

DIGITAL
BAR BULLETIN

June 25, 2025 • Volume 64, No. 12



Plaza Blanca, by Bob Santandrea (page 3)

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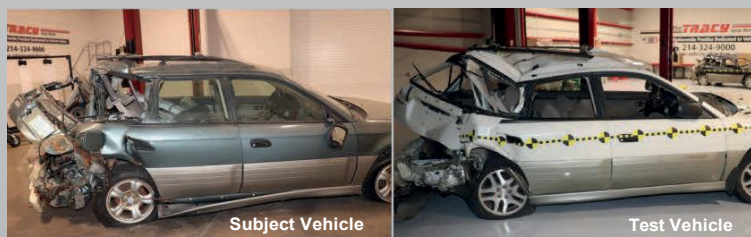


Crashworthiness

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.



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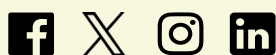
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www.sbnm.org



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The *Bar Bulletin* isn't just a place for information; it's a hub for discourse and perspectives on timely and relevant legal topics and cases! From A.I. and technology to family law and pro bono representation, we welcome you to send in articles on a variety of issues pertaining to New Mexico's legal community and beyond!

For information on submission guidelines and how to submit your articles, please visit www.sbnm.org/submitarticle.



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About Cover Image and Artist: A retired patent attorney, Bob Santandrea has been drawing, painting, and sculpting for about the last 40 years. He has worked in charcoal, pastels, oils and combinations thereof, employing the spontaneity that each medium allows. Bob has lived in and visited a variety of places, and the different experiences, tastes and cultures have influenced his work over the years. His artistic education has included numerous workshops, working informally with experienced artists/teachers, life drawing and plein air groups, and self-instruction.

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>.

New Mexico Court of Appeals Judicial Nominating Commission Candidate Announcement

The New Mexico Court of Appeals Judicial Nominating Commission convened at 10 a.m. (MT) on June 16 and June 17 to interview applicants at the State Bar Center located at 5121 Masthead St. NE, Albuquerque, N.M. 87109. The judicial vacancy occurred due to the resignation of the Hon. Kristina Bogardus, effective June 7. The Nominating Commission recommends the following applicants to Gov. Michelle Lujan Grisham: **Aletheia Vadin Pamela Allen, Leander Bergen, The Hon. Bradford James Dalley, Kristopher Nicolas Houghton, Matthew Eric Jackson, Sean Patrick McAfee, Olga Serafimova and Nicholas Mark Sydow.**

Sixth Judicial District Notice of Mass Reassignment of Cases

Effective March 1: In **Hidalgo County**, All pending cases (excluding PQ cases) assigned to the Hon. Jennifer E. DeLaney have been reassigned to the Hon. Jarod

Professionalism Tip

With respect to the courts and other tribunals:

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests.

K. Hofacket (100%). In **Luna County**, all pending CR, ER, EX, JR, LR, PD, YR and SI cases assigned to the Hon. James B. Foy have been reassigned to the Hon. Jennifer E. DeLaney (100%). All pending DM and FP cases assigned to the Hon. James B. Foy have been reassigned to the Hon. Jennifer E. DeLaney (100%). All pending DV cases assigned to the Hon. James B. Foy will be reassigned to the Hon. Jarod K. Hofacket (100%). All pending CV, PB, SA and SQ cases assigned to the Hon. James B. Foy will be reassigned to the Hon. Jarod K. Hofacket (100%). In **Grant County**, all pending CR, ER, EX, JR, LR, PD, YR and SI cases assigned to the Hon. Jarod K. Hofacket will be reassigned to the Hon. James B. Foy (100%). Parties to these cases who have not previously exercised their right to excuse a judge may do so within 10 days of the last publication in the *Bar Bulletin*, pursuant to Rule 1-088.1 NMRA.

U.S. District Court, District of New Mexico Notice of Judicial Vacancy

The Judicial Conference of the United States has authorized the appointment of a part-time United States Magistrate Judge for the District of New Mexico at Farmington, New Mexico. The current annual salary of the position is \$45,522, commensurate with the annual caseload for this part-time position. The term of office is four years. The U.S. Magistrate Judge Application form and the full notice with details and application instructions are available from the Court's website at www.nmd.uscourts.gov/employment or by calling 575-528-1439. Applications must be submitted no later than July 7.

STATE BAR NEWS

State Bar of New Mexico Register for the 2025 Annual Meeting

Registration is open for the State Bar of New Mexico's 2025 Annual Meeting! This year's Annual Meeting will be taking place at the Sandia Resort & Casino in Albuquerque, N.M. from July 31 to Aug. 2. There are multiple ways to attend this year's Annual Meeting, including in-person and virtual options. Attending all three days at the Sandia Resort & Casino will earn attendees all 12 CLE Credits for the year. Can't attend all three days? Register to attend Friday sessions only in-person or virtually (5.5 CLE credits). Register to attend at www.sbnm.org/AnnualMeeting2025.

Board of Bar Commissioners Appointment to DNA – People's Legal Services, Inc. Board

The Board of Bar Commissioners will make one appointment to the DNA – People's Legal Services, Inc., Board for a four-year term. Active status attorneys in New Mexico who wish to serve on the board should send a letter of interest and brief resume by July 16 to bbc@sbnm.org.

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

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

New Mexico State Bar Foundation Pro Bono Opportunities

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

UNM SCHOOL OF LAW Law Library Hours

The Law Library is happy to assist attorneys via chat, email or in person by appointment from 8 a.m. 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.

Featured Member Benefit



Fastcase, the legal research platform available to you as a member of the State Bar of New Mexico, has been upgraded to vLex Fastcase, a new legal intelligence and research platform. Coverage includes cases, statutes, regulations, court rules and constitutions for all 50 states & Federal. This service is available through www.sbnm.org. vLex also offers free live monthly training webinars. Customer Support is available 8 a.m. to 8 p.m. ET, Monday-Friday. The Support team can be reached at 866-773-2782 or support@fastcase.com, as well as on chat on vLex Fastcase.

For more information, email tech-support@sbnm.org.

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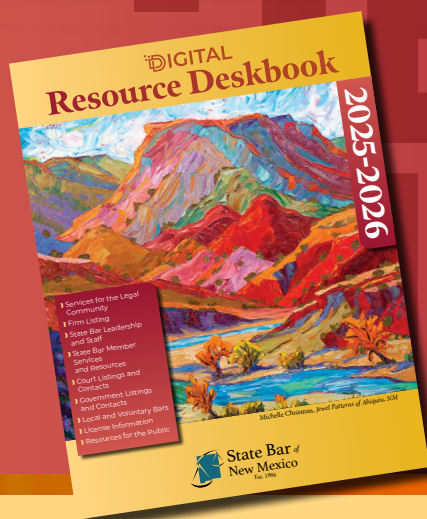
- Practice area-targeted resources
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The Digital Resource Deskbook 2025-2026 is Here!

View & Download your FREE digital copy at
www.sbnm.org/Resource-Deskbook-2025-2026!

All active State Bar of New Mexico licensees were emailed a **FREE** digital copy of the ***Resource Deskbook 2025-2026*** as a member benefit on March 28.

View and download the comprehensive guide for State Bar of New Mexico resources for our licensees, New Mexico State and Federal Court information, License Renewal information and much more at
www.sbnm.org/Resource-Deskbook-2025-2026!



The convenient downloadable digital format will allow you to easily click through the sections of the ***Resource Deskbook*** to find the information that you need – whether you are working at your desk or on the go!

Please note that the *Resource Deskbook* will not be printed and mailed this year.



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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)

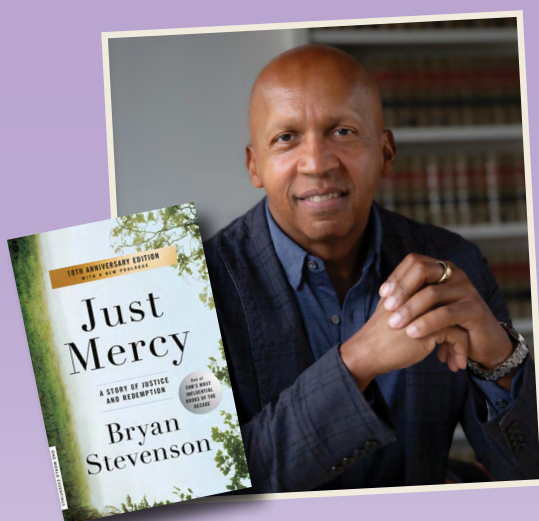
Friday Sessions Only

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

★ **CLE sessions are approved for credit in both New Mexico and Texas!** ★

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



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Daily Conference Highlights

View the full agenda at

www.sbnm.org/AnnualMeeting2025Agenda

Thursday, July 31

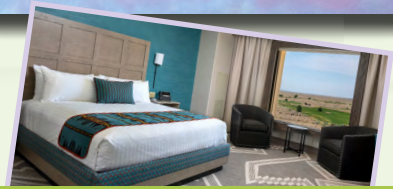
- Welcome
State Bar of New Mexico President Aja N. Brooks
- Justice by Design: Artificial Intelligence, Law and the Future of Us
Professor Sonia M. Gipson Rankin, UNM School of Law
- Breakout Sessions
- The Commander in Chief at High-Tide, Wherever that Line May Be
Professor Joshua Kastenber, UNM School 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. Sleese, State Bar of New Mexico
- Closing Remarks
State Bar of New Mexico President Aja N. Brooks



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www.sbnm.org/AnnualMeeting2025



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Reflections



The mission of the **State Bar of New Mexico's Equity in Justice Program** is to cultivate and grow a legal profession in New Mexico that is representative of and reflective of the people of New Mexico. Our state is an incredibly diverse place and a legal profession that embraces and fosters inclusivity will attract talent to its employ and clients to engage it!

With that in mind, we bring you the **Reflections** series. We call these "**Reflections**" because they not only reflect back to our diverse legal community that they belong and are valued, but also because we hope it also inspires you to reflect on how you interact with people and communities in New Mexico that may be different from you and your experiences.

In honor of **LGBTQ+ Pride Month** we bring you this Reflections curated in collaboration with New Mexico LGBTQ+ Bar Association President, Renee Lewis. Learn more about this local Bar Association here: <https://nmlgbtqbar.org/>



Read

- In response to issues raised by New Mexico Supreme Court case [Soon v. Kammann](#), this year the New Mexico Legislature, with SB 417, passed a confirmatory adoption bill. Read the Bill here: <https://bit.ly/SB-417>.
- Then, read why confirmatory adoption laws and are important to LGBTQ+ parents and families, as well as why more of these types of laws are needed: <https://bit.ly/Why-Some-LGBTQ-Parents-Still-Have-to-Adopt-Their-Biological-Children-in-2019>.



Listen

- In 2020, the US Supreme Court decided *Bostock v. Clayton* finding that prohibition against discrimination in the workplace on the basis of sex in Title VII of the Civil Rights Act of 1964 also extends to discrimination based on sexual orientation and gender identity. Listen to those oral arguments here: <https://www.youtube.com/watch?v=02JXFB5jvZg>. You can also listen to the resulting Opinion here: https://www.youtube.com/watch?v=cgF-Pjv_vsg.
- Then, listen to a discussion on the decision and others like it from the Federal Judiciary Center. Established by Congress in 1967, the Center is the research and education agency of the judicial branch of the U.S. government: <https://bit.ly/FJC-Term-Talk>.



Watch

- Get your required Equity in Justice Continuing Education Credit by watching our CLE on Transgender Cultural Fluency presented by the Transgender Resource Center of New Mexico: <https://cle.sbnm.org/courses/8102/sections/71336#>. You can also add your practice to the Center's provider directory here: <https://tgrcnm.org/providers>.
- In 2025, [Executive Order Prioritizing Military Excellence and Readiness](#) was issued, the effect of which banned transgender people from serving in the U.S. military. Watch transgender service members who sued to stop the ban talk about the impact of Executive Order on their service <https://www.cnn.com/2025/05/01/politics/video/trump-transgender-military-ban-mj-lee-digvid>. Then, watch Transgender service members testify before congress about the impact of a ban like this <https://www.youtube.com/watch?v=fV0tFcIRCZs>.
- In 2013, the New Mexico Supreme Court decided *Griego v. Oliver* finding that same sex marriage is legal in New Mexico. Watch one of the first couples same sex couples in New Mexico to be married after the ruling talk about the impact of it <https://www.koat.com/article/same-sex-couple-first-in-line-in-bernalillo-county-gets-married/4403155>.



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Legal Education Calendar

June

- | | | |
|--|---|---|
| <p>26 Litigating Truck Collisions
1.0 G
Web Cast (Live Credits)
New Mexico Trial Lawyers
Association & Foundation
www.nmtla.org</p> | <p>27 Killers of the Flower Moon: The Osage Murders and How Attorneys Can Combat Bias
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06272025-2</p> | <p>30 Elimination of Bias—Combating Age Bias in the Legal Field
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06302025-1</p> |
| <p>27 Splitting More Than Assets: How a Real Estate Divorce Expert Can Help
1.0 G
In-Person or Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06272025-1</p> | <p>27 Ethical Issues Relating to Smartphone Use
1.0 EP
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06272025-3</p> | <p>30 Discovering Implicit Biases in Jury Selection
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06302025-2</p> |
| | <p>27 Texting While Practicing Law: Ethical Risks
1.0 EP
Teleseminar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06272025-4</p> | <p>30 Small Firm Ethics: Tech, Paralegals, Remote & More
1.0 EP
Teleseminar
NMSBF Center for Legal
Education
https://bit.ly/CLE-06302025-3</p> |

July

- | | | |
|---|---|--|
| <p>1 Equity and the Personal Income Tax Through the Lens of a Low Income Taxpayer (LIVE REPLAY)
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-07012025</p> | <p>8 What Jazz and the Blues Teach About Bias and Inclusion in the Law with Stuart Teicher (LIVE REPLAY)
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-07082025-1</p> | <p>11 Estate Planning for Blended Families
1.0 G
In-Person or Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-07112025-1</p> |
| <p>2 The Yellowstone CLE: Can the Dutton Family Get Away with Murder?
1.0 G
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-07022025-1</p> | <p>10 Advanced Topics in T Visas: Diving into Physical Presence on Account of Trafficking and Recent Trends
1.0 G
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-07102025-1</p> | <p>15 Implicit Bias in Guardian ad Litem Work (LIVE REPLAY)
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-07152025-1</p> |
| <p>3 July Hearing Panels
4.0 G
Live Program
NM Medical Review Commission
www.nmms.org</p> | <p>10 2025 Race in the Federal Criminal Court: Strategies in Pursuit Of Justice
13.0 G
Live Program
Administrative Office
of the US Courts
www.uscourts.gov</p> | <p>17 Thirtieth Annual National Federal Habeas Corpus Seminar
16.0 G, 1.0 EP
Live Program
Administrative Office
of the US Courts
www.uscourts.gov</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>.

You're Invited!

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GOLF

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

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EQUAL
ACCESS TO
JUSTICE

THANK YOU, DEFENDERS OF JUSTICE!

You stepped up for our community and raised over **\$400,000** during Equal Access to Justice's 2024-25 Annual Campaign. Thank you to the **28 Leadership Committee volunteers** and **361 attorneys, law firms, and community members** who took action to support civil legal aid. Thank you for investing in our community and standing together for justice!

Every dollar raised through Equal Access to Justice's annual campaign means more, flexible funding for **New Mexico Legal Aid**, **DNA People's Legal Services**, and the **New Mexico Center on Law and Poverty**. These legal aid nonprofits provide free legal assistance, representation, and systemic legal advocacy for underprivileged families. Additionally, they lead training series, host free legal clinics, prepare and distribute educational materials, and are frequently consulted for their expertise.

Founded by attorneys wanting to make a difference, **Equal Access to Justice** is your local nonprofit. We work to increase access to justice for the most vulnerable in our community by raising vital, flexible funding for legal aid. This hard-working funding helps our legal aid partners respond quickly to community needs, address gaps in funding, and keep staff out in the community doing what they do best.

LEADERS FOR JUSTICE

Thank you to the following individuals for their generous gifts of \$1,000+ and unwavering commitment to justice for all. Special recognition to our Justice Society members and Justice Trailblazers for their transformative gifts. *(Tiers reflect annual campaign gifts received between 4/1/2024 - 3/31/2025.)*

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The Honorable Linda Vanzi

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Thank you for standing together in justice! eaj-nm.org

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* Justice Society (multi-year pledge of \$30,000)

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Like you, we believe that our community is strengthened when everyone has access to the justice system. Thank you to the many law firms, corporations, foundations and associations for their partnership in supporting civil legal services. (Tiers reflect total giving and per attorney amount for gifts received between 4/1/2024 -3/31/2025.)

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New Mexico

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Martinez, Hart, Sanchez & Romero
McGinn, Montoya, Love, Curry
& Sievers
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D. Eric Hannum Attorney at Law
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Expanding resources and advocacy for New Mexico's legal aid programs is a collective effort. EAJ values and recognizes our partners in this critical work: New Mexico Access to Justice Commission, New Mexico State Bar and Foundation, the New Mexico Civil Legal Services Corporation, policymaker champions, Volunteer Attorney Program, all the civil legal services providers, and you!

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Opportunities for Pro Bono Service CALENDAR

June

- | | |
|--|--|
| <p>26 Family Law Teleclinic
Telephonic
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Hobbs</p> | <p>27 Asylum Initial Application and Work Permit Pro Se Clinic
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic</p> |
|--|--|

July

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| <p>8 Economic Justice Workshop
Walk-In
New Mexico Immigrant Law Center
To sign up, call 505-247-1023
Location: Albuquerque</p> | <p>9 First District Court Free Legal Teleclinic
Telephonic
First Judicial District Court
firstdistrict.nmcourts.gov/
To sign up, call 505-984-3980 between noon and 1 p.m. (MT) on the day of the clinic</p> | <p>11 Free Monthly Telephonic Legal Clinic
Telephone
Bernalillo County Metropolitan Court
To register, call 505-841-9817
Location: Virtual</p> |
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If you would like to volunteer for pro bono service at one of the above events, please contact the hosting agency.



Resources for the Public CALENDAR

June

- | | |
|--|--|
| <p>26 Family Law Teleclinic
Telephonic
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Hobbs</p> | <p>27 Asylum Initial Application and Work Permit Pro Se Clinic
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic</p> |
|--|--|

July

- | | | |
|---|--|--|
| <p>8 Economic Justice Workshop
Walk-In
New Mexico Immigrant Law Center
To sign up, call 505-247-1023
Location: Albuquerque</p> | <p>9 First District Court Free Legal Teleclinic
Telephonic
First Judicial District Court
firstdistrict.nmcourts.gov/
To sign up, call 505-984-3980 between noon and 1 p.m. (MT) on the day of the clinic</p> | <p>9 Divorce Options Workshop
Virtual
State Bar of New Mexico
Call 505-797-6022 to register
Location: Virtual</p> |
|---|--|--|

Listings in the *Bar Bulletin* Pro Bono & Volunteer Opportunities Calendar are gathered from civil legal service organization submissions and from information pertaining to the New Mexico State Bar Foundation's upcoming events. All pro bono and volunteer opportunities conducted by civil legal service organizations can be listed free of charge. Send submissions to probono@sbnm.org. Include the opportunity's title, location/format, date, provider and registration instructions. Please note: Recruitment for legal fairs and teleclinics held by the Volunteer Attorney Program of New Mexico Legal Aid typically begins four weeks prior to the date of the event. You will receive recruitment emails from both the State Bar of New Mexico and the Statewide Pro Bono Coordinator for legal fairs and teleclinics. Please use the links contained in those emails to volunteer.

As of April, the **New Mexico Public Defender Commission** has unanimously appointed current **Chief Public Defender Bennett J. Baur** for a third four-year term leading the state Law Offices of the Public Defender.



As of June 7, New Mexico Court of Appeals **Judge Kristina Bogardus** has retired. Judge Bogardus was first elected to the Court of Appeals in 2018. In her early career, Judge Bogardus was a medical technologist before obtaining her Juris Doctor from the University of New Mexico School of Law in 1991. While at the UNM School of Law, she was an editor for the school's Natural Resources Journal. She also served on the Rules of Civil Procedure Committee.

Gallagher & Kennedy is pleased to welcome **Josefa A. Rodriguez** as a lateral shareholder in its Phoenix office. Before joining Gallagher & Kennedy, Josefa served as an Assistant Attorney General representing the Arizona Department of Child Safety in juvenile dependency matters. Her professional and community involvement includes Los Abogados Hispanic Bar Association, the Arizona Women Lawyers Association, and the Maricopa County Bar Association's Family Law Section. Josefa also supports the Latina Mentoring Project through active participation.

Gallagher & Kennedy is pleased to announce that it has been ranked among the best law firms in Arizona and New Mexico by *Chambers & Partners*, publishers of *Chambers USA: America's Leading Lawyers for Business*. For 2025, *Chambers USA* recognized 12 G&K attorneys and six practice areas. Recognized attorneys include Karin S. Aldama, Timothy D. Brown, Dalva L. Moellenberg, Otto S. Shill, III, David L. Wallis, Janey Henze Cook, J. Stanton Curry, D. Lee Decker, Chris S. Leason, Kevin E. O'Malley, Terence W. Thompson and Tom Henze. Recognized practice areas include Environment, Tax, Litigation: White-Collar Crime & Government Investigations, Corporate/M&A, Natural Resources & Environment and Litigation: General Commercial.

Effective May 1, **Stelzner, Winter Warburton, Flores & Dawes P.A.** has moved to a new office at 1401 Central Ave. NW, Suite A, Albuquerque, NM 87104 (corner of 14th St and Central Ave.). Their phone and fax numbers will remain the same.

Gallagher & Kennedy is proud to announce that 14 of its attorneys have been recognized as 2025 Southwest Super Lawyers, with an additional nine attorneys named Rising Stars. This prestigious recognition highlights attorneys who have achieved a high level of peer recognition and professional excellence in their respective practice areas. Additionally, shareholder Shannon L. Clark has been distinguished as a "Top 50 Attorney" in Arizona for his exceptional work in Personal Injury General: Plaintiff. The 2025 Southwest Super Lawyers include Matthew R. Boatman, Robert W. Boatman, Shannon L. Clark, Janey Henze Cook, Mark A. Fuller, Donald Peder Johnsen, Dalva L. Moellenberg, Kevin D. Neal, Kevin E. O'Malley, Michael R. Ross, Dale C. Schian, J. Tyrrell Taber, Terence W. Thompson and Woodrow C. Thompson.



The New Mexico Criminal Defense Lawyers Association (NMCDLA) is proud to announce that **Dan Cron** has been awarded the prestigious Driscoll Award, recognizing a career marked by extraordinary dedication, advocacy, and excellence in the field of criminal defense. Dan Cron came to Santa Fe in 1980 to monitor the federal court order that was placed over the Penitentiary of New Mexico following the prison riot.



On May 9, 2025, **Carlos M. Quiñones** of **Quiñones Law Firm LLC** in Santa Fe was inducted into the Western New Mexico University Education Hall of Fame. Carlos has 30 years of varied experiences in the legal field, representing clients in several legal practice areas, including employment law, civil rights, tort law, government agency law, contract law, property law, corporate law and general civil litigation.

In Memoriam



David Richard Powell was born on October 13th, 1970, in Houston, T.X. to James and Roma Powell. At the age of three, they relocated to Las Cruces, N.M. David graduated from Mayfield High School in 1988. David worked for The Power Center in Las Cruces for 15 years. In 1999, David re-entered College at NMSU and graduated Highest Honors with a Bachelor of Accountancy in 2006. He completed his Master of Accountancy in 2008. He then relocated with his wife, Katie,

to Albuquerque, N.M. and worked in public accounting for 7 years. During that time, he earned a CPA license. He then left public accounting to pursue his career as the Director of Finance at the State Bar of New Mexico. In 2024 David and Katie became legal guardians to their 17-year-old niece Anaya. His love and pride for her knew no bounds. He is preceded in death by his Father, James H. Powell, as well as his grandparents and many aunts and uncles. He is survived by his loving wife of 22 years, Katie Powell, his niece Anaya, his mother Roma Powell, sister Cindy Peterson and husband Randall. His niece and nephew, Jared and Rylie Peterson and countless loved family members, friends, and coworkers.

Kerry M. Comiskey was born April 7, 1970, in Shawnee Mission, Kansas. He passed away June 7, 2023, in Albuquerque. Kerry graduated from Limestone High School and served in the U.S. Air Force. He graduated from Eastern New Mexico University with a bachelor's and earned a law degree from the University of New Mexico Law School. Kerry worked as a juvenile probation officer and was a district attorney for 15 years for the 11th Judicial District in Gallup. He enjoyed shooting at the range and spending time with friends and family. Kerry is survived by his parents, Raymond and Jacqueline Comiskey; sisters, Jennifer Comiskey and Elaine Butcher; and grandmother, Anne Zanelli. Kerry is preceded in death by his grandfather, Michael Zanelli; and grandparents, Joseph and Marie Comiskey. Memorial service for Kerry Michael Comiskey, 53, of Gallup, will be held Saturday, June 24, at 2 p.m., at the Veterans Center (908 Buena Vista) in Gallup.

Jess Robert Lilley passed away on July 26, 2024 after battling a recurrence of gall bladder cancer and liver complications. His beloved wife of 31 years, Bernadine -- and his children Josh, Zach, and Emily -- were his life and best friends, and he will be watching over them. Jess was born to Jim and Pat Lilley, and grew up in Roswell with a plethora of siblings. He was ninth of the ten children, who are Joe (Sue), Mike (Diane), Frank (Jolene), Chris (Jerra), Tom (Cathy), Ann (Mike Jaramillo), Danny (Lisa), Monica (Chris Reynolds), and Kay. He is survived by his entire family except his father, mother, and his niece Brianna. Jess practiced law in Las Cruces for the past 26 years, and was an avid runner his entire life. Funeral services will be August 23 at St. Albert the Great Newman Parish, 2625 S. Solano Dr. in Las Cruces. The rosary will be at 2:00 p.m., followed by a funeral Mass at 2:30 p.m. Services will be livestreamed on Facebook; access via GetzCares.com. Burial services and a following reception will be private. Special thanks to the UNM Cancer Center (Dr. Brown-Glaberman), Mayo Clinic Hospital (Phoenix), Dr. Jean-Pierre Reinhold, and Deborah Thorne, PA. In lieu of flowers, please consider a donation to the National Indigenous Women's Resource Center for MMIW (NIWRC.org) or the American Liver Foundation (LiverFoundation.org).

Wade L. Jackson passed from this life on Tuesday, June 18, 2024.

Wade, a beloved husband, father and friend, was 48 years old. He is survived by his cherished wife of 19 years, Courtney, and their two daughters, Peyton and Claire. Wade was a stoic man, but anytime Courtney and his girls were mentioned, his joy would light up the room. They were the highlight of his life. He was the most carefree when he was in nature - camping, fishing, hunting, and enjoyed many nights among the stars. He was also an avid cyclist and spent many hours on his bike, rain or shine. Wade graduated from The University of Southern California in 1999 with dual Bachelor of Arts in Political Science and Print Journalism. For a semester in 1998, he studied at USC Capital Campus in Washington D.C., and was an intern at the press office of Senator Pete Domenici. After completing his undergrad, Wade went on to earn his Juris Doctorate in 2003 from the University of New Mexico School of Law, graduating cum laude. During his time in law school, he was the managing editor of the New Mexico Law Review and was a member of the national honor society, Order of the Coif. Prior to his legal career, Wade was a staff writer at the Los Angeles Times, the Santa Monica Outlook, the South Bay Daily Breeze, and the Los Angeles Daily News, writing and publishing hundreds of articles. Before joining Sutin, Thayer & Browne, Wade served for five years as General Counsel and Legislative Coordinator for the New Mexico Economic Development Department. During that time, he served on the Board of Directors of the New Mexico Finance Authority and chaired its Economic Development Committee, served as General Counsel for the New Mexico Spaceport Authority, served as Counsel to the Water Quality Control Commission, and represented Governor Susana Martinez in the New Mexico Supreme Court and the Water Quality Control Commission in the New Mexico Supreme Court and Court of Appeals. Wade was a part of the Sutin family for eight years, joining in June 2016. He practiced primarily in the areas of real estate, business, tax, corporate, economic development, public finance and tax incentives, and state and local government law. During his tenure at Sutin, Wade's passion for the law, his incredible work ethic, and dedication to the firm, was evident as he made strides to help lead the firm to where it is today. He became a shareholder in 2019 and joined the Board of Directors in 2023. He had an incredible mastery of his fields of legal practice. Wade had a lightning intellect and the amount of successful cases he would work on at one time was unsurpassed. He won many national professional awards, including being selected as the Top 3 Corporate Attorneys by the Albuquerque Journal's Readers' Choice. He also held a Martindale-Hubbell rating of AV Preeminent, one of the highest ratings one can earn. Wade was very strong in his convictions and was passionate about what he felt was right and wrong and felt called to pursue justice. Wade's wife Courtney shared that through their marriage and the upbringing of their daughters, Wade often told them, "it's never a tragedy if you die doing what you love". An unexpected loss is exceptionally difficult, but solace is found knowing Wade died doing what he loved - connecting with nature.

In Memoriam

On April 13, 2024, **Jim (Bucky) Brandenburg** passed away peacefully at the home of his daughter where he had resided for six years since the death of his wife, Marjorie Pearl Brandenburg. His cherished blue skies of New Mexico, which he often painted, opened up and welcomed him into the heavens. Our world is diminished and will never be the same. Jim was born to Floyd (Brandy) and Alice Brandenburg on August 3, 1930, in Mountainair, New Mexico. His childhood was one with minimal material comforts but filled with family and love. Looking back, he frequently commented they had everything anyone could desire, revealing his eternal and ever apparent optimism. Santa Fe High School had never known an athlete with Jim's talents. In 1948, he was named the "All State Fullback" and in 1949, he was named to "All State" in basketball. He enrolled at UNM on a football scholarship. In 1951, Jim joined the United States Air Force and was shipped to Misawa, Japan. He returned stateside when he broke his leg playing for the Misawa AFB football team. He continued to serve in several capacities, including attending navigation school and pilot training until he was honorably discharged in 1958. Upon leaving the USAF, Jim attended UNM law school. He was sworn into the New Mexico State Bar in 1961. His father, Brandy, had encouraged him to be a high school football coach. Brandy was sorely disappointed when Jim thought he could better support his family by being a lawyer. That is, until Brandy sat through one of Jim's first trials. When the jury returned a verdict in Jim's client's favor and the courtroom erupted in applause, Brandy commented with approval, "That's almost as good as a touchdown!" Jim went on to have a stellar legal career working as "Chief Trial Prosecutor" under district attorney Al Sceresse, Assistant Federal Public Defender, and serving as Bernalillo County District Attorney from 1972-1976. For the remainder of his career, Jim was in private practice, practicing 20 of those years with his daughter until she followed in his footsteps, becoming Bernalillo County District Attorney in 2001. Jim was an extraordinary trial attorney. His passion for trial and being in the courtroom never died. A true gentleman, his style was understated, and his credible demeanor and charisma resulted in many successful verdicts. The rumor was, if an accused person was innocent, the lawyer to go to was Jim Brandenburg. Jim was the beloved father of four children: Kathy, Kari, Randy, and Marcy. He coached Little League baseball for many years, was best man at his son's wedding, and had an extraordinary wit and sense of humor. He became an accomplished landscape artist and continued to be frustrated with his less than perfect golf score. One individual said Jim was the kind of man all men wished to be. Another friend and colleague offered, "Jim was a great man in all aspects of life. He was one of two men I ever idolized." Jim was preceded in death by his parents, his brother Ray, granddaughter Skye Elizabeth, and the love of his life, Marjorie Pearl to whom he was married for almost 65 years. Jim is survived by his four children, eight grandchildren, and six great grandchildren, with another due in May. The family plans to spread Jim's and Marjorie's ashes in a special place in Jamaica where they often vacationed and spent happy times with friends and family.

Val R. Jolley, a beloved father, devoted grandfather, esteemed attorney, and proud veteran, passed away on January 27th, 2024, in Lehi, Utah. He was 77. Born on November 11, 1946, in Farmington, New Mexico, Val was the son of the late William Curtis Jolley and Louise Taylor Jolley. He bravely served his country in Vietnam as a member of the 82nd Airborne Division, demonstrating unwavering dedication and courage. Val married Kathy Fuhrman in 1968, and together they raised six children: Craig Jolley, Cherie Merkley, Angie Smith-Pool, Devon Jolley, Lindsey Jolley, and Krista Spencer. After his military service, Val pursued his passion for the law. He graduated from Brigham Young University Law School in 1975 and began his legal career as an Assistant District Attorney, where he served with distinction before establishing his law firm in his hometown of Farmington, New Mexico. Val's tenure in the DA's office as an ADA was marked by his commitment to justice and his tireless advocacy for the community he served. Val was deeply committed to upholding justice and was widely respected within the legal community. Val's devotion to his family was evident in every aspect of his life. He cherished his children and took great pride in their accomplishments. His love extended to his grandchildren and great-grandchildren, whom he adored dearly. Val had a larger-than-life personality and a contagious sense of humor. He had a remarkable ability to lighten the mood and bring joy to those around him. Whether he was sharing stories, cracking jokes, or dancing at family gatherings, Val was always the life of the party. Throughout his battle with dementia, his fun-loving personality shone brightly until the end, bringing laughs and smiles to the faces of everyone he interacted with. Val will be deeply missed by his family, friends, colleagues, and all who had the privilege of knowing him. His legacy of love, laughter, and integrity will live on in the hearts of those he touched.

In Memoriam

Betty Read has passed. She died as she wished, at home and alert to the very end, with her daughter Joy at her side on May 23, 2024, at the age of 84. And so, we no longer have in our midst the assertive, opinionated, integrity-filled, pragmatic, hard core liberal and feminist, activist and award winning attorney; the matriarch of the Read/Starzynski clan; the beloved and loving mother, grandmother, and great-grandmother and dear friend; the hiker and line dancer; the kitty fostering mom; the superb photographer of family, landscapes, birds, flowers, pets and kittens (and kittens, and kittens, and kittens...); the card, domino and bridge player; the partner to her beloved companion Bandit; the woman who made a lasting impression on everyone whose path she crossed, impacting her family, her friends and the State of New Mexico. Betty, named Betty Joan Weide by her parents, the middle child of Boyd and Wilma Weide, was born on October 2nd, 1939, in Joplin, Missouri. The family moved to Austin, Texas, in 1942, and it was there, deep in the heart of Texas, where Betty was raised. The Betty of those early years would be unrecognizable to those who came to know her after her arrival in Albuquerque in 1969. Betty was raised in the Methodist Church; she was a church youth leader, a ballerina, and a beauty pageant winner based on her Hollywood beauty star glamorous looks. She married her first husband with the expectation that she would live out her life as the wife of a Methodist minister. How little we know of the changes life will bring. At the age of 26, Betty worked for Barbara Jordan (yes, the Barbara Jordan who would go on to speak so eloquently while she served on the Watergate Committee). Senator Jordan was the only Black person in the Texas State Senate. The only other Black person in the Texas State Legislature, was a Black man in the House of Representatives. That summer, a bill was introduced to curb voting by minorities. The Black male Representative condemned the bill on the House floor, loudly and at length. Senator Jordan was publicly silent. Betty was quite frustrated and she confronted the Senator. Senator Jordan explained to Betty that in order to defeat the bill, she needed a number of old white conservative men to join her in voting it down. Those old white conservative men were not going to be persuaded by fiery condemnations. Rather, Jordan patiently contacted them, one by one, and sat down with each of them for quiet conversations in their offices. The key, Jordan explained, was knowing how to be effective. And in that conversation, Betty received a master lesson in communication and strategy that she would take to heart and go on to use to the benefit of every cause and every client for whom she advocated. Betty entered UNM law school in 1970, recently divorced and single parent to eleven-year-old Joy and two-year-old Jesse. During law school, Betty (one of 6 women in her law school class) and the other women argued to the law school "bosses" that the law school needed to hire a female law professor and that female students should be on the committee interviewing the applicants. They won. Pretty soon Anne Bingaman and then Pamela Minzner (later NM Supreme Court Justice Minzner) began teaching at the law school. Indeed, eventually, and using at least in part the same skills Betty learned at the knee of Senator Jordan, the women were even able to get a second women's bathroom installed at the law school. Betty graduated in 1973. That year there was a drive to approve the Equal Rights Amendment in New Mexico. There was a lot of intensity behind that drive wanting to, among other things, demonstrate loudly and forcefully as the primary way to accomplish the goal. Betty, on the other hand, pointed out that it would take the votes of a lot of men, as well as women, to get it passed and once passed, to go through all of the laws of the state to conform those laws to the Amendment. Using a quieter and ultimately more effective way, they were able to recruit influential men, District Attorneys among others,

to push passage of the ERA and then to go on to modify statutes like the rape law (which at the time required a woman's testimony of being assaulted to be corroborated). They won. New Mexico passed the ERA in 1973. Following graduation from law school, Betty spotted a niche which needed filling: representing the spouses of well-off professional men in divorce and child custody cases. These men had typically been accustomed to getting their way in such proceedings by dint of their superior financial resources. It was not long before the upstart Betty Read began demonstrating what a fierce and effective advocate she could be, thereby attracting a steadily growing stream of admiring and loyal clients. Betty saw this work as helping to give new life; she helped divorced people start over. Betty soon became one of the acknowledged leaders of the Domestic Relations Bar and in 1986 was tasked with leading a small group of other prominent domestic relations lawyers in developing a set of forms and rules to be used in domestic relations cases. These forms and rules were so successful that the New Mexico Supreme Court mandated their use in every court in the state. Betty's continued leadership and professionalism led to her receiving numerous awards and accolades over her distinguished career, including the State Bar of New Mexico Professionalism Award in 2002. However, while not exactly an award, the acknowledgment that may have pleased her the most, and the one that she certainly found most fitting with respect to its description of her, was on the silver platter bestowed upon her by the Family Law Section of the State Bar of New Mexico at her retirement party on March 10, 2000. The platter was engraved as follows: Presented to Betty Read in recognition of your distinguished, pioneering, and inspirational service, integrity, and devotion to our highest ideals of professionalism in the area of family law. Founding Member, 1982 Board Member, 1982-1987, 1997-2000 Betty was an organizer and a strategist, but as much as anything, she was a transmitter of wisdom-of how to get things done. After serving her clients, the public and the State Bar of New Mexico for 27 years, Betty retired in 2000. And thus began the "playful" part of her life. This is the part Betty really wanted you to know about. While justifiably proud of her legal career and the contributions she made in that sphere, she considered that information to be the "dry" facts. What she really wanted to share were the "fun" facts. For Betty, the fun part, the best part, started at age 60, following retirement. These are the highlights; the things that gave her the most pleasure to have done and to remember as she aged: In 2000, Betty began line dancing with a group from the ABQ Senior Center. She loved the dancing; she did it until she no longer had the breath for it. She started hiking 2-3 days a week with another group from the ABQ Senior Center; she saw and experienced all sorts of awesome national outdoor places in NM, CO, and AZ. Betty also started playing Mexican Train regularly with three dear friends. Except for a time during Covid, this foursome played weekly or biweekly for 24 years. Their last game was the week before she died. Betty wants you to know that the most important rule in MT is that you stop counting points against you at 50. Betty loved playing games. In addition to MT, her favorites were 42 (dominoes), Manipulation, Hand and Foot, and of course, bridge. She learned bridge from her parents, and she played her whole life. During Covid she spent hours playing online with friends. But make no mistake: Betty was competitive, and she liked to win. Other life highlights were hiking down the Rio Grande and rafting the Colorado River; hiking and rafting in Big Bend; hiking and exploring Bryce Canyon, the Arches, Zion and Antelope National Parks and New Mexico ghost towns; cruising the Panama Canal with her parents; cruising to Alaska with Jesse, Missie and Joy; orca spotting in the San Juan Islands with Joy, Jim and Alex; visiting Ireland and England; and other trips

In Memoriam

with family and friends, visiting Napa/Sonoma wine country, D.C., Nashville and Graceland, to name a few. Betty fostered kittens (many of whom were so young they had to be bottle fed and have their bottoms wiped every few hours around the clock) for Animal Humane NM for over 10 years. Fostering the kittens gave her great joy and also brought great pain each time they were old enough to be returned to Animal Humane for adoption. Betty saw this work as helping to give new life; she prepared those kittens for their forever homes. When her kitten fostering time came to an end, Betty adopted her beloved 11 1/2-pound Bandit, a chihuahua mix, whom she pointedly insisted must be part Jack Russell terrier (because, we think, she could never quite see herself as a chihuahua person capable of loving a chihuahua the way she loved her Bandit) from Animal Humane in February 2020. This was just before Albuquerque shut down with Covid. Betty believed that having Bandit during that time saved her life. "When I needed a hand, I found a paw." Betty is survived by her sister, Jackie Means; her daughter, Joy Read (and husband Jim Starzynski); her son, Jesse Read (and wife Missie Read); her grandchildren, Alex Starzynski, Elijah Starzynski, Justina Starzynski Hotch (and husband Don Hotch), Lucien Starzynski, Colbran Starzynski (and wife Meghan Martinez); her great grandchildren, Thomas Thompson (and wife Sandrine Thompson), Dante Bonaccorso, Lori Starzynski, Nina Starzynski, Ricardo Martinez Starzynski, and Carolina Starzynski Martinez; and her granddaughter of the heart, Jessica Molzen. To the heartbreak of Betty and the entire family, Betty was predeceased by her granddaughter Amber Marie Smith in 2014. Betty's love and commitment to Animal Humane NM continues. In lieu of flowers, Betty's request is that you consider a donation to Animal Humane NM. And if you have a chance, go visit the Animal Humane main campus and have a look at the bench in their courtyard dedicated to Betty and Bandit. If you prefer to donate to human causes, Betty's ask is that you consider Planned Parenthood or the ACLU. Betty would tell you to tell your loved ones, often, how much you love them, and hug your dog.

It is with sadness that the family of **Virginia Ferrara** announces her passing on Friday, March 22, 2025. Ginny, nee Virginia L. Cushman was born in Gardiner, Maine on March 23, 1940. She obtained her degree in English Secondary Education from the University of Maine (Orono). She moved to Albuquerque and taught high school English for a few years before entering UNM Law School. Ginny's law career spanned many decades and took her from a position in the Public Defender's office to Chief Disciplinary Counsel of the Disciplinary Board of the New Mexico Supreme Court. She was both well-known and highly respected in the law community. Ginny loved numerous activities including traveling, reading, shopping and above all, spending time with her cats...of whom she had many over the years. She was also a talented skier, and ice-skater, and piano player. Ginny was preceded in death by her parents, Parker and Bertha (nee Carter) Cushman and her former husband, A.J. Ferrara. She leaves behind two children, Amy Joseph and her husband, William (Genevieve) of Charlotte, North Carolina and Justin Ferrara and his wife, Lindsay (Dylan and Bryson) of Saratoga, New York.

Charles D. "Chuck" Noland, 77, died in Albuquerque on Monday, April 1, 2024. A memorial toast for Chuck will be held at a later date. As a true New Mexican, Chuck usually measured distances as "it's as far as from Artesia to..." and he carried his New Mexico drawl wherever he went. Wearing one of his favored plaid, button-down shirts, Chuck enjoyed his reunions with his 1964 Artesia High School classmates and his life-long friends from the University of New Mexico (UNM) and its student newspaper, *The Daily Lobo*. He knew the antecedents of at least one person in each New Mexico town he visited. Chuck wanted to hear everyone's story. His desire to hear those stories led Chuck to earn a degree in journalism from UNM in 1973. During his journalism career, Chuck was editor of *The Daily Lobo* from 1967-68; an off-and-on reporter for the *Santa Fe New Mexican* and the *Associated Press* from 1968-1974; and as press secretary for a New Mexico gubernatorial candidate in 1974. Chuck was a Vietnam era veteran, serving in the Army from 1971-72 as a staff writer for *Soldiers Magazine*. Chuck was a 1978 graduate of the UNM School of Law as well as a talented journalist. As legal counsel for the New Mexico Department of Education, he dedicated himself to ensuring that every child in New Mexico received a quality education. Chuck emphasized the importance of basic reading, writing, and math skills as ways New Mexicans could contribute to their state, culture, and people. Chuck also worked with the families of exceptional children to ensure they, too, had access to an essential education. Chuck continued this work after his retirement. While Chuck was proud of his work with the Department of Education, one of his life highlights was performing at Carnegie Hall with his Santa Fe choir under the baton of director and composer John Rutter. Chuck will be missed by his wife, Elizabeth; his sister, Margaret; his two nephews; and his many friends.

Anna Sibylle Ehresmann (Sibyl) passed away on April 11, 2025, at the age of 55, following a long battle with cancer. Sibyl was a 2002 graduate of UNM Law school. She worked as a law clerk for the New Mexico Court of Appeals, and for a few local law firms, before specializing in senior healthcare. Sibyl's other interests included working with horses, jewelry-making, gardening, cooking, sewing, and quilting. She will be missed.

In Memoriam

Ronald R. Walker was born in Pittsburgh PA on February 1, 1942, to Harry R. Walker and Alice Walker who preceded him in death. Also preceding him in death was his sister, Karen S. Lefcakis (Walker), and her husband Nicholas Lefcakis. Ron was born in Pittsburgh, Pennsylvania and would spend the rest of his life rooting for the Steelers and Pitt. Being from Pittsburgh Ron was loyal to Heinz Ketchup and would not touch the “other” stuff. He also was famous for his complete avoidance of mayonnaise, quizzing every waitress, server and chef as to ensure no mayo came close to his food, much to the entertainment of his lunch guest. He famously told his nieces and nephews that, “Mayonnaise was the only condiment that can kill you.” Ron loved to travel and spend many months circling the globe on a cruise ship, plane, or train. He was widely regarded as an expert in travel, hotels, and things to do, holding regular infotainment sessions with friends planning trips. Ron’s travels took him to some of the most remote places on the planet, but his favorite destination would always be when he visited his family out East. After finishing high school Ron joined the U.S. Army and was stationed in West Germany. It was in Germany that he served in a “Davy Crockett Unit.” The Davy Crockett was a small nuclear weapon launched from the back of a jeep and despite being such a serious assignment, Ron was always quick to tell jokes about his time carrying a nuclear bomb on his back. Ron was a veteran storyteller and often talked about his first “cruise” to Germany aboard a troop ship. Years later he would famously compare the food on said ship to a Princess Cruise he took in 2015, writing a classic letter to the cruise line comparing and contrasting the quality of the trip as only Ron could do. After his time in the service Ron’s travels took him far and wide, working in California and Detroit, Michigan (where he worked for General Motors). From there he would end up in New Mexico, where he would obtain his bachelor’s degree at New Mexico Western. After getting his BA he continued his studies at the University of New Mexico School of Law. After law school Ron worked as an Attorney for the city of Albuquerque before heading south to take a job working for the 5th Judicial District Attorney’s Office in Roswell. Ron moved to Hobbs in 1983 and would serve in the role of Deputy District Attorney. He was renowned for his skills as an attorney, possessing not only a knack for arguing a case before a jury but also possessing a brilliant knowledge of the law. Over his career as a prosecutor, he tried many of the most important cases in New Mexico over his tenure in Lea County. After retiring from the District Attorney’s Office over 20 years ago he found he was unable to resist the call of the courtroom and returned for a second stint as Deputy District Attorney in Lea County. As an attorney he mentored many young lawyers over the years and when he retired from the District Attorney’s Office a second time he continued to excel as an attorney, practicing law for the remainder of his life. Despite being “retired” for over 15 years Ron spent his last week of life in the courtrooms of Lea and Eddy County, arguing over a dozen cases and demonstrating his acute knowledge of the law. Ron made many friends from many different walks of life. He was a dedicated friend and a person who would not let you down. His most outstanding trait was his generosity. Not only was he generous with his time, but he always made sure to visit his friends and family on birthdays and during holidays. He would always start his Christmas shopping in June and would have his gifts selected by July. And to those friends with children, he was always a favorite “uncle,” bringing presents and his infectious laughter. Ron is survived by two nephews, James R. Lefcakis and his wife Leigh Ann of Pittsburgh, PA as well as

Nicholas Lefcakis and his wife Rose Walther. Cousin Shirley Fascetti and her husband Al Fascetti of Peabody, MA. Also surviving Ron are his great nephew Riley Lefcakis as well as nieces Sabrina Walther and Alexandria, Nicolette, and Alexa Lefcakis. Ron was above all a loyal family man and friend. He was a loyal friend to all who were blessed to have him in their lives, and a loyal mentor to so many young lawyers in this community. He was full of life, knowledge, passion and was truly “the smartest and most skilled attorney in the room” throughout his 50-year legal career. No attorney will ever fill the shoes of Ron, he was simply the best...a friend to many. “And in the end” his service and generosity stand as a testament to his character and how much he influenced his community.

Donald Richard House, a devoted husband, father, son, brother, and friend, peacefully departed this life on April 4, 2024, at the Desert Banner Hospital in Mesa, Arizona. He was 59 years old. Born on August 24, 1964, in Pittsburgh, Pennsylvania, Don was the cherished son of Jackie Smith and the late Robert House. In his early years he lived in Pennsylvania, New York, California, and Florida before moving to Arizona at the age of eight. After graduating high school, Don joined The Russ Morgan Orchestra and toured the entire country playing Big Band music. After two years on the tour bus, Don joined the Coast Guard and served as a radio man, carrying out water rescue missions, and law enforcement duties, stationed in California, Alaska, Louisiana, and Florida. After serving his country for five years, he enrolled at Arizona State University, earning his undergraduate degree in Political Science and his Juris Doctorate in 1995. Don worked at various law firms, both local and national, before founding The House Law Firm in 2006 during which time he encountered many colleagues who later became lifelong friends. Don married his true love Leslie in 2003 and was blessed in 2007 when he became a father with the birth of his daughter Lauren, followed by twin sons Christian and Derek, who were all his pride and joy. In addition to his dedication to the law, Don enjoyed collecting and listening to vintage Big Band music, reading, spending time at the family cabin in the mountains, and traveling with his family. Don left an impression upon everyone with his intelligence, extraordinary sense of humor, and compassion. Don’s memory will forever be treasured in the heart of his wife, Leslie. He will live on through his children, Lauren, Christian, and Derek. He will forever be missed by his mother Jackie, along with his siblings, Susan Grim (Dale), Christopher House (Lauri), Alan House (Jackie), and Gretchen House. Don is also survived by Step-Siblings Mike Smith (Gabriela) and Lynne Litjen (Bob); Mother-in-Law Donna Becker (Denny); Sister-in Law Angela Redmond (Jim); and many nieces and nephews. Don was preceded in death by his father, Robert House; Stepfather Al Smith; and Brother-in-Law Mike Rothery.

In Memoriam

Susan Tomita moved on to her next adventure upon passing on October 25, 2024. Not surprisingly she approached this transition with the utmost strength and grace and faith. She was born January 10, 1954 to Kazuo and Helen Tomita. Her professional credentials were exemplary having completed college at Stanford University and law school at Santa Clara law school. After clerking for the California Court of Appeals, she immediately embarked upon a life of service working for the National Indian Youth Council and then as an associate and then partner with Luebben, Hughes, Tomita and Borg practicing Indian Law. She then focused on Elder Law as a shareholder with Tomita & Simpson and in her solo practice. Her professional accolades are many including former Chairperson of the Elder Law Section of the NM Bar Association, the NM Bar Association Committee on the Delivery of Legal Services to Persons with Disabilities, a member of the Special Needs Alliance, the National Academy of Elder Law Attorneys, and the NM Estate Planning Council. Susan was on the Board of Directors of the Legal Aid Society and the Indian Pueblo Legal Services and she served as Chairperson of the Indian Law Section of the NM Bar Association. She is a co-author of the Handbook for Guardians and Conservators and Alternatives to Guardianships and Conservatorships. She is listed in Best Lawyers in America in practice areas Trusts and Estates and Elder Law, in Martindale Hubbell's Directory of Preeminent Attorneys and was named by Best Lawyers as Lawyer of the Year for 2015 for Elder Law and 2016 for Trusts and Estates. As remarkable as her professional career was, Susan was equally devoted to her work within the Catholic church. She was a member of the Parish of St. Joseph's on the Rio Grande and served three terms on the Pastoral Council. She also worked in the Ministry of Loaves and Fish and St. Vincent de Paul. She was a frequent facilitator for programs in Faith and Engaging Spirituality. She served on several committees for the Archdiocese including the Archdiocese Campaign for Human Development Local Advisory Committee. She was a pilot member of the Just Faith program and served as a program facilitator for that program's Crossing Borders, Faith and Immigration Justice. She served in the Shrine of St. Bernadette's Social Concerns Ministry and most recently served on the Archdiocese Social Concerns Ministry with the Justice, Peace and Life Commission. She received the Archdiocese of Santa Fe's St. Francis award in 2006 and the Bernadette Institute's Mother Teresa Award in 2005. Susan connected with her Native religion as well on her spiritual journey participating in Native sweat lodge ceremonies and studying and following the teachings of Native leaders such as Black Elk. Consistent with her strong conviction that faith called upon her to serve those less fortunate, she was selfless in her commitment to organizations that served those less fortunate. She served on the Board of Directors and as President of St. Joseph's Community Health and in that role was instrumental in the passage of the NM Constitutional Amendment making early childhood education a constitutional right. She also served on the boards of the Alzheimers Association and Friends in Time. She also worked with Francis House and Casa de Comunidad providing leadership, legal services, and street outreach. She was co-founder of Crossroads for Women serving women with co-occurring mental health and substance disorders in the criminal justice system and their children. Susan's professional and charitable activities are an inspiration to us all. But to her friends and family, Susan will also be known as a devoted friend, a wonderful story teller, an engaging conversationalist, a source of endless funny stories, a steel trap memory, and a fiercely

devoted mom. She was empathetic, caring, ethical, hardworking, unassuming, modest, generous in every way, and welcoming to all. Susan is survived by her son Tony Tomita, her sister, Lisa Oshiro, and her brother Roy Tomita, and a countless number of friends who will miss her dearly.

Kathleen A. Miller, a beloved resident of Albuquerque, New Mexico, passed away peacefully on March 29, 2025, at the age of 74. Born on March 18th, 1951, in Gainesville, Texas, Kathleen, known as Kitty to her family and friends, led a life marked by dedication to her profession, community, and family. Kitty earned her law degree from the University of Washington, setting the foundation for an illustrious career in law. She served with distinction as an attorney for the Department of Veteran's Affairs and later as a solicitor for the Department of the Interior. Her professional life was characterized by a deep commitment to justice and advocacy, values she carried into her retirement when health challenges prompted her to step back from her formal career. In retirement, Kitty's passion for helping others found new expression as she became a guardian ad litem for children in need, ensuring their voices were heard and their rights protected. She also dedicated her time to tutoring school children, imparting not only knowledge but also her contagious enthusiasm for learning. Kitty's life was a testament to resilience and optimism. Despite facing numerous health issues, she remained upbeat and positive. Her family and friends can attest that she was always there to help them through rough spots. Kitty is survived by her husband of 38 years, Frank Jones, her sister Candace Blashak, nephew Ted Blashak, his wife Dawn Yount-Blashak, her brother Kevin Miller, his wife Sue, nieces Tommasina Miller and CK Miller, her brother Robert Miller, his wife Anita, her son and daughter-in-law Zachariah and Rebekah Zinn, grandchildren Dahlia Zinn and Oren Zinn, her stepchildren Mike and Jake Jones, and grandchildren, Mariel Jones, Michaela Jones, Frankie Jones, and Silas Jones. A celebration of life will be announced later this summer. As a transplant recipient, Kitty was passionate about promoting organ donations. In her memory, please consider registering with your state as an organ donor so that a heart or other symbol appears on your driver's license, or donate to the New Mexico Donor Services at <https://donatelifenm.org>.

In Memoriam

Born September 13, 1926, in Arroyo Hondo, New Mexico, and raised in San Cristobal, **Eliu E. Romero** loved and took great pride in his Northern New Mexico and Spanish roots. After attending a rural school run by the Carnegie Institute in San Cristobal, Eliu enrolled at the University of New Mexico at the age of 15. He interrupted his studies to serve in World War II as a Navy Communications Officer. After service, Eliu earned his bachelor's degree from UNM and his law degree from the University of Denver School of Law. He then returned to Taos to open his law practice. Eliu's legal career was extensive and varied. He loved presenting a case to a jury. His confidence and abilities in the courtroom earned him the reputation throughout the state of New Mexico as a fierce and agile litigator. Eliu took on all types of matters; from land disputes and personal injury, to contracts and business, to wills and estates. His practice, which spanned over 70 years, touched the interests and concerns of generations of the Taos community. In the early days of his law practice, Eliu identified a need for a financial institution devoted to the interests of the local community. In 1969, Eliu, along with a group of 300 stockholders, led the formation of Centinel Bank of Taos. Eliu was a passionate entrepreneur who felt strongly about the need to keep community capital in the community to foster future generations of growth and development. In addition to his law practice, Eliu participated actively in the Democratic Party and served on the Democratic Party of New Mexico Central Committee to support state and congressional candidates. He also took great pride in being a founder of the National Hispanic Cultural Center in Albuquerque. Eliu held a deep and passionate love for the land of northern New Mexico. He was always most at peace either picking apples from the orchard in Upper San Cristobal near where he grew up, or working on his ranch in Tres Piedras and then sitting under the porch of the old sheepherder's cabin to gaze at the view of the expansive Sangre de Cristo Mountains. The conservation easement he placed on his property in the San Cristobal valley was among the first in Taos County and will preserve the beauty of that land for eternity. Eliu was preceded in death by his parents, Domitila and Gabriel Romero; sisters, Licia Vigil (Leopoldo), Cora Chai (Calvin), Pricilla Romero McComas (Robert), and Ernestine Romero; brothers, Joe Romero and Adelmo Romero; nephews, Leopoldo Vigil, Jr., Wilbert Vigil, and Edward Romero. He is survived by his wife, Kimberly Grant-Romero; stepsons, Justin S. Grant (Ivy) and Colin W. Grant; former wife and mother of his two sons, Elizabeth Romero; sons, Martin Romero (Cheryl) and Dennis Romero (Sibylle); grandchildren, Rebeca Romero Rainey (John), Miguel Romero (Regina), Chris Romero (Leslie), and Gabriela Romero (and her mother, Lisa Dreger); great-grandchildren, Miquela Romero, Miguel Mateo Romero, Marcos Romero, Izabella Romero Rainey, Elliana Romero Rainey, Andrew Romero, Allie Romero; great-great-grandchild, Mariana Romero. His sisters, Fabi Romero, Veronica Romero, and Eleanor Romero (Alfredo Vigil); brothers, Robert Romero (Vera) and Ramon Pacheco (Amy); sister-in-law, Marcella Romero. And numerous nieces, nephews, great-nieces and -nephews, and great-great-nieces and -nephews. Eliu's love of the land, the law, and community was only surpassed by love of his family. The charisma, passion, and dedication Eliu brought to everything he did will live on for generations to come-his legacy endures in his family, the stewardship and conservation of the lands, his love of the law, Centinel Bank, and the many lives that he touched over the years. Eliu will be greatly missed by his family, his many friends and associates in the community, and by his wife, Kym, who says

theirs was "a match made in Heaven." Services will be held at the following locations and times: Rosary and eulogy at Our Lady of Guadalupe Church on Thursday, March 7, at 6 pm. Mass will be held on Friday, March 8, at 10 am at Our Lady of Guadalupe. Arrangements by Rivera Family Funeral home.

On Sept. 21, a day in which the Sun and Moon found equal balance during the Equinox transition from Summer to Fall, **James Alton Askew** (a.k.a. Jim, Jimbo) passed away peacefully in his sleep at his home in Albuquerque, New Mexico; he was 64 years old. Jim was born January 28th, 1960, in Fayetteville, North Carolina. After completing high school in Asheboro, NC Jim went on to attend North Carolina State University (as the men in the Askew family did), where he graduated with his Bachelors in 1982 and went on to finish Law School at the University of Denver in 1986. As proud member of the Wolf Pack he never had a kind word about Tar Heels. *Esse quam videri*, "To be rather than to seem." Jim is survived by his Mother, Mary, siblings Rebecca, Mary, John and Joe as well as many friends around the world. He is preceded by his father Eddie, as well as his beloved dogs Colter, Fremont, Tim Stray Dog and Sea Biscuit. As an Eagle Scout, Jim visited Philmont Scout Ranch in Cimarron, NM. It was there Jim's fondness for the West was born and where he would spend the rest of this life exploring the vast landscapes and high mountains. During college summers, Jim worked at Philmont as a Ranger, Rayado Trek Coordinator, Associate Chief Ranger and eventually the Manager of Logistics. As Manager of Logistics, he oversaw thousands of participants on the ranch. Jim loved to plan, and he found that few things made him happier than a plan well executed. After Working at Philmont and getting his law license, Jim moved to Albuquerque, NM, which he called home, for the rest of his life. He started his law career as a Clerk for Judge Stewart Rose in Federal Bankruptcy Court. Jim then went on to specialize in Bankruptcy. He worked for various law firms in Albuquerque until finally establishing his own practice, The Askew Law Firm. Jim was also listed in the Best Lawyers in America and the Southwest Super Lawyers 2010-2024 for his expertise and experience in Bankruptcy & Creditor/Debtor Rights Law. "*Esse quam videri*," is found in Cicero's essay, "On Friendship," and Jim definitely had many friends from all around the world and all walks of life. He loved sharing adventures around the western United States with his vast network of comrades. Jim climbed all the fourteen-thousand-foot-high mountain peaks in Colorado (twice) and was a few peaks short of all of them three times. It is estimated that around 3,000 people have climbed all 54-peaks once, so twice put Jim in rare company. He also climbed Wheeler Peak, the highest point in New Mexico over 50-times. Jim also took a copy of Lonesome Dove to the top of Denali Peak in Alaska, the highest mountain in the United States. Finally, Jimbo loved the outdoors, Jerry Jeff Walker, the study of history, camping, rye whiskey ("provided it got here quick, Larry McMurtry"), and steam engines (in particular, the 473 out of Durango, Colorado). Perhaps, he must have heard a steam whistle blow and the call, "All Aboard," as he passed on. The only healthy way to live life is, "to learn to like all the little everyday things - like a sip of good whiskey in the evening, a soft bed, a glass of buttermilk, or a feisty gentleman, Larry McMurtry," like Jimbo. You will be missed by all the lives you touched. While we have lost Jim he still lives on, just in another part of our heart. "Uva Uvam Vivendo Varia Fit, The grape changes ripens by looking at another grape" a memorial service is being planned for Jan. 2025.

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-010

No: S-1-SC-37879 (filed December 7, 2023)

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

JEREMIAH JOHN GURULE,

Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

Christina P. Argyres, District Judge

Hector H. Balderas, Attorney General
Emily C. Tyson-Jorgenson,
Assistant Attorney General
Santa Fe, NM

for Petitioner

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

for Respondent

OPINION

THOMSON, Justice.

{1} Defendant stood accused of killing his girlfriend by repeatedly stabbing her. Defendant was tried, and the jury found him guilty of second degree murder, a second degree felony, and tampering with evidence, a third degree felony. *See* NMSA 1978, § 30-2-1(B) (1994); NMSA 1978, § 30-22-5(B)(1) (2003). While he awaited trial, Defendant remained in custody as competency questions were resolved. He was isolated for much of that time due to his violence toward staff and the other inmates. On the eve of trial, Defendant filed a motion to dismiss for violation of his speedy trial

rights. After a thorough examination of the procedural timeline, the district court denied his motion. The Court of Appeals, in a split decision, reversed Defendant's convictions. *State v. Gurule*, A-1-CA-35724, mem. op. ¶¶ 1, 33 (N.M. Ct. App. July 31, 2019) (nonprecedential). The Court reexamined the trial court's findings and conclusions and determined that Defendant's speedy trial rights were violated because of the length of the delay, reasons for the delay, and the "extreme prejudice" to Defendant. *Id.* ¶ 30. We granted certiorari.

{2} In accordance with the required standard of review, we defer to the district court's findings regarding Defendant's lack of showing of particularized prejudice, his failure to assert the right to a speedy trial in

a meaningful way, and the extent to which "Defendant was engaged in gamesmanship." In doing so, we affirm that delays attributable to ascertaining a defendant's competence to stand trial "are chargeable to the defendant and must be excluded from any speedy trial analysis." *State v. Mendoza*, 1989-NMSC-032, ¶¶ 8-10, 108 N.M. 446, 774 P.2d 440. For those reasons, we reverse the Court of Appeals, affirm the district court's denial of Defendant's motion to dismiss, and remand to the Court of Appeals.¹

I. SIXTH AMENDMENT: RIGHT TO A SPEEDY TRIAL

{3} The Sixth Amendment to the United States Constitution provides that in all criminal prosecutions, "the accused shall enjoy the right to a speedy and public trial."² As we have recognized, the speedy trial right "escapes precise definition." *State v. Garza*, 2009-NMSC-038, ¶ 11, 146 N.M. 499, 212 P.3d 387. Rather, it is "amorphous, slippery, and necessarily relative." *Id.* (text only)³ (citation omitted). "Therefore, the substance of the speedy trial right is defined only through an analysis of the peculiar facts and circumstances of each case." *Id.*

{4} The first step in determining whether there has been a speedy trial violation is to divide the overall trial delay into discrete periods to allow for manageable units of analysis. *See generally id.* ¶¶ 13-14; *State v. Ochoa*, 2017-NMSC-031, ¶¶ 4-6, 406 P.3d 505. We then attribute each of those units of delay to the fault of the state or the defendant. *See, e.g., Garza*, 2009-NMSC-038, ¶ 18. There are circumstances where a delay cannot be attributed to either party, and those delays are weighed neutrally. *See id.* The district court entered specific findings relating to Defendant's claim of denial of his speedy trial rights. They are summarized in relevant part as follows.

¹ Defendant raised five arguments on appeal to the Court of Appeals. The Court of Appeals reversed the district court on speedy trial grounds and therefore did not address Defendant's other arguments. We remand for the Court of Appeals to address the remaining arguments.

² Defendant does not clarify whether his speedy trial claim is brought under the Sixth Amendment to the United States Constitution or Article II, Section 14 of the New Mexico Constitution. He does analyze the Barker factors, which arise from the United States Supreme Court case *Barker v. Wingo*, 407 U.S. 514 (1972). New Mexico adopted the Barker factor analysis in *Zurla v. State*, 1990-NMSC-011, 109 N.M. 640, 789 P.2d 588.

³ The "text only" parenthetical as used herein indicates the omission of all of the following—internal quotation marks, ellipses, and brackets—that are present in the quoted source, leaving the quoted text itself otherwise unchanged.

► From the New Mexico Supreme Court

A. Procedural Timeline

{5} In April 2010, Defendant was arrested for murder and tampering with evidence. Defendant spent the duration of the case from indictment to trial, a period of approximately sixty-nine months, in custody.

{6} The State entered its appearance about one month after the arrest. Defense counsel did the same two weeks later and simultaneously filed a speedy trial demand. From June 1, 2010, until October 21, 2010, both parties filed various pretrial motions as the case proceeded toward trial. On October 21, 2010, at Defendant's request, the trial judge filed an order to stay all proceedings to allow for a determination of Defendant's competence. Following entry of the order, Defendant filed a notice of the defense of insanity. Defendant also requested an order to show cause because of the delay in his transfer to the New Mexico Behavioral Health Institute (NMBHI). He was eventually transported to NMBHI, and in August 2011, NMBHI found Defendant competent to stand trial. Defendant objected and indicated he would hire an expert to contest the finding of his competence and that the new evaluation would take two months. A competency hearing was then set for October 2011, but Defendant requested a continuance of the proceeding because defense counsel was out of state. The hearing was reset for December 6, 2011 (first reset), and for unknown reasons, that hearing was cancelled.

{7} Over the course of approximately the next nineteen months, Defendant's competency hearing was reset again, four more times. After the December 6, 2011, hearing was cancelled, the hearing was reset for July 24, 2012 (second reset). Then, on July 2, 2012, the State sought a new competency evaluation at the recommendation of the original evaluating physician "due to the [year-long] delay since the original evaluation." The district court agreed, ordered an updated competency evaluation at NMBHI, and continued the competency hearing. Defendant was transported to NMBHI on September 18, 2012, and the competency hearing was reset for January 28, 2013 (third reset). Two weeks before the hearing, the State filed a motion requiring disclosure of Defendant's health information. Defendant acknowledged that he had not provided the

necessary documentation, and the State was compelled to file a stipulated motion to continue. This resulted in a resetting of the competency hearing to May 22, 2013 (fourth reset). On the scheduled date of the May competency hearing, NMBHI filed a written objection to the subpoenas, and as a result the competency hearing was pushed to June 26, 2013 (fifth reset). At the June hearing, the court found Defendant competent and set a jury trial for five months later.

{8} Defendant's trial date was reset four times over the next thirty-one and one half months following several discovery disputes, defense motions or stipulations to continue, and other procedural delays. On November 13, 2013, the State filed a stipulated motion to continue in order to pursue plea options. The trial was reset for July 7, 2014, (first trial reset) followed by additional discovery motions, which resulted in the State's motion to continue to resolve the issues. Due to discovery disputes from both parties, the court reset the trial for November 17, 2014 (second trial reset). On the eve of trial, Defendant filed a motion to continue the November 17 setting, stating that his expert needed time to evaluate Defendant's state of mind. Speedy trial issues were raised, and the parties agreed that the delay would count against Defendant. The trial was reset for February 2, 2015 (third trial reset), but a month after a new scheduling order was issued, the case was reassigned to a different judge, who reset the trial on a docket beginning January 25, 2016 (fourth trial reset). After the latest reset, both the State and the defense moved the matter toward trial by filing several motions, including motions to suppress and motions to exclude.

{9} As trial approached, Defendant filed a motion to dismiss based on violation of his speedy trial right. The district court held an evidentiary hearing on Defendant's motion on January 21, 2016, where Defendant submitted an affidavit describing the prejudice he experienced in segregation. In addition, a correctional officer testified about Defendant's violent behavior while incarcerated and the need to place Defendant in solitary confinement.

{10} Trial began on February 8, 2016. After a seven-day trial, Defendant was con-

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victed of second degree murder and tampering with evidence. Defendant appealed based on violation of his speedy trial right, and the Court of Appeals reversed. *Gurule*, A-1-CA-35724, mem. op. ¶ 1. With this understanding of the procedural history, we now summarize how each court has analyzed Defendant's speedy trial motion, beginning with the district court.

B. The District Court's Disposition of the Speedy Trial Motion

{11} In order to decide whether a defendant's speedy trial right was violated, courts weigh four factors relating to the delay: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Barker*, 407 U.S. at 530 (the *Barker* factors). None of these factors are dispositive, and no single factor alone is necessary or sufficient. *See id.* at 533.

{12} The first factor is "a triggering mechanism," which starts an "inquiry into the other factors that go into the balance." *Id.* at 530. Any delay longer than eighteen months in a complex case such as this one is presumptively prejudicial and triggers an analysis of the other *Barker* factors. *State v. Spearman*, 2012-NMSC-023, ¶ 21, 283 P.3d 272. In this case, because fifty-one months had passed since the triggering date, the district court found that "the delay necessitates analysis of the other *Barker* factors."

{13} The district court next divided the total delay into specific periods and assigned responsibility for each period. It concluded that thirty-three months of the delay weighed against the State, twenty months weighed neutrally, and sixteen months weighed against Defendant. The district court noted that the State was responsible for most of the periods of delay but found that the delays did not weigh heavily against the State because the delays were unintentional and Defendant stipulated to many of the continuances that the State requested. The district court also commented that it appeared "to some extent Defendant was engaged in gamesmanship" because his speedy trial motion asked that several of the stipulated delays be held against the State. These delays included the motion to continue the October 11, 2011, hearing; the motion to send Defendant for a second evaluation; the January 22, 2013, motion to

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continue the January 28, 2013, competency hearing; the November 13, 2013, motion to continue for plea negotiations; and the June 20, 2014, request to resolve discovery issues. In addition to these stipulated continuances, Defendant requested his own continuances, including the first hearing to evaluate Defendant's competency and the motion to continue the November 17, 2014, trial setting.

{14} Next, the district court looked at Defendant's assertion of the speedy trial right. While the district court found that Defendant asserted his speedy trial right with each entry of appearance, the court concluded that these assertions were made as a matter of course rather than as a strong assertion of the right. In addition, the court found that Defendant moved to dismiss based on speedy trial only on the eve of trial and therefore gave the motion little weight.

{15} Finally, the district court evaluated whether Defendant suffered any particularized prejudice. The court reasoned that, although Defendant was incarcerated both during and while awaiting trial, he still needed to show that particularized prejudice incurred from the delay. Defendant claimed he suffered particularized prejudice because of anxiety he developed while he was segregated from the other inmates. The district court rejected this claim, concluding that the detention center made efforts to put him in the general population, but that each time a transfer was initiated, Defendant's own violent actions prevented the transfer. This resulted in continued placement in the segregated unit. The district court pointed to testimony by staff members at the jail that administration attempted to move Defendant into the general population, but it acknowledged that Defendant's behavior sabotaged those efforts. The district court also considered whether Defendant's defense was impaired by the delay. The district court did not find prejudice to the defense because, although Defendant alleged that some of his witnesses were no longer available when the trial dates were changed, he

did not assert that the witnesses were material or show how those witnesses would have helped his defense.

{16} Considering all of these factors, the district court concluded that although the *length* of the delay weighed heavily against the State, the *reasons* for delay did not weigh heavily against the State. In addition, the district court gave minimal weight to Defendant's assertion of the speedy trial right, as well as Defendant's claim of particularized prejudice. Therefore, the district court found no constitutional violation of Defendant's speedy trial right. We turn next to the Court of Appeals' basis for reversing the district court on speedy trial grounds.

C. Court of Appeals' Review of the District Court's Decision on the Speedy Trial Motion

{17} Defendant appealed the district court's decision to the Court of Appeals, which reweighed the *Barker* factors de novo. *Gurule*, A-1-CA-35724, mem. op. ¶¶ 3, 30. The Court of Appeals agreed that the case was complex and that the eighteen-month threshold was the appropriate trigger for analysis of the rest of the speedy trial factors. *Id.* ¶ 4. It also agreed that a "delay of approximately seventy months" weighs heavily against the State. *Id.* ¶ 5. Weighing the reasons for delay, the Court of Appeals concluded that thirty-seven months weighed against the State, twenty months weighed neutrally, and thirteen months weighed against Defendant. *Id.* ¶ 18. Regarding Defendant's assertion of his speedy trial right, the Court of Appeals agreed with the district court's conclusion that Defendant's assertions were mostly either pro forma or made on the eve of trial and therefore weighed "only slightly in Defendant's favor." *Id.* ¶ 21.

{18} The Court of Appeals further considered prejudice to Defendant. While the district court found no particularized prejudice, the Court of Appeals held there was "extreme prejudice" to Defendant, acknowledging that the majority of the delay was administrative or procedural and not

intentional but weighing the reasons for the delay heavily against the State. *Id.* ¶¶ 18, 29. After weighing the four factors, the Court of Appeals concluded that Defendant's right to speedy trial was violated, reversed the judgement and sentence, and remanded with instructions to dismiss the charges. *Id.* ¶¶ 30-31.

{19} We granted the State's petition for writ of certiorari. We disagree with the Court of Appeals' decision to weigh the reasons for delay heavily against the State.⁴ *Id.* ¶ 30. Instead, we weigh the reasons for delay in large part against Defendant because much of the delay was the result of the multiple considerations of Defendant's competence to stand trial. The Court of Appeals erred in weighing that delay against the State. Finally, in light of Defendant's behavior while in confinement and because he did not show particularized prejudice, we disagree that Defendant suffered extreme prejudice.

II. DISCUSSION

A. Standard of Review

{20} As previously discussed, "In examining whether a defendant has been deprived of his constitutional right to a speedy trial, we use the four-factor test set forth in *Barker*." *Ochoa*, 2017-NMSC-031, ¶ 4. Importantly however, "[w]e defer to the district court's factual findings in considering a speedy trial claim, but weigh each factor de novo." *Id.* We accept the standard outlined by the United States Supreme Court that factual findings of a district court are "entitled to substantial deference and will be reversed only for clear error." *United States v. Taylor*, 487 U.S. 326, 337 (1988). Like here, when a district court considers the *Barker* factors "and supporting factual findings are not clearly in error, the district court's judgment of how opposing considerations balance should not lightly be disturbed." *Id.* We turn now to our analysis.

B. Barker Factors

1. Length of Delay

{21} Whether the length of delay triggers an inquiry into the other three *Barker* fac-

⁴ The Court of Appeals correctly calculated and weighed some portions of the delay during Defendant's pretrial incarceration. We do not see a need to recite those. Instead, this opinion will only discuss, in detail, the periods of delay for which this Court's weighing differs from the Court of Appeals' weighing. The Appendix delineates each period of delay, lists how each court weighed the delay periods, and summarizes results of the new calculations described in this opinion.

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tors depends on the complexity of the case. *Barker*, 407 U.S. at 530-31. In New Mexico, the speedy trial inquiry triggers at “twelve months for simple cases, fifteen months for cases of intermediate complexity, and eighteen months for complex cases.” *Garza*, 2009-NMSC-038, ¶ 2. It is undisputed that this was a complex case, so the triggering delay for analysis of the other *Barker* factors was eighteen months. The total delay of approximately sixty-nine months in this case exceeded the eighteen-month threshold by fifty-one months, and therefore an analysis into the other three *Barker* factors is clearly warranted. See *State v. Serros*, 2016-NMSC-008, ¶¶ 23-24, 366 P.3d 1121 (holding that a fifty-one-month total delay in a case of undetermined complexity weighs heavily against the state); *State v. Flores*, 2015-NMCA-081, ¶ 7, 355 P.3d 81 (holding that a sixty-two-month total delay in a complex case weighs heavily against the state).

{22} It is important to note that while a delay beyond the eighteen-month limit is “presumptively prejudicial” in a complex case, the analysis of the fourth *Barker* factor, actual prejudice, is separate from this conclusion and relates to Defendant’s pretrial incarceration in this case. See *Garza*, 2009-NMSC-038, ¶¶ 6, 12, 20-21, 35 (explaining that a presumptively prejudicial delay triggers analysis into the other factors, and differentiating presumptive prejudice from prejudice due to pretrial detention or pretrial release restrictions). Accordingly, we hold that a sixty-nine-month delay weighs heavily against the State as to the first *Barker* factor. We therefore move on to analysis of the other *Barker* factors.

2. Reason for the Delay

{23} *Barker*’s second factor, the reason for delay, is “[t]he flag all litigants seek to capture.” *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986). Our examination of the reasons for delay recognizes that “different weights should be assigned to different reasons.” *Barker*, 407 U.S. at 531.

{24} In cases where a defendant causes or benefits from the delay, the time weighs against the defendant. See *Serros*, 2016-NMSC-008, ¶ 43. If a prosecutor deliberately delayed trial, the delay weighs heavily against the state. *Id.* ¶ 29. Mere negligence or administrative delays weigh less heavily

against the state. *Id.* “Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.” *Barker*, 407 U.S. at 531. We now turn to the particular reasons for delay in this case and conclude, as the factual and procedural recitation provides, that the delay here was principally attributable to Defendant’s competency determination and the numerous stipulated continuances that served to assure Defendant’s competence to stand trial. Therefore, the delays do not weigh against the State.

{25} We begin with a discussion of how competency determinations can affect a court’s review of a defendant’s speedy trial claim. Raising competence during the course of a proceeding has a unique impact upon the proceeding and upon the ability to bring the matter to conclusion. Unlike virtually every other reason for a delay, raising competence causes all other work on the case to stop. Whenever a question appears, by motion of the parties or the court, as to the mental competence of a defendant to stand trial, “any further proceeding in the cause shall be suspended until the issue is determined.” NMSA 1978, § 31-9-1 (1993). That is, no criminal jeopardy confronts the defendant as long as a question of competence remains undecided. “And one who is incompetent cannot stand trial.” *Mendoza*, 1989-NMSC-032, ¶ 8; see also *Pate v. Robinson*, 383 U.S. 375, 386 (1966) (holding that conviction of a legally incompetent accused violates due process).

{26} This Court has previously held that delay pending a defendant’s competency determination does not impact the defendant’s speedy trial right. *Mendoza*, 1989-NMSC-032, ¶¶ 8-9 (“During the time an accused’s competency is being assessed, he or she is unavailable for trial. Regardless of who initiates the proceeding a competency examination is clearly on behalf of the accused and in no way infringes on that person’s speedy trial rights. . . . These delays are chargeable to the defendant and must be excluded from any speedy trial analysis.”). In *Mendoza*, we explained that the competing constitutional interests at stake due process demands that a defendant be competent to stand trial and that a speedy trial is the defendant’s right reveal that delays from determinations of competence are incurred for the benefit of

the defendant. See *id.* ¶¶ 4, 8-9.

{27} Our conclusion that delays due to competency evaluations are chargeable to the defendant is consistent with other jurisdictions’ recognition that “a defendant may not complain of delays occasioned by the trial court’s attempt to protect his interests.” *United States v. Murphy*, 241 F.3d 447, 454 (6th Cir. 2001) (citing *United States v. Antwine*, 873 F.2d 1144 (8th Cir. 1989)); see also Mass. R. Crim. P. 36(b)(2)(A)(i) (excluding from the computation of trial delay any period of “delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity”); 18 U.S.C. § 3161(h)(1)(A) (excluding from delay-of-trial computations any period of delay caused by proceedings to determine the defendant’s mental competence); *Henderson v. United States*, 476 U.S. 321, 326-27 (1986) (excluding from determinations of trial delay “any period of delay” from “proceedings concerning the defendant” such as “time consumed . . . by a competency examination” without requiring that the “period of delay be reasonable” (brackets, internal quotation marks, and citations omitted)); *United States v. McGhee*, 532 F.3d 733, 737 (8th Cir. 2008) (holding that delay for proceedings to determine the defendant’s competence is “excludable under the [Speedy Trial Act], whether reasonable or unreasonable”).

{28} The Court of Appeals relies on *State v. Stock*, 2006-NMCA-140, 140 N.M. 676, 147 P.3d 885, to conclude that periods of procedural delay should be parsed from within the larger category of delay for competency determinations and allocated to the State. See *Gurule*, A-1-CA-35724, mem. op. ¶¶ 8, 10, 13. This interpretation, however, is contrary to *Mendoza*, in which this Court counted the entirety of the competency proceedings, not just the competency hearing itself, against the defendant because the process of adjudicating competence is “for the benefit of the defendant” and “chargeable to the defendant.” 1989-NMSC-032, ¶ 9; see also *State v. Jaramillo*, 2004-NMCA-041, ¶ 11, 135 N.M. 322, 88 P.3d 264 (interpreting *Mendoza* as counting the duration of competency proceedings against the accused because those “proceedings are clearly for the benefit of the accused”). The Court

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of Appeals therefore erred in allocating weight against the State for three periods of procedural delay that were directly related to determining Defendant's competence.

{29} We also do not see *Stock* as supporting the Court of Appeals' parsing of delays that were due to Defendant's competency evaluation. The *Stock* Court considered a speedy trial issue where "the delay [was] in part attributable to the neglect of [a defendant's] overworked public defenders." 2006-NMCA-140, ¶ 1; *see also Serros*, 2016-NMSC-008, ¶¶ 30, 42 (characterizing the issue in *Stock* as involving "attorney neglect" and as considering "the fairness of attributing to the defendant delays caused by defense counsel when the defendant was effectively blameless"); *State v. Fierro*, 2012-NMCA-054, ¶ 43, 278 P.3d 541 (distinguishing *Stock* because in *Fierro* "the district court did not find that the delay was caused by the poor performance of [the d]efendant's attorneys, their neglect, or any institutional deficiencies of the public defender system"). In *Stock*, both the state and defense counsel failed to take appropriate action on the case, including failing to communicate the results of the defendant's competency evaluation, during a delay of an extraordinary length. *Stock*, 2006-NMCA-140, ¶¶ 3-5. The *Stock* Court concluded that "in [its] particular case . . . both parties bear some responsibility for the delay." *Id.* ¶ 19.

{30} Notably, however, the *Stock* Court did not "quarrel with the [s]tate's assertion that delays caused by competency evaluations should generally not count against the state for speedy trial purposes because the state cannot try an incompetent defendant." *Id.* Rather, under the circumstances presented, the Court could not "agree that needlessly taking one and a half years to communicate the results of such evaluations is for a defendant's benefit." *Id.* ¶ 21; *see also Serros*, 2016-NMSC-008, ¶¶ 43, 46 (adopting *Stock* in another case involving attorney neglect and explaining that the court will not weigh stipulated delays against the defendant when the defendant "neither caused nor consented to those stipulations"). No such attorney neglect is at issue in this case.

{31} Turning to the case at hand, the Court of Appeals weighed the period from November 3, 2010, to February 22, 2011,

amounting to three months and nineteen days, against the State as an administrative delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 8. While it is true that Defendant spent this time in custody waiting for a room at NMBHI, it is also true that the district court found Defendant incompetent to stand trial on November 3, 2010. Therefore, it is obvious both that the State could not proceed to trial without violating Defendant's right to due process and that Defendant was not prejudiced because he did not face custody. Therefore, we conclude as required by *Mendoza* that this period is chargeable to Defendant and not the State because the State could not proceed to trial as a matter of law.

{32} The second period amounts to seven months and eighteen days from December 6, 2011, to July 24, 2012, which the Court of Appeals weighed against the State due to a reset competency hearing. *Id.* ¶ 10. Once again, during this time Defendant was considered incompetent to stand trial. As stated before, this period must be weighed against Defendant and not against the State.

{33} The third period of delay erroneously allocated by the Court of Appeals was one month and twenty-five days from July 24, 2012, to September 18, 2012, where the prosecution asked for a new evaluation of competence based on the previous evaluator's recommendation. *Id.* ¶ 11. During this time, Defendant stipulated to the State's motion for a more current mental health evaluation. This period of time also included the time Defendant awaited transportation to NMBHI. *Id.* Prosecutors have a duty to inspect a defendant's competence to stand trial lest they violate due process. *Criminal Justice Standards on Mental Health*, 7-4.3(b) (Am. Bar Ass'n 2016). Although the filing was attributed to the State, defense counsel stipulated to the motion, and the delay was in Defendant's best interest, based on the advice of his evaluator. The Court of Appeals erroneously weighed this period against the State as administrative delay. We weigh this third period against Defendant.

{34} We are concerned about an outcome that discourages the prosecution from requesting or agreeing to a competency evaluation for fear of having the case dismissed on speedy trial claims. This complements

our view that if Defendant were found incompetent to stand trial, any order to detain him for treatment to attain trial competence aligns with protecting Defendant and society in general and is therefore not punitive. *See State v. Baca*, 2019-NMSC-014, ¶ 9, 448 P.3d 576. Finally, the reasons for the delay in this case were not due to bad faith or negligence on behalf of the State.

{35} As stated herein, we defer to the district court's findings of fact. Significantly, the district court concluded that none of the delay by the State "was intentionally caused and there were no unnecessarily prolonged periods of delay, but rather the parties appear [to] have been moving toward trial," based in large part on the district court's own review of the delay between Defendant's April 19, 2010, indictment and the February 8, 2016, jury trial. We hereby apply our revisions for the three procedural periods of delay to the conclusions of the Court of Appeals on its assessment of the reasons for approximately seventy months of delay. Accordingly, and as the Appendix documents, we hold that twenty-four months weigh against the State, twenty months weigh neutrally, and twenty-six months weigh against Defendant. Of the twenty months that weigh neutrally, Defendant's questionable competence caused most of that delay. We therefore correct the Court of Appeals, *Gurule*, A-1-CA-35724, mem. op. ¶¶ 18, 30 (concluding that the reason for delay weighs "heavily against the State"), and we do not weigh the second *Barker* factor against the State.

3. Assertion of the Right

{36} We turn next to the third *Barker* factor, a defendant's assertion of the speedy trial right, and consider "[w]hether and how a defendant assert[ed] his right." *Barker*, 407 U.S. at 531. A "defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* at 531-32. The *Barker* Court "emphasize[d] that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 532. In addition, a defendant who "invoked his right to a speedy trial in words while simultaneously operating in a dilatory manner leads us to conclude that [the d]efendant's assertions of

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the right were at best nominal and at worst an act of gamesmanship.” *State v. Steinmetz*, 2014-NMCA-070, ¶ 62, 327 P.3d 1145.

{37} When weighing delay against a defendant, we “first consider whether [the d]efendant is to blame for the delays . . . because he has personally caused or acquiesced to the delay in his case.” *Serros*, 2016-NMSC-008, ¶ 43; *see also United States v. Margheim*, 770 F.3d 1312, 1328 (10th Cir. 2014) (“Moving for many continuances, or otherwise indicating that the defendant is not pursuing a swift resolution of his case will tip the balance of this factor heavily against the defendant.” (text only) (citation omitted)). If delay does not weigh against a defendant, “then we consider whether the [s]tate has met its obligation to bring [the d]efendant’s case to trial.” *Serros*, 2016-NMSC-008, ¶ 43.

{38} In this case, the defense stipulated to at least six continuances and independently moved for continuance on the eve of trial. Therefore, we not only defer to the finding of the district court that Defendant was “to some extent . . . engaged in gamesmanship,” but we also find it well supported in our review.⁵ *See State v. Moreno*, 2010-NMCA-044, ¶ 14, 148 N.M. 253, 233 P.3d 782 (“The district court characterized this conduct as a form of gamesmanship in which [the d]efendant was agreeing to continuances only because he later intended to file a speedy trial claim”); *see also Barker*, 407 U.S. at 534-35 (“[T]he record strongly suggests that . . . [the defendant] hoped to take advantage of the delay in which he had acquiesced, and thereby obtain a dismissal of the charges. . . . More important than the absence of serious prejudice, is the fact that Barker did not want a speedy trial.”).

{39} We consider Defendant’s behavior in weighing his assertion of the speedy trial right. *Serros*, 2016-NMSC-008, ¶ 43. Here, Defendant asserted his right to a speedy trial five times: three times during entries of appearances of counsel and twice in con-

nection with his October 2015 motion to dismiss based on violation of his speedy trial rights. However, “pro forma motions are generally afforded relatively little weight in this analysis.” *State v. Urban*, 2004-NMSC-007, ¶ 16, 135 N.M. 279, 87 P.3d 1061. In this case, the district court gave little weight to the three speedy trial demands on entry of appearance. Further, this Court recognizes that “the closer to trial an assertion is made, the less weight it is given.” *Moreno*, 2010-NMCA-044, ¶ 33. Here, Defendant’s motion to dismiss for violation of speedy trial also earns little weight as the motion was made within a few months of trial after most of the delay had already passed. Finally, because Defendant acquiesced to several of the State’s continuances and moved for his own continuances, we do not weigh the third *Barker* factor against the State. *See Garza*, 2009-NMSC-038, ¶¶ 38-39.

4. Particularized Prejudice

{40} The fourth and final factor for us to consider is prejudice to the defendant. *Barker*, 407 U.S. at 532. As it relates to pretrial incarceration, such prejudice must be particularized, and it weighs in the defendant’s favor when the “anxiety suffered is undue.” *Ochoa*, 2017-NMSC-031, ¶ 51 (internal quotation marks and citation omitted). Again, this element is not to be confused with “presumptively prejudicial delay,” which “refers to prejudice to the fundamental right to a speedy trial, not to specific prejudice covered by the fourth *Barker* element.” *Garza*, 2009-NMSC-038, ¶ 19 (text only) (citation omitted); *see Gurule*, A-1-CA-35724, mem. op. ¶¶ 22-26.

{41} The Court of Appeals rejected the district court’s finding that Defendant’s pretrial confinement did not cause undue anxiety and concern. In doing so, the Court of Appeals incorrectly concluded that the suffering of “extreme prejudice” occurred as a matter of law based on the length of time Defendant was incarcerated before trial. *See Gurule*, A-1-CA-35724, mem. op.

¶¶ 23, 29 (“Although we acknowledge that Defendant’s initial and continued placement in segregation was the result of his conduct while in custody, we cannot ignore the oppressive impact the conditions and duration of his incarceration had on Defendant.”).

{42} The Court of Appeals’ conclusion that Defendant “suffered extreme prejudice,” *id.* ¶ 29, is not supported by the record and, more importantly, ignores deference to the trial court’s discretion in finding that Defendant showed no particularized prejudice. In addition, the Court of Appeals’ conclusion is not supported by precedent in that, like all other *Barker* factors, a claim of particularized prejudice must be made “through a review of the circumstances of a case, which may not be divorced from a consideration of the [s]tate and the defendant’s conduct and the harm to the defendant from the delay.” *Garza*, 2009-NMSC-038, ¶ 13; *see Barker*, 407 U.S. at 533. We undertake such a review now.

{43} In *Barker*, 407 U.S. at 532, “[t]he United States Supreme Court . . . identified three interests under which we analyze prejudice to the defendant: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *Garza*, 2009-NMSC-038, ¶ 35 (internal quotation marks and citation omitted). *Fierro*, 2012-NMCA-054, is on point for our analysis of prejudice. In *Fierro*, the defendant claimed his speedy trial rights were violated due to a fifty-five-month period between arrest and trial. *Id.* ¶¶ 36, 57. His bond was set at \$250,000, cash only, due to allegations that the defendant had threatened the victim and her family and that the defendant tried to have the victim killed. *Id.* ¶ 58. Because the defendant could not post bond, he remained incarcerated during the entire pretrial period and was in segregation for the majority of his incarceration as a necessity “for [the d]efendant’s own safety.” *Id.* The defendant

⁵ According to the State, this is the second time that Defendant has been charged with murder and has filed a motion to dismiss for speedy trial violation at the very last minute. The State alleged at trial and in its briefing that “it is certainly understandable that the defense filed this speedy trial motion after all the same strategy worked in getting the Defendant’s first homicide case dismissed.” It does appear that in 2011 a district court concluded in a separate case that “Defendant’s right to a speedy trial as guaranteed by the 6th Amendment to the U.S. Constitution . . . has been violated by the delay in bringing the Defendant[] to trial.” *See Order of Dismissal, State v. Gurule*, D-202-CR-2005-02559 (May 11, 2011).

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received prescribed medication to help deal with the mental toll of his incarceration. *Id.* ¶¶ 57-58. The *Fierro* Court addressed the three interests underlying prejudice analysis, concluded ultimately that the failure to show concrete prejudice defeated the defendant's speedy trial claim, and weighed the prejudices stemming from the defendant's pretrial incarceration neutrally. *Id.* ¶ 60. With reference to *Fierro*, our analysis here examines each of the three prejudice interests separately.

B. Prevent oppressive pretrial incarceration

{44} The district court analyzed prejudice to Defendant, the fourth *Barker* factor, using the particular facts surrounding Defendant's segregation. Defendant was in segregation because his behavior was incompatible with placement in the general population and because the prison had an obligation to protect other inmates and staff. In particular, the district court focused on the testimony of a Metropolitan Detention Center officer, Lieutenant Abraham Gallardo. Lieutenant Gallardo testified that the Metropolitan Detention Center made several efforts to move Defendant into the general population and reported that Defendant's violent actions stopped any and all efforts to do so. Defendant, like the defendant in *Fierro*, remained in custody and in segregation for safety reasons. *Fierro*, 2012-NMCA-054, ¶ 58 (describing circumstances that led to the conclusion that the defendant had not demonstrated any particularized or undue prejudice due to his incarceration).

{45} The district court concluded that Defendant was placed in administrative segregation because of his violent behavior, not because of the charges he faced. The district court found several instances where Defendant assaulted or threatened staff. Notably, Defendant assaulted eight staff members at initial booking. The record shows and the district court recognized that jail staff attempted to move Defendant into the general population but that further violent behavior forced his continued segregation. In many ways, Defendant has a weaker argument for a speedy trial claim than that presented in *Fierro*. Custodial segregation of the defendant in *Fierro* "was necessary for [the d]efendant's own safety." *Fierro* 2012-

NMCA-054, ¶ 58. In this case, Defendant had more control than the defendant in *Fierro* over whether he remained in segregation or whether he would be allowed into general population, and here, Defendant's own behavior was to blame for the restrictions he faced in segregation. Therefore, any prejudice suffered was due to Defendant's own actions. *See McGhee*, 532 F.3d at 740 ("Any prejudice from pretrial incarceration was attributable to [the defendant's] own acts.") Accordingly, the district court correctly found that Defendant did not demonstrate particularized prejudice due to his time spent in segregation.

b. Minimize anxiety and concern of the accused

{46} Next, the district court considered the anxiety and concern of the accused, referring to Defendant's affidavit stating that he was unable to maintain a relationship with his family, suffered from depression and anxiety attacks, and was kept in segregation. While Defendant asserted that he suffered from anxiety and PTSD, he did not specify when his mental conditions started, and, despite "his alleged mental state when he was first imprisoned," the district court declined to speculate that his symptoms were caused by the delay. The district court further declined to find that Defendant's relationship with his family had changed because of incarceration, maintaining instead that loss of contact with family is a normal consequence of incarceration and that this particular set of circumstances was not unique to Defendant. Given Defendant's erratic and violent behavior even as he was booked, it was entirely reasonable for the district court to find that Defendant did not associate his current mental state with the time he spent in incarceration, taking into consideration Defendant's mental state before he was incarcerated. Defendant failed to state when his alleged mental conditions arose, and given the mental state he exhibited when he was first imprisoned, well before the presumptive-prejudice deadline, this Court will not speculate that the delay in trial caused the issues Defendant alleges.

c. Limit the possibility that the defense will be impaired

{47} The district court in this case also found that Defendant did not provide

any particular testimony that would have been offered by his missing witnesses. In *Fierro*, the defendant did claim that some potentially exculpatory, albeit speculative, testimony was lost. 2012-NMCA-054, ¶¶ 59-60 (discussing the defendant's claim concerning the death of a potential witness who the defendant alleged "would have testified that [the victim] and her mother fabricated the charges against him"). Nonetheless, the court in *Fierro* still declined to weigh the fourth factor in favor of the defendant. *Id.* Here, Defendant claimed that his defense was impaired because several witnesses relocated and their memories deteriorated. However, the district court noted that Defendant did not "state with particularity what exculpatory testimony would have been offered" or "present evidence that the delay caused the witness's unavailability," as required by *Garza*, 2009-NMSC-038, ¶ 36 (brackets, internal quotation marks, and citation omitted). Significantly, the Court of Appeals does not discuss or give weight to any consideration of Defendant's inability to present a defense. This is significant because *Barker* tells us, "Of these, the most serious is [possible impairment of the defense] because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Barker*, 407 U.S. at 532.

{48} Finally, the district court's decision was not contrary to *Ochoa*, 2017-NMSC-031. *Ochoa* directs us to "presume that there was some impairment of the defense" based on the length of pretrial detention, subject to a "[d]efendant's burden of showing particularized prejudice." 2017-NMSC-031, ¶¶ 62, 65; *see id.* ¶ 64 ("In the absence of such proof, this factor does not tip the scale in [the d]efendant's favor."). In addition, the Court of Appeals' reliance on *Serros*, 2016-NMSC-008, ¶¶ 89-90, to support a conclusion that Defendant suffered from extreme prejudice is misplaced. *See Gurule*, A-1-CA-35724, mem. op. ¶ 23. The factual circumstances in *Serros*, including the defendant's pretrial detention and isolation that formed the basis of his speedy trial claim, differ from the case at hand. In *Serros*, this Court relied on unchallenged testimony that other inmates and jail officials had both verbally and physically abused the defendant. *See Serros*, 2016-NMSC-008, ¶

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91 (noting two attacks on the defendant); *State v. Serros*, A-1-CA-31565, mem. op. ¶¶ 11-12, 46 (N.M. Ct. App. Mar. 10, 2014) (nonprecedential) (noting testimony from several witnesses and describing attacks on the defendant by inmates). In greatest contrast to the case at bar, the defendant in *Serros* was not permitted to move out of segregation, despite his repeated requests to do so, for safety concerns *due to the nature of the charges against him*. See *Serros*, 2016-NMSC-008, ¶¶ 6, 91. In our view, the Court of Appeals incorrectly relies on *Ochoa* and *Serros* without addressing their reasoning to conclude as a matter of law that the length of pretrial incarceration and solitary confinement is enough to find a speedy trial violation. *Gurule*, A-1-CA-35724, mem. op. ¶¶ 22-29. Here, as we have pointed out, Defendant was in segregation not because of the charges he faced but because of his clearly established violent behavior. In addition, the facts surrounding any claim of prejudice to Defendant were not established through “unchallenged testimony” as in *Serros*, 2016-NMSC-008, ¶ 88 (emphasis omitted), but instead they were highly contested facts properly reviewed and decided by the trial court.

{49} We agree with the district court that Defendant has not shown particularized prejudice and that any prejudice he suffered during his time in segregation was the result of his own behavior. Therefore, we decline to weigh the fourth *Barker* factor against the State.

C. Dissent

{50} The dissent alleges that “[t]he majority upends this Court’s speedy trial jurisprudence”⁶ and is in strongest disagreement with the conclusion that the competency proceedings, meant to benefit this Defendant, should be weighed against the Defendant for speedy trial purposes. *Dissent* ¶ 58. The dissent also concludes that Defendant need only show prejudice suffered “as a result of the lengthy pretrial incarceration he

endured” and does not need to show actual prejudice. *Dissent* ¶ 93. That is, the dissent would abandon the duty of a court to look for actual prejudice in lieu of a bright-line rule based on the duration of the pretrial incarceration. We disagree. Both positions advanced by the dissent would disrupt or likely require the reversal of years of precedent by this Court.

{51} The dissent allocates the time involved in a competency determination in a way that is directly at odds with *Mendoza*. 1989-NMSC-032, ¶ 9. There, this Court counted the entirety of the competency proceedings, not just the competency hearing itself, against the defendant. *Id.* This Court reasoned that the process of adjudicating competence is “for the benefit of the defendant” and, therefore, “chargeable to the defendant.” *Id.*; see also *Jaramillo*, 2004-NMCA-041, ¶ 11 (interpreting *Mendoza* as counting the duration of competency proceedings against the accused because those “proceedings are clearly for the benefit of the accused”). We trust the dissent to acknowledge that underpinning this holding is a defendant whose case comes to a halt during a competency proceeding and who faces no jeopardy to his liberty while his competence is at issue. The dissent fails to clearly justify why that time should be counted against the State. In addition, as we emphasized previously, our conclusion that delays due to competency evaluations are chargeable to the defendant is consistent with other jurisdictions’ recognition that “a defendant may not complain of delays occasioned by the trial court’s attempt to protect his interests.” *Murphy*, 241 F.3d at 454 (citing *Antwine*, 873 F.2d at 1150); see also Mass. R. Crim. P. 36(b)(2)(A)(i) (excluding from the computation of trial delay any period of “delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity”); 18 U.S.C. § 3161(h)(1)(A) (excluding from delay-of-trial computations

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any period of delay caused by proceedings to determine the defendant’s mental competence); *Henderson*, 476 U.S. at 327, 330 (excluding periods of delay for pretrial motions, including motions for determination of competence from filing of the motion to conclusion of the hearing, “whether or not a delay in holding that hearing is reasonably necessary” (internal quotation marks omitted)); *McGhee*, 532 F.3d at 737 (holding that delay for proceedings to determine the defendant’s competence is “excludable under the [Speedy Trial Act], whether reasonable or unreasonable”).

{52} Like the Court of Appeals, the dissent reads *Ochoa* and *Serros* in tandem to conclude that the length of time served in pretrial incarceration is prejudicial on its face. *Gurule*, A-1-CA-35724, mem. op. ¶ 23. We have never announced such a rule. Instead, we have established three interests that the Court considers when analyzing prejudice to the defendant: (1) “oppressive pretrial incarceration,” (2) “anxiety and concern of the accused,” and (3) “the possibility that the defense will be impaired.” *Garza*, 2009-NMSC-038, ¶ 35.

{53} While it is true that there is a presumption of prejudice when there is a lengthy incarceration, it is also true that the Defendant must still show some particularized prejudice from his pretrial incarceration. *Ochoa*, 2017-NMSC-031, ¶ 49 (“[W]e will not speculate as to the impact of pretrial incarceration on a defendant or the degree of anxiety a defendant suffers.” (quoting *Garza*, 2009-NMSC-038, ¶ 35) (alteration in original)). *Ochoa* also emphasizes that “[b]ecause some degree of oppression and anxiety is inherent in every incarceration, ‘we weigh this factor in the defendant’s favor only where the pretrial incarceration or anxiety suffered is undue.’” *Id.* ¶ 51 (quoting *Garza*, 2009-NMSC-038, ¶ 35). *Ochoa* recognized that a “lengthy and onerous pretrial incarceration may render affirmative proof of prejudice unnecessary to find that the

⁶ The dissent also alleges that the majority “engages in a cursory review of the Barker factors,” assuring the reader that it has taken “the time to discuss each factor and time frame thoroughly.” *Dissent* ¶ 58. The dissent’s allegation is contradicted by this time and in pages committed by this opinion to the Barker factors, including the Appendix herein that lays out in detail the speedy trial calculations by the different courts. What the dissent’s lengthy recitation of the time frame reveals more than anything else is that, like the Court of Appeals, it cannot resist its own factual review of the record instead of affording the deference due to the trial court judge who presided in this case.

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defendant suffered prejudice” but that “the length of incarceration is a counterweight to a defendant’s burden of production.” *Id.* ¶ 54. Although this Court in *Ochoa* found that the defendant suffered prejudice based solely on the length of the pretrial incarceration, it could not say whether the prejudice was undue. *See id.* ¶ 61. Similarly, the trial court in this case, the court we trust to make such a factual determination, could not say whether the prejudice was undue.

III. WEIGHING THE FOUR FACTORS

{54} We reaffirm our well-established holding that “the substance of the speedy trial right is defined only through an analysis of the peculiar facts and circumstances of each case.” *Garza*, 2009-NMSC-038, ¶ 11. This case exceeded the eighteen-month threshold for presumptive prejudice by approximately fifty-two months, and therefore an analysis of the other three *Barker* factors is necessary. However, we hold that the issue of Defendant’s competence to stand trial caused most of the delay. In addition, both Defendant’s pro forma motions and his acquiescence to several continuances weigh against him. We agree with the district court that Defendant did not suffer particularized prejudice because the prejudice he suffered during his time in segregation was the result of his own behavior.

{55} “To find a speedy trial violation without a showing of actual prejudice, the Court must find that the three other *Barker* factors weigh heavily against the [s]tate.” *State v. Samora*, 2016-NMSC-031, ¶ 23, 387 P.3d 230. Because we conclude that the second and third factors weigh against Defendant and that only the first weighs heavily against the State, we hold that the delay between Defendant’s arrest and trial did not violate his right to a speedy trial.

IV. CONCLUSION

{56} We reverse the Court of Appeals, affirm the district court’s denial of Defendant’s motion to dismiss, and remand to the Court of Appeals for further consideration of the remainder of Defendant’s arguments on appeal.

{57} IT IS SO ORDERED.

DAVID K. THOMSON, Justice
WE CONCUR:
DUSTIN K. HUNTER, Judge
Sitting by designation

AMANDA SANCHEZ VILLALOBOS, Judge

Sitting by designation

C. SHANNON BACON, Chief Justice,

dissenting

MICHAEL E. VIGIL, Justice, concurring in dissent

BACON, Chief Justice (dissenting).

{58} The majority upends this Court’s speedy trial jurisprudence in concluding that a delay of nearly six years in trying Defendant for murder is reasonable. The majority notes that this delay exceeded the eighteen-month threshold for complex cases identified in *State v. Garza*, 2009-NMSC-038, ¶ 2, 146 N.M. 499, 212 P.3d 387, by fifty-one months, which this Court deemed presumptively prejudicial and triggered an analysis into the three other *Barker* factors. *Maj. op.* ¶ 21. *See State v. Gurule*, A-1-CA-35724, mem. op. ¶ 4 (N.M. Ct. App. July 31, 2019) (nonprecedential) (deferring to “the district court’s finding that this was a complex case”); *see also Barker v. Wingo*, 407 U.S. 514, 530 (1972) (identifying the four factors as “[l]ength of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant”). Even so, disregarding the presumption in *Garza*, the majority contends that the reasons for delay are primarily attributable to Defendant, mainly because his competence was at issue throughout this matter. *Maj. op.* ¶¶ 27-30. Under the majority’s view, any time spent ascertaining a defendant’s competence and upholding the defendant’s due process rights will counterbalance any of the State’s unreasonable delay and thus permissibly infringe on a defendant’s speedy trial rights. Additionally, the majority holds that Defendant had “not shown particularized prejudice and that any prejudice he suffered during his segregation was the result of his own behavior.” *Maj. op.* ¶ 49. Accordingly, the majority reverses the Court of Appeals, concluding that Defendant’s constitutional right to a speedy trial was not violated. *Maj. op.* ¶¶ 55-56. Because we disagree that the reasons for delay, assertion of the right, and prejudice factors weigh against Defendant, we respectfully dissent. In addition, because the majority engages in a cursory review of the *Barker* factors, we take the time to discuss each factor and timeframe thoroughly.

I. THE REASONS FOR DELAY FACTOR SHOULD NOT WEIGH AGAINST DEFENDANT

{59} We agree with the majority that the length of delay weighs heavily against the State. *Maj. op.* ¶ 22. The next factor in the *Barker* analysis requires a court to consider “the reason the government assigns to justify the delay.” *Garza*, 2009-NMSC-038, ¶ 25 (quoting *Barker*, 407 U.S. at 531). The majority points to three periods of delay for which it disagrees with the Court of Appeals’ analysis but does not describe why it affirms the reasoning for the other periods of delay relevant to this analysis. Because we disagree with some of the majority’s and Court of Appeals’ conclusions regarding periods of delay not addressed by the majority, we provide a timeline for each period of delay below.

A. April 3, 2010, to October 20, 2010

{60} The Court of Appeals stated, “From Defendant’s arrest on April 3, 2010, to October 20, 2010, the case was proceeding normally toward trial.” *Gurule*, A-1-CA-35724, mem. op. ¶ 7. Accordingly, the Court weighed this period of six months and seventeen days neutrally. *Id.* This determination was not contested by either party. The majority does not address this period of delay and thus seemingly affirms this holding. We would affirm this holding as well.

B. October 20, 2010, to November 3, 2010

{61} From October 20, 2010, to November 3, 2010, the district court found Defendant incompetent to stand trial and stayed the proceedings for a competency determination. Citing *State v. Stock*, 2006-NMCA-140, ¶¶ 19-22, 29, 140 N.M. 676, 147 P.3d 885, the Court of Appeals held that this period weighed against Defendant. *Gurule*, A-1-CA-35724, mem. op. ¶ 8. The Court of Appeals reasoned that *Stock* stands for the proposition that delays resulting from competency evaluations weigh against the defendant because they are for the “defendant’s benefit.” *Id.* The majority affirms this conclusion based on an alternative analysis. *Maj. op.* ¶¶ 26-30. We disagree with both the majority’s and the Court of Appeals’ conclusion that delays attributable to competency evaluations should be weighed against the defendant. Moreover, weighing such delays

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against the defendant, absent a showing of bad faith or deliberate attempts to delay the trial, is contrary to constitutional principles, our jurisprudence, and the United States Supreme Court's jurisprudence on this issue.

{62} First, “[i]t is well established that the Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial.” *Medina v. California*, 505 U.S. 437, 439 (1992). “Suspension of the criminal process where the defendant is incompetent is fundamental to assuring the fairness, accuracy, and dignity of the trial.” *State v. Rotherham*, 1996-NMSC-048, ¶ 13, 122 N.M. 246, 923 P.2d 1131.

{63} Second, it is important to recognize that the state has a “duty of insuring that the trial is consistent with due process.” *Barker*, 407 U.S. at 527. True to this principle, this Court has recognized that “[t]he State has an interest in rendering a defendant competent to stand trial, and, as long as [the defendant] remain[s] dangerous, the State has an interest in committing [the defendant] to protect the defendant[] and the public.” *Rotherham*, 1996-NMSC-048, ¶ 23.

{64} Therefore, not only do competency evaluations benefit a defendant, they also are beneficial to the state in ensuring that it complies with its constitutional obligations. *See id.* ¶ 13. The majority cites *State v. Mendoza* for the proposition that “a competency examination is clearly on behalf of the accused and in no way infringes on that person’s speedy trial rights.” 1989-NMSC-032, ¶ 8, 108 N.M. 446, 774 P.2d 440. However, we distinguish between a competency-related delay not infringing on speedy trial rights and that delay being *solely* for the benefit of the defendant, especially as the latter proposition is not expressly supported by the underlying authorities on which *Mendoza* relied. *See, e.g., Commonwealth v. Millard*, 417 A.2d 1171, 1176 (Pa. 1979) (asserting that competency-related “delay must be attributed to the unavailability of [the defendant] and, therefore, excluded from” a speedy trial analysis (internal quotation marks and citation omitted)); *Jones v. People*, 711 P.2d 1270, 1281 (Colo. 1986) (excluding competency-related delay from speedy trial computation); ABA Standards for Criminal Justice, *Speedy Trial and Timely*

Resolution of Criminal Cases § 12-2.3(a)(i) (3d ed. 2006) (including “examination and hearing on competency” in the “periods [that] should be excluded in computing allowable time under the speedy trial rule or statute”). *Mendoza* and its underlying authorities acknowledge that competency-related delays benefit both parties and clarify that such delays should be *excluded* from speedy trial analysis—in other words, weighed neutrally—rather than weighed against the defendant.

{65} Moreover, Defendant contends that he should not have to choose between his right to a speedy trial and his due process rights. We agree. This proposition is supported by this Court’s analysis in *State v. Serros*, 2016-NMSC-008, 366 P.3d 1121, interpreting *Stock*, 2006-NMCA-140, on which the Court of Appeals relies. Accordingly, we disagree with the majority’s conclusions regarding *Stock* and its implications for this analysis. In *Serros*, we discussed the holding in *Stock* and its implications for a speedy trial analysis. *See Serros*, 2016-NMSC-008, ¶¶ 35-38. We began by noting that the *Stock* Court “held that both parties shared responsibility for the delay” related to the defendant’s competency evaluation under the circumstances in that case. *Id.* ¶ 36 (citing *Stock*, 2006-NMCA-140, ¶ 19). The fact that the delay in *Stock* was “extraordinary” was partially attributable to the state because it had done “little or nothing to ascertain what was happening in the case or to move the case forward.” *Serros*, 2016-NMSC-008, ¶ 37 (quoting *Stock*, 2006-NMCA-140, ¶ 25). We determined that in *Stock*, although the delay related to the defendant’s competency evaluations, “the reasons for the delay weighed against the State because of its ‘failure to monitor the case and ensure that steps were being taken to bring [the defendant] to trial in a timely manner.’” *Serros*, 2016-NMSC-008, ¶ 37 (alteration in original) (quoting *Stock*, 2006-NMCA-140, ¶ 29).

{66} We found *Stock*’s reasoning to be “compelling,” especially “when the delay is extraordinary and the defendant is detained while awaiting trial.” *Serros*, 2016-NMSC-008, ¶ 38. We explained that “[u]nder such circumstances, we agree that it may be appropriate to shift the focus to the State’s

efforts to bring the case to trial, at least when the record demonstrates that the defendant did not affirmatively cause or consent to the delay.” *Id.* This aligns with the United States Supreme Court’s decision in *Vermont v. Brillon*, 556 U.S. 81 (2009). The *Brillon* Court announced for the first time that some delay may be charged to the defendant in a speedy trial analysis. *Id.* at 92-93. In *Brillon*, the defendant deliberately delayed his own trial by forcing the withdrawal of two out of six of his attorneys by attempting to fire one in the middle of a hearing and by threatening the life of another. *Id.* at 86-87, 94. Under these circumstances, the *Brillon* Court concluded that the defendant caused most of the delay in his case and held, “Just as a State’s deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the State, so too should a defendant’s deliberate attempt to disrupt proceedings be weighted heavily against the defendant.” *Id.* at 93-94 (text only) (citation omitted).

{67} Under this rationale, in *Serros* we analyzed whether delays caused by the defendant seeking new counsel weighed against the defendant in that case. 2016-NMSC-008, ¶ 47. We acknowledged that the inquiry “effectively pits [a d]efendant’s right to a speedy trial against his right to effective assistance of counsel, and he should not have to surrender one right to assert the other.” *Id.* Thus, we concluded that we could only weigh the delay associated with the defendant’s request for new counsel against him if “his assertion was unreasonable.” *Id.* We held that the defendant’s assertions were not unreasonable, unlike the defendant in *Brillon*, and did not weigh the delay against the defendant. *Id.* ¶¶ 55-56.

{68} We face a similar situation here, where Defendant’s right to due process is pitted against his right to a speedy trial. Accordingly, we should only weigh delays resulting from competency evaluations against Defendant if such delays were “unreasonable.” *Id.* ¶ 56. It cannot be said that taking the time to determine Defendant’s competence here was unreasonable or a tactic employed by Defendant to delay his trial. *See id.* This is demonstrated by the fact that both parties requested inquiries into Defendant’s competence. The record does

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not support, nor does the State contend, that Defendant himself deliberately sought competency evaluations to delay his own trial. {69} Thus, we would weigh the periods of delay attributable to Defendant's competency evaluations in this case neutrally absent evidence that Defendant unreasonably sought competency evaluations to delay his trial. To hold otherwise is unconstitutional.

C. November 3, 2010, to February 22, 2011

{70} The district court found Defendant incompetent to stand trial and ordered him to be transported to the New Mexico Behavioral Health Institute ("NMBHI") for treatment on November 3, 2010. By February 21, 2011, Defendant still had not been transported to NMBHI, prompting him to file a motion to show cause for this delay. Defendant was transported to NMBHI on the following day, February 22, 2011. The Court of Appeals weighed this delay of three months and nineteen days against the State as administrative delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 8. We agree with the Court of Appeals' holding regarding this period of delay, and it is uncontested by either party. Nonetheless, the majority departs from the Court of Appeal's analysis and holds this period of delay against Defendant because it relates to a competency evaluation. *Maj. op.* ¶ 31. We disagree that the delay in Defendant's transport to NMBHI due to a lack of beds can be weighed against Defendant. Moreover, Defendant's filing of the motion to show cause indicates that Defendant sought swift transport to NMBHI and in no way contributed or acquiesced to this delay. Additionally, Defendant was detained during this time, and there is no argument that detention was in any way beneficial to Defendant. We reiterate that it is the state's obligation to bring a defendant to trial in a timely manner, and when it fails to do so, such delay should weigh against the state. *See Serros*, 2016-NMSC-008, ¶ 38 ("[W]hen the delay is extraordinary and the defendant is detained . . . it may be appropriate to shift the focus to the State's efforts to bring the case to trial, at least when the record demonstrates that the defendant did not affirmatively cause or consent to the delay.").

D. February 22, 2011, to December 6, 2011

{71} An examiner at NMBHI submitted a report on August 2, 2011, indicating that Defendant was competent to stand trial. On August 9, 2011, the district court scheduled a competency hearing for August 23, 2011. Defendant requested an evidentiary hearing regarding his competence on August 17, 2011, which prompted the district court to vacate the August 23, 2011, competency hearing and reschedule the hearing for October 11, 2011. The State filed motions for an "order requiring disclosure and protecting the privacy of records and other health information" and requested a hearing on the motions. Additionally, Defendant filed a stipulated motion for continuance from the October 11, 2011, competency hearing because defense counsel had plans to be out of state. The district court rescheduled the hearing to December 6, 2011. The Court of Appeals weighed this period of delay of nine months and fourteen days against Defendant because the delay related to Defendant's competency evaluation. *Gurule*, A-1-CA-35724, mem. op. ¶ 10.

{72} Defendant contests this holding in relation to the period of delay between February 22, 2011, and August 23, 2011, during which he was at NMBHI until the original competency hearing was set. He argues that this period of delay, totaling one hundred eighty-two days, should bear neutral weight. The majority seemingly affirmed the Court of Appeals as it did not address this period of delay. We would weigh this period neutrally, in accordance with the analysis above addressing delays resulting from competency evaluations.

{73} Defendant agrees that the delay attributable to the delay he requested, from August 23, 2011, to December 6, 2011, should weigh against him. Accordingly, defense counsel's requested continuance, approximately three months, to accommodate his travel plans should be weighed against Defendant. We agree.

E. December 6, 2011, to July 24, 2012

{74} The Court of Appeals weighed the seven months and eighteen days from December 6, 2011, to July 24, 2012, against the State due to the "absence of evidence in the record demonstrating the reasons

the district court vacated the December 6, 2011, competency hearing." *Gurule*, A-1-CA-35724, mem. op. ¶ 10. The State contests this holding, stating, "[t]here was evidence in the record," including a "stipulated motion to send Defendant for his second evaluation at NMBHI," which included information that "Judge Candelaria had retired and the parties had to wait until a new judge was appointed." The State also provides that "[e]ven after the new judge was appointed, Defendant represented he was still in the process of getting a third competency evaluation, which he stated he was seeking on August 16, 2011[,] after NMBHI determined he was competent." Thus, the State argues that this time should weigh against Defendant as time spent ascertaining his competence.

{75} The State filed a stipulated motion on July 2, 2012, to send Defendant to NMBHI for another competency evaluation. The district court granted the stipulated motion on July 5, 2012. The competency hearing was set for July 24, 2012. The majority weighed this period of delay against Defendant. *Maj. op.* ¶ 32. Absent evidence that Defendant was leveraging a third competency evaluation to delay his trial, and because both parties sought to determine Defendant's competence throughout this timeframe, we would weigh this period of seven months and eighteen days neutrally.

F. July 24, 2012, to September 18, 2012

{76} The district court granted the State's stipulated motion for the court to continue the July 24, 2012, competency hearing "to a later date when . . . Defendant has been returned from NMBHI and another evaluation has been completed." Defendant was not transported to NMBHI until September 18, 2012. As a result, the Court of Appeals weighed this period of one month and twenty-five days against the State as administrative delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 11. The majority disagrees with this analysis and weighs this period of delay against Defendant. This conclusion is beyond the pale. We would affirm the Court of Appeals' analysis, as the State bears the burden of explaining pretrial delay and offered no explanation for this delay.

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G. September 18, 2012, to January 28, 2013

{77} Another evaluator from NMBHI found Defendant competent to stand trial, and the district court scheduled a competency hearing for January 28, 2013. We agree with the Court of Appeals' determination that this period of four months and ten days should be weighed neutrally. *Gurule*, A-1-CA-35724, mem. op. ¶ 13. The majority seemingly affirms the Court of Appeals, although it weighs other delays attributable to Defendant's competency evaluations against Defendant. It is unclear why this inconsistency exists because the majority does not engage in a thorough analysis of each period of delay. The district court, not either of the parties, scheduled the competency hearing related to this period of delay. However, under the majority's rationale, delays relating to ascertaining a defendant's competence are always on behalf of the defendant, regardless of who initiates an evaluation or hearing. Thus, this conclusion is directly contradictory to the majority's principal basis for holding that Defendant's speedy trial rights were not violated here.

H. January 28, 2013, to May 22, 2013

{78} On January 22, 2013, the State filed a stipulated motion to continue the January 28, 2013, competency hearing, citing both parties' need for more time to prepare. In its motion, the State also explained that Defendant did not respond to the State's request for information until January 18, 2013. Thus, the Court of Appeals weighed this period of three months and twenty-four days neutrally "as it was the result of both parties' need for additional time to prepare, as well as defense counsel's failure to respond to the State's request for information." *Gurule*, A-1-CA-35724, mem. op. ¶ 13. This timeframe went unaddressed by the majority, so we assume it affirms the Court of Appeals. We agree with this conclusion.

I. May 22, 2013, to June 26, 2013

{79} The district court rescheduled the competency hearing set to take place on May 22, 2013, to June 26, 2013, because the New Mexico Department of Health objected to the State's subpoenas, contending they were issued too close to the scheduled competency hearing and many witnesses could not attend. We agree with the Court

of Appeals' determination that this period of one month and four days should be weighed against the State as negligent or administrative delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 14; see *Garza*, 2009-NMSC-038, ¶ 26 (weighing "negligent or administrative delay" against the state). The majority does not address this timeframe, so we assume it affirms the Court of Appeals.

J. June 26, 2013, to December 2, 2013

{80} The district court found Defendant competent to stand trial following the June 26, 2013, competency hearing and scheduled the trial to begin on December 2, 2013. Absent any argument that this delay is attributable to either party, the Court of Appeals weighed this period of five months and six days neutrally. *Gurule*, A-1-CA-35724, mem. op. ¶ 14. The majority does not address this timeframe, so we assume it affirms the Court of Appeals. We would do the same.

K. July 7, 2014, to October 20, 2014

{81} The State filed another stipulated motion to continue the trial setting, and the district court rescheduled the trial to begin on October 20, 2014. In its motion, the State explained that it needed more time to conduct pretrial interviews and resolve discovery issues. Consequently, we agree with the Court of Appeals' determination that this delay of three months and thirteen days weighs against the State. *Gurule*, A-1-CA-35724, mem. op. ¶ 15. The majority seemingly affirms this holding as it does not address this timeframe.

L. December 2, 2013, to July 7, 2014

{82} The State filed a stipulated motion to continue the December 2, 2013, trial for the purpose of pursuing a plea deal. The Court of Appeals weighed this delay of seven months and five days against the State. *Gurule*, A-1-CA-35724, mem. op. ¶ 15. In support of this finding, the Court of Appeals cited *State v. Samora*, 2016-NMSC-031, ¶ 13, 387 P.3d 230, which provides that "it is well settled that the possibility of a plea agreement does not relieve the State of its duty to pursue a timely disposition of the case" (internal quotation marks and citation omitted). Further, *Samora* weighed the period of delay caused by the parties' pursuit of a plea deal against the state. *Id.*

{83} We agree with the Court of Appeals'

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determination relating to this timeframe. Even if pursuing a plea was in both parties' best interests, the State was not relieved of its duty to keep the case moving towards trial. See *id.* The majority does not address this timeframe and thus seemingly affirms this holding.

M. October 20, 2014,

to November 17, 2014

{84} Defendant filed a motion to continue the October 20, 2014, trial setting on September 8, 2014. Defendant cited defense counsel's schedule and the need for additional time to interview witnesses and resolve discovery disputes as his reasons for doing so. The district court granted the motion over the State's objection, and the trial was rescheduled for November 17, 2014. We agree with the Court of Appeals' determination that this period of twenty-eight days weighs against Defendant because defense counsel requested this delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 16 (citing *State v. Deans*, 2019-NMCA-015, ¶ 10, 435 P.3d 1280 ("[A]ny delay caused by the defendant generally weighs against the defendant.")). The majority does not address this timeframe, and thus we assume it affirms this holding.

N. November 17, 2014,

to February 2, 2015

{85} Defense counsel filed another motion for continuance from the scheduled November 17, 2014, trial, citing the need for more time for expert preparation, more time to explain the State's plea to Defendant, and a change in defense counsel. The district court scheduled the trial for February 2, 2015. The Court of Appeals weighed this period of two months and sixteen days against Defendant. *Gurule*, A-1-CA-35724, mem. op. ¶ 16. The majority does not address this timeframe and thus seemingly affirms this holding. We would do the same.

O. February 2, 2015,

to February 8, 2016

{86} The district court vacated the February 2, 2015, trial setting and scheduled trial for February 8, 2016, as a result of "a congested court docket" and "the impending imposition of LR2-400" NMRA (subsequently amended and recompiled as LR2-308 NMRA). We agree with the Court of Appeals' analysis, weighing this factor

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against the State. *Gurule*, A-1-CA-35724, mem. op. ¶ 17. In coming to this conclusion, the Court of Appeals cited *Garza*, 2009-NMSC-038, ¶ 29, which identified congested court dockets as negligent delay to be weighed against the State. The majority does not address this timeframe, and we again assume that it affirms the Court of Appeals.

II. THE STATE BEARS THE VAST MAJORITY OF RESPONSIBILITY FOR THE LENGTHY DELAY IN THIS CASE

{87} In sum, we would weigh approximately thirty-four months neutrally, twenty-nine months against the State, and seven months against Defendant. While different from the exact categorizations by the Court of Appeals, this finding would fall in line with its conclusion that this factor weighs heavily against the State. *Gurule*, A-1-CA-35724, mem. op. ¶ 18. We also note that, even under the totals it reached, the majority offers no authority for *not* weighing the presumptively excessive twenty-four months against the State due to a larger number of months being attributed to Defendant—essentially counterbalancing the State’s liability without providing a legal rationale for such a proposition. The analysis of how to assess each delay is not a balancing of whether the State or Defendant caused more delay. Instead, the analysis is whether the State caused delay of unconstitutional proportion. *See Barker*, 407 U.S. at 527 (“A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.” (footnote omitted)). There is no question that the time assessed against the State here is unconstitutional and violates Defendant’s right to a speedy trial.

III. THE ASSERTION OF THE RIGHT FACTOR SHOULD WEIGH AGAINST THE STATE

{88} The majority disagrees with the Court of Appeals’ holding that the “assertion of the speedy trial right” factor should weigh against the State. *Maj. op.* ¶ 39. We would affirm the Court of Appeals’ holding as to this factor. The majority’s primary reasoning for its holding is that because Defendant “acquiesced to several of the State’s continu-

ances and moved for his own continuances,” this factor should weigh against him. *Maj. op.* ¶ 39. The majority relied on *Serros* for the proposition that we “first consider whether [the d]efendant is to blame for the delays . . . because he has personally caused or acquiesced to the delay in his case.” *Maj. op.* ¶ 37 (alteration and omission in original) (quoting *Serros*, 2016-NMSC-008, ¶ 43). {89} The Court of Appeals acknowledged that this factor should only weigh slightly in Defendant’s favor. *Gurule*, A-1-CA-35724, mem. op. ¶ 20. Defendant asserted his right to a speedy trial on five different occasions. *Id.* He first asserted his right to a speedy trial as part of an entry of appearance on April 16, 2010. *Id.* Next, Defendant asserted his right on May 26, 2010, as a part of defense counsel’s entry of appearance in district court. *Id.* Defendant asserted his right a third time on January 22, 2015, again in conjunction with defense counsel’s entry of appearance. *Id.* The Court of Appeals gave these three assertions little weight, citing *State v. Urban*, 2004-NMSC-007, ¶ 16, 135 N.M. 279, 87 P.3d 1061, for the proposition that “[s]uch pro forma motions are generally afforded relatively little weight in this analysis.” Defendant’s fourth and final assertions were filed on October 5, 2015, and February 4, 2016. *Gurule*, A-1-CA-35724, mem. op. ¶ 20. The majority also based its conclusion partially on the fact that Defendant’s assertions of the right were pro forma. *Maj. op.* ¶ 39.

{90} We disagree that *Urban* compels us to weigh this factor against Defendant. Our jurisprudence requires us to consider all of the circumstances surrounding the case before determining whether a defendant’s assertion of the right has been mitigated. *See State v. Ochoa*, 2017-NMSC-031, ¶ 42, 406 P.3d 505 (“In evaluating the [assertion of the right] factor, this Court has also noted the importance of closely examining the circumstances of each case.”). In *Garza*, the defendant only asserted his right to a speedy trial once as part of his waiver of arraignment and plea of not guilty. 2009-NMSC-038, ¶ 4. We acknowledged, “[T]he timeliness and vigor with which the right is asserted may be considered as an indication of whether a defendant was denied needed access to speedy trial over his objection or

whether the issue was raised on appeal as afterthought.” *Id.* ¶ 32. We also emphasized the importance of analyzing the circumstances of each case. *Id.* ¶ 33. In doing so, we held that the defendant’s seemingly pro forma singular assertion of his right was sufficient for this factor to weigh in his favor, partially because he did not directly cause or acquiesce to the delay in his case. *Id.* ¶ 34. Here, we cannot say that Defendant’s five assertions of his right to a speedy trial were “raised on appeal as afterthought.” *See id.* ¶ 32. Nor can we say that, under the circumstances, Defendant caused or acquiesced to most of the delay such that his five speedy trial right assertions are now void. While this Court’s jurisprudence indicates that we may consider whether a defendant’s assertions are pro forma, we disagree that this shifts the weight in favor of the state under the circumstances in this case. *See Ochoa*, 2017-NMSC-031, ¶ 41 (“The frequency and force of the objections can be taken into account in considering the defendant’s assertion, as well as whether an assertion is purely pro forma.”).

{91} We also question courts’ continued reliance on *Urban* for the proposition that pro forma assertions of the right must be given slight weight. A defendant’s manner in asserting a constitutional right should not be diminished based on the form used to assert the right. While asserting the right timely and with vigor may afford more weight to the defendant under this factor, the fact that a defendant made such assertion via an entry of appearance should not lessen its impact.

{92} Finally, the Court of Appeals acknowledged, “To the extent that [Defendant’s] motions were efforts to expedite the time in which Defendant was brought to trial, . . . ‘Defendant’s assertions of the right were mitigated by his acquiescence to, and responsibility for, numerous delays.’” *Gurule*, A-1-CA-35724, mem. op. ¶ 21 (quoting *Samora*, 2016-NMSC-031, ¶ 20). In our view, Defendant was not responsible for the vast majority of the delay in this case, but he did bear some responsibility for the delay. Moreover, Defendant asserted his right to a speedy trial five times. This leads to our conclusion that this factor should weigh against the State. Further, mitigating factors

► From the New Mexico Supreme Court

present sound reasoning for the Court of Appeals' conclusion that the weight is slight. Accordingly, we respectfully disagree with the majority that this factor should weigh in the State's favor.

IV. THE EXTRAORDINARY DELAY IN THIS MATTER PREJUDICED DEFENDANT

{93} The majority contends that the prejudice factor weighs against Defendant. We disagree with this analysis, as it is contrary to our own jurisprudence. We therefore would affirm the Court of Appeals' holding that Defendant suffered prejudice as a result of the lengthy pretrial incarceration he endured.

{94} This Court acknowledged in *Garza* that, "if the length of delay and the reasons for the delay weigh heavily in [the] defendant's favor and [the] defendant has asserted his right and not acquiesced to the delay, then the defendant need not show prejudice for a court to conclude that the defendant's right has been violated." *Garza*, 2009-NMSC-038, ¶ 39. It follows that "[a]lthough a defendant bears the burden of proving prejudice, this burden varies with the length of pretrial incarceration." *Ochoa*, 2017-NMSC-031, ¶ 52. "Thus, the length of incarceration is a counterweight to a defendant's burden of production." *Id.* ¶ 54. Therefore, the Court of Appeals held that "[a]s Defendant was incarcerated for over five years before he was brought to trial, we presume that he was prejudiced." *Gurule*, A-1-CA-35724, mem. op. ¶ 23.

{95} This holding falls in line with this Court's jurisprudence. This Court held in *Ochoa* that the defendant's two-year incarceration was presumptively prejudicial. 2017-NMSC-031, ¶ 57. We acknowledged "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Id.* ¶ 56 (text only) (quoting *Doggett v. United States*, 505 U.S. 647, 655 (1992)). Further, we held that "[c]ontinuous

pretrial incarceration is obviously oppressive to some degree, even in the absence of affirmative proof." *Ochoa*, 2017-NMSC-031, ¶ 57. Furthermore, this Court held in *Serros* that a period of four years of pretrial incarceration "is oppressive on its face." 2016-NMSC-008, ¶ 90. Over five years of incarceration well exceeds the lapses of time that were found to be presumptively prejudicial in *Ochoa* and *Serros*.

{96} It is also important to recognize that even though the *Serros* Court discussed the circumstances surrounding the defendant's incarceration, those circumstances ultimately were not a key factor in its finding of prejudice. The Court indicated this by stating that it "already [had] determined that the first three factors weigh heavily in [the] defendant's favor, and [it] therefore need not consider whether [the] defendant has made a particularized showing of prejudice." *Serros*, 2016-NMSC-008, ¶ 87. In addition, the *Serros* Court only addressed the prejudice factor "to clarify what [it] view[ed] as a misapplication of the law by the Court of Appeals majority." *Id.*

{97} Finally, we agree with the Court of Appeals and would affirm its analysis of the prejudice factor in *State v. Brown*, 2017-NMCA-046, 396 P.3d 171. In *Brown*, the Court of Appeals determined that the defendant was "substantially prejudiced" by a pretrial incarceration period of thirty-three months. *Id.* ¶ 36. The state presented other mitigating factors, "including that [the] defendant finished his high school education, did not suffer reported incidents of violence, and did not receive any behavioral misconduct violations while incarcerated." *Id.* However, the *Brown* Court determined those factors "d[id] not sufficiently affect the degree of prejudice suffered as a result of [the] defendant's extended pretrial incarceration." *Id.* It reasoned that "[b]ecause [the] defendant need not prove both undue pretrial incarceration and undue anxiety suffered, but may prove either, a determina-

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tion of substantial prejudice arising from undue pretrial incarceration is justified in this case." *Id.*

{98} Thus, under *Brown*, because the length of delay here was extraordinary, and because the reasons for delay weigh in Defendant's favor, the delay in this case is presumptively prejudicial, and it is not necessary for Defendant to prove he suffered undue anxiety. *See id.*; *see also State v. Spearman*, 2012-NMSC-023, ¶ 36, 283 P.3d 272 ("[W]e weigh this factor in the defendant's favor . . . where the pretrial incarceration or the anxiety suffered is undue." (second alteration in original) (quoting *Garza*, 2009-NMSC-038, ¶ 35)). This analysis would lead to the same conclusion as the Court of Appeals that "[a]lthough we acknowledge that Defendant's initial and continued placement in segregation was the result of his conduct while in custody, we cannot ignore the oppressive impact the conditions and duration of his incarceration had on Defendant." *Gurule*, A-1-CA-35724, mem. op. ¶ 29. We further agree with the Court of Appeals' conclusion that "Defendant's motions for continuances . . . resulted in only a minor delay in his pretrial incarceration. We therefore conclude that Defendant suffered extreme prejudice." *Id.*

V. Conclusion

{99} We would hold that all four *Barker* factors weigh against the State, thus, Defendant's speedy trial rights were violated. Our main disagreements with the majority are its weighing of periods of delay related to competency evaluations against Defendant and its finding that Defendant suffered no prejudice as a result of almost six years of pretrial incarceration. For these reasons, we respectfully dissent.

C. SHANNON BACON, Chief Justice

I CONCUR:

MICHAEL E. VIGIL, Justice

{100} APPENDIX

{101} Months of Delay Weighed Against the Parties and Neutrally, in Three Courts

APPENDIX

Months of Delay Weighed Against the Parties and Neutrally, in Three Courts

	State	Neutrally	Defendant
District Court	33 months	20 months	16 months
Court of Appeals	37 months	20 months	13 months
Supreme Court	37 months -3 months, 19 days -7 months, 18 days -1 month, 25 days = 37 months -11 months, 62 days = 37 months -13 months = 24 months	20 months = 20 months	13 months +3 months, 19 days +7 months, 18 days +1 month, 25 days = 13 months +11 months, 62 days = 13 months +13 months = 26 months

FORMAL OPINION

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Filing Date: 5/27/2025

No. A-1-CA-40660

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JACOBY STEVENS,

Defendant-Appellee.

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

Melissa A. Kennelly, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Walter Hart, Assistant Attorney General

Erica E. Schiff, Assistant Attorney General

Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Mallory E. Harwood, Assistant Appellate Defender

Santa Fe, NM

for Appellee

► Introduction of Opinion

In this appeal, the State asks this Court to determine whether it has an obligation under Rule 11-707(C) and (D) NMRA to collect and produce the raw data from an audio or video recording of a polygraph examination administered by law enforcement as part of its investigation of a crime, when the State does not seek to offer the results into evidence at trial. We conclude that when a polygraph examination is not offered into evidence at trial, Rule 11-707(C) and (D) does not require the collection and production to the opposing party of the polygraph recording and physical polygraph data in order to admit law enforcement's post-examination interrogation of the defendant into evidence. We therefore reverse the district court's order sanctioning the State and remand for trial consistent with this opinion.

Jane B. Yohalem, Judge

WE CONCUR:

Kristina Bogardus, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40660>

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-41397
State of New Mexico
v.
Stacey April Spencer

Introduction of Opinion

After a jury trial, Defendant Stacey Spencer was convicted of two counts of vehicular homicide, contrary to NMSA 1978, Section 66-8-101 (2016). On appeal, Defendant contends that (1) the district court's comments during voir dire had a chilling effect on juror participation that resulted in fundamental error; (2) the admission of the investigating sergeant's testimony as lay opinion testimony was plain error; (3) the district court abused its discretion by admitting the State's witness as an expert in forensic toxicology; and (4) Defendant was sentenced incorrectly in light of the Legislature's 2022 amendment to the general sentencing statute, NMSA 1978, Section 31-18-15(A) (2022, amended 2024). We are not persuaded by Defendant's arguments and therefore affirm.

Zachary A. Ives, Judge
WE CONCUR:
Kristina Bogardus, Judge
Jane B. Yohalem, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41397>

No. A-1-CA-40897
State of New Mexico
v.
Martin Medina

Introduction of Opinion

Defendant stands convicted of one count of criminal sexual contact of a minor, contrary to NMSA 1978, Section 30-9-13(C)(1) (2003). On appeal, Defendant seeks reversal of his conviction, arguing that a juror's alleged inability to hear defense counsel violated his right to a unanimous jury verdict, and constructively deprived him of his right to counsel. Finding no error, we affirm.

Gerald E. Baca, Judge
WE CONCUR:
Jacqueline R. Medina, Chief Judge
Katherine A. Wray, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-40897>

No. A-1-CA-41556
State of New Mexico
v.
Daniel P. Balding a/k/a
Daniel Balding

Introduction of Opinion

Defendant Daniel Balding appeals his convictions for one count of child solicitation by electronic communication device, contrary to NMSA 1978, Section 30-37-3.2(A), (B)(1) (2007), and one count of attempting to cause or permit a child to engage in sexual exploitation (recording) in violation of NMSA 1978, Section 30-6A-3(D) (2016) and NMSA 1978, Section 30-28-1 (2024).¹ As a result of these convictions, Defendant was required to register as a sex offender for life. See NMSA 1978, § 29-11A-5(D)(3), (6), (E)(8) (2007).

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Shammara H. Henderson, Judge
WE CONCUR:
Jane B. Yohalem, Judge
Katherine A. Wray, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41556>

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-41259

Joshua Chicas

v.

Bayerische Motoren Werke AG

Introduction of Opinion

Bayerische Motoren Werke AG, BMW of North America, LLC, and Sandia Automotive Corp. d/b/a Sandia BMW (collectively, BMW) appeal the verdict returned by a jury in favor of Joshua Chicas, Jose Chicas, Jr. (Justin), Jacob Chicas (collectively, Plaintiffs), and D. Maria Schmidt acting as the personal representative for the estate of Jose Chicas Sr. (Jose). BMW asks this Court to order a new trial on Plaintiff's claims of negligence and strict liability, as well as reverse the awards for loss of consortium or grant a new trial on those claims as well. We affirm.

Kristina Bogardus, Judge
WE CONCUR:

J. Miles Hanisee, Judge
Katherine A. Wray, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41259>

No. A-1-CA-41148

Mark Edwards

v.

**Interfaith Community Shelter
at Pete's Place**

Introduction of Opinion

The district court granted summary judgment in favor of Defendants Interfaith Community Shelter Group, Inc. (Interfaith) and the City of Santa Fe (the City) on claims of nuisance and unconstitutional taking brought by Plaintiffs, who own real property and businesses near a homeless shelter operated by Interfaith. Plaintiffs appeal, and we affirm.

Jennifer L. Attrep, Judge
WE CONCUR:

J. Miles Hanisee, Judge
Megan P. Duffy, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41148>

No. A-1-CA-41439

State of New Mexico

v.

Joaquin R. Lujan

Introduction of Opinion

Defendant Joaquin R. Lujan appeals his conviction for aggravated driving while under the influence of intoxicating liquor or drugs (DWI) (refusal), contrary to NMSA 1978, Section 66-8-102(D) (3) (2016). On appeal, Defendant argues: (1) structural error occurred when the metropolitan court did not afford him the presumption of innocence and consequently lowered the prosecution's burden of proof; and (2) the evidence was insufficient to convict Defendant. We affirm.

Kristina Bogardus, Judge
WE CONCUR:
Jennifer L. Attrep, Judge
Jane B. Yohalem, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41439>

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-39997

Shaydle Mendoza

v.

Wal-Mart Stores East, L.P.

Introduction of Opinion

Appellants Wal-Mart Stores East, L.P., and Robert Bencomo (collectively, Appellants) appeal from a jury verdict that awarded Appellee Shaydle Mendoza compensatory and punitive damages for claims of malicious abuse of process (MAP), intentional infliction of emotional distress (IIED), and intentional spoliation. Appellants advance three arguments: (1) they are entitled to judgment as a matter of law on Appellee's MAP, IIED, and intentional spoliation claims; (2) Appellant Bencomo's conduct did not justify an award of punitive damages; and the damages award for MAP and IIED are duplicative. For the reasons set forth herein, we conclude: (1) Appellants were entitled to judgment as a matter of law on Appellee's MAP, IIED, and intentional spoliation claims; and **View full PDF online.**

Gerald E. Baca, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Megan P. Duffy, Judge (concurring in part, dissenting in part)

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-39997>

No. A-1-CA-41316

Daniel and Terezinha McGlynn

v.

**New Mexico Taxation
& Revenue Department**

Introduction of Opinion

In this appeal, Taxpayers Daniel and Terezinha McGlynn challenge the New Mexico Taxation and Revenue Department's (the Department) denial of their claim for a credit. We affirm.

Megan P. Duffy, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Gerald E. Baca, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41316>

No. A-1-CA-41111

Smith & Marrs Inc.

v.

Hoskins Family Enterprises, Inc.

Introduction of Opinion

Plaintiff Smith & Marrs Inc. (SMI), brought claims for debt and money due and foreclosure against Defendants Hoskins Family Enterprises, Inc. (HFE) and Mark and Suzanne Hoskins (collectively, Defendants), which arose from an oil, gas, and mineral business venture (the well interests). Defendants filed counterclaims against SMI for breach of duty and breach of contract, and a third-party claim for breach of fiduciary duty against Rickey Smith, an individual who plays roles in multiple relevant entities. After a bench trial, the district court entered judgment in favor of both parties. **View full PDF online.**

Katherine A. Wray, Judge

WE CONCUR:

Megan P. Duffy, Judge

Jane B. Yohalem, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41111>

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-41240
State of New Mexico
v.
Brenton Rael

Introduction of Opinion

A jury convicted Defendant of one count of kidnapping in the first degree, contrary to NMSA 1978, Section 30-4-1(A)(4) (2003); one count of battery, contrary to NMSA 1978, Section 30-3-4 (1963); one count of aggravated assault with intent to kill, contrary to NMSA 1978, Section 30-3-3 (1977); one count of attempted murder in the first degree, contrary to NMSA 1978, Sections 30-28-1 (1963, amended 2024) and 30-2-1(A)(1) (1994); one count of aggravated assault with a deadly weapon, contrary to NMSA 1978, Section 30-3-2(A) (1963); one count of conspiracy, contrary to NMSA 1978, Sections 30-28-2 (1979) and 30-2-1(A)(1); and one count of robbery, contrary to NMSA 1978, Section 30-16-2 (1973). **View full PDF online.**

Jacqueline R. Medina, Chief Judge
WE CONCUR:
Kristina Bogardus, Judge
Katherine A. Wray, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41240>

No. A-1-CA-41283
Amira Lewis
v.
Amina Salim

Introduction of Opinion

This matter is on appeal from the district court's judgment granting the petition of Appellee Amira Lewis (Daughter) to quiet title, for declaratory judgment, and to partition real property (the Property) that was once held as tenants in common by Daughter's parents, Rabiah Ibnuddin (Mother) and Nasir Ibnuddin (Father). Appellant Amina Salim (Wife) raises multiple issues on appeal, which include challenges to the evidence supporting the district court's conclusions, the allocation of liability for debt that encumbers the Property, the procedures used to partition the Property, and the award of attorney fees. For the reasons that follow, we reverse and remand for clarification of the rental amounts owed by Wife. Otherwise, we affirm.

Katherine A. Wray, Judge
WE CONCUR:
Jennifer L. Attrep, Judge
Shammara H. Henderson, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41283>

No. A-1-CA-38083
State of New Mexico
v.
Macario Arroyos

Introduction of Opinion

This case is before us on remand from the New Mexico Supreme Court, following its decision in *State v. Taylor*, 2024-NMSC-011, 548 P.3d 82, with instructions to affirm the validity of the requisite mens rea as set forth in UJI 14-612 NMRA, and decide all other remaining issues on appeal. Defendant seeks reversal of his convictions for aggravated fleeing from a law enforcement officer, contrary to NMSA 1978, Section 30-22-1.1 (2003, amended 2022), and child abuse by endangerment, contrary to NMSA 1978, Section 30-6-1(D) (1) (2009). **View full PDF online.**

Gerald E. Baca, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Zachary A. Ives, Judge

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We are pleased to welcome
Molly Samsell
to our Santa Fe office

Molly recently completed a clerkship with the Honorable Margaret I. Strickland of the United States District Court for the District of New Mexico.

She graduated summa cum laude from the University of New Mexico School of Law, where she was elected to the Order of the Coif, and she served as Editor-in-Chief of the New Mexico Law Review.

Molly's background and experience are a valuable addition to our work on behalf of trial counsel and their clients in high-stakes litigation throughout New Mexico.

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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.

Classified

Positions

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.

Senior Litigation 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

An established and growing law firm in Lubbock, Texas, is seeking an associate attorney with 0-5 years experience in commercial law, including contract law, real estate, banking and corporate matters. The position requires an organized, self-motivated individual who works well within a team oriented firm. Compensation will be dependent upon applicant's experience and qualifications. Company package includes: bonuses, 401(k), health care insurance, CLE expenses and bar dues. All inquiries are held in the strictest of confidence. If interested, please submit your resume, along with a cover letter detailing your relevant experience to: ryan@bigbeecurtislaw.com

Assistant City Attorney City of Santa Fe

The Santa Fe City Attorney's Office seeks a full-time lawyer to advise and represent the City in a variety of matters, including advice and counsel to the City's departments, boards, and commissions. The City Attorney's Office seeks applicants who are dedicated to public service and have excellent interpersonal skills, strong academic credentials, and exceptional written and verbal communication. Experience in government general counsel work, administrative law, litigation, appellate practice, and related law, particularly in the public context, is preferred. Initial client assignments may include economic development and redevelopment, affordable housing, and asset management. Evening meetings may be required up to a few times a month. The pay and benefits package are excellent and pay is partially dependent on experience. Hybrid and alternative work schedules are negotiable. The position is based in downtown Santa Fe at City Hall and reports to the City Attorney. The position is exempt and open until filled. Qualified applicants are invited to apply online at <https://santafenm.gov/human-resources>.

Public Defender- City of Santa Fe

The City Clerk's Office seeks a full-time lawyer to be the City of Santa Fe's Public Defender, providing legal representation to criminal defendants in the City of Santa Fe Municipal Court who have been determined eligible for free legal representation throughout the duration of their case. We seek applicants who are dedicated to public service, are able to analyze and strategize, will maintain regular ongoing contact with clients, have excellent interpersonal skills; and have strong legal research, written and verbal communication skills. The candidate hired for this position must be able to maintain a large caseload, be independently driven, and will supervise a paralegal. Applicants must be licensed to practice law in the State of New Mexico and have four (4) years of experience as an attorney. The pay and benefits package are excellent, the hourly rate range is \$42.85-\$62.14. Hybrid and alternative work schedules are negotiable. The position is based in Santa Fe at Municipal Court and reports to the City Clerk. The position is exempt and open until filled. Qualified applicants are invited to apply online at <https://santafenm.gov/human-resources>.

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.

Assistant General Counsel

Falling Colors is a B-Certified, women-owned and women-founded technology company headquartered in Santa Fe, seeking an assistant general counsel. With staff in ten states and operations in the healthcare and finance fields, we have a broad set of legal needs spanning contracting, employment, intellectual property, regulatory, and other arenas. The successful candidate will have 2-5 years of experience in these or adjacent areas; be licensed in NM; have a solid grasp of general principles of corporate, contract, employment, and intellectual property law; and excellent writing and communication skills. We're committed to a kind and supportive work environment; excellent benefits and work-life balance; and improving our communities. This is a hybrid position requiring some in-person work at our offices in Santa Fe, supporting regular work from home and a flexible schedule. Salary is approximately \$100K depending on experience with profit sharing after two years. To apply, submit a letter of interest and a current resume to sam@fallingcolors.com.

Attorney-Senior

The Eighth Judicial District Courts in Taos, New Mexico seeks a driven qualified professional attorney to serve as a full-time (at-will Perm) Attorney-Senior to provide legal advice, perform legal research and analysis, make recommendations and support the court/Judicial District in the following areas, including but not limited to, IPRA, mediation/alternative dispute resolution, court/judicial processes, court programs, ADA, and employment laws. Candidates must possess excellent inter-personal, computer, and administrative skills; 5 years of law practice experience of which one (1) year must have been a supervisor. Candidates must be New Mexico actively licensed and in good standing; or if licensed in another state, expected to attain New Mexico licensure. This career opportunity is located in the beautiful town of Taos, New Mexico in the high desert mountains near the Colorado border with excellent year-round outdoor adventures. The successful candidate will be expected to begin work in mid-July; actual start date negotiable. Send resume with resume supplement form, and a writing sample by email, mail, or in person. For job description requirements and additional information, please visit the NM Courts website at: www.nmcourts.gov/careers/ or contact the District Human Resources office at taodaas@nmcourts.gov

Los Alamos National Laboratory Seeks Proposals for Legal Services

Is your firm interested in performing work for Los Alamos National Laboratory (LANL)? Triad National Security, LLC, the contractor that manages and operates LANL, is soliciting proposals to pre-qualify law firms to perform various types of legal work. Pre-qualified firms could be considered for future litigation and advisory support in the following subject matter areas: employment; labor; ERISA and employee benefits; architectural, engineering, design and construction; subcontracting; immigration; Major Fraud Act, False Claim Act, and qui tam proceedings; taxation; crisis management; federal government contracting; transportation; criminal; internal corporate investigations; and government investigations. If interested, and to obtain more information about proposal requirements, email LFSproposals@lanl.gov by July 7, 2025.

Contract Counsel Legal Services

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.

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>.

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.

Associate Attorney

Krehbiel & Barnett, P.C., in Albuquerque, New Mexico, seeks an associate attorney for our growing civil defense practice. We represent physicians and hospitals throughout New Mexico. Ideal candidates will have a strong desire to grow with the firm, have impeccable attention to detail, strong legal writing skills, sharp thinking, and able to learn quickly and thoroughly. Please be sure to provide your résumé, unofficial transcript, writing sample, and professional references to kbarnett@lady-justice.us. Benefits: 401(k) matching; Dental insurance; Health insurance; Vision insurance. License/Certification: NM Bar License (Required)

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.

Attorneys

The Santa Fe and Albuquerque offices of Hartline Barger LLP, are seeking attorneys with 4+ years of experience to join their growing team. Hartline Barger, a nationally recognized trial law firm specializing in general civil litigation, built its reputation on product liability defense but has expanded to numerous practice areas. Given Hartline Barger's exceptional trial record over the last thirty years, Hartline is also a go-to firm for excess and monitoring counsel. We believe that associates develop best when given direct experience, including in depositions, hearings, briefing, and trial. Requirements: Strong academic and litigation background; Exceptional writing and advocacy skills; Independently manage a caseload – from beginning to end; Work closely with other attorneys and Partners on multitude of legal projects; Regularly handle court appearances and depositions; Take the lead with client communication and provide meaningful updates. We offer a competitive salary and collaborative firm culture with exceptional benefits. We also offer hybrid and in-office working options. How To Apply: If you're ready to work with some of the best trial attorneys in the country, take on a diverse docket of high-profile cases, and immerse yourself in a corporate culture that upholds the highest standards of professionalism, contact us and submit your resume to careers@hartlinebarger.com.

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.

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.

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.

Domestic Relations Hearing Officer

The Eleventh Judicial District & Magistrate Courts has an immediate career opportunity for a full-time, At-Will Domestic Relations Hearing Officer. The successful candidate will be assigned caseloads to include domestic relations, domestic violence, and child support matters consistent with Rule 1-053.2. Qualifications: Juris Doctorate from an accredited law school, New Mexico licensed attorney in good standing. Minimum of (5) five years of experience in the practice of law, with at least 20% of practice having been in family law or domestic relations matters. Salary for this position will be based on the New Mexico Judicial Branch Salary Schedule, with a target pay rate of \$86,488 per hour or \$179,895.04 annually. Wages are set by the Supreme Court and are non-negotiable. For a full job description and to download the required forms or application, please visit the Judicial Branch Career page at <https://www.nmcourts.gov/careers.aspx>. Resumes, along with the required Resume Supplemental Form or Application and supporting documentation, may be emailed to 11thjdchr@nmcourts.gov, faxed to 505-334-7762, or mailed to Human Resources at 103 S. Oliver Drive, Aztec, NM 87410. This position is open until filled.

Part-Time Job Opportunity: Subcontracted Attorney – Civil Legal Services in Pueblo Communities

The Southwest Women's Law Center seeks a part-time/temporary attorney or a subcontracted attorney to provide legal representation and/or advice to Native people experiencing domestic violence in Pueblo Courts. This short-term contract runs from August to mid-November 2025. This is for about 10-15 hours of work per week. Compensation: TBD; based on experience. Starting at \$40/hour for a part-time/temporary attorney. Prefer 3-4 years' experience but will consider 1+ year with strong courtroom experience. We are open to a subcontracted attorney, we can discuss this. Requirements: NM law license required; We can assist with applications to practice in the relevant Pueblo Courts; Experience with Native communities, DV issues, and trauma-informed practice preferred. To apply, contact Terrelene Massey at Tmassey@swwomenslaw.org. Visit <https://bit.ly/45kEVbP> for more details.

Trial Attorney or Senior Trial Attorney

Trial Attorney or Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Socorro County (Socorro, NM). Socorro is approximately a one hour commute from Albuquerque. Must be admitted to the New Mexico State Bar. Salary range will be \$77,133 - \$100,000 and commensurate with experience and budget availability. Will also have full benefits and one of the best retirement plans (PERA) in the country. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmauldin@da.state.nm.us.

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

Trial Attorney or Senior Trial Attorney

Trial Attorney or Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Torrance County (Estancia, NM). Estancia is approximately a one hour commute from Albuquerque. Must be admitted to the New Mexico State Bar. Salary range will be \$77,133 - \$90,000 and commensurate with experience and budget availability. Will also have full benefits and one of the best retirement plans (PERA) in the country. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmauldin@da.state.nm.us.

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.

Entry Level and Experienced Attorneys

The Thirteenth Judicial District Attorney's Office is seeking both entry level and experienced attorneys. Positions available in Sandoval County which is in Bernalillo, Valencia in Belen and Cibola in Grants. Enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, providing the opportunity to advance more quickly than is afforded in larger offices. The 13th Judicial District offers flex schedules in a family friendly environment. Competitive salary starting @ \$83,000+ depending on experience. Contact Krissy Fajardo @ kfajardo@da.state.nm.us or visit our website for an application @<https://www.13th.nmdas.com/> Apply as soon as possible. These positions fill fast!

Contract Attorneys NM Office of Guardianship

The NM Office of Guardianship seeks contract attorneys to serve as Petitioning Attorney and Guardian ad Litem in probate guardianship cases throughout New Mexico. OOG provides legal services to income-eligible adults with disabilities in New Mexico who need decision-making support. Contract attorneys are assigned on a case-by-case basis and play a critical role in protecting the civil rights of vulnerable individuals. Training and mentoring provided. Interested attorneys, please submit a letter of interest, resume, and three professional references to Joe. Turk@ddc.nm.gov.

Job Announcement

New Mexico Senior Attorney

DNA-People's Legal Services, a non-profit civil legal aid law firm, is seeking to hire an individual for our open New Mexico Senior Attorney position located in our Farmington, New Mexico Office. REQUIREMENTS: Senior Attorney must be a graduate of an accredited law school and a member of the New Mexico bar, or if licensed in another jurisdiction, able to gain admission to the New Mexico Bar within one year by motion or reciprocity. Admission to the Arizona or Utah bar is a plus, as is admission to the Navajo, Hopi, or Jicarilla Tribal Court bar. Must have at least five (5) years of experience as an attorney in a legal aid organization or similar non-profit law firm with strong litigation skills; 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, and other marginalized communities; a commitment to providing legal services to the poor; the ability to identify and successfully pursue strategic, systemic, and affirmative advocacy; good judgment, the ability to handle stress, take initiative, and have a willingness to work as a team; and the ability to manage and supervise others, including the ability to mentor other staff and law students. Senior Attorneys are supervised by the Director of Litigation and the Executive Director. SALARY RANGE (depending on experience): \$87,000 - \$97,500. BENEFITS: The position we are offering comes with benefits, including paid federal and Navajo Nation holidays, 10 sick days per year, two weeks paid vacation per year (which increases over time), low-cost health insurance for you and your dependents, no-cost dental insurance for you, and a fully paid \$60,000 life insurance policy. You may also opt to join our 401(k) plan. For our attorneys, we also pay for continuing legal education courses and Bar dues, and offer a generous reimbursable educational loan forgiveness program. DNA is a qualified employer under the Federal Public Service Loan Forgiveness Program. For more information, please call Human Resources at 928.245.4575 or 928.871.4151 ext. 5640, email your resume and cover letter to HResources@dnalegalservices.org or you may obtain

additional details and copies of the job description and employment application on the Join the DNA Legal Team webpage at <https://dnalegalservices.org>. Preference is given to qualified Navajo and other Native American applicants.

Financial Institutions Division Counsel

The NM Regulation & Licensing Department is hiring for the Financial Institutions Division Counsel located in Santa Fe. This incumbent of the position provides legal advice, counsel, and other legal services to the Financial Institutions Division Director, Deputy Director, and other FID personnel. The incumbent will, among other duties: study, interpret and apply laws, court decisions, and other legal authorities; prepare legal documents, pleadings, memoranda, reports, opinions, and other materials; process request to inspect public records; intake, investigate, and prosecute administrative violations; draft administrative rules and coordinate their implementation; draft and/or review agency initiated/backed bill language; and provide legal representation in judicial proceedings in state and federal courts. Interested candidates must apply through <https://careers.share.nm.gov> and submit your application for position #10106318 & 10117336 under job opening ID 155333 by 7/10/25.

Associate Attorney – Estate & Business Planning

We are a boutique law firm in Albuquerque, New Mexico seeking a full-time Associate Attorney with 2–5 years of experience to join our team. Our firm focuses on sophisticated estate planning, business succession planning, and sale-side M&A transactions. We serve a diverse client base, including high-net-worth individuals, family business owners, and closely held companies, often working in close collaboration with financial advisors and accountants. The position is full-time offering a competitive salary and benefits with a flexible in-office and remote work schedule. For more information and interested parties, please email your cover letter and resume to kira@hurleyfirm.com.

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.

Forestry Attorney

This is an on-site full-time role for a Forestry Attorney with the New Mexico Energy, Minerals and Natural Resource Department. The Forestry Attorney will be responsible for providing legal advice on forestry and natural resource matters, conducting legal research, handling labor and employment law issues, and engaging in negotiation processes. The position involves drafting and reviewing legal documents, ensuring compliance with environmental regulations, and representing the department in legal proceedings. The Energy, Minerals and Natural Resources Department is composed of five divisions: Energy Conservation and Management, Forestry, Mining and Minerals, Oil Conservation, and State Parks. Our mission is to position New Mexico as a national leader in energy and natural resource management. We are committed to fostering innovation and sustainability in natural resource stewardship. Join us in supporting New Mexico's growth and responsible use of its rich resources. Qualifications: Law and Labor and Employment Law skills; Experience providing Legal Advice and conducting Research; Strong Negotiation skills; Excellent written and verbal communication skills; Ability to work independently and on-site in Santa Fe, NM; Experience in environmental or natural resources law is a plus; Juris Doctor (JD) degree from an accredited law school; Active membership in the New Mexico State Bar. To apply, review current openings at <https://www.spo.state.nm.us/work-for-new-mexico/> and enter "Forestry Attorney" in the search field.

Litigation Attorney

Medium size civil law firm is accepting resumes for an attorney with 5-15 (or more) years of practical experience. Practice areas include civil litigation, primarily construction and defense and some transactional work. Candidates should be proficient in conducting and defending depositions, have critical research and writing abilities and be familiar with motion practice. Construction litigation experience is helpful. Salary commensurate with experience. This is a full time position located in Albuquerque; remote work may be considered. Please forward a letter of interest along with a Resume and writing sample to: pjenkins@stelznerlaw.com

Full-Time Litigation Associate

The Simons Firm LLP is seeking a full-time litigation associate with 0-3 years of experience to join our civil litigation practice in Santa Fe, New Mexico. We're a small, collaborative firm committed to excellent legal work, professional integrity, and a healthy work environment. Our practice includes commercial, real estate, and trust and estate litigation. Candidates must be licensed in New Mexico and should bring strong research, writing, and analytical skills. Prior deposition or courtroom experience is welcome but not required. We value curiosity, initiative, and a willingness to grow through mentorship. This position offers meaningful responsibility, direct collaboration with experienced attorneys, and a competitive salary and benefits package. To learn more, visit www.simonsfirm.com. To apply, send a cover letter, resume, and writing sample to Audra Burdwell at aburdwell@simonsfirm.com. All inquiries will be treated with the utmost confidentiality.

FREE SERVICE FOR MEMBERS!

Employee Assistance Program

Get help and support for yourself, your family and your employees.
FREE service offered by NM LAP.

To access this service call 505-254-3555 and identify with NM LAP. All calls are **CONFIDENTIAL**.



The
Solutions
Group



State Bar of New Mexico
Lawyer Assistance Program

www.sbnm.org/NMLAP

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.

Associate Attorney

Medium size primarily civil law firm is accepting resumes for an associate attorney with 2-5 (or more) years of practical experience, excellent research and writing skills and some criminal prosecution experience. Qualified applicants must have experience conducting legal research, drafting memos and briefs and attendance in magistrate/municipal courtroom setting. This is a full time position located in Albuquerque, remote work may be considered. Please submit resume and writing sample to pjenkins@stelznerlaw.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: paralegal3.bleuslaw@gmail.com.

Legal Assistant

Roybal-Mack & Cordova, P.C. is hiring for a full time, in office, legal assistant. Legal Assistants serve as a liaison between attorneys, paralegals, clients, courts, and other parties to ensure efficient case handling, timely deadlines, and organized documentation. Pay is competitive and a full suite of benefits available. Key Responsibilities: Act as the main point of contact for attorneys regarding case files and documentation; Organize and maintain legal documents such as pleadings, motions, discovery, and correspondence; Update case files, docket calendars, and internal databases; Coordinate documents and deadlines around attorney schedules and court timelines; Track case progress and ensure compliance with legal procedures; Conduct legal research under attorney supervision; Assist attorneys and paralegals in preparing for hearings, trials, and mediations; Track time on case-related tasks; Use platforms like Clio and Microsoft-based systems to manage documentation and support attorney workflows effectively. Qualifications Required: Associate's or bachelor's degree in legal or paralegal studies, or equivalent experience; 2+ years in legal or case management; Proficiency in legal terminology, Microsoft Office, and case management software. Preferred: Paralegal certification. Location: Roybal-Mack & Cordova, P.C., Albuquerque, NM. Resumes to info@roybalmacklaw.com

Legal Secretary

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

Paralegal/Legal Intern

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.

Tired of Commuting over the River?

Sanchez & Pinon, Rio Rancho's Injury Attorneys are growing again! Hiring a full time paralegal/legal assistant with litigation and pre-litigation experience to join our team. We are looking for a candidate that takes satisfaction in helping others, enjoys their workplace and co-workers, and contributes to a cohesive and enjoyable work atmosphere. We work hard but also enjoy the work we do. Must have organizational and multi-tasking skills, great communication skills, experience in legal writing and a desire to help others. Competitive salary, employee health insurance, vacation and sick leave, a generous holiday leave schedule, and 401(k). Please submit resume and letter of interest to asanchez@sanchezandpinon.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.

Staff Accountant

The State Bar of New Mexico seeks qualified applicants to join our team as a full-time (40 hours/week) Staff Accountant. The successful incumbent will be responsible for performing general accounting functions, including bank reconciliations, accounts receivable, accounts payable, payroll, posting journal entries, and performing month-end closing procedures. This position will also assist in the annual financial audit process and is responsible for maintaining accounting records and responding to inquiries received by the accounting department. Salary: \$65,000-\$70,000/year, 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.

Services

True North Resolution Mediation Services Amy Glasser, Esq.

Neutral, experienced mediator; Over 25 years of legal expertise representing plaintiffs and defendants; Reasonable rates; Mediation via Zoom; Online Scheduling available. Email: amy@truenorthresolution.com; www.truenorthresolution.com

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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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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.

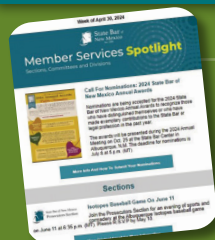


Bar Bulletin

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 notifications@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.

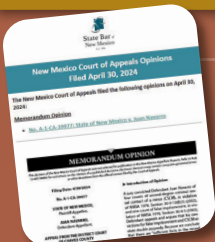


Member Services Spotlight

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.

