces the 2023-2024 Request for Proposals. If your organization intends to apply for an Access to Justice Fund Grant, send an email to Donna Smith at donna.smith@sbnm.org and provide a statement of intent to apply, the organization contact person and his/her email, telephone number and mailing address. Donna will respond by email acknowledging receipt of the intent to apply and provide the application materials. Upon notification of a statement of intent to apply, prospective applicants will receive application materials and any further instructions, copies of all of the questions asked by potential applicants and the question responses. Submitting an "Intent to Apply" does not obligate your organization to submit an application, but you should notify Donna by email if you decide not to apply.

Equity in Justice Program Have Questions?

Do you have specific questions about equity and inclusion in your workplace

or in general? Send in 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, click on the Ask Amanda link and submit your question. No question is too big or too small.

Listening Session on Disability

If you are a lawyer with a disability or a primary caretaker of a person with a disability, we invite you to a candid conversation regarding your experiences in the legal profession and legal settings and your recommendations for improvement. Please reach out to Dr. Amanda Parker at amanda.parker@sbnm.org or call 505-797-6085 to be part of or help facilitate this session.

Historical Committee Announcement of Lunch & Learn

Join the Historical Committee of the State Bar on March 10 from noon – 1 p.m. (MT), for a Lunch & Learn on "The 1862 Confederate Invasion of the New Mexico Territory." Hear why the invasion occurred as well as why Jefferson Davis, President of the Confederacy, personally authorized it. The answer to these questions involves the Mexican War, the Treaty of Guadalupe Hidalgo, the history of the thorny relationship between Texas and New Mexico, the Compromise of 1850, the 3/5th Clause of the Constitution, the Wilmot Proviso and the Fugitive Slave Law. The presentation's speaker, Henry M. Rivera, is a partner in the Washington, DC, firm of Wiley Rein where he specialized in matters before the Federal Communications Commission, the Commerce Department, the White House and Congress. The event is free to attend and will be held in-person at the State Bar Center or virtually. Pre-registration is required for virtual attendance, which tentative attendees can sign up for at no cost. Virtual attendees will receive a joining link closer to the event date. For more information, please contact memberservices@sbnm.org.

Legal Specialization Commission

Notice of Commissioner Vacancy

The State Bar of New Mexico is accepting applications for one available commissioner seat on the Legal Specialization Commission. Applicants must be lawyers who have passed the bar examination, are licensed and in good standing to practice law in New Mexico and have practiced law for a minimum of seven years. To apply, please send a letter of intent and resume to kate.kennedy@sbnm.org.

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) 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 pam.moore@sbnm.org or Briggs Cheney at bcheney@dsc-law.com for the Zoom link.

NM LAP Committee Meetings

The, NM LAP Committee will meet at 4 p.m. (MT) on May 18, July 13, Oct. 5 and Jan. 11, 2024. 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.

The New Mexico Well-Being Committee

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness.

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. (MT) Monday through Thursday and 8 a.m. - 6 p.m. (MT) 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.

— *Featured* —

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www.lawpay.com/nmbar.

OTHER NEWS

New Mexico Christian Legal Aid Virtual Training Seminar Announcement

New Mexico Christian Legal Aid will be hosting a Virtual Training Seminar on April 28 from 1 - 5 p.m. (MT) via Zoom on the topics of justice for the poor and assisting the needy. Attendants will receive free CLE credits and up-to-date training in providing legal aid. For more information and registration, contact Jim Roach at 505-243-4419 or Jen Meisner at christianlegalaid@hotmail.com.

Legal Education

February

- | | | |
|--|---|---|
| <p>22 Lawyer Ethics and Texting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>23 Winning Strategies Seminar II
14.2 G, 2.0 EP
Live Program
Administrative Office
of the U.S. Courts
www.uscourts.gov</p> | <p>28 Identifying and Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>22 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>23 Fundamentals of Federal Criminal Defense
10.1 G, 1.0 EP
Live Program
Administrative Office
of the U.S. Courts
www.uscourts.gov</p> | <p>28 How to Fix a Broken Trust: Decanting, Reformation & Other Tools
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>23 Disorder in the Court: An Attorney's Guide to Judicial Misconduct
2.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | | |

March

- | | | |
|--|--|--|
| <p>1 Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice & More
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>2 Non-Capital Habeas Conference
11.9 G
Live Program
Administrative Office
of the U.S. Courts
www.uscourts.gov</p> | <p>9 REPLAY: Pay Equity and Gender: Women and Fair Pay in the Workplace (2021)
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>2 Avoiding Malpractice and Staying Ethically Compliant: The Good, The Bad and The Ugly of Legal Technology
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>3-5 Taking and Defending Depositions
31-4/2
31.0 G, 4.5 EP
Live Program
University of New Mexico
School of Law
lawschool.unm.edu</p> | <p>9 Law & Technology Series: TECM Workshop
16.2 G
Live Program
Administrative Office
of the U.S. Courts
www.uscourts.gov</p> |
| <p>2 REPLAY: Visibility for Women of Color: A Crucial First Step Toward Equality and Inclusion (2022)
1.75 EP
Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>7 Ethical Issues in Contract Drafting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>14 Franchise Agreements: What You Need to Know Before Your Client Signs, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

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

March (cont.)

- | | | |
|---|---|---|
| <p>15 Franchise Agreements: What You Need to Know Before Your Client Signs, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Poverty Law
10.0 G, 2.0 EP
Live Program
University of New Mexico
School of Law
lawschool.unm.edu</p> | <p>28 Trust and Estate Planning with Rising and Volatile Interest Rates
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>16 REPLAY: Gender Discrimination and Sexual Harassment Complaints (2021)
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Planning and Goal-Setting Webinar
1.0 EP
Webcast
New Mexico Defense Lawyers Association
www.nmdla.org</p> | <p>29 The Paperless Law Firm: A Digital Dream
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>21 Mother Nature & Leases: Drafting Issues to Protect Against Storm & Other Damage
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>23 REPLAY: Women in the Court Room (2021)
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>30 REPLAY: Structural Impediments to Equal Pay (2021)
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| | <p>28 Ethics, Attorneys, and Social Media: How to Keep the Disciplinary Counsel from Knocking at Your Door
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>31 Ethics: Practical and Budget-Friendly Cybersecurity for Lawyers
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

April

- | | |
|--|--|
| <p>3 Roadways to the Bench
2.3 G
Webcast
U.S. District Court,
District of New Mexico
www.nmd.uscourts.gov</p> | <p>14 Family Mediation
30.0 G, 2.0 EP
Live Program
University of New Mexico
School of Law
lawschool.unm.edu</p> |
|--|--|

From the New Mexico Supreme Court

From the New Mexico Supreme Court

Public Censure

No: S-1-SC-39193 (filed January 30, 2023)

INQUIRY CONCERNING A JUDGE JSC Inquiry No. 2021-015

IN THE MATTER OF HON. MARY W. ROSNER Third Judicial District Court

PUBLIC CENSURE

{1} This matter came before this Court on the Petition to Accept the Stipulation Agreement and Consent to Discipline between the Judicial Standards Commission of the State of New Mexico (the Commission) and Respondent, Honorable Mary W. Rosner, a district court judge in the Third Judicial District. The petition was supplemented with a proposed public censure.

{2} Following oral argument in this matter, we granted the petition and accepted the terms of the Stipulation Agreement and Consent to Discipline (Stipulation) in part, adopting the Commission's request that we issue a public censure, but substituting in place of the Commission's suggested censure, this public censure. We now publish this public censure in the State Bar of New Mexico *Bar Bulletin* in accordance with our Order, the Stipulation, and JSC Rule 36(C)(5) NMRA.

I. BACKGROUND

{3} This matter arose out of Judge Rosner's handling of Cause No. D-307-DM-2014-00786, a domestic matter involving the custody of a minor child (the Soto matter). During the course of the proceedings, the parties stipulated to and Judge Rosner entered an order in November 2017, which appointed Dr. Harold Smith to serve as the parenting coordinator in the Soto matter to reduce conflict between the parties and to assist the court in modifying an existing parenting plan and/or developing a new parenting plan.

{4} Three years later, Father retained new counsel who quickly, upon entering her appearance, filed two separate motions: a motion to recuse for cause, requesting Judge Rosner's recusal (recusal motion) and a motion to remove Dr. Harold Smith as the court-appointed parenting coordinator

and to revoke his quasi-judicial immunity (removal motion). The recusal motion alleged that recusal was required so as to compel Judge Rosner's testimony about why Dr. Smith was appointed as the parenting coordinator three years prior in 2017. The removal motion alleged that Dr. Smith was not qualified to continue to serve as the parenting coordinator.

{5} One week after Father's counsel filed these motions and before a hearing was held, the *Las Cruces Sun-News* published an article reporting many of the allegations contained in the two motions—that Dr. Smith was not a qualified parenting coordinator and that Judge Rosner recommended and issued an order appointing Dr. Smith despite his purported lack of qualifications. The article criticized the Third Judicial District's parenting program, along with Judge Rosner and her involvement in that program and her subsequent order appointing Dr. Smith.

{6} Judge Rosner admits she read the *Las Cruces Sun-News* article and the two motions filed by Father's counsel and that she considered them to be personal criticisms, factually inaccurate, and misleading. Judge Rosner admits that she felt personally attacked but nevertheless continued to preside over the Soto matter, including over the recusal motion and the removal motion, because she believed then that she could be impartial, set aside her personal feelings, and continue with her duty to sit. *See Gerety v. Demers*, 1978-NMSC-097, ¶ 9, 92 N.M. 396, 589 P.2d 180 (explaining a judge's duty to sit is equally as compelling as a judge's duty to recuse when disqualified, “[r]ecusal should be used only for the most compelling reasons[,]” and a judge “has no right to disqualify [herself] unless there is a compelling constitutional, statutory or ethical cause for so doing”).

Following the hearing on the two motions, Judge Rosner issued an Order Denying Respondent's (Father's) Motion to Recuse for Cause, and Order Denying Respondent's (Father's) Motion to Remove Parenting Coordinator and Revoke Parenting Coordinator's Quasi-Judicial Immunity. In paragraph 17 of the order, Judge Rosner stated:

Rather than bring to [the c]ourt her claims of alleged misconduct by Harold Smith and this [c]ourt, [Father's counsel] took her motions to the *Las Cruces Sun News*, without input from anyone other than herself. At the hearing, on her two motions . . . her client, [Father], testified under oath, that he had never had any contact nor had he made any statement to any reporter of the *Las Cruces Sun News*. The article, which appeared on the front page of the *Las Cruces Sun News* on July 21, 2020, sought to damage Harold Smith and this [c]ourt by implying an inappropriate relationship between Harold Smith and the undersigned judge, and bias by this [c]ourt and Harold Smith against [Father]. Noteworthy, is the failure of [Father's counsel] to attack Dr. Caplan's report which is the most damaging report against her client At the request of [Father's counsel], Dr. Caplan's report has been sealed.

After the order denying Father's motions was filed, Father's counsel renewed her motion to recuse. Three days later Judge Rosner recused herself from the Soto matter. Father's counsel subsequently filed a disciplinary complaint, and this disciplinary proceeding followed.

{7} Upon completion of its investigation, the Commission entered into a stipulation with Judge Rosner to resolve the matter. As part of that stipulation, Judge Rosner admitted to engaging in the following acts listed in order of significance to the Commission:

- (1) Judge Rosner failed to recuse from Cause No. D-307-DM-2014-00786, when she knew or should have known that she could no longer be fair and impartial following the publication of the *Las Cruces Sun-News* article which she believed was written by Father's counsel.

- (2) Judge Rosner inappropriately used paragraph 17 of the order denying Father's motions to directly respond to allegations in a *Las Cruces Sun-News* article that she thought was written by and/or because of Father's counsel. In doing so, Judge Rosner admits she cast Father's counsel and Father's credibility and reputation in a negative light.
- (3) Judge Rosner inappropriately referenced the conclusion of a sealed doctor's report in paragraph 17 of the order denying Father's motions, noting that the report was unfavorable to Father. Judge Rosner admits that there was no substantive purpose for this reference, and it was used as a retort to the *Las Cruces Sun-News* article.

{8} Judge Rosner agreed and admitted that her conduct violated the following Rules of the Code of Judicial Conduct:

- Rule 21-101 NMRA (requiring compliance with the law).
- Rule 21-102 NMRA (promoting confidence in the judiciary).
- Rule 21-202 NMRA (impartiality and fairness).
- Rule 21-203 NMRA (bias, prejudice, and harassment).
- Rule 21-204(A)-(B) NMRA (avoiding external influences on judicial conduct).
- Rule 21-210(A), (E) NMRA (judicial statement on pending and impending cases).
- Rule 21-211(A)(1) NMRA (disqualification).

Based on these admitted violations, Judge Rosner agreed to (1) enroll in and successfully complete, at her own expense, *Ethics and Judging: Reaching Higher Ground*, a National Judicial College Course and (2) receive a public censure to be published in the *State Bar of New Mexico Bar Bulletin*. This is that censure.

II. DISCUSSION

{9} Article VI, Section 32 of the New Mexico Constitution provides that "any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office." "[W]illful misconduct in office is improper and wrong conduct of a judge acting in [her] official capacity done intentionally, knowingly, and, generally in bad faith. It is more than

a mere error of judgment or an act of negligence." *In re Locatelli*, 2007-NMSC-029, ¶ 8, 141 N.M. 755, 161 P.3d 252 (internal quotation marks and citation omitted). Willful misconduct must be proven by clear and convincing evidence prior to the imposition of discipline. *Id.* ¶ 7. "There need not be clear and convincing evidence to support each and every [allegation or fact]. Rather, we must be satisfied by clear and convincing evidence that there is willful judicial misconduct which merits discipline." *In re Castellano*, 1995-NMSC-007, ¶ 37, 119 N.M. 140, 889 P.2d 175; *see also In re Schwartz*, 2011-NMSC-019, ¶ 13, 149 N.M. 721, 255 P.3d 299.

{10} In this case, while Judge Rosner denied willfully violating any of these rules, she acknowledged and stipulated that the facts and evidence, individually and taken together, may constitute willful misconduct in office and provide this Court with a sufficient basis to impose discipline pursuant to Article VI, Section 32 of the New Mexico Constitution. We agree that while violations of the Code of Judicial Conduct do not control the imposition of discipline, they do provide evidence of misconduct. *See Schwartz*, 2011-NMSC-019, ¶¶ 12, 25.

{11} Rules 21-101 and 21-102 codify the overarching principles that govern a judge's conduct, requiring a judge to "respect and comply with the law, including the Code of Judicial Conduct," and to "at all times [act] in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" and "avoid impropriety and the appearance of impropriety." Even an appearance of impropriety erodes the public's confidence in the judiciary. Rule 21-102, comm. cmt. 3. "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated [the Code of Judicial Conduct] or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." Rule 21-102, comm. cmt. 5.

{12} Rule 21-202 requires a judge to "uphold and apply the law and . . . perform all duties of judicial office fairly and impartially," while Rule 21-203 requires that a judge perform those duties without bias or prejudice. Rule 21-211(A)(1) requires that a judge recuse when "the judge's impartiality might reasonably be questioned, including but not limited to [when t]he judge has a personal bias or prejudice concerning a party or party's lawyer." To determine whether a judge is required to recuse for an appearance of impropriety, we consider "whether an

objective, disinterested observer, fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal." *State v. Riordan*, 2009-NMSC-022, ¶ 11, 146 N.M. 281, 209 P.3d 773 (text only)¹ (citation omitted). Further, "deference should be given to" the district court's decision "when there is a significant possibility that the defendant is attempting to manipulate the [justice] system." *Id.* (internal quotation marks and citation omitted).

{13} We agree that the conduct admitted to by Judge Rosner is sufficient to support a conclusion that she violated the foregoing rules. It is evident from the language used in paragraph 17 of the order denying Father's motions that Judge Rosner believed Father and Father's counsel intentionally sought to manipulate the judicial process and cause damage to her by simultaneously filing the two motions and providing information to the *Las Cruces Sun-News*. However, none of the facts in paragraph 17 were necessary for the disposition of Father's motions, and their unnecessary inclusion in the order denying Father's motions calls into question Judge Rosner's impartiality, notwithstanding any artifices or gamesmanship on the part of Father or his counsel.

{14} We acknowledge that the precise time to recuse is not always clear and that a judge "must exercise [her] judicial function." *Gerety*, 1978-NMSC-097, ¶ 10. In performing her required duties, Judge Rosner determined at the time she considered Father's two motions that she could continue violating over the Soto matter without violating the Code of Judicial Conduct. Nevertheless, the facts of this case support a conclusion that "an objective, disinterested observer . . . would . . . doubt that justice would be done" if Judge Rosner were allowed to continue on the case. *Riordan*, 2009-NMSC-022, ¶ 11 (brackets, internal quotation marks, and citation omitted). Here, Father's counsel's two motions contained allegations of ethical and legal misconduct by Judge Rosner. The *Las Cruces Sun-Times* article also alleged ethical and legal misconduct by Judge Rosner. Judge Rosner believed Father's counsel was the source of the article and admitted she felt personally attacked by the article. In response, Judge Rosner, rather than simply addressing the merits of Father's motions, included the gratuitous accusations set out in paragraph 17 of the order denying Father's motions. Once her impartiality might have reasonably been questioned, Judge Rosner was obligated to recuse, and her failure to do so violated Rule 21-211(A). Notwithstanding this violation, we recog-

¹ The "text only" parenthetical as used herein indicates the omission of all of the following—internal quotation marks, ellipses, and brackets—that are present in the quoted source, leaving the quoted text itself otherwise unchanged.

nize that Judge Rosner ultimately remedied her error, reconsidering whether she could remain impartial and subsequently recusing from the Soto matter.

{15} Rule 21-204(A)-(B) requires that a “judge . . . not be swayed by public opinion or fear of criticism” and “shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.” Judge Rosner admits, and we agree, that her conduct violated Rule 21-204(A)-(B) when she reacted to the criticism in the *Las Cruces Sun-News* article and included the language in paragraph 17 of the order denying Father’s motions.

{16} Judge Rosner’s statements also violate Rule 21-210(A)’s proscription of statements that might affect the outcome of a pending or impending case. The statements suggest that there is at least an appearance that Judge Rosner may not be impartial to the parties, which certainly may impact the outcome of a proceeding. While Rule 21-210(A), (E) allows a judge to respond to criticism, it cannot be done in a manner that may appear to impact the outcome of a proceeding and cannot be done using court orders in active proceedings.

{17} While we commend Judge Rosner for recusing when she realized she could not be impartial, her use of the order denying Father’s motions, a tool used to carry out her official judicial duties under Article VI, Section 1 of the New Mexico Constitution, to respond to criticism was inappropriate. It was also inappropriate to reference the conclusion of the sealed doctor’s report, not only because it was sealed, but also because it had no bearing on the disposition of Father’s motions. While judges may respond to public or personal criticism, they may not do so in carrying out their official judicial duties. Rule 21-300 NMRA (“A judge shall con-

duct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.”). Having misused the order denying Father’s motions to respond to public criticism, we conclude that Judge Rosner violated Rule 21-204(A)-(B) and Rule 21-201(A), (E).

{18} We recognize the challenges faced by district court judges, often presiding over emotionally charged cases involving litigants and lawyers who might challenge their authority, insult their integrity, impugn their good names, and even attempt to bait them into losing control. In those instances, district court judges, no matter how egregious the behavior by counsel or clients, must remain above the fray in order to carry out their official duties. Judges are equipped with tools to address inappropriate behavior on the part of the parties and counsel, in the form of sanctions and contempt powers, which should be used as needed. Judges must always remain cognizant that an essential function of their role in the judiciary is to be a neutral arbiter even in the throes of highly adversarial proceedings. By adhering to these responsibilities, the judge may effectively avoid any appearances of impropriety, as well as actual instances of impropriety.

{19} While Judge Rosner’s admitted conduct violates several of the Rules of Judicial Conduct, this Court looks at various factors when deciding to impose judicial discipline including “the nature of the misconduct and patterns of behavior[.] . . . the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.” *Schwartz*, 2011-NMSC-019, ¶ 25 (internal quotation marks and citation omitted).

{20} Here, while Judge Rosner was acting

in an official capacity and using a judicial tool when she violated the Rules of Judicial Conduct, Judge Rosner has been a long-standing judge in the Third Judicial District and has not previously had a complaint filed against her before the Commission. This is her first and only incident of misconduct. Also, it is significant that Judge Rosner took action to remedy any perceived misconduct by recusing herself promptly when she recognized that she could not be impartial. We conclude all of the foregoing to be mitigating factors in favor of a lesser degree of discipline for Judge Rosner. She, however, did violate the foregoing rules, which in the aggregate, we conclude is sufficient to support a finding of willful conduct sufficient for the imposition of this public censure.

III. CONCLUSION

{21} We, therefore, accept the stipulated agreement presented by the Commission and Judge Rosner and issue this public censure to Judge Rosner. While we issue this censure in part as an assurance to the public that we do not tolerate judicial misconduct, we also issue this censure to remind judges of their responsibilities to avoid the appearance of impropriety notwithstanding bad behavior or even provocation by litigants and lawyers. This censure also reaffirms our commitment to insure fair and impartial justice under the law.

{22} For the foregoing reasons, Respondent, Honorable Mary W. Rosner is hereby censured for her willful misconduct, and the Stipulation is accepted, adopted, and confirmed.

{23} IT IS SO ORDERED.

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice



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How to THRIVE – An Inside Out Job

By Pam Moore, LPCC

Get eight hours of sleep. Exercise for at least 20 minutes most days of the week. Eat a healthy diet. Minimize sugar intake. Have a strong social support network – connect. Take multiple day vacations away from work more than once/year. Don't answer work emails after 8 p.m. Laugh more. Reduce stress. Spend time on activities that give you a sense of purpose. I could go on and on, but you get the general idea and you've heard all these recommendations before. Have you employed them? Did it make a difference in how you feel.... on the inside? Did they reduce or diminish anxiety, stress, depression, negative thought patterns, chronic bad habits, etc.? The reality is that we can do all these things and from the outside, we look.... well, like we've "got it together" and are doing great. I'm fine, everything's good. These are the answers you get when you ask somebody, "How's it going?" or "How are you?," but in reality, the person is wearing a mask. Their inside and outside is not congruent.

Truth is, you can do all those things (get eight hours of sleep a night, eat a healthy diet, connect with friends and family, take a vacation, etc.) and still be miserable and struggling on the inside. This is because, to feel truly okay, good, fine, great or dare we say, at peace and confident in your own skin, requires effort/work on the inside as well. Looking successful on the outside, by western standards, does not always equal success felt on the inside, hence enter wearing a mask. So, let's break this down....

"Success is often defined as the ability to reach your goals in life, whatever those goals may be. In some ways, a better word for success might be attainment, accomplishment, or progress. It is not necessarily a destination but a journey that helps develop the skills and resources you need to thrive." ¹ I love that last sentence that intimates life is a journey and we all truthfully walk it alone, gathering and employing the skills and resources we need along the way to not just survive but thrive.... if we choose.

To me, surviving is basic breathing, going through the mandatory daily motions just to inhabit a body on planet earth. Thriving is a deeper, personal drive toward



a different level of living, and it starts with awareness that there is more, and I want different. On this quest of "How do I thrive?," questions bubble up from within - what is possible for my life, what experiences do I want to create for myself, what brings me joy, what do I need to let go of to feel at peace, how can I be loved and love more? And, more questions – how can I turn down the volume on the critical voice in my head, am I holding on to guilt or shame that could free me if I chose to let it go, what resentments do I need to surrender, where do I need to shine the light and take responsibility, and what could open up for me if I wholeheartedly engaged in this exploration?

Engaging in this type of work is hard because you are digging into your baggage that is weighing you down and keeping you from experiencing life at a certain (higher) level. However, the work is well worth it because your freedom, confidence and inner laughter and playfulness with life are at stake. Doing this type of work is better done with a trusted, non-judgmental person, someone other than by yourself. It's what you don't know that you don't know, that stunts your growth and expansion. And believe it or not, there are blind spots or shadows, i.e. what we don't see that we ALL have in our life.

For the last 15 years, an older family member and myself take a short trip once per year. This once per year

occasion started out as a way to catch up and connect with each other, enjoy good food, shop, relax, enjoy the outdoors, and just get away. What it quickly (within 5 years) turned into is a one-sided (her) gripe-and-growl fest, or, as I like to call it.... spewing venom. The entire day is spent with her verbalizing all the negative things in her life currently and past tense. I have heard the same stories over and over again about who wronged her, who is not living life “right”, what somebody did to somebody else, how she tried to be a good partner, daughter, parent, sibling, but the other person was bad or wrong. Then she will turn the attention to herself and beat herself up for not being.... better, stronger, smarter. “I’m so stupid” is a favorite line of hers. It is very hard to hold the space and listen in a compassionate way for hours at a time when you’ve heard the caustic, negative stories multiple times with no movement towards change. Do you know somebody like this? Being around them is exhausting, it sucks the life and joy right out of you.

Me: How does it benefit you to spew venom on the same stories year after year?

Her: It doesn’t.

Me: Then why do you do it?

Her: I don’t know.

Me: How do you feel when we get together and you spew venom all day?

Her: Not good.

Me: Then why do you do it?

Her: Because you are the only one that will listen to me. Honestly, I don’t know.

This family member bottles herself up and puts on a mask until that one time/year when we get together and then a volcano erupts. It makes me sad. Sad that she chooses to live with the anger, anxiety, sadness, fear, guilt, shame, etc. bottled up inside of her and either doesn’t want to or doesn’t know how to start the work of freeing herself from the daily onslaught of pain and suffering. And, it’s not the onslaught of pain and suffering outside of herself, this is an inner voice that destroys, it is the evil monster within that talks to us and about us (and others) in a most critical and demeaning way.

So, here is where we get down to the nuts and bolts. Life is not about rainbows and unicorns (feeling happy, happy all the time), but it is also not about evil monsters (feeling bad all the time). We feel a mix of both, usually on a daily basis, and that is **normal**. Life unfolds in front of us humans and we choose what we make of the situation – how we view it, what we tell ourselves about it, what we let go and what we keep. Note I said “CHOOSE”, not blindly react, which is what most people do. CHOICE is freedom, reaction is prison.

You choose your perspective on life, meaning you choose what you tell yourself about your life experiences, and ultimately, this determines how much the monsters affect you. Not IF they affect you, but HOW MUCH. And how much depends on the inner work you do.

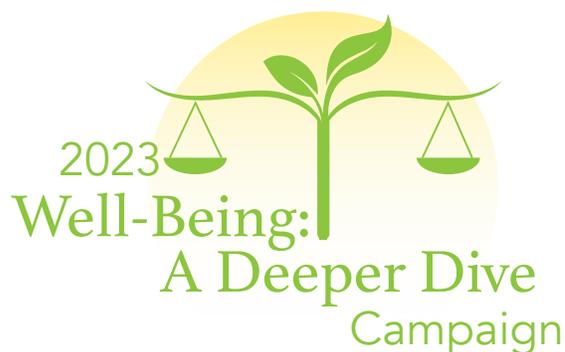
Exploring what you feel, where the feeling came from, your beliefs or story about it (this is really where you have to peel those layers off the onion and get to the core), and asking if you want to hold onto that story or change it (to what serves you better), is most important to shining a light of awareness on “it” (the yuck feeling) and being able to CHOOSE how to move forward. Sometimes moving forward presents as doing nothing, but it can be **awareness of and accepting** this is where you are, that all will be okay, and being at peace with that. This too shall pass, and this is a powerful choice.

You have the longest relationship with yourself. Do you know you....really? Can you identify throughout the day what you are feeling and the underlying message behind it? Do you have a perspective on life that serves how you want to show up in the world? Are you that person that looks like you “have it all together” because you make money? Maybe you do get eight hours of sleep at night, exercise for at least 20 minutes most days of the week, eat a healthy diet, have a strong social support network, take multiple-day vacations away from work more than once/year and don’t answer work emails after 8 p.m..... but is your inside messy? Are you an Outside-In person or an Inside-Out person? ■

Endnotes

¹ 9 Tips for How to Find Success in Life, How Success Is Defined and How You Can Achieve It, by Kendra Cherry, July 2022, Verywellmind.com

Pam Moore, LPCC, is Director of Professional Programs at the State Bar of New Mexico.





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NM Children’s Court Improvement Commission	1 district attorney in Children’s Court position 1 guardian ad litem position 1 parent representative position 1 community partner position
NM Supreme Court Commission on Equity and Justice	1 judge from medium-sized district or metropolitan court
Rules of Criminal Procedure for State Courts Committee	2 general member positions
Statewide Alternative Dispute Resolution Commission	1 district court judge position 1 magistrate court judge position
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Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by submitting the attached application, along with a resume, to Elizabeth A. Garcia, Chief Clerk, by email to nmsupremecourtclerk@nmcourts.gov, or by first class mail to P.O. Box 848, Santa Fe, NM 87504. The application can be found on the Supreme Court’s website – Committees, Board and Commissions – Current Vacancies. **Please submit applications by February 24, 2023.**

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From the Clerk of the New Mexico Supreme Court

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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-039

No: A-1-CA-39059 (filed February 3, 2022)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
APRIL L. VEITH,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

Curtis R. Gurley, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM
John Kloss, Assistant Attorney
General
Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender
Caitlin C.M. Smith, Assistant
Appellate Defender
Santa Fe, NM

for Appellee

OPINION

BOGARDUS, Judge.

{1} Defendant April Veith was charged by criminal complaint in magistrate court with petty misdemeanor battery, contrary to, NMSA 1978, Section 30-3-4 (1963). The magistrate court dismissed the criminal complaint, and the State appealed to the district court. The district court determined Defendant's arrest was illegal and remanded to magistrate court for imposition of the magistrate court's dismissal order. The State appeals the district court's remand order and argues (1), NMSA 1978, Section 30-3-6 (1983) provided statutory authority for Defendant's arrest; (2) Defendant's warrantless arrest was not a violation of the New Mexico Constitution; and (3) the district court erred in concluding dismissal was the appropriate remedy. We reverse.

BACKGROUND

{2} The parties stipulated that the following facts from the arresting officer's probable cause statement were true for purposes of resolving Defendant's motion. Deputy Deprez was dispatched to a middle school parking lot based on a call in which someone reported that "April" (later identified as Defendant) was attacking the caller's mother outside of the school gym. Upon his arrival at the school,

Deputy Deprez observed multiple people attempting to keep Defendant and Jennifer Hebert apart. Deputy Deprez noticed Hebert was taking deep breaths, seemed emotional, and that Defendant had blood on her face. He made sure neither party needed medical attention before beginning his on-the-scene investigation.

{3} Deputy Deprez spoke to Hebert, Defendant, Defendant's husband, and two witnesses while at the scene. Hebert told Deputy Deprez that as she was getting ready to leave and as she was putting her children in her car, Defendant walked up to her and told her she did not have any "beef" with her, but then got in her face and started yelling at her. Hebert stated that Defendant was trying to get her to fight. Hebert explained she told Defendant she did not want to fight and yelled for Defendant's husband to come get Defendant. Hebert told Deputy Deprez that Defendant pushed her, grabbed her by her shirt, shoved her against a wall, and asked if she was scared of her. Hebert went on to say that Defendant began to choke her so she defended herself by punching Defendant in the face. She said they both fought until Defendant's husband and another person separated them.

{4} Deputy Deprez spoke to Defendant who said she had wanted to confront Hebert about a guy they both previously dated, but that she did not have any "beef" about it. Defendant stated Hebert pushed

her and she had to defend herself. Later, Defendant changed her story and stated Hebert initially pulled her hair. Deputy Deprez could smell alcohol on Defendant's breath and asked her if she had anything to drink that day. Defendant answered that she had been drinking.

{5} Deputy Deprez spoke to Defendant's husband who explained that when he and Defendant arrived at the school, Defendant approached Hebert. He stated he knew the two had a previous conflict so he attempted to avoid the situation by remaining in his car. He said he did not see who started the altercation, but saw the two fighting so he separated his wife from the situation. Deputy Deprez also spoke to two witnesses who explained Defendant initiated the physical altercation. After completing his interviews of the parties and witnesses, Deputy Deprez arrested Defendant without a warrant and took her to the detention center. Defendant was later charged with battery.

{6} During proceedings in magistrate court, Defendant filed a motion to dismiss or in the alternative to suppress evidence, arguing the arrest violated the misdemeanor arrest rule and that the criminal complaint should be dismissed or statements and evidence should be suppressed because they were tainted by her unlawful arrest. The magistrate court entered an order dismissing the complaint with prejudice. The State appealed to the district court, and in response, Defendant renewed her motion to dismiss or in the alternative to suppress evidence. After a hearing on the motion, the district court remanded the matter to the magistrate court for imposition of the dismissal order.

DISCUSSION

{7} The State pursues three related but distinct arguments: (1) Section 30-3-6 provided statutory authority for Defendant's arrest; (2) the arrest was a reasonable warrantless arrest under the New Mexico Constitution; and (3) even if the arrest was illegal, dismissal was not the appropriate remedy.

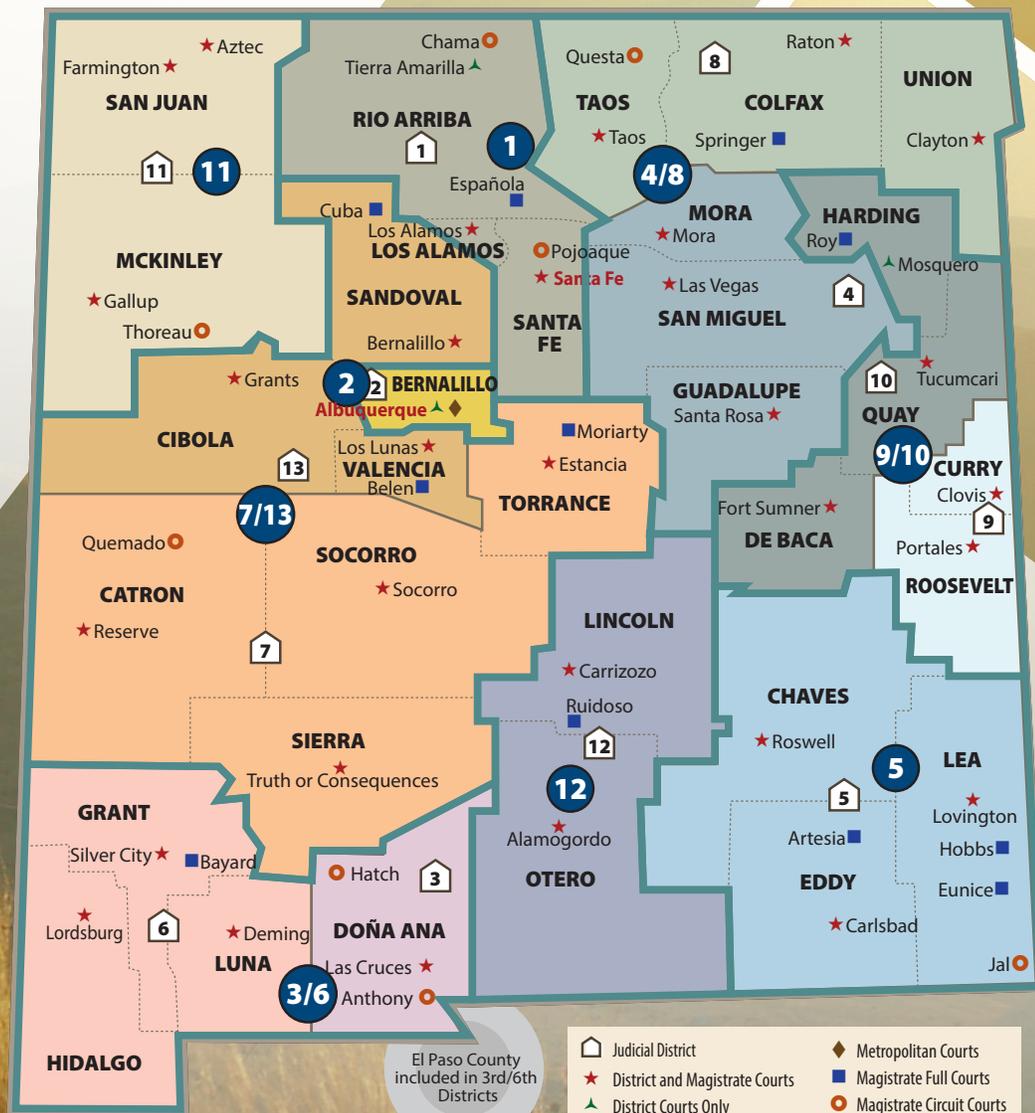
{8} The question we must address is whether Defendant was lawfully arrested without a warrant. Our state strongly prefers arrests be made pursuant to a warrant. *State v. Rivera*, 2010-NMSC-046, ¶ 23, 148 N.M. 659, 241 P.3d 1099. Under the Fourth Amendment of the United States Constitution, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend. IV. In *United States v. Watson*, 423 U.S. 411 (1976), the U.S. Supreme Court applied Fourth



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2023 COMMISSIONERS

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2nd Judicial District

(Bernalillo County)



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Steven Scholl a founding member of Dixon Scholl [Bailey] Carrillo, P.A. He does civil trials, but occasionally helps-out behind the scenes with criminal trials. He is a past president of the UNMSOL Alumni Board and the Albuquerque Bar Association. Serving on the Board of Bar Commissioners is another and different way that Steve serves the members of the Bar. Since graduating from UNMSOL in 1989, he spent a lot of free time “paying it forward” by teaching trial practice, evidence and deposition skills classes and coaching mock trial teams. Steve and Chris raised their two kids here, and they are raising theirs here as well. In addition to doing law stuff, they restored and use two vintage ‘50s camp trailers, drive a 1929 Model A Roadster and boat-camp. Life is Good.

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Lucy Sinkular Lucy Sinkular is a shareholder at Atkinson & Kelsey, P.A., in Albuquerque, where she limits her practice to family law matters. Practicing for 28 years, Lucy comes from a family of lawyers

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3rd and 6th Judicial Districts (Dona Ana, Grant, Hidalgo, and Luna Counties)



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Connie J. Flores is a partner at Flores, Tawney, Acosta P.C, specializing in cases involving personal injury to include on the job injuries, premises liability, Dram Shop, nursing home and

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4th and 8th Judicial Districts (Guadalupe, Mora, San Miguel, Colfax, Taos, and Union Counties)



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5th Judicial District (Chaves, Eddy, and Lea Counties)



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7th and 13th Judicial Districts (Catron, Cibola, Sandoval, Sierra, Socorro, Torrance, and Valencia Counties)



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Jessica Perez is an Assistant District Attorney in the 13th Judicial District within Sandoval County. There, she works primarily as a felony trial attorney handling a variety of cases.

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9th and 10th Judicial Districts
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11th Judicial District
 (McKinley and San Juan Counties)



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12th Judicial District
 (Lincoln and Otero Counties)

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Out-of-State District



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After working for a few years as a prosecutor litigating felony and misdemeanor cases, **Sean FitzPatrick** started his firm FitzPatrick Law, LLC in 2016. FitzPatrick’s current practice area is civil litigation focusing on

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Amendment jurisprudence to uphold the constitutionality of a warrantless arrest supported by probable cause and explicit statutory authority. The Fourth Amendment permits warrantless arrests when the arrest is supported by statutory authority and probable cause. *See State v. Paananen*, 2015-NMSC-031, ¶¶ 17-18, 357 P.3d 958 (holding a warrantless arrest with probable cause, *see*, NMSA 1978, § 30-16-23 (1965), which permits warrantless arrests with probable cause for shoplifting, did not violate the Fourth Amendment based on *Watson*). Article II, Section 10 of the New Mexico Constitution requires that all warrantless arrests be “reasonable.” *Campos v. State*, 1994-NMSC-012, ¶ 5, 117 N.M. 155, 870 P.2d 117. Under our New Mexico Constitution, warrantless arrests based on statutory authority are presumed constitutional, but require an exigency that precluded the arresting officer from procuring a warrant. *Id.* ¶ 14.

{9} To address the State’s appeal, we must first determine if Section 30-3-6 provided statutory authority for the warrantless arrest. We then turn to the State’s contention that the arrest was reasonable under the New Mexico Constitution. Because the appeal is based on Defendant’s motion to suppress, we are presented with a mixed question of law and fact. We review “factual matters with deference to the district court’s findings if substantial evidence exists to support them, and [the appellate courts] review[] the district court’s application of the law de novo.” *State v. Almanzar*, 2014-NMSC-001, ¶ 9, 316 P.3d 183.

I. Section 30-3-6 Provided Statutory Authority for Defendant’s Arrest

{10} The State first appeals the district court’s determination that Section 30-3-6 did not apply to the facts of this case. The State argues that the plain language of the statute provides that so long as an arresting officer has probable cause that a battery, or one of the other crimes listed, has occurred, the officer has authority to perform a warrantless arrest. Defendant answers that the Legislature did not intend to create such a broad exception to the misdemeanor arrest rule, and that the statute applies only to arrests that occur in licensed liquor establishments. We agree with the State.

{11} Because Defendant’s appeal centers on our interpretation of Section 30-3-6, we interpret the statute de novo. *See State v. Gonzales*, 2019-NMCA-036, ¶ 7, 444 P.3d 1064. “In interpreting a statute, our primary objective is to give effect to the Legislature’s intent.” *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125. “If the language of the statute is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” *State v.*

McWhorter, 2005-NMCA-133, ¶ 5, 138 N.M. 580, 124 P.3d 215. However, we will not give effect to the plain meaning of the statute if “this leads to an absurd or unreasonable result.” *State v. Marshall*, 2004-NMCA-104, ¶ 7, 136 N.M. 240, 96 P.3d 801. If it will, we construe the statute “according to its obvious spirit or reason[.]” *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 3, 117 N.M. 346, 871 P.2d 1352 (internal quotation marks and citation omitted).

{12} “[W]e additionally consider the context surrounding a particular statute, such as its history, its apparent object, and other related statutes.” *State v. Becenti*, 2021-NMCA-060, ¶ 5, 498 P.3d 282 (alteration, internal quotation marks, and citation omitted). We are required to “read the entire statute as a whole so that each provision may be considered in relation to every other part[.]” *State v. Bernard*, 2015-NMCA-089, ¶ 11, 355 P.3d 831 (internal quotation marks and citation omitted). In reading the statute as a whole, we are also to consider “its purposes and consequences.” *State v. Martinez*, 2020-NMCA-043, ¶ 34, 472 P.3d 1241.

{13} We start by considering the misdemeanor arrest rule, which provides context for our discussion of the statute in this case. “The misdemeanor arrest rule provides that generally, in New Mexico, an officer may execute a warrantless misdemeanor arrest only if the offense was committed in the officer’s presence.” *Milliron v. Cnty. of San Juan*, 2016-NMCA-096, ¶ 28, 384 P.3d 1089 (alteration, internal quotation marks, and citation omitted). “The misdemeanor arrest rule is a holdover from the common law distinction between warrantless arrests for felonies and for misdemeanors.” *State v. Ochoa*, 2008-NMSC-023, ¶ 11, 143 N.M. 749, 182 P.3d 130. However, New Mexico has several exceptions to this rule. *Id.* ¶ 12 (“[P]ermitting officers in specific circumstances to make warrantless arrest if the arresting officer has ‘reasonable grounds, based on personal investigation which may include information from eyewitnesses[.]’” (quoting, NMSA 1978, § 66-8-125(B) (1978)); *see also*, NMSA 1978, § 31-1-7(A) (1995) (permitting warrantless arrests for domestic disturbances); *State v. Lyon*, 1985-NMCA-082, ¶ 18, 103 N.M. 305, 706 P.2d 516 (allowing for a police-team exception to the “in the presence” requirement of the misdemeanor arrest rule); § 30-16-23 (permitting warrantless arrests for shoplifting). The Legislature has the authority to enact an exception to the misdemeanor arrest rule, insofar as it does not violate the New Mexico Constitution, *see Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024, ¶ 22, 389 P.3d 1087 (explaining the Legislature may overturn the common law with “clear and unambiguous

language” (internal quotation marks and citation omitted)), and Section 30-3-6 is one such legislatively enacted exception. {14} We next turn to examination of the statute. Section 30-3-6, entitled “Reasonable detention; assault, battery, public affray or criminal damage to property[,]” states:

A. As used in this section:

(1) “licensed premises” means all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors;

(2) “proprietor” means the owner of the licensed premises or his manager or his designated representative; and

(3) “operator” means the owner or the manager of any establishment or premises open to the public.

B. Any law enforcement officer may arrest without warrant any persons he has probable cause for believing have committed the crime of assault or battery as defined in [NMSA 1978,] Sections 30-3-1 through 30-3-5 [(1963, as amended through 1977)] . . . or public affray or criminal damage to property. Any proprietor or operator who causes such an arrest shall not be criminally or civilly liable if he has actual knowledge, communicated truthfully and in good faith to the law enforcement officer, that the persons so arrested have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 . . . or public affray or criminal damage to property.

The statute has two subsections. The first, a definition section, defines “licensed premises,” “proprietor,” and “operator.” Section 30-3-6(A)(1)-(3). “[L]icensed premises” pertains to those premises we traditionally refer to as restaurants and bars. Section 30-3-6(A)(1). The second subsection addresses warrantless arrests for enumerated crimes and includes a provision addressing criminal and civil liability arising from reporting such crimes. Section 30-3-6(B). Because we find no cases in New Mexico that have interpreted Section 30-3-6, its scope is an issue of first impression to this Court.¹

{15} Defendant refers to Section 30-3-6 as the “barroom brawl statute that has traditionally been understood to authorize misdemeanor arrests at bars, restaurants, and liquor stores.” Defendant argues that the misdemeanor arrest rule is limited

to three judicially and statutorily created exceptions for crimes against businesses, crimes related to domestic violence, and crimes arising from driving vehicles, and contends that Section 30-3-6 falls under the exception to the misdemeanor arrest rule for crimes against businesses. Defendant highlights two other statutes that allow for warrantless arrests, NMSA 1978, § 30-16-16(B) (2006) (permitting warrantless arrests for falsely obtaining services or accommodations) and § 30-16-23 (permitting warrantless arrests for shoplifting), and suggests that these three statutes read together protect specific businesses from low-level crimes, i.e. shoplifting from stores, fighting or damaging property at bars or restaurants, and getting service without paying at restaurants, hotels, and other service-oriented businesses. Defendant contends, therefore, that a common-sense reading of Section 30-3-6 indicates that it only applies when the arrest occurs on licensed premises, that is, an establishment that sells liquor.

{16} We disagree with Defendant's conclusion. Not one of the three statutes cited by Defendant limits warrantless arrests to those taking place at specific locations. Instead, each statute addresses warrantless arrests for specifically described crimes. See §§ 30-16-16(B), -23; § 30-3-6. Although Section 30-3-6 includes civil and criminal liability protection for owners—and their managers and designated representatives—of establishments licensed to sell or serve alcohol, that protection also extends to owners or managers “of any establishment or premises open to the public.” Section 30-3-6(A)(3), (B). The liability protection for “licensed premises” is not a sufficient indication—particularly in light of the fact that the statute includes the same protection for owners or managers of any establishment or premises open to the public, *see id.*—that it limits statutory authority for warrantless arrests with probable cause for assault, battery, public affray, or criminal damage to property to be executed at only locations licensed to sell liquor. And the statute's mere inclusion of protection from civil liability for owners and operators of liquor establishments or other business locations open to the public does not bear upon the statute's otherwise broadly stated exception to the misdemeanor arrest rule.

{17} A plain reading of Section 30-3-6 permits a law enforcement officer to arrest people for the enumerated crimes stated therein, including battery, without a warrant when the officer has probable cause. See *State v. Farish*, 2018-NMCA-003, ¶ 6, 410 P.3d 239 (“We begin the search for legislative intent by looking first to the words chosen by the Legislature and the plain meaning of the Legislature's language.” (internal quotation marks and citation omitted)), *rev'd on other grounds and remanded*, 2021-NMSC-030, 499 P.3d 622. The plain language does not limit the arrests based on the location of the alleged crime. The only limitation is that the law enforcement officer have probable cause that one of the listed crimes occurred.

{18} Reading the entire statute as a whole, we understand the statute is about two central subjects: warrantless arrests and protection from civil and criminal liability relating to those warrantless arrests. While the definition of licensed premises—restaurants and bars—is relevant to the civil and criminal liability portion of the statute, it does not limit the provision regarding warrantless arrest requirements. We must presume the Legislature chose to omit a requirement that the warrantless arrest occur on licensed premises. See *State v. Jade G.*, 2007-NMSC-010, ¶ 16, 141 N.M. 284, 154 P.3d 659 (“We are not permitted to read into a statute language which is not there, particularly if it makes sense as written.” (internal quotation marks and citation omitted)). We also note, as discussed above, the liability protection is not limited by the reference to licensed premises, but also extends to operators of premises open to the public. Section 30-3-6(B). Defendant's contention that the statute only applies when the arrest occurs on licensed premises ignores the term “operator” in the statute. Such an interpretation would render a portion of the statute superfluous, which we decline to do. See *Am. Fed'n of State, Cnty. & Mun. Emps. v. City of Albuquerque*, 2013-NMCA-063, ¶ 5, 304 P.3d 443 (“Statutes must also be construed so that no part of the statute is rendered surplusage or superfluous[.]” (internal quotation marks and citation omitted)).

{19} We next look at the history of Section 30-3-6. It was originally enacted in 1981 and amended once in 1983. The 1983 amendment changed the title from “Rea-

sonable detention on licensed premises; assault, battery or public affray” to “Reasonable detention; assault, battery, public affray or criminal damage to property[.]” which is still current today. Compare § 30-3-6 (1981) (emphasis added), with § 30-3-6. This deletion provides further support to our view that the Legislature intended that the warrantless arrest need not be based on actions that occurred at particular locations and supports our conclusion that Section 30-3-6 requires only that the arresting officer have probable cause for one of the crimes listed in the statute to execute a warrantless arrest. {20} The 1983 amendment also added “criminal damage to property” to the list of offenses and added “operator” to the class of people protected from criminal or civil liability arising from such arrests.² Compare § 30-3-6, with § 30-3-6 (1981). These two additions significantly expanded the scope of the statute by increasing both the number and types of situations in which law enforcement is permitted to make warrantless arrests and to extend civil and criminal liability protections to more people. And by defining “operator” as “owner or the manager of any establishment or premises open to the public[.]” compare § 30-3-6(A)(3), with § 30-3-6(A) (1981), the statute broadened “licensed premises” beyond licensed liquor establishments to include the entirety of premises open to the public. The amendments made to the statute support our conclusion that the statute's scope is not limited to events that occur in a barroom or restaurant, but its scope is broad enough to include the events that occurred in this case, in a parking lot adjacent to a school.

{21} We conclude that Section 30-3-6 provides statutory authority for law enforcement to arrest someone without a warrant if they have probable cause that that person committed a battery pursuant to Section 30-3-4. “An officer has probable cause to arrest when the facts and circumstances within the officer's knowledge are sufficient to warrant the officer to believe that an offense has been or is being committed.” *State v. Granillo-Macias*, 2008-NMCA-021, ¶ 9, 143 N.M. 455, 176 P.3d 1187. Defendant was charged with committing petty misdemeanor battery, which is “the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.” Section 30-3-4.

¹ Defendant cites a nonprecedential federal case, *Montes v. Gallegos*, 812 F. Supp. 1159, 1165 n.7 (D.N.M. 1992), which references Section 30-3-6. In a footnote, Montes refers to the defendant's argument regarding “the New Mexico ‘barroom fight’ statute” and cites to Section 30-3-6, focusing on the statute's probable cause requirement. However, neither the defendant's nor the federal district court's characterization of the statute in Montes, is relevant to our analysis. Clearly, Section 30-3-6 permits arrests based upon the occurrence of barroom batteries. At issue here, is whether the statute is limited to that, and only that, context.

² The 1983 amendment to Section 30-3-6 also added the requirement that eligible parties must communicate “truthfully and in good faith to the law enforcement officer” to qualify for liability protection. Compare § 30-3-6(B), with § 30-3-6(B) (1981).

{22} Deputy Deprez was called to the scene where people were actively keeping Defendant and Hebert apart. Both were visibly injured such that Deputy Deprez asked if they needed medical intervention. He interviewed multiple witnesses who stated Defendant initiated the physical altercation. Defendant was the only person who claimed Hebert hit her first. Defendant also admitted to drinking alcohol and gave differing accounts of how Hebert started the fight. These facts together sufficiently established probable cause that Defendant committed a battery against Hebert.

{23} Having concluded that Section 30-3-6 provided Deputy Deprez with statutory authority to arrest Defendant without a warrant, we next determine whether the warrantless arrest was legal under the New Mexico Constitution.

II. Defendant's Warrantless Arrest Was Valid Under the New Mexico Constitution

{24} The State argues that the district court erred in its determination that no exigent circumstances existed to excuse Deputy Deprez's failure to obtain a warrant. As explained above, all warrantless arrests must comply with the "reasonableness" component of Article II, Section 10 of the New Mexico Constitution. *Campos*, 1994-NMSC-012, ¶ 5. "Warrantless arrests made under the authority of [a] statute may be presumed reasonable but that presumption may be rebutted under our interpretation of what is constitutional." *Id.* ¶ 7. "[A] warrantless arrest supported by probable cause is reasonable if some exigency existed that precluded the officer from securing a warrant." *Paananen*, 2015-NMSC-031, ¶ 27 (internal quotation marks and citation omitted). Exigent

circumstances exist in "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence." *Campos*, 1994-NMSC-012, ¶ 11 (internal quotation marks and citation omitted). However, this is not an exhaustive list, and there "are other situations in which an exigency not necessarily amounting to an imminent threat of danger, escape, or lost evidence will be sufficient to render reasonable a warrantless public arrest supported by probable cause under the totality of the circumstances." *Paananen*, 2015-NMSC-031, ¶ 26. "An on-the-scene arrest supported by probable cause will usually supply the requisite exigency." *Id.*

{25} In *Paananen*, our Supreme Court determined that a warrantless arrest for shoplifting met New Mexico's constitutional standard when the responding officer developed probable cause to arrest the defendant at the scene based on the review of evidence. *Id.* ¶¶ 24-28. The officers did not have the "information or time to act on it prior to arriving on scene, and thus could not have gotten an arrest warrant before responding to the call." *Id.* ¶ 24. Similarly, in this case, Deputy Deprez was dispatched based on a call that Defendant was attacking Hebert. He arrived at the scene, interviewed witnesses, and determined based on his investigation that he had probable cause to arrest Defendant for battery. Deputy Deprez did not have information to act on before he arrived at the scene and investigated, and he did not have time to secure a warrant before responding. He developed probable cause to arrest based on his review of the evidence at the scene.

{26} Further, just as in *Paananen*, given it was not reasonable to obtain an arrest warrant before responding, Deputy Deprez faced three alternatives: to arrest Defendant on the scene; detain Defendant while going to the court to obtain a warrant, which would lead to a de facto warrantless arrest based on the time necessary to procure the warrant; or release Defendant and secure a warrant. *See id.* ¶ 25. Our Supreme Court concluded in *Paananen* that a warrantless arrest was "the only reasonable approach" in this situation. *Id.* It determined that to secure a warrant would lead to an expenditure of resources "seemingly disproportionate to the crime of shoplifting and a risk our Legislature has declared unacceptable" and cited to the statute that authorized warrantless arrests for shoplifting. *Id.* In this case, securing a warrant would have led to a similar disproportionate expenditure of resources for a crime that the Legislature has also declared unacceptable. *See* § 30-3-6; *Paananen*, 2015-NMSC-031, ¶ 25. In our view, Deputy Deprez chose a reasonable approach under the circumstances.

{27} Having concluded Defendant's warrantless arrest was reasonable, we need not address the State's final argument that dismissal was an inappropriate remedy under the circumstances.

CONCLUSION

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

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

**KRISTINA BOGARDUS, Judge
WE CONCUR:**

**J. MILES HANISEE, Chief Judge
JACQUELINE R. MEDINA, Judge**

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AGENDA

Sign-in		7:45 – 8:15 a.m.
Introductory Remarks	Jeffrey D. Myers, M.S., J.D.	8:15 – 8:30 a.m.
Federal and State Estate and Gift Tax Update 2023	Vickie R. Wilcox, J.D., LL.M.	8:30 – 9:15 a.m.
Corporate Transparency Act and Secure Act 2.0	Vickie R. Wilcox, J.D., LL.M.	9:15 – 10:00 a.m.
Non-Compete v. Non-Solicitation: The FTC’s Proposed Prohibition and the States’ Positions	Jeffrey D. Myers, M.S., J.D.	10:00 – 10:30 a.m.
Break		10:30 – 10:45 a.m.
Continuing Education Smorgasbord: Overview of Current Hot Topics	Madison R. Jones, J.D., M.B.A.	10:45 – 11:45 a.m.
Lunch: Pizza, Beverages, and Networking in the Charity Exhibit Hall		11:45 – 12:45 p.m.
Interacting with Hospitals & Staff, Families and Insurance Companies regarding Advanced Directives & End of Life Decisions	Christy Calderwood, J.D.	12:45 – 1:45 p.m.
Speaking with All the Letters: Having Productive Conversations with Clients about LGBTQ+ EP Issues (in Financial, Legal, and Insurance Services)	Deian McBryde, J.D.	1:45 – 2:45 p.m.
Break		2:45 – 3:00 p.m.
Ethics: Judging Capacity, Undue Influence, Engagement Agreements, and Conflict Waivers: Best Practices	Anne Taylor, J.D.	3:00 – 4:00 p.m.

Presented By:

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Montgomery & Andrews, P.A. is seeking lawyers with 3+ years of experience to join its firm in Santa Fe, New Mexico. Montgomery & Andrews offers enhanced advancement prospects, interesting work opportunities in a broad variety of areas, and a relaxed and collegial environment, with an open-door policy. Candidates should have strong written and verbal communication skills. Candidates should also be detail oriented and results-driven. New Mexico licensure is required. Please send resumes to rvalverde@montand.com.

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.

Chief Officer

The Insurance Nominating Committee is accepting letters of interest and résumés from those who meet the statutory qualifications of the Insurance Code 59A-2-3 NMSA, 1978 (2020), experience, and knowledge for the position of Chief Officer of the Office of Superintendent of Insurance known as the Superintendent of Insurance. The position is responsible for exercising all powers related to the supervision of the insurance industry as provided in the New Mexico Insurance Code. The complete job description, qualification, and application information are available at <http://www.osi.state.nm.us/inscom/nomcom/index.html>. The deadline to submit letters of interest and resume is March 15, 2023. Further inquiries regarding the details of the application process should be directed to Jennifer Romero at (505) 795-1315 or by e-mail at jennifer.romero@osi.nm.gov.

Chief General Counsel

The New Mexico Public Regulation Commission is accepting applications for the position of Chief General Counsel. The position advises the Commission on regulatory matters, including rulemakings and adjudicatory proceedings involving the regulation of electric and gas utilities, telecommunications providers and motor carriers. The position represents the Commission in federal and state courts. Responsibilities include overseeing the day to day operations of General Counsel Division including case management and assignment. The position requires extensive knowledge of administrative law practice and procedures and of substantive law in the areas regulated by the Commission; ability to draft clear, concise legal documents, as well as to prioritize within a heavy workload environment. Minimum qualifications: JD from an accredited law school; ten years of experience in the practice of law, including at least four years of administrative or regulatory law practice and three years of staff supervision; admission to the New Mexico Bar or commitment to taking and passing Bar Exam within six months of hire. Background in public utilities with a focus on renewable energy resources strongly preferred. Salary: Anticipated salary, \$91,374.40- \$126,547. The NMPRC and the State of New Mexico provide excellent retirement and health benefits. This is a GOVEX "at will" position and reports to the Commission. The State of New Mexico is an EOE Employer. Apply: Submit letter of interest, writing sample, resume and three references to: Human Resources, Attention: Rene Kepler, Renes.Kepler@prc.nm.gov or NMPRC P.O. Box 1269, Santa Fe, NM 87504-1269. This position will remain open until filled.

Briefing and Research Attorney

Excellent licensed briefing and research attorney with strong education and experience, as well as appellate. Practice includes Texas, New Mexico, and other states, State and Federal Courts. You will be involved in case development, motions and court proceedings. We have an active Plaintiff trial practice with principal office located in El Paso, with /Las Cruces office and possible arrangements for remote research and writing. Full-time. Salary range: \$80,000.00 - \$150,000.00+ per year. Contract work possible. Please submit resume and writing sample to jimscherr@jamesscherrlaw.com, or mail to 1790 Lee Trevino 601, El Paso, Texas 79936.

Associate Attorney

Do you want to work among colleagues, not cutthroats? Do you want to refine your case presentation skills? Do you want plenty of time in front of mediators and judges? Do you want to have the ability to work from home, from the office, or a combination of both? We specialize in workers' compensation defense, run a completely paperless office, and do a variety of district court work. We are a litigation focused firm looking for a newly licensed attorney or an attorney looking for a new challenge. If you think you are up to the task, submit a resume and cover letter to: jeffrey@hklfirm.com. Competitive salary and benefits.

Request For Proposal – Guardian Ad Litem Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual attorney practicing in NM to provide Guardian ad litem services in cases involving child or adult neglect or abuse. Reply by March 15, 2023. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfq/

Associate Attorney

Riley | Keller | ALDERETE | GONZALES, an AV-rated Albuquerque defense firm formed in 1982, seeks an associate attorney for an appellate/research writing position. We seek a person with appellate experience, an interest in legal writing and strong writing skills. The position is full-time with a virtual work setting and flexible schedule. We offer an excellent salary, benefits and pension package. Please submit a resume, references and writing samples to our Office Manager by fax, (505) 883-4362 or mvelasquez@rileymlaw.com.

Environmental Justice Staff Attorney

NMELC is seeking applications for a Staff Attorney dedicated to NMELC's mission of working with communities to advance environmental justice and human rights. <https://nmelc.org/employment/>

JSC Investigative Trial Counsel

State of NM Judicial Standards Commission located in Albuquerque seeks a JSC Investigative Trial Counsel, an FLSA exempt (not classified), at-will and full-time position with benefits including PERA retirement. NMJB Pay Range LL \$31.273/hr-\$62.546/hr, or (\$65,047-\$130,220) yearly DOE. Flexible work schedules available. Under general direction and review, the Investigative Trial Counsel assists in the investigation and prosecution of matters before the Commission involving the discipline, removal, or retirement, of New Mexico judges and may assist with oral and written arguments before the New Mexico Supreme Court. No telephone calls, e-mails, faxes, or walk-ins accepted. See full job description and application instructions at [https://humanresources.nmcourts.gov/home/career-opportunities/or/on-the-Career-Opportunities-page-of-the-Commission's-website-\(www.nmjsc.org\)](https://humanresources.nmcourts.gov/home/career-opportunities/or/on-the-Career-Opportunities-page-of-the-Commission's-website-(www.nmjsc.org)).

Attorney (3+ years)

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

Attorneys

For more than sixty years, Butt Thornton & Baehr PC has been known as a law firm of quality and integrity. We are proud of the position of trust and respect the firm has earned in New Mexico's business, legal and governmental communities. Our commitment is to continue to meet the high standards that have earned us that reputation into the twenty-first century. BTB attorneys work together to analyze legal issues and provide legal counsel to clients. New attorneys are exposed to all areas of civil litigation, from legal research and drafting documents, to taking and defending depositions, trial preparation and trial, and working directly with clients. If you are licensed to practice law and are seeking an opportunity to enjoy the practice of law with plenty of room for growth, please send a letter of interest, resume and writing samples to Neysa E. Lujan at nelujan@btblaw.com.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney (\$ 65,000.00) to a Senior Trial Attorney (\$76,600.00), based upon experience. These positions are located in the Carlsbad, NM office. Please send resume to Dianna Luce, District Attorney, 100 N Love Street, Suite 2, Lovington, NM 88260 or email to 5thda@da.state.nm.us

Associate Attorney

If you want an exciting, rewarding and fulfilling career, with the prospect of great advancement, our firm is the one for you! We offer great training, the opportunity for depositions, hearings and trial work immediately. If you have some experience with insurance defense and want to work in a great environment, please send us a resume and a writing sample. We pay at the high end of the pay range for the right candidate. We have outstanding benefits including medical, dental, disability and a 6% matching 401K! We ask for those lawyers who are tired of working in a large firm or who feel unappreciated and want a home where their talents will be realized, submit resume to NMLegalOffice15@gmail.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 – EHD – Air Quality; Assistant City Attorney – Property & Finance. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

Position Announcement #2023-02 Legal Assistant

POSITION: LEGAL ASSISTANT (Full-time with comprehensive benefits package); **LOCATION:** Albuquerque, NM; **SALARY RANGE:** JSP 6/7/8 (starting salary range \$42,429-\$52,215; grade level and step placement determined by experience, qualifications, and budgetary constraints); **CLOSING DATE:** March 5, 2023. The Federal Public Defender for the District of New Mexico is accepting applications for a full-time Legal Assistant. The mission of our office is to provide high quality, effective, and ethical legal representation to our clients charged with federal crimes. We are an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. **POSITION OVERVIEW:** The Legal Assistant is a liaison between attorneys and clients. A critical component of this position is to effectively communicate and frequently interact with assigned attorneys, other staff, clients, court agency personnel, and the public. The Legal Assistant will routinely spend their time in a Monday-Friday office environment supporting multiple attorneys and providing back-up support to other legal assistants, the receptionist, and other support staff. Minimal telework may be allowed. Daily duties and responsibilities include but are not limited to: Use of advanced knowledge of legal terminology; Use of Microsoft Word, Adobe Acrobat, and Case Management programs; Frequent communication with court personnel and clients; Answer general inquiries about the defender organization and program operations; Obtain information from external sources; Understand court rules and protocols; Manage digital and paper case files; Maintain calendars for multiple attorneys; Arrange meetings; Send reminders to Assistant Defender(s) of appointments and commitments; Use a multi-line phone system and other various office equipment; Screen incoming mail, route to appropriate destinations, and review outgoing mail for accuracy; File pleadings electronically Prepare correspondence; Edit and proofread initial pleadings; Check citations in legal documents; Assemble hard copies for case filing; Carry files and mail between offices, courthouse, and post office; Occasionally transcribe dictation. **MINIMUM QUALIFICATIONS AND EXPERIENCE:** High school graduate or equivalent; Two years general experience and one-year legal assistant experience; U.S. citizen or person authorized to work in the U.S. and receive compensation as a federal employee; Proficient in Microsoft Outlook, Word, and Adobe Acrobat. Excel is a plus; Interest in indigent criminal defense; Possess excellent communication and interpersonal skills; Self-motivated while also excelling in a fast-paced team environment; A valid driver's license is required for certain duties. **PREFERRED SKILLS AND EXPERIENCE:** Federal crimi-

nal experience; Office confidentiality, such as attorney/client privilege; Ability to analyze and apply relevant policies and procedures to office operations; Exercise good judgment; General knowledge of office protocols and secretarial processes; Analyze and recommend practical solutions; Spanish fluency is a plus. **BENEFITS:** This position is full-time with a comprehensive benefits package that includes: Health/Vision/Dental/ Life Insurance Coverage; Flexible Spending Program; Long Term Care Insurance Program; Public Service Loan Forgiveness if qualified; Earned paid time off in the amount of 13 days per year for the first three years of employment; 20 days after three years; and 26 days after fifteen years of federal service; Earned sick leave in the amount of 13 days per year 11 Paid Federal Holidays; Paid Parental Leave in the amount of 12 weeks after one year of full-time employment; Mandatory participation in the Federal Employees Retirement System; Optional participation in the Thrift Savings Plan with up to 5% government matching contributions; Employee Assistant Program (confidential counseling and assistance); Credit for prior federal service. **PHYSICAL DEMANDS AND WORK ENVIRONMENT:** Candidate must be physically capable of meeting the requirements of the job, which may include moving and lifting items up to and sometimes more than 25 lbs. While performing the duties of this job, the individual is regularly required to sit, stand, walk, talk, hear, and reach with hands and arms. Reasonable accommodations may be made to enable individuals with disabilities to perform essential job functions. **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. The position is excepted service and does not carry the tenure rights of the competitive Civil Service. Employees are members of the judicial branch. Excepted appointments are considered "AT WILL" employees and can be terminated at any time with or without cause. 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 NM Dept of Health regarding Covid-19 vaccinations and boosters. Salary is payable only by electronic funds transfer (direct deposit). **HOW TO APPLY:** In one PDF document, please submit statement of interest, resume, and three references to: Michelle Dworak, Administrative Officer, FDNM-HR@fd.org. Reference 2023-02 in the subject. Applications must be received by March 5, 2023. Position(s) will remain open until filled and is subject to the availability of funding. No phone calls please. Only those selected for interview will be contacted. For more information about our office, please visit <https://nm.fd.org/>

Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$24.68 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$25.89 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Paralegal

Ortiz & Zamora, LLC, is growing and seeks an experienced and motivated paralegal to work in the Santa Fe office. The paralegal will work with our attorneys to manage an active civil litigation docket involving personal injury, medical malpractice, governmental liability, and more. Civil litigation experience is required and it is preferred that a candidate meet the paralegal qualifications in NMRA Rule 20-115. Experience with discovery, motion practice, court filings, calendaring, and hearing and trial preparation desired. Salary D.O.E. Benefits include retirement, insurances, and paid time off. Please email your resume to nadine@ortiz-zamora.com.

Legal Assistant

Solo practitioner seeking an experienced, professional, full-time legal assistant. Practice limited to probate, elder law, guardianships, and a few plaintiff's personal injury cases. Legal experience preferred, but will train a well-qualified candidate with limited experience. The ideal candidate will have experience with MS Office, QuickBooks, Odyssey, and legal billing software. The ideal candidate will possess above-average writing and speaking skills. Duties will include reception, answering multiple telephone lines, scheduling appointments, filing, client billing, bookkeeping, general office administrative duties, and other duties as assigned. Position offers a very pleasant working environment. Salary commensurate with experience. Please send a cover letter and resume to ben@benhancocklaw.com.

**Position Announcement# 2023-03
Administrative Assistant
Specializing In Personnel And
Human Resources Management**

POSITION: ADMINISTRATIVE ASSISTANT (Full-time with comprehensive benefits package); LOCATION: Albuquerque, NM; SALARY RANGE: JSP 9/11/12 (starting salary range \$57,672-\$83,634; grade level and step placement determined by experience, qualifications, and budgetary constraints). CLOSING DATE: March 5, 2023. The Federal Public Defender for the District of New Mexico is seeking a full-time Administrative Assistant specializing in Personnel and Human Resources for our Albuquerque office. The mission of our office is to provide high quality, effective, and ethical legal representation to our clients charged with federal crimes. We are an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. POSITION OVERVIEW: The Administrative Assistant (HR) performs a full range of Human Resources and Administrative services that include, but are not limited to, benefits administration, recruitment, classification, payroll, workers compensation, personnel actions, employee relations, time and attendance, and record maintenance. This position is a liaison between employees and management. You work closely with all staff to fulfill the mission of a very fast-paced legal office. Candidate must be extremely detail and policy oriented, have a demonstrated work history of dependability, handle confidential matters with discretion, always exhibit professional conduct, and consistently demonstrate sound ethics and judgement. Must effectively interact with others; provide exceptional customer service; and resolve difficulties. Adhering to stringent deadlines and meticulous attention to detail are essential. Duties and responsibilities will progress as the needs of the office change. Work time is routinely spent in a Monday-Friday office environment. Minimal telework may be allowed. Travel between offices and to national trainings may be required. Daily duties and responsibilities include but are not limited to: Process personnel and payroll actions such as onboarding, appointments, promotions, separations, within-grade increases, retirements, and changes to employee benefits; Develop, coordinate, and facilitate a comprehensive orientation program for all new employees on various administrative, personnel, and procedural matters; Develop and maintain the content of the human resources section on intranet website; Organize and conduct annual benefits open season fair and corresponding information workshops; Respond and attend to administrative inquiries from staff in two offices as well as from other organizations on issues including HR matters, property, purchasing, space, and facilities; Assist in researching, developing,

and recommending human resources related procedures or policies Maintain and update human resource records and benefits files; Maintain and monitor payroll and leave records to include administering timekeeping records; Process workers compensation claims forms; Assist in recruitment, interviewing, and hiring of candidates for employment; Administer background checks (fingerprinting) and issuing credentials and identification cards; Assist with benefits program coordination, including maintaining and distributing benefits materials, processing forms, addressing benefit questions, and resolving benefits issues; Assist Administrative Officer in a variety of administrative matters regarding human resources, personnel, policy, operations, finance, procurement, property, space, and facilities. Other duties may include but are not limited to: Prepare and arrange offices/workstations for new employees/interns/volunteers; Oversee and anticipate office supplies, furniture, and general equipment needs, update inventory, restocking, and coordinate repairs and maintenance of equipment and furniture; Support administrative functions for external and internal audits and program assessments; Arrange travel and prepare vouchers for payment reimbursement; Review and prepare vouchers, purchase orders, and invoices for payment ensuring accuracy and appropriateness in the Judiciary Integrated Financial Management System (JIFMS); Maintain and organize administrative files, client files, and the file room as needed or directed. MINIMUM QUALIFICATIONS: High school graduate or equivalent; Three years general experience and two years of specialized experience in human resources management and administration that provides knowledge of the rules, regulations, terminology, etc. in H.R. administration; A valid driver's license; U.S. citizen or person authorized to work in the U.S. and receive compensation as a federal employee; Computer fluency in Microsoft Office, Excel, Adobe Acrobat, and database applications. PREFERRED SKILLS AND EXPERIENCE: Human Resources experience in the federal judiciary or another federal agency; Ability to analyze and apply relevant policies and procedures to office operations; Ability to think logically, research matters, and demonstrate problem-solving and analytical skills; Communicate effectively with attorneys, other staff, clients, court agency personnel, and the public; Self-motivated, committed to our Mission, and a desire to work collaboratively in team environment; Prior supervisory or management experience. PHYSICAL DEMANDS AND WORK ENVIRONMENT: Candidate must be physically capable of meeting the requirements of the job, which may include moving and lifting items up to and sometimes more than 25 lbs. While performing the duties of this job, the individual is regularly required

to sit, stand, walk, talk, hear, and reach with hands and arms. Reasonable accommodations may be made to enable individuals with disabilities to perform essential job functions. BENEFITS: This position is full-time with a comprehensive benefits package that includes: Health/Vision/Dental/Life Insurance Coverage; Flexible Spending Program; Long Term Care Insurance Program; Public Service Loan Forgiveness if qualified; Earned paid time off in the amount of 13 days per year for the first three years of employment; 20 days after three years; and 26 days after fifteen years of federal service; Earned sick leave in the amount of 13 days per year; 11 Paid Federal Holidays; Paid Parental Leave in the amount of 12 weeks after one year of full-time employment Mandatory participation in the Federal Employees Retirement System Optional participation in the Thrift Savings Plan with up to 5% government matching contributions; Employee Assistant Program (confidential counseling and assistance); Credit for prior federal service. 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. The position is excepted service and does not carry the tenure rights of the competitive Civil Service. Employees are members of the judicial branch. Excepted appointments are considered "AT WILL" employees and can be terminated at any time with or without cause. 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. Salary is payable only by electronic funds transfer (direct deposit). HOW TO APPLY: In one PDF document, please submit letter of interest, resume, and three references to: Michelle Dworak, Administrative Officer, FDNM-HR@fd.org; Reference 2023-03 in the subject. Applications must be received by March 5, 2023. Position(s) will remain open until filled and is subject to the availability of funding. No phone calls please. Only those selected for interview will be contacted. More than one position may be filled from this posting. For more information about our office, please visit <https://nm.fd.org/>

Legal Assistant

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks Legal Assistant. Must be detail-oriented, organized, and have excellent communication skills. Bilingual in Spanish a plus. Competitive salary. Please e-mail your resume to karrants@stiffllaw.com

Paralegal

Paralegal position in established commercial civil litigation firm. Prior experience preferred. Requires knowledge of State and Federal District Court rules and filing procedures; factual and legal online research; trial preparation; case management and processing of documents including acquisition, review, summarizing, indexing, distribution and organization of same; drafting discovery and related pleadings; maintaining and monitoring docketing calendars; oral and written communications with clients, counsel, and other case contacts; proficient in MS Office Suite, AdobePro, Powerpoint and adept at learning and use of electronic databases and legal software technology. Must be organized and detail-oriented professional with excellent computer skills. All inquiries confidential. Salary DOE. Competitive benefits. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Legal Secretary

AV rated insurance defense firm seeks full-time legal assistant. Position requires a team player with strong word processing and organizational skills. Proficiency with Word, knowledge of court systems and superior clerical skills are required. Should be skilled, attentive to detail and accurate with a Minimum typing speed of 75 wpm. Excellent work environment, salary, private pension, and full benefits. Please submit resume to mvelasquez@rileymlaw.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

Office Space**Offices For Rent**

820 Second Street NW, two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170

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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 website www.sunvalleyabq.com for more details or call Jaclyn Armijo at 505-343-2016.

Office for Rent

1,400 SQFT: Reception, four offices, shared conference. Standalone building, signage, off-street parking, car charging. Near courthouses. Coffee-shop and eatery on block. 505-242-9812, 801 Tijeras NW, Albuquerque. See pictures on website: www.legaleconomicsllc.com

Private Office Suite in Law Office

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 located at 900 Lomas NW. Contact Kim @ 505-331-3044 or email baiamonte4301@gmail.com

2023 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

The publication schedule can be found at
www.sbnm.org.



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In-house expertise in all catastrophic cases including carbon monoxide and electrocutions.

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SpenceNM.com.



**Governor Michelle Lujan Grisham proclaimed
February 4 through February 11, 2023
“Court Reporting and Captioning Week”**



STATE OF NEW MEXICO EXECUTIVE OFFICE SANTA FE, NEW MEXICO

Proclamation

WHEREAS, for centuries there has been a need to translate the spoken word into text for posterity by trusted impartial professionals; and

WHEREAS, scribes were present when our nation's Founding Fathers drafted the Declaration of Independence and the Bill of Rights. President Lincoln entrusted scribes to record the Emancipation Proclamation; and

WHEREAS, since the advent of shorthand stenotype machines in 1879, scribes have become known as court reporters, stenographers, or captioners, and have played an invaluable role in creating an impartial transcript for legal proof and verification in real time or at a later date, as well as safeguarding confidential legal records; and

WHEREAS, court reporters have embraced and continue to stay abreast of technology which provides the fastest, most accurate way to preserve the record using computer-aided translation, which results in the most up-to-date voice-to-print transcription available in real time; and

WHEREAS, court reporters are preferred by the United States Congress for diligently preserving members' words for the official Congressional Record; and

WHEREAS, court reporters are indispensable in the delivery of fair and impartial justice, as they must create a verbatim and accurate record of court proceedings and deposition testimony for all civil litigants and criminal defendants in courtrooms and other venues requiring a written record across our country; and

WHEREAS, court reporters and captioners are responsible for the closed captioning seen on television and movie screens, at sporting stadiums, and other community and educational settings, providing instant and equal access to news and information to millions of deaf and hard-of-hearing people every day; and

WHEREAS, court reporters during the ongoing global pandemic have worked tirelessly, in person and remotely, to provide much needed access and preserve our history; and

WHEREAS, whether they are called the scribes of yesterday or the stenographic court reporters and captioners of today, they are preserving our nation's history and are truly impartial guardians of the written record.

NOW, THEREFORE, I, Michelle Lujan Grisham, Governor of the state of New Mexico, do hereby proclaim February 4 through February 11, 2023 as:

"Court Reporting and Captioning Week"

throughout the state of New Mexico.

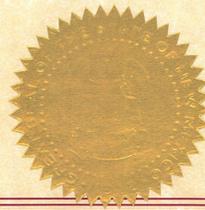
Attest:

Maggie Toulouse Oliver
Secretary of State

Done at the Executive Office this
17th day of January 2023.

Witness my hand and the Great Seal
of the State of New Mexico.

Michelle Lujan Grisham
Governor



Paid Advertising

New Mexico Court Reporters Association

Jennifer Bean, *President* • Robin Brazil, *President-Elect*

Board members: Peggy Gonzales • Deb Williams • Kendra Sutton
Lydia Davidson • Monica Gutierrez • Melissa Goodson