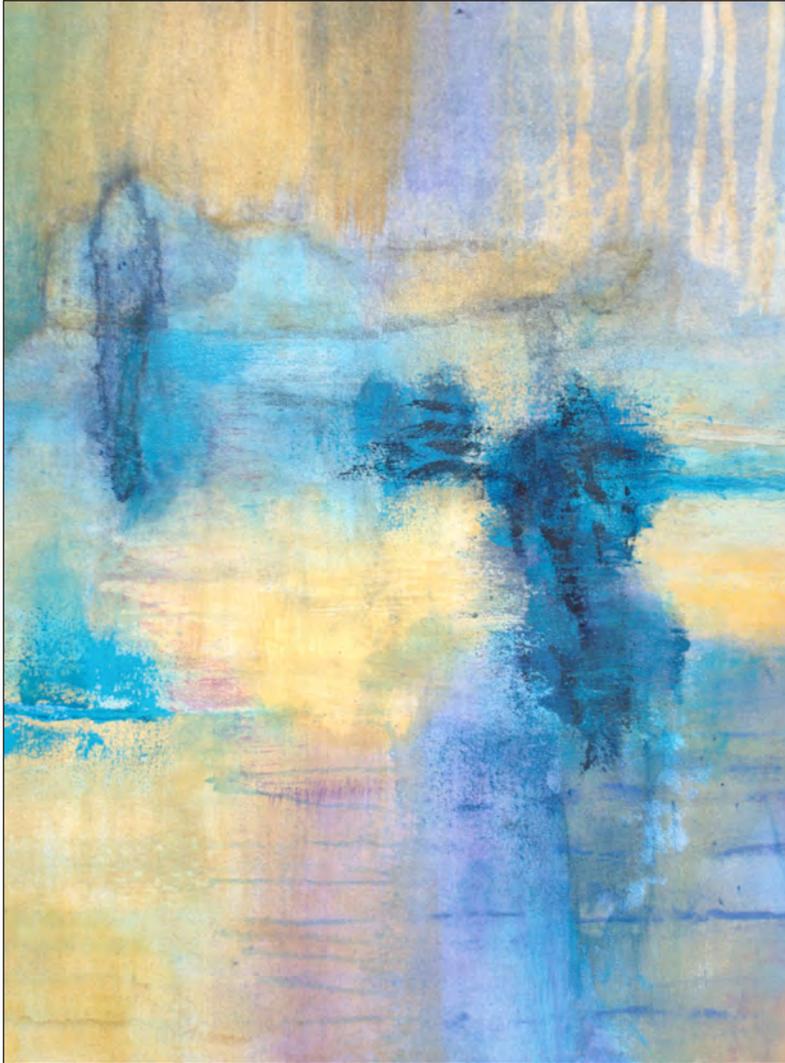


# BAR BULLETIN

September 27, 2023 • Volume 62, No. 18



*Curious Symmetry*, by Linda Holland (see page 3)

[www.lindahollandstudio.com](http://www.lindahollandstudio.com)

## Inside This Issue

Board of Bar Commissioners: 2023 Election Notice .....	4
Bernalillo County Metropolitan Court: Notice of Temporary Closure .....	4
United States District Court for the District of New Mexico: Increase to Per Page Transcript Fee Rates.....	6
Clerk's Certificates .....	7
Hearsay & In Memoriam.....	9
Court of Appeals Opinions List.....	12
Proposed Amendments to Judicial Standards Commissions Rules ....	13
From the New Mexico Supreme Court	
2023-NMSC-014: No. S-1-SC-39057: State v. Romero.....	16
2023-NMSC-015: No. S-1-SC-38797: State v. Begaye.....	21
2023-NMSC-016: No. S-1-SC-38872: Gonzagowski v. Steamatic of Albuquerque, Inc. and Allstate Indemnity Company and Gerard Becker.....	26
From the New Mexico Court of Appeals	
Formal Opinions.....	31
Memorandum Opinions .....	34



# We've got your back.

In-house expertise in all catastrophic cases including wrongful death and medical malpractice.

Over \$25 million in co-counsel settlements in 2022 and more than \$1 billion in the firm's history.

Call us for your next case, [505.832.6363](tel:505.832.6363).  
[SpenceNM.com](http://SpenceNM.com).





**Officers, Board of Bar Commissioners**

Benjamin I. Sherman, President  
 Erinna M. Atkins, President-Elect  
 Aja N. Brooks, Secretary Treasurer  
 Carolyn A. Wolf, Immediate Past President

**State Bar Staff**

Executive Director, Richard Spinello  
 Marketing Communications Manager,  
 Celeste Valencia, celeste.valencia@sbnm.org  
 Graphic Designer, Julie Sandoval,  
 julie.sandoval@sbnm.org  
 Advertising and Sales Manager,  
 Marcia C. Ulibarri, 505-797-6058,  
 marcia.ulibarri@sbnm.org  
 Assistant Communications Manager,  
 Brandon McIntyre, brandon.mcintyre@sbnm.org

©2023, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The Bar Bulletin has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the Bar Bulletin does not constitute an endorsement by the Bar Bulletin or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the Bar Bulletin as part of their annual dues. The Bar Bulletin is available at the subscription rate of \$125 per year and is available online at [www.sbnm.org](http://www.sbnm.org).

The *Bar Bulletin* (ISSN 1062-6611) is published twice a month by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227  
 Fax: 505-828-3765 • [address@sbnm.org](mailto:address@sbnm.org)  
 September 27, 2023 • Volume 62, No. 18

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



# Table of Contents

Notices ..... 4  
 United States District Court for the District of New Mexico:  
 Increase to Per Page Transcript Fee Rates..... 6  
 Clerk's Certificates ..... 7  
 Hearsay & In Memoriam..... 9  
 Court of Appeals Opinions List..... 12  
 Proposed Amendments to the Judicial Standards Commissions Rules ..... 13

**From the New Mexico Supreme Court**

2023-NMSC-014: No. S-1-SC-39057: State v. Romero ..... 16  
 2023-NMSC-015: No. S-1-SC-38797: State v. Begaye ..... 21  
 2023-NMSC-016: No. S-1-SC-38872:  
 Gonzagowski v. Steamatic of Albuquerque, Inc.  
 and Allstate Indemnity Company and Gerard Becker ..... 26

**From the New Mexico Court of Appeals**

Formal Opinions..... 31  
 Memorandum Opinions..... 34  
 Advertising ..... 41

## Meetings

### September

**29**  
**Immigration Law Section**  
 Noon, virtual

### October

**6**  
**Elder Law Section**  
 Noon, virtual

**10**  
**Business Law Section**  
 11 a.m., virtual

**13**  
**Cannabis Law Section**  
 9 a.m., virtual

**16**  
**Children's Law Section**  
 Noon, virtual

**19**  
**Public Law Section**  
 Noon, virtual

**20**  
**Children's Law Section**  
 9 a.m., virtual

## Workshops and Legal Clinics

### September

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

### October

**4**  
**Divorce Options Workshop**  
 6-8 p.m., virtual

**10**  
**Common Legal Issues for Senior Citizens Workshop**  
 11 a.m.-noon, Virtual  
 For more details and to register, call  
 505-797-6005

**25**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., virtual

### November

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

**About Cover Image and Artist:** Linda Holland layers and blends color, intuitively responding to shades and textures which evoke patinas of urban and natural realms. Gesture and motion flow from martial arts and musical rhythms. Her abstract sculptures and paintings have been featured in numerous solo and two-person shows in New Mexico as well as juried regional group exhibits. In addition to corporate and private collections, several of her works have been selected for state, municipal and university art collections. For more information, visit [www.lindahollandstudio.com](http://www.lindahollandstudio.com).

# Notices

Please email notices desired for publication to [notices@sbnm.org](mailto:notices@sbnm.org).

## 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. (MT). Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. (MT). For more information call: 505-827-4850, email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### N.M. Administrative Office of the Courts

#### Learn About Access to Justice in New Mexico in the "Justice for All" Newsletter

Learn what's happening in New Mexico's world of access to justice and how you can participate by reading "Justice for All," the New Mexico Commission on Access to Justice's monthly newsletter! Email [atj@nmcourts.gov](mailto:atj@nmcourts.gov) to receive "Justice for All" via email or view a copy at <https://accesstojustice.nmcourts.gov/>.

### Bernalillo County Metropolitan Court Notice of Temporary Closure

The Bernalillo County Metropolitan Court will be closed on Oct. 20 for the court's annual training conference. Misdemeanor Custody Arraignment Hearings will be held that morning starting at 9 a.m. (MT) with Felony First Appearance Hearings immediately following. The courthouse will reopen on Oct. 23.

## Professionalism Tip

**With respect to parties, lawyers, jurors and witnesses:**

I will give all cases deliberate, impartial and studied analysis and consideration.

### Eighth Judicial District Court Notice of Mass Case Reassignments

Eighth Judicial District Court Chief Judge Emilio J. Chavez provides notice that as a result of the appointment of Judge Steven A. Romero to Division II of the Eighth Judicial District, the Court is re-assigning all Division II Judge cases to Judge Steven A. Romero effective Sept. 16. Pursuant to Supreme Court Rule 1.088.1 parties who have not yet exercised a preemptory excusal will have 10 days from Sept. 16 to excuse Judge Romero.

### U.S. District Court, District of New Mexico Notice of Proposed Amendments to Local Rules of Criminal Procedure

Proposed amendments to the Local Rules of Criminal Procedure of the United States District Court for the District of New Mexico are being considered. A "redlined" version (with the proposed amendments to 44.1(g) Representation of Corporation or Partnership) and a clean version of these proposed amendments are posted on the Court's website at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov). Members of the Bar may submit comments by email to [clerkofcourt@nmd.uscourts.gov](mailto:clerkofcourt@nmd.uscourts.gov) or by mail to U.S. District Court, Clerk's Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, N.M. 87102, Attn: Cynthia Gonzales, no later than Sept. 30.

### STATE BAR NEWS Board of Bar Commissioners 2023 Election Notice

The nomination period for four Board of Bar Commissioner seats will close at 5 p.m. on Oct. 11. Vacancies exist in the First, Third and Sixth, and Ninth and Tenth Judicial Districts. Nominations of active status members to fill the vacancies caused by the expiration of the term of such members shall be made by petition of 10 or more active status members of the Bar who are in good standing and whose principal

place of practice (address of record) is in the respective district. Active status members whose principal place of practice (address of record) is in El Paso County, Texas, may nominate members for the Third and Sixth Judicial Districts. View the vacant positions, terms, duties and requirements for BBC members and the nomination petition in the Sept. 13 Bar Bulletin or on the website under <https://www.sbnm.org/Leadership/Governance/BBC-Election-Notice-and-Nomination-Petition-2023>.

### 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 Equity in Justice Program Manager Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the Bar Bulletin. Go to [www.sbnm.org/eij](http://www.sbnm.org/eij), click on the Ask Amanda link and submit your question. No question is too big or too small.

### Invitation to New Equity in Justice Book Club Meetings

Join the Equity in Justice Book Club, led by Dr. Amanda Parker and Equity and Justice Commission Chair Torri Jacobus, for five new Book Club meetings this Fall discussing Matthew Desmond's "Poverty, by America." The dates are Oct. 3, Oct. 10 and Oct. 24 from noon to 1:30 p.m. (MT). Please visit <https://form.jotform.com/232184486200047> to register.

### 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](mailto:pam.moore@sbnm.org) or Briggs Cheney at [bcheney@dsc-law.com](mailto:bcheney@dsc-law.com) for the Zoom link.

### NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on 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.

### UNM SCHOOL OF LAW Distinguished Achievement Award and Alumni Promise Award Honorees Announcement

The UNM School of Law and the UNM School of Law Alumni/ae Association are proud to announce the 2023 Distinguished Achievement Award and Alumni Promise Award honorees. The Distinguished Achievement Award honorees are Hon. Judith K. Nakamura (Ret.), Benny Naranjo and Alicia Gutierrez. The Alumni Promise Award honoree is Larissa Lozano. The 2023 UNM School of Law and UNM School of Law Alumni/ae Association Distinguished Achievement Award Dinner will be held on Oct. 20 at the UNM Student Union Building in the ballrooms. The reception will begin at 5:30 p.m. (MT), followed by dinner and award presentations at 6:30 p.m. (MT). Tickets may be purchased on the UNM School of Law website at <https://lawschool.unm.edu/>. Funds go toward UNM School of Law scholarships.

### 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](http://lawlibrary.unm.edu).

### The New Mexico Law Review Invitation to New Mexico Civil Rights Act Symposium

The New Mexico Law Review invites you to the New Mexico Civil Rights Act Symposium: Its Meaning and Application! The symposium will be on Oct. 28 from 9 a.m. to 5 p.m. (MT) at the UNM School of Law. There will be three keynote speakers, including Julie Murray and Matthew Segal from the ACLU State Supreme Court Initiative, and Professor Joanna Schwartz from the UCLA School of Law. Additionally, there will be three locally hosted discussion panels focused on aspects of civil rights litigation and legislation. This event is approved for 5 general and 1 ethics MCLE credit. Contact Shannel Daniels at [nmlrsymposium2023@unm.edu](mailto:nmlrsymposium2023@unm.edu) with any questions. Please register by Oct. 21 here: [https://secure.touchnet.com/C21597\\_ustores/web/product\\_detail.jsp?PRODUCTID=3486&SINGLESTORE=true](https://secure.touchnet.com/C21597_ustores/web/product_detail.jsp?PRODUCTID=3486&SINGLESTORE=true).

### OTHER NEWS N.M. Workers' Compensation Administration Notice of Judicial Vacancy

The Director of the New Mexico Workers' Compensation Administration hereby announces a vacancy for a Workers' Compensation Judge effective Oct. 16. Judge Reginald Woodard is not seeking reappointment. The primary location of the position is in Albuquerque, N.M., with periodic travel throughout the state. This position is an exempt position with an initial one-year term, and a possible appointment to a subsequent five-year term. Interested individuals may obtain a Judicial Application at [www.workerscomp.nm.gov](http://www.workerscomp.nm.gov). The completed Judicial Application and supporting documentation must be received by the WCA at the Albuquerque office of the New Mexico Workers' Compensation Administration, attention Director Robert E. Doucette, Jr., no later than close of business on Sept. 29. A background check will be conducted prior to hiring. WCA judicial salaries are set by statute; please see NMSA sec. 52-5-2(B).

### The Center for Civic Values Judges Needed for New Mexico Middle School Mock Trial Program

The New Mexico Middle School Mock Trial Program, open to any and all middle school students, needs judges for its next

— *Featured* —

**Member Benefit**



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

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

event. The event will be held in Las Cruces at the US Federal Court and the Third Judicial District Court in Las Cruces. Those interested in attending the event may sign up at <https://civicvalues.org/mock-trial/registration/middle-school-judge-volunteer-registration/> by Oct. 25. Please email any questions to Kristen Leeds at [Kristen@civicvalues.org](mailto:Kristen@civicvalues.org) or by phone at 505-764-9417.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**INCREASE TO PER PAGE TRANSCRIPT FEE RATES**

At its September 2022 session, the Judicial Conference approved a significant increase to the maximum per page original and copy transcript fee rates, effective October 1, 2023 (see attached chart). The increase of roughly 10 percent in each of the fiscal years 2024 and 2025, or roughly 20 percent overall, is aimed at keeping pace with inflation and helping courts recruit and retain qualified court reporters. The *Guide to Judiciary Policy*, Volume 6 (*Guide*), and transcript fee schedule on [uscourts.gov](http://uscourts.gov) will be updated to reflect these changes.

The District of New Mexico has adopted the proposed schedule of per page transcript fees, subject to the maximum rates established by the Judicial Conference. Transcripts ordered prior to the court's adoption of a new fee schedule should be billed at the rates in effect at the time the order was placed with the court reporter.

**New Original and Copy Transcript Fee Rates  
(Effective Fiscal Years 2024 and 2025)**

**Original Transcript Rates**

Transcript Types	Original Rate	Increased Rate Fiscal Year 2024	Increased Rate Fiscal Year 2025
<b>Ordinary Transcript (30-day)</b>	\$3.65	\$4.00	\$4.40
<b>14-Day Transcript</b>	\$4.25	\$4.70	\$5.10
<b>Expedited Transcript (7-day)</b>	\$4.85	\$5.35	\$5.85
<b>3-Day Transcript</b>	\$5.45	\$6.00	\$6.55
<b>Daily Transcript</b>	\$6.05	\$6.70	\$7.30
<b>Hourly Transcript</b>	\$7.25	\$8.00	\$8.70
<b>Realtime Transcript</b>	One feed, \$3.05 per page; two-to- four feeds, \$2.10 per page; five or more feeds, \$1.50 per page.	One Feed, \$3.40; two-to-four feeds, \$2.35; five or more feeds, \$1.65.	One Feed, \$3.70; two-to-four feeds, \$2.55; five or more feeds, \$1.80.

**Copy Rates**

Transcript Types	First Copy	Increased First Copy Fiscal Year 2024	Increased First Copy Fiscal Year 2025	Add'l Copy	Increased Add'l Copy Fiscal Year 2024	Increased Add'l Copy Fiscal Year 2025
Ordinary Transcript (30-day)	\$ .90	\$1.00	\$1.10	\$ .60	\$ .70	\$ .75
14-Day Transcript	\$ .90	\$1.00	\$1.10	\$ .60	\$ .70	\$ .75
Expedited Transcript (7-day)	\$ .90	\$1.00	\$1.10	\$ .60	\$ .70	\$ .75
3-Day Transcript	\$1.05	\$1.20	\$1.30	\$ .75	\$ .85	\$ .90
Daily Transcript	\$1.20	\$1.35	\$1.45	\$ .90	\$1.00	\$1.10
Hourly Transcript	\$1.20	\$1.35	\$1.45	\$ .90	\$1.00	\$1.10
Realtime Transcript	n/a	n/a	n/a	n/a	n/a	n/a

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

---

## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective May 8, 2023:  
**Ariana L. Lopez**  
633 S. Ninth Street, Suite 100  
Lincoln, NE 68508

Effective May 9, 2023:  
**Jeffrey O. Denison**  
454 Commerce Road  
Orem, UT 84058

Effective May 11, 2023:  
**Isabel A. Alcántara**  
2511 Arlington Blvd., Unit 101  
Arlington, VA 22201

**Seth Randal Wilson**  
5864 Stags Leap, Apt. 117  
The Colony, TX 75056

Effective June 1, 2023:  
**Sandra Milena McCarthy**  
555 13th Street, N.W.  
Washington, D.C. 20002

Effective June 2, 2023:  
**John C. Moncure**  
P.O. Box 12308  
Austin, TX 78711

Effective June 5, 2023:  
**Amanda Jaeger Thom**  
P.O. Box 5104  
White Rock, NM 87547

Effective June 30, 2023:  
**Adam Alexander Kougias**  
2220 San Jacinto Blvd.  
Denton, TX 76205

---

## IN MEMORIAM

---

As of April 29, 2022:  
**Karl Thomas Werner**  
P.O. Box 412  
Lafayette, CO 80026

As of November 7, 2022:  
**Lara K. Keithley**  
P.O. Box 2649  
Tijeras, NM 87059

As of November 12, 2022:  
**Morgan L. Taylor**  
2625 Eagle Lane  
Hellertown, PA 18055

As of March 19, 2023:  
**Donald Lee Jones**  
P.O. Box 93760  
Albuquerque, NM 87199

As of April 1, 2023:  
**Bradford Haynes Zeikus**  
7508 Trail Ridge Road, N.E.  
Albuquerque, NM 87109

As of April 7, 2023:  
**Florencio Ramirez**  
715 E. Amador, Suite B  
Las Cruces, NM 88001

As of April 12, 2023:  
**Stuart D. Shanor**  
P.O. Box 10  
Roswell, NM 88202

As of May 1, 2023:  
**Thomas Smidt II**  
4811 A Hardware Drive, N.E.,  
Suite 4  
Albuquerque, NM 87109

As of May 9, 2023:  
**William W. Deaton, Jr.**  
508 Laguna Seca Lane, N.W.  
Albuquerque, NM 87104

As of May 25, 2023:  
**Colin L. Hunter**  
1905 Wyoming Blvd., N.E.  
Albuquerque, NM 87112

---

## CLERK'S CERTIFICATE OF ADMISSION

---

On April 29, 2022:  
**Alejandro Alvarez**  
The Alvarez Law Firm  
3251 Ponce de Leon Blvd.  
Coral Gables, FL 33134  
305-444-7576  
305-444-0075 (fax)  
alex@talf.law

**Randolph James Amaro Jr.**  
Amaro Law Firm  
448 W. 19th Street, PMB #335  
2500 E. TC Jester Blvd.,  
Suite 525  
Houston, TX 77008  
713-864-1941  
713-864-1942 (fax)  
contact@amarolawfirm.com

**Caroline Elizabeth Andrews**  
Office of the Second Judicial  
District Attorney  
520 Lomas Blvd., N.W.  
Albuquerque, NM 87102  
505-629-7195  
caroline.andrews@da2nd.  
state.nm.us

On May 15, 2023:  
**Santiago Piza Cossio**  
P.O. Box 2168  
Albuquerque, NM 87103  
505-848-1800  
Santiago.pizacossio.com

On June 7, 2023:  
**Payton George Anderson**  
1113 Trinidad Drive  
Fort Worth, Texas 76140  
682-351-9171  
paytongandersonlaw@gmail.  
com

**Daniel Aaron Beattie**  
19919 Wood Walk Ln  
Humble, TX 77346  
832-527-3576  
dabeattie74@gmail.com

**Shelton James Cotton**  
1660 Hickory Loop  
Las Cruces, NM 88004  
903-424-4286  
sjc@mmslawpc.com

**Nathaniel J. Dimmitt**  
14546 Brook Hollow, Blvd.,  
#241  
San Antonio, TX 78232  
512-577-2817  
Nathan.dimmitt@gmail.com

**Timothy D. Ducar**  
9280 E. Raintree Dr., Suite 104  
Scottsdale, AZ 85260  
602-799-4259  
Tducar@azlawyers.com

**Nathan Frazier**  
316 Osuna Rd. NE  
Albuquerque, NM 87110  
505-246-0500  
nfrazier@batleyfamilylaw.com

**Adam Paul Freyaldenhoven**  
1 Information Way, Ste. 105  
Little Rock, AR 72202  
501-428-1452  
afreyaldenhoven95@gmail.com

**Michael S. Haynes**  
8115 Preston Road, Suite 800  
Dallas, TX 75225  
972-590-9931  
michael.haynes@riatac.com

**Chris B. Holleman**  
297 Willbrook Blvd  
Pawleys Island, SC 29585  
479-434-1210  
cholleman@stotlerhayes.com

**Philip Matthew Kovnat**  
505 Cerrillos Road, Suite A209  
Santa Fe, NM 87501  
505-416-1538  
pkovnat@dpslawgroup.com

**Jeffrey Thomas Kubiak**  
1990 North California Blvd.,  
Ste. 1060  
Walnut Creek, CA 94596  
925-906-9220  
jkubiak@kasdandclaw.com

**John Martell Landis**  
1 Information Way, Ste. 105  
Little Rock, AR 72202  
501-907-7790  
jlandis@reddicklawfirm.com

**Stephen Michael Little, Jr.**  
300 Austin Hwy., Suite 150  
San Antonio, TX 78209  
210-403-9461  
slittle@mlenergy.law

**Phoebe Tess Lytle**  
570 Broad Street Suite 1001  
Newark, NJ 07102  
973-735-3689  
phoebelytle@gmail.com

**Cedric D. Logan**  
370 17th Street, Suite 4500  
Denver, CO 80202  
303-244-1984  
logan@wtotrial.com

**Abby Rose Lubbock**  
1900 Elm St #308  
Dallas, TX 75201  
210-352-0999  
abbyrlubbock@gmail.com

**Melissa Kristina McDonough**  
414 Lars Lane  
Wenatchee, WA 98801  
509-387-1009  
melissakmcdonough@gmail.com

**Paula Andrea Millan**  
1708 15th St  
Lubbock, TX 79401  
806-712-2889  
paula@thelubbocklawyer.com

**Anaika Sage Miller**  
237 Don Gaspar Ave.  
Santa Fe, NM 87501  
505-226-6204  
anaika.miller@law.nyu.edu

**Malinda Morain**  
1675 Broadway, Suite 600  
Denver, CO 80202  
303-407-4477  
mmorain@bwenerylaw.com

**Shawn K. Neal**  
370 17th Street, Suite 4500  
Denver, CO 80202  
303-244-1872  
Neal@wtotrial.com

**Ure-Krystal Chioma Okoro**  
503 Hunter Bend Drive  
Mansfield, TX 76063  
817-291-6851  
krystalokoro@gmail.com

**Liana Dolores Orta**  
297 Willbrook Blvd  
Pawleys Island, SC 29585  
919-670-4168  
Lorta@stotlerhayes.com

**Bader Osama Rayyan**  
5305 Southwind Dr.  
Wilmington, NC 28409  
910-685-6150  
bader.rayyan1@gmail.com

**Hailey Nichole Reall**  
107 Pine Lakes Drive  
Maple Hill, NC 28454  
760-390-9152  
hailey.reall@icloud.com

**Bryon Allyn Rice**  
3555 Timmons Lane,  
Suite 1000  
Houston, TX 77027  
713-518-1635  
brice@hdwlegal.com

**Randall Jay Ross**  
12012 Wickchester Lane,  
Suite 470  
Houston, TX 77079  
832-626-0223  
randall.ross@kuiperlawfirm.com

**Robert Aaron Sachs**  
1209 Camino Carlos Rey  
Santa Fe, NM 87507  
505-379-9477  
robert.sachs2772@gmail.com

**Cassandra Daniela Santos**  
7600 Burnet Rd Suite 515  
Austin, TX 78757  
512-881-7500  
csantos@structurelaw.com

**Benjamin R. Schwartz**  
2550 W Union Hills Dr.  
Suite 350  
Phoenix, AZ 85027  
480-939-3110  
Ben@FreedomLegal-AZ.com

**Brian Adam Shelton**  
555 Rivergate Lane,  
Suite B4-180  
Durango CO, 81301  
970-385-4401  
brian@abadieschill.com

**Cassidy R. Sissung**  
8400 E. Crescent Parkway,  
6th Floor  
Greenwood Village CO, 80111  
916-622-2489  
cassidysissung@gmail.com

**Ryne Smith**  
8205 Spain Road NE Suite 110  
Albuquerque, NM 87109  
505-358-7228  
rsmith@joneslawabq.com

**Greg William Souquette**  
2000 West Loop South,  
Suite 2200  
Houston, TX 77027  
210-392-0209  
gwsouquette.law@gmail.com

**Neal Wayne Spradlin**  
3217 34th Street  
Lubbock, Texas 79410  
806-744-4878  
neal@liggettlawgroup.com

**Demetra S. Tobin**  
325 W 72nd Street  
Shreveport, LA 71106  
318-245-3606  
demetrasade@gmail.com

**Robert H. Todd**  
P.O. Box 836170  
El Prado, NM 87529  
214-991-7740  
rtodd0424@gmail.com

On June 27, 2023:  
**Samuel Chase Wilson**  
285 South Boardman Drive,  
Ste. B  
Gallup, NM 87301  
435-764-9078  
84samwilson@gmail.com

---

**CLERK'S CERTIFICATE  
OF CHANGE TO INACTIVE  
STATUS**

---

Effective April 30, 2023:  
**Madonna N. Bixby**  
PO Box 90573  
Albuquerque, NM 87199

**John L. Armijo**  
351 Ventasso Way  
Fallbrook, CA 92028-6526

**Linda L. Bretz**  
PO Box 20174  
Albuquerque, NM 87154-0174

**J. Kirk Eby**  
1709 Grandin Ave  
Rockville, MD 20851-1159

**Richard R. Montgomery**  
PO Box 50468  
Midland, TX 79710-0468

**Emily Powers**  
3610 Campus Blvd NE  
Albuquerque, NM 87106-1314

Effective May 1, 2023:  
**Hanna Christine Bledsoe**  
1699 S Trenton St Unit 69  
Denver, CO 80231-5603

**Jacob Bradley Brown Booher**  
PO Box 2425  
Idyllwild, CA 92549-2425

**Razvan Breban**  
32 Dennison St Apt 4  
Roxbury, MA 02119-1353

**Alicia Duran**  
215 W 2nd St  
Pueblo, CO 81003-3251

**Quincy Hope Ferrill**  
1205 Texas Ave Rm 507  
Lubbock, TX 79401-4037

**Paul S. Grand**  
629 Calle de Valdez  
Santa Fe, NM 87505-7335

**Brian K. Matisse**  
40 Inverness Dr E  
Englewood, CO 80112-5481

**Bryson A. Matthews**  
5507 Louetta Rd Ste A  
Spring, TX 77379-7872

Effective May 15, 2023:  
**Katherine Aniece Brennan**  
1675 Broadway  
New York, NY 10019-5820

**Juan Carlos Calvo**  
210 N Winston Ave  
Lubbock, TX 79416-1529

**T. O. Gilstrap Jr.**  
PO Box 222008  
El Paso, TX 79913-5008

**Thomas James Guttenberg**  
201 Highland Ridge Dr  
Manhattan, KS 66503-2428

**Nathaniel Lenke**  
PO Box 44203  
Rio Rancho, NM 87174-4203

**Dallas Ray Lopez Jr.**  
1999 Avenue of The Stars  
Los Angeles, CA 90067-6022

**Christina Taylor Wisdom**  
PO Box 303218  
Austin, TX 78703-0054

Effective June 1, 2023:  
**Perry E. Bendicksen III**  
46 Agua Sarca Rd  
Placitas, NM 87043-9404

**James A. Burke**  
PO Box 9332  
Santa Fe, NM 87504-9332



**Christopher A. Holland** has re-joined Sutin, Thayer & Browne after serving for five years as Chief Counsel of the New Mexico National Guard. Chris represents corporate and institutional clients in commercial litigation, government contracts and environmental and land use law. Chris originally joined the firm in 1996 after clerking for two years for the Honorable Pamela B. Minzner at the Supreme Court of New Mexico.



**George "Dave" Giddens** has been selected by his peers for inclusion in the 30th edition of *The Best Lawyers in America*® for his work in four practice areas – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Commercial Litigation, Litigation - Bankruptcy and Real Estate Law. Giddens was also recognized by his peers as the 2024 Albuquerque Real Estate Law "Lawyer of the Year."



*Best Lawyers*, a purely peer review publication, recognized **Larkin & Padilla Family Law** as "Best Law Firm" for the second year in a row! Larkin's expertise in Family Law has again scored inclusion in *The Best Lawyers in*

*America*®. Specific to region and practice area, **Twila Larkin** and **Kim Padilla** were ranked based on firm-wide talent, case matters, firm size, scope, and coverage.



**Gallagher & Kennedy** is pleased to announce that six highly-experienced attorneys have joined the firm's Phoenix office as shareholders. Welcome **Thomas Arendt**, **Haley A. Harrigan**, **Lindsay G. Leavitt**, **John C. Norling**, **Otto S. Shill, III** and **Wayne A. Smith**.

**Justice David K. Thomson** was announced as a newly elected member of the American Law Institute (ALI). ALI's membership consists of judges, lawyers and law professors from all areas of the United States and from many foreign countries, selected on the basis of professional achievement and demonstrated interest in improving the law.



**Brian S. Colón** has been elected Treasurer of the NALEO Board of Directors. The National Association of Latino Elected and Appointed Officials (NALEO) Conference recently took place from July 11 to the 13 in New York City. Brian is a 22-year practicing attorney, former New Mexico State Auditor, and has been a member, trustee, and president of several non-profit boards and organizations.



For 2022, IHMM is very pleased to announce its winner of the Excellence in EHS Management Award is **Michael R. Howe**, CSSM, CSHM, of Owatonna, Minnesota, Environmental Health & Safety Manager at Riverland Community College, with primary career responsibilities within the industry (e.g., manufacturing), and Education/Academics (e.g., Community & Technical College) in multiple fields and studies.

**Jay F. Stein** and **James C. Brockmann** of Stein & Brockmann, P.A. have been named to *Best Lawyers in America* in the field of Water Law for 2024.

**Gallagher & Kennedy** is pleased to announce that 52 of its attorneys across 46 practice areas have been selected by their peers for inclusion in the 2024 edition of *The Best Lawyers In America*®, with nine attorneys named *Ones To Watch*®. In addition, two G&K shareholders were selected "Lawyer of the Year," including **Shannon L. Clark** and **Terence W. Thompson**, who received the highest overall peer feedback for a specific practice area and geographic region.

**Bardacke Allison Miller LLP** is pleased to announce **Ben Allison** was again selected for inclusion in the 2023 edition of *SuperLawyers*® for his expertise in Intellectual Property Litigation. Ben was also ranked in the *Chambers USA 2023 Guide* for expertise in Intellectual Property and General Commercial Litigation. Ben was selected for inclusion in the 30th edition of *The Best Lawyers in America*® for Art Law, Commercial Litigation, Copyright Law, Intellectual Property Litigation, and Trademark Law.



Atler Law Firm, P.C. has hired **Amy Timmerman** as Operations Manager, responsible for coordinating and overseeing the firm's business operations. Timmerman has an MBA from Bentley College, a BA from the University of Kansas, and is a graduate from Albuquerque Academy. Atler Law Firm, P.C. has experience in many areas of civil litigation with specific expertise in appellate matters.

# In Memoriam

www.sbnm.org

United States Air Force **Captain Morgan L. Taylor**, 31, of Colorado, formerly of Phillipsburg, NJ, passed away unexpectedly November 12, 2022, in a tragic vehicular accident in Kansas. Born December 19, 1990, she was the daughter of Neil M. and Lorna L. (Spiwak) Taylor of Phillipsburg, NJ. After graduating from Phillipsburg High School, Morgan earned her Bachelor of Arts degree in Criminal Justice and Political Science from Rutgers University and Juris Doctor from the University of Maine School of Law. She completed Officer Training School, Judge Advocate Staff Officer Course; completed the Special Victims Capabilities Course and US Army Police School, both at Ft. Leonard Wood; completed the Accident Investigation Course and Air Force Judge Advocate General's School at Maxwell AFB; and completed the Arctic Regional Security Orientation Course in Alaska. Morgan's assignments included Joint Base McGuire-Dix-Lakehurst, NJ, where she was a Legal Extern, and Joint Base Elmendorf-Richardson, AK, where she was an Assistant Staff Judge Advocate with the 673rd Air Base Wing. At the time of her death, Morgan was the Deputy Chief of Military Justice at the United States Air Force Academy in Colorado Springs, CO. In this role, she served as legal counsel to the Academy's Superintendent, Commandant of Cadets, Dean of Faculty, Director of Athletics, headquarters staff, USAFA Preparatory School, 10th Air Base Wing, and all subordinate organizations on matters relating to legal assistance. She was in the process of training to obtain a promotion to the rank of Major. Morgan was passionate about animals and was dedicated to her beloved cat, Aina. She loved board games and hosting game nights for friends. In high school, she competed for the swim and track teams, specializing in pole vaulting. In high school, she participated in the Future Farmers of America and other extracurricular activities. Morgan also previously worked as a lifeguard at the Lopatcong Pool. In addition to her parents, Morgan is survived by a sister, Melissa Taylor and her fiancé Keenan Randolph; grandmother, Carole Taylor; grandparents George and Roseanne Spiwak; aunts and uncles Lynne Taylor, Monique Spiwak, Graham and Janith, and Colin and Stacey; cousins Ashley and Emma Taylor and her godfather, Gary Garrison.

**Rose Eileen Provan**, 84, passed away on Feb. 5, 2023, in Santa Fe, New Mexico. She was born on February 2nd, 1939, in Los Angeles, California, to Howard and Edith Mc Donald Provan. Rose was preceded in death by her parents. Rose was a vibrant, loving, and caring person who lived her life to the fullest. She was a puppeteer, actor, director, lawyer, and friend. She attended John Marshal High School and obtained her higher education from UCLA, USC, and George Mason University, where she earned her law degree. After moving to New Mexico, Rose worked with Attorney Bill Gordon & Associates in Albuquerque before retiring. She was also involved with the Desert Rose Playhouse, Teatro Paraguas, and other theater groups in the Santa Fe area, which were some of her favorite hobbies. Rose is survived by her cousins Edith Gardner (Jack), Matthew Gardner, Holly Post (Josh), John, Derek, and Chase Waters, her good friends Stephen Jules Rubin, and Elizabeth Ryan-Long (Joe). A memorial and celebration of life for Rose Provan will be held on June 11, 2023, at 3 p.m. at the Unitarian Universalist Church, 107 West Barcelona Road, Santa Fe, New Mexico. Please join us in celebrating a joyous life well lived.



**Mary Ann McConnell** passed away on May 18, 2023. A striking redhead of Irish descent, Mary Ann gave up a scholarship in music to train as a nurse. She traveled widely in that role, raised four children during the Vietnam War and supported her first husband through medical school. Afterwards, Mary Ann taught nursing at New Mexico State University in Las Cruces while earning a Master's degree in Education.

Hours before completing her doctorate she learned, at the age of 40, that she had been admitted to law school. Mary Ann moved to San Antonio, Texas, graduated with a J.D. from St. Mary's University then returned home to clerk for the Chief Justice of the New Mexico State Supreme Court, Dan Sosa, Jr. A spirited advocate for equality, Mary Ann always said her proudest moment was having a hand in the decision that made divorce proceedings fair for women in New Mexico-- her eyes would sparkle with delight and she would lower her voice to a whisper when she said it. After her clerkship, Mary Ann went on to practice law in Santa Fe with grace and verve, representing clients in personal injury and civil rights cases individually and in collaboration with her colleagues. She took clients under her wing and served as the guardian ad litem in a case against a locally-owned chain of gas station/convenience stores that declined to employ security cameras to protect its minimum wage workers, one of the largest wrongful death suits of its time. A caring, conscientious friend and a mentor to many, she was cherished by Oliver Archuleta, her companion of 30 years. The two lived happily on Mary Ann's land in Chimayo, with Oliver raising chile and looking after the horses and Mary Ann perched in an armchair, preparing her cases. When, after a series of accidents, falls and a surgical procedure that permanently impaired her back such that she could no longer keep up her practice or the color of her beautiful hair, Oliver was at her side, lying beside her as she struggled with pain, holding her in his arms and singing softly in her ear. She loved him dearly and he cared for her without fail. Mary Ann was fiercely attached to and protective of her children throughout her life. She is survived by each of them, five grandchildren and one great granddaughter. Her legacy of courage, kindness and an unceasing urge to care for the well-being of those around her will be remembered by all who knew her.

**Marc Alan Gordon**, 64, died Thursday, April 20, 2023. He was born Thursday, March 13, 1958, in Ridgecrest, California. As a young child, his family moved to Albuquerque, New Mexico. It was in Albuquerque where he was raised and completed all his schooling. Upon finishing his studies, he worked and lived the remainder of his life in New Mexico. He received his Juris Doctor degree from the University of New Mexico School of Law, passed the State Bar of New Mexico and practiced law for the state of New Mexico until his retirement. During retirement, Marc enjoyed reading and traveling and a life of thrift and contemplation. As much as anything, Marc loved his pet cats. He is preceded in death by his parents William and Janice Gordon; and survived by his brothers, Gary Lee and wife, Cathi, Wayne Ira, and Barry Edmund and wife, Kimberly.

**Anne Porter Browne**, prominent Albuquerque lawyer, died May 16, 2023, after a long and courageous battle with cancer. She was 60. Anne, beloved daughter, sister, and friend is survived by her mother, Sandra Porter Browne, of Albuquerque, her cherished cairn terrier, Maggie, and a host of friends, colleagues, and admirers. Anne was born in Albuquerque on January 20, 1963, and grew up in the city's Northeast Heights. She earned her bachelor's degree from Franklin & Marshall College in Pennsylvania in 1985 and her law degree from University of Bridgeport in Connecticut in 1988. After law school, she returned to Albuquerque as vice president and general counsel for The First National Bank, now Wells Fargo Bank. In 1994, she joined the law firm of Sutin, Thayer & Browne, where she built a sterling reputation, became a shareholder and senior principal, and excelled in financial and commercial law for almost 30 years. Her mastery of her fields of legal practice was unsurpassed. Anne had a lightning intellect, legal expertise, and tremendous sense of humor. She won many national professional awards, including being selected as the 2022 Albuquerque Lawyer of the Year in Banking and Finance Law by Best Lawyers in America. She was hailed as one of the New Mexico's finest real estate and finance lawyers, and served on several high-profile banking, real estate, and commercial development projects in New Mexico. She played a significant role in the leadership of Sutin, Thayer & Browne and was a true and valued mentor and wise person. Anne was a woman of sharp wit and strong opinion, yet she was warm, well-mannered, and direct with clients and colleagues alike. She laughed easily. She had superb taste in art, jewelry, and furnishings, and had a special affinity for art deco style. She loved her family, and she loved many of her colleagues like family. She had a deep love for animals, especially her beloved dogs. She was a fan of vintage television shows, movies, and the Dallas Cowboys. Anne was preceded in death by her father, notable lawyer Graham Browne, in 2003, and her sister, Rebecca Browne, in 2015.

**Louis Stephan Marjon**, born on Sept. 4, 1945 in Atlantic City, New Jersey to Pierre and Lilli Marjon, came into this world marching to the beat of his own drum from day 1. Lou is preceded in death by his father Pierre, his adored mother Lilli, Peter, his brother and Lucas, his first born son. Lou grew up in Santa Cruz, New Mexico was proud of his Northern New Mexican heritage as well as his heritage from Montenegro. Lou carried a passion for life, love, and justice into every endeavor. In many things great and small he was a pioneer; medical malpractice in New Mexico, prisoners' rights in Guantanamo Bay, Cuba, educating immigrant children and adults in Southwest Florida and Running. His accomplishments are voluminous as are the friendships he made throughout the world. Lou was always an adventurer and traveled extensively. He shared his love for travel with his children, Joachim and Hannah and his wife, Sandi. Lou was an active community member, running for state legislature in New Mexico, and participating and building numerous organizations from his college days to the end of his life. He was especially proud of his work for the anti-war and peace movements. Running was his constant through life. He excelled in the sport and generously shared his knowledge with a legion of runners thought out the world. He is survived by his wife and best friend of 16 years, Sandi Marjon, Albuquerque, New Mexico. Lou is most proud of his two surviving Children, Joachim Marjon of Albuquerque, New Mexico and Hannah Hayes of Fort Myers, for whom their father was a superhero. His three grandchildren, Magnus, Raphael and Fiona Marjon brought so much love and lightness to his past few years. Lou will be remembered as a fighter of injustice wherever he saw it and for his family - He was an icon in law, life and love. For Louis' obituary, visit: <https://www.legacy.com/us/obituaries/abqjournal/name/louis-marjon-obituary?id=51597772>

# Opinions

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

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

## Effective August 11, 2023

### UNPUBLISHED OPINIONS

A-1-CA-39215	State v. D Rieck	Affirm	08/07/2023
A-1-CA-39554	State v. S Castaldi	Affirm	08/07/2023
A-1-CA-40382	State v. T James	Affirm	08/07/2023
A-1-CA-40805	State v. R Meyn, Jr.	Affirm/Reverse/Remand	08/07/2023
A-1-CA-41004	State v. P Evans	Affirm	08/07/2023
A-1-CA-41045	A Pino v. Mesa Verde Humates	Affirm	08/07/2023
A-1-CA-39879	State v. C Ceballos	Affirm	08/08/2023
A-1-CA-40471	J Edwards v. L Wright	Reverse	08/08/2023
A-1-CA-40589	State v. J Granado	Affirm/Remand	08/08/2023
A-1-CA-40383	State v. M Henry	Affirm	08/09/2023
A-1-CA-40949	CYFD v. Jeffery S.	Affirm	08/09/2023
A-1-CA-39885	State v. M Moreno Valencia	Affirm	08/10/2023

## Effective August 18, 2023

### PUBLISHED OPINIONS

A-1-CA-40263	B Battishill v. P Ingram	Affirm/Reverse	08/15/2023
A-1-CA-39537	State v. A Calderon	Dismiss	08/17/2023
A-1-CA-39697	L Trujillo v. Presbyterian Healthcare Services	Affirm	08/17/2023

### UNPUBLISHED OPINIONS

A-1-CA-41024	R Carmona v. ABQ 24 Hour Towing	Reverse/Remand	08/14/2023
A-1-CA-41058	CYFD v. Montes S	Affirm	08/14/2023
A-1-CA-39783	AFSCME Council 18 v. Dona Ana County	Other	08/15/2023
A-1-CA-40992	Deming Nursing Home Company LLC v. NM Taxation & Revenue Dep't	Affirm	08/15/2023
A-1-CA-39537	State v. A Calderon	Dismiss	08/16/2023

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

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

# Rules/Orders

From the New Mexico Judicial Standards Nominating Commission

## NOTICE OF PUBLICATION FOR COMMENT

### PROPOSED AMENDMENTS TO JUDICIAL STANDARDS COMMISSION RULES

SEPTEMBER 27, 2023

The Judicial Standards Commission is recommending the proposed amendments to its rules as summarized below. To comment on the proposed amendments before they are submitted for publication, you may submit your comments electronically at [forfilingnmjsc@nmjsc.org](mailto:forfilingnmjsc@nmjsc.org). Your comments must be received on or before October 27, 2023.

The proposed rule amendments summarized below can be viewed in their entirety at the Judicial Standards Commission website: [www.nmjsc.org](http://www.nmjsc.org)

*All underlined text is text that has been changed or amended. Any text*

#### RULE 2. DEFINITIONS.

I. "Judge" means any full or part-time justice, judge, or magistrate of any New Mexico court as provided in the Constitution. ~~Judge also includes others subject by law to the Commission's jurisdiction including court appointed commissioners, hearing officers, administrative law judges, or special masters while acting in a judicial capacity.~~ In the appropriate context, "judge" may mean the judge or the judge's attorney.

N. "Notice of investigation" means a notice, issued by the Commission, based upon a complaint and served upon a judge, that the Commission has found that an investigation into ~~specific~~ allegations contained in a complaint ~~is substantially complete and which~~ requires a response from the judge.

#### RULE 4. ORGANIZATION AND ADMINISTRATION OF THE COMMISSION.

##### C. Quorum.

Any meeting, hearing on the merits, or any other proceeding of the full Commission requires a quorum. An action of the Commission that is authorized by the Constitution and the Statutes requires a quorum and an affirmative vote of a majority of members. In the case of a hearing on the merits, an action of the Commission requires that a quorum be present for the entire hearing and that the action is approved by a majority of members all of

whom have been present in person or by audio/visual conferencing for the entire hearing.

##### D. Recusal and Resignation.

(4) When a member is a judge:

(c) Who has received an informal disposition or has been disciplined, removed or retired shall resign permanently or, failing resignation, the Commission shall recommend to the Supreme Court that the judge be removed from the Commission.

##### F. Presiding Officers.

###### (1) District Judge Presiding Officers.

At the time the Commission issues a notice of formal proceedings, the chair shall appoint a district judge as presiding officer to preside at a hearing on the merits. A district judge presiding officer shall also preside over all motions, except as otherwise provided by Rule 9(C), contempt hearings as set forth in Rule 10 and at all hearings for presentment of stipulations as set forth in Rule 34(B). District judge presiding officers may also preside at other hearings or conferences as described in these rules.

##### G. Masters.

(1) Pursuant to the Constitution and Section 34-10-2.1A(3) NMSA, the Commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice, judge or magistrate, or the Commission may, if deemed necessary or convenient, appoint three (3) masters who are justices or judges of courts of record to hear and take evidence in the matter at any time the Commission deems it necessary or convenient, it may appoint three (3) masters to conduct any hearing, including a hearing on the merits, which the Commission could conduct, to hear testimony and receive other evidence; and to report their findings of fact, conclusions of law, and recommendations, including recommendations for discipline, removal, or retirement of a judge, to the Commission.

(4) The masters shall provide the Commission with their findings of fact, conclusions of law, recommendations, and with a record of any hearing within twenty-one (21) days of the conclusion thereof. The parties shall be served with a copy of the masters' findings of fact, conclusions of law, recommendations, and a copy of the ~~transcript~~ recording of the hearing.

(7) If the Commission accepts the masters' conclusions of law and recom-

mendations, with or without modifications, and if it finds good cause, it may shall file a petition for approval of the findings of fact, conclusions of law, and recommendations with the Supreme Court.

##### I. Executive Director.

(12) Prepare an annual report of the Commission's activities for publication presentation to the Commission, Supreme Court, Governor, Legislature, sitting judges, and the public.

##### K. Means of Conducting Proceedings.

The Commission may conduct meetings or other proceedings in person or by any other means authorized by the Commission. All hearings on the merits shall be conducted in person or by audio/visual conferencing.

#### RULE 5. AUTHORITY OF THE COMMISSION.

##### B. Issue Subpoenas.

At the request of investigative trial counsel, ~~a judge,~~ or at the Commission's discretion, a member who is a district judge acting for the Commission may issue subpoenas to compel the attendance of witnesses and the production of documents and things in connection with a Commission proceeding.

#### RULE 6. CONFIDENTIALITY AND PRIVILEGE.

##### A. Requirements of the Constitution.

(7) Promptly upon their appointment, masters shall be informed of the confidentiality of all proceedings undertaken by them and shall agree in writing to keep such proceedings confidential.

##### B. Applicability.

(4) The record of ~~proceedings~~ of a hearing on the merits loses confidentiality upon filing with the Supreme Court, but only to the extent of the filing. The record of any other Commission proceeding filed with the Supreme Court loses confidentiality only upon order of the Supreme Court and then only to the extent of the filing.

#### RULE 7. SERVICE.

##### A. General Method of Service.

Except as otherwise set forth herein, all pleadings and documents required or permitted to be served upon a judge shall be served by U.S. Mail, facsimile e-mail, the Supreme Court's e-filing account or any other method approved by the Commission to the most current available address provided to the Commission by the judge or, if the judge has retained counsel, upon counsel at the address provided by counsel.

upon counsel at the address provided by counsel.

**RULE 11. DUTY TO COOPERATE.**

**(1) Failure to Comply With Requests or Orders.**

The failure to comply with reasonable requests or orders of the Commission.

**RULE 15. COMMENCEMENT OF PROCEEDINGS.**

**B. Initial Actions.**

The executive director shall conduct an investigation of the allegations of a complaint, or of other information upon which a complaint could be based, docket as a general counsel complaint or recommend dismissal to the Commission.

**C. Notice of Investigation.**

Upon finding that the initial investigation of a complaint is substantially complete and that there is sufficient evidence to require a judge to respond to the allegations of a complaint, the Commission may issue a notice of investigation.

**E. Interim Actions.**

At any time following docketing of a complaint, during the pendency of a proceeding the Commission may take interim actions as set forth in Section III, Rules 23, 24 and 25, below.

**RULE 16. SERVICE UPON A JUDGE AND RESPONSE BY A JUDGE.**

C. Upon motion and for good cause shown, the time for the judge's responses may be extended pursuant to Rule 8(C).

**RULE 17. INITIAL DISCLOSURES.**

**A. Disclosures Made**

**2. Judge's Disclosures.**

(a) If investigative trial counsel's initial disclosures were served with an invitation to a conference with the Commission, then the judge's initial disclosures shall be due within fifteen ~~(15+)~~ days of such service.

C. Continuing Obligation. The parties shall have a continuing obligation to promptly supplement initial disclosures as additional information required by Section A of this rule as it becomes known.

**RULE 19. CONFERENCE WITH THE COMMISSION.**

**C. In-Person Participation.**

Participation of the judge in a conference with the Commission shall be in person or by audio/visual conferencing.

**D. Closed Conference.**

The conference is confidential and shall not be open to the public.

**E. Confidential.**

The conference is confi-

dential as set forth in Rule 6, above, and pursuant to the Constitution Article VI, Section 32 and may only be attended by the judge and the judge's attorney.

**G. Presiding Officer.**

A presiding officer, who shall be a judge member or lawyer member, shall preside over the conference with the Commission. If no presiding officer has been appointed, the chair shall appoint one for the conference.

**I. Role of Investigative Trial Counsel.**

Investigative trial counsel shall be present for the conference. The presiding officer ~~may~~ shall request investigative trial counsel make a brief statement of the allegations of the notice of investigation. Investigative trial counsel may continue to be present, but shall not otherwise participate in the discussions or ask questions unless the Commission permits.

**RULE 20. RECOMMENDED DISPOSITION.**

At any time in the proceeding after service of the judge's response to a notice of investigation, ~~but before issuance of a notice of formal proceedings,~~ the Commission may serve a judge with a recommended disposition as set forth in Rule 35 or Rule 36(C) and (D). If, at the time of service of a recommended disposition, initial disclosures have not been served on the judge, then they shall be served with the recommended disposition.

**RULE 22. CONSOLIDATION.**

If a judge has multiple complaints pending, ~~the the proceedings on those complaints~~ may be consolidated for efficiency and in the interests of justice. Complaints Proceedings for which notices of formal proceedings have not been issued may be consolidated by order of the Commission. Complaints Proceedings for which notices of formal proceedings have been issued may be consolidated by order of the presiding officer either upon motion by one of the parties or at the presiding officer's discretion. ~~Consolidation procedures shall conform to policies promulgated by the Commission.~~

**RULE 23. MEDICAL EXAMINATIONS, PSYCHOLOGICAL EVALUATIONS, AND DRUG AND ALCOHOL TESTING.**

**B. Drug and Alcohol Tests.**

A judge may be ordered to submit to drug/alcohol testing for any of the reasons set forth in the New Mexico Judicial Branch General Personnel Policy

and Procedure: Drug and Alcohol Testing Policy, drug/alcohol testing policy. Testing shall be conducted in accordance with the Commission's drug/alcohol testing protocols published on the Commission's website, a copy of which shall be served upon the judge along with the order.

**C. Examination or Test at Judge's Election.**

A judge may also submit to a medical examination, a psychological evaluation, or a drug/alcohol test with a qualified provider of the judge's choice.

**F. Subpoenas.**

If the judge fails to provide the Commission with all waivers and releases necessary to authorize the Commission to receive all records, reports, test results, and information from any medical or mental health provider regarding the judge's physical or psychological condition or drug/alcohol testing facility regarding testing, the Commission may issue a subpoena or may otherwise order the medical and mental health provider or drug/alcohol testing facility to provide it with such records, reports, results, and information. The Commission shall promptly provide the judge with a copy of each subpoena or order served on a provider. The Commission shall promptly inform each provider that ~~the~~ a judge has been provided a copy of the subpoena or order served on that provider.

**G. Other Records.**

~~Pursuant to this Rule, t~~The Commission may obtain medical and mental health records from the judge's treating providers, and may obtain other ~~the~~ results of alcohol and drug testing conducted. ~~other than in accordance with this Rule.~~ The judge is required to provide a list of all treating physicians or providers and releases and waivers ~~therefore~~ as set forth in a Request for Production herein. The Commission may issue subpoenas for such records as set forth herein.

**K. Failure to Participate.**

Failure or refusal of a judge to submit to a medical examination, a psychological evaluation, or a drug/alcohol test, or to provide a list of all treating physicians or providers and releases or waivers as set forth herein as requested, may be a failure to cooperate with the Commission in violation of Rule 11 of these rules and the Code, Rule 21-216 NMRA.

**RULE 24. IMMEDIATE TEMPORARY SUSPENSION AND OTHER INTERIM RELIEF.**

**B. Petition.**

The Commission may petition the Supreme Court for immediate

temporary suspension of the judge with or without pay or for other interim relief. The petition shall be filed under seal and shall set forth in full the factual and legal bases for the Supreme Court to issue a summary order, and shall contain all documents and other evidence supporting the allegations of the petition. The petition and accompanying evidence of factual and legal grounds shall, as appropriate, comply with the Supreme Court Rules Governing Review of Judicial Standards Commission Proceedings

**RULE 27. SCHEDULING ORDER.**

E. Disclosure of expert witness(es) and relevant qualifications pursuant to Rule 28(C)(5).

GF. Objections to witnesses and exhibits.

HG. Requests to the Commission for issuance of subpoenas.

IH. A pre-hearing conference.

JF. Such other matters as the presiding officer may deem appropriate to the management of the case.

**RULE 30. TIME AND PLACE OF HEARING.**

All pending charges made against a judge in a notice of formal proceedings shall come before the Commission for a hearing on the merits at a time as set forth by Rule 27(A), above, and at a place as set by the executive director presiding officer all in consultation with the Commission.

**RULE 32. CONDUCT OF HEARING ON THE MERITS.**

**C. Admissible Evidence.**

**(4) Use of Closed Files.**

With notice and disclosure to the judge ~~as required by the scheduling order~~, closed files of complaints against the

judge, notices of investigation, responses to notices of investigation, notices of formal proceedings, responses to notices of formal proceedings, evidence presented before the Commission at hearings on the merits or at other hearings, and evidence provided to the judge by investigative trial counsel may be offered by investigative trial counsel as evidence in the recommendations phase, and only as follows:

**D. Order of Hearing on the Merits – Adjudicatory Phase.**

**(3) Statement of the Case to the Commission.**

Before the parties are given an opportunity to make opening statements, the presiding officer shall read to the Commission a brief statement of the case prepared by the presiding officer that shall contain the ~~remaining~~ charges of notices of formal proceedings, a statement that the judge admits or denies each charge and a brief statement of the judge's remaining legal defenses. If charges in a notice of formal proceedings have been dismissed, the presiding officer shall remind the Commission that the dismissed charges shall not be further considered by the Commission.

**(5) Presentation of Evidence.**

**(c) Commission Questions.**

Following the direct, cross, and redirect examinations, ~~the presiding officer and~~ the Commissioners may ask questions of witnesses. Investigative trial counsel and the judge may object to questions asked by the presiding officer and Commissioners. Following questions

~~by the presiding officer or~~ the Commissioners, investigative trial counsel and the judge may each ask follow-up questions.

**F. Order of Hearing on the Merits – Recommendations Phase.**

Subject to the presiding officer's authority to control the conduct of the hearing, the order of presentation in the recommendations phase shall be the same as during the adjudicatory phase except that there shall be no motions to dismiss.

**RULE 33. DISMISSAL.**

A. At any time following docketing of a complaint ~~or service of a notice of investigation~~, the Commission may dismiss all or part of the allegations therein.

**RULE 34. STIPULATION.**

**C. Modification.**

~~Subject to approval by the parties, the Commission may accept or reject a stipulation or, subject to approval by the parties, the Commission may modify a stipulation, as a condition of approval, modify a stipulation.~~

**RULE 35. NON-DISCIPLINARY DISPOSITION.**

At any time in the proceedings ~~after service of a notice of investigation, filing of the judge's response, and an invitation to a conference with the Commission~~, the Commission may close the proceedings with one or more of the following:

**A. Advisory Letter.**

(3) If, within fifteen (15) days of service of notice of intent to issue an advisory letter, the judge objects thereto, the judge may:

(a) File objections to the proposed advisory letter with the Commission in writing and/or;

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-014**

No: S-1-SC-39057 (filed July 6, 2023)

**STATE OF NEW MEXICO,**

Plaintiff-Respondent,

v.

**MICHAEL J. ROMERO,**

Defendant-Petitioner.

**ORIGINAL PROCEEDING ON CERTIORARI**

Abigail Aragon, District Judge

Bennett J. Baur, Chief Public Defender  
Kimberly Chavez Cook,  
Appellate Defender  
Charles D. Agoos,  
Assistant Appellate Defender  
Santa Fe, NM  
  
for Petitioner

Hector H. Balderas, Attorney General  
Meryl Elizabeth Francolini,  
Assistant Attorney General  
Santa Fe, NM  
  
for Respondent

## OPINION

### THOMSON, Justice.

{1} “The constitutional command for trial by an impartial jury casts upon the judiciary the exercise of judgment in determining the circumstances which preclude that free, fearless and disinterested capacity in analyzing evidence which is indispensable if jurymen are to deal impartially with an accusation.” *Dennis v. United States*, 339 U.S. 162, 181 (1950) (Frankfurter, J., dissenting) (internal quotation marks omitted). Defendant Michael J. Romero alleges that his Sixth Amendment right to a fair and impartial jury was violated because one of his jurors revealed during voir dire that he knew the investigator in the case. Defendant did not inquire into the juror’s potential bias during jury selection, did not challenge the juror for cause, did not use an available peremptory challenge on the juror, and did not otherwise object to the juror during jury selection. We conclude that the juror’s statements did not violate Defendant’s Sixth Amendment right to an impartial jury, and that Defendant both failed to preserve and waived any objection to the juror’s alleged bias.

We therefore affirm the Court of Appeals. We write to clarify the types of bias that may present during jury selection, and to explain that failing to raise an objection to a juror’s perceived bias implicates issues of both preservation and waiver.

#### I. BACKGROUND

{2} Defendant was convicted of second-degree murder and tampering with evidence relating to the shooting death of his son’s friend. During voir dire at his trial, the State asked the entire venire whether they knew the lead crime scene investigator, Commander Pam Sandoval. Juror 11 said that he knew the witness, and the following exchange occurred:

**Juror 11:** I’ve known Detective Sandoval for twenty plus years. I currently serve under — I’m one of her coaches at the West Las Vegas softball program.

**Prosecutor:** So you’re — one of the things you do is the softball program for West Las Vegas?

**Juror 11:** Yes, sir.

**Prosecutor:** Is she the head coach?

**Juror 11:** Yes, sir.

**Prosecutor:** We anticipate calling Ms. Sandoval as one of the wit-

nesses. Would you be able to set aside that relationship that she’s in a sense your boss and be able to make a decision based on the evidence?

**Juror 11:** That’s tough, I do socialize with her and I do know her on a personal basis . . . .

**Prosecutor:** Would it be difficult for you, let’s say you had to vote not guilty, let’s say the facts came back and you vote, would that be difficult to face in this [inaudible]?

**Juror 11:** It can be. It can compromise the relationship.

After this colloquy, there were no further questions of Juror 11 relating to Commander Sandoval by the State, Defendant, or the court, and neither party moved to excuse Juror 11 for cause.

{3} After the court considered challenges for cause, it went down the list of the remaining potential jurors in order. One by one, the judge read the jurors’ names, and each party was given the opportunity to accept the juror or exercise a peremptory challenge. When the judge got to Juror 11, Defendant had three peremptory challenges remaining. The State and defense counsel each accepted Juror 11, and no peremptory challenge was used. With Juror 11 empaneled, the court continued to seat the remaining jury and two alternates. Defendant eventually used his final three peremptory challenges on other jurors before a full panel was chosen.

{4} On appeal, Defendant now alleges the colloquy described above revealed actual bias by Juror 11,<sup>1</sup> resulting in a violation of his Sixth Amendment right to a trial by an impartial jury. In a memorandum opinion, the Court of Appeals affirmed Defendant’s conviction of second-degree murder, concluding that Defendant did not preserve his objection to the juror and that the district court did not commit fundamental error by allowing the juror to participate in the trial. *State v. Romero*, A-1-CA-38757, mem. op. ¶¶ 1, 4, 14 (N.M. Ct. App. Oct. 15, 2021) (nonprecedential).

{5} We agree with the Court of Appeals’ conclusion that “the statements at issue did not establish bias,” and that nothing Juror 11 said expressed prejudice of Defendant’s guilt or a failure to obey the district court’s instruction to arrive at a verdict according to the evidence and the law. *Id.* ¶¶ 10, 12, 14. Therefore, Defendant failed to

<sup>1</sup> Defendant alleges bias of two different jurors. Because Defendant’s briefing and grounds for requested relief only include arguments concerning Juror 11’s alleged bias, we omit discussion of Juror 14 and affirm the Court of Appeals on that issue. See *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (explaining appellate courts are under no obligation to review unclear or undeveloped arguments).

show a violation of his Sixth Amendment right to an impartial jury. *Id.*

## II. DISCUSSION

### A. Standard of Review

{6} Fundamental error analysis is appropriate because Defendant's claim was not preserved. Rule 12-321(B)(2)(c) NMRA; see *State v. Rojo*, 1999-NMSC-001, ¶ 55, 126 N.M. 438, 971 P.2d 829 ("Failure to make a timely objection to alleged improper argument bars review on appeal, unless the impropriety constitutes fundamental error . . . [which] arises when [there is] misconduct that compromises the defendant's right to a fair trial." (internal quotation marks and citation omitted)). Fundamental error analysis involves two basic steps. First, we determine "whether error occurred." *State v. Ocon*, 2021-NMCA-032, ¶ 7, 493 P.3d 448. If an error has occurred, "we proceed to the second step, asking whether the error is fundamental." *Id.* ¶ 8. In order to show fundamental error, Defendant must "demonstrate the existence of circumstances that shock the conscience or implicate a fundamental unfairness within the system that would undermine judicial integrity if left unchecked." *State v. Cunningham*, 2000-NMSC-009, ¶ 21, 128 N.M. 711, 998 P.2d 176 (internal quotation marks and citation omitted). Our analysis begins with an explanation of the categories of bias that may present during jury selection and the role of voir dire to protect a defendant's constitutional guarantee to an impartial jury.

### B. Types of Juror Bias

{7} The Sixth Amendment to the United States Constitution requires, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." An impartial jury is one that "does not favor one side more than another, treats all alike, [and] is unbiased, equitable, fair and just." *State v. McFall*, 1960-NMSC-084, ¶ 6, 67 N.M. 260, 354 P.2d 547. We presume "that a jury selected from a fair cross section of the community is impartial, regardless of the mix of individual viewpoints actually represented on the jury, so long as the jurors can conscientiously and properly carry out their sworn duty to apply the law to the facts of the particular case." *Lockhart v. McCree*, 476 U.S. 162, 184 (1986); see also *State v. Gardner*, 2003-NMCA-107, ¶ 12, 134 N.M. 294, 76 P.3d 47 (recognizing the presumption that the jury obeys its instructions).

{8} Questions of juror bias are not easily answered because "[i]mpartiality is not a technical conception. It is a state of mind. . . . [T]he Constitution lays down no particular test[] and procedure is not chained to any ancient and artificial formula." *United States v. Wood*, 299 U.S. 123, 145-46 (1936). In an effort to clarify questions of juror bias, we explain the two types of juror bias that might arise during jury selection: actual bias, which requires factual development, and implied bias, a bias conclusively presumed as a matter of law. If potential bias presents itself during jury selection, voir dire and juror strikes become critical to ensuring an unbiased jury.

#### 1. Actual bias

{9} "Actual bias is bias in fact," or "the existence of a state of mind that leads to an inference that the person will not act with entire impartiality." *United States v. Torres*, 128 F.3d 38, 43 (2d Cir. 1997) (internal quotation marks omitted). Actual bias can only be uncovered when "a prospective juror is adequately questioned on voir dire with respect to his or her ability to apply the law impartially." *Id.* at 44. In order to prove actual bias, the opponent of the juror must establish that the bias would actually affect the juror's vote. *United States v. Brazelton*, 557 F.3d 750, 754 (7th Cir. 2009).

{10} Actual bias is elicited by an unequivocal statement by the potential juror that he or she cannot be fair and impartial. *United States v. Haynes*, 398 F.2d 980, 984 (2d Cir. 1968) ("[Actual] bias is based upon express proof, e.g., by a voir dire admission by the prospective juror of a state of mind prejudicial to a party's interest."). This actual, express bias, which is an unusual occurrence, requires juror disqualification.

{11} Actual bias also "may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias." *Torres*, 128 F.3d at 47, 48 (concluding that where the juror spoke during voir dire about her involvement with similar conduct as was charged, "the mental gymnastics required for her to separate her own experience . . . from the . . . testimony . . . brought out at trial would have been too precarious and too strenuous to have been expected of any juror" (internal quotation marks omitted)).

Just as the trial court's finding of

actual bias must derive from voir dire questioning, so the court is allowed to dismiss a juror on the ground of inferable bias only after having received responses from the juror that permit an inference that the juror in question would not be able to decide the matter objectively.

*Id.* at 47.

#### 2. Implied bias

{12} Implied bias is the second type of bias, and it is "attributable in law to the prospective juror regardless of actual partiality." *Wood*, 299 U.S. at 134. This type of bias requires a court to excuse a juror "if the juror is related to one of the principals in the case." *Brazelton*, 557 F.3d at 753. Though an impliedly biased juror "may well be objective in fact, . . . the relationship is so close that the law errs on the side of caution" and requires excusal of the juror. *Id.*

{13} This Court discussed implied bias in *State v. Sanchez*, 1995-NMSC-053, ¶ 14, 120 N.M. 247, 901 P.2d 178 (describing implied bias as an instance "where the juror has a close relationship with a party or the attorneys trying the case" (citing *Randolph v. Commonwealth*, 716 S.W.2d 253, 255 (Ky. 1986) (concluding that a juror who was an employee of the state's attorney was impliedly biased))). In *Sanchez*, a juror revealed on a questionnaire and during voir dire that her sister was an employee of the district attorney's office. 1995-NMSC-053, ¶ 3. No attorneys asked any further questions relating to the juror's relationship with the district attorney's office, and it was not until jury deliberations were underway that defense counsel learned that the juror's sister was a victim's advocate who sat with the victim's family during trial. *Id.* ¶¶ 3, 8. This Court concluded that the juror's connection to the district attorney's office was "indirect and insufficient as a matter of law to support a determination of implied bias." *Id.* ¶ 15.

{14} *Sanchez* provides instructive examples of implied bias from other jurisdictions. *Id.* ¶¶ 13-14. See, e.g., *Haak v. State*, 417 N.E.2d 321, 325-26 (Ind. 1981) (concluding that a juror was impliedly biased where her husband accepted employment as a prosecutor); *Smith v. Phillips*, 455 U.S. 209, 222 (1982) (O'Connor, J., concurring) (identifying instances of impliedly biased jurors: "the juror is an actual employee of the prosecuting agency," "the juror is

<sup>2</sup> We correct a small but not insignificant misstatement of the standard of review by the Court of Appeals in this case. In its memorandum opinion, the Court of Appeals concluded by stating, "[i]n sum, we cannot say the facts of this case demonstrate 'exceptional circumstances' when guilt is so doubtful that it would 'shock the conscience to allow the conviction to stand.'" *Romero*, A-1-CA-38757, mem. op. ¶ 14 (quoting *State v. Aguilar*, 1994-NMSC-046, ¶ 21, 117 N.M. 501, 873 P.2d 247). The question under review here takes no account of the evidence or doubtfulness of guilt. But in circumstances of alleged and actual juror bias where there is uncertainty as to whether that bias was or was not the basis of the conviction, substantial justice is our guide. See *State v. Buhr*, 1971-NMCA-017, ¶ 8, 82 N.M. 371, 482 P.2d 74.

a close relative of one the participants in the trial,” or “the juror was a witness or somehow involved in the [case]”). Implied bias is the easiest type of bias to manage because it is itself disqualifying, even if a juror assures the court that he or she can remain impartial. See *Brazelton*, 557 F.3d at 753. To show implied bias, a defendant need not demonstrate or establish that the relationship actually affected the juror’s judgment; the effect is “attributable in law to the prospective juror regardless of actual partiality.” *Wood*, 299 U.S. at 134.

### 3. The role of voir dire to show disqualifying bias

{15} When a potential juror makes a statement during voir dire that calls into question whether he or she can be fair and impartial, the defendant’s right to the opportunity to prove actual or implied bias attaches. See *Dennis*, 339 U.S. at 171-72 (“Preservation of the opportunity to prove actual bias is a guarantee of a defendant’s right to an impartial jury.”). A goal of voir dire is to uncover and investigate potential bias, and it is the mechanism for parties to clarify whether a juror’s potential bias rises to the level of actual or implied bias, which would warrant excusal of the juror. *Sutherlin v. Fenenga*, 1991-NMCA-011, ¶ 36, 111 N.M. 767, 810 P.2d 353 (“The purpose of voir dire is to enable the parties to determine whether there is any bias or prejudice on the part of prospective jurors and to enable counsel to intelligently exercise challenges.”). Though bias is often difficult to address, courts allow for “considerable latitude” in questioning potential jury members to uncover whether they have possible biases. *Id.* ¶ 45 (internal quotation marks and citation omitted). With this framework in mind, we turn now to the statements made by Juror 11 and Defendant’s actions in relation to those statements.

#### C. Juror 11’s Statements

##### 1. Actual bias (express or inferred)

{16} Defendant argues that his Sixth Amendment right to an impartial jury was violated by Juror 11’s unequivocal statement that he was biased against Defendant because of his relationship with Commander Sandoval. The State responds that Juror 11’s statements were vague and equivocal, and that they “did not equate to an admission that the juror’s knowledge of [C]ommander Sandoval would sway him in favor of convicting . . . Defendant.” While acknowledging that Juror 11 indicated it would be difficult to face Commander Sandoval if he voted to acquit, the State characterizes Juror 11’s statement as a “reference to the hypothetical state of his future relationship with Commander Sandoval after trial,” which does not show

prejudice.

{17} To analyze whether Juror 11 elicited actual bias, we turn again to this Court’s opinion in *Sanchez*. There, the defendants argued that the district court denied them an unbiased jury by allowing the sister of an employee of the district attorney’s office to sit on the jury. *Sanchez*, 1995-NMSC-053, ¶¶ 1, 9. The Court concluded that the defendants had not revealed that the juror was actually biased, noting that the district court specifically asked the juror whether she could be fair and impartial after learning of her relationship, and that the defendants “presented no other evidence that the juror was unable to perform her duties and that [the defendants] were prejudiced as a result.” *Id.* ¶ 16. For that reason, the *Sanchez* Court concluded that the defendants had not revealed that the juror was actually biased. *Id.*

{18} Here, Juror 11 stated at least five different times during voir dire that he was willing and able to serve fairly and impartially. The statement he made during voir dire about his association with the State’s witness did not constitute actual, express bias. Further questioning would have been necessary in order for the statements to rise to the level of actual bias. However, Defendant chose not to avail himself of that opportunity. See, e.g., *Wood*, 299 U.S. at 133-34 (“All the resources of appropriate judicial inquiry remain available in this instance as in others to ascertain whether a prospective juror, although not exempted from service, has any bias in fact which would prevent his serving as an impartial juror.”).

{19} We also do not infer actual bias from Juror 11’s statements. It is certainly plausible that Juror 11 could separate his personal relationship with Commander Sandoval from his evaluation of the evidence she presented. That Juror 11 would be so intimidated by his relationship that he would not act on “the sense of responsibility and the individual integrity by which [citizens] judge [citizens]” is the type of “[v]ague conjecture” described in *Dennis* in which we refuse to engage to disrupt a jury verdict. 339 U.S. at 172. The record in this case discloses at most potential bias that, absent further proof, does not rise to a constitutional violation. Actual bias must be grounded in facts developed at voir dire, and as we have discussed, no such factual development took place in this case. See *Torres*, 128 F.3d at 47.

##### 2. Implied bias

{20} We reiterate the rule announced in *Sanchez* that “juror bias may be implied as a matter of law in New Mexico.” 1995-NMSC-053, ¶ 14. However, like *Sanchez*, the facts of this case do not justify the

implication. Juror 11 had an indirect relationship with the prosecution through Commander Sandoval. The fact that Juror 11 worked with Commander Sandoval in her capacity as the head softball coach at a school does not show a relationship sufficient in itself to be categorized as an “extreme situation[] that would justify a finding of implied bias.” *Id.* ¶ 15 (quoting *Smith*, 455 U.S. at 222 (O’Connor, J., concurring)). But see, e.g., *Randolph*, 716 S.W.2d at 255-56 (concluding that a juror who was an employee of the state’s attorney was impliedly biased); *Haak*, 417 N.E.2d at 325-26 (concluding that a juror was impliedly biased where her husband accepted employment as a prosecutor). The record in this case reveals at most a social relationship, which may not be unusual or even avoidable given the small size of the community.

{21} Therefore, the district court did not err by allowing the juror to sit on the jury. Because we have determined the district court did not err, we do not reach the issue of whether the error was fundamental. See *Ocon*, 2021-NMCA-032, ¶ 8 (“If we conclude that the instructions were erroneous, we proceed to the second step, asking whether the error is fundamental.”).

##### 2. Preservation and waiver of juror bias objections

{22} Under Rule 12-321(A), “[t]o preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.” Preservation serves three primary purposes: (1) it allows the district court an opportunity to cure claimed errors; (2) it allows the opposing party to respond to the claim of error and show the district court why it should rule against that claim; and (3) it creates a record which the appellate court may review to make an informed decision. *State v. Bell*, 2015-NMCA-028, ¶ 2, 345 P.3d 342. As stated above in setting forth the standard of review, we agree with the Court of Appeals that Defendant did not preserve the issue because he failed to object and therefore precluded a district court decision for this Court to review.

{23} The facts of this case also require discussion of waiver. We reiterate our concerns from *Sanchez* about the consequences of a holding that objections to actual juror bias are not waivable. 1995-NMSC-053, ¶ 12. In *Sanchez*, defense counsel did not ask the juror about her answers to the questionnaire or about her relationship with the district attorneys. *Id.* ¶ 3. In addition, defense counsel did not move to strike her for cause, and they did not exercise a peremptory strike on her. *Id.* After the jury began deliberating, the defendants raised concerns about

<sup>3</sup> We add a note of caution to litigants that when confronted with concerns about juror bias during jury selection, issues of both preservation and waiver arise.

the juror's relationship with the district attorneys through her sister. *Id.* ¶ 8. The district court, however, denied requests to interview the juror, to replace her with an alternate juror, or to declare a mistrial. *Id.* As we stated in *Sanchez*, if defendants, even after trial, were permitted to raise issues of juror bias, including bias that was known during voir dire when the juror could be dismissed, defendants would be "permitted to escape the consequences of . . . earlier knowledge [of possible juror bias] or to reverse [their] previous position simply because [they] gambled and lost." *Id.* ¶12 (first alteration in original) (internal quotation marks and citation omitted); see also *Gardner*, 2003-NMCA-107, ¶ 13 ("Because [the defendant] declined the additional [voir dire] offered at trial, he cannot now obtain relief in the form of a new trial.").

{24} Similarly, the Tenth Circuit held that "[w]hen the basis for a challenge to a particular juror can be timely shown, the failure to object at the trial's inception constitutes a waiver of the right to attack the composition of the jury." *United States v. Diaz-Albertini*, 772 F.2d 654, 657 (10th Cir. 1985) (concluding the defendant waived his objection to a juror where defense counsel was on notice prior to the impaneling of the jury that the potential juror had a relationship with the state police); see also *Brazelton*, 557 F.3d at 755 ("[T]he Sixth Amendment right to an impartial jury, like any constitutional right, may be waived. [The defendant's] on-the-record decision to pass up not one, but two opportunities to ask that Juror Number Four be struck for cause was a waiver." (internal quotation marks and citation omitted)). A "litigant cannot transform a tactical decision to withhold the information from the court's attention into a trump card to be played only if it becomes expedient." *Diaz-Albertini*, 772 F.2d at 657.

{25} It is undisputed that Juror 11 revealed the nature of his relationship with Commander Sandoval during voir dire and that defense counsel failed to inquire further into the matter or use available strikes. Defendant therefore waived any objection to Juror 11's service on his jury when he learned of the potential bias, did not inquire further into the potential bias, failed to object to the juror's service, chose not to strike the juror for cause, and affirmatively accepted the juror, leaving his three peremptory strikes on the table. See *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984) ("Voor dire examination serves to protect [the right to an impartial trier of fact] by exposing

possible biases, both known and unknown, on the part of potential jurors."). For this reason, we are confident in announcing that, at least at the stage of jury selection, "[a] sentient defendant, knowledgeable of a possible claim of juror bias, waives the claim if he elects not to raise it promptly." *United States v. Uribe*, 890 F.2d 554, 560 (1st Cir. 1989).

#### D. The District Court Had No Duty to Dismiss Juror 11 Sua Sponte

{26} We reject Defendant's suggestion that the district court had a duty to sua sponte dismiss Juror 11 based on the colloquy described during voir dire. When confronted with potential bias that the party does not show rises to the level of actual bias, the court has discretion to inquire to dismiss that juror. See Rule 5-606(C) NMRA ("The court . . . may excuse any prospective juror for good cause."); see also *State v. Trujillo*, 1982-NMSC-145, ¶ 5, 99 N.M. 251, 657 P.2d 107 ("[T]he district court has discretion in determining how voir dire should be conducted and reversal is available only where the discretion is abused."). However, there is no authority requiring intervention, as a claimed expression of potential bias does not itself violate the Sixth Amendment. While the district court may excuse the juror or inquire further, we defer to its discretion concerning the operation of voir dire and conclude that the district court did not abuse its discretion in not inquiring further of or dismissing Juror 11 on its own initiative. *State v. Johnson*, 2010-NMSC-016, ¶ 34, 148 N.M. 50, 229 P.3d 523 ("We will reverse only if a clear abuse of discretion by the district court in the conduct of voir dire resulted in prejudice to defendant.").

#### E. We Decline to Apply or Revisit

##### *State v. Pierce*

{27} Finally, Defendant invites us to revisit this Court's split decision in *State v. Pierce* and adopt the dissenting opinion as controlling. 1990-NMSC-027, ¶¶ 50-65, 109 N.M. 596, 788 P.2d 352 (Montgomery, J., dissenting). We decline for a number of reasons. First, the procedural posture of *Pierce* is dissimilar to the case at hand. In *Pierce*, the parties did not discover that a juror made misrepresentations on voir dire until after the submission of the case to the jury. *Id.* ¶¶ 4-5. The Court considered whether the district court erred by denying the defendant's motion for a new trial. *Id.* ¶ 3. In this case, Defendant learned of the alleged bias during voir dire and did not take steps to either ask questions or strike that juror. Additionally, unlike *Pierce*, the record before us shows that Juror 11 was

truthful in his responses to questions during voir dire. There are no accusations nor is there evidence of misrepresentations or concealment of material facts by Juror 11. The facts and procedural posture of the two cases are incongruent, and therefore *Pierce* does not apply here.

{28} Regardless, the dissent in *Pierce* would not support a finding in Defendant's favor. The *Pierce* dissent suggests that a misrepresented fact that comes to light during voir dire would allow "the system [to] have worked as it is intended to," because counsel or the court would have had the opportunity to explore the issue further. *Pierce*, 1990-NMSC-027, ¶ 54 (Montgomery, J., dissenting). The situation described in the dissent is exactly what happened in the instant case. Counsel had the opportunity to explore the subject more fully and, ultimately, defense counsel chose not to object to Juror 11, or even question him further. Given that *Pierce*'s factual and procedural posture depart from those of this case, and that *Pierce*'s dissent would not grant Defendant relief, we decline to revisit the precedential effect of *Pierce*.

{29} Ineffective Assistance of Counsel

{30} This Court reviews claims of ineffective assistance of counsel de novo. *State v. Favela*, 2015-NMSC-005, ¶ 9, 343 P.3d 178. Defendant claims ineffective assistance of counsel because his defense counsel failed to object to the seating of an actually biased juror and because Defendant "did not knowingly, intelligently, and voluntarily waive his constitutional right to an impartial jury." This Court said in *Sanchez*, "When reviewing a claim of ineffective assistance of counsel, we do not second-guess defense counsel's trial strategy and tactics. Further, an assertion of prejudice is not sufficient to demonstrate that a choice caused actual prejudice." 1995-NMSC-053, ¶ 20 (citation omitted). The Court in *Sanchez* further explained that nonuse of peremptory challenges may be a strategic decision. *Id.* ¶¶ 20, 21. **Defendant acknowledged the high-profile posture of this case, recognizing that seven of twelve jurors stated during voir dire that they had been exposed to details of the case through pretrial publicity, six of twelve jurors knew the prosecutor before the trial, and at least two of the jurors stated that they knew Defendant before trial. Where so many potential jurors knew Defendant or the prosecution or had some other connection to the case, counsel had to make strategic decisions about which jurors with knowledge about the case to keep and which to strike. It is plausible**

<sup>4</sup> This opinion is not written for the circumstance where bias is concealed, either mistakenly or purposefully, by the juror only to be discovered later. That is a third type of bias, which we call concealed bias. See, e.g., *McDonough Power Equip., Inc.*, 464 U.S. at 556.

that choosing not to exercise a peremptory strike on Juror 11 could have been strategic, and therefore, under the facts of this case, the failure to strike does not establish a prima facie case of ineffective assistance of counsel.

{31} Finally, this Court has expressed its preference that ineffective assistance of counsel claims “be brought under habeas corpus proceedings so that the defendant may actually develop the record with respect to defense counsel’s actions.” *State v. Arrendondo*, 2012-NMSC-013, ¶ 38, 278 P.3d 517 (“The record [on appeal] is frequently insufficient to establish whether

an action taken by defense counsel was reasonable or if it caused prejudice.”). Therefore, we conclude Defendant has not established a prima facie case of ineffective assistance of counsel.

### III. CONCLUSION

{32} We hold that where alleged juror bias does not rise to the level of actual bias, and a defendant learns of the bias during voir dire, chooses not to challenge the juror for cause, does not use available peremptory challenges on the juror, and in fact affirmatively accepts the juror, that defendant has waived the right to argue actual or implied bias on appeal. Accordingly, the

district court did not fundamentally err in allowing Juror 11 to sit on Defendant’s jury. We decline to revisit the precedential effect of *Pierce* as it does not apply to this case. Finally, we hold that Defendant has not established a prima facie case of ineffective assistance of counsel. Therefore, we affirm the Court of Appeals.

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

**DAVID K. THOMSON, Justice**

**WE CONCUR:**

**C. SHANNON BACON, Chief Justice**

**MICHAEL E. VIGIL, Justice**

**BRIANA H. ZAMORA, Justice**

# Advance Opinions

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

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-015**

No: S-1-SC-38797 (filed January 12, 2023)

**STATE OF NEW MEXICO,**

Plaintiff-Respondent,

v.

**FRANKLIN D. BEGAYE,**

Defendant-Petitioner.

**ORIGINAL PROCEEDING ON CERTIORARI**

John Dean, Jr., District Judge

Bennett J. Baur, Chief Public Defender

Mary Barket,

Assistant Appellate Defender

Santa Fe, NM

for Petitioner

Hector H. Balderas, Attorney General

Walter M. Hart, III,

Assistant Attorney General

Santa Fe, NM

for Respondent

## OPINION

### VARGAS, Justice.

{1} This case requires us to consider whether Defendant Franklin Begaye's convictions for nonresidential burglary and breaking and entering violated his right to be free from double jeopardy. Defendant was convicted of both crimes after he broke into a business in Farmington, New Mexico. In the proceedings below, the district court determined that the nonresidential burglary and breaking and entering charges did not violate double jeopardy. The Court of Appeals affirmed the district court in a formal opinion. *State v. Begaye*, 2022-NMCA-010, ¶¶ 1, 31, 505 P.3d 855. Though our guidance in *State v. Porter*, 2020-NMSC-020, 476 P.3d 1201, resolves the issue, this appeal indicates that confusion persists within our double jeopardy jurisprudence warranting further clarification. We conclude that Defendant's right to be free from double jeopardy was violated when he was convicted for both breaking and entering and nonresidential burglary because the underlying conduct

was unitary and, under the State's theory, the burglary offense subsumed the breaking and entering offense. "[I]f we determine that one of the offenses subsumes the other offense, the double jeopardy prohibition is violated, and punishment cannot be had for both." *Id.* ¶ 20 (internal quotation marks and citation omitted). We reverse.

#### I. BACKGROUND

##### A. Facts

{2} On February 28, 2017, Defendant was arrested following a report of a break-in at Ram Signs, a business in Farmington, New Mexico. That night, Ram Signs co-owner, Michael Mordecki, heard a loud bang in the lobby of his business. Mr. Mordecki found the front window smashed and called the police. Farmington Police Department Officer Justin Nichols responded. He verified that the intruder was not in the building and proceeded to inspect the premises. Officer Nichols testified that the front window was broken, the cash drawer was pulled out and its contents were on the floor, and the front desk was in disarray. Nevertheless, nothing was taken.

{3} Security footage showed an individual smashing and eventually falling through the front glass window. After reviewing the footage, Officer Nichols directed officers to search the area for an adult male wearing dark pants, lighter-colored boots, headgear, and a dark jacket over a lighter-colored hoodie. On his way back to the police station, Officer Nichols saw Defendant, who matched the description of the individual in the security footage. Upon approaching Defendant, Officer Nichols observed a considerable amount of glass covering Defendant's jacket. Defendant was detained and ultimately charged with nonresidential burglary, contrary to NMSA 1978, Section 30-16-3(B) (1971), and breaking and entering, contrary to NMSA 1978, Section 30-14-8 (1981).<sup>1</sup>

#### B. Procedural History

{4} At trial, Defendant's attorney moved to dismiss the breaking and entering charge on double jeopardy grounds, arguing that the State relied upon the same conduct and evidence to support both breaking and entering and nonresidential burglary. The district court denied Defendant's motion, concluding that there was no double jeopardy violation because breaking and entering required proof of the distinct element of force—an element not required to prove burglary. After having been convicted on both charges, Defendant appealed.

{5} In a published opinion, the Court of Appeals affirmed Defendant's breaking and entering and burglary convictions, holding that "Defendant's convictions for breaking and entering and aggravated burglary did not offend his right to be free from double jeopardy."<sup>2</sup> *Begaye*, 2022-NMCA-010, ¶ 16. In reaching its holding, the Court of Appeals first correctly recognized that this case involved a double jeopardy, multiple description issue and applied the two-part *Swafford* test, which examines "(1) whether the conduct is unitary, and, if so, (2) whether the Legislature intended to punish the offenses separately." *Id.* ¶¶ 5-6 (quoting *State v. Gonzales*, 2019-NMCA-036, ¶ 14, 444 P.3d 1064 (citing *Swafford v. State*, 1991-NMSC-043, ¶ 25, 112 N.M. 3, 810 P.2d 1223)).

{6} After explaining that the first part of the *Swafford* test was satisfied because the State did not dispute that the conduct in this case was unitary, the Court of Appeals proceeded to apply the strict-elements test established by the United States Supreme

<sup>1</sup> Defendant was also charged with, and subsequently convicted of, possession of burglary tools contrary to NMSA 1978, Section 30-16-5 (1963). Defendant appealed his conviction for possession of burglary tools. The Court of Appeals reversed, holding that there was insufficient evidence to support the conviction. *Begaye*, 2022-NMCA-010, ¶¶ 1, 30-31. The State does not challenge the Court of Appeals' reversal of Defendant's conviction for possession of burglary tools.

<sup>2</sup> We note that Defendant was charged with, and subsequently convicted of burglary, not aggravated burglary as set out in the Court of Appeals' opinion.

Court in *Blockburger v. United States*, 284 U.S. 299, 304 (1932), to ascertain legislative intent. *Begaye*, 2022-NMCA-010, ¶¶ 6-7; see *Swafford*, 1991-NMSC-043, ¶ 10 (explaining that the only consideration under the strict-elements test is “whether each provision requires proof of a fact the other does not” (internal quotation marks and citation omitted)). Applying the strict-elements test, the Court of Appeals explained that burglary, Section 30-16-3, requires a specific intent “to commit any felony or theft therein,” while breaking and entering, Section 30-14-8, requires “the unauthorized entry to be effectuated by a specified means.” *Begaye*, 2022-NMCA-010, ¶ 10. The Court of Appeals concluded that there was no double jeopardy violation because “both offenses require proof of an element the other does not” and therefore, according to the Court of Appeals, it was the Legislature’s intent to authorize separate punishments for breaking and entering and nonresidential burglary. *Id.*

{7} After reaching its conclusion, the Court of Appeals nonetheless proceeded to apply the modified *Blockburger* test adopted by this Court in *State v. Gutierrez*, 2011-NMSC-024, ¶ 48, 150 N.M. 232, 258 P.3d 1024, “to examine other indicia of legislative intent” and confirm that there was no double jeopardy violation under the strict-elements test. *Begaye*, 2022-NMCA-010, ¶¶ 10-11. The Court of Appeals acknowledged that the modified test applies when a statute is written in the alternative or “can be violated in more than one way,” *id.* ¶¶ 8, 11, and explained that “the modified *Blockburger* analysis demands that we compare the elements of the offense, looking at the [S]tate’s legal theory of how the statutes were violated.” *Id.* ¶ 8 (quoting *Porter*, 2020-NMSC-020, ¶ 8).

{8} Applying the modified *Blockburger* analysis, the Court of Appeals initially recognized that the purpose of “New Mexico’s breaking and entering statute is itself grounded in common law burglary” but reiterated that each statute requires distinct elements. *Begaye*, 2022-NMCA-010, ¶¶ 11-12 (text only)<sup>3</sup> (citing *State v. Holt*, 2016-NMSC-011, ¶ 15, 368 P.3d 409). Additionally, the Court of Appeals concluded that “the Legislature intended to authorize separate punishments under the statutes” because the “purpose of the breaking and entering statute is sufficiently distinct from the purpose of the burglary statute” in that “[t]he crime of burglary punishes the broader criminal conduct of any unauthorized entry when there is specific criminal intent.” *Begaye*, 2022-NMCA-010, ¶ 13; see § 30-16-3.

{9} Finally, the Court of Appeals turned to the State’s theory of the case, analyzing the jury instructions and charging documents. *Id.* ¶¶ 14-16. As part of this analysis, the Court of Appeals revisited whether the conduct in this case was unitary as conceded by the State on appeal, noting that “the State did not suggest that the jury rely on the unauthorized entrance as the sole basis for conviction of each crime.” *Id.* ¶ 15. As to the jury instructions, the Court of Appeals concluded that breaking and entering was not subsumed into burglary because each charge required different elements: burglary required a specific intent to commit a theft, while breaking and entering required “the jury . . . to find that the unauthorized entrance was effectuated by breaking the window.” *Id.* According to the Court of Appeals, “That additional element—one that was not required by the burglary instruction—establishes that Defendant’s conviction for breaking and entering could not have been subsumed within the aggravated burglary conviction.” *Id.*

{10} Reviewing the charging documents, the Court of Appeals reiterated that the breaking and entering charge relied upon “breaking or dismantling” and that the burglary charge relied upon the “intent to commit a felony or theft therein.” *Id.* ¶ 16 (internal quotation marks and citations omitted). The Court of Appeals held that Defendant’s double jeopardy rights were not violated because “the conduct required by the two charges was adequately distinguishable and not solely premised on the unitary conduct.” *Id.* ¶ 16 (emphasis added). The Court of Appeals’ holding appeared to be predicated on two findings: (1) The language and purpose of the burglary and breaking and entering statutes suggest that the Legislature intended to allow separate punishments under both provisions, see *id.* ¶ 14, and (2) the State’s legal theory of the case, as gleaned from the charging documents and the jury instructions, did not depart from the elements set out in the burglary and breaking and entering statutes, each of which requires proof of an element the other does not, see *id.* ¶¶ 14-16.

## II. DISCUSSION

{11} Defendant’s challenge that his convictions for burglary and breaking and entering violated his right to be free from double jeopardy is reviewed de novo. *State v. Torres*, 2018-NMSC-013, ¶ 17, 413 P.3d 467 (“A double jeopardy challenge presents a question of constitutional law, which we review de novo.”). Before evaluating Defendant’s argument that he was twice put in jeopardy for the same offense, we first discuss New Mexico’s double jeopardy jurisprudence, focusing on how it has

“grow[n] away from the historical strict mechanical elements test and increasingly toward a substantive sameness analysis.” *State v. Montoya*, 2013-NMSC-020, ¶ 46, 306 P.3d 426.

### A. Double Jeopardy Jurisprudence

{12} Under the United States and New Mexico Constitutions, no person shall be “twice put in jeopardy” for the same offense. U.S. Const. amend. V; N.M. Const. art. II, § 15. We have previously explained that the double jeopardy clause provides a criminal defendant with three distinct levels of protection. *State v. Gallegos*, 2011-NMSC-027, ¶ 30, 149 N.M. 704, 254 P.3d 655. The double jeopardy clause protects against (1) “a second prosecution for the same offense after acquittal,” (2) “a second prosecution for the same offense after conviction,” and (3) “multiple punishments for the same offense.” *Id.* (internal quotation marks and citation omitted). The third and most common category, multiple punishment cases, comes to us in two ways. *Id.* ¶ 31. “First, there are double description [cases] in which a single act results in multiple charges under different criminal statutes. Second, there are unit of prosecution [cases] in which an individual is convicted of multiple violations of the same criminal statute.” *Id.* (alterations in original) (internal quotation marks and citations omitted). Defendant in this case presents his challenge as a double-description violation because he was convicted for unitary conduct under two different statutes.

{13} “It is well established that the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended.” *Gutierrez*, 2011-NMSC-024, ¶ 50 (internal quotation marks and citation omitted). In reviewing a double-description challenge, we follow the two-part test adopted in *Swafford*, 1991-NMSC-043, ¶ 25. First, we assess “whether the conduct underlying the offenses is unitary, *i.e.*, whether the same conduct violates both statutes.” *Id.* Second, we examine “the statutes at issue to determine whether the legislature intended to create separately punishable offenses.” *Id.* “Only if the first part of the test is answered in the affirmative, and the second in the negative, will the double jeopardy clause prohibit multiple punishment in the same trial.” *Id.*

{14} This Court’s jurisprudence applying the first prong of the test, whether the conduct is unitary, is largely consistent. See, e.g., *Porter*, 2020-NMSC-020, ¶ 12 (explaining that our unitary conduct inquiry examines whether the conduct underlying both convictions is sufficiently distinct as to time, place, or action); see also *State v. Swick*, 2012-NMSC-018, ¶ 11, 279 P.3d 747;

<sup>3</sup> The “text only” parenthetical as used in this opinion indicates the omission of any of the following—internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text itself otherwise unchanged.

*Gutierrez*, 2011-NMSC-024, ¶ 51 (applying substantially the same analysis in discerning whether the conduct underlying the two convictions was unitary). It is the second prong of the test, ascertaining whether the Legislature intended to allow for multiple punishments, that previously led this Court to note that “[h]onoring the law’s protection against multiple punishments for ‘the same offense’ is one of the most vexing challenges of double jeopardy jurisprudence.” *Montoya*, 2013-NMSC-020, ¶¶ 29, 32 (citation omitted). Given these complexities, New Mexico’s double-description jurisprudence has not always progressed in a linear fashion. *See id.* ¶ 46 (“Our double jeopardy jurisprudence has continued to grow away from the historical strict mechanical elements test and increasingly toward a substantive sameness analysis.”).

{15} Today, two divergent approaches exist within this Court’s double jeopardy jurisprudence to discern whether the Legislature intended to allow for multiple punishments: the strict-elements *Blockburger* test and the modified *Blockburger* test. These divergent approaches amount to a difference in the process the reviewing court implements to determine whether a defendant’s double jeopardy rights were violated. The applicable approach is dependent on whether the statutes at issue are vague or written in the alternative. Before we reach the appropriate test applicable to the facts of this case, we discuss the development of the two tests over time.

{16} In 1991, this Court adopted a two-part test set out in *Swafford*, applying a mechanical *Blockburger* test, to ascertain legislative intent. *Swafford*, 1991-NMSC-043, ¶¶ 10, 25. This mechanical *Blockburger* test is often referred to as the strict-elements test. *See, e.g., Porter*, 2020-NMSC-020, ¶ 7. In adopting the strict-elements test, the *Swafford* Court explained that the test did not involve the consideration of evidence presented at trial. 1991-NMSC-043, ¶ 10. In *State v. Franco*, this Court reiterated that *Swafford* rejected “an evidence-based approach . . . in favor of the *Blockburger* test[], which is an elements-based approach.” 2005-NMSC-013, ¶ 17, 137 N.M. 447, 112 P.3d 1104.

{17} Twenty years after *Swafford*, this Court modified the *Blockburger* analysis in cases where the statutes at issue are vague and unspecific or are written in the alternative. *Gutierrez*, 2011-NMSC-024, ¶ 48. When the modified *Blockburger* approach applies, we compare the elements of the two offenses, examining the state’s legal theory of the particular case as to how the statutes were violated. *Id.* ¶ 58; *accord Porter*, 2020-NMSC-020, ¶ 8. While *Gutierrez* noted that the particular facts of the case should be avoided, 2011-NMSC-024, ¶ 58, Justice Bosson, specially concurring,

recognized that the Court was authorizing a limited review of the facts by looking at the indictment and jury instructions:

While it makes sense to allow a party to look at the specific language used in the indictment along with the jury instructions to analyze the state’s “legal theory,” any factual inquiry beyond those two limited areas has not been sanctioned by this Court. But at the same time, something creative is happening whereby this Court, for the first time in twenty years, is rethinking some of the underpinnings of our double jeopardy jurisprudence. We encourage constructive critical thinking from counsel and from our colleagues on the Court of Appeals in terms of where this process should lead.

*Id.* ¶ 78 (Bosson, J., specially concurring). {18} In *Swick*, we expanded the limited factual inquiry of the indictment and jury instructions authorized in *Gutierrez* when we examined the state’s closing argument to discern the state’s legal theory. *Swick*, 2012-NMSC-018, ¶¶ 26-27. In *Montoya* one year after *Swick*, noting the state’s reliance on the same testimony to prove both charged crimes, we explained that *Swick* “followed the teachings of *Gutierrez* and reaffirmed that a complete double jeopardy analysis may require looking beyond facial statutory language to the actual legal theory in the particular case by considering such resources as the evidence, the charging documents, and the jury instructions.” *Montoya*, 2013-NMSC-020, ¶ 49 (emphasis added). Most recently in *Porter* we reiterated that, when the legal theory is still unclear based on the charging documents and jury instructions alone, “we also review testimony, opening arguments, and closing arguments to establish whether the same evidence supported a defendant’s convictions under both statutes.” 2020-NMSC-020, ¶ 19.

{19} It is with this jurisprudential progression in mind that we proceed to examine the parties’ arguments.

## B. Application of the Two-Part *Swafford* Test

### 1. Unitary conduct

{20} *Swafford*’s two-part test first requires that this Court assess whether the “conduct underlying the offenses is unitary, i.e., whether the same conduct violates both statutes.” 1991-NMSC-043, ¶ 25. A defendant’s conduct is unitary “if the acts are not separated by sufficient indicia of distinctness.” *Porter*, 2020-NMSC-020, ¶ 12 (internal quotation marks and citation omitted). “The conduct question depends to a large degree on the elements of the charged offenses and the facts presented at trial.” *Swafford*, 1991-NMSC-043, ¶ 27.

The State concedes that Defendant’s conduct in this case was unitary. *See Begaye*, 2022-NMCA-010, ¶ 6 (considering the first part of the *Swafford* test to be satisfied because the State did not dispute that the conduct was unitary). While this Court is not bound by the State’s apparent concession, *State v. Comitz*, 2019-NMSC-011, ¶ 25, 443 P.3d 1130, we agree with the State that Defendant’s convictions for nonresidential burglary and breaking and entering both arose out of the unitary conduct of Defendant entering Ram Signs by breaking the window. When the underlying conduct for multiple convictions is unitary, we next consider legislative intent. *Torres*, 2018-NMSC-013, ¶ 21.

### 2. Legislative intent

{21} To determine whether the Defendant in this case is protected from being punished twice for unitary conduct, “this Court must determine whether the Legislature intended to permit multiple punishments” for nonresidential burglary and breaking and entering. *Porter*, 2020-NMSC-020, ¶ 15. “In analyzing legislative intent, we first look to the language of the statute itself.” *Torres*, 2018-NMSC-013, ¶ 21 (internal quotation marks and citation omitted). Neither the nonresidential burglary statute nor the breaking and entering statute explicitly authorizes multiple punishments. *See* § 30-16-3(B) (nonresidential burglary); § 30-14-8 (breaking and entering). Because the statutes do not explicitly authorize multiple punishments, we must apply other canons of construction to determine legislative intent. *Porter*, 2020-NMSC-020, ¶ 16.

{22} We next apply the *Blockburger* test, looking to the language of the statute to determine whether we must apply the strict-elements test or the modified version of the test. *Id.* ¶¶ 16-19. Notwithstanding the possible alternative violations of the breaking and entering statute, the Court of Appeals in this case, relying upon *State v. Silvas*, 2015-NMSC-006, ¶ 11, 343 P.3d 616, applied the strict-elements test before applying the modified test “to examine other indicia of legislative intent” and confirm that there was no double jeopardy violation under the strict-elements test. *Begaye*, 2022-NMCA-010, ¶¶ 7-11. The State contends that the Court of Appeals correctly “employed the same practice [as *Silvas*] of first evaluating the statutes under strict elements *Blockburger* analysis before proceeding to the modified *Blockburger* analysis.” Reliance upon *Silvas* to support the application of both the strict-elements test and the modified test is misplaced because *Silvas* never applied the strict *Blockburger* test to the facts of that case and instead merely explained the strict-elements *Blockburger* test before describing why this Court modified it. *See* 2015-NMSC-006, ¶ 14 (“*Blockburger* continues to retain a place in our jurisprudence as a kind of surrogate for construing legislative intent. In recent years, however, when interpreting generic,

multipurpose criminal statutes which may in the abstract require proof of a fact the other does not, this Court has modified the *Blockburger* test to require more.” (text only) (citation omitted). “We now consider not only whether each statute *in the abstract* requires proof of a fact that [the other does] not, but also whether the statute, *as applied by the State in a given case*, overlaps with other criminal statutes so that the accused is being punished twice for the same offense.” *Id.* (first emphasis in original) (internal quotation marks and citation omitted). The *Silvas* Court proceeded to apply the modified test, holding that the defendant in that case was convicted and punished twice for the same offense, thus violating double jeopardy. *Id.* ¶¶ 15-21.

{23} This Court’s approach in *Silvas* is consistent with our recent explanation in *Porter* that it is improper to apply the strict-elements *Blockburger* test in a case where the statute is vague or written in the alternative and that such an application “renders [the] conclusion unreliable.” *Porter*, 2020-NMSC-020, ¶ 8. We clarify that in double jeopardy cases where a defendant asserts having been twice put in jeopardy for the same offense, like the present case, a court must first examine the statutes at issue to discern whether the modified or strict-elements *Blockburger* test applies. Once a court has made such a determination, it should then apply either the modified or the strict-elements test—but not both. The Court of Appeals erred when it applied the strict-elements test to this case despite its recognition that the breaking and entering statute was drafted in the alternative. See *Begaye*, 2022-NMCA-010, ¶ 11. Only application of the modified test was appropriate.

{24} In the present case, the modified test applies because the breaking and entering statute provides alternative methods by which a defendant can violate the statute. The state can prosecute an individual where “entry is obtained by fraud or deception, or by . . . breaking or dismantling.” Section 30-14-8(A) (emphasis added). The modified *Blockburger* analysis “demands that we compare the elements of the offense, looking at the State’s legal theory of how the statutes were violated.” *Porter*, 2020-NMSC-020, ¶ 8. To ascertain the state’s legal theory, this Court “review[s] the statutory language, charging documents, and jury instructions used at trial.” *Id.* ¶ 19. “If the state’s legal theory cannot be ascertained using the charging documents and jury instructions, we also review testimony, opening arguments, and closing arguments to establish whether the same evidence supported a defendant’s convictions under both statutes.” *Id.* We examine each offense keeping in mind that determining “[w]hether one offense subsumes the other depends entirely on the State’s theory of the case.” *Id.* ¶ 21.

**a. The statutory language, charging documents, and jury instructions do not reveal the State’s legal theory**

{25} Because the Legislature drafted the breaking and entering statute in the alternative, “strictly comparing the language of these two statutes does not resolve the issue,” *id.*, and so we move forward to examine the charging documents. Defendant contends that the charging documents are not sufficiently specific to ascertain the State’s theory of the case. And the State does not refer this Court to the jury instructions or charging documents to explain what evidence supported each conviction that did not support the other. We agree with Defendant that the charging documents shed little light on the State’s legal theory. As to breaking and entering, the State’s charging documents provide that Defendant obtained entry to Ram Signs by “breaking or dismantling the front window, or by fraud or deception.” The charging documents for Defendant’s burglary charge identify the structure but do not identify the State’s legal theory as to how Defendant entered the structure, do not specify whether Defendant intended to commit a felony or instead intended to commit a theft therein, and, if a felony, do not identify what felony Defendant intended to commit.

{26} Similarly, the jury instructions fail to capture the State’s theory. The breaking and entering jury instructions list the relevant elements as (1) “[D]efendant entered a structure without permission” and (2) “[t]he entry was obtained by the breaking of a window.” The relevant elements set out in the jury instructions on Defendant’s burglary charge were (1) “[D]efendant entered a structure without authorization” and (2) “[D]efendant entered the structure with the intent to commit a theft when inside.” Relevant to both charges, the instructions do not identify the State’s theory as to what the structure was or how the Defendant entered without permission or authorization; as to the burglary charge specifically, the instructions do not reveal the State’s theory establishing how the “intent to commit a theft” element of the instruction was satisfied. Because the State’s legal theory cannot be ascertained by the charging documents or jury instructions alone, we turn to the “testimony, opening arguments, and closing arguments to establish whether the same evidence supported” Defendant’s convictions for both burglary and breaking and entering. *Porter*, 2020-NMSC-020, ¶ 19.

**b. The same evidence supported both convictions**

{27} Defendant maintains that the breaking and entering charge was subsumed into the burglary charge because, under

the State’s theory of the case, the same evidence supported both charges. In support, Defendant refers this Court to the State’s closing argument, contending that the State’s attorney relied upon the same evidence to satisfy the elements of both burglary and breaking and entering. By contrast, the State does not refer this Court to any portions of opening or closing arguments or other testimony in the record to explain how it did not rely on the same evidence to support both convictions. The State instead focuses on the elements of the two charges. Similarly, the Court of Appeals did not “review testimony, opening arguments, and closing arguments to establish whether the same evidence supported” both convictions, as *Porter* instructs. 2020-NMSC-020, ¶ 19. Instead, the Court of Appeals concluded that “the State’s theory of the case regarding the conduct required by the two charges was adequately distinguishable” because the charging documents and jury instructions established different elements. *Begaye*, 2022-NMCA-010, ¶¶ 14-16.

{28} In reviewing New Mexico double jeopardy jurisprudence, however, it becomes clear that the focus in ascertaining the state’s theory in any particular case is not simply whether the elements differ, but whether the same evidence, that is, the same underlying conduct, is used to support both charges. Cf. *Porter*, 2020-NMSC-020, ¶ 19 (explaining that in ascertaining what the state’s theory is, this Court is attempting to discern “whether the same evidence supported a defendant’s convictions under both statutes.” (emphasis added)).

{29} In *Silvas*, we examined whether the charges of (1) trafficking by possession with intent to distribute and (2) conspiracy violated the defendant’s right to be free from double jeopardy. 2015-NMSC-006, ¶¶ 17-18. The *Silvas* Court first highlighted, as the State does in this case, that the two statutes “are different and in the abstract they contain different elements.” *Id.* ¶ 17. The Court noted, however, that “the State appears to have directed the jury to the same act for both crimes—the sale of drugs from [the d]efendant to [the car passenger]—as the basis to convict for both crimes.” *Id.* ¶ 18. The Court explained that the “theory for both crimes rested upon [the d]efendant’s unitary conduct of transferring the drugs from his hand to [the passenger’s] hand and [the passenger] transferring the money to [the d]efendant,” *id.* ¶ 19, and that the state’s prosecution strategy revealed that “[t]he State relied on the sale of the narcotics to support its theory under both charges,” *id.* ¶ 21. The Court held that “as the State presented this case to the jury, the inescapable conclusion is that [the d]efendant was convicted twice

and is being punished twice for the same offense.” *Id.* It was careful to clarify, however, that in most cases conspiracy would be separate from the substantive offense where there is “multilayered conduct in which evidence of the conspiracy did not rely solely on evidence of the substantive crime—a single act in time and space.” *Id.* ¶ 22. Instead, *Silvas* “present[ed] the converse scenario involving a complete overlap in evidence.” *Id.* ¶ 28.

{30} In *Swick* the defendant was charged with aggravated battery with a deadly weapon and attempted murder. 2012-NMSC-018, ¶ 27. This Court reviewed the evidence and highlighted the conduct that the state’s theory relied on as to both charges: The defendant “beat, stabbed, and slashed the [victims].” *Id.* Looking to the state’s closing argument, the *Swick* Court concluded that, because the state’s theory of the case was the same as to both charges, “the aggravated battery elements were subsumed within the attempted murder elements.” *Id.* ¶¶ 26-27.

{31} In *State v. Serrato*, the defendant was charged with kidnapping by deception and enticement of a child. 2021-NMCA-027, ¶ 20, 493 P.3d 383, cert. denied (S-1-SC-38204, May 4, 2020). The Court of Appeals explained that even though the two charges, “when viewed in the abstract, might require proof of an element that the other does not,” the defendant’s double jeopardy rights were violated because, as applied in that case, the two offenses overlapped when the state relied upon the same conduct to support both charges. *Id.* ¶¶ 19-20. It reasoned that the offenses overlapped because “[t]he State’s theory of both charges was identical: [the d]efendant coaxed [the v]ictim to follow him by deceiving her with the notion he had something to show her with the intent to commit a sexual assault.” *Id.* ¶ 19.

{32} The State refers to the *Serrato* Court’s analysis as “questionable” because the Court found a double jeopardy violation “notwithstanding a conclusion that each statute contained an element requiring proof of a fact that the other statute did not.” Contrary to the State’s assertion, *Serrato* is consistent with this Court’s jurisprudence explaining that “our law does not permit an application of *Blockburger* that is so mechanical that it is enough for two statutes to have different elements.” *Torres*, 2018-NMSC-013, ¶ 25 (internal quotation marks and citation omitted). Thus, as *Torres*, *Silvas*, and *Serrato* explain, a determination that each statute contains distinct elements in the abstract does not eliminate the possibility of a double jeopardy violation under the modified approach.

{33} Turning to this case, Defendant was charged with nonresidential burglary

under Section 30-16-3(B) and breaking and entering under Section 30-14-8. The jury instructions provide three elements for each charge. The elements of burglary were provided to the jury as follows:

1. [D]efendant entered a structure without authorization;
2. [D]efendant entered the structure with the intent to commit a theft when inside;
3. This happened in New Mexico on or about February 28, 2017.

The elements of breaking and entering provided to the jury were:

1. [D]efendant entered a structure without permission;
2. The entry was obtained by the breaking of a window;
3. This happened in New Mexico on or about February 28, 2017.

Reviewing the State’s closing, it is clear that the State relied upon the same evidence to support both charges. In closing, the State’s attorney recounted evidence presented to support each element of the burglary charge. To satisfy element one, unauthorized entry, the State told the jury:

We know that an individual is on video smashing the glass, entering the store. There’s no doubt about that. I mean, it’s on tape. There’s broken glass. A human being went up to that window, smashed it intentionally, [and] jumped inside. An individual entered that structure, and it was very clear from the owners that it was without authorization.

As to element two, intent to commit a theft, the State pointed to evidence that Defendant “went looking through drawers” and “pull[ed] out the cash drawer.” Finally, the State explained that the incident happened on February 28, 2017.

{34} The State relied upon the same evidence to support the breaking and entering charge. As to the first element, the State noted that Defendant “entered Ram Signs. He did not do so with permission.” Under the second element, the State indicated that “Defendant entered through the breaking of the front glass and that’s how he jumped inside the structure.” Finally, the incident happened on February 28, 2017. Under the State’s theory, for the jury to convict on the burglary charge, it necessarily had to have found that Defendant entered Ram Signs without authorization by breaking the front window, and that he entered with the intent to commit a theft on February 28, 2017. For breaking and entering, the jury had to have found that Defendant entered Ram Signs without permission by breaking the front window on February 28, 2017.

{35} Therefore, although burglary requires the additional element of a specific

intent to commit a theft therein and although burglary can be committed without a physical breaking, under the theory of this case as argued by the State, the State used the same exact evidence to support the *unauthorized entry* element of burglary as it did to support both the *breaking of a window* and *entry without permission* elements of breaking and entering. See, e.g., *State v. Luna*, 2018-NMCA-025, ¶ 17, 458 P.3d 457 (explaining that the defendant’s double jeopardy rights were violated even though one of the counts required “proof of an additional element” absent in the other counts because “the jury could . . . convict [the d]efendant of [count one] based on nothing more than the same evidence used to convict [the d]efendant of” counts two and three). Thus, consistent with *Silvas*, *Swick*, *Serrato*, and *Luna*, under the State’s theory, the breaking and entering elements were subsumed within the burglary elements. When this Court determines that one offense is “subsumed within the other, the inquiry is over.” *Gutierrez*, 2011-NMSC-024, ¶ 56 (internal quotation marks and citation omitted); see also *Porter*, 2020-NMSC-020, ¶ 20 (“[I]f . . . one of the offenses subsumes the other offense, the double jeopardy prohibition is violated, and punishment cannot be had for both.” (internal quotation marks and citation omitted)).

### III. CONCLUSION

{36} Because the underlying conduct was unitary and, under the State’s theory, the breaking and entering elements were subsumed within the burglary elements, Defendant’s right to be free from double jeopardy was violated. When a defendant’s double jeopardy rights are violated, “one of [the d]efendant’s convictions must be vacated.” *Porter*, 2020-NMSC-020, ¶ 42. In the present case, both offenses result in the same degree of felony. See § 30-16-3(B) (nonresidential burglary is a fourth degree felony); § 30-14-8(B) (breaking and entering is a fourth degree felony). When “both offenses result in the same degree of felony, the choice of which conviction to vacate lies in the sound discretion of the district court.” *Porter*, 2020-NMSC-020, ¶ 42. Consistent with our approach in *Porter*, we reverse the Court of Appeals and remand to the district court to vacate one of Defendant’s convictions and resentence him. See, e.g., *id.* ¶ 43.

{37} IT IS SO ORDERED.

JULIE J. VARGAS, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-016**

No: S-1-SC-38872 (filed June 22, 2023)

**RICHARD JAMES GONZAGOWSKI,**  
Plaintiff-Petitioner/Cross-Respondent,

v.

**STEAMATIC OF ALBUQUERQUE, INC.,  
d/b/a STEAMATIC OF ALBUQUERQUE &  
SANTA FE, INC., and GEB, INC.,**

Defendants-Respondents/Cross-Petitioners,  
and

**ALLSTATE INDEMNITY COMPANY and GERARD BECKER,**  
Defendants.

**ORIGINAL PROCEEDING ON CERTIORARI**

Clay Campbell, District Judge

Santillanes & Neidhardt, P.C.

Janet Santillanes

Olivia Neidhardt

James T. Roach

Albuquerque, NM

The Roehl Law Firm P.C.

Jerrald J. Roehl

Katherine C. Roehl

Albuquerque, NM

for Petitioner/Cross-Respondent

Sutin Thayer & Browne, P.C.

Mariposa Padilla Sivage

Albuquerque, NM

BatesCarey LLP

Agelo L. Reppas

Chicago, IL

for Respondents/Cross-Petitioners

## OPINION

### VIGIL, Justice.

{1} New Mexico does not permit a civil plaintiff to recover duplicate compensatory damages for the same injuries. *Hood v. Fulkerson*, 1985-NMSC-048, ¶ 12, 102 N.M. 677, 699 P.2d 608. The collateral source rule presents an exception to the prohibition of double recovery, permitting a plaintiff to recover the same damages from both a defendant and a collateral source. *Sunnyland Farms, Inc. v. Cent. N.M. Elec. Coop., Inc.*, 2013-NMSC-017, ¶ 48, 301 P.3d 387. We have held that the payor of the prejudgment settlement of a claim qualifies as a collateral source and that the payment does not reduce the same

damages the plaintiff may recover from an adjudicated wrongdoer. *McConal Aviation, Inc. v. Com. Aviation Ins. Co.*, 1990-NMSC-093, ¶¶ 15, 17, 110 N.M. 697, 799 P.2d 133; *Sanchez v. Clayton*, 1994-NMSC-064, ¶ 10, 117 N.M. 761, 877 P.2d 567. The current proceedings invite us to consider whether a payment in postjudgment settlement of a claim by an adjudicated wrongdoer qualifies as a collateral source.

{2} Although our precedent has already limited the collateral source rule to prejudgment settlements, *see Sanchez*, 1994-NMSC-064, ¶ 10, we clarify that the collateral source rule has no application to a postjudgment payment made by an adjudicated wrongdoer. We hold that the payment, which Plaintiff Richard Gonzagowski received in a postjudgment settlement with one defendant, Allstate

Indemnity Company (Allstate), satisfied a portion of Plaintiff's damages and extinguishes Plaintiff's right to recover the same damages from a second defendant, GEB, Inc., d/b/a Steamatic of Albuquerque and Santa Fe, Inc. (Steamatic). Applying our opinion in *Sanchez*, 1994-NMSC-064, we also explain that the share of damages fully satisfied by Allstate must offset the damages Plaintiff may recover from Steamatic. We affirm, in part, and reverse, in part, the opinion of the Court of Appeals in *Gonzagowski v. Steamatic of Albuquerque, Inc.*, 2021-NMCA-056, 497 P.3d 1202. We remand to the district court for further proceedings consistent with our opinion.

#### I. BACKGROUND

{3} After Plaintiff's home sustained water damage in a hailstorm, he asked his insurer Allstate to cover the loss; consequently, Steamatic was hired to perform water abatement and mold remediation services. Plaintiff claimed that the mold was not remediated properly and that he developed a severe and permanent lung condition as a result.

{4} Plaintiff filed suit against Allstate and Steamatic for his personal injuries. Plaintiff's claim against Allstate was for breach of contract on the basis that his injuries were a consequence of Allstate's failure to adhere to the mold remediation provisions in his homeowner's insurance policy. Plaintiff asserted claims against Steamatic for breach of contract and negligence, asserting that the company failed to properly repair and remediate the mold in his home. Plaintiff abandoned his breach of contract claim against Steamatic before trial. Thus, Plaintiff's claim against Allstate was for breach of contract and his claim against Steamatic was for negligence. Although Plaintiff asserted different theories of liability against each defendant, Plaintiff sought the same compensatory damages from both Allstate and Steamatic.

{5} During the jury instructions conference, the three parties and the district court discussed potential issues arising from Plaintiff's attempt to recover the same damages from both defendants. With input from the parties, the district court set out to craft a special verdict form that would permit the jury to allocate responsibility for damages as between the parties.

{6} The special verdict form began by asking the jury to answer a series of interrogatories on the substantive elements of the parties' claims and defenses. As relevant to the current appeal, the jury found that Steamatic was an independent contractor, that Allstate breached its contract, and that Steamatic was negligent. Allstate's breach and Steamatic's negligence were also found

to have caused Plaintiff's injuries.

{7} The jury determined that Plaintiff had failed to mitigate his damages with respect to Allstate's breach and Steamatic's negligence. Two interrogatories on the special verdict form asked the jury to compare each defendant's conduct to Plaintiff's failure to mitigate "and find a percentage that each party's conduct contributed to [Plaintiff's] damages." In response to Question No. 5, the jury found that Allstate's conduct contributed 60% and that Plaintiff's failure to mitigate contributed 40%. In response to Question No. 9, the jury found that Steamatic's negligence contributed 80% and Plaintiff's failure to mitigate contributed 20%.

{8} The jury was asked to identify Plaintiff's "total compensatory damages." The jury set the amount of Plaintiff's compensatory damages at \$2.5 million. Question No. 12 asked the jury to "[i]dentify the total percentage of compensatory damages caused by each of" the three parties. The jury answered that, of Plaintiff's total compensatory damages, Allstate caused 30%, Steamatic caused 55%, and Plaintiff caused 15%.

{9} After trial, the parties disagreed about the proper allocation of damages in light of the jury's findings. Plaintiff argued that the jury's verdict was inconsistent with the jury findings, that Questions No. 5 and 9 reflected the proper allocation of damages as to each defendant, and that Question No. 12 was "surplusage." The defendants argued that the jury's verdict was consistent, in that the jury allocated responsibility for causing Plaintiff's injuries (Question No. 12), and also found that Plaintiff failed to mitigate his damages as to each defendant (Questions No. 5 and 9).

{10} The district court resolved this dispute by concluding that Question No. 12 expressed the jury's findings on the allocation of damages. Thus, the district court found that Plaintiff suffered \$2.5 million in total compensatory damages, of which Allstate caused 30%, Steamatic caused 55%, and Plaintiff caused 15%. The district court entered final judgment accordingly, adjudicating Allstate liable for \$0.75 million and Steamatic liable for \$1.375 million.

{11} Following entry of the final judgment, Allstate settled with Plaintiff and secured full satisfaction and release from the judgment. The record does not reflect the amount of Allstate's postjudgment payment to Plaintiff. But, significantly, no party appealed or sought to amend the final judgment against Allstate, and no party disputes Allstate's full satisfaction of the judgment.

{12} Shortly after this postjudgment settlement, Plaintiff moved to amend the final judgment as only against Steamatic.

Plaintiff once again challenged the damages allocation and asserted that damages should be allocated using Question No. 9, the interrogatory concluding that Steamatic's negligence contributed 80% to his \$2.5 million total compensatory damages. The district court agreed and entered an amended judgment setting aside the prior final judgment as against Steamatic. The amended judgment specified that Steamatic was liable to Plaintiff for \$2 million in compensatory damages.

{13} Steamatic then asked for an offset of \$0.75 million, the amount reflecting the damages allocated to Allstate in the final judgment. Steamatic argued that permitting Plaintiff to accept satisfaction of the Allstate judgment and to recover \$2 million from Steamatic would result in Plaintiff recovering twice for the same damages. Plaintiff responded that an offset was inappropriate because Allstate's settlement was a collateral source. The district court agreed with Plaintiff and denied the offset.

{14} Steamatic appealed, contesting only the district court's denial of the requested offset. The Court of Appeals reversed the district court, holding that Allstate's payment satisfied a portion of Plaintiff's damages and reduced the amount of compensatory damages that Plaintiff could recover from Steamatic. *See Gonzagowski*, 2021-NMCA-056, ¶¶ 10-14. The Court of Appeals also concluded that Allstate in its settlement of the final judgment was not a collateral source. *Id.* ¶¶ 17-18. The Court of Appeals, however, disagreed that the amount of the offset was necessarily \$0.75 million, and instead concluded that the amount of the offset was equal to the amount of Allstate's actual postjudgment payment to Plaintiff. *Id.* ¶¶ 9, 15. The Court of Appeals remanded with instructions to ascertain the amount that Plaintiff recovered from Allstate in the settlement. *Id.*

{15} Plaintiff petitioned for writ of certiorari to review the Court of Appeals' conclusion that Allstate in its postjudgment payment was not a collateral source. Steamatic cross-petitioned for review on the amount of the offset. We granted both petitions. We review the legal issues presented de novo. *See Sunnyland*, 2013-NMCA-017, ¶ 46; *Eker Brothers, Inc. v. Rehders*, 2011-NMCA-092, ¶ 7, 150 N.M. 542, 263 P.3d 319.

## II. DISCUSSION

{16} We assess whether Allstate's payment in satisfaction of the final judgment qualifies Allstate as a collateral source. We conclude that, in a postjudgment settlement with an adjudicated wrongdoer, that payor is not a collateral source. We then explain that Plaintiff's recovery from Steamatic must be reduced by the damages fully satisfied by Allstate.

### A. The Prohibition of Double Recovery and the Collateral Source Rule

{17} "New Mexico does not allow duplication of damages or double recovery for injuries received." *Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 20, 110 N.M. 314, 795 P.2d 1006. The rule prohibiting double recovery "is founded on the principle that a claimant is only entitled to one payment of its loss and that an injured party should not be allowed to recover more than once for the same wrong." 47 Am. Jur. 2d *Judgments* § 769 (2017) (footnote omitted). This is because "[t]he purpose of compensatory damages is to make the injured party whole by compensating it for losses." *Cent. Sec. & Alarm Co. v. Mehler*, 1996-NMCA-060, ¶ 11, 121 N.M. 840, 918 P.2d 1340.

{18} Accordingly, "[w]here there are different theories of recovery and liability is found on each, but the relief requested was the same, namely compensatory damages, the injured party is entitled to only one compensatory damage award." *Hood*, 1985-NMSC-048, ¶ 12. When a plaintiff's compensatory damages award is fully or partially satisfied, the plaintiff's right to recover the same damages is extinguished to the extent of the satisfaction, "regardless of the theories upon which the respective claims for relief are based." *Sanchez*, 1994-NMSC-064, ¶ 6; *see also Vaca v. Whitaker*, 1974-NMCA-011, ¶ 16, 86 N.M. 79, 519 P.2d 315 ("[A] plaintiff is entitled to but one compensation for [the plaintiff's] loss and that satisfaction of [the plaintiff's] claim prevents its further enforcement."); Restatement (Second) of *Judgments* § 50 (1982) ("Any consideration received by the judgment creditor in payment of the judgment debtor's obligation discharges, to the extent of the amount of value received, the liability to the judgment creditor of all other persons liable for the loss.").

{19} The collateral source rule is an exception to the general prohibition of double recovery. *McConal*, 1990-NMSC-093, ¶ 17. The rule provides that "[c]ompensation received from a collateral source does not operate to reduce damages recoverable from a wrongdoer." *Trujillo v. Chavez*, 1966-NMSC-175, ¶ 17, 76 N.M. 703, 417 P.2d 893. "In other words, if a plaintiff is compensated for . . . injuries by any source unaffiliated with the defendant, the defendant must *still* pay damages, even if this means that the plaintiff recovers twice." *Sunnyland*, 2013-NMCA-017, ¶ 48. For example, "[p]ublic assistance and social security constitute benefits from a collateral source, and they are not subject to offset from an award of damages." *Smith v. FDC Corp.*, 1990-NMSC-020, ¶ 23, 109 N.M. 514, 787 P.2d 433. The proceeds of an insurance policy procured for the

benefit of a plaintiff is another common collateral source. Restatement (Second) of Judgments § 50 cmt. e. By excluding compensation provided by a collateral source from the same damages recoverable from a wrongdoer, the rule thereby “allows the ultimate burden of compensating the plaintiff to fall on the defendant, rather than on blameless but generous parties.” *Sunnyland*, 2013-NMSC-017, ¶ 49.

{20} In *McConal*, 1990-NMSC-093, this Court extended the collateral source rule to a payment made by a defendant in pre-judgment settlement of a claim. *Id.* ¶¶ 17-22. The plaintiff in *McConal* sued an insurance broker for negligence and an insurer for breach of contract. *Id.* ¶¶ 1-4. The plaintiff settled with the broker prior to trial. *Id.* ¶ 5. The insurer proceeded to trial and was adjudicated liable. *Id.* ¶¶ 5-6. The insurer moved to offset the broker’s settlement against the judgment. *Id.* ¶ 7. The trial court denied the offset. *Id.*

{21} On appeal, the *McConal* Court affirmed the denial of the offset. *Id.* ¶ 22. The three justices on the panel were not able to reach consensus on whether the same damages were sought from both the broker and the insurer. *Id.* ¶ 13 (plurality opinion); *id.* ¶ 27 (Montgomery, J., specially concurring). However, the justices agreed that the policies of the collateral source rule and the encouragement of settlements suggested that the plaintiff should receive the benefit of the pre-judgment settlement. *Id.* ¶¶ 20-21; *cf. id.* ¶¶ 34-36 (Montgomery, J., specially concurring). As noted by the *McConal* plurality opinion, the broker settled with the plaintiff prior to entry of judgment, and the broker’s payment was therefore “in the legal sense, voluntary.” *Id.* ¶ 19 (quoting *Rose v. Hakim*, 335 F. Supp. 1221, 1236 (D.D.C. 1971)). By settling, both the plaintiff and the broker lost the chance of attaining a better outcome at trial. *McConal*, 1990-NMSC-093, ¶ 21. The *McConal* plurality noted, “if we were to allow [the insurer] the offset it seeks, the odds would be better for a defendant who refuses to settle and proceeds to trial.” *Id.* Further, if the insurer were permitted to offset the broker’s settlement, then the insurer would have its “liability borne by a party who had not been adjudged liable and might never have been even if [the party] had gone to trial.” *Id.*

{22} Plaintiff argues that he should be permitted to recover the same damages from both Allstate and Steamatic because Allstate is a collateral source. Plaintiff likens his settlement with Allstate to the settlement in *McConal* and asks this Court to hold that the collateral source rule extends to settlements made after entry of judgment. Steamatic responds that only pre-judgment settlements may qualify as collateral source payments under *McConal*

and that the collateral source rule does not apply to Allstate’s postjudgment settlement. We agree with Steamatic.

{23} The collateral source rule, as applied in *McConal*, extends only to pre-judgment settlements and does not extend to the postjudgment payment made by an adjudicated wrongdoer in satisfaction of its liability. *Id.* ¶¶ 20-21. As we explained in *Sanchez, McConal* holds only that “the collateral source rule applies to the pre-judgment settlement of a claim involving neither a joint tortfeasor nor a joint obligor under a contract.” *Sanchez*, 1994-NMSC-064, ¶ 10 (emphasis added); see also *Summit Props., Inc. v. Pub. Serv. Co. of N.M.*, 2005-NMCA-090, ¶ 46, 138 N.M. 208, 118 P.3d 716 (emphasizing the additional requirement that there be “no facts showing that the parties were jointly liable for the damages caused to the plaintiff”). The Court’s opinion in *McConal* was based upon “principles of collateral source and the encouragement of settlements.” *Sanchez*, 1994-NMSC-064, ¶¶ 9-10. These principles and policies are not present in the postjudgment context. A defendant who settles with a plaintiff before liability is adjudicated does so voluntarily and forgoes the chance of gaining a better outcome at trial. *McConal*, 1990-NMSC-093, ¶¶ 19, 21. After adjudication, a defendant’s payment is no longer voluntary but made in satisfaction of a legal judgment and with full knowledge of the extent of the defendant’s liability.

{24} It also is noteworthy that no reported decision in New Mexico has extended the collateral source rule to a postjudgment settlement. And Plaintiff has not persuaded us that the collateral source rule should be so extended. For example, Plaintiff argues that Allstate’s payment is collateral because it represents a payment made by his own insurance company. We agree that the proceeds from a policy of insurance purchased for the benefit of a plaintiff are commonly a collateral source. See, e.g., *Collateral-source rule*, *Black’s Law Dictionary* (11th ed. 2019) (“Insurance proceeds are the most common collateral source.”). However, the jury found Allstate liable for causing the same damages that Plaintiff now seeks to recover from Steamatic. We are not presented with the common circumstance of a blameless insurer compensating a plaintiff for damages caused by an unaffiliated wrongdoer. An adjudicated-labile defendant is not akin to an innocent collateral source. *Cf. Sunnyland*, 2013-NMSC-017, ¶¶ 8, 53-54 (refusing to permit a liable defendant to exercise a subrogation lien acquired from the plaintiff’s insurer because that defendant and the plaintiff’s insurer are “not similarly situated”).

{25} Plaintiff also argues that Allstate is a collateral source because Allstate was neither a joint tortfeasor nor a joint contract obligor with Steamatic. Plaintiff highlights the fact that the jury rejected his theory of joint and several liability against Allstate by finding that Steamatic was acting as an independent contractor. He asserts that a severally liable defendant is a collateral source, emphasizing language in our jurisprudence that discusses principles of double recovery in relation to joint liability. See, e.g., *Summit Props.*, 2005-NMCA-090, ¶ 46 (noting that the collateral source rule as applied in *McConal* calls for offsetting damages already awarded to the plaintiff unless “there are no facts showing that the parties were jointly liable for the damages caused to the plaintiff”).

{26} We reaffirm that a jointly liable defendant is not a collateral source. *Sanchez*, 1994-NMSC-064, ¶¶ 6, 10. “Under the theory of joint and several liability, each tortfeasor is liable for the entire injury, . . . leaving it to the defendants to sort out among themselves individual responsibility based on theories of proportional indemnification or contribution.” *Payne v. Hall*, 2006-NMSC-029, ¶ 11, 139 N.M. 659, 137 P.3d 599. “[P]ayments from a joint obligor on a contract are credited toward the amount received from other joint obligors.” *Summit Props.*, 2005-NMCA-090, ¶ 46.

{27} We likewise reaffirm that a severally liable defendant is not a collateral source when it is allocated responsibility for paying the same damages allocated to another defendant. As we have repeatedly emphasized, a plaintiff is entitled to a single recovery for the same compensatory damages, regardless of the theory upon which liability is based. *Sanchez*, 1994-NMSC-064, ¶ 6; *Hood*, 1985-NMSC-048, ¶ 12. Typically, a severally liable defendant will not be responsible for the same damages as another defendant, because “[l]iability for proportionate fault is a liability for a distinct part of the damages and not for the same damages that may be apportioned to others.” *Sanchez*, 1994-NMSC-064, ¶ 6; see also *Safeway, Inc. v. Rooter 2000 Plumbing & Drain SSS*, 2016-NMSC-009, ¶¶ 18-26, 368 P.3d 389 (surveying New Mexico’s law of comparative fault, traditional indemnification, proportional indemnification, and contribution as supporting a system under which each party is ultimately responsible for paying its own share of damages). However, as further explained below, Steamatic became responsible for paying the same damages allocated to Allstate due to an overlapping damages award in the final judgment and amended final judgment. In this situation, Allstate’s satisfaction of the duplicative portion of the damages award

extinguished Plaintiff's right to recover those same damages from Steamatic. *See* Restatement (Second) of Judgments § 50 cmt. c (explaining and illustrating the principle that a defendant's payment for damages for which it is solely responsible does not discharge the liability of other defendants "except insofar as [the payment] extends beyond the losses for which the first [defendant] alone is responsible"). {28} In sum, we agree with the Court of Appeals that the collateral source rule does not apply to Allstate's postjudgment settlement with Plaintiff. *Gonzagowski*, 2021-NMCA-056, ¶¶ 17-18. In making payment in satisfaction of the final judgment against it, Allstate was not acting as a "blameless but generous" party providing compensation for damages caused by an unaffiliated wrongdoer. *Sunnyland*, 2013-NMSC-017, ¶ 49. Allstate was paying for its own adjudicated fault.

#### **B. The Amount of the Satisfaction**

{29} Steamatic cross-appeals from the portion of the Court of Appeals' opinion addressing the amount of the offset. *See Gonzagowski*, 2021-NMCA-056, ¶¶ 9, 15. Steamatic argues that the damages Plaintiff may recover must be reduced by the duplicative damages allocated to and fully satisfied by Allstate and that the Court of Appeals erred by remanding to determine the dollar amount of the settlement. We agree that, under the circumstances presented, the amount of the offset is equal to the damages fully satisfied by Allstate.

{30} Like the Court of Appeals, we view the circumstances presented as "remarkably similar" to those presented in *Sanchez*. *Gonzagowski*, 2021-NMCA-056, ¶ 14. In *Sanchez*, the plaintiffs obtained a judgment against one group of defendants in federal court. 1994-NMSC-064, ¶¶ 3-4. The plaintiffs entered into a postjudgment settlement with that group of defendants but reserved the right to pursue recovery against a second group of defendants. *Id.* ¶ 4. The *Sanchez* plaintiffs thereafter sued the second group of defendants in state court. *Id.* ¶ 5. The plaintiffs admitted that they were seeking the same compensatory damages from both groups. *Id.* The trial court concluded that the plaintiffs' settlement with the defendants in the first action fully satisfied the plaintiffs' damages and barred further recovery, and thus the trial court dismissed the second action. *Id.* ¶¶ 1, 5.

{31} On appeal, the *Sanchez* Court similarly agreed that principles of double recovery applied to the plaintiffs' two actions and prohibited the plaintiffs' recovery for the same damages from the second group of defendants. *Id.* ¶¶ 6, 11. The *Sanchez* Court also acknowledged that *McConal* did not apply to the plaintiffs' postjudgment settlement with the first group of defendants. *Id.* ¶¶ 7-10. However,

the *Sanchez* Court reversed the trial court because it determined that the plaintiffs were not seeking the *same damages* from the second group of defendants. *Id.* ¶¶ 11, 20. As the *Sanchez* Court explained, the plaintiffs could still seek punitive damages against the second group of defendants. *Id.* ¶¶ 11-17. The plaintiffs could also potentially recover the portion of the plaintiffs' compensatory damages that had not been satisfied by the settlement with the first group of defendants. *Id.* ¶ 19.

{32} *Sanchez* is dispositive of the issues presented in this appeal. Here, the district court entered a final judgment against Allstate, adjudicating the insurance company liable for \$0.75 million or 30% of Plaintiff's damages. Allstate thereafter entered into a postjudgment settlement with Plaintiff. After Allstate satisfied its liability, the judgment was amended as only against Steamatic. This amended final judgment specified that Steamatic was responsible for \$2 million, which was 80% of Plaintiff's compensatory damages, where the total amount of Plaintiff's damages remained as set by the jury at \$2.5 million. *See Sanchez*, 1994-NMSC-064, ¶ 18 (noting that a plaintiff seeking the same damages in successive litigation "would be estopped from the recovery of compensatory damages greater than awarded in, but remaining unpaid from, a prior judgment"); Restatement (Second) of Judgments § 50 cmt. d ("The adjudication of the amount of the loss also has the effect of establishing the limit of the injured party's entitlement to redress, whoever the obligor may be."). Further, as Plaintiff had already accepted full satisfaction of the judgment against Allstate, Plaintiff could not dispute the validity of that prior judgment. *See State v. Fernandez Co.*, 1923-NMSC-007, ¶¶ 1-2, 28 N.M. 425, 213 P. 769 (holding in favor of the general rule that acceptance in full satisfaction of a judgment precludes review of that judgment).

{33} Because there were two judgments and a common total damages award, the 80% share of damages allocated to Steamatic in the amended final judgment partially duplicated the 30% share allocated to Allstate in the final judgment. In these circumstances, *Sanchez* would not permit Plaintiff to recover the duplicative portion of both defendants' combined liability damages. 1994-NMSC-064, ¶ 6 ("To the extent a judgment for damages is paid by one or more of the judgment debtors, . . . a claim for the *same damages* against any other person is extinguished regardless of the theories upon which the respective claims for relief are based.").

{34} Thus, similar to *Sanchez*, Plaintiff's postjudgment settlement with Allstate satisfied Allstate's allocated share of Plaintiff's damages award. *Id.* ¶¶ 6, 11. Plaintiff's

right to recover the same damages from Steamatic was extinguished to the extent of that satisfaction. *Id.* And Plaintiff could recover compensatory damages from Steamatic only to the extent that Plaintiff's damages were not yet satisfied. *Id.* We therefore agree with the Court of Appeals that the district court erred by denying Steamatic's request for an offset. *Gonzagowski*, 2021-NMCA-056, ¶¶ 8-9, 14. An offset was necessary due to Allstate's satisfaction of the same damages Plaintiff sought to recover from Steamatic. *See Sanchez*, 1994-NMSC-064, ¶ 19 (limiting the plaintiffs' recovery from the second group of defendants to reflect partial satisfaction of the plaintiffs' damages).

{35} However, there is one part of the Court of Appeals' analysis that is inconsistent with *Sanchez*. The Court of Appeals held that the amount of the offset was to be determined in reference to the amount Plaintiff actually recovered from Allstate, and thus remanded the proceedings to determine the actual amount of Allstate's postjudgment settlement. *Gonzagowski*, 2021-NMCA-056, ¶¶ 9, 15. We disagree with that approach.

{36} Rather, we conclude that the record as it stands is sufficient for resolving this issue. As noted by *Sanchez*, a plaintiff "has an obligation to establish what compensatory damages [the plaintiff] is foregoing in the settlement if [the plaintiff] later wishes to show a right to recover compensatory damages in successive litigation." 1994-NMSC-064, ¶ 19. In *Sanchez*, the Court noted that the plaintiffs, in settling with the first group of defendants, had expressly reserved their cause of action against the second group of defendants. *Id.* Thus, the Court determined that the plaintiffs had reserved the right to recover a portion of the plaintiffs' compensatory damages that were not satisfied by the settlement. *Id.*

{37} In contrast, Plaintiff here has not shown that he reserved the right to further recover any part of the duplicative damages award in the settlement with Allstate. Regardless of any dollar amount Plaintiff accepted from Allstate in settlement, Plaintiff accepted that payment in full satisfaction and release of the final judgment against Allstate. Plaintiff was thus "entitled to no more" for Allstate's share of the damages. *Fortuna Corp. v. Sierra Blanca Sales Co.*, 1976-NMSC-014, ¶ 12, 89 N.M. 187, 548 P.2d 865. And Plaintiff cannot now recover any part of this fully satisfied share from Steamatic. *Sanchez*, 1994-NMSC-064, ¶¶ 6, 11; *Vaca*, 1974-NMCA-011, ¶ 18 ("When payment of the judgment in full is made by the judgment debtor, . . . the plaintiff is barred from a further action against another who is liable for the same damages." (internal quotation marks and citation omitted));

Restatement (Second) of Judgments § 50 cmt. d (“[W]hen a judgment is based on actual litigation of the measure of a loss, and the judgment is thereafter paid in full, the injured party has no enforc[ea]ble claim against any other obligor who is responsible for the same loss.”).

{38} We hold that a 30% share of Plaintiff’s \$2.5 million compensatory damages award, or \$0.75 million, has been fully satisfied by Allstate and may not be recovered from another liable for the same damages. According to the amended final judgment, Steamatic is liable to Plaintiff for \$2 million, representing an 80% share of Plaintiff’s total damages. Steamatic’s share must be reduced by \$0.75 million to reflect Allstate’s satisfaction of these same damages allocated to Steamatic. This means that Plaintiff may recover \$1.25 million in compensatory damages from

Steamatic, exclusive of any award of pre- or postjudgment interest, costs, and fees. It appears from the record that Steamatic has already tendered a supersedeas bond for this amount.

### III. CONCLUSION

{39} Plaintiff may not recover duplicative damages from Allstate and Steamatic. We affirm the Court of Appeals insofar as it concluded that the collateral source rule does not apply to the payment Allstate made in satisfaction of the final judgment. *Gonzagowski*, 2021-NMCA-056, ¶¶ 17-18. We likewise affirm the Court of Appeals insofar as it held that the amount Plaintiff may recover from Steamatic must be reduced by Allstate’s satisfaction of its portion of Plaintiff’s compensatory damages. *Id.* ¶ 14. We reverse the Court of Appeals to the extent that it held that the amount

of the reduction must be determined on remand to reflect the actual amount of Allstate’s payment. *Id.* ¶¶ 9, 15. We direct that the amount of the reduction must equal the damages fully satisfied by Allstate. We therefore remand to the district court for entry of a second amended final judgment reflecting the satisfaction of 30% of Plaintiff’s total damages by reducing Plaintiff’s recovery from Steamatic by \$0.75 million (to \$1.25 million) and for other such proceedings as consistent with our opinion.

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

**MICHAEL E. VIGIL, Justice**

**WE CONCUR:**

**C. SHANNON BACON, Chief Justice**

**DAVID K. THOMSON, Justice**

**BRIANA H. ZAMORA, Justice**

**JAMES LAWRENCE SANCHEZ,**

**Judge, Sitting by Designation**

# FORMAL OPINION

*Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 8/30/2023**

**No. A-1-CA-39045**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**CRYSTAL SIVILS,**

Defendant-Appellant.

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

Michael H. Stone, District Court Judge

Raúl Torrez, Attorney General  
Laurie Blevins, Assistant Attorney General  
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender  
Kathleen T. Baldrige,  
Assistant Appellate Defender  
Santa Fe, NM

for Appellant

## ► Introduction of Opinion

After a jury trial, Defendant Crystal Dawn Sivils was convicted of conspiracy to commit bringing contraband into a jail. See NMSA 1978, § 30-28-2 (1979) (conspiracy); NMSA 1978, § 30-22-14(B) (2013) (bringing contraband into a jail). On appeal, Defendant argues that (1) fundamental error occurred in the manner the jury was instructed on the elements of the offense; and (2) there was insufficient evidence to support her conviction. As to the first argument, we agree with Defendant. The district court gave the jury an instruction on the offense of conspiracy that deviated from the applicable uniform instruction, UJI 14-2810 NMRA, and the given instruction omitted essential elements of the offense. We conclude that this instruction was erroneous, and although Defendant did not object to it at trial, we reverse Defendant's conviction under the doctrine of fundamental error. As a result, we consider Defendant's sufficiency claim for the purpose of determining whether principles of double jeopardy bar retrial. **View full PDF online.**

Zachary A. Ives, Judge

WE CONCUR:

Kristina Bogardus, Judge

Michael D. Bustamante, Judge, retired,  
sitting by designation

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39045>

# FORMAL OPINION

*Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 8/31/2023**

**No. A-1-CA-38739**

**DAVID N. STANLEY,**

Plaintiff-Appellant,

v.

**NEW MEXICO GAME COMMISSION  
and STATE OF NEW MEXICO,**

Defendants-Appellees,

and

**BOARD OF COUNTY COMMISSIONERS  
OF MORA COUNTY,**

Defendant.

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

Emilio J. Chavez, District Court Judge

Atler Law Firm, P.C.

Timothy J. Atler

Jazmine J. Johnston

Albuquerque, NM

for Appellant

Kerry Kiernan, P.C.

Kerry Kiernan

Albuquerque, NM

Walcott, Henry & Winston, P.C.

Donald A. Walcott, Et al.

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Plaintiff-Counterdefendant David Stanley appeals the district court's final judgment dismissing his complaint for quiet title and declaring certain roads traversing Stanley's property public under various theories, including by prescriptive easement. Stanley also appeals the district court's cost award. Although we remand for certain, limited findings regarding the widths of the roads deemed public by prescriptive easement, we otherwise affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

J. Miles Hanisee, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38739>

# FORMAL OPINION

*Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 9/11/2023**

**No. A-1-CA-40279**

**MARIE A. SHOOK, ED OPPENHEIMER,  
and JOAN CONROW,**

Plaintiffs-Appellants,

v.

**GOVERNING BODY OF THE  
CITY OF SANTA FE,**

Defendant-Appellee,

and

**ZIA STATION, LLC,**

Real Party in Interest.

**APPEAL FROM THE DISTRICT COURT  
OF SANTA FE COUNTY**

Kathleen McGarry Ellenwood, District Court Judge

Rodey, Dickason, Sloan, Akin & Robb, P.A.

Jenica L. Jacobi

Jacques H. Chouinard

Albuquerque, NM

for Appellants

Herdman MacGillivray Fullerton

Cameron Pumarejo Honeycutt PC

Frank T. Herdman

Santa Fe, NM

Erin K. McSherry, City Attorney

Marcos D. Martinez, Senior Assistant City Attorney

Santa Fe, NM

for Appellee

## ► Introduction of Opinion

The present case arose from an administrative proceeding relating to five applications submitted by Zia Station, LLC (Developer) seeking zoning changes and amendments to the land use plans of the City of Santa Fe (the City). The City's Governing Body (the Governing Body) approved Developer's request, which Marie Shook, Ed Oppenheimer, and Joan Conrow (Residents) appealed, first to the district court and then to this Court. In both appeals, Residents argued that the Governing Body did not afford sufficient process during a public hearing about Developer's plans for their community. The City maintains that Residents' appeal should be dismissed. It is well established that in administrative appeals brought under Rule 1-074 NMRA, the district court can simultaneously exercise appellate and original jurisdiction. See *Maso v. N.M. Tax'n & Revenue Dep't*, 2004-NMCA-025, ¶¶ 6, 17, 135 N.M. 152, 85 P.3d 276. The capacity in which the district court acted depends on whether the issue raised in the district court was within the administrative agency's jurisdiction to determine. *Id.* ¶¶ 13-14. **View full PDF online.**

Katherine A. Wray, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Michael D. Bustamante, Judge, retired,  
sitting by designation

To read the entire opinion, please visit  
the following link: <https://bit.ly/A-1-CA-40279>

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 8/30/2023**

**No. A-1-CA-39558**

**DAVID GRIEGO,**

Plaintiff-Appellant,

v.

**JOHN SERNA,**

Defendant-Appellee.

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

Flora Gallegos, District Court Judge

Christopher P. Lucero

Albuquerque, NM

for Appellant

Riley Keller Alderete Gonzales

David A. Gonzales

Mathew R. Wadsworth

Victor E. Sanchez

Albuquerque, NM

for Appellee

**► Introduction of Opinion**

The district court dismissed Plaintiff David Griego's suit against Defendant John Serna1 on the grounds that he had failed to serve process on Defendant "with reasonable diligence," as required by Rule 1-004(C)(2) NMRA. Plaintiff appeals, contending that the district court abused its discretion. We affirm the dismissal, and as a result, we do not reach the abatement questions that arose due to the death of Defendant during the pendency of this appeal.

Zachary A. Ives, Judge

WE CONCUR:

Kristina Bogardus, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39558>

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 8/31/2023**

**No. A-1-CA-39542**

**ERIC VASCONSELLES,**

Worker-Appellant,

v.

**UNIVERSITY OF NEW MEXICO and NEW MEXICO  
RISK MANAGEMENT,**

Employer/Insurer-Appellees.

**APPEAL FROM WORKERS'  
COMPENSATION ADMINISTRATION**

Rachel A. Bayless, Workers' Compensation Judge

Dorato & Weems LLC

Derek Weems

Albuquerque, NM

for Appellant

Garcia Law Group, LLC

Teague Williams

Bryan C. Garcia

Albuquerque, NM

for Appellees

## ► Introduction of Opinion

Eric Vasconselles (Worker) appeals an order from the Workers' Compensation Administration denying his request that his former employer, University of New Mexico, and its insurer, New Mexico Risk Management, (collectively, Employer) pay one hundred percent of his attorney fees, pursuant to the fee shifting provision in NMSA 1978, Section 52-1-54(F)(4) (2013). Worker contends the workers' compensation judge (WCJ) erred by concluding he failed to demonstrate entitlement to fee shifting. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit

To read the entire opinion, please visit  
the following link: <https://bit.ly/A-1-CA-39542>

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 8/31/2023**

**No. A-1-CA-40544**

**KARLA J.C., individually  
and on behalf of AYL A C.,**

Petitioners-Appellants,

v.

**DESMOND MONTAÑO,**

Respondent-Appellee.

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

Abigail Aragon, District Court Judge

New Mexico Legal Aid  
Corinna Laszlo-Henry  
Las Vegas, NM

for Appellants

Ahmad Assed & Associates  
Britany J. Schaffer  
Ahmad Assed  
Richard J. Moran  
Amy M. Williams  
Albuquerque, NM

for Appellee

## ► Introduction of Opinion

This matter arises from the denial and dismissal of a petition for an order of protection against Respondent Desmond Montaña under the Family Violence Protection Act (FVPA), NMSA 1978, §§ 40-13-1 to -13 (1987, as amended through 2019). Petitioners Karla Cave (Mother) and her minor child A.C. (Child) (collectively, Petitioners) appeal the order denying their motion to reconsider the dismissal of their petition. Petitioners argue that the district court (1) erred by requiring Petitioners to show fear and necessity to obtain an order of protection; (2) misapprehended the elements of criminal sexual contact of a minor (CSCM); and (3) erred by admitting evidence of a nonparty and non-witness's character. Petitioners also argue

To read the entire opinion, please visit  
the following link:

Jacqueline R. Medina, Judge  
WE CONCUR:  
Kristina Bogardus, Judge  
Zachary A. Ives, Judge

To read the entire opinion, please visit  
the following link: <https://bit.ly/A-1-CA-40544>

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 9/6/2023**

**No. A-1-CA-39397**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**ISAAC MONTANO,**

Defendant-Appellant.

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

Michael H. Stone, District Court Judge

Raúl Torrez, Attorney General  
Santa Fe, NM

Jane A. Bernstein, Assistant Attorney General  
Albuquerque, NM

for Appellee

Harrison, Hart & Davis, LLC  
Nicholas T. Hart  
Albuquerque, NM

for Appellant

## ► Introduction of Opinion

Defendant Isaac Montano appeals from the denial of his motion for immediate release due to the COVID-19 pandemic. Defendant argues that the district court was required to hold a hearing and make specific findings of fact and conclusions of law before denying his motion. Defendant seeks remand to allow the district court to make findings of fact. We are not persuaded and affirm.

Gerald E. Baca, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit  
the following link: <https://bit.ly/A-1-CA-39397>

To read the entire opinion, please visit  
the following link:

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 9/7/2023**

**No. A-1-CA-39782**

**BLOCHHOUSE, LLC,**  
Plaintiff/Counterdefendant-Appellee,

v.

**FRANCINE M. TRUJILLO**  
**and ALL OTHER UNKNOWN OCCUPANTS,**  
Defendants/Counterclaimants-Appellants,

and

**FRANCINE M. TRUJILLO,**  
Third-Party Plaintiff,

v.

**ESTANCIA BLUEWATER, LLC;**  
**DEVELOPING OPPORTUNITIES, LLC;**  
**and STEPHEN PALEVICH,**  
Third-Party Defendants.

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

Benjamin Chavez, District Court Judge

Vance, Chavez & Associates, LLC  
James A. Chavez  
Albuquerque, NM

for Appellee

New Mexico Legal Aid  
Corinna Laszlo-Henry  
Las Vegas, NM

for Appellant

## ► Introduction of Opinion

Having granted the motion for rehearing filed by Defendant Francine Trujillo (Tenant) and considered the response of Plaintiff Blochhouse LLC (Landlord), we withdraw the opinion filed June 28, 2023, and substitute the following opinion in its place. Tenant appeals the district court's grant of a writ of possession in favor of Landlord. Tenant argues that the district court erroneously granted Landlord possession of the property under the Uniform Owner-Resident Relations Act (UORRA), NMSA 1978, §§ 47-8-1 to -52 (1975, as amended through 2007). We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39782>

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 9/7/2023**

**No. A-1-CA-39625**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**FREDERICK ROSS MCCARTHY,**

Defendant-Appellant.

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

Cindy Leos, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Emily Bowen, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

MJ Edge, Assistant Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Defendant Frederick McCarthy appeals his convictions for aggravated fleeing a law enforcement officer, in violation of NMSA 1978, Section 30-22-1.1 (2003); receiving or transferring stolen motor vehicles, in violation of NMSA 1978, Section 30-16D-4 (2009); resisting, evading or obstructing an officer (arrest), in violation of NMSA 1978, Section 30-22-1(B) (1981); and criminal damage to property (under \$1,000), in violation of NMSA 1978, Section 30-15-1 (1963). Defendant contends that the district court violated his constitutional right to a public trial when the court excluded his wife, who was previously identified as a witness in the case, from attending the trial pursuant to the rule of exclusion, Rule 11-615 NMRA. See U.S. Const. amend. VI (right to a speedy and public trial); N.M. Const. art. II, § 14 (same). Defendant also requests certification to the New Mexico Supreme Court to overturn its holding in *State v. Padilla*, 2008-NMSC-006, 143 N.M. 310, 176 P.3d 299, with respect to the elements of aggravated fleeing a law enforcement officer. See NMSA 1978, § 34-5-14 (1972); Rule 12-606 NMRA. We decline Defendant's request for certification and affirm the district court.

Gerald E. Baca, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39625>

# MEMORANDUM OPINION

*This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.*

**Filing Date: 9/11/2023**

**No. A-1-CA-39063**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**ROBERT CONANT,**

Defendant-Appellant.

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

Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Leland M. Churan, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Mark A. Perlata-Silva, Assistant Appellate Defender

Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Roberto Conant appeals the district court's denial of his motion to challenge the amount of restitution set forth in a judgment filed more than eight months prior. Defendant argues that the district court failed to hold a hearing at which he could challenge the restitution amount claimed by the State prior to issuance of the judgment, and that the district court erred by finding he waived his right to challenge restitution by signing a probation restitution agreement. The State answers that under Rule 5-801(A) NMRA, the district court lacked jurisdiction to reduce the amount ordered to be paid by Defendant more than ninety days following the judgment from which Defendant did not appeal. We affirm.

J. Miles Hanisee, Judge

WE CONCUR:

Zachary A. Ives, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39063>

Arbitrator, Mediator, Insurance Claim Umpire, Special Master, Early Neutral Evaluator & Appointed Judge



**JIM MILLER**  
DISPUTE RESOLUTION

Focused practice areas include construction, business & commercial, employment, personal injury, real estate & professional negligence

 **719.626.9539**

Available In-Person or Virtual

**FORMER JUDGE •  
EXPERIENCED NEUTRAL**

# CONFLICT RESOLVER

**DOMESTIC •  
INTERNATIONAL**



Book a mediation/arbitration *online*  
 [jimmillerdisputeresolution.com](http://jimmillerdisputeresolution.com)

Save almost 18% over  
regular prices!

*Annual Pass*  
**2023**



Lock in your savings!  
**Pre-pay 12 credits  
for only \$485**

Credits must be redeemed by  
**Dec. 31, 2023**

Contact us for more info:  
[cleonline@sbnm.org](mailto:cleonline@sbnm.org)



New Mexico State Bar Foundation  
Center for Legal Education

Redeemable on Center for Legal Education courses only.  
Exclusions: No teleseminar or other third-party content. No  
refunds or roll-over of unused credits.

“Alongside a good trial lawyer is...”

**DP&S**

**DURHAM, PITTARD & SPALDING, L.L.P.**

**Justin R. Kaufman  
Caren I. Friedman  
Rosalind B. Bienvenu  
Philip M. Kovnat**

Appeals & Strategic Litigation Support

505 Cerrillos Road, Suite A209  
Santa Fe, NM 87501  
505.986.0600  
[dpslawgroup.com](http://dpslawgroup.com)



**We shop up to 22 professional liability insurance companies to find the right price and fit for your law firm.**



Brian Letherer

**Make sure your insurance policy has:**

- Prior acts coverage, to cover your past work.
- Claim expenses outside the limit of liability, no PacMan.
- "A" rating from A.M. Best, important, some companies are NOT!
- Free tail options for retiring attorneys.



Mallory Letherer

*We help solve insurance problems for the growth of your firm*

Albuquerque, New Mexico  
bletherer@licnm.com • 505.433.4266  
[www.licnm.com](http://www.licnm.com)

**John Battle, CPA, CVA, MAFF, CM&AA**

Valuation and Consulting, LLC

**Economic Damages Consulting/Litigation Support**

Commercial Lost Profits \* Employment Economic Damages  
Death and Injury Economic Damages \* Complex Damage Claims

**Business Valuations**

Partner/Shareholder Disputes \* Marital Dissolution

PO Box 189 \* La Luz, NM 88337  
575.488.3410 (Office) 575.921.7578 (Cell)  
[www.linkedin.com/in/jbattlecpacva](http://www.linkedin.com/in/jbattlecpacva)

# Classified

## Positions

**Senior Associate**

Senior Associate with partnership fast track potential for the right person. Looking for experience in medical malpractice, complex liability, general liability, and or employment and civil rights. Mid-size Defense firm downtown. Excellent benefits and pay. Congenial and easy-going firm. Please contact Karen Arrants at Stiff, Garcia & Associates, KArrants@stiffllaw.com

**Attorneys**

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

**Bill Chesnut, MD**

*Orthopedic Surgeon, Retired*



IMEs, EXPERT TESTIMONY,  
RECORD REVIEWS  
FREE ESTIMATES

[www.BillChesnutMD.com](http://www.BillChesnutMD.com)  
[BillChesnutMD@comcast.net](mailto:BillChesnutMD@comcast.net)  
505-501-7556

**RFP – Attorney Services**

The Española/Rio Arriba E-911 Center invites sealed proposals in response to an RFP for attorney services for the ERA911 Center and its Board of Directors. The ERA911 Center provides 911 emergency services for the County of Rio Arriba, City of Española, Ohkay Owingeh, Northern Santa Fe County, and all the communities therein. Contact the Director's office for a copy of the current RFP. ERA911 Center, 407 N Paseo de Oñate, Española, NM 87532, Ph: 505-753-5555.

**Attorney**

Barnhouse Keegan Solimon & West LLP, a Chambers and Partners ranked law firm specializing in the representation of American Indian Tribes and tribal businesses, is seeking an associate attorney. An active New Mexico license to practice law is required. Prior federal Indian law or tribal representation experience preferred, but not required. The Firm is committed to the advancement of American Indian and offers a collaborative working environment with opportunities for mentorship and professional growth. To apply, submit a cover letter, resume, three references and a writing sample to Barnhouse Keegan Solimon & West LLP at [lvera@indiancountrylaw.com](mailto:lvera@indiancountrylaw.com).

### Associate Attorney

Mann Morrow, PLLC is seeking a highly motivated and experienced associate attorney to join our civil litigation firm in Las Cruces, NM. The ideal candidate will have 3-5 years of experience in civil litigation, as well as a strong work ethic and the ability to independently manage their own cases. Responsibilities: 1. Conduct legal research and analysis; 2. Draft pleadings, motions, and other legal documents; 3. Interview clients and witnesses; 4. Prepare for and participate in depositions, hearings, and trials. Qualifications: 1. Juris Doctor degree from an accredited law school; 2. New Mexico bar admission; 3. 3-5 years of experience in civil litigation; 4. Strong research and writing skills; 5. Excellent oral and written communication skills; 6. Ability to work independently and as part of a team. Benefits: 1. Competitive salary and benefits package; 2 Opportunity to work with a team of experienced attorneys. If you are interested in this position, please send your resume, references, and cover letter to christina.munoz@mannmorrow.com. We look forward to hearing from you!

### Experienced Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 37 states, is currently seeking an experienced litigation attorney for an immediate opening in its offices in Albuquerque and Santa Fe, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers a \$50K signing bonus, 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume with cover letter indicating which office(s) you are interested in to Hamilton Hinton at hhinton@cordellllaw.com

### Entry Level and Experienced Attorneys

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

### Southern Ute Indian Tribe Job Opening Tribal Prosecutor

The Southern Ute Indian Tribe is looking for a self-motivated, personable, disciplined, and compassionate attorney to join the in-house Legal Department on the Southern Ute Indian Reservation in sunny, mountainous, southwest Colorado. Under the supervision of the Legal Department Director, attorney will serve as a member of the Tribe's Legal Department, with principal responsibility for the effective, efficient, and fair prosecution of violations of the Tribal Code to include criminal, gaming, and wildlife cases. In addition, the attorney will represent the Tribe in other matters that require the Legal Department's attention, including code review and drafting, civil litigation, contract review, employment matters, and the consideration of social services cases. A strong command of Tribal jurisdiction, an understanding of tribal sovereignty, and an ability to provide accurate legal advice in a fast-paced environment is essential. Must have 2 years of criminal law experience with actual trial experience. Salary starts at 95,745.85/annually. For more information about the position and to apply, please visit: <https://careers.southernute.com/pfund>. This position is open until filled.

### Full-Time Associate Attorney

Armstrong Johnson Law, LLC, formerly known as Michael Armstrong Law Office, LLC, is a well-established Social Security Disability firm of over 30 years, with an excellent reputation in the legal community and the United States District Court for the District of New Mexico. We have an immediate opening for a full-time Associate Attorney to represent individuals with disabilities before the Social Security Administration and Federal Court. This position offers an excellent opportunity to exercise oral advocacy skills, creative and persuasive writing skills, and specialized representation strategies. Strong people skills, as well as time management, organization, and research and writing abilities required. Some knowledge of administrative law and Federal Court processes helpful but not necessary. We offer a full benefits package and advancement potential. Please submit a letter of interest, along with a resume to: dana017.sanders@michaelarmstronglaw.com.

### Position For Plaintiff Litigation Attorney

Employment opportunity for 3+ year attorney interested in complex plaintiff's litigation. Send expression of interest to Will@Fergusonlaw.com

### Assistant Disciplinary Counsel

The Disciplinary Board of the New Mexico Supreme Court is hiring for a half time (20-25 hours a week) Assistant Disciplinary Counsel. Primary duties include investigating and prosecuting allegations of professional misconduct against attorneys, interviewing witnesses, and representing the Office of Disciplinary Counsel at hearings and other proceedings. Must possess a JD from an accredited law school and be a licensed New Mexico attorney in good standing. Span-ish speaking helpful. Great opportunity for challenging legal work in a good environment. Salary \$50-\$60k DOE. Excellent benefits for part-time employees. Anticipated start date of December 1, 2023. To apply, email resume, letter of interest, writing sample, and three references to [info@nmdisboard.org](mailto:info@nmdisboard.org).

### 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 ( \$ 70,196.00 ) to a Senior Trial Attorney ( \$82,739.00), based upon experience. Must be licensed in the United States. These positions are located in the Lovington, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to [nshreve@da.state.nm.us](mailto:nshreve@da.state.nm.us)

### Associate Attorney

Batley Family Law, a nationally recognized family law firm, seeks an Associate Attorney to join our team. We handle complex Family Law cases and try to maintain a smaller case load which allows us the opportunity to best serve our clients. We are looking for an ambitious, dedicated and passionate attorney with 3+ years' experience who strives to do their best in an environment that encourages personal growth and development. Applicant must be able to work independently and collaborate with a team; the ability to think outside the box and attention to detail is a must. Must possess strong organizational skills, superior writing and communication skills and the ability to independently manage their own family law cases. Applicants must also possess a strong work ethic and commitment to delivering excellent client service. We offer a great benefits package for our employees which includes, PTO, Health, Dental, Vision, 401K. We also offer an employee bonus/incentive program separate from the employee's salary compensation. Please email cover letter and resume to [lorrie@batleyfamilylaw.com](mailto:lorrie@batleyfamilylaw.com)

### Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

The Eleventh Judicial District Attorney's Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for Assistant Trial Attorneys, Trial Attorneys and Senior Trial Attorneys. You will enjoy working in a community with rich culture and history while gaining invaluable experience and making a difference. The McKinley County District Attorney's Office provides regular courtroom practice, supportive and collegial work environment. You are a short distance away from Albuquerque, Southern parts of Colorado, Farmington, and Arizona. We offer an extremely competitive salary and benefit package. Salary commensurate with experience. These positions are open to all licensed attorneys who have knowledge in criminal law and who are in good standing with the New Mexico Bar or any other State bar (Limited License). Please Submit resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to Bmartin@da.state.nm.us. Position to commence immediately and will remain opened until filled.

### Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. Hybrid remote work schedule available. The Legal Department's team of attorneys provides a broad range of legal services to the City and represents the City in legal proceedings in court and 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. Current open positions include: Property and Finance Division: The City is seeking attorneys to bring code enforcement actions, advise on real estate matters, and serve as general counsel to various City departments; IPRA: The City is seeking an attorney to advise on the interpretation of and compliance with the Inspection of Public Records Act; Litigation Division: The City seeking attorneys to join the Litigation Division, which defends claims brought against the City. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as licensed attorney; experience with government agencies, government compliance, litigation, contracts, and policy writing. Salary will be based upon experience. For more information or to apply please go to [www.cabq.gov/jobs](http://www.cabq.gov/jobs). Please include a resume and writing sample with your application.

### Prosecutors needed in Silver City and Deming

Prosecutors needed in Silver City and Deming. Practice law in Southwestern New Mexico, an area of natural beauty, with a diverse culture and reasonable costs of living. The Sixth Judicial District Attorney's Office is accepting resumes for two Deputy District Attorney positions in Silver City and a Senior Trial Prosecutor in Deming. We are looking for attorneys to handle a variety of criminal cases, in an atmosphere of collegiality and collaboration, in an office with a low employee turnover rate for both attorneys and staff. Salaries range from \$91,419 to \$114,274 for the Deputy positions and \$82,739 to \$103,424 for the Senior Trial position, depending on qualifications and experience. Deming and Silver City have all the quality-of-life benefits of a rural area, including outstanding outdoor recreational opportunities, and also have excellent local medical and educational facilities, dining, cultural experiences, shopping and entertainment. The area is a haven for those who enjoy countless year-round outdoor recreational activities, including hiking, fishing, hunting, camping, rock climbing, cycling and birding. See [Silvercity.org](http://Silvercity.org) and [Demingntrue.com](http://Demingntrue.com) for more information. The communities have easy access to urban conveniences, including passenger air service from Silver City and Las Cruces, with one-hour flights to Albuquerque and Phoenix. Limited NM law license is available for attorneys licensed in other states. Please submit resume and letter of interest to [Ehand@da.state.nm.us](mailto:Ehand@da.state.nm.us).

### New Mexico Legal Aid – Current Job Opportunities

New Mexico Legal Aid (NMLA) provides civil legal services to low income New Mexicans for a variety of legal issues including domestic violence/family law, consumer protection, housing, tax issues and benefits. NMLA has locations throughout the state including Albuquerque, Santa Fe, Las Cruces, Gallup, Roswell, Silver City, Clovis, Hobbs, Las Vegas, Taos, and Santa Ana. NMLA currently has the following job openings: Managing Attorney- Consumer Law Practice Group; Director - Native American Program – Santa Ana, NM; Project Manager - Disaster Legal Services. Staff Attorney Positions: Generalists – Silver City, NM; Generalists – Taos, NM; Native American Program – Santa Ana, NM; Consumer Law Practice Group; Las Cruces, NM; Domestic Violence. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>

### Lawyers With 3+ Years of Experience

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 [jwechsler@montand.com](mailto:jwechsler@montand.com).

### Apply to be a Navajo Nation Judge

Seeking applicants for District Court Judge Judicial District Court, Navajo Nation Wide. The District Court Judge is Responsible for presiding over civil, criminal and family court cases; and provides policy direction and guidance in the operation of the Judicial District. For more information, please call the Judicial Branch Human Resources Office at (928) 871- 7025 or (928) 871-7023 or email [applyJBHR@navajo-nsn.gov](mailto:applyJBHR@navajo-nsn.gov). Please visit <https://courts.navajo-nsn.gov> for details on qualifications, job description and how to apply.

### Director - Native American Program – Santa Ana, NM

New Mexico Legal Aid is seeking a Director for its Native American Program. The Native American Program (NAP) provides free legal services to low-income Native Americans living on or near the nineteen (19) Pueblos, and outreach and community education to the community of the Mescalero Apache Nation. NAP is funded by the Legal Services Corporation and is part of New Mexico Legal Aid's statewide program. In addition to the administrative and management duties for the overall operations of NAP, the Director is responsible for: ensuring that the civil legal needs of its client community are met, including initiating and completing periodic needs assessments; partnering and collaborating with tribal entities within the service area; developing projects and programs to leverage NAP resources, including funding opportunities; integrating NAP's technology and communications needs into NMLA's statewide system; Overseeing the NAP's legal advocacy, including supervising the Litigation Manager; NAP is located within the Santa Ana Pueblo lands; approximately 40 miles from Santa Fe and 15 minutes from Albuquerque. Attorneys with experience working with tribal communities and/or who speak Keres are encouraged to apply. Click here or copy the following link into your browser to view full job descriptions and requirements (<https://newmexicolegalaid.isolvedhire.com/jobs/902413.html>). Deadline to apply: Until filled. Resumes will be reviewed on a rolling basis.

### **City of Albuquerque Managing Attorney for APD**

The City of Albuquerque Legal Department is hiring a Managing City Attorney for the APD Compliance Division. The work includes management, oversight, and development of Assistant City Attorneys, paralegals, and staff. Other duties include but are not limited to: administrative hearings; civil litigation; arbitrations; reviewing and providing advice regarding policies, trainings and contracts; reviewing uses of force; drafting legal opinions; and reviewing and drafting legislation, ordinances and executive/administrative instructions as they relate to the United States v. City of Albuquerque, 14-cv-1025. Attention to timelines, detail, and strong writing and speaking skills are essential. Five (5) + years' experience including (1) + years of management experience is preferred. Applicants must be an active member of the State Bar of New Mexico in good standing. Please apply online at [www.cabq.gov/jobs](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### **Bernalillo County Hiring 20 Prosecutors**

Are you ready to work at the premiere law firm in New Mexico? The Bernalillo County District Attorney's Office is hiring 20 prosecutors! Come join our quest to do justice every day and know you are making a major difference for your community. We offer a great employment package with incredible benefits. If you work here and work hard, you will gain trial experience second to none, collaborating with some of the most seasoned trial lawyers in the state. We are hiring at all levels of experience, from Assistant District Attorneys to Deputy District Attorneys. Please apply to the Bernalillo County District's Attorney's Office at: <https://berncoda.com/careers-internships/>. Or contact us at [recruiting@da2nd.state.nm.us](mailto:recruiting@da2nd.state.nm.us) for more information.

### **Family Law Litigation Attorney And Litigation Paralegal**

Peak Legal Group, LLC has immediate openings for a Family law litigation attorney and a family law litigation paralegal. Our Westside law firm practices in all areas of Family Law, in addition to adoptions and assisted reproductive technology cases. Prior litigation experience is necessary – or, at a minimum, the absence of fear of a courtroom. We are looking for hard working, dedicated team members who would enjoy working in a family-oriented law firm that works hard and plays hard. We offer a great work environment, a competitive salary, a generous benefits package and in-office dogs. Send your resume, cover letter and list of references to [sheryl@pklegalgrp.com](mailto:sheryl@pklegalgrp.com).

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

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

### **Legal Assistant**

Montgomery & Andrews, Law Firm is accepting resumes for a Legal Assistant position in our Santa Fe Office. Must have a minimum of two years' experience working in a mid- or large-sized law firm. Applicants must have experience, including knowledge of local court rules and filing procedures. Must have excellent clerical, organizational, computer and word processing experience. Applicants must be able to multi-task and work in a team player environment. Firm offers a congenial work environment, competitive compensation, and a benefit package. Please send resume to [tgarduno@montand.com](mailto:tgarduno@montand.com) or mail to T. Garduno, P.O. Box 2307, Santa Fe, New Mexico 87504-2307.

### **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. Excellent work environment, salary, private pension, and full benefits. Please submit resume to [mvelasquez@rileymlaw.com](mailto:mvelasquez@rileymlaw.com) or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

### **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@stifflaw.com](mailto:karrants@stifflaw.com)

### **Paralegal**

Paralegal for civil litigation defense law firm. 5+ years paralegal experience preferred including experience preparing medical records summaries. Strong organizational skills, motivated, attention to detail necessary and cooperative attitude. Full time, salary DOE, great benefits including health, dental & life insurance and 401K match. E-mail resume to: [kayserk@civerolo.com](mailto:kayserk@civerolo.com).

### **CLE Program Administrative Assistant/Coordinator**

New Mexico State Bar Foundation Center for Legal Education seeks a full-time, Center for Legal Education (CLE) Program Coordinator. The Foundation is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community; including live seminars, webcasts, replays, national series teleseminars and online self-study videos. The successful applicant must have excellent administration, customer service, computer, and communication skills. Must be able to manage multiple projects and deadlines. Minimum high school diploma plus 1 year of related work experience required. Generous benefits package. \$17-\$20 per hour, depending on experience and qualifications. To be considered, submit a cover letter and resume to [HR@sbnm.org](mailto:HR@sbnm.org). Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

### **Guest Services Coordinator**

The State Bar of New Mexico (SBNM) seeks a full-time, Guest Services Coordinator. The successful applicant will coordinate and schedule State Bar Center room rentals, internal meetings, ensure set-up for rooms, greet visitors, and field incoming phone calls and emails to SBNM general phone line and email inbox. The person in this position will provide a positive customer service experience to guests, callers, and visitors, including attorneys, judges, legal staff, members of the public and other third parties and must have excellent administration, customer service, computer, and communication skills. Minimum high school diploma plus 2 years of related work experience required. Generous benefits package. \$17-\$20 per hour, depending on experience and qualifications. To be considered, submit a cover letter and resume to [HR@sbnm.org](mailto:HR@sbnm.org). Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

### **Legal Secretary/Assistant**

Well established commercial civil litigation firm seeking experienced Legal Secretary/Assistant. Requirements include current working knowledge of State and Federal District Court rules and filing procedures, calendaring, trial preparation, document, and case management; ability to monitor, organize and distribute large volumes of information; proficient in MS Office, AdobePro, Powerpoint and adept at learning and use of electronic databases and legal-use software; has excellent clerical, computer, and word processing skills. Competitive Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to [e\\_info@abrfirm.com](mailto:e_info@abrfirm.com).

### City of Albuquerque 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 \$25.54 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$26.80 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

### Office Space

#### Office Building for Sale

3,640sf in the heart of Downtown Albuquerque with Off-street/secure parking, Within walking distance to court houses, Refrigerated air, 7 offices, Conference room, Reception, Break area, and 2 Bathrooms. Located at 715 Tijeras Ave. NW. For more information call Clay J. Azar at Metro Commercial Realty 505-480-9777.

#### Office Space Available

Private offices and workstations available in downtown coworking space. This plug and play office is move in ready for you to start working immediately with receptionist, security, weekday cleaning, parking, copier, phone, and internet already set up! Plaza 500 is located in the WaFd Bank Building at 201 Third St, Suite 500, SW, 87102. Call or text 505-373-6312 or [gcortez@heritagerec.com](mailto:gcortez@heritagerec.com)

### Albuquerque Downtown Office Space

Office space available in downtown Albuquerque. Immediately south of the D.A.s office, on a diagonal corner to APD and just steps to all 3 courthouses. 500 sq ft \$500. mo. Tenant improvements permitted. Andriana 505-244-0530. text is best

#### Office Suites-No Lease-All Inclusive

Virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead in a professional environment. 2 convenient locations-Journal Center and Riverside Plaza. 505-796-9600/[officealternatives.com](http://officealternatives.com).

### Miscellaneous

#### Want to Purchase

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

## 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.**

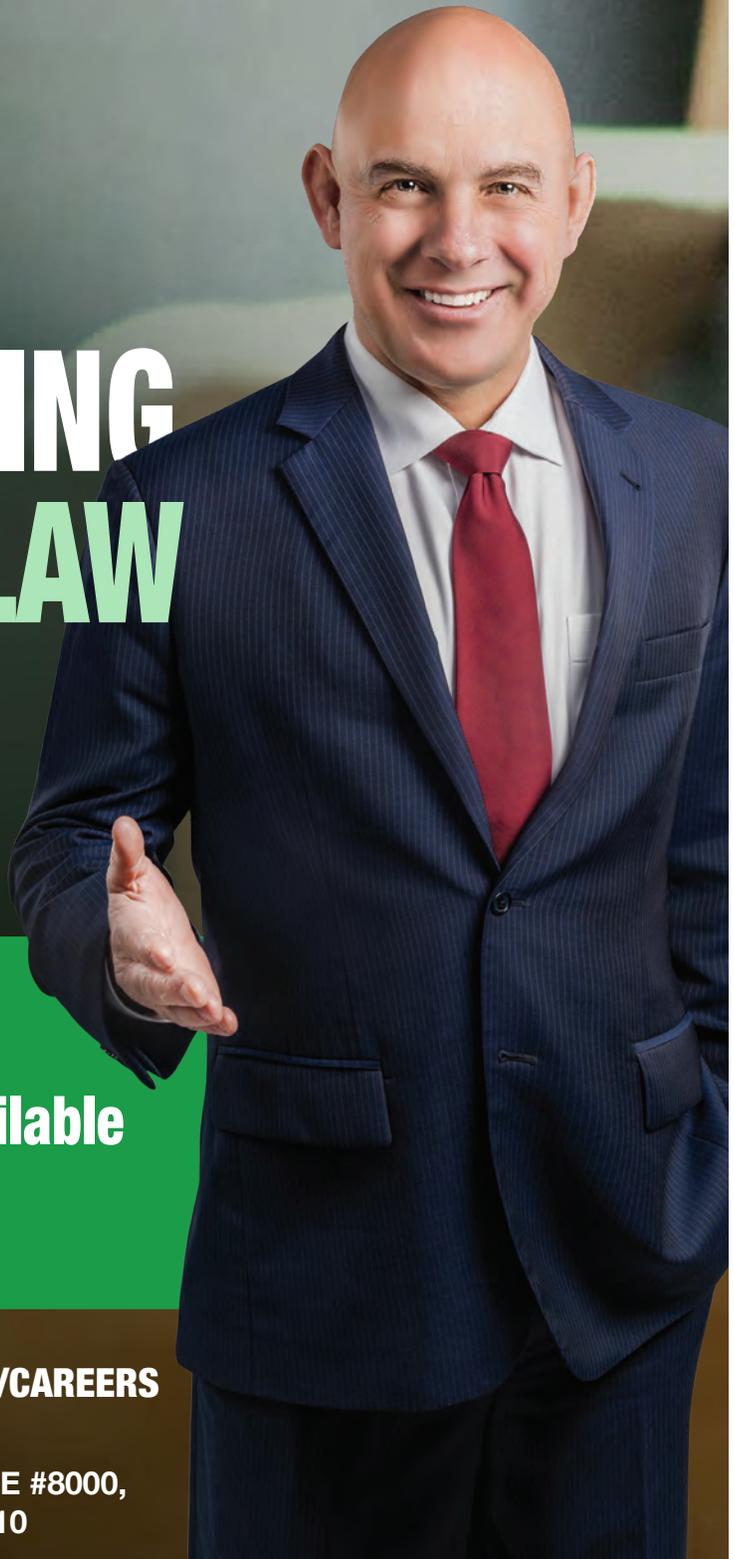
Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication 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](mailto:marcia.ulibarri@sbnm.org)**

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

**PARNALL**  
LAW

# JOIN THE GROWING PARNALL LAW TEAM!



**Attorney  
& Many Positions Available**

**Apply online now ↓**



**HURTCALLBERT.COM/CAREERS**

(505) 268-6500  
2155 Louisiana Blvd NE #8000,  
Albuquerque, NM 87110

**ALL INQUIRIES HELD IN STRICTEST CONFIDENCE**



# Pro Bono Spotlight

## Volunteer Attorney Program



The **Volunteer Attorney Program (VAP)** a program of New Mexico Legal Aid, welcomes its new Project ECHO Coordinator, **Zac Addison**. A graduate of California Western School of Law in San Diego, Zac began his career as a legal aid attorney serving family, housing, public benefits, and consumer law clients in California's Coachella Valley. After also gaining private practice experience in family and contract law, Zac spent the past two decades in Florida managing consumer and contract litigation in a corporate setting. His background includes facilitating meetings, collaborative problem-solving and leading teams. A new resident of Albuquerque, Zac wants to serve the community and is excited to be a part of the VAP Pro Bono Collaborative ECHO project launch. He looks forward to working with private attorneys who are dedicated to making a positive impact on the lives of New Mexicans most in need of legal assistance.

### The Impact of VAP's Volunteer Attorneys

*With the assistance of VAP's volunteer attorneys, many low-income New Mexicans have recently received free legal consultations around the state!*

**August 11 – Hybrid Legal Fair in Taos**  
**23 individuals served**

*Co-Sponsored by the Eighth Judicial District  
Pro Bono Committee*

**August 25 – Law-La-Palooza in Albuquerque**  
**216 individuals served**

*Co-Sponsored by the Second Judicial District  
Pro Bono Committee*

**August 18 – Legal Fair in Santa Fe**  
**22 individuals served**

*Co-Sponsored by the First Judicial District  
Pro Bono Committee*

**August 26 – Legal Fair in Chaparral**  
**72 individuals served**

*Co-Sponsored by the Third and Twelfth Judicial District  
Pro Bono Committees*

*We would love to connect you with our low-income pro se clients!*

**Join our volunteer attorney pool to receive pro bono opportunities directly to your email! There is no commitment to take on a specific matter – YOU let us know which pro bono opportunities are of your interest!**

To volunteer for one-time, brief advice and counsel consultations through the upcoming **Teleclinics or Fairs**, please contact Isabella (Bella) Zayani at [nediaz@nmlegalaid.org](mailto:nediaz@nmlegalaid.org).

To volunteer for brief, limited, or extended representation, through the **Direct Representation** track, please contact Becky O. O'Gawa at [rebecca@nmlegalaid.org](mailto:rebecca@nmlegalaid.org).

**Volunteer Attorney Program, New Mexico Legal Aid, Inc.**  
505 Marquette NW, Suite 1820 Albuquerque, NM 87102  
P.O. Box 25486 Albuquerque, NM 87125-5486  
[www.newmexicolegalaid.org](http://www.newmexicolegalaid.org)