

Official Publication of the State Bar of New Mexico

DIGITAL **BAR BULLETIN**

May 28, 2025 • Volume 64, No. 10



Uncontrolled Burn, by Angela Berkson (see page 4)

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STATE BAR OF NEW MEXICO 2025 Annual Meeting

July 31 – August 2
Sandia Resort & Casino
Albuquerque, New Mexico

Together
Towards
JUSTICE

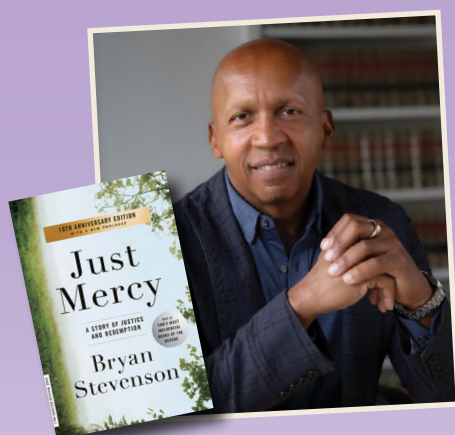
Registration is NOW OPEN!

Choose the option that works best for your schedule:

All 3 Days
In-Person: \$650
(12 CLE Credits)

Friday Sessions Only
In-Person: \$475
Virtual: \$275
(5.5 CLE Credits)

**Bryan Stevenson's
Keynote Presentation**
In-Person Only: \$30
(Audit Only - No CLE Credit)



Featuring Keynote Speaker **Bryan Stevenson!**

BRYAN STEVENSON is a widely acclaimed public interest lawyer who has dedicated his career to helping the poor, the incarcerated and the condemned. Bryan Stevenson is the founder and Executive Director of the Equal Justice Initiative and author of the New York Times bestseller, *Just Mercy*.

www.sbnm.org/AnnualMeeting2025



State Bar *of*
New Mexico
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Daily Conference Highlights

View the full agenda at

www.sbnm.org/AnnualMeeting2025Agenda

Thursday, July 31

- Welcome
State Bar of New Mexico President Aja N. Brooks
- Justice by Design: Artificial Intelligence, Law and the Future of Us
Professor Sonia M. Gipson Rankin, UNM School of Law
- Breakout Sessions
- The Commander in Chief at High-Tide, Wherever that Line May Be
Professor Joshua Kastenber, UNM School of Law
- Welcome Reception
- Annual Awards Ceremony
- Movie Night – *Just Mercy*

Friday, August 1

- Keynote Address
Bryan Stevenson, Executive Director, Equal Justice Initiative
- New Mexico Supreme Court Judicial Panel
- Breakout Session options for in-person attendees
- Breakout Session for virtual attendees - A System-Wide Approach: Behavioral Health, the Courts and Legal Practice Implications
Justice Brianna H. Zamora, New Mexico Supreme Court
- Law, Justice, and the Holocaust: How the Courts Failed Germany
US Holocaust Memorial Museum educators Kendal Jones and Sarah Reza, and N.M. attorney Roberta Cooper Ramo
- President's Reception
- Hospitality Lounge
- Trivia Contest with the Young Lawyers Division

Saturday, August 2

- Breakout Sessions
- Navigating the New Frontier: Ethical Uses of Generative Artificial Intelligence in Legal Practice
Professor Sonia M. Gipson Rankin, UNM School of Law and William D. Slease, State Bar of New Mexico
- Closing Remarks
State Bar of New Mexico President Aja N. Brooks

Book Your Hotel Room

At The Special *Discounted Rate* of Only \$229/night!

Book your hotel room at the exciting Sandia Resort & Casino by July 14 to receive the reduced Annual Meeting rate:

<https://bit.ly/2025-Annual-Meeting-Hotel-Room-Reservation>

Or Call 877-272-9199 • 505-798-3930

Booking ID #12031

*Exclusive
Amenity
Discounts!*



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at the relaxing
Green Reed Spa



15% Off
a round of golf at
the award-winning
Sandia Golf Club

Sponsor and Exhibitor Opportunities are **NOW AVAILABLE!**

Please help support the Annual Meeting and promote your firm or business to the New Mexico legal community through your sponsorship!



- Contact State Bar of New Mexico sales representative Tom Ende at marketing@sbnm.org or 651-288-3422 for more information.

www.sbnm.org/AnnualMeeting2025



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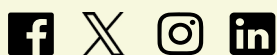
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The Bar Bulletin (ISSN 1062-6611) is distributed digitally twice a month by the State Bar of New Mexico, 5121 Masthead St. NE, Albuquerque, NM 87109-4367, including the second and fourth weeks of the month.

505-797-6000 • 800-876-6227
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www.sbnm.org



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www.sbnm.org/StateBarCenter

For more information, site visits and
reservations, contact Guest Services at
505-797-6070 or roomrental@sbnm.org

About Cover Image and Artist: Angela Berkson is an Albuquerque based artist who works in acrylic and encaustic (beeswax-based) media to create a variety of abstract, colorful paintings. Berkson studied art in Los Angeles, New York and Texas, but maintains her professional art practice in Albuquerque. She also works part-time as a paralegal. Berkson's work can be found in the Clerk's office at the Bernalillo County offices, outside of the Kiva Auditorium at the Convention Center and at Exhibit/208 Gallery at 208 Broadway SE in Albuquerque.

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_date.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>.

First Judicial District Mass Reassignment of Cases

Effective June 2, a mass reassignment of all active cases previously assigned to Judge Mary Marlowe Sommer and Division VIII will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule and LR1-102, Locations of Principal Offices. The Hon. Jason Lidyard, Division V has been reassigned to Santa Fe County of the First Judicial District and will maintain a Criminal Docket. Parties who have not previously exercised their right to challenge or excuse will have ten (10) days from May 28 to challenge or excuse Judge Jason Lidyard pursuant to Rule 1-088.1.

First Judicial District Court Judicial Nominating Commission Announcement of Vacancy

A vacancy on the First Judicial District Court will exist as of June 1 due to the retirement of the Hon. Mary Marlowe Sommer effective May 31. The First Judicial District Court Judicial Nominating Commission will meet on May 13 to interview applicants for the First Judicial District Court located at 225 Montezuma Ave., Santa Fe, N.M.

Professionalism Tip

With respect to the courts and other tribunals:

I will refrain from filing frivolous motions.

Second Judicial District Court Notice of Reassignment of Cases

Pursuant to Rule 5-106, NMRA, the Second Judicial District Clerk of Court hereby serves notice that, effective March 15, Division II cases have been assigned to the Hon. Matthew Chavez. Individual notices of judge reassignment will be sent to attorneys in active cases. A list of inactive case reassignments will be emailed to the Law Offices of the Public Defender, the District Attorney's Office, the Attorney General's Office and the private defense bar, in lieu of individual notices of reassignment. An email notification regarding the reassignment of probation violation cases will be sent to the Law Offices of the Public Defender, the District Attorney's Office, the Attorney General's Office and the private defense bar.

Twelfth Judicial District Court Notice of Reassignment of Cases

Pursuant to NMSC 23-109, a mass reassignment of all cases previously assigned to the Twelfth Judicial District Court, Division II, Judge Ellen Jessen, have been automatically reassigned to Judge Lori Gibson Willard effective May 12. Pursuant to Rules 1-088.1 and Rule 5-106, NMRA, any party who wishes to exercise their right to excuse Judge Gibson Willard must do so within ten (10) days from June 11.

U.S. District Court, District of New Mexico Notice of Investiture of United States District Judge Sarah M. Davenport

All members of the Federal Bench and Bar are invited to the Investiture of the Hon. Sarah M. Davenport at 3:30 p.m. (MT) on May 30 in the Sierra Blanca Courtroom at the United States Courthouse in Las Cruces, N.M. at 100 N. Church St. on the third floor. A reception hosted by the Federal Bench

and Bar of the United States District Court for the District of New Mexico will follow from 5:30 to 7:30 p.m. (MT) at Red Hawk Golf Club at 7502 Red Hawk Golf Rd., Las Cruces, N.M. 88012. To RSVP, visit rsvp.nmcourt.uscourts.gov/Davenport.

Bernalillo County Metropolitan Court Notice of Investiture of the Hon. Andrea I. Gunderson and the Hon. Ramon J. Maestas

Members of the legal community and the public are invited to attend the Investiture of the Hon. Andrea I. Gunderson, Division XIX, and the Hon. Ramon J. Maestas, Division V. The ceremony will be held at 3 p.m. (MT) on June 6 in the Bernalillo County Metropolitan Court Rotunda. Participating justices and judges are asked to please bring their robe and report to the Viewing Room by 2:30 p.m. (MT).

STATE BAR NEWS State Bar of New Mexico 2025 Annual Meeting- Early Bird Registration Extended Through May 30

Early Bird discounted registration for the State Bar of New Mexico's 2025 Annual Meeting has been extended! Register by May 30 for the Early Bird discounted rate of attending all three days of the conference (12 CLE credits) for only \$575! General registration pricing starts on May 31. Can't attend all three days? Register to attend Friday sessions only in-person or virtually (5.5 CLE credits) or to attend Bryan Stevenson's keynote presentation only (audit only - no CLE credit). Register to attend at www.sbnm.org/AnnualMeeting2025.

The Supreme Court of New Mexico Announces Out-of-Cycle Rule Amendments

In accordance with Rule 23-106.1 NMRA, the Supreme Court has approved out-of-cycle rule amendments. What follows is a summary of amendments that the Court approved on May 20, 2025. The amendments are effective June 1, 2025. The full text of the amendments in markup format and the related order are available on the Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/approved-amendments-to-rules-and-forms/2025-approved-amendments-to-rules-and-forms/>. The approved rule amendments will also be available on NMOneSource.com by their effective date.

Board of Bar Examiners

Former Federal Employee Limited Licensure – New Rule 15-310 NMRA;
Amended Rule 15-303 NMRA

On recommendation of the Board of Bar Examiners, the Supreme Court has adopted a new rule that allows a current or former federal employee-attorney to apply for a limited license to practice law in New Mexico. The Court also approved amendments to Rule 15-303 NMRA that permit an attorney holding a limited license under Rule 15-310 to qualify for a reciprocal license, amongst other qualifications.

THE RULE AMENDMENTS SUMMARIZED ABOVE
CAN BE VIEWED IN THEIR ENTIRETY AT THE
NEW MEXICO SUPREME COURT WEBSITE

<https://supremecourt.nmcourts.gov/rules-forms-files/approved-amendments-to-rules-and-forms/2025-approved-amendments-to-rules-and-forms/>

2025 State Bar of New Mexico Annual Awards Call for Nominations–Submissions Due May 30!

Nominations are being accepted for the 2025 Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. The awards will be presented at the 2025 Annual Meeting on Thurs., July 31, at Sandia Resort & Casino in Albuquerque, N.M. For additional information and to submit a nomination through Jotform, please visit <https://bit.ly/SBNM-AnnualAwards>. **The deadline for submissions is May 30.**

Committee on Diversity in the Legal Profession Call For Volunteers for the Bar Exam Coaching Program

The State Bar of New Mexico's Committee on Diversity in the Legal Profession is proud to offer an inclusive coaching program for applicants from all diverse backgrounds taking the New Mexico Bar Exam. The program is designed to match an applicant with a committed attorney volunteer who will serve as a resource for the applicant. Coaches and applicants will communicate in person, via phone, e-mail and/or virtual meeting during the applicant's bar preparation. Attorney volunteers will not be expected to teach applicants substantive law. To volunteer or to learn more, contact State Bar of New Mexico Equity in Justice Attorney Abby Lewis at abby.lewis@sbnm.org.

Featured Member Benefit



The
Solutions
Group

The Solutions Group partners with the New Mexico Lawyer Assistance Program to offer comprehensive, state-wide Employee Assistance Program (EAP) services to members of the New Mexico legal community and their immediate family members.

Services include up to four complimentary counseling sessions per issue per year, addressing any mental or behavioral health, addiction, relationship conflict, anxiety and/or depression issue. These sessions are conducted by licensed professional therapists. Additional no-cost services encompass management consultation, stress management education, critical incident stress debriefing, video counseling, and a 24/7 call center. Providers are available statewide.

**•To access this service call
505-254-3555 and identify with
NMLAP. All calls are confidential.**

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues and to know you are not in this alone. Join the meeting via Zoom at <https://bit.ly/attorneysupportgroup>.

UNM SCHOOL OF LAW Invitation to the Alumni/ae Association Law Scholarship Golf Classic

Join the UNM School of Law for the Alumni/ae Association Law Scholarship Golf Classic presented by Nusenda Credit Union on June 6 at the UNM Championship Golf Course! This tournament raises funds for law student scholarships. To register for the tournament, email lynn.taylor@law.unm.edu or register online at <https://bit.ly/UNM-School-of-Law-Golf-Classic>.

Law Library Hours

The Law Library is happy to assist attorneys via chat, email, or in person by appointment from 8 a.m. to 6 p.m. (MT) Monday through Friday. 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.



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Benefits of Section Membership include:

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- Public service opportunities
- Networking
- Leadership experience

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 **State Bar of
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STATE BAR OF NEW MEXICO

2025

Annual Awards

Call for Nominations

Nominations are being accepted for the **2025 State Bar of New Mexico Annual Awards** to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. The awards will be presented at the **2025 Annual Meeting on Thurs., July 31**, at Sandia Resort & Casino in Albuquerque, NM. All awards are limited to one recipient, whether living or deceased, with the exception of the Justice Pamela B. Minzner Professionalism Award, which can have two recipients—an attorney and a judge. Nominees may be nominated for more than one award category. Previous recipients for the past three years are listed below.

To view last year's recipients and the full list of previous recipients, visit:

www.sbnm.org/AnnualAwards



Distinguished Bar Service Award – Nonlawyer

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time. Nomination should include specific examples of service/contributions; specify in what ways they affected the legal profession; and the period of time.

Previous recipients: *Katina Watson, Mary Galves, Juan Abeyta*



Excellence in Well-Being Award

Many individuals have made significant contributions to the improvement of legal professional well-being including destigmatizing mental health, strengthening resiliency, and creating a synergic approach to work and life. This award was created to recognize an individual or organization that has made an outstanding positive contribution to the New Mexico legal community's well-being. As the State Bar of New Mexico is committed to improving the health and wellness of New Mexico's legal community, we strongly encourage self-nominations and peer nominations for any lawyer, judge or nonlawyer working in some capacity with the N.M. legal community. Nomination should include examples of significant contributions to the legal profession, and outstanding positive contribution to the legal community's well-being.

Previous recipients (created in 2022): *Briggs F. Cheney, Joy Applewhite, Pamela Moore*



Judge Sarah M. Singleton* Distinguished Service Award

Recognizes attorneys who have provided valuable service and contributions to the legal profession, the State Bar of New Mexico and the public over a significant period of time. Nomination should include examples of service and contributions to the legal profession; service and contributions to the State Bar; service and contributions to the public; and the period of time.

Previous recipients: *George David Giddens, Jr., David Stout, Michael P. Fricke*

**This award was renamed in 2019 in memory of Judge Singleton (1949-2019) for her tireless commitment to access to justice and the provision of civil legal services to low-income New Mexicans. She also had a distinguished legal career for over four decades as an attorney and judge.*



Justice Pamela B. Minzner* Professionalism Award

Recognizes attorneys and/or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism. Nomination should describe the long and distinguished legal career, and provide examples of how they have exemplified ethical and personal conduct that is the epitome of professionalism for their fellow attorneys.

Previous recipients: *M. Mitchell Moss, Justice Edward L. Chavez, Judge James J. Wechsler, Quentin P. Ray*

**Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994 to 2007.*



Justice Pamela B. Minzner Outstanding Women's Advocacy Award



Recognizes attorneys who have provided legal assistance to women who are unrepresented or underserved, or advocated for causes that will benefit and/or further the rights of women within the previous calendar year. This award is not a lifetime achievement award; it is for an attorney who is currently doing the work and pushing the status of women forward. Nomination should describe the legal assistance provided to women who are unrepresented or underserved, and provide examples of how they have advocated for causes that will benefit and/or further the rights of women.



Outstanding Legal Organization or Program Award

Recognizes outstanding, extraordinary law-related organizations or programs that serve the legal profession and the public. Nomination should include examples of how the law-related organization or program is outstanding or extraordinary, and how it serves the legal profession and the public.

Previous recipients: *American Indian Law Center PLSI Judicial Clerkship Committee, Judicial Branch IT Staff, Pueblo of Pojoaque Path to Wellness Court, Intellectual Property Law Section Pro Bono Fair*



Outstanding Young Lawyer of the Year Award

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have been admitted to the practice of law in any state for ten (10) years or less. Nomination should include examples of how they have exemplified the epitome of professionalism; how they demonstrated a commitment to clients' causes; list their public service; and provide examples of how they enhanced the image of the legal profession in the eyes of the public.

Previous recipients: Cameron S. Bush, Shasta N. Inman, Lauren E. Riley



Robert H. LaFollette* Pro Bono Award

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney. Nomination should include examples of exemplary contribution of time and effort, without compensation, to provide legal assistance, and for what period of time.

Previous recipients: Ronald T. Taylor, Ella Joan Fenoglio, Darlene T. Gomez

**Robert LaFollette (1900–1977), Director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.*



Seth D. Montgomery* Distinguished Judicial Service Award

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and the bar; generally given to judges who have retired or soon will be retiring. Nomination should provide examples of how they have distinguished themselves; describe their long and exemplary service on the bench; provide examples of how they advanced the administration of justice; and provide examples of how they have improved the relations between the bench and the bar.

Previous recipients: Judge Robert H. Scott, Judge Lorenzo F. Garcia, Judge Henry A. Alaniz

**Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989 to 1994 decades as an attorney and judge*

Nominations should be submitted through the following link:

<https://form.jotform.com/sbnm/2025sbnmawards>

Additional information or letters may be uploaded with the form and submitted with the nomination. Please include all relevant information and elaborate on all responses to assist the Awards Committee in selecting the recipients. Ensure that your nomination includes reasons for the nomination and addresses all of the criteria.

Deadline for Nominations: Friday, May 30, 5 p.m. (MT)

For more information or questions, please contact Kris Becker at kris.becker@sbnm.org or 505-797-6038.



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You're Invited!

New Mexico
State Bar Foundation

GOLF
Classic

Save the Date!

SEPTEMBER 29, 2025
SANDIA GOLF CLUB
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ALBUQUERQUE, N.M. 87113

► **More information and registration coming soon!**

You don't need to be an attorney to play!

All proceeds benefit the New Mexico State Bar Foundation.



**New Mexico
State Bar Foundation**

Legal Education Calendar

May

- | | |
|---|--|
| <p>29 Killers of the Flower Moon: The Osage Murders and How Attorneys Can Combat Bias
1.0 EIJ
Webinar
NMSBF Center for Legal Education
bit.ly/CLE-KillersoftheFlowerMoon-5292025</p> | <p>30 Cross Discipline: Building Cross-Examination Skills with Practical Improv Techniques
1.5 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-CrossDiscipline-05302025</p> |
|---|--|

June

- | | | |
|---|--|---|
| <p>3 June Hearing Panels
4.0 G
Live Program
NM Medical Review Commission
www.nmms.org</p> | <p>11 Take Ethical Security Precautions with Email: When and How to Encrypt
1.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-TakeEthicalSecurityPrecautionswithEmail</p> | <p>16 2025 Fundamentals of Federal Capital Defense
16.0 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov</p> |
| <p>5 Anthony G. Amsterdam Capital Post-Conviction Skills Workshop
23.0 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov</p> | <p>11 Strategies for Countering Wage Loss Claims and Work Life Expectancy in Personal Injury
1.0 G
Web Cast (Live Credits)
New Mexico Defense Lawyers Association
www.nmdla.org</p> | <p>17 Cross By Camera: How to Become a Master of REMOTE Cross-Examination
2.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-CrossByCamera</p> |
| <p>6 First District Court Family Law Mediation Workshop
3.0 G
Live Program
First Judicial District Court
firstdistrict.nmcourts.gov</p> | <p>12 Immigration Hot Topics and Ethical Considerations Under A New Executive Administration
1.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-ImmigrationHotTopics</p> | <p>24 2025 Virtual Power Act
1.0 EIJ
Web Cast (Live Credits)
United States District Court, District of New Mexico
www.nmd.uscourts.gov</p> |
| <p>10 Defeating Imposter Syndrome for Lawyers
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-DefeatingImposterSyndromeForLawyers</p> | <p>13 Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation
1.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-BadReviewBadResponseBadIdea</p> | <p>25 WEBINAR: Strategies for Defending § 1325 Cases
1.0 G
Web Cast (Live Credits)
Administrative Office of the US Courts
www.uscourts.gov</p> |
| <p>11 AI for Transactional Lawyers: Ethics and Efficiency in Your Legal Practice
2.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-AIforTransactionalLawyers</p> | | <p>25 Thurgood Marshall's Coming!
2.8 EIJ
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-Thurgood-Marshall</p> |

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@sbnm.org. Include course title, credits, location/course type, course provider and registration instructions. For a full list of MCLE-approved courses, visit <https://www.sbnm.org/Search-For-Courses>.

From the Disciplinary Board of the New Mexico Supreme Court

Disciplinary No. 2024-05-4575

**IN THE MATTER OF
Adam D. Oakey, Esq.**

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

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

You have agreed that the facts, as pleaded in the Specification of Charges, demonstrate violations of the following Rules of Professional Conduct:

- 16-101, by failing to provide competent representation to a client;
- 16-104(A) and (B), by failing to communicate with a client;
- 16-301, by filing a frivolous motion;
- 16-404(A), by using means that had no substantial purpose other than to embarrass, delay or burden a third person;
- 16-501 (A)-(C), by failing to adequately supervise;
- 16-801(A), by knowingly making a false statement of material fact in connection with a disciplinary matter;
- 16-804(C), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and
- 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

In 2024 you received several disciplinary complaints. One of the complaints involved a probate matter in which you were counsel of record. You filed a pleading in 2023 putting forth an argument that

had no basis in law and fact. At the time the pleading was filed, your knowledge of probate law was limited and you had never completed a probate CLE. Additionally, an attorney newly employed by your firm and under your supervision was assigned to the case. This subordinate attorney also had limited knowledge of probate law, had never completed a probate CLE, and his employment at your firm was his first legal job since being admitted to practice law in 2022. That subordinate attorney was hired to be the probate and family law attorney for your firm and he was hired with the understanding that he would be trained by your firm in probate and family law as he had no legal experience at the time.

Following a hearing, the Hon. Nancy J. Franchini found the pleading to be in violation of Rule 1-011, NMRA. Audio from the hearing established that Judge Franchini found both you and your subordinate attorney to be in violation of Rule 1-011 and she strongly recommended that opposing counsel file a disciplinary complaint against both you and your subordinate.

The next complaint involved a domestic relations matter in which you were counsel of record for JG who alleged that you approved a proposed order sent by opposing counsel without first sending JG the order, discussing it with her, or otherwise obtaining her informed consent to approve the proposed order. Your response

to the complaint failed to adequately demonstrate that you had communication with your client regarding the proposed order prior to providing approval to opposing counsel.

In the final complaint, Captain JW ("JW") of the New Mexico State Police alleged that you engaged in inappropriate and offensive behavior during telephone communications he had with you in 2023 regarding setting up an interview with your client. In recordings of the telephone communications provided by JW, you are heard making unprovoked comments to JW that were unprofessional, belligerent, and insulting.

In your response to the complaint, dated and received on April 30, 2024, you alleged, without proof, that it was JW who engaged in inappropriate, threatening, and harassing behavior. Your response also made conflicting statements that on the one hand the telephone communications with JW were not work related, but on the other they involved advocacy for both your and your client's rights. In an additional response from you, also dated and received on April 30, 2024, you acknowledged your "tone and wording was not the best choice for this discourse," that you "will definitely be more cognizant in the future," and that you would apologize to JW.

You ultimately cooperated with disciplinary counsel in this matter, you have

Formal Reprimand

► From the Disciplinary Board of the New Mexico Supreme Court

<https://nmdisboard.org>

acknowledged that your conduct was inappropriate and unprofessional, you have made a timely and good faith effort to make restitution and rectify the consequences of your misconduct, you have made changes to your law office management, and you have demonstrated remorse; these are all mitigating factors. While mitigating factors in your practice were considered, you are reminded that as an attorney your law license requires that, despite whatever challenging circumstances might be present, you must comport

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

17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

Dated: April 18, 2025

The Disciplinary Board of the New Mexico Supreme Court

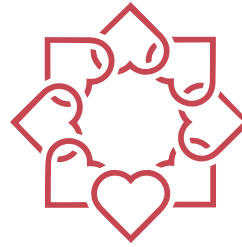
By

David J. Stout, Esq.
Disciplinary Board Chair

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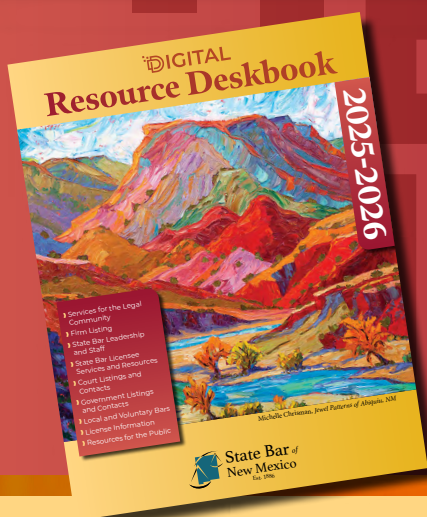
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State Bar *of*
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Disciplinary Quarterly Report

► Report By Disciplinary Counsel

<https://nmdisboard.org>

Reporting Period: January 1, 2025 – March 31, 2025

Final Decisions

Final Decisions of the NM Supreme Court 3

In the Matter of Alejandro R. Hernandez a/ki/a Alex R. Hernandez, (No. S-1-SC-40689). The New Mexico Supreme Court entered an order on the petition for reciprocal discipline disbarring the Respondent pursuant to Rule 17-206(A) and 17-210(B), (F) NMRA, effective January 9, 2025.

In the Matter of Thomas Clear III, (No. S-1-SC-40766). The New Mexico Supreme Court entered an order permanently disbarring the Respondent from the practice of law pursuant to Rule 17-206(A)(1) NMRA, effective March 11, 2025.

In the Matter of Rudolph B. Chavez, (No. S-1-SC-40808). The New Mexico Supreme Court entered an order suspending the Respondent until further order of the Court.

Summary Suspensions

Total number of attorneys summarily suspended 1
Total number of attorneys summarily suspended (reciprocal) 0

Administrative Suspensions

Total number of attorneys administratively suspended 0

Disability Inactive Status

Total number of attorneys removed from disability inactive states 0

Charges Filed

Total number of charges filed 0

Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law 1

Reciprocal Discipline

Total number of reciprocal discipline filed 0

Reinstatement from Probation

Petitions for reinstatement filed 0

Public Censure

Public Censure 0

Formal Reprimands

Total number of attorneys formally reprimanded 3

Informal Admonitions

Total number of attorneys admonished 0

Letters of Caution

Total number of attorneys cautioned 6

Attorneys were cautioned for the following conduct: (3) lack of competence, (2) conduct prejudicial to the administration of justice, (2) other.

Complaints Received

<i>Allegations</i>	<i>No. of Complaints</i>
Lack of Competence	49
Failure to Follow client Decisions	0
Lack of Diligence.....	7
Failure to Communicate.....	6
Excessive or Improper Fees.....	3
Breach of Client Confidentiality	0
Conflict of Interest	2
Specifically Prohibited Conflicts	4
Trust Account Violations	0
Improper Withdrawal.....	2
Discrimination	0
Meritless claims or defenses.....	1
Lack of Candor to Tribunal	0
Lack of Fairness to Opposing Counsel.....	11
Ex Parte Contact with Court	0
Disruption of Tribunal	1
Improper trial Publicity.....	0
Lawyer Acting as Witness	2
Prosecutorial Misconduct	6
Dishonesty, fraud, Misrepresentation.....	17
Ex Parte contact.....	0
Improper conduct with unrepresented Party.....	1
Improper means	2
Improper Supervision.....	0
Improper Fee Splitting.....	0
Advertising Violations.....	3
False statement to DBoard or BBE.....	0
Improper statements about Judge's Integrity.....	3
Criminal Conduct.....	0
Engaged in conduct Prejudicial to Admin of Justice.....	1
Other.....	6
Total number of complaints received	175

*Denotes total number of complaints received through 3/31/2025. May differ from the total number reflected in allegations due to reporting timing.



Equity in Justice Book Club



State Bar of New Mexico 2025 Annual Meeting Keynote Speaker Bryan Stevenson's *Just Mercy*

Aja N. Brooks, President, State Bar of New Mexico

Abby Lewis, Equity in Justice Attorney, State Bar of New Mexico

Torri Jacobus, Director of Statewide Equity, Inclusion, and Justice for the Administrative Office of the Courts

Join us as we read “*Just Mercy*,” the powerful memoir that explores the injustices of the American criminal justice system by State Bar of New Mexico’s 2025 Annual Meeting keynote speaker Bryan Stevenson. This award-winning book illustrates the impact of wrongful convictions, inadequate legal defense and harsh sentencing, emphasizing the need for compassion and reform. Ultimately, it calls for a more just system that values mercy and human dignity for all individuals. Book club participants will work together to identify tools to ensure that justice is available to all.

We will meet virtually on the dates below from noon to 1 p.m. (MT).

- Wednesday, May 28 Prologue, Introduction, and Chapters 1-3
- Wednesday, June 18 Chapters 4-8
- Wednesday, June 25 Chapters 9-10
- Wednesday, July 9 Chapters 11-13
- Wednesday, July 23 Chapters 14-16 and Epilogue



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All in the legal profession are welcome!

Can't make all of them? That's okay! Come to whichever dates you can!

- Sign-up: <https://form.jotform.com/250713612369052>
- Study guide: <https://bit.ly/Just-Mercy-Discussion-Guide>



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► From the New Mexico Supreme Court

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-007

No: S-1-SC-39473 (filed November 18, 2024)

STATE OF NEW MEXICO and DWAYNE SANTISTEVAN, Warden,
Plaintiffs-Appellants,
v.
DONOVAN HOUIDOBRE,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Michael H. Stone, District Judge

Raúl Torrez, Attorney General
Erica Schiff,
Assistant Attorney General
Santa Fe, NM

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

for Appellants

for Appellee

OPINION

THOMSON, Chief Justice.

{1} We are asked once again to examine the extent to which the Earned Meritorious Deductions Act (EMDA) creates a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. NMSA 1978, § 33-2-34 (2015); see *Miller v. Tafoya*, 2003-NMSC-025, ¶¶ 12, 23, 134 N.M. 335, 76 P.3d 1092. In this case, we discuss the difference between being *eligible* for a program and *entitled* to its benefits, and a prison's obligation to allow a prisoner the opportunity for review. Specifically, we must determine whether the due process right of Donovan Houdobre (Prisoner) was violated when the New Mexico Corrections Department (NMCD) deemed him ineligible for a thirty-day lump-sum meritorious deduction (LSA) and then denied him an opportunity to appeal. The district court found in favor of Prisoner, issuing the Writ of Habeas Corpus, which ordered the award of a thirty-day credit without further administrative review. We affirm the district court's award of the LSA, but take the opportunity to clarify the lib-

erty interest created by the EMDA and the grounds for issuing the writ. We also advise the NMCD to promulgate procedural rules in accordance with this opinion's holding in order to comply with due process.

I. BACKGROUND

{2} The EMDA is a legislative "tool for managing prisons and jails and to encourage inmate cooperation, good behavior, and rehabilitation." *State v. Tafoya*, 2010-NMSC-019, ¶ 19, 148 N.M. 391, 237 P.3d 693. The EMDA incentivizes participation by awarding deductions from a prisoner's term of confinement upon the prisoner's fulfillment of certain criteria. The Legislature established two deduction regimes, meritorious deductions and LSAs, the subset of meritorious deductions at issue in this appeal. Sections 33-2-34(A)-(B), (D)-(E). The EMDA provides for a thirty-day LSA once two criteria are met. First, a prisoner must satisfy LSA eligibility requirements by successfully completing an approved program. Section 33-2-34(D) (1) (stating in relevant part that "[a] prisoner . . . is *eligible* for [LSA]s . . . for successfully *completing* an approved . . . substance abuse . . . program" (emphasis added)); Section 33-2-34(D)(2)-(5) (list-

ing other acceptable programs). Second, once eligible, the final award is subject to a recommendation by the Classification Supervisor based on the prisoner's level of participation in the program and a subsequent approval of the Classification Supervisor's recommendation by the Warden. Section 33-2-34(B) ("A prisoner may not earn meritorious deductions unless the recommendation of the classification supervisor is approved by the warden or the warden's designee."). If the prisoner is housed in a private prison, the application for an LSA is subject to final approval by the NMCD's Director of the Adult Institutions. Section 33-2-34(K) ("All decisions regarding the award or forfeiture of meritorious deductions at such facilities are subject to final approval by the director of the adult institutions division of the [NMCD] or the director's designee."). If both criteria are satisfied, the lump-sum deduction will reduce the time "an inmate must serve before becoming eligible for parole or release." *State v. Montano*, 2024-NMSC-019, ¶ 25, 557 P.3d. 86.

{3} While incarcerated at Lea County Correctional Facility, a privately owned prison, Prisoner enrolled in and completed an addictions program called Therapeutic Communities (TC), after which he was approved for a 120-day deduction. He subsequently applied and was approved for enrollment in the Residential Drug Abuse Program (RDAP), another addictions program that the NMCD instituted and approved for LSA consideration. Despite completing the program, the NMCD deemed Prisoner ineligible to receive an LSA because he was previously awarded credit for TC. Multiple prison officials rejected Prisoner's application on the grounds that RDAP is identical to, and supplants, the TC program. Because NMCD rules state that "an inmate is eligible for only one (1) Lump Sum Award per program," the prison officials found Prisoner ineligible for the additional LSA. CD-082801, § B.2.d (Aug. 14, 2013).

{4} Prisoner did not immediately appeal the NMCD's decision as NMCD policy expressly precludes any review. NMCD CD-082801, § G (2013) ("Decisions on LSA awards except on cases described above may

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not be appealed.”¹ Six years later, Prisoner filed a Petition for Writ of Habeas Corpus alleging that the denial of his LSA violated his right to procedural due process. The district court granted the petition and ordered the award of a thirty-day LSA, finding that Prisoner had “a liberty interest in the [LSA] previously recommended and rejected for the completion of [the RDAP].” The district court supported its conclusion by noting that it “cannot make a finding that there is a specific policy indicating RDAP cannot be utilized for an LSA if the individual already received an LSA based on completion of TC.” The district court did not address the two reasons why the denial might violate due process: (1) Prisoner was entitled to an award, so any deprivation violated his due process rights, or (2) the NMCD’s reasoning was arbitrary because there was no specific policy precluding deductions for both programs. See *Miller*, 2003-NMSC-025, ¶ 13. The State appealed, arguing that the EMDA does not create a liberty interest in LSAs because the awards are discretionary.

II. DISCUSSION

{5} The parties’ positions are diametrically opposed. The State contends that the successful completion of an approved program does not create a liberty interest. According to the State, the Legislature’s use of “may” and the permissive nature of the EMDA affords the NMCD unfettered discretion such that a state-created liberty interest cannot arise from its terms. Section 33-2-34(B) (“A prisoner may earn meritorious deductions . . .”). In response, Prisoner advances a sweeping liberty interest, suggesting that once the conditions for *eligibility* are satisfied, a prisoner is *entitled* to the award. Both parties overstate their position.

{6} We hold that the Legislature created a liberty interest in LSA *eligibility* upon the successful completion of an approved program. See § 33-2-34(D)(1) (“A prisoner . . . is *eligible* for [LSA]s . . . for successfully completing an approved . . . program.” (emphasis added)). Before depriving Prisoner of his right to consideration of an LSA, the Due Process Clause of the Fourteenth Amendment “requires the government to give notice and opportunity to be heard.” *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 26, 122 N.M. 524, 928 P.2d 250. Here, Prisoner was deprived of his eligibility, and NMCD rules expressly prohibit appeal, precluding any opportunity to be heard. NMCD CD-082801, § G (2013) (“Decisions on LSA awards except on cases described above may not be appealed.”). Because the NMCD’s regulations violated Prisoner’s right to adequate process, restoring Prisoner’s thirty-day LSA was an appropriate equitable remedy “tailored to the harm caused by the [NMCD].” *Lopez v. LeMaster*, 2003-NMSC-003, ¶ 25, 133 N.M. 59, 61 P.3d 185.

A. Procedural Due Process

{7} Under our Rules of Criminal Procedure, Prisoner’s Petition for Writ of Habeas Corpus should be granted only if the “custody or restraint is, or will be, in violation of the constitution or laws of the State of New Mexico or of the United States.”² Rule 5-802(A) NMRA. Prisoner advances a procedural due process argument that his completion of RDAP created a liberty interest in the LSA and that the subsequent “process used to deprive [him] of the lump-sum award was procedurally deficient.”³ “Claims involving the denial of procedural due process are legal questions that we review de novo.” *Miller*, 2003-NMSC-025, ¶

9 (citation omitted). Where a due process analysis requires us to determine the nature and scope of a state-created liberty interest through statutory interpretation, our review is similarly without deference to the district court’s conclusion. *Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61 (“The meaning of language used in a statute is a question of law that we review de novo.”).

{8} “Procedural due process requires the government to give notice and an opportunity to be heard before depriving an individual of liberty or property.” *Madrid*, 1996-NMSC-064, ¶ 26. A procedural due process inquiry is a two-step analysis. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999); *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). First, we determine whether the individual has been deprived of a constitutionally significant interest. *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037, ¶ 51, 306 P.3d 457 (“We have said numerous times that [t]he threshold question in evaluating a due process challenge is whether there is a deprivation of liberty or property.” (alteration in original) (internal quotation marks and citation omitted)); see *Thompson*, 490 U.S. at 460. Then, if there is a deprivation, we determine whether the NMCD’s procedures comport with due process. See *id.*

{9} The crux of this dispute lies in the first step of the procedural due process inquiry, the nature and scope of the liberty interest created by the LSA provision. A liberty interest protected by the Due Process Clause of the Fourteenth Amendment “may arise from two sources the Due Process Clause itself and the laws of the [s]tate[.]” *Cordova v. LeMaster*, 2004-NMSC-026, ¶ 18, 136

¹ We do not find any “cases described above” in the NMCD policy, and so it appears that any decision regarding the award of an LSA is barred from further review. NMCD CD-082801, § G (2013).

² Prisoner is not alleging that the sentence was illegal nor that the district court was without jurisdiction. See Rule 5-802 NMRA.

³ Historically, prisoners used the writ of habeas corpus to secure an immediate release from unlawful imprisonment when the judgment against the prisoner was void because the issuing court lacked jurisdiction. *Smith v. Abram*, 1954-NMSC-061, ¶ 5, 58 N.M. 404, 271 P.2d 1010; *Johnson v. Cox*, 1963-NMSC-058, ¶ 2, 72 N.M. 55, 380 P.2d 199; *NMSA 1978*, § 44-1-1 (1884) (limiting writs of habeas corpus to those grounds where a defendant may “obtain relief from such imprisonment or restraint, if it proves to be unlawful”). The scope of the writ was expanded relying on a legal fiction, where “constitutional violations in a criminal case deprive the trial court of jurisdiction,” and immediate release was no longer required. *Lopez*, 2003-NMSC-003, ¶¶ 12, 14, 15 (internal quotation marks and citation omitted). This change is reflected in our Rules of Criminal Procedure, making habeas “the proper avenue to challenge the unconstitutional deprivation of good-time credits, even if it would not result in an immediate release.” *Perry v. Moya*, 2012-NMSC-040, ¶ 12, 289 P.3d 1247 (emphasis added) (internal quotation marks and citation omitted).

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N.M. 217, 96 P.3d 778 (internal quotation marks omitted) (quoting *Hewitt v. Helms*, 459 U.S. 460, 466 (1983)). Here, our focus is on the latter and whether the text of the LSA statute creates a constitutionally significant interest. Generally speaking, the “[s]tate creates a protected liberty interest by placing substantive limitations on official discretion.” *Brooks v. Shanks*, 1994-NMSC-113, ¶ 10, 118 N.M. 716, 885 P.2d 637 (quoting *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983)). Courts have recognized three such substantive limitations.

{10} Our Legislature may create a liberty interest when a statute “establish[es] procedures that control how a deprivation of rights or privileges such as good-time credits may be imposed.” *Brooks*, 1994-NMSC-113, ¶ 10; see also *Wolff v. McDonnell*, 418 U.S. 539, 546 (1974). In *Wolff*, the United States Supreme Court held that because Nebraska prisoners “can only lose [awarded] good-time credits if they are guilty of serious misconduct . . . , the minimum requirements of procedural due process appropriate for the circumstances must be observed.” *Wolff*, 418 U.S. at 558. Similarly, in *Brooks*, we held that the forfeiture of an awarded good time credit required an evidentiary proceeding to ensure the manner of deprivation accorded with due process. See *Brooks*, 1994-NMSC-113, ¶ 12. We have also acknowledged due process rights to “notice and . . . opportunity to prepare and defend against allegations” that would lead to a forfeiture of already-earned good time credits. *Miller*, 2003-NMSC-025, ¶ 16.

{11} A statute may also require mandatory action that is contingent on discretionary predicates. In *Board of Pardons v. Allen*, 482 U.S. 369 (1987), the United States Supreme Court analyzed a Montana parole statute that mandated parole release if certain criteria were met. The United States Supreme Court held that the statute creates a liberty interest by using “mandatory language (‘shall’) to ‘create a presumption that parole release will be granted’ when the designated findings are made.” *Id.* at 376-78 (emphasis added) (brackets, footnote, and citation omitted) (quoting the Montana statute requiring that “the board shall release on parole . . . any person confined in the Montana state prison or the women’s cor-

rection center . . . when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community” (omissions in original) (second emphasis added)); see also NMSA 1978, § 31-21-10(F) (2023) (“When a person on parole has performed the obligations of the person’s release . . . , the board shall make a final order of discharge and issue the person a certificate of discharge.” (emphasis added)).

{12} Perhaps the most obvious substantive limitation on official discretion is where statutes employ “explicitly mandatory language” . . . [such that if] substantive predicates are present, a particular outcome must follow.” *Thompson*, 490 U.S. at 463. For example, New Mexico law providing credit for time served prior to a conviction offers little, if any, room for discretion. See NMSA 1978, § 31-20-12 (1977) (“A person held in official confinement on suspicion or charges of the commission of a felony shall, upon conviction of that or a lesser included offense, be given credit” (emphasis added)).

{13} Prisoner argues that the LSA statute falls under this last category of protected interests because the Legislature created a “mandatory regime.” We agree that the EMDA establishes a mandatory right to eligibility when a prisoner successfully completes a program. However, Prisoner misidentifies the liberty interest, arguing that once the substantive predicate of completing RDAP is present, Prisoner is entitled to the award. Here, Prisoner goes too far with his argument. Absent any statutory disqualifications, the LSA provision only entitles Prisoner to further consideration for an award under the terms of the EMDA. Section 33-2-34(F)(1)-(4) (listing eligibility disqualifications including being in disciplinary segregation and not being an active participant in the program recommended to the prisoner); Sections 33-2-34 (A), (B) (noting review and approval requirements). There is no language compelling an award upon the completion of an approved program. The NMCD retains its statutorily defined scope of review post-eligibility. See Sections 33-2-34(B), (K).

B. The Nature of the Liberty Interest

{14} The LSA provision provides that

“[a] prisoner . . . is eligible for [LSA]s . . . for successfully completing an approved . . . substance abuse . . . program.” Section 33-2-34(D)(1) (emphasis added). The Legislature employed mandatory language (“is eligible”) such that when “substantive predicates [like the completion of RDAP] are present, a particular outcome must follow.” *Thompson*, 490 U.S. at 463. The LSA provision is not couched in permissive statutory language. Consideration by the board is required once a prisoner meets the eligibility criteria. Here, Prisoner completed RDAP—an approved substance abuse program—which created Prisoner’s constitutionally significant eligibility interest. Upon completion of the RDAP, the NMCD deemed Prisoner ineligible for reasons not justified by statute or regulation. That decision deprived Prisoner of an interest protected by the Due Process Clause of the Fourteenth Amendment.

{15} Our straightforward analysis is contradicted by the positions taken by both the State and Prisoner, each assuming an extreme stance on the extent of discretion afforded to the NMCD. Prisoner argues that the NMCD has no review authority post-eligibility, while the State interprets the EMDA as conferring the NMCD with unfettered discretion. Neither extreme is supported by the EMDA.

{16} Prisoner suggests that the LSA statute “leaves no authority to the warden or any other corrections official” because, unlike other provisions of the EMDA, such as Section 33-2-34(B), the LSA provision lacks permissive terms like *may*. See § 33-2-34(D). In Prisoner’s view, the LSA’s silence strips the NMCD of any review authority post-eligibility. Thus, the moment of eligibility transforms into a grant of entitlement. There are two crucial defects in Prisoner’s reasoning.

{17} First, Prisoner’s argument would force us to accept that being *eligible* for an outcome is the same as being *entitled* to that outcome, despite the absence of any language requiring the granting of an award. Prisoner cites no case law, ours or otherwise, to support an eligibility-as-entitlement theory of liberty interests. And the few cases that are cited refer to circumstances easily distinguished from here. *Templeman v. Gunter*, 16 F.3d 367, 370 (10th Cir. 1994)

► From the New Mexico Supreme Court

(holding that the Colorado good-time credit applicable to a prisoner mandated an award (using “shall”) only if prison-official discretionary predicates were present); *Fogle v. Pierson*, 435 F.3d 1252, 1262 (10th Cir. 2006) (noting that while the denial of a mandatory credit would deprive a prisoner of a liberty interest, the Colorado earned time credit regime was a prison-official discretionary scheme such that depriving prisoner the opportunity to earn credit did not implicate a protected interest).

{18} Prisoner’s argument also conflicts with the common understanding of “eligible.” Put simply, “[e]ligibility is not entitlement.” *Bellis v. Davis*, 186 F.3d 1092, 1094 (8th Cir. 1999) (internal quotation marks and citation omitted), *aff’d sub nom. Lopez v. Davis*, 531 U.S. 230 (2001). *Black’s Law Dictionary* defines *eligible* as “[f]it and proper to be selected or to receive a benefit[, or] legally qualified for an office, privilege, or status.” *Eligible*, *Black’s Law Dictionary* (12th ed. 2024). Being legally qualified for something does not imply that one is also legally entitled to it. Here, *eligible* means fit and proper to receive an LSA—expressing a potential rather than a realization. In other contexts, like Medicare and Medicaid, courts have interpreted *eligible* to mean “capable of receiving.” *Forrest Gen. Hosp. v. Azar*, 926 F.3d 221, 229 (5th Cir. 2019); *Legacy Emanuel Hosp. & Health Ctr. v. Shalala*, 97 F.3d 1261, 1264 (9th Cir. 1996) (distinguishing between *eligible*, which means “capable of receiving,” and *entitled*, which “means that one possesses the right or title to that benefit” (internal quotation marks and citation omitted)).

{19} The second issue with Prisoner’s argument is that to bridge the definitional gap between *eligible* and *entitled*, Prisoner relies on a bootstrap premise that the silence of the LSA provision prevents post-eligibility review and thus creates an entitlement from eligibility. But while the LSA statute may be silent, the EMDA is not. *State v. Smith*, A-1-CA-35199, mem. op. ¶ 15 (N.M. Ct. App. Nov. 6, 2019) (nonprecedential) (“To earn good time credit, a prisoner must participate in particular programs, maintain

good behavior, be recommended for good time credit by a supervisor, and have this credit approved by the warden.” (citing § 33-2-34(A), (B), (F))); *State v. Ardrey*, A-1-CA-27396, mem. op. at 4 (N.M. Ct. App. Feb. 9, 2009) (nonprecedential) (“Even if eligible for a deduction, a prisoner may not earn meritorious deductions unless the recommendation of the classification supervisor is approved by the warden or the warden’s designee.” (emphasis added) (quoting § 33-2-34(B))). The sort of prohibition against post-eligibility review argued by Prisoner is contradicted by the statutory authority granted to the NMCD. Namely, that the Legislature expressly provided final approval powers to the Director of the prison: “All decisions regarding the award . . . of meritorious deductions at [private correctional] facilities are subject to final approval by the director . . . or the director’s designee.” Section 33-2-34(K).⁴ That is to say, in circumstances specific to this case, the Legislature reserved “final approval” authority for specific prison officials. *Id.* Prisoner effectively asks us to amend the EMDA by decision, a request we respectfully deny.

{20} Finally, prohibiting review also seems to conflict with the discretion Subsection (E) affords, that LSAs “may be awarded in addition to the meritorious deductions provided in Subsections A and B.” Section 33-2-34(E) (emphasis added). If an applicant fulfills the eligibility criteria, Prisoner’s reading that eligibility becomes entitlement redrafts this statutory provision by requiring that the LSA *must* be awarded in addition to the meritorious deductions. Prisoner’s suggested statutory regime “encas[es] the [post-eligibility] procedures in an inflexible . . . straitjacket.” *Wolff*, 418 U.S. at 563.

{21} The State’s argument fares no better. The State interprets the EMDA as conferring the NMCD with unfettered discretion, precluding the creation of any liberty interest because there is no substantive limitation on official discretion to approve or deny an LSA. The State’s position ignores the mandatory nature of the LSA provision and is not supported by the plain language

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of the EMDA.

{22} The crux of the State’s argument resides in the permissive nature of the EMDA. See §§ 33-2-34(B)-(D). Neither the United States Constitution nor the New Mexico Constitution guarantees prisoners good time credit. *Wolff*, 418 U.S. at 557. Nor did the Legislature require that the NMCD establish or maintain a meritorious deduction program. We also agree that the Legislature provided the NMCD with broad discretion to operate the meritorious deduction program if it so chooses. The NMCD enjoys significant decision making powers in such matters as selecting what programs are approved for earning credit and what prisoners to recommend for those programs. See §§ 33-2-34(A), (D). Thus, consistent with the State’s assertion of NMCD discretion, we acknowledge that there is not a constitutionally protected interest in earning good time credits.

{23} But there is a significant distinction between being denied an opportunity to earn a meritorious deduction and being deprived of further consideration for an award after the NMCD approved a program and then recommended a prisoner for that program, which the prisoner ultimately successfully completed. The cases cited by the State stand only for the proposition that a protected interest is not implicated when the NMCD denies a prisoner the opportunity to earn credits under certain circumstances, such as denials addressed in Section 33-2-34(F) when the prisoner is in administrative or disciplinary segregation. *Brown v. Ulibarri*, 298 F. App’x 746, 749-50 (10th Cir. 2008) (acknowledging that under the EMDA a liberty interest is not implicated when a prisoner is deprived of the opportunity to earn good time credits while in disciplinary segregation); *Fogle*, 435 F.3d at 1262 (holding that under Colorado law a prisoner’s due process rights were not violated when he was denied the opportunity to earn credits while in administrative segregation); *Templeman*, 16 F.3d at 370 (same). As these cases illustrate, the EMDA “does not entitle prisoners to earned meritorious deductions. Instead, it gives prison officials *discretion* to

⁴ At the time of completing RDAP, Prisoner was incarcerated in a private correctional facility, Lea County Correctional Facility, which gives relevance to Subsection (K).

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allow a prisoner to earn them by actively participating in programs recommended and approved for the prisoner.” *Helfferrich v. New Mexico*, 1:20-cv-01069-JCH-KK, at 8 (D.N.M. Oct. 26, 2022) (emphasis added). {24} However, the NMCD’s discretion to approve programs and recommend prisoners to participate in those programs are discretionary predicates that, along with the prisoner’s successful completion of the program, entitle a prisoner to further consideration for an LSA. For the State’s argument to succeed, the NMCD must have unbridled discretion to deny a prisoner’s application post-eligibility. Yet the Legislature chose not to confer the NMCD with such expansive authority. Subsection (B) of the EMDA, cited by the State, applies to all meritorious deductions and cabins the review authority of the Classification Supervisor and the Warden. The provision states, “A prisoner may earn meritorious deductions upon recommendation by the classification supervisor, based upon the prisoner’s *active participation* in approved programs and the *quality* of the prisoner’s participation in those approved programs.” Section 33-2-34(B) (emphasis added). The Legislature restricted the scope of the Classification Supervisor’s review to the prisoner’s performance in the approved and recommended program. Subsection (B) concludes by stating, “A prisoner may not earn meritorious deductions unless the recommendation of the classification supervisor is approved by the warden or warden’s designee.” *Id.* The Warden’s approval is similarly limited to a review of the substance of the Classification Supervisor’s recommendation. The same limitation applies when a private prison is awarding the deduction. Subsection (K) states that in a private prison, the “prisoner . . . is eligible to earn meritorious deductions in the same manner as a prisoner confined in a state-run correctional facility.” Section 33-2-34(K). By expressly stating that a prisoner’s right to consideration of an award in a private setting is the same as in a public correctional

facility, the Legislature ensures mirrored processes are present at both. Section 33-2-34(K); *see also* Section 33-2-34(A). The prison’s administrative review and approval allows the NMCD to ensure consistency in the private prison’s recommendation as it relates to the prisoner’s performance in the NMCD-approved program.

{25} Our interpretation cabining the NMCD’s scope of review does not appear to alter the current review framework of the NMCD. The record shows that Prisoner’s LSA application was reviewed and rejected by numerous parties, including the Classification Supervisor (or the Program or Unit Manager), Warden (or Deputy Warden or Contract Monitor), and the Director (or Deputy Director) of Adult Prisons. Our holding does not change this status quo.⁵ We comment on the statutory procedures only to acknowledge the express restrictions on the NMCD’s review. Once the NMCD approves a prisoner for a program and the prisoner subsequently completes the program, the statute creates a liberty interest in the prisoner’s eligibility for the LSA. If prison officials do not deem the prisoner ineligible under one of the statutory disqualifications or a promulgated rule consistent with NMCD authority, then the prison officials’ review of the application is limited to the overall quality of the prisoner’s participation. Sections 33-2-34(B), (K). Here, Prisoner was deprived of that protected interest in further consideration. Therefore, we are now charged with determining whether the NMCD “procedures attendant upon that deprivation were constitutionally sufficient.” *Thompson*, 490 U.S. at 460.

C. NMCD Regulations Did Not Provide Prisoner an Opportunity to Be Heard

{26} The touchstone of procedural due process is fairness, protecting individuals against arbitrary deprivations of life, liberty, and property. *Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶ 23, 118 N.M. 470, 882 P.2d 511 (“Due process requires that the proceedings looking toward

a deprivation be essentially fair.”); *Wolff*, 418 U.S. at 558 (“We think a person’s liberty[, like property,] is equally protected, even when the liberty itself is a statutory creation of the [s]tate.”). The Due Process Clause “raises no impenetrable barrier to the taking of a person’s possessions, or liberty, or life.” *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (internal quotation marks and citation omitted). It does not shield an individual from every deprivation, only those arbitrary deprivations that implicate a constitutionally significant interest. *Id.* (“Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”). Due process provides its safeguards, in part, by requiring “the government to give notice and an opportunity to be heard before depriving an individual of liberty or property.” *Nash v. Bd. of Cnty. Comm’rs of Catron Cnty.*, 2021-NMSC-005, ¶ 36, 480 P.3d 842 (internal quotation marks and citation omitted). This essential requirement does not demand a set of formalistic processes. Our case law “instructs that due process is flexible and calls for such procedural protections as the particular situation demands and not all situations calling for procedural safeguards call for the same kind of procedure.” *State v. Guthrie*, 2011-NMSC-014, ¶ 11, 150 N.M. 84, 257 P.3d 904 (emphasis, internal quotation marks, and citation omitted). Our inquiry, therefore, must decide whether Prisoner was afforded adequate process for the circumstances when the NMCD deprived him of a constitutionally significant interest.

{27} New Mexico courts apply the three-factor test from *Mathews v. Eldridge*, 424 U.S. 319, 332-33, 335 (1976), to determine whether the administrative procedures employed comport with the Fourteenth Amendment. *See State v. Rotherham*, 1996-NMSC-048, ¶ 51, 122 N.M. 246, 923 P.2d 1131 (noting the *Mathews* test is applied in both civil and criminal contexts); *State v. Cooley*, 2023-NMCA-089, ¶ 31, 538 P.3d 491 (noting that in answering what procedural

⁵ While the NMCD rules use slightly different language to describe scopes of review, we do not find it a material change from the statute. Compare NMCD CD-082801 § C.16 (stating that the Director’s review will include the “case”) with NMCD CD-082801 §§ C.13-14 (requiring the Classification Supervisor or Program Manager or Unit Manager, followed by the Warden, to review the “packet”).

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due process is owed requires “balanc[ing] that interest against the state’s interests as guided by the factors in *Mathews*”). An elaboration of the test is unnecessary here because the NMCD regulations prohibited any opportunity to be heard in any form. While the award is a “matter of grace and not of right,” the right to be heard is not. *Owens v. Swope*, 1955-NMSC-079, ¶¶ 24, 27, 60 N.M. 71, 287 P.2d 605 (discussing the entitlement to parole). We conclude that the NMCD’s bar against appeal was constitutionally deficient and that the NMCD must augment its rules consistent with this opinion. We recognize that “[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources,” and so for the moment we leave to the NMCD’s expertise, guided by our case law, the implementation of appropriate procedures to provide prisoners with notice and an opportunity to appeal eligibility determinations. *Griffin v. Thomas*, 2004-NMCA-088, ¶ 23, 136 N.M. 129, 95 P.3d 1044 (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)).

{28} Our holding should not suggest that adhering to procedural safeguards immunizes the NMCD from judicial review. Courts “are not wallflowers or potted plants.” *Tagatz v. Marquette Univ.*, 861 F.2d 1040, 1045 (7th Cir. 1988). The United States Supreme Court has recognized “that a governmental decision resulting in the loss of an important liberty interest violates due process if the decision is not supported by any evidence.” *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455 (1985). Or, as happened here, a due process violation can also occur if the procedures are followed but policies, statutes, or regulations are violated. *Brooks*, 1994-NMSC-113, ¶ 9 (noting that allegations of departure from statutory or administrative procedures may suggest deprivation of a prisoner’s right to due process).

{29} The State contends that Prisoner was ineligible for an LSA for RDAP because he already received credit for another program, TC. The NMCD rules state that “[a]n inmate is eligible for only one (1) Lump Sum Award *per program listed* in the Programs Approved as Eligible for LSA Consideration table” (emphasis added). The NMCD contends that TC and RDAP were the same program, so that Prisoner was prohibited by NMCD rule to receive an additional award. NMCD’s argument might be persuasive if its policies contained such a rule, which they are, of course, required to promulgate. Section 33-2-34(H) (“The [NMCD] shall promulgate rules to implement the provisions of this section.”). RDAP was an approved program, and there was no rule or policy announcement that RDAP and TC could not both count towards separate awards. Thus, Prisoner had a liberty interest in eligibility, Prisoner was actually eligible, and the NMCD’s denial of eligibility is in violation of its own rules (and is not under one of the statutory exclusions in Section 33-2-34(F)). Because the Due Process Clause is an “essential guarantee of . . . fairness” that protects against arbitrary governmental acts that deprive a prisoner of a liberty interest, such as the eligibility determination in this case, Prisoner’s Petition for Writ of Habeas Corpus should still be granted. *Harrell*, 1994-NMSC-096, ¶ 23. The final question is the propriety of the award.

D. The Thirty-Day Award Was an Acceptable Equitable Remedy

{30} This Court has recognized that “traditionally the writ [of habeas corpus] provided for an equitable remedy, such that a court has some flexibility in fashioning an appropriate disposition for the circumstances of a particular case.” *Perry*, 2012-NMSC-040, ¶ 15 (internal quotation marks and citation omitted). The scope of remedies is not boundless, so district courts “may not ignore statutes, rules, and precedents

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when fashioning such a remedy.” *Lopez*, 2003-NMSC-003, ¶ 17 (citation omitted). In particular, “remedies for constitutional violations should be narrowly tailored and take into account competing interests.” *Id.* ¶¶ 21, 23.

{31} In awarding the thirty-day credit, the district court effectively disallowed further hearings by the NMCD. In *Lopez*, this Court determined that “precluding a new hearing is an *exceptional remedy*, which we believe is *only* appropriate when the trial court is persuaded either that the [NMCD] will not or cannot provide a fair hearing on remand, or that there has been such a pattern of conduct by the Department that a sanction is appropriate.” *Id.* ¶ 33 (emphasis added). The *Lopez* Court upheld the district court’s decision to restore good time credits without an additional administrative hearing because the district court had noted its concerns about recurrent due process violations. *See id.* ¶¶ 33-34. This case implicates *Lopez*’s alternative justification in that the NMCD cannot provide a fair hearing because its rules currently prohibit appeal. Therefore, granting the award and precluding further NMCD review is an appropriate remedy.

III. CONCLUSION

{32} For the foregoing reasons, we hold that the Legislature created a liberty interest in LSA eligibility when a prisoner successfully completes an approved and recommended program. Because NMCD rules prohibit review of eligibility denials, Prisoner’s right to due process was violated, and the district court’s award of the thirty-day credit was an appropriate equitable remedy.

{33} We advise the NMCD to promulgate procedural rules consistent with this opinion.

{34} IT IS SO ORDERED.

DAVID K. THOMSON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

► From the New Mexico Supreme Court

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-008

No: S-1-SC-39474 (filed November 18, 2024)

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JESSICA VASQUEZ,

Defendant-Appellee.

CERTIFICATION FROM THE NEW MEXICO COURT OF APPEALS

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OPINION

THOMSON, Chief Justice.

I. INTRODUCTION

{1} This Court has recognized that “[f]reedom from illegal search and seizure is a fundamental right.” *State v. Vargas*, 2017-NMSC-029, ¶ 14, 404 P.3d 416 (internal quotation marks omitted) (quoting *State v. Gomez*, 1997-NMSC-006, ¶ 31 n.4, 122 N.M. 777, 932 P.2d 1).

{2} A district court judge in rural New Mexico noticed a pattern of warrantless searches and seizures throughout her docket, where the resulting evidence formed the basis for the State’s prosecution. In New Mexico, a warrantless search is presumptively unconstitutional and subject to rebuttal by the State, yet there appeared to be a clear failure by trial counsel to challenge how the evidence was obtained. The district

court (on its own) filed a series of orders setting suppression hearings in thirty cases.

{3} Thirteen of these cases were proactively dismissed (*nolle prosequi*) by the prosecution before the district court reached a determination on suppression. The justifications provided by the prosecution reveal the origin of the district court’s concerns including dismissal because of a “[K]afkaesque arrest for an unnamed charge and subsequent search and retrieving of evidence” that made “no justifiable sense.” *Nolle Prosequi, State v. Alex Kolb*, D-809-CR-2020-00124 (8th Jud. Dist. Ct. Sept. 17, 2021). Other reasons provided by the prosecution for dismissal were less trenchant but equally troubling. *Nolle Prosequi, State v. Coy Cleburn*, D-809-CR-2020-00186 (8th Jud. Dist. Ct. Sept. 17, 2021) (“[T]he incident was an arguably bad search.”); *Nolle Prosequi, State v. Patrick Gonzales*, D-809-CR-2020-00149 (8th Jud. Dist. Ct.

Sept. 17, 2021) (“[T]he law enforcement officer threatened to impound the vehicle if the owner of the vehicle did not consent to the search.”); *Nolle Prosequi, State v. Rosa Vigil*, D-809-CR-2019-00116 (8th Jud. Dist. Ct. Sept. 17, 2021) (“[T]he search of the vehicle incident to arrest is not justified by facts and neither was the opening of the draw string bag.”); *Nolle Prosequi, State v. Christian Ortega*, D-809-CR-2020-00152 (8th Jud. Dist. Ct. Sept. 17, 2021) (“[T]he law enforcement investigative officers made arguably inconsistent reports as to how they received permission to enter the residence.”). Ultimately, evidence was suppressed in six of the remaining seventeen cases, including the nameplate case.

{4} This Court must determine whether a district court may sua sponte raise the issue of suppression through an order for a suppression hearing. The issue framed in this certified matter is similar to that described by Justice Cardozo in *People v. Defore*, 150 N.E. 585, 589 (N.Y. 1926), while he sat on New York’s high court: “The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office.” For this case, through six questions from the State, certified to this Court by our Court of Appeals, we consider the overarching question in the context of (1) standing, (2) jurisdiction, (3) separation of powers, (4) ineffective assistance of counsel as a recourse, (5) bias, and (6) particularity requirements for a court’s order for a suppression hearing. The Certification Order asserts that “the suppression order [for this case] detail[s] the district court’s reasoning for identifying and raising suppression concerns in numerous cases and is representative of the [six] cases certified to [this] Court.”¹

II. BACKGROUND

{5} In this case, there was a warrantless search of a home. A search warrant was subsequently obtained with a probable cause foundation that was partially based

¹ Although the Court of Appeals certified six cases under Rule 12-606 NMRA, we accepted certification on only one. The Court directed the Court of Appeals to hold the remaining five cases, and any other cases that raise substantially the same issue(s), in abeyance, pending the Court’s disposition of this matter.

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on the original warrantless search. The district court sua sponte ordered a suppression hearing and, after a hearing and briefing from both parties, entered an Order Suppressing Evidence (Suppression Order), finding that Defendant “*Was Unlawfully Coerced into Giving Police Consent to Enter Her Home, and Police Were Not Justified in Entering Her Home Under the Emergency Assistance Doctrine.*”² The State appealed the suppression of the evidence to the Court of Appeals. The Court of Appeals, in turn, certified the case to this Court.

{6} In the Order setting briefing, this Court instructed the parties to file briefs to “address the issues articulated in the certification order” in accordance with our rules governing briefing. See Rule 12-318(A) (4)-(5) NMRA (requiring that a brief in chief include an argument for each issue that provides the applicable standard of review, applicable authority, and a conclusion containing a precise statement of the relief sought).

{7} The State did not comply with the certification instructions in that its briefing only fully addresses two of the six questions on certification that sought to explore the authority of the district court to act as it did. The State discussed the district court’s lack of standing (Question One) or jurisdiction (Question Two) to order a suppression hearing on its own and absent a request by Defendant. The State briefly discussed bias (Question Five), citing only the Code of Judicial Conduct, failing to elaborate and neglecting to provide either support for its allegation of bias or a suggested remedy to any harm resulting from alleged bias. Significantly, the State did not brief this Court on the remaining three questions: separation of powers (Question Three), ineffective assistance of counsel as a recourse (Question Four), and particularity requirements for a court’s sua sponte order for a suppression hearing (Question Six). Therefore, we deem these arguments waived. See Rule

12-318(A)(4) (requiring parties to “set forth a specific attack . . . or the finding shall be deemed conclusive”).

{8} Despite incomplete briefing, we address the legal questions presented on certification for the benefit of the Court of Appeals to whom we remand this certified case—for its own review and determination consistent with this opinion.

III. DISCUSSION

A. Certified Question One: Did the district court lack jurisdiction to sua sponte raise the suppression issue because it was not “aggrieved” by the alleged violation of rights?

{9} No. We hold that a court does not have to be an aggrieved party to raise the issues surrounding a warrantless search and to order a hearing and briefing to address the issues.³ The State raises standing, arguing that the district court “improperly disregarded Defendant’s initial burden of production” by initiating a suppression hearing when it was not an aggrieved party. The State’s argument is inconsistent with existing standing jurisprudence. We review whether Rule 5-212(A) NMRA imputes a defendant’s requirement of standing to district courts to sua sponte raise suppression issues de novo, and we and conclude it does not. See Rule 5-212(A) (“A *person* aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence.” (emphasis added)); *see also Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806 (“The proper interpretation of our Rules of Criminal Procedure is a question of law that we review de novo.”).

{10} First, standing relates to a litigant’s right to raise an issue and requires a showing of the litigant’s “personal stake in the outcome of a case.” *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, ¶ 13, 138 N.M. 575, 124 P.3d 210 (quoting *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 11, 121 N.M. 764, 918 P.2d 350 (internal quotation marks omitted)). In the context of the

Fourth Amendment to the United States Constitution, standing “captur[es] the idea that a person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search.” *Byrd v. United States*, 584 U.S. 395, 410 (2018). In New Mexico, “one must be the victim of the search in the sense that one’s right of privacy was invaded.” *State v. Torres*, 1970-NMCA-017, ¶ 23, 81 N.M. 521, 469 P.2d 166. Thus, standing in this context applies to an *individual* seeking the vindication of a *personal* right violated by the government’s acts; therefore, standing is not an obstacle to a court ensuring that constitutional processes are followed in the course of the prosecution. Rule 5-212(A) comm. cmt. (“The aggrieved person under Paragraph[] A . . . of this rule is the person who has standing to raise the issue.”).

{11} The State contends that the district court lacked authority under Rule 5-212(A) to order a suppression hearing on its own motion because it is not an “aggrieved” party. The State interprets Rule 5-212(A) as conferring standing only to parties affected by the alleged rights violation. However, the State appears to confuse the authority of a court with the requirement that a litigant must have standing to bring a particular claim. A court does not have to be an aggrieved party to ask for analysis on an apparent constitutional infirmity that resulted in evidence that forms the basis of the prosecution against the accused. Rule 5-212(A) does not suggest that *only* aggrieved persons may move for suppression of evidence. The Rule is silent as to whether a court may initiate a hearing on its own motion, and the State fails to provide any authority that the standing requirement in this rule applies to the court. Further, the district court is not initiating a hearing to vindicate a right for its benefit, but for the right of Defendant, who has standing to contest the warrantless search.

² The State discusses the merits of the district court’s suppression of the evidence at length. This matter was not presented for our review and is most appropriately reviewed by the Court of Appeals on remand.

³ This opinion in no way compels a court to attempt to identify or address such issues. We do not impose an obligation to identify or address the issues; we simply acknowledge a court’s authority to do so. While it may be prudent for a Rule of Criminal Procedure to guarantee that all evidence seized in a presumptively unconstitutional search be subject to a suppression hearing, we have not yet promulgated such a rule.

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{12} Second, accepting the State's logic would preclude sua sponte appellate review in other contexts where no formal statutory grant of authority exists. For example, this Court has noted, "[A]s a general rule, propositions of law not raised in the trial court cannot be considered sua sponte by the appellate court." *State v. Jade G.*, 2007-NMSC-010, ¶ 24, 141 N.M. 284, 154 P.3d 659 (internal quotation marks and citation omitted). However, there are "exceptions to that rule . . . [including] where it is necessary . . . to protect the fundamental rights of the party." *Id.* (internal quotation marks and citation omitted). These exceptions are *not* founded in statute. Thus, the State's reasoning would suggest that absent a grant by statute or rule, an appellate court would not have authority to review an issue not presented by the parties.

{13} Finally, the State's argument does not consider that district courts are conferred authority under Article VI of the New Mexico Constitution, which provides that district courts are courts of "original jurisdiction in all matters and causes not excepted in [the New Mexico Constitution], and such jurisdiction of . . . proceedings as provided by law." N.M. Const. art. VI, § 13; *Smith v. S. Union Gas Co.*, 1954-NMSC-033, ¶ 10, 58 N.M. 197, 269 P.2d 745 ("[T]he district court gets its jurisdiction from the [New Mexico] Constitution."). The State's discussion focuses solely on jurisdiction as established through statute under Rule 5-212(A), although the State acknowledges that "[a] court's jurisdiction derives from a statute or constitutional provision." *State v. Rudy B.*, 2010-NMSC-045, ¶ 14, 149 N.M. 22, 243 P.3d 726 (emphasis added). As this Court has noted, "There is a presumption of jurisdiction, in the absence of proof to the contrary, in courts of general jurisdiction." *Marchman v. NCNB Tex. Nat'l. Bank*, 1995-NMSC-041, ¶ 27, 120 N.M. 74, 898 P.2d 709. Therefore, the district court did not lack jurisdiction because a court does not have to meet the standing requirements under Rule 5-212(A), and a district court has adequate constitutional authority to order a suppression hearing on its own motion.

B. Certified Question Two: Did the district court lack jurisdiction to raise claims of constitutional violations in raising the suppression issue because the district court exists to decide issues presented to it?

{14} No. We hold that district courts have inherent authority to raise the issue of suppression for warrantless searches. The State argues that the district court as the trier of fact "exist[s] to decide disputes presented to it, not to raise its own disputes" and therefore lacks jurisdiction to raise suppression issues sua sponte. This argument is unpersuasive for three reasons. First, the broad language in New Mexico case law does not limit to appellate courts the authority to sua sponte review violations of a defendant's fundamental rights. Second, a warrantless search and seizure is presumptively unreasonable and may implicate a defendant's fundamental rights. *State v. Rowell*, 2008-NMSC-041, ¶ 10, 144 N.M. 371, 188 P.3d 95; see *Vargas*, 2017-NMSC-029, ¶ 14 (acknowledging appellate courts' discretion to review unpreserved issues of illegal search and seizure involving parties' fundamental rights). Third, the district court did not engage in sua sponte decision making because the district court's action in raising the suppression issue initiated briefing and provided an opportunity for both parties to be heard. This Court reviews the district court's jurisdictional authority to initiate a suppression hearing de novo. *State v. Martinez*, 2022-NMSC-004, ¶ 5, 503 P.3d 313.

{15} To begin, the State fails to provide any argument for affording appellate courts the authority to sua sponte review violations of fundamental rights while simultaneously restricting the authority of district courts. The broad language in New Mexico case law does not reserve to appellate courts the authority of courts to sua sponte review violations of a defendant's fundamental rights. The district court's Suppression Order cites holdings that implicate the general authority of appellate and district courts to raise issues sua sponte. *Id.* ¶ 26 (acknowledging a district court's inherent authority to review sufficiency of the evidence on its own motion); *Vargas*, 2017-NMSC-029, ¶¶ 14-15 (affirming a Court of Appeals deci-

sion where it raised and decided a Fourth Amendment issue sua sponte without additional briefing).

{16} The holdings cited by the district court refer generally to "courts" or "judiciary" rather than to an "appellate court" specifically or by using other limiting language. *State ex rel. Quintana v. Schnedar*, 1993-NMSC-033, ¶ 3, 115 N.M. 573, 855 P.2d 562 ("There is no doubt that the *judiciary* has the inherent authority to guarantee the enforcement of constitutional civil liberty protections in criminal prosecutions." (emphasis added)); *State v. Cruz*, 2021-NMSC-015, ¶ 1, 486 P.3d 1 ("At every level of our *courts*, the Constitution must stand as an immovable bulwark to secure the rights of individuals in every case." (emphasis added)), *reh'g denied* (Apr. 23, 2021).

{17} For more than one hundred years this Court has recognized the authority of courts to act to protect a defendant's fundamental rights. See *State v. Garcia*, 1914-NMSC-065, ¶ 18, 19 N.M. 414, 143 P. 1012 (on motion for rehearing) ("There exists in every *court* . . . an inherent power to see that a man's fundamental rights are protected in every case." (emphasis added)). This Court recently confirmed this principle, providing that New Mexico's Rules of Criminal Procedure "are applied with an understanding of a *court's* 'inherent power to see that a [defendant's] fundamental rights are protected in every case' and that '[every] *court* has the power, in its discretion, to relieve [a defendant of the error] and to see that injustice is not done.'" *Martinez*, 2022-NMSC-004, ¶ 6 (alterations in original) (emphasis added) (quoting *State v. Cunningham*, 2000-NMSC-009, ¶ 12, 128 N.M. 711, 988 P.2d 176).

{18} New Mexico courts have inherent authority over a host of other matters. *Belser v. O'Cleireachain*, 2005-NMCA-073, ¶ 9, 137 N.M. 623, 114 P.3d 303 ("The district court has the inherent authority, in its discretion, to dismiss a case for failure to prosecute." (internal quotation marks and citation omitted)); *State ex rel. N.M. State Highway & Transp. Dep't v. Baca*, 1995-NMSC-033, ¶ 11, 120 N.M. 1, 896 P.2d 1148 ("[T]rial and appellate courts must have inherent power to impose a variety of sanctions on both litigants and attorneys." (internal quo-

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tation marks and citation omitted)). This power includes a district court's authority to raise various issues sua sponte. *See State v. Balderama*, 2004-NMSC-008, ¶ 20, 135 N.M. 329, 88 P.3d 845 (“[A] judge is not prohibited from excluding evidence sua sponte.”); *see also Martinez*, 2022-NMSC-004, ¶ 1 (clarifying that a district court also has inherent authority to raise, on its own motion, issues of sufficiency of the evidence postverdict).

{19} Further expanding upon a district court's authority, this Court in *Grogan* held that a trial court may find ineffective assistance of counsel without providing the parties an opportunity to be heard on the issue. *State v. Grogan*, 2007-NMSC-039, ¶ 1, 142 N.M. 107, 163 P.3d 494. Indeed, it seems incongruous to allow a court to both raise and decide a Sixth Amendment ineffective assistance of counsel issue without a hearing, like in *Grogan*, and not allow the same court to request a hearing and briefing to review a search by law enforcement that was, “without prior approval by judge or magistrate, [and thus] per se unreasonable,” subject only to well-delineated exceptions.” *Rowell*, 2008-NMSC-041, ¶ 10 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).

{20} Given the fact-intensive nature of a suppression hearing, the trial court is best situated to initiate a hearing and allow the parties the opportunity to cross-examine witnesses and introduce evidence. In addition, absent an objection to the search, a defendant's claim of error on appeal would be subject to appellate review under the strict standard of fundamental error or would risk the issue remaining unaddressed by appellate courts. *Vargas*, 2017-NMSC-029, ¶¶ 13-15; *see also State v. Varela*, 1999-NMSC-045, ¶¶ 11, 25, 128 N.M. 454, 993 P.2d 1280; Rule 12-321(A), (B)(2)(c) NMRA; Rule 5-212(C).

{21} Finally, the district court did not engage in decision making without a full opportunity for the parties to present their argument. When there is a warrantless search, the State bears the burden to overcome the presumption that a warrantless search is unreasonable. *Rowell*, 2008-NMSC-041, ¶ 10. Here, the district court's actions allowed the prosecution the opportunity to meet its

burden to demonstrate that the warrantless search was nevertheless reasonable. The district court held a thorough evidentiary hearing and requested follow-up briefing, which the State and Defendant provided. Only then did the district court make an evidentiary determination. Ultimately, requesting briefing and review is substantially distinct from and less problematic than sua sponte decision making where parties lack an opportunity to be heard. *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 760 F.2d 1347, 1365 (2d Cir. 1985) (“The district court has no authority to dismiss a complaint . . . without giving the plaintiff an opportunity to be heard.”), *aff'd*, 476 U.S. 409 (1986).

{22} Therefore, we hold that district courts have jurisdiction to raise the issue of suppression for warrantless searches. The district court did not tip the scale of justice; the court merely ensured its balance. *See State v. Crump*, 1981-NMSC-134, ¶ 11, 97 N.M. 177, 637 P.2d 1232 (“The trial judge is properly governed by the interest of justice and truth.” (internal quotation marks and citation omitted)).

C. Certified Question Three: Did the district court's actions violate separation of powers?

{23} No. The district court did not violate the separation of powers doctrine when it sua sponte raised the suppression issue. This Court reviews preserved constitutional claims de novo. *State v. Tafoya*, 2010-NMSC-019, ¶ 24, 148 N.M. 391, 237 P.3d 693. Article III, Section 1 of the New Mexico Constitution explicitly provides for the separation of powers of the legislative, executive, and judicial branches. Our jurisprudence acknowledges that “[t]he constitutional doctrine of separation of powers allows some overlap in the exercise of governmental function.” *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 32, 120 N.M. 562, 904 P.2d 11 (internal quotation marks and citation omitted). “This common sense approach recognizes that the absolute separation of governmental functions is neither desirable nor realistic.” *Id.*

{24} “[T]he executive branch executes the laws.” *N.M. Bldg. & Constr. Trades Council v. Dean*, 2015-NMSC-023, ¶ 7, 353 P.3d 1212. “[T]he judiciary has the power to enforce

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and interpret constitutional provisions.” *State v. Brown*, 1998-NMSC-037, ¶ 61, 126 N.M. 338, 969 P.2d 313 (emphasis added). Indeed, it is “[t]he essence of judicial power [to have] final authority to render and enforce a judgment.” *State ex rel. N.M. Jud. Standards Comm'n v. Espinosa*, 2003-NMSC-017, ¶ 13, 134 N.M. 59, 73 P.3d 197; *Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶ 47, 118 N.M. 470, 882 P.2d 511. But neither execution nor enforcement are genuinely at issue here because the district court merely ordered briefing and a hearing for a presumptively unconstitutional search, requiring the State to meet its burden to prove reasonableness. The court's actions do not “prevent[the executive] branch from accomplishing its constitutionally assigned functions,” *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶¶ 23, 25, 125 N.M. 343, 961 P.2d 768, unless the State alleges that it is acknowledged that one of these functions is to enter a house without a warrant. Further, ordering a hearing does not infringe on the defense counsel's role as advocate. Defendant here did not waive her Fourth Amendment protections, and if she had and the waiver was overridden by the district court, our analysis might be different.

{25} For these reasons, the district court's order for a hearing and briefing on the suppression issue does not violate separation of powers.

D. Certified Question Four: Was the district court's only recourse to raise ineffective assistance of counsel against defense attorneys who failed to properly raise suppression issues?

{26} No. While ineffective assistance of counsel is a valid recourse, it is not the only one available to the district court. The State's briefing failed to develop an argument as to why the district court's inquiry into ineffective assistance of counsel was the only recourse available to the district court, and we hold the district court may exercise discretion in determining which recourse to pursue.

{27} A district court's decision whether to address indigent counsel's failure to properly move for suppression by issuing a sua sponte order for a suppression hearing or instead by inquiring into counsel's inef-

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fective assistance is reviewed for abuse of discretion. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case.” *State v. Otto*, 2007-NMSC-012, ¶ 9, 141 N.M. 443, 157 P.3d 8 (internal quotation marks and citation omitted).

{28} As noted by the district court’s Suppression Order, a court may decide that ineffective assistance of counsel is not the appropriate recourse in rural areas where re-assignment is “often futile” due to a limited number of attorneys or where prosecutorial pressure discourages defense attorneys from bringing suppression issues. Further, a district court may decline to pursue ineffective assistance of counsel as a recourse because it is a claim “best addressed in a habeas corpus proceeding.” *State v. Astorga*, 2016-NMCA-015, ¶ 25, 365 P.3d 53. We suggest a trial court may first take other intermediate steps, like instructing defense counsel that they are obligated to consult with a superior, before proceeding with a case ordering substitute counsel. Therefore, while ineffective assistance of counsel is a valid recourse, it is not the only one available to the district court, and a district court judge may exercise discretion as to which recourse to pursue.

E. Certified Question Five: Did the district court’s actions and statements demonstrate bias or create the appearance of bias?

{29} No. The district court’s actions in sua sponte ordering a suppression hearing did not inherently implicate bias or the appearance of bias. We revisit this authority as framed by potential concerns for actual or apparent bias. The State argues the district court exhibited bias by stating that the warrantless search appeared to be unreasonable, thereby shifting the burden to the prosecution to prove the search was reasonable. Additionally, the State argues that there was either actual bias or the appearance of bias

because the district court sua sponte raised suppression issues in thirty cases.

{30} Of the arguments raised in this proceeding, bias is the most concerning. We acknowledge that there are facts from the trial that warrant inspection. However, a series of procedural decisions hinder our review. First, the State did not raise the issue of bias before the trial court and, therefore, failed to preserve the claim for our review. See *S. Union Gas Co. v. Taylor*, 1971-NMSC-067, ¶ 11, 82 N.M. 670, 486 P.2d 606 (refusing to review claims of judicial bias that are not preserved in the record). We would typically review recusal or disqualification under an abuse of discretion standard, but no such request was made to the district court. *State v. Riordan*, 2009-NMSC-022, ¶ 6, 146 N.M. 281, 209 P.3d 773; see also *State v. Hernandez*, 1993-NMSC-007, ¶ 44, 115 N.M. 6, 846 P.2d 312 (holding that the judge’s conduct did not implicate bias where the defendant did not raise a claim for bias “until after an adverse ruling”). Second, the State’s briefing before this Court was sparingly developed, citing only the Code of Judicial Conduct. See Rule 21-102 NMRA. This Court does not address claims that are not thoroughly briefed or developed. *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (holding that the Court will not entertain unclear or undeveloped arguments); see also Rule 12-318(4)-(5) (prescribing details of the arguments and conclusion of an appellate brief in chief). Third and perhaps most important is failure of the State’s briefing before this Court to make a specific request for relief based on the alleged bias and any grounds under which relief would be sought.⁴ See Rule 12-318(4)-(5).

{31} We infer the State is implying that the district court’s conduct amounted to either impropriety, impartiality, or both. Because there are other cases held in abeyance, we address the claim of bias as a matter of law and discuss the facts of this case only to the

extent that we believe it can provide context to the Court of Appeals on remand.⁵

{32} A judge’s objectivity is in issue when “an objective, disinterested observer, fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal.” *Riordan*, 2009-NMSC-022, ¶¶ 11, 14 (brackets, internal quotation marks, and citation omitted). The “bias must be personal” to the case, *State v. Fernandez*, 1994-NMCA-056, ¶ 17, 117 N.M. 673, 875 P.2d 1104, and “[p]ersonal bias cannot be inferred from an adverse ruling,” *Hernandez*, 1993-NMSC-007, ¶ 44. The metric for impartiality is whether an *objective, disinterested* observer would have doubts that justice could be served absent the judge’s recusal. See *Riordan*, 2009-NMSC-022, ¶¶ 11, 14. Thus, while the district court may have sua sponte raised the issue of suppression, that alone is insufficient to prove bias.

{33} “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated [the Code of Judicial Conduct] or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” Rule 21-102 cmt. (5). The district court’s conduct here did not rise to the level of improper conduct as to violate Rule 21-102 of the Code of Judicial Conduct. To the extent the State argues that the district court judge was not impartial, “[t]he alleged bias and prejudice . . . must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 418, 96 N.M. 155, 629 P.2d 231 (internal quotation marks and citation omitted). An extrajudicial source “concerns the origin of the judge’s bias rather than the place of its expression. . . . However, if a judge’s state-

⁴ In a footnote, the State cites a dispositional order where this Court remedially remanded a proceeding to a pro tem judge, but the State does not explicitly suggest that a similar outcome is warranted here. Because the district court judge has since retired from judicial service, whether the State may request a pro tem judge is moot.

⁵ We note that any determination on bias, outside of the common element that the district judge sua sponte moved for a suppression hearing, would require separate factual analysis for each of the cases held in abeyance. Therefore, even if briefing was sufficient to allow us to review the facts of this case, a bias determination in this case would not necessarily apply to the cases held in abeyance.

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ments or conduct during a trial refer to or reflect bias or prejudice . . . outside of [the judge's] judicial duties, then the extrajudicial source rule is satisfied and recusal may be required." *Id.* ¶ 421 n.159. {34} As it relates to bias, we discuss (1) whether the district court inappropriately shifted the burden to the prosecution when it ordered a hearing to review the warrantless search and (2) whether the district court implicated bias by ordering suppression hearings across thirty cases. First, the district court's order for a suppression hearing, stating the warrantless search appeared to be unreasonable, did not shift the burden to the State to provide reasonableness of the search. Without prior approval by a judge or magistrate, a warrantless search is "per se unreasonable, . . . and the state bears the burden of proving reasonableness." *Rowell*, 2008-NMSC-041, ¶ 10 (internal quotation marks and citations omitted). Here, the affidavit clearly indicates that the initial search was conducted without a search warrant. Bias cannot be inferred solely from a judge's recognition of the constitutional norm: that the search was per se unreasonable, and the prosecution must prove the search was reasonable under one of the limited exceptions. *Rowell*, 2008-NMSC-041, ¶ 10. Here, the State makes no argument that the search was not presumptively unreasonable, only that it was justified "under the emergency assistance doctrine" exception which, the district court ultimately held, did not "justif[y] the officers' warrantless entry." {35} Second, regarding the district court's statement that there was a systemic "pattern and practice by one municipal police department of violating indigent citizens' right to be free from unreasonable search and seizure" (emphasis added), we acknowledge that this does not carry with it the ideal of neutrality. However, the State did not rebut this statement, and our review of other cases where the judge sua sponte

raised the suppression issue does suggest a pattern of violation.

{36} Additionally, the State's Docketing Statement claims that the "district court has suppressed in [one-hundred percent] of the cases in which it filed Hearing Orders and. . . that the State did not dismiss." While this fact is more suggestive of bias, it does not reach the required threshold of impartiality. There is no evidence suggesting the actions of the district court in ordering the review of thirty cases (representing twenty percent of the district court judge's criminal docket) reflect the type of pernicious dishonesty Rule 21-102 is meant to address. *Heeter v. Heeter*, 1992-NMCA-032, ¶ 15, 113 N.M. 691, 831 P.2d 990 ("This [C]ourt will not search the record to find evidence to support an appellant's claims.").

{37} We recognize the importance of a judge being a neutral third party and the importance of the effects the appearance of bias can have on the judiciary. We also recognize "a court's inherent power to see that a defendant's fundamental rights are protected in every case." *Martinez*, 2022-NMSC-004, ¶ 6 (brackets, internal quotation marks and citation omitted). This is especially true in environments where vulnerable populations experience repeated and unaddressed constitutional violations. Limiting the appearance of bias, even when defending fundamental rights, is paramount to maintaining judicial integrity. This holding does not create a duty or incentivize courts to "sally forth each day looking for wrongs to right." *Greenlaw v. United States*, 554 U.S. 237, 244 (2008) (citation omitted). Our holding is limited to a district court's authority to order a suppression hearing when a presumptively unconstitutional search or seizure is at issue.⁶ On the one hand, "a judge should exercise this authority sparingly . . . [and] should be careful to avoid the appearance of being more of an advocate or partisan than

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an objective jurist." *Balderama*, 2004-NMSC-008, ¶ 20 (recognizing a trial judge's authority to exclude evidence sua sponte). However, we also note that our holding should not be read as creating a rule that restricts the inherent authority of courts to raise suppression issues only in isolated contexts, allowing systemic abuses to persist due to their repetitive nature.

F. Certified Question Six: Did the district court err in entering suppression orders based on evidence presented at the hearing because the initial hearing orders lacked particularity and the State was therefore unable to adequately prepare?

{38} No. The district court's Hearing Order provided sufficient particularity to notify the State and allow the State to adequately prepare for the hearing. The State argued that the district court's Hearing Order included a "generalized allegation of a rights violation" that did not satisfy the particularity normally required in an aggrieved party's motion to suppress and thus greatly disadvantaged the State, who was "unable to adequately prepare for the hearing." Contrary to Rule 12-318 (4)-(5), the State's Brief in Chief did not provide the applicable standard of review, the relevant authority, or the relief sought. As a result, we only address the legal question of the level of particularity required for a district court's sua sponte order for a suppression hearing. {39} We review the particularity requirements for a sua sponte order for a suppression hearing de novo. *See LeMaster*, 2012-NMSC-001, ¶ 11 (requiring de novo review of questions on proper interpretation of the New Mexico Rules of Criminal Procedure). Requirements for a motion to suppress are outlined in Rule 5-212. Further, Rule 5-120(A) NMRA provides that a written motion "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." New Mexico case law has held a defendant's motion to suppress

⁶ This authority does not extend to a sua sponte challenge of a search issued with a warrant, which is presumptively reasonable. In its Hearing Order, the district court appears to prejudge a presumptively reasonable search with a warrant. This error may justify the designation of a pro tem judge in similar cases. However, as previously noted, the suggested remedy of a pro tem appointment may not be applicable to these cases where the judge has resigned.

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to this standard. See *State v. Goss*, 1991-NMCA-003, ¶ 13, 111 N.M. 530, 807 P.2d 228. This requirement is based on the need for “specificity in the statement of [a] defendant’s legal theory.” *Id.* (citation omitted). The Court of Appeals has interpreted this particularity requirement to indicate “a motion claiming ‘there was no probable cause to arrest’ could be sufficient.” *State v. Esguerra*, 1991-NMCA-147, ¶ 17, 113 N.M. 310, 825 P.2d 243 (internal quotation marks and citation omitted).

{40} Rule 5-121 NMRA, which governs a district court’s preparation and entry of orders, does not mandate a requirement of particularity. However, this Court has previously held a trial judge to the standards of counsel where a trial judge sua sponte excluded evidence during a trial. *Balderama*, 2004-NMSC-008, ¶ 20 (“Our rules of evidence require no less of counsel who object to the admissibility of evidence, . . . and we see no reason why the same procedural rules should not apply to a trial judge who seeks to exclude evidence sua sponte.”). The *Balderama* Court explained the purpose of imputing such a requirement, which permits the district court to “afford the proponent of the evidence a fair opportunity to respond to the court’s concerns and to make the necessary offer of proof prior to the sua sponte ruling.” *Id.*

{41} Here, where a district court judge sua sponte orders a suppression hearing, the State cannot avail itself of the benefit of particularity that it would have received had Defendant brought the motion. Having recognized the requirements of particularity for defendants, in accord with our previous imputation of counsel’s duties to a court in a sua sponte ruling, we conclude that the district courts must also provide particularity in their orders when sua sponte ordering a suppression hearing. Similar to *Balderama*, such a holding would guarantee a fair opportunity to respond to the district court’s concerns prior to the issuance of an order of suppression.

IV. CONCLUSION

{42} We remand this matter to the Court of Appeals to decide this case, and any related cases held in abeyance, in accordance with this opinion.

{43} IT IS SO ORDERED.

DAVID K. THOMSON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice, dissenting

ZAMORA, Justice (dissenting).

{44} In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. . . . Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.

Greenlaw v. United States, 554 U.S. 237, 243-44 (2008) (internal quotation marks and citation omitted). Because district courts have inherent authority to ensure that defendants’ fundamental rights are protected, *maj. op.* ¶¶ 14-19, I agree with the majority’s determination that the district court acted within its authority when it raised a concern about the searches in this case. See *State v. Martinez*, 2022-NMSC-004, ¶ 6, 503 P.3d 313 (noting that “[every] court has the power, in its discretion, to relieve [a defendant of the error] and to see that injustice is not done” (quoting *State v. Cunningham*, 2000-NMSC-009, ¶ 12, 128 N.M. 711, 998 P.2d 176)). However, I disagree with how the district court exercised its authority, as it strayed from its role as neutral arbiter into the realm of advocacy. Specifically, after the district court judge researched her entire court docket and selected cases she believed had infirm searches and seizures, she sua sponte ordered suppression hearings in thirty cases within a short period of time. In this case, the district court set the suppression hearing after the deadline had passed to file motions to suppress and after the scheduled trial date; it failed to properly apprise

the parties of the purported grounds for suppression; and the order setting the matter for a suppression hearing appeared to prejudice the outcome of the hearing. Finally, the district court questioned the State’s witnesses at the suppression hearing while defense counsel stood silent. Notwithstanding the district court’s good intentions, these actions constituted an abuse of the court’s discretion and created the appearance of bias or partiality. I would therefore reverse the district court’s orders resulting from this flawed procedure and remand with instructions to reassign these cases to a judge whose impartiality may not reasonably be questioned. Accordingly, I respectfully dissent.

I. THE STATE WAIVED ARGUMENT ON THE CERTIFIED QUESTIONS CONCERNING SEPARATION OF POWERS, INEFFECTIVE ASSISTANCE OF COUNSEL, AND THE PARTICULARITY REQUIREMENTS OF THE DISTRICT COURT’S ORDER

{45} As a preliminary matter, I agree with the majority that the State waived its argument on Question 3 (whether the district court’s actions violated separation of powers), Question 4 (whether the district’s court’s sole recourse was to raise ineffective assistance of counsel against attorneys who failed to raise suppression issues), and Question 6 (whether the district court erred in entering suppression orders because the initial hearing orders lacked sufficient particularity and failed to provide sufficient notice) in the Certification Order by either failing to adequately brief them or to brief them at all. *Maj. op.* ¶ 7.⁷ However, unlike the majority, I would not have decided the questions the State waived. We “risk overlooking important facts or legal considerations” when we reach issues without the benefit of briefing by the parties. *N.M. Dep’t of Hum. Servs., Income Support Div. v. Tapia*, 1982-NMSC-033, ¶ 11, 97 N.M. 632, 642 P.2d 1091; see *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (stating, “To rule on an

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inadequately briefed issue, this Court would have to develop the arguments itself, effectively performing the parties' work for them," thereby "creat[ing] a strain on judicial resources and a substantial risk of error."). Where, as here, the questions before us are novel, this principle applies with extra force. *Tapia*, 1982-NMSC-033, ¶ 11.

II. THE DISTRICT COURT HAD THE AUTHORITY TO RAISE CONCERNS ABOUT THE SEARCHES IN THIS CASE

{46} The district court in this case was concerned that Defendant was receiving representation that failed to protect her fundamental right to be free from unreasonable searches and seizures. The court was specifically concerned that Defendant had been subjected to unlawful searches that her attorney had failed to contest on her behalf. I agree with the majority that the district court had the inherent authority to raise these concerns with the parties and to seek assurances that Defendant's fundamental rights were being protected.

{47} For example, the district court would have been within its discretion—as a function of this authority—to call a status conference with the parties and to inquire of defense counsel whether he intended to challenge the searches. See Rule 5-603(D) NMRA (“[T]he court may order the attorneys to appear before it for a hearing,

at which the defendant shall have the right to be present, to consider . . . such other matters as may aid in the disposition of the trial.”). Alternatively, the district court could have inquired into whether Defendant desired substitute counsel, reported concerns about defense counsel to his supervisor, or made a report to the state's Disciplinary Board about defense counsel's persistently deficient performance. See *State v. Lewis*, 1986-NMCA-090, ¶ 17, 104 N.M. 677, 726 P.2d 354 (stating that the decision to appoint substitute counsel on grounds of ineffective assistance is within the trial court's discretion); Rule 16-803(A) NMRA (“A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the New Mexico Disciplinary Board.”).⁸ Had the district court undertaken any or all of these measures, it would have acted well within its discretion.

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY ORDERING A SUPPRESSION HEARING AND ADJUDICATING THE SUPPRESSION ISSUES IN THIS CASE

{48} But I disagree that the district court had the authority to sua sponte order a suppression hearing in this case—much less

to simultaneously order thirty suppression hearings in thirty cases the judge proactively selected from her docket. *Maj. op.* ¶¶ 19-22. The parties' role is to bring forth issues and claims, while the judge must act as a neutral arbiter in adjudicating them and in presiding over the proceeding. See generally Jeffery M. Anderson, *The Principle of Party Presentation*, 70 Buff. L. Rev. 1029 (2022). Taken as a whole, the district court's actions in this case amounted to advocacy and not impartial adjudication.

{49} Although this is an issue of first impression in New Mexico, courts in other jurisdictions have held that district courts lack the authority to sua sponte order suppression hearings or to raise suppression arguments that have not been raised by the parties. See *Commonwealth v. Whiting*, 767 A.2d 1083, 1087 (Pa. Super. Ct. 2001) (stating that “it was improper, and therefore an abuse of discretion for the trial court to voluntarily raise this issue and rule upon it in [the defendant's] favor where [the defendant] never raised the issue in any suppression motion, let alone with specificity and particularity”); *State v. Tyson*, 41 N.E.3d 450, 457 (Ohio App. 3d 2015) (holding that the trial court abused its discretion in sua sponte raising and considering the duration of the defendant's detention during a traffic stop when the defendant did not raise it in his motion to suppress); *State v. Joseph*,

⁷ The majority addresses the first question as it was framed by the Certification Order—namely, whether “the district court lacked jurisdiction to sua sponte raise the suppression issue because it is not ‘aggrieved’ by the alleged violation of rights.” Order of Certification to the New Mexico Supreme Court, *State v. Vasquez*, A-1-CA-40228, at 4 (N.M. Ct. App. June 30, 2022) (emphasis added). But this framing conflates standing with jurisdiction. Standing under the Fourth Amendment concerns the right of a person to challenge a search as unreasonable, while jurisdiction concerns the power of a court to preside over parties and matters. See generally *Terrence Byrd v. United States*, 584 U.S. 395, 410 (2018) (cautioning against conflating jurisdictional “standing” with Fourth Amendment “standing,” which “can be a useful shorthand for capturing the idea that a person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search”). I fear that the majority's discussion obscures this distinction by stating that “Rule 5-212(A) NMRA does not suggest that only aggrieved persons may move for suppression of evidence.” *Maj. op.* ¶ 11. To the contrary, Fourth Amendment jurisprudence is clear that the right to challenge a search as unreasonable is personal in nature and that it “may be enforced by exclusion of evidence only at the instance of one whose own protection was infringed by the search and seizure.” *Simmons v. United States*, 390 U.S. 377, 389 (1968) (emphasis added). Additionally, the majority concludes its analysis by stating that “the district court did not lack jurisdiction because a court does not have to meet the standing requirements under Rule 5-212(A) and a district court has adequate constitutional authority to order a suppression hearing on its own motion.” *Maj. op.* ¶ 13 (emphasis added). I caution that, in so stating, the majority improperly suggests that the district court's jurisdiction might be dependent upon a standing requirement found outside of the rule. Because the jurisdiction of a district court is not dependent on any demonstration of Fourth Amendment standing, I depart from this language in the majority's opinion.

⁸ The district court's order suppressing evidence in the case before us demonstrates that it understood these options were available.

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297 A.3d 490, 501 (R.I. 2023) (criticizing the district court for sua sponte raising the issue of racial bias in a traffic stop and stating that “a trial justice should address those considerations when they are *argued* and *raised* by defense counsel to support a motion to suppress”); *People v. Pimentel*, 528 N.Y.S.2d 568, 570 (App. Div. 1988) (stating that “it was improper for the court to sua sponte suppress [a weapon obtained during a search], which was neither the subject of defendant’s motion to suppress nor of his argument at the conclusion of the suppression hearing”); see also *State v. Land*, 2014-Ohio-1877, ¶ 17 (Ct. App. 2014) (unpublished) (finding abuse of discretion where the trial court sua sponte called for and conducted a suppression hearing in violation of the principle of party presentation, and stating that, in so doing, the court “overrode [the defendant’s express] waiver of his defense”); *State v. Jacobs*, A14-1245 (Minn. Ct. App. Mar. 9, 2015) (unpublished) (concluding that the district court erred by sua sponte considering a suppression issue that was not raised in defendant’s motion to suppress because the state did not have notice of the issue); *State v. Poteat*, CR. A. IN01-07-2086R1, ¶ 4 (Del. Super. Ct. Mar. 11, 2005) (ORDER) (stating that “[t]he [c]ourt will not convene a suppression hearing *sua sponte*” and that “[a] request to suppress evidence must be made in accordance with [superior court rules]”), *aff’d*, 931 A.2d 437 (Del. Aug. 14, 2007); cf. *State v. Kindler*, 370 P.3d 909, 913, 915 (2016) (finding abuse of discretion where the district court’s “precipitous action in *sua sponte* directing a suppression hearing” to occur “immediate[ly]” deprived defense counsel of the opportunity to develop arguments and evidence).

{50} I agree with these authorities and would reverse the district court in this case. Doing so would discourage judicial conduct that, like the conduct in this case,

undermines the court’s neutrality and the proper functioning of the adversarial system of justice. A brief review of the proceedings below demonstrates why adherence to the principle of party presentation is so essential. “The ‘central precept’ of an adversarial system is that the combination of active litigants and passive, neutral judges most likely produces results that are ‘acceptable both to the parties and to society.’” Anderson, *supra*, at 1039 (citation omitted). In this case, the district court undermined confidence in the outcome by usurping the role of advocate and failing to maintain at least the appearance of neutrality. Sometime in 2021, the district court judge became concerned that appointed counsel appearing in her courtroom were, as a matter of course, failing to raise suppression issues. In reviewing its docket, the district court identified thirty cases it believed had search or seizure issues and (almost simultaneously) filed orders for suppression hearings in all thirty cases, setting all of the hearings for two specific dates occurring about six weeks later. The district court’s orders were generic, failing to identify facts or authority relevant to any individual defendant’s case, and informing the parties that they could submit optional briefing in advance of the hearings. Order of Certification to the New Mexico Supreme Court, *State v. Vasquez*, A-1-CA-40228, at 3 n.1 (N.M. Ct. App. June 30, 2022), (noting the order in *Vasquez* is “representative” of the orders in the cases on appeal). In the case before us, the Order for Suppression Hearing included a finding that the information contained in the affidavit for arrest warrant indicated that “the search(es) and/or seizure(s) in this matter were unreasonable . . . and that insufficient probable cause existed for a search warrant.” Perhaps because the briefing was optional, the district court set no briefing schedule.

{51} The record is unclear as to why the

district court decided to issue orders in all thirty cases at once and to schedule hearings on such a shortened timeline. In its order suppressing the evidence in the case before us, the district court justified its actions on the grounds of efficiency. But by failing to observe the principle that issues should be raised and litigated by the parties, the district court short-circuited the truth-finding process that lies at the heart of our adversarial system. This disruption infected the proceedings.

{52} First, the district court’s order established an unreasonable and confusing timeline for the parties—made worse by requiring the parties to respond to thirty different orders at once. In the case before us, the court initially set the suppression hearing for a date occurring *after* the trial setting, contrary to the timeliness requirement of Rule 5-212 NMRA for filing a motion to suppress. See Rule 5-212(C) (requiring a motion to suppress be filed sixty days prior to trial unless, “upon good cause shown, the trial court waives the requirement.”). Second, even if the district court had authority to sua sponte set a hearing on the matter, its two-page order for a suppression hearing failed to provide meaningful notice of the purported grounds for suppression. Indeed, the order failed to identify which evidence might be subject to suppression or which of the two searches conducted at Defendant’s home were being challenged. See Rule 5-120(A) NMRA (requiring that a motion “state with particularity the grounds therefor” and “set forth the relief or order sought”); see also 6 Wayne R. LaFare et al., *Search & Seizure* § 11.2(a), at 44 (6th ed. 2020) (noting that “a motion to suppress should be as reasonably specific as possible under the circumstances in order to give the state as much notice as possible of the contentions it must be prepared to meet at the suppression hearing”).⁹ This is not simply a

⁹ Because the State failed to brief the issue, I express no opinion on the certified question of whether the lack of particularity in the district court’s order, on its own, amounted to error (Question 6). Elane Photography, 2013-NMSC-040, ¶ 70 (stating that “[t]o rule on an inadequately briefed issue, this Court would have to develop the arguments itself, effectively performing the parties’ work for them,” thereby “creat[ing] a strain on judicial resources and a substantial risk of error”). I raise the lack of particularity in the order only to demonstrate how the district court’s decision to order a hearing in the absence of a motion filed pursuant to our Rules deprived the court of vital information in determining whether to suppress the State’s evidence. See *State v. Rivas*, 2017-NMSC-022, ¶ 63, 398 P.3d 299 (Nakamura, J., specially concurring) (observing that the Rules of Criminal Procedure, including the rules governing motions to suppress, “are intended to promote basic fairness in the administration of justice”).

► From the New Mexico Supreme Court

matter of fairness. The “[adversarial] system is premised on the well-tested principle that truth—as well as fairness—is best discovered by powerful statements on both sides of the question.” See *Penson v. Ohio*, 488 U.S. 75, 84 (1988) (internal quotation marks and citation omitted). The district court’s role is not to search for or litigate the issues in a case but to adjudicate the strength of the evidence and arguments that have been presented by the parties. *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020).

{53} Third, by commandeering the parties’ presentation of the issues and evidence, the district court appeared to place itself in the shoes of defense counsel, compromising the neutrality that underlies our adversarial system of justice. This appearance of partiality is reflected in the district court’s “finding” (before the suppression hearings) that the evidence indicated that the searches in question were unreasonable and that probable cause was lacking. See *Reid v. N.M. Bd. of Exam’rs in Optometry*, 1979-NMSC-005, ¶ 7, 92 N.M. 414, 589 P.2d 198 (stating that “a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case” (emphasis added)). Similarly, after defense counsel essentially

withdrew from the proceeding and declined to cross-examine either of the State’s fact witnesses at the suppression hearing, the district court took over and questioned them itself. See *State v. Jiles*, 663 N.W.2d 798, 809 (Wis. 2003) (cautioning that, in a suppression hearing, “[t]he court must not permit itself to become . . . an advocate for one party” because to do so “[does] not afford a reliable determination of [the issue]” (internal quotation marks and citation omitted)).

{54} It is plain that the district court was concerned about the possibility that Defendant had been subjected to unreasonable searches in violation of the United States Constitution. But it is equally plain that the way in which the court raised and disposed of the suppression issue in this case failed to maintain the appearance of neutrality. Society has a “legitimate expectation that judges maintain, in fact and appearance, the conviction and discipline to resolve . . . disputes with detachment and impartiality.” *Liteky v. United States*, 510 U.S. 540, 564 (1994) (Kennedy, J., concurring in the judgment). Here, the district court strayed into the role of advocate, and its actions, taken together, evince an impermissible appearance of partiality. See *High Ridge Hinkle Joint Venture v.*

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City of Albuquerque, 1994-NMCA-139, ¶ 40, 119 N.M. 29, 888 P.2d 475 (stating that “[i]n general, a judge should be disqualified from deciding a matter if an objective observer would entertain reasonable questions about the judge’s impartiality” (internal quotation marks and citation omitted)).

{55} As I have said, the district court could have taken other actions when it determined that Defendant was likely the subject of unreasonable searches and was not being served by appointed defense counsel. What the district court could not do is advocate for Defendant in the proceeding before it. “Justice should not only be done, but should manifestly and undoubtedly be seen to be done.” *High Ridge*, 1994-NMCA-139, ¶ 40 (quoting *Liteky*, 510 U.S. at 564 (Kennedy, J., concurring in the judgment)). In my view, the district court’s actions amount to a clear departure from the role of neutral arbiter in violation of the fundamental precepts of our adversarial system. Accordingly, the order in this case should be reversed, and the matter should be remanded to the district court and reassigned to a judge whose impartiality may not reasonably be questioned. Because the majority concludes otherwise, I respectfully dissent.

BRIANA H. ZAMORA, Justice

FORMAL OPINION

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Filing Date: 3/31/2025

No. A-1-CA-42076

**STATE OF NEW MEXICO, ex rel.
CHILDREN YOUTH AND FAMILIES**

DEPARTMENT,
Petitioner-Appellee,
v.

ANTHONY D.,
Respondent-Appellant,
and
JADA M.,
Respondent,

IN THE MATTER OF ISAAC D., a Child.

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

Lee A. Kirksey, District Court Judge

Children, Youth & Families Department
Amanda M. Romero,
Chief Children's Court Attorney
Santa Fe, NM

K. Brandon Cline, Children's Court Attorney
Albuquerque, NM

for Appellee

Susan C. Baker
El Prado, NM

for Appellant

Laura K. Castillo
Hobbs, NM

Guardian Ad Litem

► Introduction of Opinion

Respondent Anthony D. (Father)¹ appeals the district court's determination that his infant son (Child) is a "neglected child," pursuant to NMSA 1978, Section 32A-4-2(G)(2) (2023) of the Abuse and Neglect Act, a part of the Children's Code. See *id.* (describing a "neglected child" as a child without proper parental care and control because of the faults of a parent, or the neglect or refusal of the parent, when able to do so, to provide proper care and control). Father argues that the New Mexico Children, Youth and Families Department (CYFD) failed to establish, by clear and convincing evidence, that (1) a serious risk of harm to Child required his removal into the custody of CYFD; or that (2) Father's failure to remedy the cockroach infestation in his home, which was the basis of CYFD's claim that Father had neglected Child, was attributable to "the faults or habits of [Father]" or to Father's "failure or refusal" to provide a safe home for Child, "when able to do so." *Id.* Following careful review of the record, we agree with Father that the district court's adjudication of Child as neglected, pursuant to Section 32A-4-2(G)(2), is not supported by substantial evidence of a clear and convincing nature. **View full PDF online.**

Jane B. Yohalem, Judge

WE CONCUR:

Zachary A. Ives, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-42076>

FORMAL OPINION

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Filing Date: 4/1/2025

No. A-1-CA-40852

NEW MEXICO FAMILIES FORWARD,

Petitioner-Appellee,

v.

**NEW MEXICO STATE ETHICS
COMMISSION,**

Respondent-Appellant.

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

Daniel E. Ramczyk, District Court Judge

Sara Berger Law

Sara Berger

Portland, OR

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

Linda M. Vanzi

Albuquerque, NM

for Appellee

State Ethics Commission

Jeremy Farris

Walker Boyd

Albuquerque, NM

for Appellant

Office of Secretary of State

Peter S. Auh, General Counsel

Santa Fe, NM

for Amicus Curiae

► Introduction of Opinion

The New Mexico State Ethics Commission (the Commission) appeals the district court's grant of a writ of mandamus ordering the Commission to "cease all proceedings" and "dismiss the action against [New Mexico Families Forward (NMFF)] for lack of jurisdiction." We conclude that the district court did not abuse its discretion in refusing to require NMFF to exhaust administrative remedies before the Commission under the circumstances in this case, and did not otherwise err in exercising its jurisdiction in mandamus, see NMSA 1978, §§ 44-2-1 to -14 (1884, as amended through 1899). On the merits of NMFF's claim that organizations engaged in lobbying advertising campaigns are not subject to the Commission's jurisdiction, we note that this appeal marks the first time this Court has been asked to construe the State Ethics Commission Act (ECA), §§ 10-16G-1 to -16 (2019, as amended through 2023). **View full PDF online.**

Jane B. Yohalem, Judge

WE CONCUR:

Jennifer L. Attrep, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40852>

FORMAL OPINION

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Filing Date: 4/21/2025

No. A-1-CA-41357

MARIA CUMMINGS, individually and as Personal Representative of the ESTATE OF SHAUN MICHAEL CHAVEZ; JANA VALLEJOS, individually and as Personal Representative of the ESTATE OF DONOVAN VALLEJOS,

Plaintiffs,

and

LEON SALAZAR,

Plaintiff-Appellant,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO, a body corporate of the State of New Mexico, for itself and its public operations; UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER, and its components; UNIVERSITY OF NEW MEXICO HOSPITAL; and UNIVERSITY OF NEW MEXICO SCHOOL OF MEDICINE,

Defendants-Appellees.

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

Daniel E. Ramczyk, District Court Judge

Freedman Boyd Hollander & Goldberg P.A.

Joseph Goldberg, Et al.

Albuquerque, NM

for Appellant

► Introduction of Opinion

In this long-running class action case, initially brought in 2001 and involving pediatric cancer patients treated by Defendant University of New Mexico Hospital (UNMH) from the mid-1970s to the mid-1990s, Plaintiff Leon Salazar appeals the district court's order granting summary judgment in favor of UNMH regarding Plaintiff's loss-of-chance medical malpractice claim. Plaintiff argues the district court erred when it determined that Plaintiff needed to demonstrate actual physical harm to proceed with his loss-of-chance claim, and even if the district court did not err in this conclusion, Plaintiff's evidence demonstrated a genuine issue of material fact regarding such actual harm. We conclude that *Alberts v. Schultz*, 1999-NMSC015, 126 N.M. 807, 975 P.2d 1279, requires an actual physical harm, which Plaintiff has not demonstrated. Thus, we affirm.

J. Miles Hanisee, 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-41357>

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.

No. A-1-CA-40402
State of New Mexico
v.
Shayla Romero

Introduction of Opinion

A jury convicted Defendant Shayla Romero of battery upon a peace officer, contrary to NMSA 1978, Section 30-22-24 (1971); aggravated fleeing a law enforcement officer, contrary to NMSA 1978, Section 30-22-1.1 (2003, amended 2019); and improper turning movements and required signals, contrary to NMSA 1978, Section 66-7-325(A) (1978). On appeal, Defendant seeks reversal of her convictions for battery and aggravated fleeing, arguing that the district court erred by refusing to instruct the jury on self-defense and a lesser included offense. Additionally, Defendant argues that there is insufficient evidence to support her conviction for aggravated fleeing. For the following reasons, we affirm.

Shammara H. Henderson, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Katherine A. Wray, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-40402>

No. A-1-CA-41382
State of New Mexico
v.
Nathaniel R. Ray

Introduction of Opinion

The State appeals the metropolitan court's decision to dismiss the criminal complaint against Defendant Nathaniel Ray on double jeopardy grounds. The State argues that double jeopardy was not implicated, so dismissal was not required. We affirm.

J. Miles Hanisee, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Jane B. Yohalem, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41382>

No. A-1-CA-41221
Marc Grano
v.
**Board of Regents of the
University of New Mexico**

Introduction of Opinion

Plaintiff Marc Grano, as personal representative of the wrongful death estate of Decedent Isidro Lucero, initially filed an action against the Board of Regents of the University of New Mexico (Regents), United Healthcare Services, Inc., United Healthcare of New Mexico, Inc., Optum Care, Inc., Optum Healthcare Solutions, LLC, Optum Medical Services, P.C., Optum Clinical Services, Inc., OptumCare Holdings New Mexico, LLC, OptumCare, New Mexico, LLC, and Laura Bellew, CNP, (collectively, Defendants) in the First Judicial District Court in March 2021. The case was dismissed for improper venue in October 2021 by a stipulated order that included a twenty-one-day refiling deadline. **View full PDF online.**

Zachary A. Ives, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Jacqueline R. Medina, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41221>

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.

No. A-1-CA-41189
State of New Mexico
v.
Jose O. Romero

Introduction of Opinion

Defendant Jose Romero was charged with aggravated driving under the influence (DUI) of intoxicating liquor or drugs, contrary to NMSA 1978, Section 66-8-102(D) (3) (2016), among other offenses. This matter is on appeal from the district court's order granting Defendant's motion to suppress blood evidence. After careful review and consideration of the briefs, applicable law, and the record, we affirm.

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

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41189>

No. A-1-CA-41518
State of New Mexico
v.
Jason Nowell

Introduction of Opinion

Defendant Jason Nowell was convicted of aggravated stalking, contrary to NMSA 1978, Section 30-3A-3.1 (1997), false imprisonment, contrary to NMSA 1978, Section 30-4-3 (1963), deprivation of the property of a household member, contrary to NMSA 1978, Section 30-3-18(C), (D) (2009), and interference with communications, contrary to NMSA 1978, Section 30-12-1 (1979). Defendant raises four issues on appeal: (1) the district court erred in omitting two essential elements from the aggravated stalking jury instruction; **View full PDF online.**

Megan P. Duffy, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Shammara H. Henderson, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41518>

No. A-1-CA-41257
Creig Butler
v.
Dealerbank Financial Services, LTD.

Introduction of Opinion

Defendants appeal the district court's award of attorney fees to Plaintiff Creig Butler for his efforts to collect a judgment over a period of four years. Defendants argue the award should be vacated for four reasons: (1) Plaintiff's application did not include a supporting affidavit; (2) the award included amounts that were already awarded and paid in show cause proceedings; (3) Plaintiff's application was untimely; and (4) a portion of the award lacked a statutory basis. Perceiving no error, we affirm.

Megan P. Duffy, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Jennifer L. Attrep, Judge

To read the entire opinion,
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<https://bit.ly/A-1-CA-41257>



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SAMUEL L. BACA

CPA/ABV/CFF, CVA, MAFF

RETIREMENT

It is with mixed emotions that I announce my retirement from the firm of Baca & Howard, P.C., effective June 30, 2025.

After more than 53 years in public accounting, I have decided to step away and embrace a new chapter in my life. Throughout my career, I have had the privilege of working with remarkable clients and colleagues. I am truly grateful for the opportunities I've had to contribute to our clients' success and to the many professional organizations that have supported my journey. The relationships I have built over the years mean the world to me, and I will cherish the memories we've created together. As I transition into retirement, I plan to spend more time with my family, pursue personal interests, and enjoy the simple pleasures of life. I am excited about this next phase and the adventures it will bring.

I want to thank each of you for your support, mentorship, and friendship throughout my career. While I will miss our daily interactions, I look forward to staying in touch.

Warmest regards,
Samuel L. Baca, CPA/ABV/CFF, CVA, MAFF
Baca & Howard, P.C.

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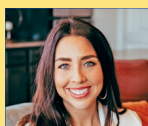
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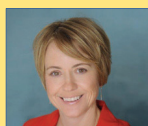
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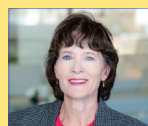
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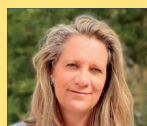
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Marcus J. Rael, Jr. and Taylor S. Rahn Named to 2025 Super Lawyers®

Robles, Rael & Anaya attorneys Marcus J. Rael, Jr. and Taylor S. Rahn have been selected for the 2025 Super Lawyers® list, a recognition earned by just five percent of attorneys each year. The listing reflects Rael and Rahn's commitment to extraordinary service for the clients they serve. The Super Lawyers® database relies upon patented selection technology, along with peer influence and research, to develop a list of the leading attorneys throughout the nation. According to the Super Lawyers® website, the company is a "rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement."

Rael is a Founding Partner and currently serves as the firm's Managing Partner. He represents a wide variety of clients, including governmental entities, private corporations and private parties on a variety of complex legal affairs. Rael's knowledge of government and administrative law, jail litigation, contracts, real estate, construction, land

use, water law and environmental litigation and reclamation is among the best in the region. As well as being Managing Partner of the firm for the past 15 years, he also heads the firm's Environmental Litigation and Governmental General Counsel and Litigation divisions. He currently represents the State of New Mexico in two U.S. Supreme Court cases as lead counsel having to do with environmental claims.

Rahn is a partner. She has significant trial experience in municipal, state and federal courts, representing government and private clients in both criminal and complex civil rights and tort cases. She has also successfully represented government clients before the Tenth Circuit Court of Appeals as well as in New Mexico's appellate courts.

"We are honored to have received this prestigious recognition," Rael said. "While the recognition goes to two of us, it really is a testament to the dedication of the entire team at Robles, Rael and Anaya."

About Robles, Rael & Anaya, P.C.

Robles, Rael & Anaya, P.C. attorneys provide legal services to clients in New Mexico and throughout the Southwest. The firm stands apart in the level of customer service provided to each client. The firm is committed to building productive, long-standing relationships through clear communication, consistent accessibility, and an unparalleled work ethic. Robles, Rael & Anaya has built its name on a dedication to exceeding expectations in every facet of legal service. For more information, visit <https://www.roblesrael.com>.



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Experienced Part-Time Attorney

Are you an experienced attorney licensed in New Mexico seeking a rewarding role with greater work-life balance and the opportunity to handle diverse, complex cases? Our growing law firm, based in Albuquerque, is seeking a motivated and experienced part-time attorney to join our dedicated team. We are a small, dynamic firm focused on providing high-quality legal services across a unique range of practice areas, including healthcare transactional, regulatory, and litigation matters, contract drafting, negotiation and litigation, guardian and conservatorship, administrative law and licensure defense, civil rights, and serious injury and wrongful death cases. This position offers a unique blend of autonomy and collaboration within a supportive small-firm environment. We are looking for an attorney to work on a remote part-time basis, offering significant flexibility. The position requires a commitment of 20 billable hours per week, with the opportunity to bill more based on case needs and your availability. You will be expected to manage assigned tasks and case responsibilities independently, leveraging your experience to move matters forward efficiently. While independence is key, you will work closely with the managing partner, benefiting from mentorship and a collaborative approach to navigating complex issues. If you are a qualified attorney interested in this unique opportunity, please email dan@akenheadlaw.com and attach your resume and a writing sample.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney (\$72,301.00) to a Senior Trial Attorney (\$85,222.00), based upon experience. Must be licensed in the United States. These positions are located in the Carlsbad and Roswell, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to nshreve@da.state.nm.us

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Positions

Full Time Attorneys

Jay Goodman and Associates, Law Firm PC, with offices in Santa Fe and Albuquerque, is dedicated to assisting clients in the areas of family law, domestic violence, estate planning and probate. Our mission is to respond to our clients' goals and concerns with creative consideration and seek results designed to minimize or resolve future legal problems. We are in the process of hiring Full Time Attorneys licensed and in good standing in New Mexico with experience in Family Law, and/or Probate Law. Successful applicants should have court room experience and have provided client relations with empathy and compassion. We offer excellent compensation and a comfortable team working environment with flexible hours. Please feel welcome to visit our website at www.jaygoodman.com to find out more about us. All inquiries are maintained as confidential. Please send a cover letter, resume, and a reference to: es@jaygoodman.com

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

The Eleventh Judicial District Attorney's Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for Assistant Trial Attorneys, Trial Attorneys and Senior Trial Attorneys. You will enjoy working in a community with rich culture and history while gaining invaluable experience and making a difference. The McKinley County District Attorney's Office provides regular courtroom practice, supportive and collegial work environment. You are a short distance away from Albuquerque, Southern parts of Colorado, Farmington, and Arizona. We offer an extremely competitive salary and benefit package. Salary commensurate with experience. These positions are open to all licensed attorneys who 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.

Children's Court Attorney for CYFD
Position Job ID: Various

The Children, Youth and Families Department (CYFD) is hiring full-time and contract attorneys of all levels of experience, as well as law clerks, to fill multiple Children's Court Attorney vacancies in the Legal Department statewide. Children's Court Attorneys are established in the Children's Code for each judicial district and provide legal services in protective services cases (child abuse and neglect matters) including consultation, counsel, filing and initiation of new cases, interpretation of law, research, litigation, 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. Qualifications: JD from an accredited law school, and admission to the NM state bar in good standing or if barred in another state, the ability to acquire a limited law license. Children's Court Attorneys are in pay band LH, with an annual salary range from \$77,354 to \$139,238 and a competitive full benefits package. Individual contracts will be negotiated up to \$60,000/year. For more information please contact Cynthia Gonzales CynthiaM.Gonzales@cyfd.nm.gov To apply www.spo.state.nm.us. The State of New Mexico is an EOE.

Litigation Attorney

Jennings Haug Keleher McLeod Waterfall, an AV-rated regional law firm, is seeking a full-time litigation attorney with 2 to 5 years of litigation experience to join a busy and varied general civil litigation practice in the Albuquerque office. Must be currently licensed to practice law in the state of New Mexico. Experience with depositions and court appearances is a plus, legal analysis and excellent research and writing skills are required. All inquiries will be held in strict confidence. The firm offers a competitive salary and benefits with a professional working environment. Please see www.jkwlawyers.com for further information about the firm. Please email your cover letter, resume, and writing sample to Nathan Stimson at nss@jkwlawyers.com.

City of Albuquerque
Assistant City Attorney

The City of Albuquerque Legal Department is seeking an Assistant City Attorney to provide support on its higher-level litigation matters. The attorney will work directly with outside counsel and attorneys within the Legal Department, including the City Attorney, as litigation on these matters proceeds. Duties will include researching legal questions, drafting and responding to discovery, taking depositions, drafting and arguing motions, working with witnesses, attending trial and drafting appeal briefs if necessary. When time permits, the attorney will also handle other assignments as needed and handle or assist with matters assigned to the Litigation Division, which defends claims brought against the City and its employees. This is a great opportunity to work with experienced attorneys and obtain significant experience. This position also provides opportunity for advancement. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

Department of Municipal Development

The City of Albuquerque is seeking an attorney to provide legal services to the City's Department of Municipal Development ("DMD") 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. Salary based upon experience. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

Associate Attorneys

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

Full or Part Time Lawyer

Stiff, Garcia & Associates, defense insurance firm seeking full or part time lawyer. Work as much or as little as you want. Our practice includes employment, civil rights, coverage, professional liability and general liability. "Of Counsel" is available for experienced defense lawyer. Benefits include health, dental, life insurance and 6% 401K. Please send resume to John Stiff, jstiff@stiffllaw.com or Karen Arrants, karrants@stiffllaw.com

Litigation Attorney

Busy Plaintiff's civil litigation firm located near the Journal Center is accepting resumes for an associate attorney with 5 (or more) years of practical experience. Candidates should possess strong oration skills, be proficient in conducting and defending depositions, have critical research and writing abilities and be familiar with motion practice. Practice areas include civil litigation/personal injury and general tort issues. Litigation experience preferred, but will not bar consideration. Salary commensurate with experience. Please forward a letter of interest along with a Resume and writing sample to: paraalegal3.bleuslaw@gmail.com.

Assistant City Attorney

The City of Albuquerque Legal Department is seeking an Assistant City Attorney to join the Land Use and Enforcement ("LUE") division. The LUE division advises numerous departments as they enforce a wide range of the City's ordinances, including ordinances concerning housing standards, nuisance abatement, and animal treatment. In addition to advising departments, the LUE division represents the City in administrative hearings, in criminal prosecutions in Metro Court, and in civil matters in District Court. Responsibilities will include advising clients, boards, and commissions, drafting legal memoranda, and representing the City in administrative, criminal, and civil matters. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

Request for Letters of Interest for Legal Services

The City of Albuquerque Legal Department is issuing a Request for Letters of Interest for Legal Services. The City utilizes outside counsel for tort litigation, employment claims, use of force claims, land use appeals, contract disputes, affirmative litigation and appellate practice, as well as general counsel services. The City is seeking to expand its options for legal services in order to ensure that it has a wide bench to draw from. The City's cases provide an opportunity for firms to allow younger attorneys to gain deposition and courtroom experience in state and federal court and in administrative hearings. They also provide the opportunity to work on cutting-edge legal issues, including interpretation of the newly-enacted New Mexico Civil Rights Act. The City is particularly interested in civil defense firms. Interested parties may secure a copy of the Proposal Packet, by accessing the City's website at <https://www.cabq.gov/legal/documents/rfli-legal-services.pdf>.

Contract Counsel

The New Mexico Law Offices of the Public Defender (LOPD) provides legal services to qualified adult and juvenile criminal clients in a professional and skilled manner in accordance with the Sixth Amendment to United States Constitution, Art. II., Section 14 of the New Mexico State Constitution, *Gideon v. Wainwright*, 372 U.S. 335 (1963), the LOPD Performance Standards for Criminal Defense Representation, the NM Rules of Professional Conduct, and the applicable case law. Contract Counsel Legal Services (CCLS) is seeking qualified applicants to represent indigent clients throughout New Mexico, as Contract Counsel. The LOPD, by and through CCLS, will be accepting Proposals for the November 1, 2025 – October 31, 2027 contract period. All interested attorneys must submit a Proposal before July 7, 2025 at 4:00 p.m. (MDT) to be considered. For additional information, attorneys are encouraged to search the LOPD website (<http://www.lopdnm.us>) to download the Request for Proposals, as well as other required documents. Confirmation of receipt of the Request for Proposals must be received by email (ccls_RFP_mail@ccls.lopdnm.us) no later than midnight (MDT) on June 9, 2025.

Job Announcement Staff Attorney (State Licensed)

Location: Farmington, NM

DNA - People's Legal Services ("DNA") is committed to providing high quality legal services to persons living in poverty on the Navajo, Hopi and Jicarilla Apache Reservations, and in parts of Northern Arizona, New Mexico, and Southern Utah. DNA's main office, as well as DNA's Fort Defiance branch office, are located in Window Rock, Arizona. DNA also has branch offices in Chinle, Arizona, Tuba City, Arizona, Flagstaff, Arizona, on the Hopi BIA judicial compound near Keams Canyon, Arizona, and Farmington, New Mexico. DNA legal staff practice in tribal, state, federal, and administrative courts. REQUIREMENTS: Attorneys must be a graduate of an accredited law school and a member of the Arizona, New Mexico, or Utah bar association, or if licensed in another jurisdiction, able to gain admission by motion or reciprocity. Must have strong oral and written communication skills; the ability to travel and work throughout the DNA service area; competence in working with diverse individuals and communities, especially with Native Americans, persons of color, other marginalized communities; and a commitment to providing legal services to the poor. RESPONSIBILITIES INCLUDE: a) Reporting to Managing Attorney and Director of Litigation; b) Providing the full range of high-quality legal services to DNA clients; c) Being familiar with and following all DNA and funder policies, and all applicable state, federal, tribal and local laws; d) Participating in community outreach, training programs, and client education events; e) Participating in remote, local, or online intake; f) Performing other duties as assigned. SALARY RANGE (depending on experience): \$57,600 - \$76,500. WHAT TO SUBMIT: Employment Application (found at <https://dnalegalservices.org/career-opportunities-2/>), Resume, Cover Letter, and, upon request, Transcripts (if applicants graduated within the last two years) and Writing Sample (Attorney applicants only). HOW TO APPLY: Email: HResources@dnalegalservices.org | Direct: 928.871.4151 ext. 5640 Cell: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted). Preference is given to qualified Navajo and other Native American applicants. DNA requires all applicants to be eligible to work within the United States. DNA will not sponsor visas unless otherwise noted on the position description.

Criminal Justice Act (CJA) Resource Counsel for the District of New Mexico CJA Panel

The Federal Public Defender for the District of New Mexico is seeking a full-time attorney to serve as the Criminal Justice Act (CJA) Resource Counsel for the District of New Mexico CJA Panel. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The CJA Resource Counsel will work closely with the Courts, the Federal Public Defender, the Defender Services Office and the members of the CJA Panel to improve the quality of representation, assist in providing efficient management of CJA resources and provide support for CJA Panel lawyers. Minimum qualifications include graduation from an accredited law school, be licensed by the highest court of a state, federal territory, or the District of Columbia; and be a member in good standing in all courts where admitted to practice. Applicants must have an established working knowledge and demonstrated command of federal criminal law; at least five years of experience practicing federal criminal law; significant experience working under the Criminal Justice Act; either as a CJA Panel lawyer or in a Federal Defender Organization. Position is full-time with comprehensive benefits including: health, vision, dental and life benefits, FSA & HSA, EAP, earned PTO/sick leave, paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contributions, public service loan forgiveness if qualified, and prior service credit. Full-time salary from Grade 11 to 15 (\$74,741 to \$192,490) determined by experience, qualifications, and budgetary constraints. In one PDF document, please submit a statement of interest, detailed resume of experience, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference in the subject line 2025-01. Closing date is 06/01/2025.

Litigation Attorney

Priest & Miller LLP is seeking an experienced litigation attorney to join our team. Priest & Miller is a dynamic defense firm that handles complex cases involving claims of medical negligence, wrongful death, catastrophic injury, long-term care, and oil and gas accidents. We are seeking attorneys with 3+ years of experience and who will thrive in a collaborative, flexible and fast paced environment. We offer highly competitive salaries and a generous benefits package. All inquiries will be kept confidential. Please email your resume to Resume@PriestMillerLaw.com.

Request For Proposal/Job Posting Sjdc Assisted Outpatient Treatment Program (AOT)

The Second Judicial District Court (SJDC) is seeking proposals from mental health treatment providers to provide treatment services to participants in the SJDC's Assisted Outpatient Treatment (AOT) program. AOT is a civil court program that facilitates the delivery of community-based behavioral treatment to individuals with a serious mental illness who have a prior history of treatment non-adherence, which has resulted in multiple hospitalizations and/or incarcerations. The intent of AOT is to improve the quality of life for persons with a primary diagnosis of a mental health disorder, and possible secondary substance use disorder, by engaging clients in effective treatment to overcome the barriers that have led to their high utilization of crisis-based treatment services and unnecessary incarceration. Ideal candidates are established clinical providers with experience working with persons with serious mental illness. Learn more and submit your proposal at: <https://seconddistrict.nmcourts.gov/the-second-judicial-district-court-of-the-state-of-newmexico-request-for-proposals/>.

Associate Attorney

RILEY | KELLER | ALDERETE | GONZALES, an AV-rated Albuquerque civil defense firm formed in 1982, seeks an associate attorney trial position. We seek a person with civil experience, including communication and writing skills. The position is full-time with the prospect of a virtual work setting and flexible schedule. We offer an excellent salary, benefits and pension package. Please submit a resume, references and writing samples to our Office Manager by fax, (505) 883-4362 or mvelasquez@rileynmlaw.com.

Deputy Chief Appellate Court Clerk

The New Mexico Court of Appeals is seeking an experienced supervising attorney to serve as its next Deputy Chief Appellate Court Clerk. The Deputy works under the general direction of the Chief Clerk and closely with the Chief Judge, Judges, staff attorneys, and Clerk's Office staff. The Deputy assists the Clerk of the Court with supervision of the Clerk's Office, court administration, and general counsel matters including IPRA requests, contracts, and HR. The Deputy works closely with the court manager and state-wide district courts to facilitate case processing. With the assistance of staff, the Deputy processes all procedural motions under delegated authority and provides legal recommendations on substantive motions and jurisdictional matters to staff and judges. The Court of Appeals has offices in Santa Fe and Albuquerque with regular travel between the offices required. The position may be primarily located in either location. Education: must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico. Required experience: Eight (8) years of experience in the practice of applicable law, of which two (2) years must have been as a supervisor. \$91,520-\$163,758.40 annually. Interested applicants should submit a New Mexico Judicial Branch Application for Employment, or a Resume and a Resume Supplemental form to: jobs@nmcourts.gov, AOC Human Resources Division, 202 E. Marcy Street, Santa Fe, New Mexico 87501. To view the complete job description and obtain the Judicial Branch Application for Employment or Resume Supplemental form, interested applicants should visit www.nmcourts.gov/careers. The New Mexico Judicial Branch is an equal-opportunity employer. Application Deadline: June 6, 2025.

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

We're Hiring: Estate Planning / Probate / Family Law Attorney

Albuquerque, NM | Full-time | \$85K-\$147K (based on experience). New Mexico Financial and Family Law is a forward-thinking, growth-driven law firm focused on Estate Planning, Probate, and Family Law—and we're looking for a motivated, collaborative attorney ready to be part of something unique. Why This Role Stands Out: Play a key role in shaping firm culture and processes; Competitive pay with work-life balance; Deliver top-tier service in a supportive environment; Be part of a mission-driven, high-energy team. What We Offer: Private office with a view; 401(k) + matching; Medical, dental, vision & disability insurance; Paid parking; PTO; Performance-based bonuses; Positive, professional atmosphere—no drama, no burnout. What We're Looking For: 3+ years of legal experience (trial experience a plus); Excellent communication and client-relations skills; NM bar license; Able to reliably commute to our Albuquerque office; A builder mindset—ready to contribute to a thriving practice Sound like a fit? Send us your resume, a quick intro, or whatever you think best shows us who you are. All inquiries are 100% confidential. We'd love to connect.

Attorneys

The State of New Mexico, Risk Management Division - Legal Bureau ("RMD") is seeking attorneys interested in "protecting the State of New Mexico's human, physical, and financial assets." RMD has two convenient locations in Albuquerque and Santa Fe, with the Santa Fe office located within walking distance of the South Capitol Rail Runner stop. RMD offers a competitive salary and benefits package. Senior Litigation Attorneys evaluate cases, maintain a case load of all types of civil claims, manage outside counsel defending the State of New Mexico, collaborate and strategize with experienced attorneys, attend and participate in mediations and trials, and work with a wonderful supportive staff. Applicants are required to have a current license to practice law in New Mexico and be in good standing with the State Bar. We are an equal opportunity employer and encourage all qualified candidates to apply. Please send a resume to Laura.Unklesbay@gsd.nm.gov

Associate Attorney

Prince & Schmidt, LLP, a respected and established personal injury law firm located in downtown Santa Fe, is seeking a driven and capable associate attorney to join our growing litigation team. The ideal candidate will have at least two years of experience in personal injury law or civil litigation and should be comfortable managing a caseload of 40 to 80 cases with partner supervision while also working collaboratively with colleagues. Responsibilities include case development, client communication, settlement negotiations, discovery, motion practice, and trial preparation. We are looking for someone who is detail-oriented, highly organized, and passionate about advocating for injured clients. In return, we offer a structured path to partnership, with regular performance reviews, a highly competitive salary in addition to performance-based incentives and bonuses, profit-sharing, full benefits, and ongoing mentorship from experienced trial and personal injury attorneys. Our firm culture is collaborative, client-focused, and committed to professional excellence. This is a unique opportunity to build a meaningful legal career in a firm that values growth, accountability, and results. To apply, please send a cover letter, resume, and writing sample to roger@lawforpersonalinjury.com. To learn more about our firm, visit www.lawforpersonalinjury.com.

Associate Attorneys

Modrall Sperling, one of New Mexico's largest law firms, is searching for Associate attorneys to join our general civil litigation practice. The ideal candidates should have a minimum of 2 to 3 years of civil litigation experience with excellent research, writing, and verbal advocacy skills. Qualified applicants must have experience working on large cases, including conducting legal research, drafting briefs, taking and defending depositions, arguing in court is preferred. Strong academic credentials required. Candidates must be admitted, or eligible for admission to the New Mexico Bar. As one of New Mexico's largest firms, we are able to offer associate attorneys high quality, challenging work and outstanding career opportunities. Please send a letter of interest and resume to attyapplicants@modrall.com. All inquiries will be kept confidential.

Professional Liability Attorney

Description: Rodey, Dickason, Sloan, Akin & Robb, P.A.'s Albuquerque office is currently seeking attorneys to help in its Professional Liability Group, primarily to help with the defense of medical malpractice and legal malpractice cases. The candidate would participate in all aspects of case handling and would gain experience in taking depositions, preparing witnesses for depositions and defending depositions (including expert witnesses), brief and reporting writing, answering written discovery, and participating in direct contact with clients. The candidate would receive mentorship from Directors in the Professional Liability Group. Qualifications: Ideal candidate should have strong academic credentials and writing skills and be licensed in New Mexico. Rodey offers a competitive salary and bonus structure, comprehensive benefits package, including health, dental and vision; professional development and multi-faceted mentoring program; FSA and HSA plan option(s); 401K plan/ employer match; group life and long-term disability insurance; employee assistance program; wireless phone/ services stipend. To apply, please send a cover letter, resume, writing sample, and law school transcript attention "Ali Taylor, Human Resources Director" at: jobs@rodey.com with "Professional Liability Attorney" in the subject line. All inquiries will be kept confidential. Rodey is an Equal Opportunity Employer. Rodey Law Firm is not accepting unsolicited resumes from search firms for this position.

Full-Time Associate Attorney

Whitener Law Firm, P.A. is seeking a full-time associate attorney to assist with briefing, to attend hearings, depositions, and mediations as well as managing a caseload of personal injury cases. Candidates must be highly motivated, client oriented and enjoy working in a fast-paced environment. Candidates must be licensed to practice in the state of New Mexico. Must have at least five years of experience. Salary competitive and commensurate to experience and qualifications. Please send resume to Leanne Duree, Whitener Law Firm, P.A., 4110 Cutler Avenue, N.E., Albuquerque, NM 87110, fax to 505-242-3322 or e-mail to leanne@whitenerlawfirm.com.

Attorney – Civil Litigation

Join Sutin, Thayer & Browne where you can grow your legal practice and thrive while having flexibility and support! We have been New Mexico's trusted choice for legal services for over 75 years and we're seeking to energize the traditional big law firm model. You'll be part of a supportive team where excellence meets a vibrant workplace culture. Our teams handle everything from business transactions to litigation with a unique, client-focused approach and a collaborative spirit that sets us apart. Here's what we offer: competitive compensation structure, flexible remote work, and opportunities for growth and mentorship. We have a fantastic benefits package including medical, dental, and vision insurance, 401(k) matching, profit sharing, and employer-paid life and long-term disability insurance. Join us and dive into diverse areas of law while looking forward to one day leading a team. Ready to grow with us? Let's make it happen! We are looking to hire a full-time Attorney with at least 4-5 years of relevant experience to join our Litigation practice. A book of business is NOT required. Interest in commercial and governmental law is a plus. To apply, please send please send a letter of interest, résumé, and writing sample to both: Eduardo Duffy, Recruiting Chair, at EAD@sutinfirm.com and Danielle Smith, HR Manager, at DSS@sutinfirm.com

Legal Defense Services

The Town of Taos is seeking proposals from qualified attorneys to provide legal defense services for indigent defendants facing misdemeanor charges in Taos Municipal Court. Cases are assigned by the Municipal Court Judge when a defendant is deemed indigent and entitled to legal representation, with an average of 30 to 50 cases per year. The selected attorney must be willing to accept all assigned cases unless a conflict of interest arises and must be licensed to practice law in New Mexico and in good standing. Proposals should include a resume, a copy of the New Mexico Bar Card, contact information for two professional references, a summary of qualifications and legal experience, a brief statement of interest, and a fee schedule outlining the proposed cost structure for services. For questions or proposal submission please contact Bailey Andrea, Chief Procurement Officer, at bandrea@taosnm.gov.

Managing Attorney (FT-At-Will)
#00054444

Civil Division

The Second Judicial District Court, Civil Court is accepting applications for an At-Will Managing Attorney. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and eight (8) years of experience in the practice of civil law, of which four years must have been as a supervisor. The Managing Attorney will be responsible for overseeing the operations and administration of the Civil Division. Responsibilities include, but are not limited to, overseeing information provided to the Presiding Judge on behalf of the Civil Division; implement and oversee substantive procedural matters and judicial operations at the direction of the Presiding Judge; legal research and analysis; prepares reports, memoranda and orders; legislative analysis; analyze reports and data and interpret trends or patterns; serve as a subject matter expert; supervise four or more staff; and work with ten judicial officers, court personnel, the Administrative Office of the Courts, and the Supreme Court. Target Pay: \$63,182 hourly or \$131,418.56 annually, plus benefits. Send application or resume supplemental form, proof of education, and a writing sample to the Second Judicial District Court, Human Resource Office, to 2ndjobapply@nmcourts.gov or mail to P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSES: Friday, June 20, 2025, at 5:00 p.m.

**Full-Time Legal Assistant/
Legal Secretary**

Madison, Mroz, Steinman, Kenny & Olexy, P.A., a well-established civil litigation firm, seeks a full-time Legal Assistant/Legal Secretary. The ideal candidate should have a minimum of 6 months of civil litigation experience, the ability to multitask effectively in a fast-paced environment, possess excellent skills in case management and calendar procedures, ability to assess priorities, highly motivated, detail oriented, strong work ethic, knowledge of State and Federal court rules, and proficient in Odyssey and CM/ECF e-filing. We offer an excellent fully funded health insurance plan, 401(K) and Profit Sharing Plan, paid designated holidays, PTO, and a professional and team-oriented environment. Please submit your resume to: becky@madisonlaw.com, or mail to Office Administrator, P.O. Box 25467, Albuquerque, NM 87125-5467.

Paralegal/Legal Intern

Harrison & Hart, LLC is a busy, collegial, and Harrison & Hart, LLC is a busy, collegial, and highly collaborative law firm in Albuquerque, New Mexico that handles complex litigation, including federal and high-level state criminal defense, civil rights, class actions, constitutional and election-law cases, and commercial disputes. We are seeking a paralegal and/or legal intern with a minimum of two years of civil paralegal litigation experience or a bachelor's degree with a pre-law focus. The ideal candidate will be highly motivated, very detail oriented, and possess excellent skills in discovery review, case management, and calendaring procedures, as well as proficiency in Odyssey and CM/ECF filing. This position would be an excellent opportunity for a recent graduate considering law school, as we provide hands-on legal training and opportunities to complete substantive legal work. We offer an extremely competitive salary, excellent and fully funded health insurance plan, 401(K) and profit-sharing plan, paid designated holidays, PTO, and a generous bonus structure. We are also open to full- or part-time employees. Qualified applicants are encouraged to submit a cover letter and resume to elise@harrisonhartlaw.com.

Paralegal Position

Albuquerque based Plaintiffs' law firm seeks an experienced litigation paralegal for remote, part-time (20-25 hours/week) employment with a full-time position possible after 90-day probationary period. At least 3-5 years of prior paralegal litigation experience is required. Excellent organization and time-management skills required. Computer experience working with multiple software programs and strong writing ability required for busy Plaintiffs' litigation law-firm. Candidates must be able to draft pleadings, draft discovery requests and responses and be able to assist attorneys with analyzing and organizing discovery received from opposing parties. Legal research skills would be beneficial. Salary/hourly rate is dependent on candidate's experience. Please email resumes and a recent, redacted writing sample (pleadings, discovery documents or legal research memo) to psapien@sapienlaw.com and nstaeger@sapienlaw.com

Paralegal Position

Macias-Mayo Law, P.C., a law firm serving clients throughout the State of New Mexico, seeks paralegals to join its growing firm. We specialize in family law matters including complex international cases, adoption and artificial reproductive technology; as well as mediation. We have a congenial office environment and expect all team members to work professionally and collaboratively together. All successful candidates must have strong organizational, writing and computer skills, knowledge of state and federal court rules and filing procedures, the ability to manage cases with large volumes of documents, and professional communication skills. The paralegal position requires experience with litigation matters, the ability to draft motions, pleadings and correspondence, organize and analyze discovery, interview clients and witnesses, and a general ability to assist clients during highly emotional circumstances. We offer competitive salaries and benefits dependent on qualifications and experience. Prospective team members should submit a resume, references, and cover letter to ninap@maciasmayolaw.com.

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State Bar of
New Mexico's
website*

www.sbnm.org

Attorney

Collins & Collins, P.C. seeks an attorney with at least 3 years of experience in complex civil litigation. Must have exceptional legal research and writing skills. Primary duties include drafting motions, briefs, legal memos and mediation statements in high-stakes civil rights and tort cases—all geared toward trial. Additional responsibilities include discovery review, deposition preparation and trial support. Requirements: NM license (or immediate eligibility); Strong writing under pressure and tight deadlines; Experience in complex litigation and trial preparation; Strong work ethic, fast learner and ability to work independently. Send résumé, writing sample and brief cover letter to info@collinsattorneys.com.

Paralegal Position

Hardy McLean LLC is looking for a paralegal to join our new firm. Hardy McLean LLC is a boutique firm located in downtown Santa Fe that specializes in energy and natural resources law. We handle a large volume of oil and gas and public utilities regulatory matters. We are passionate about our work and clients and would love to find someone who shares our excitement for energy and natural resources. The paralegal's job duties will focus on assisting the attorneys with preparing documents and filings for regulatory practice before the New Mexico Public Regulation Commission and the New Mexico Oil Conservation Division. The ideal candidate will have experience preparing legal pleadings and discovery, and working knowledge of oil and gas and/or utilities administrative procedure. Please send resume and letter of interest to Hardy McLean LLC's Managing Partner, Jackie McLean, at jmclean@hardymclean.com.

Administrative Support Coordinator

The State Bar of New Mexico seeks qualified applicants to join our team as a full-time (40 hours/week) Administrative Support Coordinator. The successful incumbent will provide administrative support for the activities, programs and events of State Bar committees, practice sections, and divisions ("groups") as well as customer service for callers and visitors, including attorneys, judges, legal staff and members of the public. \$19-\$21/hour, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.

Legal Assistant/Paralegal

Legal Assistant/Paralegal needed for criminal firm. Start immediately for part or full-time position. Phones, correspondence, simple legal drafting, transcription, case and client management. Court/legal experience preferred but not required. Pay DOE. Call Frechette & Associates at 505-247-8558 or email at Frechette@frechettelaw.com

Services

Are you in need of a Weekend Legal Assistant?

I can help with that! Defense only, no family or Criminal Law. I'm looking for weekend work. I have 20 years of experience. I can work at home or in the office. Please contact "W" at LEGALASSISTANT0425@YAHOO.COM for Resume/Recommendations.

Miscellaneous

Search for Will

I am looking for the will of Charles Boone, deceased. If you prepared the original will or have a copy please contact me at 360-421-1383 Heather H McClellan.

2025 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 via email by 5 p.m. (MT) 13 business days prior to the issue publication date.**

**For more advertising information, contact:
651-288-3422 or email marketing@sbnm.org**

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

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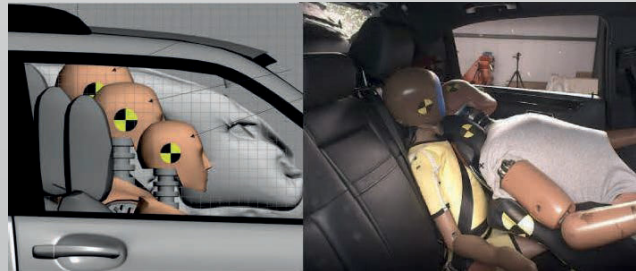
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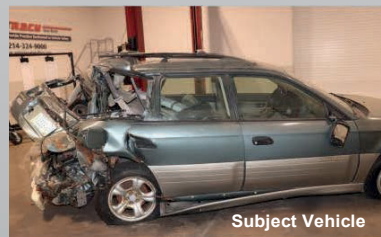


Crashworthiness

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.



Subject Vehicle



Test Vehicle

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A Guide to



State Bar of
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The State Bar of New Mexico's Digital Communications

As part of our mission to serve New Mexico's legal community, the State Bar of New Mexico is dedicated to ensuring that licensees are up-to-date with the latest information and announcements via regular digital e-newsletters and email communications. From news pertinent to New Mexico courts to pro bono opportunities, our emails cover a variety of legal information.



Bar Bulletin

The State Bar of New Mexico's official publication, the Bar Bulletin, is published on our website on the second and fourth Mondays of each month. The day that the *Bar Bulletin* is published online, an email is distributed to State Bar of New Mexico licensees that links to the new issue. To publish your notices, announcements, classifieds or articles in the *Bar Bulletin*, contact notices@sbnm.org.

eNews

Sent out each Friday morning, our weekly eNews e-newsletter is a comprehensive email containing a variety of information and announcements from the State Bar of New Mexico, the New Mexico State Bar Foundation, New Mexico courts, legal organizations and more. To advertise in eNews, please email marketing@sbnm.org. To have your organization's announcements or events published in eNews, please contact enews@sbnm.org.



Member Services Spotlight

Emailed each Tuesday morning, our weekly Member Services Spotlight e-newsletter contains announcements and events from each of the State Bar's Sections, Committees and Divisions. To highlight your Section, Committee or Division's latest news, email memberservices@sbnm.org.

CLE Weekly Roundup

Distributed each Wednesday morning, the CLE Weekly Roundup provides a highlight of the New Mexico State Bar Foundation Center for Legal Education's upcoming CLE courses with information regarding the date and time of the course, credits earned and link to register. For more information regarding the CLE Weekly Roundup, please contact cleonline@sbnm.org.



New Mexico Court of Appeals Opinions

As a licensee benefit, the State Bar of New Mexico distributes introductions to the New Mexico Court of Appeals' published opinions with links to the full opinions the day they are published. For more information regarding the Court of Appeals opinions distribution, please contact opinions@sbnm.org.

Pro Bono Quarterly Newsletter

Disseminated quarterly, the State Bar of New Mexico's Pro Bono Quarterly e-newsletter provides the New Mexico legal community with an overview of initiatives to provide pro bono legal services for New Mexican residents in need. For more information on the newsletter or to advertise your pro bono or volunteer opportunity, contact probono@sbnm.org.

