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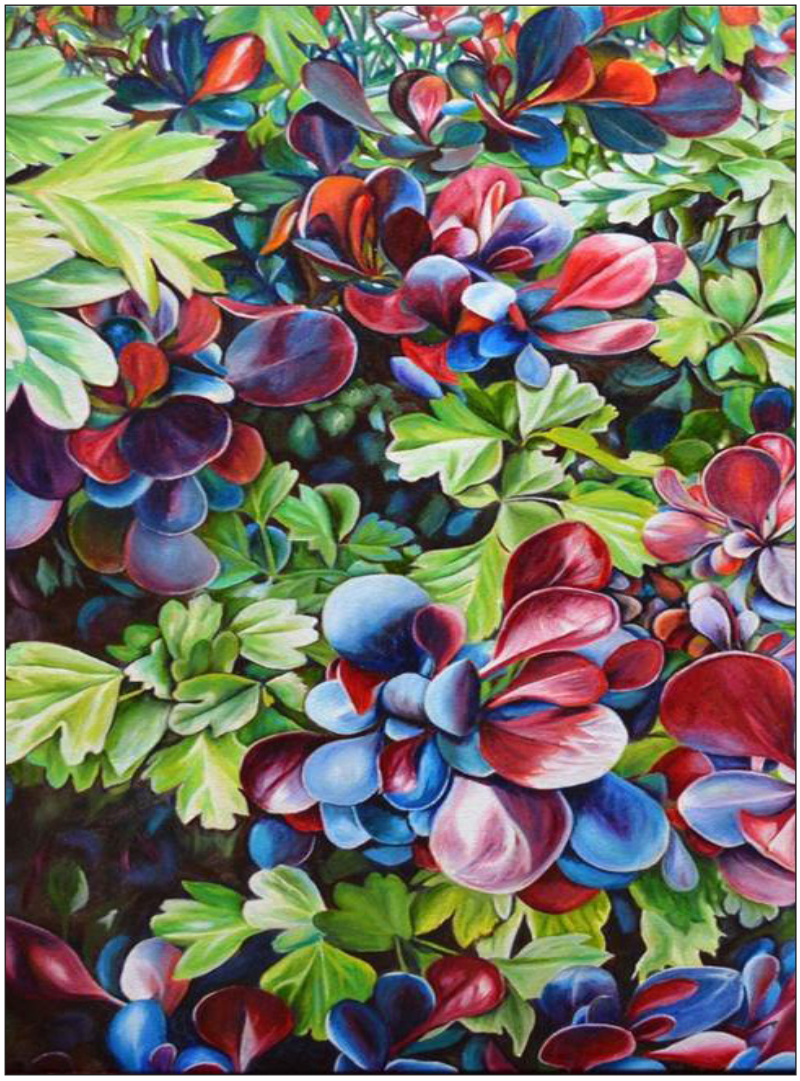
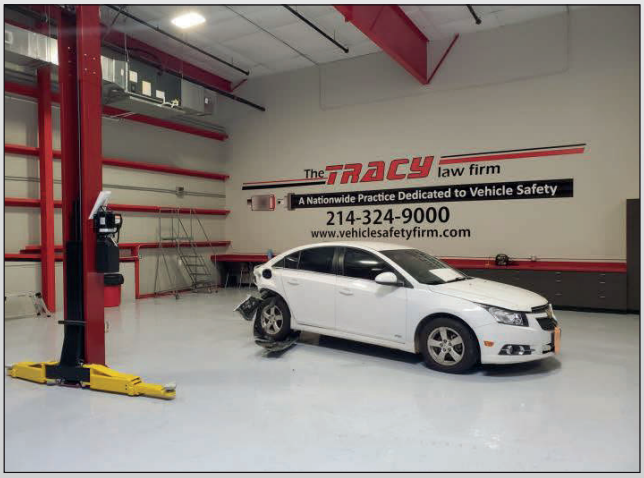


Space Stared All Around, by Sarah Hartshorne (see page 4) Matrix Fine Art

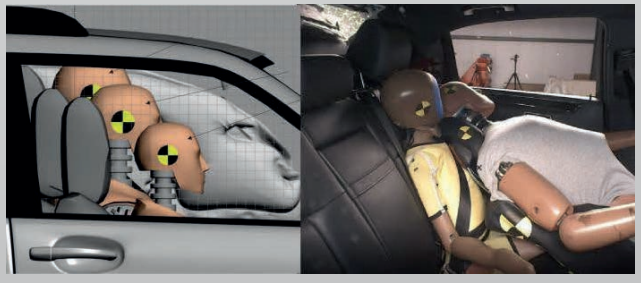
Inside This Issue

IS YOUR CASE AT A RECOVERY DEAD-END?

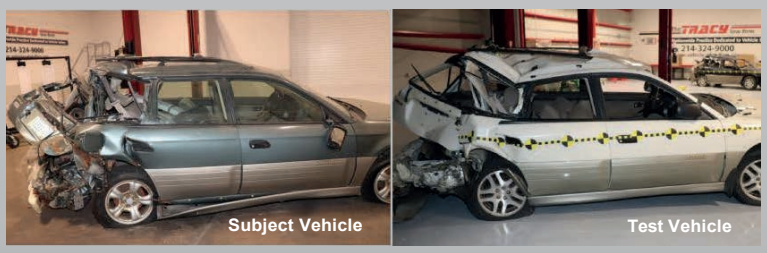
Maybe not because you may have a CRASHWORTHINESS case.



Crashworthiness focuses on how the vehicle's safety systems performed, not who caused the accident. At my firm's Crash Lab, we continually study vehicle safety through engineering, biomechanics, physics, testing and innovation.



If you have any questions about a potential case, please call Todd Tracy. Vehicle safety system defects may have caused your client's injury or death.



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State Bar of New Mexico
Est. 1886

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www.sbnm.org

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Section, Committee, Division	July	August	Time, Format
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Animal Law	10	N/A	12:30 p.m., Zoom
Appellate	2	6	Noon, Zoom
Bankruptcy Law	9	13	Noon, Bankruptcy Court & Zoom
Business Law	9	13	11 a.m., Zoom
Cannabis Law	12	9	9 a.m., Zoom
Children's Law	15	19	Noon, Zoom
Elder Law	5	2	Noon, Zoom
Employment and Labor Law	3	7	12:30 p.m., Zoom
Family Law	19	16	9 a.m., Zoom
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NREEL	23	27	Noon, Zoom

About Cover Image and Artist: The focus of Sarah Hartshorne's work has been on capturing the unique in the ordinary, the beauty in the mundane. Like the impressionists, she paints in oil from everyday life and the world around her, sharing what often goes unnoticed and exploring the play of light and shadow.

Notices

Please email notices desired for publication to 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 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 to receive "Justice for All" via email or view a copy at https://accesstojustice.nmcourts.gov.

State Bar News

Save the Date for the State Bar of New Mexico's 2024 Annual Meeting on Oct. 25

The Annual Meeting looks a little different this year! Save the Date for the State Bar of New Mexico's 2024 Annual Meeting on Oct. 25. "Be Inspired" during one full day of legal education, networking with your colleagues, inspirational speakers and activities, entertainment and much more. Join us either in-person at the State Bar Center or virtually and earn all 12 of your CLE credits for the year! Sponsorship opportunitites are now available. More information and registration can be viewed soon at https://www.sbnm.org/AnnualMeeting2024.

Professionalism Tip

With respect to my clients:

I will keep my client informed about the progress of the work for which I have been engaged or retained, including the costs and fees.

Communications Advisory Committee

Join the New Committee!

The Communications Advisory Committee, which the Board of Bar Commissioners established earlier this year, is a committee that sources and reviews content for the Bar Bulletin. There are currently multiple open seats on the Committee, which will begin work in 2025. To apply for the Committee, please submit a letter of interest and your experience in this area. Send your email application by email to notices@sbnm.org by Aug. 31 for consideration.

Elder Law Section

Invitation to Monthly Medicaid Lunch and Learns

The New Mexico legal community is invited to attend an all-new monthly series of "Medicaid In Small Bites" lunch and learns. Presented by Lori L. Millet, Esq. and co-hosted by the State Bar of New Mexico's Elder Law Section Board, these lunch and learns will provide attendees the opportunity to both better understand the complexities of Medicaid in a legal capacity and avoid the potential pitfalls accompanying misunderstandings of Medicaid. These sessions will be held through Zoom on Aug. 15, Sept. 19, Oct. 17, Nov. 21 and Dec. 19, from noon to 12:30 p.m. (MT). To join, visit https://us02web.zoom.us/j/83846688863?pwd=RJsHBnM7tbQdTBfU6aLfVzQF2Y5T0b.1. For any questions about joining the lunch and learn, please contact jbrannen@brannenlawllc.com.

Historical Committee

Invitation to Presentation on the USS New Mexico

On Aug. 16 at noon (MT), Greg Trapp will present the history of the state's namesake battleship, USS New Mexico (BB-40). The presentation will be at the State Bar of New Mexico, 5121 Masthead St. NE Albuquerque, N.M. 87109, with some pizza and water. The USS New Mexico was commissioned on May 20, 1918, and decommissioned on July 19, 1946. The battleship was sponsored by Margarita C de Baca, the daughter of Governor Ezequiel C de Baca. The battleship was called the "Wonder Ship" because of its advanced technology and revolutionary turbo-electric system of propulsion, making USS New Mexico the "space shuttle" of its age. Greg Trapp, Historian for the New Mexico Council of the Navy League of the United States, will discuss the history of the battleship, including the December 10, 1941 collision of USS New Mexico with the freighter SS Oregon and the resulting litigation, Pacific-Atlantic S.S. Co. v. United States. Please register to attend in-person at https://form.jotform.com/sbnm/the-historical-committee-USS-NM. View the presentation online through Zoom at https://us06web.zoom.us/j/82995580957?pwd=7sWKs1kNFICvmJvablqRebqltsILin.1.

New Mexico Lawyer Assistance Program

NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on Oct. 11. 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.

New Mexico Well-Being Committee Meetings

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

State Bar of New Mexico Announcement

Beware of Possible Phishing Attack Emails

The State Bar of New Mexico's IT department has been alerted to a possible phishing attack that has targeted the members of other Bar Associations around the country. Our IT department is in close contact with the other Bar Associations around the country to proactively protect our membership from being affected. Please be aware that you may receive a possible phishing attack email purported to be from the State Bar of New Mexico. It will be from a domain address such as:

- @members-nmbar.org
- @member-nmbar.org
- @members-sbnm.org
- @member-sbnm.org

These are fraudulent domain names. If you do receive this email, please disregard it, do not respond to it, and do not click any links that may come from it, especially if you have already responded to it.

If you have any questions, you are welcome to contact the State Bar of New Mexico's IT Department at 505-797-6018 or techsupport@sbnm.org. Thank you for your continued diligence in security.

Being Committee will meet the following dates at 3 p.m. (MT): July 30, Sept. 24 and Nov 26. Email Tenessa Eakins at Tenessa.Eakins@sbnm.org.

New Mexico State Bar Foundation

Pro Bono Opportunities

The New Mexico State Bar Foundation and its partner legal organizations gratefully welcome attorneys and paralegals to volunteer to provide pro bono service to underserved populations in New Mexico. For more information on how you can help New Mexican residents through legal service, please visit www.sbnm.org/probono.

New Mexico State Bar Foundation Golf Classic - Register to Play!

You're invited to the New Mexico State Bar Foundation Golf Classic on Sept. 30 at 9 a.m. (MT) at the Tanoan Country Club in Albuquerque! Register to play form.jotform.com/sbnm/GolfClassic. All proceeds benefit the New Mexico State Bar Foundation. Sponsorship opportunities are also available. Visit www.sbnm.org/NMSBFGolfClassic2024 for more information.

UNM School of Law

Law Library Hours

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

Other News

N.M. Legislative Council Service

Legislative Research Library Hours

The Legislative Research Library at the Legislative Council Service is open to state agency staff, the legal community, and the general public. We can assist you with locating documents related to the introduction and passage of legislation as well as reports to the legislature. Hours of operation are Monday through Friday, 8 a.m. to 5 p.m. (MT), with extended hours during legislative sessions. For more information and how to contact library staff, please visit https://www.nmlegis.gov/Legislative_Library.

New Mexico Workers' Compensation Administration

Notice of Judicial Vacancy

The New Mexico Workers' Compensation Administration announces a vacant judge position in Albuquerque. The position is exempt, with an initial one-year term, and a possible reappointment to a subsequent five-year term. Interested applicants must be licensed by and in good standing with the New Mexico Supreme Court to practice law in New Mexico, with five years of experience as a practicing attorney. A background check will be performed prior to hiring. Attorneys interested in applying for the judge vacancy must complete a judicial application and submit to the WCA along with a resume and legal writing sample by close of business on Aug. 5 to the attention of WCA Director Robert E. Doucette, Jr. Completed application packets should be labeled "WCA Judge Vacancy," and mailed to the Workers' Compensation Administration, Attn: Director's Office, PO Box 27198, Albuquerque, N.M., 87125-7198; or transmitted via email to Nicole.Bazzano@wca.nm.gov. For more information, and to obtain the judicial application, visit the WCA's website, https://workerscomp.nm.gov/WCA-Jobs.

— Featured —

Member Benefit

The Solutions Group

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

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

Opportunities for Pro Bono Service CALENDAR

July

25 **Asylum Initial Application and Work Permit Pro Se Clinic**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic

26 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Santa Fe

August

22 **Asylum Initial Application and Work Permit Pro Se Clinic**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic

23 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Lovington

30 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Los Lunas

If you would like to volunteer for pro bono service at one of the above events, please contact the hosting agency.

Resources for the Public CALENDAR

July

24 **Consumer Debt/Bankruptcy Workshop**
Virtual
State Bar of New Mexico
Call 505-797-6094 to register
Location: Virtual

25 **Asylum Initial Application and Work Permit Pro Se Clinic**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic

26 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Santa Fe

August

7 **Divorce Options Workshop**
Virtual
State Bar of New Mexico
Call 505-797-6022 to register
Location: Virtual

21 **Consumer Debt/Bankruptcy Workshop**
Virtual
State Bar of New Mexico
Call 505-797-6094 to register
Location: Virtual

22 **Asylum Initial Application and Work Permit Pro Se Clinic**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic

Listings in the *Bar Bulletin* Pro Bono & Volunteer Opportunities Calendar are gathered from civil legal service organization submissions and from information pertaining to the New Mexico State Bar Foundation's upcoming events. All pro bono and volunteer opportunities conducted by civil legal service organizations can be listed free of charge. Send submissions to probono@sbnm.org. Include the opportunity's title, location/format, date, provider and registration instructions.

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 Admission

On May 6, 2024:

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On May 7, 2024:

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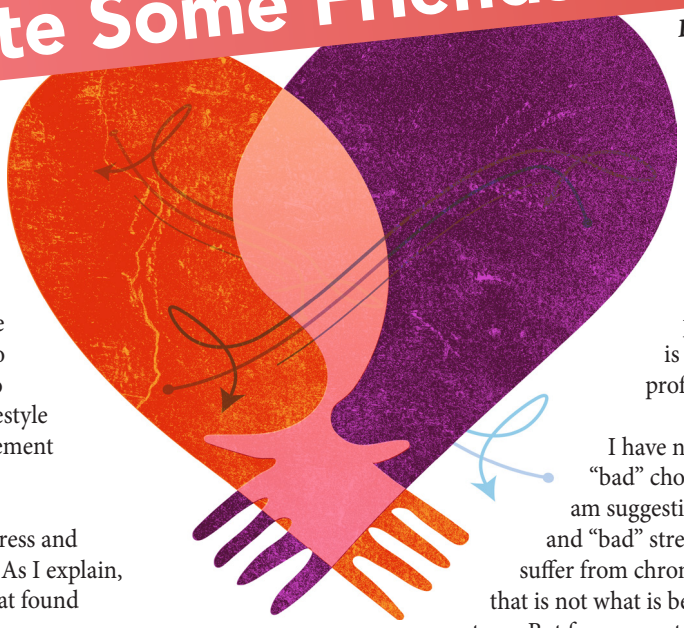
Stress and Anxiety: Embrace It and Invite Some Friends to Help

By Briggs Cheney



This year's Well-Being Campaign theme is "Living: Small Pivots that Matter." In a perfect introduction to this year's effort, Tenessa Eakins wrote an inspiring article that described the aforementioned theme as a "call to action, encouraging individuals to make tiny adjustments in their lifestyle that can lead to profound improvement in their health and happiness."

Here's my *Pivot* on dealing with stress and anxiety. *Embrace it, but not alone.* As I explain, my *Pivot* is my own experience that found support in the research.

I flunked out of accounting in college. I did not get a degree in psychology. I have practiced law for over 50 years, primarily representing lawyers in legal malpractice and disciplinary matters, and I am a recovering drunk who has attended probably four 12-Step meetings a week for 27 years – do the arithmetic. Those are my qualifications for writing about stress and anxiety and some ideas on how to manage both. You may want to stop reading right here!

I use the terms "stress" and "anxiety" as if they were one in the same, and to me, they are interchangeable, but they aren't. There is a fine line of distinction between stress and anxiety, according to the American Psychological Association. In an article titled, "What's the difference between stress and anxiety?" the American Psychological Association describes stress as a normal human reaction/response to external triggers – work deadlines, social pressures and normal reactions the body is designed to experience when confronted with risky or dangerous situations.

Anxiety, on other hand, is described by the American Psychological Association as persistent, excessive worry that does not go away even when there is not an outside stressor. Unfairly simplifying it, *worry* that does not make sense. I am an alcoholic. To those who can drink normally, non-alcoholically, it did not make sense why I couldn't just stop. So, I get it. There is a difference, and it is important for me to say that what I am promoting (that you embrace stress and anxiety) is not to minimize that, for some, anxiety is not a friend. Just as I tried and failed to deal with my alcoholism on my own, for those who suffer from chronic, persistent anxiety, the same is true: asking for and getting professional help is critical.

I have never understood "good" and "bad" cholesterol, but perhaps what I am suggesting is that there can be "good" and "bad" stress or anxiety. For those who suffer from chronic and disabling anxiety, that is not what is being suggested as "good" stress. But for many, stress and anxiety surround us each day and often stops us in our tracks and it can seem disabling, but it does not have to be – that's the stress I am addressing.

My small pivot

Looking back, how I approach stress and anxiety today began with Meg Davidson. This is simply a name to some, but to those who knew her, she is an incredible lady, a wonderful lawyer and a partner at what was then Keleher & McLeod, P.A. Meg left us in March of 2001.

When I met Meg, she was fighting what ended up being a four-year battle with cancer. Meg shared with me what she learned from Ross Lewallen, a spiritual guide and shop owner in Santa Fe[1] – "Run Toward the Roar," or the lesson of how lions hunt. *See* "No One Escapes Fear," *Bar Bulletin*, Vol. 60, No. 16 (8/25/21). A long story short: the male and female lions separate, the male lion roars and the prey run away from the roar into the clutches of the female lions who do the killing. The lesson: run toward what scares you, or as Shankar Vedantum of "The Hidden Brain" podcast suggests, be a warrior and embrace stress and anxiety and make it your friend. This podcast is a great listen and looks at stress and anxiety from all sides providing reasons why stress should be viewed as a friend and strategies to do that.

Recommending running headlong into danger is a touch dramatic, but Ross Lewallen's lion story makes the point so well – when confronting stress and anxiety, to turn and run, to

flee or freeze and do nothing (be stuck) only avoids or placates a fear, or worse. Fleeing or being stuck may be missing an opportunity to grow as a person.

Easier said than done? A fair question and keeping with the theme – small pivots – my pivot has been to embrace fear and stress and make it my friend. That sounds pretty *macho*, but my pivot has not been to become the *Warrior* Shankar Vedantum refers to in his podcast. Hardly. I call in reinforcements.

My reinforcements

I have already told you about Meg. She is just one of several special friends who left me prematurely. They left me behind, or so I thought. I have refused to let them go. I have deputized them as my onboard committee who I call upon for guidance when I am scared. For me, that is a simpler way of saying stress and anxiety. Let me introduce you to a few of my other special friends.

Bill Giese, my first best friend in the world, was born 27 days before me. He dropped dead of a massive heart attack 15 days after 9/11. He was a Captain with Southwest Airlines. He was 54.

Perhaps my closest friend and mentor, Clayton Stone, was 14 years my senior. I met him in the Pecos wilderness. He left me in 2003 at age 69. A fabulously successful developer in Houston, Clayton knew presidents, personally. There was no reason for our paths to cross, but he introduced me to Falcon jets, important people and a world I would have never known.

And then, there was Tom Goers, my 6 foot 7 high school buddy. We came to UNM together from Chicago and each saw our first mountain together on our drive to the southwest. Tom came to play basketball for the Lobos but grew tired of college athletics after a couple of years. Tom was a renaissance man who died in 2022, somewhat of a recluse in the mountains outside Snowmass.

There are some others, but these are my *go-to's* when life gets scary. Yes, when I am scared, I turn to those who are no longer in this world. You have every right to be skeptical. It's my *pivot* and that is my point. You have to find your own strategy that works for you.

Meg was forever telling me how brave I was because my alcoholism was not curable – in Meg's mind, her cancer was. She is my courage.

Bill is my pilot and lookout at 35,000 feet.

Clayton believed in me. This guy who lived in a world of fancy people and the fast lane believed in me, and he taught me to be aware of wonder.

Tom was so talented, but he struggled with demons and depression. No matter what you suggested to Tom, his response was always, "That's not going to happen." Tom is my reminder that I can have the courage when things get scary to say, "Yes Tom, it is going to happen, watch me."

There is a reason for stress and anxiety. Something needs to happen. You can call it an Alarm, but aren't there some better names? How about calling it Information or Helpmate or a Compass indicating which way to head or a course of action? But whatever you *name it*, the stress and anxiety come from trying to figure out what to do, and doing it alone, let's face it, is scary. That's *My Pivot* – I am not alone; I have some pretty good friends.

Concluding thoughts

Pema Chodron, a well-known Buddhist nun in her book, *Comfortable with Uncertainty*, Lesson 33, writes:

> What do you do when you find yourself anxious because your world is falling apart? How do you react when you're not measuring up to your image of yourself, everybody is irritating you because no one is doing what you want, and your whole life is fraught with emotional misery and confusion and conflict? At those times it helps to remember that you are going through an emotional upheaval because your coziness has just been, in some small or large way, addressed. It's as if the rug has been pulled out from under you. Tuning in to that groundless feeling is a way of remembering that basically, you ***do*** prefer life and warriorship to death.

In her junior year of college, my daughter, confronting something that seemed *bigger than her*, wrote her dad, "It's the hard things that turn out to be the very best." She is a *warrior*, and she taught me an important lesson. ■

Briggs Cheney: *Not by design but happenstance, Briggs' career in the law has been that of being a lawyer's lawyer. Following graduation from law school at UNM and for the better part of his 51 years of practice, Briggs has had the honor of helping lawyers throughout New Mexico - defending them in the civil arena and guiding them through the disciplinary process. Briggs has been recognized for his legal skills in representing lawyers and he has been a leader in local, state and national bars. He has tirelessly helped the struggling and suffering lawyer as others helped him.*

Endnotes

[1] Lewallen & Lewallen Jewelry, a magical place just off the Plaza on Palace Avenue in Santa Fe.

Do you have something to share? Contact the New Mexico Well-Being Committee at well@sbnm.org. We would love to hear from you!

2024 Living: Small Pivots that Matter Campaign

State Bar of New Mexico
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ANNUAL MEETING 2024

What Inspires You?

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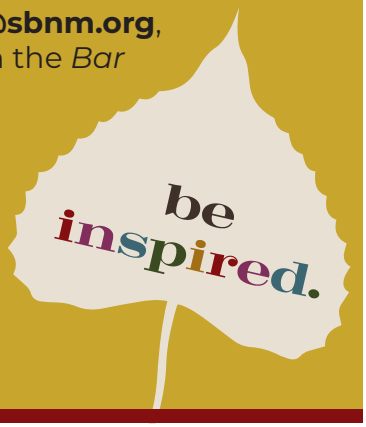
We look forward to your submissions!
Please contact notices@sbnm.org if you have any questions.



When filming the short video, please ensure centered orientation and clear resolution. Please provide your name and contact information when submitting. Submissions will be screened for relevancy and approved by the State Bar of New Mexico.

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The State Bar of New Mexico is soliciting articles and brief comments regarding what you find most rewarding about doing pro bono work in New Mexico. Please send submissions to Brandon McIntyre at **Brandon.McIntyre@sbnm.org** for possible inclusion in a future *Bar Bulletin*.

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The deadline for submissions is Aug. 30.
We look forward to your submissions!

From the New Mexico Supreme Court

Opinion Number: 2024-NMSC-012
Nos: S-1-SC-38815 & S-1-SC-39149 (Consolidated, filed March 18, 2024)

SOUTHWESTERN PUBLIC SERVICE COMPANY,
Appellant,
v.
NEW MEXICO PUBLIC REGULATION COMMISSION,
Appellee,
and
NEW MEXICO LARGE CUSTOMER GROUP, PUBLIC SERVICE COMPANY OF NEW MEXICO, EL PASO ELECTRIC COMPANY, OCCIDENTAL PERMIAN LTD., WESTERN RESOURCE ADVOCATES, and LOUISIANA ENERGY SERVICES, L.L.C.,
Intervenors-Appellees.

In the Matter of Potential Amendments to NMPRC Rule 17.9.572 NMAC, Entitled Renewable Energy for Electric Utilities, Case No. 19-00296-UT

CONSOLIDATED WITH No. S-1-SC-39149

SOUTHWESTERN PUBLIC SERVICE COMPANY,
Appellant,
v.
NEW MEXICO PUBLIC REGULATION COMMISSION,
Appellee.
In the Matter of Southwestern Public Service Company's Annual 2022 Renewable Energy Portfolio Procurement Plan and Requested Approvals Therein; Proposed 2022 Renewable Portfolio Standard Cost and Reconciliation Riders; Application for an RPS Incentive; and Other Associated Relief Case No. 21-00172-UT

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OPINION

THOMSON, Justice.

{1} In this consolidated appeal, we first consider whether the New Mexico Public Regulation Commission (the PRC) misconstrued the financial incentive provision of the Renewable Energy Act to deny Southwestern Public Service Company's (SPS's) 2021 application for an incentive. *See* NMSA 1978, § 62-16-4(D) (2019) (providing for the award of "financial or other incentives"); Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10 (2004, as amended through 2021) (the REA or the Act)[1]. We then consider SPS's numerous facial challenges to the PRC's April 2021 order. That order adopted 2021 amendments to Rule 572 (the Amended Rule)——regulations implementing the PRC's duties under the REA's 2019 amendments, including the duty to award an incentive when appropriate.[2] *See* Renewable Energy for Electric Utilities, 17.9.572 NMAC (5/4/2021, as amended through 2/28/2023); 17.9.572.22 NMAC (5/4/2021) (setting forth requirements to apply for an incentive).

{2} We hold that SPS's proposed retirement of banked, renewable energy certificates (RECs) to exceed the Renewable Portfolio Standard (RPS) was insufficient to qualify for an incentive under the REA because the proposed retirement would not have "produce[d] or acquire[d] renewable energy" as required by Section 62-16-4(D).[3] *See* § 62-16-3(G) ("'[REC]' means a certificate or other record . . . that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy."); § 62-16-3(I) ("'[RPS]' means the minimum percentage of retail sales of electricity by a public utility . . . that is required by the [REA] to be from renewable energy . . . ."). Our conclusion is based on the statute's plain language, which is consistent with the REA's clear legislative intent to require public utilities to procure sufficient renewable energy resources to reduce carbon emissions and achieve the zero carbon resource standard by 2045. *See* § 62-16-4(A) (providing public utilities with a sequence of increasingly renewable, energy benchmarks to achieve by 2045); § 62-16-3(K) ("'[Z]ero carbon resource' means an electricity generation resource that emits no carbon dioxide into the atmosphere . . . as a result of electricity production.").

{3} We also hold that the challenged provisions of the Amended Rule (1) do not exceed the scope of the REA; (2) are not arbitrary, capricious, or void for vagueness; and (3) are not otherwise unreasonable or unlawful. We therefore affirm the PRC in all respects. *See* NMSA 1978, § 62-11-5 (1982) ("The supreme court shall vacate and annul the order complained of if it is made to appear to the satisfaction of the court that the order is unreasonable or unlawful.").

I. BACKGROUND

{4} SPS's primary objection is to the PRC's approach to awarding incentives under the REA and the Amended Rule and the resulting denial of SPS's incentive application. We therefore begin with an overview of the REA and its incentive provision and the PRC's 2021 amendments to Rule 572, before summarizing SPS's incentive request and the PRC's reasons for denial. We then address SPS's arguments in turn.

A. Overview of the REA and the 2021 Amendments to Rule 572

{5} Section 62-16-4 is the heart of the REA. Among other things, the provision establishes the RPS and the related requirements for public utilities to meet that standard. *See id.*; *see also* § 62-16-3(I). Before 2019, Section 62-16-4 set forth a series of increasing RPS benchmarks culminating in a requirement for public

[1] The REA's 2019 amendment is relevant to this opinion. The current (2021) REA consists of two statutes from 2007, seven from 2019, and one Section 62-16-5 enacted in 2019 and amended in 2021 by the addition of Subsection (B)(1)(d) (on which this opinion does not rely). Accordingly in this opinion, all nondated references to the REA or to the Act and all citations of statutes therein are supported fully by the current enactments.

[2] SPS has filed two additional appeals that separately challenge the PRC's subsequent orders denying SPS's application for a financial incentive for 2023 and approving further amendments to Rule 572 in February 2023 (the Second Amended Rule). See S-1-SC-39733; S-1-SC-39796; see also 17.9.572 NMAC (2/28/2023). We have consolidated and held in abeyance those appeals pending the outcome of this proceeding.

[3] We use the phrase "banked REC" throughout this opinion to refer to an REC that represents renewable energy generated in a year before the year in which the REC is retired. See § 62-16-5(B)(4) (providing that an REC "may be carried forward for up to four years from the date of issuance to establish compliance with the [RPS], after which [the REC] shall be deemed retired").

utilities to supply at least twenty percent of retail electricity sales from renewable energy by 2020. *See* § 62-16-4(A)(1)(a)-(d) (2014); *see also* § 62-16-3(F) ("'[R]enewable energy' means electric energy generated by use of renewable energy resources and delivered to a public utility."). In 2019, the Legislature extended the sequence of RPS benchmarks intended to achieve the ambitious zero carbon resource standard by 2045. *See* § 62-16-4(A)(1)-(6); *see also* § 62-16-3(L) ("'[Z]ero carbon resource standard' means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources."). At present, renewable energy must make up at least twenty percent of a utility's retail sales, which will increase to a minimum of forty percent by 2025, fifty percent by 2030, and eighty percent by 2040. *See* § 62-16-4(A)(2)-(5). In addition to these intermediate benchmarks, the Legislature mandated that "[r]easonable and consistent progress shall be made over time toward [the] requirement" of supplying one hundred percent of retail electricity sales in New Mexico from zero carbon resources by 2045. Section 62-16-4(A)(6).

{6} Section 62-16-4 also prescribes the manner in which a public utility must comply with the RPS. To comply, a utility must retire enough RECs annually to "meet the [RPS] requirements" relative to the utility's total retail sales of electricity. *See* § 62-16-4(A); *see also* § 62-16-5(A)(1) (providing that the PRC shall establish "a system of [RECs] that can be used by a public utility to establish compliance with the [RPS]"). One REC represents one megawatt-hour of electricity generated from renewable energy and "may be carried forward for up to four years from the date of issuance to establish compliance with the [RPS], after which [the REC] shall be deemed retired." Section 62-16-5(B)(4); *see* § 62-16-3(G). Thus, any excess RECs that are not retired in the same year they are earned may be banked for up to four years and used to meet a utility's annual RPS obligation during that period. In addition, excess RECs "may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the [RECs] from that plant shall be retired by the utility on behalf of itself or its customers." Section 62-16-5(B)(2).

{7} Of particular importance to this appeal, Section 62-16-4 also provides for the award of "financial or other incentives" for exceeding the Act's minimum requirements. *See* § 62-16-4(D). Before 2019, the REA tasked the PRC with "provid[ing] appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies that exceed the applicable annual [RPS]." Section 62-16-4(A)(4) (2007); *see also* § 62-16-2(A)(5) (2007) ("The legislature finds that . . . a public utility should have incentives to go beyond the minimum requirements of the [RPS] . . . ."). The 2019 amendments to Section 62-16-4 elaborated on the bases for which an incentive may be awarded:

> [T]he commission shall . . . develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual [RPS] set forth in this section; results in reductions in carbon dioxide emissions earlier than required by Subsection A of this section; or causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.

Section 62-16-4(D). Where the pre-2019 Act allowed incentives "to encourage public utilities to acquire renewable energy supplies that exceed the applicable annual [RPS]," § 62-16-4(A)(4) (2007), the Act now allows incentives "to encourage public utilities to produce or acquire renewable energy" that exceeds the RPS, results in early reductions in carbon dioxide emissions, or reduces coal-fired generation, § 62-16-4(D).

{8} In response to the 2019 amendments to the REA, the PRC developed and approved significant amendments to Rule 572, including by adding provisions that govern the availability of incentives. *See* 17.9.572.22 NMAC (5/4/2021).[4] Among other things, the Amended Rule restates the general requirements set forth in Section 62-16-4(D) and articulates other, more specific requirements that a proposed course of action must satisfy to qualify for an incentive. For example, an incentive is available, by definition, "to encourage certain behaviors or actions *that would not otherwise have occurred* in order to further the outcomes described in Section 62-16-4 . . . ." *See* 17.9.572.7(F) NMAC (5/4/2021) (emphasis added).[5] Similarly, an incentive "must be related to measures implemented by the utility *after the effective date of this rule*." 17.9.572.22(B) NMAC (5/4/2021) (emphasis added).[6] And an incentive will *not* be awarded "with respect to a particular investment if the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions." 17.9.572.22(D) NMAC (5/4/2021).[7] The Amended Rule also provides that an "interested person" may apply for an exemption or variance from any of the rule's requirements when *inter alia* a "proposed alternative is in the public interest." 17.9.572.21(G) NMAC (5/24/2021).[8] As these provisions exemplify, the Amended Rule clarifies the circumstances in which an incentive may be awarded under the REA. Whether that clarity is consistent with the REA itself is one of the principal questions in this appeal.

B. Procedural Background

{9} The PRC approved the Amended Rule in an April 2021 order, after an eighteen-month rulemaking aimed at implementing the 2019 amendments to the REA. SPS participated throughout the rulemaking process along with Public Service Company of New Mexico (PNM), El Paso Electric Company (EPE), PRC Utility Division Staff, and various nonutility entities and individuals. SPS timely appealed from the order adopting the Amended Rule, alleging numerous legal infirmities and asking the Court to vacate and annul the order.

{10} Weeks later, SPS filed an application with the PRC under the REA and the Amended Rule, seeking approvals of its 2022 Annual Renewable Energy Act Plan and of several proposed rate riders for the same year. These matters were uncontested and eventually approved by the PRC.

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[4] Previous versions of Rule 572 did not address the incentive provisions of the Act. See generally 17.9.572 NMAC (5/31/2013); 17.9.572 NMAC (8/30/2007).

[5] The 2023 amendments to Rule 572 do not affect this provision. See 17.9.572.7(F) NMAC (2/28/2023).

[6] The Second Amended Rule amended this language as follows: "A financial or other incentive proposed under [this section] shall be to encourage the public utility to produce or to acquire renewable energy to accomplish, in the future, at least one of the following purposes: . . . ." 17.9.572.22(B) NMAC (2/28/2023) (emphasis added); see also 17.9.572.7(F) NMAC (5/4/2021) ("The financial incentive . . . motivates certain behaviors or actions.").

[7] The Second Amended Rule renumbered this provision and made minor changes that do not affect its substance. See 17.9.572.22(E) NMAC (2/28/2023).

[8] The Second Amended Rule made minor changes to this provision that do not affect its substance. See 17.9.572.21(A), (B)(7) NMAC (2/28/2023).

{11} In the same application, SPS requested a financial incentive for which it proposed to exceed its twenty percent RPS obligation and meet the forty percent standard three years before it becomes mandatory as of 2025. Specifically, SPS proposed to retire enough RECs in 2022, 2023, and 2024 to meet 2025's forty percent standard in each of those years. In return, SPS requested a rate rider that would allow it to charge customers one dollar for each REC that it would retire over the twenty percent standard. If approved, SPS projected that it would collect from ratepayers the additional amounts of $1.65 million in 2022; $1.74 million in 2023; and $1.84 million in 2024, for a three-year total incentive of approximately $5.23 million. SPS represented that it would not retire "excess RECs early without an incentive to do so." SPS also maintained that retiring excess RECs to meet the 2025 standard "will necessitate that SPS procure more renewable energy resources earlier than would otherwise be needed in order to comply with the REA's [RPS]."

{12} As a final part of the application, SPS requested a variance from the Amended Rule's requirement to demonstrate that the cost of retiring extra RECs would not exceed "the demonstrable value of the corresponding reduction in carbon dioxide or other emissions." 17.9.572.22(D) NMAC (5/4/2021). Conceding that the proposal failed to meet that requirement, SPS argued that the requirement "is inconsistent with the REA" and therefore requested a variance.

{13} PRC Staff and three of the intervenors in the application proceeding[9] "vigorously contested" SPS's incentive proposal and variance request, both of which the PRC later denied in an order filed in December 2021. The PRC was careful to explain in the order that—although the request failed several provisions of the Amended Rule—the denial was not based on the rule's requirements. Rather, SPS failed to meet the threshold *statutory* requirement to qualify for an incentive: SPS "did not propose to 'produce or acquire' any renewable energy." Section 62-16-4(D). The PRC found that SPS introduced "no evidence of any firm plans to acquire or produce any additional renewable energy." Instead, "SPS only proposed to retire banked excess RECs earlier than it otherwise would [have]." That proposal was insufficient because, in the PRC's view, "the retirement of RECs is a paper exercise or method by which RPS compliance is demonstrated" and not a proposal to produce or acquire renewable energy that exceeds the RPS "as required to be eligible for an incentive under the statute."

{14} In addition to finding failure under Section 62-16-4(D), the PRC separately concluded that SPS's incentive application failed to satisfy the provisions of the Amended Rule summarized above. Specifically, the PRC concluded that SPS's proposal did not merit an incentive because the RECs in question "are associated with . . . existing renewable energy facilities, all of which [1] pre-date Rule 572.22 (contrary to Rule 572.22.B) and [2] were acquired for reasons other than those contemplated in . . . Section 62-16-4(D) or Rule 572.22." *See* 17.9.572.22(B) NMAC (5/4/2021) (providing that an incentive "must be related to measures implemented by the utility *after the effective date of this rule*" (emphasis added)); 17.9.572.7(F) NMAC (5/4/2021) (defining "financial incentive" as "money or additional earnings . . . to encourage certain behaviors or actions *that would not otherwise have occurred* in order to further the outcomes described in Section 62-16-4" (emphasis added)). The request also failed the Amended Rule's requirement that the costs associated with retiring RECs must not exceed "the demonstrable value of the corresponding reduction in carbon dioxide or other emissions." 17.9.572.22(D) NMAC (5/4/2021). And as for SPS's requested variance from the latter requirement, the PRC denied the variance as moot because the incentive request "failed on many other grounds." As previously noted however, these conclusions were ancillary to the PRC's determination that SPS's incentive request failed to produce or acquire renewable energy, as required by Section 62-16-4(D).

{15} SPS timely appealed from the order denying its incentive request, and we granted its subsequent motion to consolidate the appeal with its pending appeal challenging the Amended Rule. We now proceed to the merits of both appeals.

II. DISCUSSION

{16} SPS's core objection to both the Amended Rule and the denial of its incentive request is the PRC's interpretation of Section 62-16-4(D) to preclude the award of an incentive for exceeding the RPS by retiring RECs earlier than required by the Act. Because our resolution of this issue effectively disposes of SPS's appeal by denial of its incentive application, we address it first. We then address SPS's many remaining arguments against the Amended Rule.[10] As the party challenging the PRC's orders, SPS has the burden of establishing that the orders are unreasonable or unlawful. NMSA 1978, § 62-11-4 (1965); *see also*, *e.g.*, *Pub. Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n*, 2019-NMSC-012, ¶ 12, 444 P.3d 460 (observing that the party challenging the PRC's order has the burden of showing that the order was "arbitrary and capricious, not supported by substantial evidence, outside the scope of the agency's authority, or otherwise inconsistent with law." (internal quotation marks and citation omitted)).

A. The PRC's Denial of SPS's Incentive Application Under Section 62-16-4(D) Was Not Unreasonable or Unlawful

{17} SPS challenges the denial of its incentive application under Section 62-16-4(D) on three grounds. First, SPS argues that the PRC's interpretation of the statute "ignores the purpose and language of the REA and is consequently arbitrary and capricious, contrary to law, and an abuse of discretion." In particular, SPS argues that conditioning the award of an incentive on a proposal that would "produce or acquire renewable energy," § 62-16-4(D), "would lead to absurd results and thwart the Legislature's intent to incentivize utilities to exceed the RPS." Second, SPS argues that the availability of incentives under the REA since at least 2007 supports SPS's proposed reading of the statute. Third, SPS argues that the PRC lacked sufficient evidence to support the hearing examiner's finding of "speculative" that SPS's early retirement of extra RECs would result in acquiring additional renewable energy resources earlier than otherwise necessary. We address each argument in turn, and because our resolution of these issues is sufficient to affirm, we decline to address SPS's additional arguments related to the denial of its incentive application.

1. The plain language of Section 62-16-4(D) conditions the award of an incentive on a proposal "to produce or acquire renewable energy"

[9] The three intervenors that opposed the incentive and variance were the New Mexico Large Customer Group, Occidental Permian Ltd. (Occidental), and Louisiana Energy Services. Having intervened in this appeal, these same parties filed a joint answer brief in support of the PRC's orders challenged by SPS.

[10] The presentation of the issues in this appeal provides a case study as to why the limitations the Legislature has placed on our review encourage trivial argument. See § 62-11-5 ("The supreme court shall have no power to modify the action or order appealed from, but shall either affirm or annul and vacate the same."). We caution parties that the better approach to advocacy is advancing only credible and discernible claims of error. Tossing in the kitchen sink with the hope of vacating an entire administrative ruling is an ill-conceived strategy that is wasteful of judicial resources.

{18} Whether the PRC erred by construing Section 62-16-4(D) to limit the award of incentives to proposals that would "produce or acquire renewable energy" presents a question of statutory interpretation, "which we review de novo." *N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm'n*, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 168 P.3d 105. "Where as here an agency is construing the same statutes by which it is governed, we accord some deference to the agency's interpretation," particularly for "legal questions that implicate special agency expertise or the determination of fundamental policies within the scope of the agency's statutory function." *Id.* (internal quotation marks and citation omitted). Nevertheless, we are "not bound by the agency's interpretation and may substitute [our] own independent judgment for that of the agency because it is the function of the courts to interpret the law." *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, ¶ 11, 120 N.M. 579, 904 P.2d 28.

{19} "When construing statutes, our guiding principle is to determine and give effect to legislative intent." *N.M. Indus. Energy Consumers*, 2007-NMSC-053, ¶ 20. We begin with "the plain meaning of the words at issue, often using the dictionary for guidance." *N.M. Att'y. Gen. v. N.M. Pub. Regul. Comm'n*, 2013-NMSC-042, ¶ 26, 309 P.3d 89. We must give effect to the statute as written "without room for construction unless the language is doubtful, ambiguous, or . . . would lead to injustice, absurdity or contradiction, in which case the statute is to be construed according to its obvious spirit or reason." *Id.* (internal quotation marks and citation omitted).

{20} SPS does not argue that the PRC's interpretation of Section 62-16-4(D) is contrary to the statute's plain language—nor could it reasonably do so. The language and structure of the statute support the PRC's conclusion that Section 62-16-4(D) is "unequivocally clear" that an incentive must encourage a public utility, first and foremost, to "produce or acquire renewable energy." The statute is similarly clear on exceeding the RPS, the focus of SPS's argument, as a *secondary* objective that must be accomplished by the threshold requirement of producing or acquiring renewable energy. Under the statute's plain language, an incentive will be provided to encourage a public utility "to produce or acquire renewable energy that exceeds the applicable annual [RPS]" or that accomplishes one of the other secondary objectives listed in the statute. *See* § 62-16-4(D) (providing an incentive "to produce or acquire renewable energy" that reduces carbon emissions earlier than required or that reduces the coal-fired generation of electricity).

{21} Instead of offering an alternative construction of Section 62-16-4(D), SPS argues that a literal interpretation "would lead to absurd results and thwart the Legislature's intent to incentivize utilities to exceed the RPS." SPS points to two other provisions to illustrate the purported absurdity that would result from a literal reading of Section 62-16-4(D): (1) the Legislature's finding that "a public utility should have incentives to go beyond the minimum requirements of the [RPS]," § 62-16-2(A)(5); and (2) the mandate that "[a] public utility shall meet the [RPS] . . . as demonstrated by its retirement of [RECs]," § 62-16-4(A). Based on these provisions, SPS insists that retiring RECs must be worthy of an incentive to exceed the RPS because retiring RECs is the only way to "establish compliance with the [RPS]." Section 62-16-5(A)(1); *see also* § 62-16-4(A). The SPS maintains that otherwise, "the Legislature chose to incentivize utilities to exceed the RPS but then failed to provide any mechanism for them to do so."

{22} We will depart from a statute's literal meaning when the statute is shown to be ambiguous by "one or more provisions giving rise to genuine uncertainty as to what the legislature was trying to accomplish." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. We see no "genuine uncertainty" about the purpose or meaning of Section 62-16-4(D) in relation to the statute's plain language. To the contrary, providing an incentive to encourage a public utility "to produce or acquire renewable energy" is entirely consistent with the overarching purpose of Section 62-16-4, particularly after the 2019 amendments to the REA.

{23} As previously explained, Section 62-16-4(A) was amended in 2019 to mandate that public utilities keep pace with a series of increasing RPS benchmarks and make "[r]easonable and consistent progress" toward supplying one hundred percent of all retail sales of electricity in New Mexico from zero carbon resources by the year 2045. Section 62-16-4(A)(6). These demanding requirements signal a clear legislative intent to reduce and eliminate from the electricity provided to New Mexico public utility customers the use of any electricity generation resources that emit carbon dioxide into the atmosphere. Section 62-16-3(K) (defining a "zero carbon resource," in part, as "an electricity generation resource that emits *no* carbon dioxide into the atmosphere" (emphasis added)). As a necessary corollary, these requirements also signal an intent to compel public utilities to procure sufficient zero carbon resources to meet the zero carbon resource standard by 2045. Against this backdrop, an incentive clearly acts as a carrot "to encourage" a public utility to increase its renewable energy portfolio and reduce carbon dioxide and other harmful emissions faster than the REA requires. *See* § 62-16-4(D). Conditioning an incentive on a proposal that will produce or acquire renewable energy ensures that a proposed measure will not qualify for an incentive unless, at minimum, it advances a utility's progress toward achieving the zero carbon resource standard. *Id.* In short, the statute's purpose supports and does not undermine its literal meaning.

{24} To read Section 62-16-4(D) as SPS suggests would elevate form over substance. The act of retiring RECs alone does nothing to further the statute's objectives. SPS's proposal for an incentive illustrates the point. SPS characterized its proposal as a plan "to supply no less than 40% of [its] New Mexico retail energy sales [from renewable energy] three years early." But SPS's supporting documentation showed that in 2020, it actually generated and purchased renewable energy in an amount that was substantially equivalent to its RPS obligation—twenty percent of its retail electricity sales.[11] Section 62-16-4(A)(2) (setting forth an RPS of twenty percent, effective January 1, 2020). SPS also admitted that it was not proposing to produce or acquire additional renewable energy or renewable energy resources. Rather, SPS proposed only to retire *banked* RECs from its sizeable balance of RECs carried forward from renewable energy generated in previous years.[12] SPS's proposal thus would have done nothing to expand SPS's renewable energy portfolio or reduce carbon emissions during the three years that its requested incentive would have been in effect. We see nothing in the REA to suggest that the Legislature

[11] SPS generated and purchased approximately 1.46 million MWh of renewable energy in 2020, which exceeded its RPS compliance requirement by approximately 4,910 MWh or 0.34%. Notably, at SPS's proposed incentive rate of $1 per MWh, its excess renewable energy for 2020 would have supported an incentive of $4,911, far less than the $1.65 million incentive that it requested for 2022.

[12] SPS has represented throughout this proceeding that, unless it receives an incentive to retire its banked RECs early, it has enough banked RECs to allow it to continue meeting its RPS obligations without procuring new renewable resources "until at least 2030." And even if it receives an incentive to retire RECs early, SPS estimates that it will remain compliant with its existing resources until sometime between 2026 and 2029.

intended the award of an incentive under these circumstances. We therefore find no ambiguity that would lead us to ignore the plain meaning of Section 62-16-4(D), and we affirm the PRC's interpretation of the statute according to its plain language.

2. The availability of incentives under the REA since at least 2007 does not require the award of an incentive in this case

{25} We are similarly unpersuaded by SPS's argument that the availability of incentives under the REA since 2007 compels a different result. SPS offered testimony in support of its incentive application that "almost all renewable procurements on SPS's system were constructed before 2019 with the knowledge that SPS could be eligible for an incentive under the Act." This testimony reveals a basic misunderstanding of what the Legislature intended an incentive to accomplish.

{26} Although the REA does not define the term incentive, common definitions describe it as something that "incites," "induces," "motivates," or "encourages" one to take action. *See, e.g.*, *Merriam-Webster Collegiate Dictionary* (11th ed. 2020), (defining "incentive" as "something that incites or has a tendency to incite to . . . action"); *New Oxford American Dictionary* (3d ed. 2010) (defining "incentive" as "a thing that motivates or encourages one to do something"); *American Heritage Dictionary* (5th ed. 2011) (defining "incentive" as "[s]omething, such as the fear of punishment or the expectation of reward, that induces action or motivates effort"). These definitions align closely with the plain language of Section 62-16-4(D), which provides that the PRC shall award an incentive "to *encourage* public utilities to produce or acquire renewable energy." (Emphasis added.)

{27} Given that one cannot encourage past behavior, the problem for SPS is simply a matter of timing. We agree that incentives have been available since at least 2007, and had SPS requested an incentive *before* it constructed the "renewable procurements" in question, it may well have qualified for an incentive to "encourage" the associated investments. Section 62-16-4(D); *see also* § 62-16-4(A)(4) (2007) (providing for an incentive to "encourage public utilities to acquire renewable energy supplies that exceed the applicable annual [RPS]"). But at this stage, SPS seeks a *reward*—not an incentive—for renewable resources or energy that it already has produced or acquired beyond the REA's demands. Section 62-16-4(D) does not authorize the PRC to reward SPS's past behavior. Having failed to request an incentive before exceeding its obligations under the REA, SPS's actions vis-à-vis Section 62-16-4(D) were voluntary. Those actions do not support additional compensation from SPS's customers beyond the reasonable rate of return that SPS already has earned through the ratemaking process for the electricity associated with SPS's banked RECs.

3. Substantial evidence supports the PRC's finding that SPS did not propose to produce or acquire renewable energy to support its incentive request

{28} As a final point in our review of the denial of SPS's incentive application, we address SPS's argument that the PRC lacked substantial evidence to support the following finding:

> [T]he Commission concurs with the [Recommended Decision's] finding that it was speculative that SPS's early retirement of excess RECs would result in the early acquisition of resources to meet SPS's RPS in the future because there was no evidence of any firm plans to acquire or produce any additional renewable energy and because future acquisitions or procurements would only meet its RPS for compliance purposes, not exceed its RPS for the purposes required by the financial incentive statute.

SPS argues that the finding is unsupported because "SPS presented uncontroverted testimony that the proposed retirement of RECs to exceed the RPS in 2022 through 2024 would accelerate SPS's need to acquire additional resources by approximately two to four years."

{29} "[W]e will affirm the Commission's order if it is supported by substantial evidence, which is evidence that is credible in light of the whole record and that is sufficient for a reasonable mind to accept as adequate to support the conclusion reached by the agency." *Citizens for Fair Rates & the Env't v. N.M. Pub. Regul. Comm'n*, 2022-NMSC-010, ¶ 13, 503 P.3d 1138 (internal quotation marks and citation omitted). We address SPS's substantial-evidence challenge only to the extent that it may implicate our conclusion that the PRC properly denied SPS's incentive application under Section 62-16-4(D) because SPS "did not propose to 'produce or acquire' any renewable energy." Our concern therefore is whether the PRC had substantial evidence to find that "there was no evidence of any firm plans to acquire or produce any additional renewable energy."

{30} As we have previously noted, SPS admitted at the hearing on its application that its incentive proposal did not include a "specific plan" to produce or acquire any additional renewable energy or renewable energy resources. The "uncontroverted testimony" cited by SPS does not suggest otherwise. It merely explains that, based on SPS's projections,

> if SPS continues to retire the minimal amount of RECs required to comply with the RPS, SPS is projecting compliance through 2030 to beyond 2031 . . . . However, if SPS's plan to meet the 40% requirement three years early is approved, SPS is projecting compliance through 2026 and 2029. In other words, if SPS's plan is approved, SPS would be required to accelerate the acquisition of additional renewable resources to maintain RPS compliance.

This testimony underscores the PRC's finding that SPS did not actually propose to produce or acquire renewable energy, let alone renewable energy that would exceed the RPS as required for an incentive under Section 62-16-4(D); rather, SPS merely offered projections about when it would need to acquire "additional renewable resources to maintain RPS compliance" after expiration of SPS's incentive at the end of 2024. Based on our review, we hold that substantial evidence supports the PRC's finding that SPS did not propose to produce or acquire renewable energy to support its request for an incentive.

{31} In sum, with no proposal to produce or acquire renewable energy that exceeds the RPS, the PRC's denial of SPS's incentive application under Section 62-16-4(D) was neither unreasonable nor unlawful. Because we affirm the denial under the statute, we need not reach SPS's arguments that the PRC improperly denied the application under the various provisions of Rule 572.

B. The Amended Rule Is Not Unreasonable or Unlawful

{32} We turn now to SPS's many challenges to the Amended Rule itself. SPS argues that various provisions of the Amended Rule exceed the scope of the REA, are arbitrary and capricious and void for vagueness, and suffer from a litany of other legal and procedural deficiencies. After the completion of briefing the PRC filed a motion to dismiss as moot four of the issues raised by SPS in its appeal from the order approving the Amended Rule. The PRC argued that its subsequent order filed on December 7, 2022, which approved the Second Amended Rule after the instant appeals were filed, revised certain language in the Amended Rule that SPS had challenged in this appeal. We agree that three of SPS's arguments are moot, and we address those issues at the end of our analysis. But first, we consider SPS's arguments that are properly before us.

{33} SPS brings a facial challenge to the rule and therefore must establish that the rule is invalid in all of its applications, not

merely "under some specific set of circumstances." *Gila Res. Info. Project v. N.M. Water Quality Control Comm'n*, 2018-NMSC-025, ¶ 6, 417 P.3d 369 ("Petitioners must establish that no set of circumstances exist where the . . . [r]ule could be valid."); *see also Bounds v. State ex rel. D'Antonio*, 2013-NMSC-037, ¶ 14, 306 P.3d 457 ("In a facial challenge to a statute, we consider only the text of the statute itself, not its application." (brackets, internal quotation marks, and citation omitted)). We emphasize the point because many of SPS's arguments suffer from the lack of a factual record or any suggestion of an actual injury resulting from the application of the Amended Rule. *See Bounds*, 2013-NMSC-037, ¶ 13 ("[Where the petitioner] was unable to show any actual injury, . . . [he] was unable to pursue an as-applied challenge in which specific facts would be relevant and was left with only a facial challenge.").

1. The Amended Rule's cost-benefit requirement does not exceed the scope of the REA and is not otherwise unreasonable or unlawful

{34} SPS first challenges the cost-benefit requirement set forth in the Amended Rule, specifically Rule 572.22(D), which precludes the award of an incentive for a "particular investment if the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions." SPS argues that the provision (1) ignores the scope of REA-authorized incentives by limiting incentives to investments that result in a reduction in carbon dioxide or other emissions when Section 62-16-4(D) also allows incentives for measures that exceed the RPS or reduce the coal-fired generation of electricity; (2) exceeds the scope of the REA by requiring a cost-benefit analysis that is not required under the REA; (3) is void for vagueness and arbitrary and capricious; and (4) was adopted without notice and comment in violation of due process.

a. Rule 572.22(D) does not preclude an incentive for measures that would exceed the RPS or reduce coal-fired electricity-generation

{35} SPS argues that Rule 572.22(D) limits incentives "only to investments that result in a reduction in carbon dioxide or other emissions" and effectively writes out of existence the other two bases under Section 62-16-4(D) for earning an incentive, namely, exceeding the RPS and reducing the coal-fired generation of electricity.[13] This argument is overstated and does not withstand scrutiny.

{36} Despite SPS's repeated assertions to the contrary, Rule 572.22(D) does *not* necessarily preclude an incentive for measures that would exceed the RPS or reduce coal-fired generation. Like Section 62-16-4(D), Rule 572.22 expressly provides that a utility may seek an incentive for implementing measures "to accomplish *at least one* of the following purposes: (1) exceeding the public utility's annual RPS requirements; (2) reducing carbon dioxide emissions earlier than required by [the RPS]; or (3) reducing the generation of electricity by coal-fired generating facilities." *See* 17.9.572.22(A), (B) NMAC (5/4/2021) (emphasis added). The cost-benefit requirement ensures that an investment proposed to accomplish *any* of these purposes—including exceeding the RPS or reducing the coal-fired generation of electricity—is cost-effective relative to "the demonstrable value of the corresponding reduction in carbon dioxide or other emissions." 17.9.572.22(D) NMAC (5/4/2021). That the metric for measuring cost-effectiveness overlaps with the purpose of reducing carbon emissions does not *exclude* an incentive for exceeding the RPS or reducing the coal-fired generation of electricity. Nor does the metric *guarantee* an incentive for reducing carbon emissions alone. The cost-benefit requirement applies equally to any of the purposes for earning an incentive.

{37} As a fallback to its categorical argument, SPS argues that the cost-benefit requirement "renders meaningless the provisions of the Rule that *purport* to allow incentives for exceeding the RPS or reducing coal-fired generation." (Emphasis added.) To illustrate the point, SPS provides the single example of biomass resources, which the Legislature included in the definition of a renewable energy resource that can be used to meet and exceed the RPS. *See* § 62-16-3(H)(3) (providing that biomass resources under the REA are "limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico"). SPS argues that Rule 572.22(D) precludes a utility from using biomass resources to earn an incentive for exceeding the RPS because "biomass fuel results in substantial carbon emissions and the increased use of biomass fuel to generate electricity would likely not result in a decrease in carbon emissions."

{38} This argument fails for at least two reasons. First, SPS's assertions about the "likely" carbon-related effects of biomass resources are not supported by the record and thus are merely the arguments of counsel and not evidence. *See, e.g.*, *State v. Hall*, 2013-NMSC-001, ¶ 28, 294 P.3d 1235 ("It is not our practice to rely on assertions of counsel unaccompanied by support in the record." (internal quotation marks and citation omitted)). Second, SPS's assertions are contradicted by the REA itself, which has provided since 2019 that REC-eligible biomass resources must come from a facility certified to "have zero life cycle carbon emissions." Section 62-16-3(H)(3)(b). This lone example therefore does not establish that Rule 572.22(D)'s cost-benefit requirement precludes an incentive for exceeding the RPS, even when using biomass resources to do so. To the contrary, any measure that otherwise qualifies for an incentive can satisfy Rule 572.22(D)—as long as the cost would be less than the value of the corresponding reduction in carbon dioxide or other emissions.[14] We thus disagree that Rule 572.22(D) exceeds the scope of the REA by limiting incentives only to investments that would result in a reduction of carbon dioxide or other emissions.

b. Rule 572.22(D) is a reasonable exercise of the PRC's overarching duties under the Public Utility Act

{39} SPS next argues that Rule 572.22(D) exceeds the scope of the REA by requiring a cost-benefit analysis that is not explicitly required by statute. SPS argues that, because the REA expressly includes a cost-benefit analysis for measures taken to meet the 2040 and 2045 RPS levels of eighty percent and one hundred percent, the exclusion of such an analysis for complying with earlier RPS requirements was purposeful, such that Rule 572.22(D) is contrary to legislative intent. *See* § 62-16-4(B)(3) ("In administering the [eighty percent and one hundred percent RPS standards], the commission shall . . . prevent unreasonable impacts to customer electricity bills, taking into consideration the economic and environmental costs and benefits of renewable energy resources and zero carbon resources . . . .").

[13] The PRC argues that this issue is moot for largely semantic reasons, which we decline to address because we are unpersuaded by SPS's argument.

[14] We also note that, although this is a facial challenge, SPS's evidence to support its own incentive request similarly failed to show that Rule 572.22(D) precludes the award of an incentive for SPS's proposal for an incentive. Although SPS admitted that the cost of retiring extra RECs would be greater than the value of the corresponding reduction in carbon dioxide or other emissions, it also volunteered that it had declined to use a different methodology that "could have generated a better result for the cost-benefit analysis required by the rule." Thus, SPS's own evidence was inconclusive about whether Rule 572.22(D) "renders meaningless the provisions of the REA that allow incentives for exceeding the RPS."

{40} We are not persuaded. This argument fails to consider Rule 572.22(D) in the context of both the REA and the PRC's broader regulatory duties. *Cf. Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047 ("We must examine [the plaintiffs'] interpretation in the context of the statute as a whole, including the purposes and consequences of the . . . Act."). The PRC adopted Rule 572.22 pursuant to its statutory duty to "promulgate rules to implement the provisions of the [REA]," § 62-16-9, including "to develop and provide financial or other incentives to encourage public utilities to" carry out the purposes of the REA, § 62-16-4(D). *See also* § 62-16-7(A)(1) (providing that the PRC "shall adopt rules regarding the [RPS]"). However, the REA provides minimal guidance for determining whether a requested incentive may be justified, leaving the PRC to apply its broad policy-making authority and expertise to fill in the legislative gaps to effectuate the purposes of the REA. *See, e.g.*, *New Energy Econ., Inc. v. N.M. Pub Reg. Comm'n*, 2018-NMSC-024, ¶ 25, 416 P.3d 277 ("[I]f it is clear that our Legislature delegated to the PRC (either explicitly or implicitly) the task of giving meaning to interpretive gaps in a statute, we will defer to the PRC's construction of the statute as the PRC has been delegated policy-making authority and possesses the expertise necessary to make sound policy."). Under these circumstances, the PRC necessarily falls back on its overarching duty to regulate public utilities in a manner that balances the interests of the public, consumers, and investors to ensure "that reasonable and proper services shall be available at fair, just and reasonable rates." NMSA 1978, § 62-3-1 (B) (2008); *see also* NMSA 1978, § 62-8-1 (1941) ("Every rate made, demanded or received by any public utility shall be just and reasonable."); *cf.* § 62-16-2(A)(4) ("[P]ublic utilities should be able to recover their reasonable costs incurred to procure or generate energy from renewable energy resources . . . .").

{41} Against this backdrop, Rule 572.22 first ensures that any incentive awarded under the REA will comply with the statute by encouraging a utility to produce or acquire renewable energy that accomplishes one or more of the REA's statutory bases for an incentive. *See* 17.9.572.22(A), (B) NMAC (5/4/2021); *see also* § 62-16-4(D). The utility then must demonstrate "that the terms and duration of the proposed incentive . . . are just and reasonable in light of the utility's costs, its authorized return, and the magnitude of any other incentives that have been authorized by the commission." 17.9.572.22(C) NMAC (5/4/2021). The utility also must show that the measure proposed to support the incentive will be a cost-effective investment as compared with the "value of the corresponding reduction in carbon dioxide or other emissions." 17.9.572.22(D) NMAC (5/4/2021).

{42} This framework implements the REA's incentive and rulemaking requirements in a manner that comports with the PRC's broad mandate to regulate public utilities to ensure "that reasonable and proper services shall be available at fair, just and reasonable rates." Section 62-3-1(B). Given that an incentive will compensate a utility at the expense of ratepayers, we hold that the PRC acted within its authority by requiring an incentive to be just and reasonable and based on a cost-effective investment. *Cf. Att'y Gen. v. N.M. Pub. Regul. Comm'n*, 2011-NMSC-034, ¶¶ 11, 13, 150 N.M. 174, 258 P.3d 453 (concluding that an "adder" that allows a utility to "receive additional revenue as compensation for reducing the consumption of their energy" is a rate and therefore requires a balancing of interests to ensure that it is "'just and reasonable'" (quoting Section 62-8-1)). Moreover, we defer to the PRC's chosen standard for evaluating the cost-effectiveness of an investment—the cost of the investment versus the value of the corresponding reduction of carbon dioxide or other emissions—as a reasonable exercise of policy-making authority that promotes the legislative directive to make "[r]easonable and consistent progress" toward reaching the zero carbon resource standard by 2045. Section 62-16-4(A)(6); *see also New Energy Econ.*, 2018-NMSC-024, ¶ 25.

{43} The cases cited by SPS do not compel a different conclusion. In particular, SPS cites *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 26, 127 N.M. 272, 980 P.2d 55, to argue that the PRC "usurp[ed] the Legislature's lawmaking and policy-setting authority" by adopting Rule 572.22(D). We held in *Sandel* that the PRC's predecessor, the Public Utility Commission, violated Article III, Section 1 of the New Mexico Constitution "by undertaking to deregulate the electric power industry in New Mexico in a manner that is beyond the scope of the authority granted . . . by the Legislature." *Sandel*, 1999-NMSC-019, ¶ 26. We reached that conclusion based on the Commission's actions to "carry out broad changes in public policy by replacing regulation under the 'just and reasonable' standard with competition in an open marketplace," *id.* ¶ 19, at a time when deregulation was being debated at both the state and federal levels, *id.* ¶ 8. Here, the PRC has not attempted a controversial change in public policy vis-à-vis its fundamental responsibility to ensure just and reasonable rates. Rather, the PRC has adopted a rule that implements the REA's incentive provision, consistent with the PRC's traditional exercise of its regulatory authority. *Sandel* is thus inapposite.

{44} In sum, the PRC must carry out its duty to establish just and reasonable rates absent a clear statement to the contrary. *See, e.g.*, *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, ¶ 4, 94 N.M. 731, 616 P.2d 1116 ("The law . . . charges the Commission with the responsibility of [e]nsuring that every rate made or received by a public utility shall be just and reasonable."). The cost-benefit analysis requirement in Section 62-16-4(B)(3) does not relieve the PRC from ensuring that an incentive awarded at ratepayers' expense is just and reasonable. To the contrary, it mandates that the PRC consider "*unreasonable* impacts to customer electricity bills" in achieving the 2040 and 2045 RPS standards. *Id.* (emphasis added). That mandate is broad enough to encompass a cost-benefit requirement that precludes the award of an incentive unless the utility demonstrates a benefit to ratepayers that ensures progress toward the zero carbon resource standard.

c. SPS's remaining challenges to Rule 572.22(D) fail

{45} SPS's two remaining challenges to Rule 572.22(D) also fail. First, SPS argues that the cost-benefit provision in Rule 572.22(D) was adopted without notice and comment, in violation of due process. We readily dispense with this argument. The PRC's Notice of Proposed Rulemaking included a draft of proposed Rule 572.22 that "request[ed] that all comments include a proposal on how best to calculate a financial incentive." SPS proposed a method of calculating a financial incentive that the PRC ultimately declined to adopt. Instead, the PRC adopted the cost-benefit requirement that was proposed by Occidental Permian Ltd. (Occidental) in its initial comment to the proposed rule. Significantly, SPS submitted a written comment on Occidental's proposed requirement, stating that it "is an ambiguous, arbitrary, and capricious limitation found nowhere in the statute." SPS thus had notice that the PRC was considering a method of calculating a financial incentive, had an opportunity to propose its own method, and had an opportunity to comment on the very language that the PRC eventually adopted. Under these circumstances, SPS's claimed due process violation rings hollow. *See, e.g.*, *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 9, 101 N.M. 592, 686 P.2d 934 ("Case law suggests that the minimum protections upon which administrative action may be based, [are] according to interested parties a simple notice and right to comment." (alteration in original) (internal quotation marks and citation omitted)).

{46} Second, SPS argues that Rule 572.22(D) provisions for calculating the

costs and benefits supporting an incentive application are void for vagueness. In particular, SPS challenges the requirement to provide "the cost of the measures implemented by the utility that resulted in the lower carbon dioxide emissions." 17.9.572.22(D)(4) NMAC (5/4/2021). SPS similarly challenges the requirement to provide "the estimated value of the reduction in carbon dioxide emissions . . . based on an analysis of relevant carbon dioxide markets." 17.9.572.22(D)(3) NMAC (5/4/2021). SPS argues that, without greater specificity, the rule "requires utilities to guess at its meaning and is impermissibly vague." We disagree. "A court entertaining a pre-enforcement challenge to a regulation that does not implicate constitutionally protected conduct such as the First Amendment right to freedom of expression may sustain a vagueness challenge only if the law 'is impermissibly vague in all of its applications.'" *N.M. Petroleum Marketers Ass'n v. N.M. Env't Improvement Bd.*, 2007-NMCA-060, ¶ 16, 141 N.M. 678, 160 P.3d 587 (quoting *Vill. of Hoffman Ests. v. The Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 495 (1982)). Here, by SPS's own account, it understood Rule 572.22(D) well enough to submit "all the information required by that subsection" to support its proposal for an incentive. SPS's ability to comprehend the rule's requirements undermines its argument that the rule "is impermissibly vague in all of its applications."

2. SPS's void-for-vagueness challenges lack merit

{47} Continuing with the void-for-vagueness theme, SPS challenges three other provisions of Rule 572 on vagueness grounds. First, SPS argues that the rule's definition of the term "financial incentive" is unconstitutionally vague. *See* 17.9.572.7(F) NMAC (5/4/2021). SPS maintains that the definition's use of the terms "capital investment opportunities," "certain behaviors or actions," and "would not otherwise have occurred" are confusing, ambiguous, and require utilities to guess at their meanings. Second, SPS argues that the definition of "procure" and "procurement" is ambiguous "to the extent it does not comport with the Amended Rule's actual use of the term 'procurement.'" *See* 17.9.572.7(P)(4) NMAC (5/4/2021). SPS argues that the Amended Rule "defines procurement to mean a bidding process, but the rule subsequently uses the term to refer to the cost of the generation purchased rather than the bidding process itself" and then cites, as an example, "17.9.572.12(C) NMAC (5/4/2021) ('To the extent a procurement is greater than the reasonable cost threshold and results in excess costs . . . .')." SPS argues that the actual use of the term procurement relative to the definition provided in the rule is "inconsistent and confusing" and "renders the definition vague and unenforceable." Third, SPS challenges the provision that requires a public utility to give a preference to renewable energy generated in New Mexico in limited circumstances. *See* 17.9.572.10(A) NMAC (5/4/2021) ("Other factors being equal, preference shall be given to renewable energy generated in New Mexico."). SPS argues that the requirement for a preference when "[o]ther factors [are] equal" fails to identify what those factors may be and as such, the provision requires utilities to guess at its meaning and is impermissibly vague. *See id.*

{48} Although these provisions have not been drafted with perfect clarity, they are sufficient for due process purposes. As our Court of Appeals has cogently explained, "An agency drafting regulations is not required to write for the benefit of deliberately unsympathetic or willfully obtuse readers: for purposes of due process, a governmental agency attempting to give notice to members of the public may assume a hypothetical recipient desirous of actually being informed." *N.M. Petroleum Marketers*, 2007-NMCA-060, ¶ 18 (internal quotation marks and citation omitted). Here, SPS objects to language that readily informs a public utility about the PRC's intended meaning. SPS itself was able to understand the PRC's intended meaning and was able to apply the first two provisions it challenges——*financial incentives* and *procurements*——in its incentive application without difficulty. We are thus unpersuaded that the challenged provisions are "impermissibly vague in all of [their] applications." *Id.*

3. The Amended Rule's preference for renewable energy generated in New Mexico is not unlawful

{49} SPS challenges the Amended Rule's preference for renewable energy generated in New Mexico, 17.9.572.10(A) NMAC (5/4/2021), as (1) exceeding the scope of the REA, (2) unlawfully discriminating against citizens of other states in violation of the Privileges and Immunities Clause, U.S. Const, art. IV, § 2, cl. 1, and (3) violating the dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3.

{50} As for exceeding the scope of the REA, we reiterate that the PRC is not precluded from exceeding the REA's requirements on matters of public policy specifically entrusted to the PRC's discretion and expertise. *See New Energy Econ.*, 2018-NMSC-024, ¶ 25. The REA directs the PRC to promulgate rules to implement the Act and its objectives, § 62-16-9, including rules to implement the legislative finding that "the use of renewable energy by public utilities subject to commission oversight in accordance with the [REA] can bring significant economic benefits to New Mexico," § 62-16-2(A)(2). Stating, in 17.9.572.10(A) NMAC (5/4/2021), a narrow preference for renewable energy generated in New Mexico—in the unlikely circumstance of "[o]ther factors being equal"—is a reasonable exercise of the PRC's mandate to implement the Act in a manner that is economically beneficial to New Mexico when lawful and appropriate.

{51} Turning to SPS's unlawful discrimination argument, we note that this argument is largely undeveloped and is not supported by SPS's lone citation of *United Building & Construction Trades Council v. Mayor & Council of City of Camden*, 465 U.S. 208 (1984). Unlike the requirement in *United Building* that at least forty percent of the employees of city contractors and subcontractors must be local residents, *see id.* at 210, the Amended Rule's preference does not require any of a utility's renewable energy to be generated in New Mexico. "Other factors being equal," 17.9.572.10(A) NMAC (5/4/2021), the preference merely acts as a tie-breaker. SPS cites no authority that such a tie-breaker amounts to unlawful discrimination against the citizens of other states under the Privileges and Immunities Clause, and we therefore assume that none exists. *See Lee v. Lee* (*In re Doe*), 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 ("We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority.").

{52} That the challenged preference is a mere tie-breaker also distinguishes it from the cases cited by SPS in support of its similarly undeveloped argument under the dormant Commerce Clause. *See Wyoming v. Oklahoma*, 502 U.S. 437, 440-41, 461 (1992) (holding that the Commerce Clause was violated by a statute requiring ten percent of coal burned in Oklahoma power plants to be mined in-state); *New England Power Co. v. New Hampshire*, 455 U.S. 331, 339, 344 (1982) (holding that the Commerce Clause was violated by an order prohibiting a utility from selling hydroelectric energy outside the State of New Hampshire); *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273, 280 (1988) (holding that the Commerce Clause was violated by a statute awarding tax credits to ethanol producers only if the ethanol was produced in Ohio or in a state that granted similar tax advantages to ethanol produced in Ohio). Unlike the statutes in those cases, the Amended Rule's preference neither discriminates against interstate commerce nor imposes a burden on such commerce that "is clearly excessive in relation to the putative local benefits." *See Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Again, SPS cites no authority that a

mere tie-breaker discriminates against or unlawfully burdens interstate commerce. Assuming no such authority exists, we conclude that the Amended Rule's preference is not unreasonable or unlawful. *See In re Doe*, 1984-NMSC-024, ¶ 2.

4. Rule 572.22(E) does not exceed the scope of the REA by including a cost cap on incentives

{53} SPS argues that the Amended Rule's cost cap on incentives exceeds the scope of the REA. Specifically, SPS challenges Rule 572.22(E), which provides, "The total financial incentive authorized for recovery in rates pursuant to this section shall not exceed the product (expressed in dollars) of: (1) the utility's annual weighted average cost of capital (expressed as a percent)[] and (2) the cost of the measures described in Subsection B of this section." 17.9.572.22(E) NMAC (5/4/2021). SPS argues that this cap unduly limits the availability of incentives beyond the lone cost cap actually established in the statute, which "protect[s] public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold." Section 62-16-2(B)(3); *see also* § 62-16-3(E) (establishing a reasonable cost threshold of $60 per megawatt-hour of renewable energy with adjustments for inflation after 2020).

{54} As an initial matter, we note that the challenged provision does not establish a cap at all; rather, it ensures that any incentive is cost-based and justly and reasonably related to a utility's approved weighted average percentage cost of capital. *See, e.g.*, *N.M. Att'y Gen.*, 2011-NMSC-034, ¶ 18 (holding that the adoption of rates was "arbitrary and unlawful in that they were not evidence-based, cost-based, nor utility specific"). We further note that SPS proposed an arbitrary incentive cap of $10 million in its initial comments to the proposed rule as part of its proposed method of calculating a financial incentive. SPS never withdrew its proposed cap or otherwise alerted the PRC to the argument that it raises on appeal. We therefore decline to address this argument further.

5. Rule 572.11 does not unreasonably or unlawfully restrict the application of the REA

{55} SPS next challenges the PRC's adoption of Rule 572.11 as unreasonable and unlawful. Rule 572.11 codifies one of the seven requirements set forth in Section 62-16-4(B) that govern how the PRC shall administer the eighty percent and one hundred percent RPS requirements. Specifically, Rule 572.11 codifies the requirement that the PRC shall, "in consultation with the department of environment, ensure that the standard does not result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation." Section 62-16-4(B)(6); *see* 17.9.572.11 NMAC (5/4/2021) ("After consultation with the department of environment, the commission may not approve a public utility's annual [REA] plan that result[s] in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation."). SPS argues that, because the PRC did not codify the other six requirements set forth in the statute, the Amended Rule "selectively implement[s] the REA" and "limit[s] the application of [the REA] through the adoption of a regulation." Intervenors, in their Joint Answer Brief, agree that the PRC's "unexplained inclusion of one consideration in Section 62-16-4(B) and exclusion of the remainder is unreasonable and should be annulled and vacated."

{56} We disagree with the position of SPS and Intervenors that the PRC's inclusion of only one of the requirements set forth in Section 62-16-4(B) requires annulling and vacating the order approving the Amended Rule. Neither SPS nor Intervenors cite authority requiring the PRC to take an all-or-nothing approach to codifying multiple requirements set forth in a single, relevant statute. We therefore assume that no such authority exists. *See In re Doe*, 1984-NMSC-024, ¶ 2 ("Issues raised in appellate briefs which are unsupported by cited authority will not be reviewed by us on appeal."). Moreover, the Amended Rule's language does not contradict or otherwise conflict with the substantially identical language in the statute and does not relieve the PRC from the remainder of its duties under the statute. *Cf.* NMSA 1978, § 14-4-5.7(A) (2017) ("A conflict between a rule and a statute is resolved in favor of the statute.").

6. The PRC did not act unreasonably or unlawfully by "adopting the Amended Rule after it bifurcated critical matters from the rulemaking"

{57} SPS argues that the PRC acted arbitrarily and capriciously when it "bifurcated critical matters from the rulemaking" and it "transfer[red] controversial issues to a separate rulemaking and subject[ed] utilities to a confusing, ambiguous, and vague rule." Specifically, SPS contends that the PRC lacked authority to adopt the Amended Rule without addressing (1) the definition of the phrase "capital investment opportunities" in the definition of financial incentive, (2) whether a financial incentive would be available to advance the closure of the four corners nuclear facility, (3) whether the one hundred percent zero carbon standard includes the 2040 RPS standard of eighty percent renewables and limits nuclear to twenty percent, (4) whether Arizona Public Service could apply for a financial incentive as a nonregulated entity for the four corners nuclear facility, and (5) how the "average annual levelized cost" of energy should be calculated for purposes of the reasonable cost threshold definition set forth in Section 62-16-3(E).

{58} The lone authority that SPS cites in support of this argument is a federal district court case that granted a preliminary injunction against the implementation of a rule that was adopted through a "staggered rulemaking" process. *See Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 954-55 (N.D. Cal. 2021). The circumstances of *Centro Legal de la Raza* are clearly distinguishable. In particular, the rulemaking in this case and the subsequent rulemaking that resulted in the Second Amended Rule were held in a sequential, orderly manner with full public notice of both proceedings and ample opportunity for public participation. *Contra id.* at 958 (holding that the agency's rushed and overlapping rulemakings and decisions "deprived the public of the opportunity to consider how these rules intersected and impacted the Rule, and also raise[d] serious questions about whether the agency meaningfully addressed the interaction of these rules." (internal quotation marks and citation omitted)). SPS's contention does not withstand scrutiny.

7. SPS's remaining arguments are moot

a. A reasonable cost threshold analysis is not required for existing procurements

{59} SPS challenges the provision of the Amended Rule that implemented the REA's "reasonable cost threshold" (RCT) of sixty dollars per megawatt-hour that was established by the Legislature in 2019. *See* § 62-16-4(E) (providing that a "public utility shall not be required to incur" costs above the RCT to procure or generate renewable energy to comply with the RPS); § 62-16-3(E) (defining "reasonable cost threshold"). SPS argues that the Amended Rule's requirement to include an RCT analysis for *existing* renewable energy procurements applies the RCT retroactively and is therefore unlawful. *See* 17.9.572.12(B) NMAC (5/4/2021) (providing that a public utility "shall include in its annual [REA] plan [an RCT] analysis by procurement, *existing or proposed*, for the plan year" (emphasis added)); *see also, e.g.*, *Howell v. Heim*, 1994-NMSC-103, ¶ 17, 118 N.M. 500, 882 P.2d 541 ("New Mexico law presumes that statutes and rules apply prospectively absent a clear intention to the contrary."). However, the Second Amended Rule removed the reference to "existing" procurements and now requires an RCT analysis only for "proposed" procurements. *Compare* 17.9.572.12(A)

NMAC (2/28/2023) *with* 17.9.572.12(B) NMAC (5/4/2021). And as we have already determined, the PRC denied SPS's incentive application under Section 62-16-4(D) and did not rely on Rule 572.12(B). A ruling on this issue therefore would not "grant actual relief," and accordingly the issue is moot. *Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008 (internal quotation marks and citation omitted); *see also KOB-TV, L.L.C. v. City of Albuquerque*, 2005-NMCA-049, ¶ 37, 137 N.M. 388, 111 P.3d 708 ("[W]hen legislation is enacted that resolves a conflict, a question concerning the conflict addressed to a court will be moot.").

b. The typographical error in Rule 572.12(C) has been corrected

{60} SPS argues that the order approving the Amended Rule must be vacated and annulled because of a typographical error in the Amended Rule that "states the exact opposite of the REA." *Compare* § 62-16-4(E) ("The provisions of this subsection *do not preclude* a public utility from accepting a project with a cost that would exceed the [RCT]." (emphasis added)) *with* 17.9.572.12(C) NMAC (5/4/2021) ("The provisions of this rule *do preclude* a public utility from accepting a project with a cost that would exceed the [RCT]." (emphasis added)). However, the Second Amended Rule corrected the error such that the current rule is now consistent with the statute. *See* 17.9.572.12(B) NMAC (2/28/2023). Nonetheless, SPS continues to press the issue because the PRC denied SPS's incentive application based on the "flawed rule." We disagree. The PRC reasonably and lawfully denied SPS's incentive application irrespective of the Amended Rule's "flawed" RCT provision, which has now been corrected. This issue is therefore moot. *See Gunaji*, 2001-NMSC-028, ¶ 9; *KOB-TV*, 2005-NMCA-049, ¶ 37.

c. No controversy exists about whether the Amended Rule requires a new competitive selection process for existing resources

{61} SPS challenges the Amended Rule's provision implementing a new competitive bidding requirement established by the 2019 amendments to the REA that applies to procurements for "new renewable energy" beginning on July 1, 2020. *See* 17.9.572.13 NMAC (5/4/2021); *see also* § 62-16-4(G)(1), (3). SPS argues, "*To the extent* the rule allows for application of the competitive procurement requirement to existing, previously approved resources, it is inconsistent with the REA." (Emphasis added.) The PRC agrees that the competitive procurement requirement does not apply to "previously approved procurements" and maintains that neither the Amended Rule nor the Second Amended Rule provides otherwise. *See* 17.9.572.13 NMAC (5/4/2021 & 2/28/2023). We see no actual controversy on this issue. We agree with the parties that Section 62-16-4(F) and (G) impose distinct and different requirements on renewable-energy procurements proposed before and after July 1, 2020—with only the latter subject to a competitive procurement process. The Amended Rule does not provide to the contrary and does not require us to disturb the order adopting the Amended Rule. *See, e.g.*, *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1987-NMCA-153, ¶ 14, 107 N.M. 469, 760 P.2d 161 ("Rules and regulations enacted by an agency are presumed valid and will be upheld if reasonably consistent with the statutes that they implement."), *superseded by statute on other grounds as stated in N.M. Mining Ass'n v. N.M. Water Quality Control Comm'n*, 2007-NMCA-010, ¶ 19, 141 N.M. 41, 150 P.3d 991.

III. CONCLUSION

{62} SPS has failed to meet its burden to show that the PRC's orders adopting the Amended Rule and denying SPS's 2021 request for a financial incentive were unreasonable or unlawful. We therefore affirm both orders.

{63} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court

Opinion Number: 2024-NMSC-013
No: S-1-SC-38681 (filed January 16, 2024)

CCA OF TENNESSEE, LLC,
Appellant-Respondent,
v.
NEW MEXICO TAXATION AND REVENUE DEPARTMENT,
Appellee-Petitioner.

IN THE MATTER OF THE PROTEST TO ASSESSMENT ISSUED UNDER LETTER ID. NO L1081049392

ORIGINAL PROCEEDING ON CERTIORARI
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OPINION

ZAMORA, Justice.

{1} The issue on appeal is whether taxpayer CCA of Tennessee, LLC (CCA), a private prison corporation, accepted in good faith a nontaxable transaction certificate (NTTC) executed by Torrance County (the County) for CCA's housing of federal prisoners at the Torrance County Detention Center (the Detention Center). An NTTC establishes a taxpayer's entitlement to claim a deduction for the gross receipts it receives from the sale of certain licenses or services. NMSA 1978, § 7-9-43(A) (2011, amended 2018); NMSA 1978, § 7-9-47 (1994, amended 2021); NMSA 1978, § 7-9-48 (2000, amended 2021).[1] The issuance of an NTTC for such sales is predicated on the buyer reselling the license or services it purchased from the taxpayer. Section 7-9-47; § 7-9-48. When the taxpayer accepts a properly executed NTTC in good faith, the NTTC is conclusive evidence that the proceeds are deductible from that taxpayer's otherwise taxable gross receipts. Section 7-9-43(A). Generally speaking, this provides the taxpayer with safe harbor protection from liability for payment of gross receipts tax in situations where, unbeknownst to the seller, the buyer is not reselling the license or services in the intended manner. *See* § 7-9-43(A).

{2} The administrative hearing officer for the New Mexico Taxation and Revenue Department (the Department) concluded that CCA, as the seller, did not in good faith accept the NTTC, executed by the County as buyer, and therefore was not entitled to the deduction from gross receipts it received for housing federal prisoners. *See id.* The Court of Appeals came to the opposite conclusion. *CCA of Tenn. v. N.M. Tax'n & Revenue Dep't*, A-1-CA-37548, mem. op. ¶ 27 (N.M. Ct. App. Jan. 21, 2021) (nonprecedential).

{3} We agree with the conclusion of the hearing officer and hold that under the plain language of Section 7-9-43(A), CCA did not accept the NTTC in good faith and is therefore not entitled to safe harbor protection from the payment of gross receipts tax. We reverse the Court of Appeals.

I. BACKGROUND

{4} CCA owned and operated the Detention Center during the times relevant to this appeal. CCA incarcerated inmates for the County at the Detention Center pursuant to the contract it executed with the County in 2010. The contract required CCA to provide services for booking inmates, safekeeping inmate property, medical care, transporting inmates, and supervising inmate work programs. Some years earlier, in 2002, the County had entered into a separate contract with the United States Marshals Service (Marshals Service) to house federal prisoners. CCA agreed to fulfill the County's obligation to the Marshals Service to house and supervise federal prisoners at the Detention Center. CCA directly invoiced, and directly received payments from, the Marshals Service for housing federal prisoners.

{5} CCA sought a refund of gross receipts taxes from the Department that it had purportedly overpaid from January 1, 2010, through December 31, 2012, on the gross receipts it received from the Marshals Service. To secure that refund, CCA needed the Department to issue an NTTC to the County, which the County would then execute with CCA. *See* Section 7-9-43(D). CCA's tax advisor communicated with an audit bureau chief in the Department about the NTTC. In email correspondence with the Department's audit bureau chief, CCA's tax advisor wrote: "Just to clarify, the NTTC relates to the portion of Torrance County receipts derived from housing [Marshals Service] inmates. The receipts are not coming directly from the [Marshals Service] to CCA." CCA concedes that this was a misstatement because the Marshals Service was sending payments directly to CCA. In reliance on CCA's assertion that the receipts were not coming directly from the Marshals Service to CCA, the Department's audit bureau chief informed CCA's tax advisor that CCA could accept an NTTC for the receipts derived from housing the Marshals Service inmates.

[1] The relevant activity in this case occurred before Sections 7-9-43, 7-9-47 and 7-9-48 were amended in 2018, 2021, and 2021, respectively. Further reference to Section 7-9-43 is to the 2011 version of the statute; further reference to Section 7-9-47 is to the 1994 version of the statute; further reference to Section 7-9-48 is to the 2000 version of the statute.

{6} The Department issued the requested NTTC and the County executed an NTTC to CCA in August 2013 for the gross receipts from CCA's purported sale of a license for housing federal prisoners at the Detention Center. CCA then filed for a tax refund for the years 2010-2012 asserting it was entitled to a deduction under Section 7-9-47 for the sale of a license to the County to use the Detention Center, which the County resold to the Marshals Service to house federal prisoners. In April 2014, CCA received the requested refund.

{7} In August 2016, the Department conducted an audit of CCA for 2010 through September 30, 2015. The auditor concluded that CCA was not entitled to the refund it had received for gross receipts tax paid on the 2010-2012 receipts from the Marshals Service and that it was liable for gross receipts tax in the amount of $2,686,632.18, plus penalties and interest. The auditor found that there was no resale of the license and that CCA was not entitled to a tax deduction because CCA was selling services, not a license. CCA protested the audit. The hearing officer held a hearing on CCA's protest and issued a decision and order denying the protest. In the decision and order, the hearing officer first determined that CCA was not entitled to a tax deduction under Section 7-9-47, which was predicated on the County reselling a license to use the Detention Center to the Marshals Service in the ordinary course of the County's business.[2] The hearing officer found that the predominant feature of the transaction—to house federal prisoners—was not the licensing of an interest in real property. Instead, the predominant feature was the provision of services within the building, such as providing adequate food, clothing, shelter, and medical care for inmates. The hearing officer found that there was not an agreement between the County and the Marshals Service for the resale of the license, and that there was no evidence that the County was reselling licenses in the ordinary course of its business. Therefore, the hearing officer concluded CCA was not entitled to its claimed deduction.

{8} The hearing officer next analyzed whether CCA was nonetheless entitled to safe harbor protection under Section 7-9-43(A). Section 7-9-43(A) provides in relevant part that when a seller or lessor accepts a properly executed NTTC "in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner," the NTTC is "conclusive evidence" that the proceeds from that transaction can be deducted from the seller's gross receipts. To support its position, CCA relied on the email it received from the Department agreeing that CCA could accept an NTTC "for the receipts derived from hous[ing] the inmates." The hearing officer rejected as unreasonable CCA's reliance on this email because the facts the Department relied upon "were undeniably and undisputedly incorrect." The hearing officer observed that "safe harbor protection only applies when the underlying transaction is covered by a recognized deduction." He then concluded that because CCA's underlying transaction was taxable, "mere possession of an NTTC" did not transform it into a nontaxable transaction.

{9} The Court of Appeals reversed the hearing officer, holding that "[a]bsent evidence that [CCA] did not accept the NTTC from the County in good faith," CCA was entitled to safe harbor protection under Section 7-9-43(A). *CCA of Tenn.*, A-1-CA-37548, mem. op. ¶ 27. We granted the Department's petition for certiorari to decide whether CCA accepted the NTTC in good faith and was therefore entitled to safe harbor protection under Section 7-9-43(A).[3]

II. DISCUSSION

A. Standard of Review

{10} We will set aside a decision and order of an administrative hearing officer only if it is "(1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with the law." NMSA 1978, § 7-1-25(C) (2015). Within that framework, we review issues of statutory interpretation de novo. *High Desert Recovery, LLC v. N.M. Tax'n & Revenue Dep't*, 2022-NMCA-048, ¶ 7, 517 P.3d 258. In reviewing the administrative hearing officer's decision "we apply a whole-record standard of review." *Gemini Las Colinas, LLC v. N.M Tax'n & Revenue Dep't*, 2023-NMCA-039, ¶ 11, 531 P.3d 622 (internal quotation marks and citation omitted); Section 7-1-25(A). We view the evidence in the light most favorable to the hearing officer's decision to determine whether that decision is supported by substantial evidence. *Vigil v. N.M. Tax'n & Revenue Dep't*, 2022-NMCA-032, ¶ 9, 514 P.3d 15.

B. The Plain Meaning of the Term "Good Faith" in Section 7-9-43(A) Includes the Facts and Circumstances Reasonably Known to the Seller When It Accepts an NTTC

{11} The Department argues that the plain meaning of Section 7-9-43(A) "provides a clear answer to legislative intent—a seller must accept the NTTC in good faith—therefore, the statutory analysis begins and ends there." Based on its interpretation of the plain language of the statute, CCA counters that the good faith requirement of Section 7-9-43(A) requires only "'the absence of intent to defraud or to seek unconscionable advantage'" (citation omitted). Under either party's formulation of the issue presented, we must first determine the meaning of "good faith" as it is used in Section 7-9-43(A).[4] This determination will guide our analysis of whether CCA has met its burden to overcome the presumption that the Department's assessment of gross receipts tax on the receipts CCA received from the Marshals Service for housing federal prisoners was correct. NMSA 1978, § 7-1-17(C) (2007); *Holt v. N.M. Dep't of Tax'n & Revenue*, 2002-NMSC-034, ¶ 4, 133 N.M. 11, 59 P.3d 491.

{12} When construing statutes, we must determine and give effect to legislative intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. "Under the rules of statutory construction, we first turn to the plain meaning of the words at issue,

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[2] Section 7-9-47 states in relevant part:

> Receipts from selling . . . licenses may be deducted from gross receipts . . . if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the . . . license . . . in the ordinary course of business.

[3] Neither party appeals the determination that CCA was selling services, not a license, and our analysis of the issue on appeal does not depend on this distinction. For ease of reference, we refer primarily to sales of goods and services and refer to sellers and buyers, though NTTCs can also be issued for license sales. See § 7-9-47.

[4] No New Mexico appellate court has previously addressed the definition of "good faith" in Section 7-9-43(A). Below, the Court of Appeals reversed in part the hearing officer's decision and order without analyzing the meaning of the term "good faith" in Section 7-9-43(A) and without considering how CCA's own actions affected whether CCA accepted the NTTC in good faith. The Court of Appeals has observed that "the good faith belief of the seller may rest solely upon the representations made by the buyer in the exemption certificate, as such reliance fulfills the function of exemption certificates." Siemens Energy & Automation v. N.M. Tax'n & Revenue Dep't, 1994-NMCA-173, ¶ 15, 119 N.M. 316, 889 P.2d 1238 (text only) (emphasis added) (citation omitted). But that general observation does not preclude inquiry into whether a seller's own actions comport with the good faith requirement of Section 7-9-43 (A).

often using the dictionary for guidance." *Griego v. Oliver*, 2014-NMSC-003, ¶ 21, 316 P.3d 865 (internal quotation marks and citation omitted); *see also* NMSA 1978, § 12-2A-2 (1997) (stating that the meaning of an undefined phrase in a statute is determined by its context, the rules of grammar, and common usage). When the language of a statute is clear and unambiguous, we give effect to that language and refrain from further statutory interpretation. *See State v. Barela*, 2021-NMSC-001, ¶ 6, 478 P.3d 875. The statute's text is "the primary, essential source of its meaning." NMSA 1978, § 12-2A-19 (1997). "However, if the plain meaning of the statute is doubtful or ambiguous, or if an adherence to the literal meaning of the words would lead to injustice, absurdity or contradiction, we will construe the statute according to its obvious spirit or reason." *Baker*, 2013-NMSC-043, ¶ 11 (brackets, internal quotation marks, and citation omitted). Tax statutes are "construed strictly in favor of the taxing authority." *Pub. Serv. Co. of N.M. v. N.M. Tax'n & Revenue Dep't*, 2007-NMCA-050, ¶ 32, 141 N.M. 520, 157 P.3d 85 (internal quotation marks and citation omitted).

{13} Section 7-9-43(A) states:

> When the seller or lessor accepts a[n] [NTTC] within the required time and *in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner*, the properly executed [NTTC] shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

(Emphasis added.) This section conditions safe harbor protection from taxation on the seller's good faith belief that the buyer will employ the property or service transferred in a nontaxable manner when the seller accepts an NTTC. In this context, the phrase "in a nontaxable manner" means that the buyer or lessee will resell the property, services, or license in a manner that will subject the second transaction to gross receipts tax. *See* § 7-9-47; § 7-9-48; 3.2.206.8(A) NMAC; 3.2.208.8(A) NMAC. If there is no resale, tax is due on the value of the services at the time they were initially rendered. *See, e.g.*, 3.2.206.8(A) NMAC.

{14} The task at hand is construing the plain meaning of the statutory term "good faith" in a manner that gives effect to legislative intent. This term has been defined in an analogous taxation context by at least one other jurisdiction. *See, e.g.*, 12 Mo. Code of State Regulations § 10-101.500(2)(B) (2006) (defining *good faith* objectively as "[h]onesty of intention and freedom from knowledge of circumstances which ought to put the holder [of an exemption certificate] upon inquiry"); *Blevins Asphalt Const. Co. v. Dir. of Revenue*, 938 S.W.2d 899, 902 (Mo. 1997) (en banc) (affirming a company's sales tax liability on purchases for which it lacked evidence of a good faith belief in its holding of a state exemption). However, "good faith" is not defined in our Gross Receipts and Compensating Tax Act, NMSA 1978, §§ 7-9-1 to 120 (1966, as amended through 2023), or the Act's administrative regulations. Accordingly, we apply the ordinary meaning of the term "good faith" in a manner that makes sense as to the statute as written. *See Pub. Serv. Co. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, ¶¶ 16, 18, 128 N.M. 309, 992 P.2d 860.

{15} *Black's Law Dictionary* (11th ed. 2019) defines "good faith" as a "state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." It has been described as a term that is used in various contexts, with its meaning varying somewhat depending on the context. *See id.* (quoting Restatement (Second) of Contracts, § 205 cmt. a (1979)); *see also ERICA, Inc. v. N.M. Regul. & Licensing Dep't*, 2008-NMCA-065, ¶¶ 16, 18, 144 N.M. 132, 184 P.3d 444 (describing "good faith" as a "broad term" and relying on the same dictionary definition to determine whether a liquor licensee could avail itself of a statutory good faith defense when alcohol was served to a minor). To apply the ordinary meaning of "good faith," we first determine whether the inquiry into good faith is limited to an assessment of the seller's subjective belief that it acted in good faith or whether that inquiry can include an objective assessment of the relevant facts and circumstances reasonably known to the seller when it accepts an NTTC. *Cf. J.R. Hale Contracting Co. v. United N.M. Bank*, 1990-NMSC-089, ¶¶ 36-39, 110 N.M. 712, 799 P.2d 581 (reviewing subjective and objective standards to define the statutory term "good faith" in a section of the Uniform Commercial Code).

{16} The first clause of Section 7-9-43(A) provides context as to the kind of belief the safe harbor provision is intended to protect: the belief "that the buyer or lessee will employ the property or service transferred in a nontaxable manner." The corresponding regulation similarly focuses on the way the buyer employs the property or services sold to it:

> Acceptance of [NTTCs] in good faith that the . . . service sold thereunder *will be employed by the purchaser in a nontaxable manner* is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

3.2.201.14(A) NMAC (emphasis added). Collectively, Section 7-9-43(A) and 3.2.201.14(A) NMAC indicate the purpose of the safe harbor provision: to protect sellers whose products or services are initially sold to buyers for a nontaxable purpose but where, unbeknownst to the seller, the buyers do not actually use those products or services in the required manner.

{17} Additional gross receipts tax regulations indicate that the assessment of a seller's good faith belief is not a purely subjective standard, which we have described as "the pure heart and the empty head standard." *J.R. Hale*, 1990-NMSC-089, ¶ 30 (internal quotation marks and citation omitted). In the context of sales of construction materials, a seller may not claim it accepted an NTTC in good faith pursuant to Section 7-9-43(A) "when the seller can *reasonably determine* that the tangible personal property sold will be incorporated into a construction project which will not be subject to gross receipts tax upon completion because it is located outside New Mexico." 3.2.209.23(A) NMAC (2000) (emphasis added). Reasonableness is an objective standard, *Est. of Gutierrez ex rel. Jaramillo v. Meteor Monument, LLC*, 2012-NMSC-004, ¶ 9, 274 P.3d 97,[5] and this regulation specifically includes it as a component of the good faith requirement of Section 7-9-43(A). We give deference to an agency's reasonable interpretation of its own regulation, *see Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, ¶ 25, 136 N.M. 630, 103 P.3d 554, and our Legislature has specifically acknowledged that the administrative construction of a statute may be considered when deter-

[5] Gutierrez references instances where we have contrasted the subjective "good faith" standard with the objective "reasonable" standard. 2012-NMSC-004, ¶ 9 (citing Shull v. N.M. Potash Corp., 1990-NMSC-110, ¶ 8, 111 N.M. 132, 802 P.2d 641, and Kestenbaum v. Pennzoil Co., 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280). Neither Shull nor Kestenbaum are contrary to our analysis here. Shull and Kestenbaum concerned contractual wrongful termination claims. Neither case involved statutory construction or engaged in any analysis of the meaning of "good faith."

mining the meaning of statutory text, NMSA 1978, § 12-2A-20(B)(4) (1997). The administrative regulations for gross receipts taxes support the inference that the Department understands that the term "good faith" in Section 7-9-43(A) requires an objective review of the facts and circumstances known to the seller at the time it accepted the NTTC. This approach is consistent with prior case law, where facts and circumstances reasonably known to the taxpayer were part of the good faith analysis under Section 7-9-43(A). *Cf. Arco Materials, Inc. v. N.M. Tax'n & Revenue Dep't*, 1994-NMCA-062, ¶¶ 10-11, 118 N.M. 12, 878 P.2d 330 (rejecting a taxpayer's Section 7-9-43(A) good faith claim that it had no continuing duty to assess validity of deductions made in reliance on an NTTC and holding that the taxpayer has affirmative duty to stay informed about tax changes that might affect its liability), *rev'd on other grounds by Blaze Constr. Co. v. N.M. Tax'n & Revenue Dep't*, 1994-NMSC-110, ¶ 22, 118 N.M 647, 884 P.2d 803.

{18} Cases from another jurisdiction interpreting similar safe harbor protections from tax liability offer additional support that the plain meaning of good faith in Section 7-9-43(A) requires an objective analysis based on the facts and circumstances known to the seller. *See* § 12-2A-20(B)(2) (1997) (stating that judicial construction of a similar statute by another jurisdiction may be used to determine the common usage of a phrase in a statute). The Missouri Supreme Court described the purpose of exemption certificates when it determined that a seller did *not* accept an exemption certificate in good faith:

> Exemption certificates, received and accepted in good faith, protect sellers, who may know little or nothing about the facts upon which an exemption is claimed, from the obligation to investigate all buyers who may claim exemption because of their status or because of the intended use for purchases. Buyers, by signing the certificate, are alerted that they must be prepared to prove claims of exemption, because buyers are secondarily liable for the tax if the claim of exemption is improper.

Conagra Poultry Co. v. Dir. of Revenue, 862 S.W.2d 915, 918 (Mo. 1993). Noting Missouri's adoption of a relevant part of the Multistate Tax Compact and citing *Conagra*, *id.*, the Missouri Supreme Court stated further that "good faith receipt of an exemption certificate requires that a seller honestly believe that the buyer is exempt from paying the sales tax." *All Star Amusement, Inc. v. Dir. of Revenue*, 873 S.W.2d 843, 844-45 (Mo. 1994).[6] To provide safe harbor protection to a seller in Missouri, the transaction must be nontaxable based on the facts reasonably known to the seller at the time of the transaction. *See id.* at 845 (if the seller has information or knowledge that should raise doubts, "the seller must investigate to the point that it is honestly convinced that the buyer or the transaction is exempt.")

{19} The Missouri Supreme Court looked to the plain language of the statute at issue, which similarly required that exemption certificates be accepted in good faith by the seller. *Conagra*, 862 S.W.2d at 917-18. There, as here, the burden was on the taxpayer to prove that its sale was exempt from taxation. *See Holt*, 2002-NMSC-034, ¶ 4 (stating that the taxpayer bears the burden to overcome the presumption that Department's assessment or demand for payment was correct).

{20} In *Conagra*, the taxpayer purchased and delivered wood shavings to turkey farmers, which the farmers used to absorb turkey droppings. 862 S.W.2d at 916. Once the shavings absorbed a sufficient amount of droppings, the combined shavings and droppings were used to fertilize the farmers' crops. *Id.* The taxpayer claimed that it was exempt from paying sales tax on the transfer of the shavings to the farmers because it was providing a component ingredient of fertilizer and fertilizer was exempt from Missouri sales tax. *Id.* The Missouri Supreme Court held that the taxpayer was not entitled to the exemption because components of fertilizer were not included in the tax deduction for fertilizer. *Id.* at 917-18. In addition, the *Conagra* Court held that the taxpayer had not accepted exemption certificates from the farmers in good faith, reasoning that the taxpayer was "well aware of the facts underlying the transactions from the outset," and the taxpayer—and not the farmers—prepared the exemption certificates. *Id.* at 918. The taxpayer in *Conagra* had all the information necessary to know that the deduction it claimed was not applicable to the transaction, and a reasonable taxpayer in the same circumstances would not have believed it qualified for a deduction. Thus, the taxpayer did not accept the exemption certificate in good faith.

{21} We find the reasoning of the Missouri Supreme Court persuasive. If the buyer, unbeknownst to the seller, does not use the products or services sold in a nontaxable manner, the seller is protected by the safe harbor provision from liability for the gross receipts tax and does not have an obligation to investigate buyers "who may claim exemption because . . . of the intended use for purchases." *Id.* Alternatively, if under all the facts and circumstances known to the seller, the transaction between the seller and buyer does not fit the deduction described in an exemption certificate, the seller cannot accept in good faith a certification for the transaction. *Id.* (determining that the taxpayer "was well aware of the facts underlying the transactions from the outset"); *cf.* 3.2.201.14(A), (C) NMAC (providing that the seller can demonstrate good faith acceptance of an NTTC with a statement from a responsible employee of the buyer indicating that the transaction is eligible for the deduction *if* the seller does not know that the statement is false).

{22} The clear and unambiguous language of Section 7-9-43(A), the corresponding gross receipts and compensating tax regulations, and the persuasive interpretation of a similar safe harbor provision by the Missouri Supreme Court lead us to conclude that in applying an objective standard to the "good faith" requirement in Section 7-9-43(A), we are giving proper effect to legislative intent. The good faith standard in the safe harbor provision in Section 7-9-43(A) protects sellers from tax liability when buyers do not use goods or services in the intended manner. It does not protect a seller who is fully aware that the goods or services it sells are not being utilized by the buyer in the manner justifying the issuance or execution of the NTTC. This is an objective standard, based on the facts and circumstances reasonably known to the taxpayer at the time of the transac-

[6] NTTCs serve the same purpose for intrastate transactions that Multistate Tax Compact Uniform Sales and Use Tax Certificates serve for interstate transactions. Siemens Energy & Automation v. N.M. Tax'n & Revenue Dep't, 1994-NMCA-173, ¶¶ 2, 16, 119 N.M. 316, 889 P.2d 1238. The Multistate Tax Compact's safe harbor provision states, "Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate . . . the vendor shall be relieved of liability for a sales or use tax with respect to the transaction." NMSA 1978, § 7-5-1, Multistate Tax Compact art. V, part 2 (1967). New Mexico is one of fifteen states plus the District of Columbia that have enacted the Multistate Tax Compact into their existing law. Member States, Multistate Tax Commission, https://www.mtc.gov/The-Commission/Member-States (last visited Jan. 2, 2024). Thus, other member states' interpretations of the safe harbor provision of the Multistate Tax Compact's safe harbor provision can be persuasive.

tion. It relies on the ordinary meaning of "good faith," which here is most simply expressed as honesty in belief or purpose.[7]

C. CCA Is Not Entitled to Section 7-9-43(A) Safe Harbor Protection

{23} We review whether CCA accepted the NTTC in good faith given its misstatement to the Department that the receipts from housing federal prisoners did not come directly to CCA from the Marshals Service. CCA acknowledges that "[t]he question now is whether CCA's misstatement precluded CCA from accepting the County's NTTC in good faith under Section 7-9-43(A)" and argues that it accepted the NTTC in good faith because "there is no evidence that CCA's misstatement was either knowing or otherwise intentional."

{24} We apply an objective standard based on the facts and circumstances reasonably known to CCA at the time it accepted the NTTC and assess whether the hearing officer's conclusion that CCA is not entitled to safe harbor protection of Section 7-9-43(A) was (1) arbitrary, capricious, or an abuse of discretion; (2) not supported by substantial evidence; or (3) otherwise not in accordance with the law. Section 7-1-25(C). The Department argues that the Court of Appeals misapplied the law and that substantial evidence supports the hearing officer's conclusion that CCA did not accept the NTTC in good faith. CCA argues that the Court of Appeals' legal analysis was correct and that the hearing officer's conclusion is contrary to law and conflicts with the plain meaning of Section 7-9-43(A).

{25} Relying on the plain language of the statute, the parties looked only to the fourth common definition of "good faith"—the "absence of intent to defraud or to seek unconscionable advantage"[8]—and confined most of their arguments on this point to the alleged subjective state of mind of CCA. But as we have just determined, the applicable legal standard is an objective one, where the determination of whether a taxpayer accepts an NTTC in good faith is based on the facts and circumstances reasonably known to the taxpayer at the time it accepted the NTTC. On the facts of this case, our focus is on whether CCA accepted the NTTC with a good faith belief that the County was reselling to the Marshals Service the services CCA provided.

{26} The analysis here is straightforward. To help facilitate the issuance of an NTTC by the Department, CCA's tax advisor, just "to clarify," explained that "the NTTC relates to the portion of Torrance County receipts derived from housing [Marshals Service] inmates. The receipts are not coming directly from the [Marshals Service] to CCA." In reliance on CCA's assertion that the receipts were *not* coming directly from the Marshals Service to CCA, the audit bureau chief responded to CCA's tax advisor that an NTTC would be appropriate. CCA made these representations despite the fact it directly invoiced the Marshals Service for the housing of federal prisoners and received payment directly from the Marshals Service for the provision of those services. These facts are supported by the evidence and testimony presented at the hearing before the hearing officer, who issued findings of fact on each of these points. CCA conceded that its tax advisor made a misstatement of fact to the Department because the Marshals Service was sending payments directly to CCA. These facts were known to CCA when it accepted the NTTC and preclude any honest belief by CCA that its services were being resold.

{27} Based on the foregoing, we conclude that the hearing officer's determination that CCA did not accept the NTTC in good faith is supported by substantial evidence and was not arbitrary, capricious, or an abuse of discretion. CCA knew that there was no resale of services or a license because it was directly billing the Marshals Service, that the Marshals Service was paying CCA directly, and that the Department relied on CCA's misstatement in issuing the NTTC. Therefore, CCA did not, on the facts and circumstances known to it, accept the NTTC in good faith.

III. CONCLUSION

{28} For the reasons set forth above, we reverse the Court of Appeals' holding that CCA was entitled to safe harbor protection under Section 7-9-43(A) and we affirm the administrative hearing officer's decision.

{29} IT IS SO ORDERED.

BRIANA H. ZAMORA, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

GEORGE P. EICHWALD, Judge

Sitting by designation

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[7] In the current statute, the good faith language is simplified and placed in its own, separate subdivision. That subdivision states in its entirety, "When a person accepts in good faith a properly executed nontaxable transaction certificate from the purchaser, the properly executed nontaxable transaction certificate shall be conclusive evidence that the proceeds from the transaction are deductible from the person's gross receipts." Section 7-9-43(D) (2018).

Though the language has been streamlined, the Legislature still conditions the safe harbor protection of Section 7-9-43 (2018) on the taxpayer's good faith acceptance of a properly executed NTTC. The determination that the proper standard of review to determine good faith under Section 7-9-43(A) (2011) is an objective one is not affected by the more streamlined language of Section 7-9-43(D) (2018). Even without the specific language of Section 7-9-43(A) (2011), the analysis leading to the adoption of an objective standard to determine whether a taxpayer accepted an NTTC in good faith is supported by the plain meaning of the term "good faith," without additional explanatory language, as well as by the case law and regulations discussed in the body of this opinion.

[8] Good faith, Black's Law Dictionary (11th ed. 2019).

FORMAL OPINION

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Filing Date: 5/28/2024

No. A-1-CA-40425

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MARK A. LUCERO JR. a/k/a
MARK ANTHONY LUCERO JR.,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF COLFAX COUNTY
Melissa A. Kennelly, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

▶ Introduction of Opinion

The opinion filed on April 29, 2024, is hereby withdrawn, and this opinion is substituted in its place, following Plaintiff-Appellee's timely motion for rehearing, which this Court has denied.

{2} Defendant Mark Anthony Lucero, Jr. was convicted, following a jury trial, of three offenses: (1) aggravated battery against a household member by strangulation, (2) false imprisonment, and (3) violation of a restraining order prohibiting domestic violence. Defendant argues that he is entitled to a new trial because eleven of the twelve jurors seated at his trial were biased by having heard "inflammatory" comments made by a member of the jury panel during voir dire. Defendant contends that the district court abused its discretion in failing to dismiss the entire panel at the conclusion of voir dire. Defendant also argues that his convictions for aggravated battery against a household member and false imprisonment are based on the same conduct, violating his right to be free from double jeopardy. **View full PDF online.**

Jane B. Yohalem, 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-40425-1**

FORMAL OPINION

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

Filing Date: 5/28/2024

No. A-1-CA-40909

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
CESAR ALFREDO JURADO,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
David A. Murphy, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Van Snow, Assistant Attorney General
Albuquerque, NM

for Appellant

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

for Appellee

▶ Introduction of Opinion

This case, like our recently published opinion in State v. Ornelas, ___-NMCA-___, ___ P.3d ___ (A-1-CA-40501, May 14, 2024), is an appeal by the State from an order of the district court specifically enforcing a plea agreement the State sought to withdraw prior to its acceptance by the district court. The district court agreed with Defendant Cesar Alfredo Jurado that the State had promised him a plea and a specific sentence in return for his waiver of his constitutional right to a preliminary hearing. See N.M. Const. art. II, § 14. Finding that Defendant was induced by the State's promise of a specific plea to waive his right to a preliminary hearing, the district court held that the plea agreement was binding and enforceable and the State could not avoid its obligations by filing a nolle prosequi and a new criminal information. The district court also rejected the State's alternative claim that the plea agreement is void because Defendant failed to comply with what the State claimed was a material provision of the agreement: a requirement that his counsel file the plea paperwork within thirty or at most forty-five days from the date of the plea agreement. **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:
Megan P. Duffy, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40909**

FORMAL OPINION

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

Filing Date: 5/29/2024

No. A-1-CA-40776

REBEKAH WRIGHT, Personal Representative of the ESTATE OF BILLY R. WEINMAN, Deceased; KARL BAUMGARTNER; and SAMANTHA BAUMGARTNER,
Plaintiffs-Appellees,
v.
SEVENTH JUDICIAL DISTRICT COURT OF NEW MEXICO,
Defendant-Appellant,
and
SHANNON MURDOCK,
Defendant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Victor S. Lopez, District Court Judge

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

The Davis Law Group, LLC
Frank T. Davis, Jr.
Albuquerque, NM

for the Estate of Billy Weinman

Blazejewski & Hansen, LLC
Eva K. Blazejewski
Heather K. Hansen, Et al.
Albuquerque, NM

for Appellees Karl & Samantha Baumgartner

Introduction of Opinion

This appeal arises from a tragic highway accident involving a sitting judge and two bicyclists, one of whom was killed and the other severely injured upon being struck by the judge's vehicle as she returned home from a Saturday event (the Event), where she was invited to provide remarks to successful participants in an adult drug treatment program. At issue is whether the judge, who stipulated to liability and is not a party to this appeal, was acting within the scope of her official duties on her drive home from the Event such that the Seventh Judicial District Court (SJDC), her employer, is vicariously liable for the judge's negligence under the New Mexico Tort Claims Act (TCA or the Act), NMSA 1978, §§ 41-4-1 to -27 (1976, as amended through 2020). The district court concluded there to be a sufficient nexus between the judge's attendance at the Event and the judge's judicial responsibilities such that she was acting within the scope of her official duties for purposes of the Act. The SJDC appeals from that determination. We affirm.

J. Miles Hanisee, Judge
WE CONCUR:
Jane B. Yohalem, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40776**

FORMAL OPINION

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

Filing Date: 5/30/2024

No. A-1-CA-39416

BRYCE FRANKLIN,
Plaintiff-Appellant,
v.
KEEFE COMMISSARY NETWORK, LLC, formerly identified as THE KEEFE GROUP,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Maria Sanchez-Gagne, District Court Judge

Bryce Franklin
Las Cruces, NM

Pro Se Appellant

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Stephanie K. Demers
Albuquerque, NM

for Appellee

▶ Introduction of Opinion

The opinion filed on March 8, 2022, is hereby withdrawn, and this opinion is substituted in its place, following Plaintiff's timely motion for rehearing, which this Court granted.

{2} Plaintiff Bryce Franklin, a self-represented state inmate, appeals the district court's order dismissing his claim under the New Mexico Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2023), against Defendant Keefe Commissary Network, LLC. On appeal, Plaintiff argues that Defendant is subject to IPRA "despite being a private corporation, by standing in the shoes of [New Mexico Corrections Department] NMCD." Because we conclude that Plaintiff stated a claim under IPRA, we reverse and remand.

Kristina Bogardus, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39416**

FORMAL OPINION

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

Filing Date: 5/31/2024

No. A-1-CA-40209

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JOHN MARLOWE DAVIDSON,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
R. David Pederson, District Court Judge

Margaret McLean, Special Counsel
Santa Fe, NM

for Appellant

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

for Appellee

▶ Introduction of Opinion

The State of New Mexico appeals the district court's dismissal with prejudice of second degree murder charges against Defendant John Marlowe Davidson as a sanction for multiple violations of the district court's discovery orders, rules, and the State's constitutional pretrial obligations. The State focuses its appeal exclusively on the final violation by the State: what the district court found was the intentional, reckless, or grossly negligent "loss" of a surveillance video that would have provided irreplaceable material evidence in support of Defendant's claim that he acted in self-defense. The State argues that its loss of this evidence must be addressed by one of the two remedies suggested by our Supreme Court in State v. Chouinard when evidence is inadvertently lost prior to trial. 1981-NMSC-096, ¶¶ 22-23, 96 N.M. 658, 634 P.2d 680. We do not agree with the State that Chouinard limits the sanctions available to the district court for the repeated, intentional and highly prejudicial violations of court orders, rules, and constitutional pretrial duties by the State in this case. **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:
Megan P. Duffy, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40209**

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: 5/23/2024

No. A-1-CA-40884

LDB PROPERTIES, LLC; and LAS CRUCES COMPREHENSIVE REHABILITATION, HOME CARE AND HOSPICE,
Plaintiffs-Appellants,
v.
POOLS AND SPAS UNLIMITED d/b/a POOLS BY DESIGN; FRANKLIN WELLS; JAY MILLER; and NEW MEXICO ENVIRONMENTAL DEPARTMENT,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF DONA ANA COUNTY
James T. Martin, District Court Judge

Kemp Smith LLP
CaraLyn Banks
Las Cruces, NM

for Appellants

Gallagher, Casados & Mann P.C.
Wesley C. Jackson
Albuquerque, NM

for Appellees Pools & Spas Unlimited d/b/a Pools by Design and Franklin Wells

Jay Miller
Las Cruces, NM

Pro Se Appellee

Lisa Chai
Albuquerque, NM

for Appellee N.M. Environmental Department

▶ Introduction of Opinion

This appeal concerns a contract dispute over the construction of a therapy pool and integrated spa in Las Cruces, New Mexico. Defendant Pools and Spas Unlimited d/b/a Pools by Design (PBD), which is owned by Defendant Franklin Wells, submitted an unsigned proposal for the construction of a therapy pool to Shelly Borde, part owner of Plaintiff Las Cruces Comprehensive Rehabilitation, Home Care and Hospice (LCCR). Plaintiff LDB Properties, LLC (LDB) owned the lot where its tenant LCCR would operate aquatic therapy services, including the swimming pool. Defendant Jay Miller submitted construction plans for the pool, and the New Mexico Environmental Department (NMED) issued a construction permit, which authorized construction according to Miller's plans. Eventually, LCCR and LDB (collectively, Plaintiffs) sued Wells, PBD, Miller, and NMED. NMED settled and was dismissed by stipulated motion. The remaining Defendants PBD, Wells, and Miller went to trial. The district court determined that Miller's negligence resulted in damages but otherwise found in favor of Defendants. Plaintiffs appeal. For the reasons set forth below, we affirm.

Bruce D. Black, Judge Pro Tem
WE CONCUR:
Jacqueline R. Medina, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40884**

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: 5/28/2024

No. A-1-CA-40986

TONY RICHEY,
Petitioner-Appellee,
v.
CHRISTINE RICHEY,
Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
Daylene A. Marsh, District Court Judge

Burns Law Group, P.C.
B. Tell Ward
Farmington, NM

for Appellee

Christine Richey
Flora Vista, NM

Pro Se Appellant

▶ Introduction of Opinion

Christine Richey (Wife) appeals the district court's final order in her divorce proceeding against Tony Richey (Husband), challenging the division of the couple's property. We affirm.

Megan P. Duffy, Judge
WE CONCUR:
Jennifer L. Attrep, Chief Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40986**

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: 5/29/2024

No. A-1-CA-41126

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
FRANCIS DAVID FAIR,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY
David A. Murphy, District Court Judge

Raúl Torrez, Attorney General
Serena R. Wheaton, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Allison H. Jaramillo, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

Defendant Francis Fair appeals his conviction for involuntary manslaughter (firearm enhancement), contrary to NMSA 1978, Section 30-2-3(B) (1994). Defendant argues that the State made "two material misrepresentations" during trial that impacted the defense's ability to cross-examine two prosecution witnesses. Perceiving no reversible error, we affirm.

Megan P. Duffy, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Kristina Bogardus, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-41126**

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: 5/30/2024

No. A-1-CA-41251

STATE OF NEW MEXICO ex rel. CHILDREN, YOUTH & FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
STEPHEN F.,
Respondent-Appellant,
and
KANDICE C.,
Respondent,

IN THE MATTER OF BRISEIS F. and VAELEIGH F.,
Children.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Grace B. Duran, District Court Judge

Children, Youth & Families Department
Mary McQueeney, Chief Children's Court Attorney
Santa Fe, NM
Kelly P. O'Neill, Children's Court Attorney
Albuquerque, NM

for Appellee

Susan C. Baker
El Prado, NM

for Appellant

ChavezLaw, LLC
Rosenda Chavez-Lara
Sunland Park, NM

Guardian Ad Litem

▶ Introduction of Opinion

Respondent Stephen F. (Father), appeals the district court's adjudicatory judgment and dispositional order (adjudicatory judgment) in which the district court found that the subject minor Children were neglected as to Father and were abandoned children under NMSA 1978, Section 32A-4-2(G)(1) (2018, amended 2023). Father contends that the district court lacked jurisdiction over this matter, and further asserts that Petitioner Children, Youth & Families Department (CYFD), failed to prove by clear and convincing evidence that Children were abandoned by Father. Resolving the second issue—which we conclude is dispositive—in favor of Father, we reverse the district court's adjudication under Section 32A-4-2(G)(1) and do not render a conclusion as to Father's first point of appeal.

J. Miles Hanisee, Judge
WE CONCUR:
Jane B. Yohalem, 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-41251**

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.decisions.

Filing Date: 5/30/2024

No. A-1-CA-40525

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
LATOYA GUTIERREZ,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
Drew D. Tatum, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Walter Hart, Assistant Attorney General
Albuquerque, NM

for Appellee

Wadsworth Law, LLC
Mathew R. Wadsworth
Rio Rancho, NM

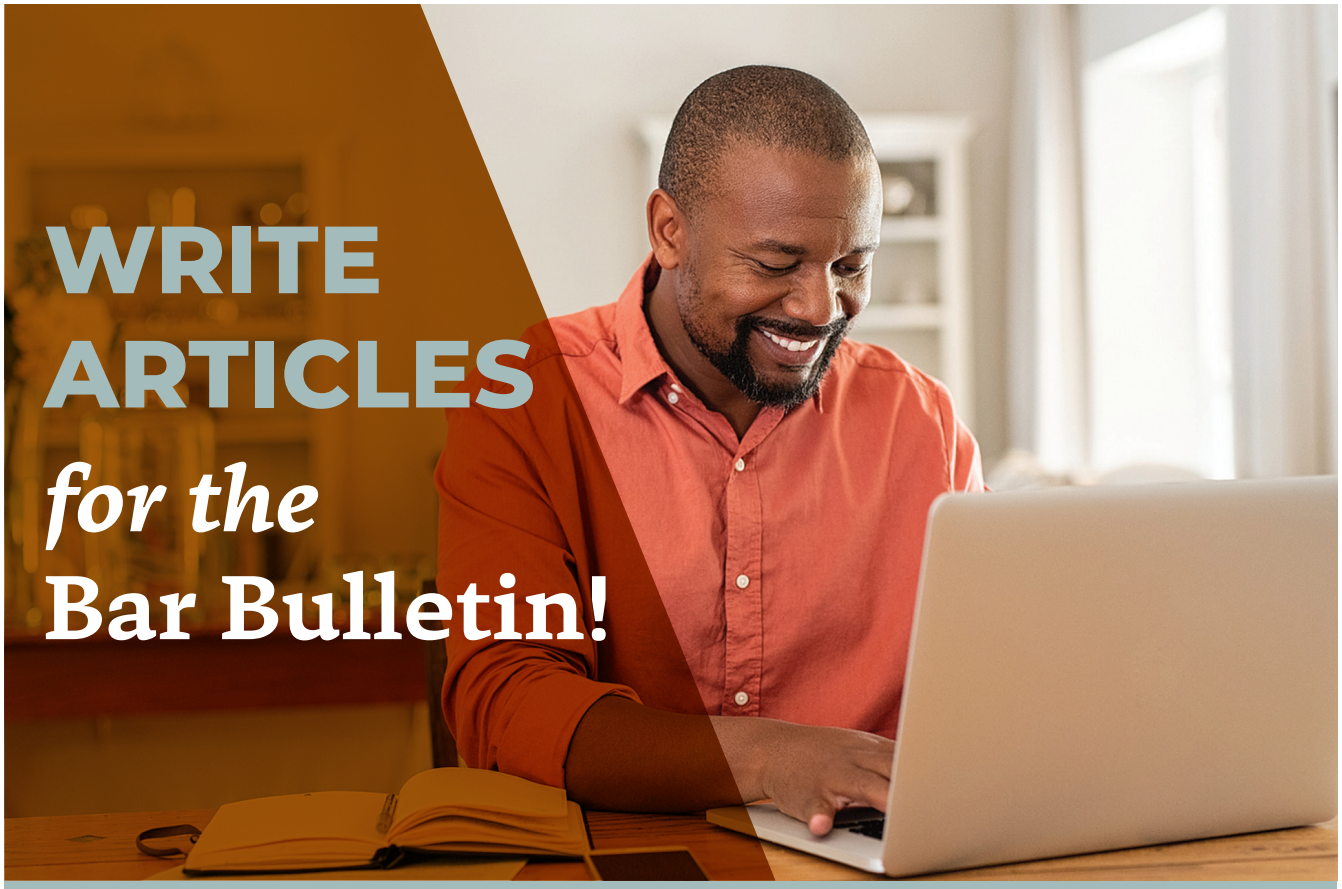
for Appellant

▶ Introduction of Opinion

Defendant Latoya Gutierrez was accused of forging five checks and was charged with twelve distinct crimes as a result: three counts of identity theft (Counts 1-3), five counts of forgery (Counts 4-8), one count of conspiracy to commit identity theft (Count 9), and three misdemeanor counts of fraud (Counts 10-12). At trial, Defendant was convicted of ten of the twelve counts, the State having withdrawn one identity-theft charge and one fraud charge. After one-year habitual enhancements were added to several of the charges, and with some of the sentences running concurrently, Defendant was sentenced to fifteen years, or three years for each forged check. Four of the five forgery charges related to checks were purportedly written by Mike Archibeque, the owner of Billy Johnston Auctioneers (Auctioneers). The State presented no direct evidence from Mr. Archibeque, or from any representative of Auctioneers, in support of these charges. Nor did the State present the forgery and counterfeit check affidavit that Mr. Archibeque apparently signed at his bank's behest. **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40525**



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Classified

Positions

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Attorney
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Associate Attorney
Mid- size downtown Defense litigation firm looking for associate with 3-5 years to do litigation including depositions and trials. Pay range varies with experience $70,000. To $120,000. Congenial and easy-going firm. Please contact Karen Arrants at Stiff, Garcia & Associates, karrants@stifflaw.com

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Full-Time Transactional Attorney
Blackgarden Law is looking for a full-time transactional Attorney with at least 2 years of meaningful experience in Business and Corporate Law. Corporate securities law is a requirement. This is an in-person or hybrid position. Visit our website at blackgardenlaw.com/careers for a full job description and application instructions.

Associate Attorney
Quiñones Law Firm LLC is a well-established defense firm in Santa Fe, NM in search of a full-time associate attorney with minimum 5 years of legal experience and willing to work minimum of 30 hours per week. Generous compensation and health benefits. Please send resume to quinoneslaw@cybermesa.com

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

Experienced Family Law Attorney
Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 35 states, is currently seeking an experienced family law attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

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. Managing Attorney: Multiple positions; Staff Attorney Positions: Multiple positions; Paralegal: Multiple positions. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - https://newmexicolegalaid.isolvedhire.com/jobs/

Contract Prosecutor

The Eleventh Judicial District Attorney's Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for a Contract Prosecutor to assist in the prosecution of criminal misdemeanor cases, felony cases and conflict of interest cases. The Contract Prosecutor position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; the ability to draft legal documents and to research/analyze information and situations and the ability to work effectively with other criminal justice agencies and Law Enforcement. This position is open to all attorneys who have knowledge in criminal law and who are in good standing with the New Mexico Bar. Limited License is okay. Salary will result in a contractual agreement between the contract prosecutor and the District Attorney. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us.

Public Defender

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Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. Hybrid in person/remote work schedule available. The Legal Department's attorneys provide a broad range of legal services to the City and represent it in legal proceedings in court and before state, federal and administrative bodies. Current open positions include: Employment/Labor: The City is seeking an attorney to represent it in litigation related to employment and labor law in New Mexico State and Federal Courts, before the City of Albuquerque Personnel Board, and before the City of Albuquerque Labor Board; Litigation Division: The City is seeking attorneys to join its in house Litigation Division, which defends claims brought against the City; Health, Housing and Homelessness and Youth and Family Services General Counsel: The City is seeking an attorney to serve as general counsel to the Department of Health, Housing and Homelessness and the Department of Youth and Family Services for contract review, and a broad range of general legal issues, including federal grant compliance, procurement, rulemaking and interpretation, and other duties as assigned; Aviation: The City is seeking an attorney who will focus on representation of the City's interests with respect to Aviation Department legal issues and regulatory compliance. The position will be responsible for interaction with Aviation Department administration, the Albuquerque Police Department, various other City departments, boards, commissions, and agencies, and various state and federal agencies, including the Federal Aviation Administration and the Transportation Security Administration; Municipal Affairs: The City is seeking an attorney to provide a broad range of general counsel legal services to the Mayor's Office, City Council, various City departments, boards, commissions, and agencies. The legal services provided by the division includes, but are not limited to, drafting legal opinions, reviewing and drafting ordinances and executive/administrative instructions, reviewing and drafting contracts, and providing general advice and counsel on day-to-day operations; Department of Municipal Development and General Services Department: The City is seeking an attorney to provide legal services to the City's Department of Municipal Development ("DMD") and General Services Department ("GSD") for contract review, and a broad range of general legal issues, including public works construction law and Capital Implementation projects, facilities, procurement, rulemaking, and interpretation, and other duties as assigned. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: experience with litigation, contract drafting and review, government agencies, government compliance, and policy writing. Salary based upon experience. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

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 are in good standing with the bar within or without the State of New Mexico. 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 open until filled.

Managing City Attorney

The City of Albuquerque Legal Department is hiring a Managing City Attorney for the Land Use and Enforcement division. This includes management, oversight and development of Assistant City Attorneys, paralegals, and staff. This role may require legal expertise in areas of municipal law such as: administrative and civil litigation; contract law; ordinance drafting; regulatory law; procurement; planning and zoning; code enforcement; nuisance abatement; general counsel work; and risk management. Attention to details, timelines, and strong writing skills are essential. Five (5)+ years' experience including at least one (1)+ year of management experience is preferred. An applicant must be an active member of the State Bar of New Mexico, in good standing. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

NM Interstate Stream Commission Attorney (Job ID# 145318)

NMISC Legal Bureau provides legal assistance to the NM Interstate Stream Commission, its Director and Managers on complex matters of water and environmental law involving interstate compact administration, complex transactional matters, analysis of rules, regulations and guidelines, interpretation of legal research and analysis for complex litigation matters. The primary purpose is to provide professional legal assistance on complex matters of water and environmental law. This includes assistance involving interstate compact administration, drafting real property agreements and other agreements involving real property, water, and environmental law. This position provides legal support and advice to Basin Managers, Attorney Supervisor and Director regarding interstate compact administration, property law, multi-party contracts and administrative proceedings. Must be licensed as an attorney, in good standing, by the Supreme Court of New Mexico, or qualified to apply for limited practice license. Position includes a competitive salary, with great benefits, and generous leave accruals. To view full job details, visit the following link: https://www.spo.state.nm.us/, Agency contact is Christopher Shaw at (505) 470-6377.

Children's Court Attorney for CYFD

The Children, Youth and Families Department (CYFD) is seeking attorneys of all levels of experience to fill multiple Children's Court Attorney vacancies in the Legal Department in the following offices: Albuquerque, Alamogordo, Clovis, Las Vegas, and Santa Fe. Children's Court Attorneys are established in the Children's Code for each judicial district in New Mexico and provide professional legal services in protective services cases (child abuse and neglect matters) including litigation, counsel, interpretation of law, research, analysis, and mediation. These positions offer the opportunity for challenging and fast-paced litigation, including civil evidentiary trials, and to work with CYFD to find solutions for children and their families and to make a difference in the community. Minimum qualifications: Juris Doctorate from an accredited law school, and admission to the New Mexico state bar and in good standing or the ability to acquire a limited law license. Children's Court Attorneys are part of the Attorney classification, pay band LH, with an annual salary range from $77,354 to $139,238 and a competitive full benefits package. For more information, please contact Dawn Walters (505) 526-5925. To apply for these positions, go to www.spo.state.nm.us. The State of New Mexico is an EOE.

Associate General Counsel

New Mexico State University (NMSU) seeks a highly efficient, organized and productive attorney to serve as Associate General Counsel. The selected candidate will report to the General Counsel and work with other university attorneys, outside counsel and university administrators. The successful candidate will be responsible for timely responding to public records disclosure requests (IPRA), subpoenas, and discovery requests. Additionally, the incumbent will work on state procurement and contracting matters, as well as intellectual property and other business transactions. Other matters may include employment, civil rights, public entity law, academic and student affairs, litigation support and other higher education issues. This position requires excellent writing skills, good business judgment, and the ability to work under limited supervision. NMSU is an equal opportunity and affirmative action employer. Select the link for complete job announcement and apply: http://careers.nmsu.edu/cw/en-us/job/500960. Requisition No. 500960

Full-Time Attorney

The Center for Biological Diversity's Climate Law Institute seeks a full-time attorney in New Mexico to address oil and gas production and pollution. This position is located in New Mexico, working remotely. The Climate Law Institute wages innovative legal and grassroots campaigns to protect people, wildlife and ecosystems from climate change and the fossil fuel industry. The New Mexico attorney will carry out regulatory and legal interventions to help New Mexico phase out oil and gas production as science demands. The successful candidate will work closely with a dynamic team of legal, science, organizing, and communications staff, as well as colleagues at allied organizations, and research and analyze potential legal and regulatory interventions on New Mexico oil and gas production. License to practice law in New Mexico and familiarity with New Mexico environmental and administrative law; candidates who wish to relocate to New Mexico and take the New Mexico bar will be considered; minimum five years legal experience. The Center for Biological Diversity deeply values, and is committed to sustaining and promoting, both biological and cultural diversity. We welcome, embrace and respect diversity of people, identities and cultures. For more information and to apply, please visit: https://www.biologicaldiversity.org/about/jobs/.

Deputy City Attorney

The City of Albuquerque Legal Department is seeking a Deputy City Attorney. This includes management, oversight and development of the Department's Managing Attorneys, Assistant City Attorneys, and staff. This person will track legal projects, timelines, deliverables, and project requirements, assist with Department operations, and provide support to the City Attorney. Outside of managerial duties, work includes but is not limited to: contract drafting, analysis, and negotiations; drafting ordinances; drafting regulatory law; assisting with Inspection of Public Records Act requests; procurement; providing general legal advice in matters regarding public finance, commercial transactions, real estate transactions, public works, and risk management; review of intergovernmental agreements; and civil litigation. Attention to detail and strong writing skills are essential. Seven (7)+ years of legal experience, including three (3)+ years of management experience is preferred. An applicant must be an active member of the State Bar of New Mexico, in good standing. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

General Counsel for NM Department of Finance and Administration

The General Counsel for DFA offers a rare and valuable opportunity to grow and deepen practice with fundamental governance structures in New Mexico, such as the state budget and appropriations, bond financing, capital outlay and infrastructure funding, financial control, local government oversight, and federal awards. Few other legal positions in the government provide such extensive practice that impacts and supports New Mexico's diverse communities. Specifically, the General Counsel will prepare a range of New Mexico and federal constitutional, statutory, and regulatory analyses, provide legal advice on complex matters, advise, and represent DFA before external stakeholders on complex and sensitive matters, and advise the Department on personnel and human resource matters, agency contracts, and the Inspection of Public Records Act (IPRA) inquiries, among others. DFA oversees and manages all state financial transactions, working closely with executive and legislative leadership to provide critical support to all state agencies, local government entities, tribal governments, and federal partners. The position enjoys a competitive benefits package. For more information or to submit a resume, email Henry.Valdez@dfa.nm.gov

Senior Staff Attorney

The Hartford currently has an in-house opportunity for a remote Senior Staff Attorney to litigate cases throughout New Mexico. This position is an ideal fit for an experienced Attorney with significant trial and litigation experience in Construction Defect, Premise Liability, Products Liability and Commercial and Personal Automobile accidents. The Senior Staff Attorney will strive to deliver the best possible result in pending litigation. In this position the attorney reports to the Staff Legal Managing Attorney. The ideal candidate is an experienced Attorney with considerable trial experience and demonstrates the ability to independently handle cases from inception through trial. RESPONSBILITIES: Handle complex and high exposure litigation. Analyze intricate substantive and procedural legal and factual issues, conduct extensive, well-reasoned legal research, independently develop and present defense strategies on behalf of clients. Prepare complex pleadings, written discovery, depositions, motions and briefs in support of defense strategies without supervision because of level of experience and expertise. Provide effective and timely communications, information, legal advice and other services to clients and claims customers on legal and factual issues in a technology driven environment. Communicate with the court, witnesses, opposing counsel and co-counsel in a manner consistent with established office procedures. Provide for the prompt, efficient and effective disposition of assigned cases. Independently prepare and present witnesses and evidence at trials, judicial and administrative hearings and alternative dispute resolutions. Research, draft, file and argue appellate briefs in reviewing courts on behalf of clients. Provide opinions to Managing Attorney, staff, clients and claims customers. QUALIFICATIONS: Juris Doctorate (JD) from accredited law school and license to practice in New Mexico state and local federal courts. Knowledge of courts with available transportation. Member in good standing of applicable New Mexico Bar Association. 5+ years of legal experience. Documented first chair jury trial/appellate expertise. Strong legal research and writing skills. Excellent organizational skills and ability to prioritize duties and time are a must. Strong communication, computer and technological skills and the ability to quickly leverage new software as required. Demonstrated expertise and familiarity in the handling of claim cases and litigation. NOTE* This position is a remote work position; the selected candidate will travel for appearances within New Mexico and its counties. If this is an opportunity that you are interested in please reach out to Alec Strohmaier at Alexander.Strohmaier@TheHartford.com. You can also submit an application utilizing the link below: https://thehartford.wd5.myworkdayjobs.com/Careers_External/job/Albuquerque-NM/Sr-Staff-Attorney_R2416077

Family Legal Assistance Attorney

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney to provide legal advice and representation to Laguna members on broad range of civil matters, including consumer, probate, benefits, and family issues. Leisurely commute from Albuquerque metro, Los Lunas, or Grants with some WFH currently available. Apply now, will fill quickly. Application instructions and position details at: https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/

Litigation Attorney

Tired of billable hours? The Law Offices of Erika E. Anderson is looking for an attorney with a minimum of 3-5 years of experience. The law firm is a very busy and fast-paced AV rated firm that specializes in civil litigation on behalf of Plaintiffs. We also do Estate Planning and Probate litigation. The candidate must be highly motivated and well organized, pay close attention to detail, be willing to take on multiple responsibilities, and be highly skilled when it comes to both legal research and writing. This is a wonderful opportunity to join an incredible team that works hard and is rewarded for hard work! The position offers a great working environment, competitive salary and a generous benefits package. If interested, please send a resume to accounting@eandersonlaw.com.

Full Time Admin Assistant/Legal

The UNM Office of University Counsel is currently accepting applications for a legal administrative assistant to support it Main Campus office. To apply, please submit a cover letter, resume, and application via UNM jobs at https://unmjobs.unm.edu, req29668. Please apply as soon as possible.

Experienced Legal Assistant

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks experienced 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

Seeking Part-Time Paralegal/Legal Writer

Rio Rancho Attorney seeks motivated senior with experience, common sense, and thick skin. Please contact Daniel at (505) 247-1110.

Legal Assistant Position

The Office of University General Counsel, New Mexico State University, invites qualified candidates to apply for an open legal assistant position. The successful applicant will independently respond to all forms of information requests (IPRA, discovery, subpoenas) with limited attorney supervision. Knowledge of IPRA, FERPA, HIPAA, and evidentiary rules is necessary to perform the duties of the position. Additional legal administrative duties are detailed on the NMSU webpage address provided below. Past experience in higher education and responding to IPRA and discovery requests is preferred. NMSU is an Equal Opportunity and Affirmative Action employer. Applications must be submitted electronically at:https://careers.nmsu.edu/cw/en-us/job/500924. Requisition No. 500924

Paralegal

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

Part-time Legal Assistant/Paralegal

Quinones Law Firm LLC is a well-established defense firm in Santa Fe, NM in search of a part-time legal assistant/paralegal with minimum 5 years of Legal Assistant/Paralegal experience. Please send resume to quinoneslaw@cybermesa.com

Full Time Paralegal

The UNM Office of University Counsel is currently accepting applications for a Paralegal to support it Health Science Center/Hospital. To apply, please submit a cover letter, resume, and application via UNM jobs at https://unmjobs.unm.edu, req29085. Please apply as soon as possible.

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.

Services

Contract Paralegal
27 years civil litigation experience offering top quality full-service litigation support. Specializing in legal writing and medical records analysis and chronology. Reliable and exceptional work product. You will not be disappointed. Well-versed in legal and medical terminology. Send inquiries to ppslegalpro@gmail.com.

Miscellaneous

Search for Will
Will of John F. Murphy: If you possess or have information concerning a will for John F. Murphy formerly of Santa Fe New Mexico. Please contact Lauren Wilber of Jennings, Haug, Keleher McLeod Waterfall LLP 505-346-4646.

Office Space

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

All-Inclusive North Valley Office Suites Available
Locally owned and operated. Move-in ready suites (155 sq ft & 350 sq-ft) ideal for a solo attorney. Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Visit our website www.sunvalleyabq.com for more details or call Jaclyn Armijo at 505-343-2016.

2024 *Bar Bulletin* Publishing and Submission Schedule

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

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

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

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

The State Bar of New Mexico's Annual Meeting looks a little **different** this year.

be inspired.

Save the Date!

October 25, 2024

Attend In-Person at the State Bar Center in Albuquerque or Virtually

Earn all 12 of your CLE credits for the year at a discounted rate!

Earn a portion of your CLE credits by attending the live (in-person or virtual) Annual Meeting event and complete the remaining credits with access to our CLE On-Demand courses. More information coming soon!

Reach thousands of members of the New Mexico legal community!
Annual Meeting sponsorships are available!

Contact Marcia Ulibarri at 505-797-6058 or marketing@sbnm.org for more information.

www.sbnm.org/AnnualMeeting2024

You're Invited!

New Mexico State Bar Foundation

GOLF Classic

Golf Registration Is NOW OPEN!

SEPTEMBER 30, 2024
Tee Time: 9 a.m. (MT)

Tanoan Country Club
10801 Academy Rd NE
Albuquerque, N.M. 87111

- Tournament Players: $175/player or $650/foursome

Register to play at: https://form.jotform.com/sbnm/GolfClassic

Golf registration closes on September 16.

All proceeds benefit the New Mexico State Bar Foundation.

New Mexico State Bar Foundation Golf Classic

Sponsorship opportunities for the New Mexico State Bar Foundation Golf Classic are available!
Please contact Marcia Ulibarri at 505-797-6058 or marcia.ulibarri@sbnm.org for sponsorship information.

Please contact Susan Simons at 505-288-2348 or susan.simons@sbnm.org with any additional questions about the event.

New Mexico State Bar Foundation