

**DIGITAL**  
**BAR BULLETIN**

September 10, 2025 • Volume 64, No. 17



*Northern Lights*, by Rachel Rickerman (see page 4)

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State Bar of  
New Mexico

Est. 1886

Board of Bar Commissioners

2025 Election Notice and  
Nomination Petition



New Mexico  
State Bar Foundation

## CLE PROGRAMMING

from the  
*Center for Legal Education*

*Join the Center for Legal Education and  
the Sections, Committees and Divisions  
of the State Bar of New Mexico for a  
Fall of practice-specific programs!*

### **September 11**

#### **2025 Employment and Labor Law Institute**

4.1 G, 1.0 EP, 1.0 EIJ

8 a.m.–4 p.m.

**IN-PERSON AND WEBINAR**

### **September 17**

#### **2025 Elder Law Institute**

4.0 G, 1.0 EP

9 a.m.–3:30 p.m.

**IN-PERSON AND WEBINAR**

### **September 19**

#### **New Mexico Appellate Practice Institute**

5.7 G, 1.0 EP

8:30 a.m.–5 p.m.

**IN-PERSON AND WEBINAR**

### **September 20**

#### **Rights in Motion: Legal Strategies for Advocacy in a Changing World (Paralegal Institute)**

5.5 G

9 a.m.–4 p.m.

**IN-PERSON AND WEBINAR**

### **September 25**

#### **Environmental Justice on Life Support: Maintaining a Commitment to Equity**

1.0 EIJ

Noon–1 p.m.

**IN-PERSON AND WEBINAR**

### **September 26**

#### **2025 Fall Family Law Institute**

6.0 G

8:45 a.m.–4:30 p.m.

**IN-PERSON AND WEBINAR**

### **October 3**

#### **2025 Health Law Institute: A Survey of Health Law in 2025**

4.0 G, 1.0 EIJ, 1.0 EP

9:15 a.m.–4:45 p.m.

**IN-PERSON AND WEBINAR**

### **October 8**

#### **How to Practice: Adult Guardianship and Conservatorship**

3.0 G, 1.0 EP

8:30 a.m.–1 p.m.

**IN-PERSON AND WEBINAR**

### **October 15**

#### **Alternative Dispute Resolution Institute**

5.5 G

9 a.m.–4 p.m.

**WEBINAR**



### *Introducing Teicher Tuesdays!*

Stuart Teicher, The CLE Performer, is returning (virtually) to New Mexico for Teicher Tuesdays in October. Register for an individual webinar, or register for the series and save!

### **October 7**

#### **The Ethics of Asking for Work**

1.0 EP

Noon–1 p.m.

**WEBINAR**

### **October 14**

#### **Learn by Doing: ANOTHER Hour of Legal Writing Exercises with Stuart Teicher**

1.0 G

Noon–1 p.m.

**WEBINAR**

### **October 21**

#### **Harmony in Justice: Using Classic R&B to Address Bias and Diversity in the Legal Profession**

1.0 EIJ

Noon–1 p.m.

**WEBINAR**

### **October 28**

#### **5 Ways to Ethically Use ChatGPT Safely in the Practice of Law**

1.0 EP

1–2 p.m.

**WEBINAR**

► **Register online at [cle.sbnm.org](https://cle.sbnm.org) or call 505-797-6020**



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# DIGITAL BAR BULLETIN



State Bar of  
New Mexico  
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Allison H. Block-Chavez, President-Elect  
Lucy H. Sinkular, Secretary-Treasurer  
Erinna M. "Erin" Atkins, Immediate Past President

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Director of Marketing & Communications, Celeste Valencia,  
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Advertising and Sales  
651-288-3422, [marketing@sbnm.org](mailto:marketing@sbnm.org)

## Communications Advisory Committee

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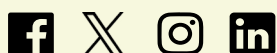
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[www.sbnm.org](http://www.sbnm.org)



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**About Cover Image and Artist:** This oil painting is submitted by Rachel Rickerman, a native New Mexican, who has worked as a legal assistant in Albuquerque for the past 25 years. She has always wanted to paint but never took the initiative, believing she could not paint because she felt she could not draw. Come to find out, drawing had nothing to do with it. With a break through in her healing process a creative energy was ignited. She recently became inspired by 'The Joy of Painting with Bob Ross' television series. She purchased the supplies, picked up a brush and began painting along. She has now taken up oil painting as a regular outlet and comments that painting has brought about confidence, a deep satisfaction in achieving a goal and much peace.



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

## COURT NEWS

### New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://bit.ly/NM-Rules>.

### 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 resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. (MT). Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. (MT). For more information call: 505-827-4850, email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov) or visit: <https://bit.ly/nmlawlibrary>.

### Second Judicial District Court Monday Night Attorney Support Group

The Second Judicial District Court will be closed on Oct. 1 for training. The Court will reopen on Oct. 6.

### U.S. District Court, District of New Mexico Notice of Exclusive Premiere Screening of NMPBS Documentary: *Law for a Lawless Land*

Join the United States District Court for the District of New Mexico for the Exclusive Premier Screening of the NMPBS Documentary, *Law for a Lawless Land - New Mexico Territory's Federal Judiciary, 1846-1912*. The first screening will be held on Sept. 16 in Las Cruces, N.M. at the U.S. Courthouse, located on 100 N. Church Street, Las Cruces, N.M. 88001. A second screening will be held on Sept. 23 at the Pete V. Domenici U.S. Courthouse in Albuquerque, N.M., located on 333 Lomas Blvd. NW, Albuquerque, N.M. 87102. A reception will be held before both screenings starting at 5:30 p.m. (MT) followed by the screening of the documentary. The event

## Professionalism Tip

With respect to the courts and other tribunals:

I will be respectful toward and candid with the court.

is black-tie optional and is sponsored by the Federal Bench and Bar for the District of New Mexico. All members of the Federal Bench and Bar are cordially invited to attend either or both events. Reservations are requested. RSVP, if attending, at: <https://rsvp.nmcourt.uscourts.gov/doc/>.

## STATE BAR NEWS

### Access to Justice Fund Grant Commission

#### Notice of Commissioner Vacancy

Two Commissioner appointments for three-year terms will be made to the State Bar of New Mexico ATJ Fund Grant Commission. The ATJ Fund Grant Commission solicits and reviews grant applications and awards grants to civil legal services organizations consistent with the State Plan for the Provision of Civil Legal Services to Low Income New Mexicans. To be eligible for appointment, applicants must not be affiliated with a civil legal service organization which would be eligible for grant funding from the ATJ Fund. Anyone interested in serving on the Commission should send a letter of interest and brief résumé by Oct. 15 to [maria.velazquez@sbnm.org](mailto:maria.velazquez@sbnm.org).

### Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on July 31 at Sandia Resort & Casino in Albuquerque, N.M. Action taken at the meeting follows:

- Approved the May 16-17, 2025 Meeting Minutes;
- Chief Justice Thomson conducted the swearing-in of new bar commissioners Chrystian J. Gonzalez, Third and Sixth Bar Commissioner Districts; Dylan O'Reilly, Out-of-State District; and Lauren E. Riley, YLD Chair;
- Reported that the Board will begin discussions of the second half of Rule 24-101(A) NMRA at its October meeting;
- Received the 2026-2028 Three-Year

Strategic Plan Report from the May Board Retreat and created a special committee to begin review of the report;

- Received the 2026 Officers Nominations as follows: Commissioner Lucy H. Sinkular for the position of President-Elect and Commissioner Tomas J. Garcia for the position of Secretary-Treasurer; the nominations were uncontested, and the Board will vote on the nominations at their October meeting;
- Reappointed Chad Abeyta to the DNA – People's Legal Services, Inc., Board for another term;
- Approved a request for YLD to provide CLE Credit for pro bono work through YLD events, including workshops and Wills for Heroes Events;
- Appointed Commissioner Erinna M. "Erin" Atkins to the Children's Court Rules Committee through the end of the year;
- Received a report from the Executive Committee and ratified the action taken by the committee, including: 1) reviewed and approved licensing late fee waivers for non-compliance; 2) approved a sponsorship request for the UNM Scholarship Golf Tournament; 3) approved a funding request for the EAJ Conference; and 4) approved the Annual Awards Committee's recommendations for the 2025 Annual Awards recipients.
- Accepted the April and May 2025 Financials;
- Accepted the 2024 Combined Financial Audit presented by the auditors to the Audit Committees of the State Bar and New Mexico State Bar Foundation and reported that it was an unmodified opinion;
- Received a report on the Member Services Committee and which reviewed the Bankruptcy, Cannabis, NREEL, and Real Property, Trust and Estate Sections, which were scheduled for review this year, approved continuing all of them;



## New Mexico Courts Artificial Intelligence (AI) in the Courts: Interim Guidelines for Legal Professionals

Artificial Intelligence is evolving - but your ethical duties remain the same. Until formal AI policies are adopted, all legal professionals must:

### Follow the New Mexico Rules of Professional Conduct

AI tools, including generative tools like ChatGPT, do not replace your professional judgment or ethical obligations. Key reminder, but not an exhaustive list:

- **Rule 1-011 (Signing of Pleadings):** The signature of an attorney constitutes a certificate that an attorney has read the pleading, motion or other paper; that to the best of the attorney's knowledge, information, and belief, there is good ground to support it.
- **Rule 16-302 (Candor to the Tribunal):** Verify AI-generated content. Never rely on it for case citations or legal arguments without checking original sources.
- **Rule 16-101 (Competence):** Understand the technology you use and its risks.
- **Rule 16-104 (Client Communication):** Disclose your use of AI tools if they impact legal advice or case handling.
- **Rule 16-106 (Confidentiality):** Do not enter client data or privileged information into AI platforms without informed consent, or taking reasonable steps to insure the continued confidentiality of that information.

**Comply with the New Mexico State Bar's Ethics Advisory Committee's Opinions ([Formal Opinion: 2024-004, Using Generative Artificial Intelligence in the Practice of Law](#)), which emphasize that:**

- Attorneys are fully responsible for the use of AI tools in their practice.
- Misuse of AI that results in misconduct or harm may lead to disciplinary action.

### Practical Interim Tips:

- Double-check all AI-generated text, citations or summaries.
- Use AI for drafting ideas, not final legal analysis.
- Document how you're using AI in your workflow.
- When in doubt, consult your supervisor or ethics counsel.

**Remember: Confidentiality, Accuracy, and Integrity are Non-Negotiable.**

- Received a report from the Annual Meeting Planning Committee, which discussed options for the 2026 Annual Meeting and future Annual Meetings;
- Received a report from the Policy and Bylaws Committee, which is reviewing the role of Supreme Court Board, Committee and Commission liaisons;
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal Divisions, and Bar Commissioner Districts;
- Discussed the Supreme Court's request for a Commissioner to serve on its AI Committee; Commissioners Andrea Salazar and Concepcion "Connie" J. Flores volunteered to serve on the committee; and

## Featured Member Benefit



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- Recognized William D. Sleese, Professional Development Programs Director of the State Bar, on his retirement.

Note: The minutes in their entirety will be available on the State Bar of New Mexico's website following approval by the Board at the Oct. 24 meeting.



## Join a State Bar Committee!

Vacancies exist for three-year terms starting Jan. 1, 2026, on State Bar Committees: Alternative Dispute Resolution Committee (ADR), Committee on Diversity in the Legal Profession (CDLP), Committee on Women in the Legal Profession (CWLP), Communications Advisory Committee, Ethics Advisory Committee, Historical Committee, Lawyers Professional Liability and Insurance Committee (LPLIC), and Well-Being Committee. For additional information on committees please visit the website at:

<https://bit.ly/SBNMCommittees>. For consideration, send an email of interest to [memberservices@sbnm.org](mailto:memberservices@sbnm.org) by Sept. 15.

## New Mexico Lawyer Assistance Program The Other NM Bar Meeting

The New Mexico Lawyer Assistance Program proudly presents to you The Other NM Bar Meeting, which is a confidential traditional 12-step meeting for legal professionals. Open to all lawyers, law students, judges and other legal professionals, the meeting's purpose is to provide a safe space for people to support one another in their desire to stop drinking and using. The Other NM Bar Meeting meets in person every Thursday evening from 5:30 to 6:30 p.m. (MT) at the First Unitarian Church, located at 3701 Carlisle Blvd. NE, Albuquerque, N.M. 87110. For those unable to make it in person, there will be an option to join telephonically in the future. For more information about The Other NM Bar Meeting, email [NMLAP@sbnm.org](mailto:NMLAP@sbnm.org).

## 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 New Mexico State Bar Foundation 2025 Golf Classic

Player registration is still open for the New Mexico State Bar Foundation 2025 Golf Classic. The event will take place on Sept. 29, starting at 8 a.m. (MT), at the Sandia Golf Club, located at 30 Rainbow Rd. NE, Albuquerque, N.M. 87113. Register to play individually for \$200. Register a foursome for \$800. Sponsorship opportunities are also available! Register now at <https://bit.ly/2025NMSBFGolfClassic>. Contact Joey Gutierrez at 505-797-6057 or [nmsbfdevelopment@sbnm.org](mailto:nmsbfdevelopment@sbnm.org) with any questions.

## UNM SCHOOL OF LAW Announcement of 2025 Distinguished Achievement Award and Alumni Promise Award Honorees

The UNM School of Law and the UNM School of Law Alumni/ae Association are proud to announce the 2025 Distinguished Achievement Award and Alumni Promise Award honorees. Honorees for the Distinguished Achievement Award are **Paul Biderman**, **Peter Cubra** and the **Hon. M. Monica Zamora**. The Alumni Promise Award recipient is **Lauren E. Riley**. The awards dinner will be held on Oct. 17 in the Student Union ballrooms. Registration for the awards dinner will open soon.

## 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 <https://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://bit.ly/NMLegisLibrary>.

### Southwest Women's Law Center Invitation to 20th Anniversary Celebration

The Southwest Women's Law Center is celebrating its 20th Anniversary at the Albuquerque Museum on Sept. 26. Guests will be able to view museum exhibits for free between 4 and 5 p.m. (MT). Visit

<https://swwomenslaw.org/events> for more information. Please email

[jpaulsen@swwomenslaw.org](mailto:jpaulsen@swwomenslaw.org) or call 505-244-0502 for any questions.

# Board of Bar Commissioners Election Notice 2025



State Bar of  
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Notice is hereby given for the election of the State Bar of New Mexico (State Bar) Board of Bar Commissioners, the elected governing board of the State Bar (Rule 24-101 NMRA). The State Bar will hold elections this fall to fill nine (9) positions on the Board of Bar Commissioners described below and which will expire on December 31, 2025. The positions are for three-year terms that run from January 1, 2026 through December 31, 2028, except for a one-year term as noted below. **The election will open November 5, 2025, and close at noon on November 30, 2025.**

Nominations of State Bar active status members to fill the vacancies shall be made by petition of ten (10) or more active status members of the State Bar who are in good standing and whose principal place of practice (address of record) is in the respective district. A member may only be nominated for one position on the Board of Bar Commissioners. Members of the State Bar may nominate (sign a petition for) more than one candidate for a position.

Active status members whose principal place of practice (address of record) is in El Paso County, Texas, may nominate members for the Third and Sixth Judicial Districts.

**Nominations must be made by completing the Nomination Petition on the next page or at the link below.** The nominee is responsible for collecting all nomination petitions and submitting them to the State Bar in either a single email or a single mailed packet **no later than 5:00 p.m. MT on October 6, 2025.** Individual emails sent directly to the State Bar by a petitioner will not be counted.

[www.sbnm.org/BBCnominationpetition2025](http://www.sbnm.org/BBCnominationpetition2025)

## Primary Responsibilities of the Board of Bar Commissioners:

### Governance

- › Support and advance the State Bar's mission and strategic plan.
- › Attend Board meetings (up to six annually), including the Annual Meeting and a Board Retreat every three years.
- › Serve on State Bar and Supreme Court committees and boards.
- › Evaluate State Bar programs and operations to ensure alignment with the strategic plan and budget.
- › Establish and enforce bylaws and policies that support the Bar's mission and comply with legal and ethical standards.
- › Ensure financial sustainability and accountability for the organization.
- › Select, support and annually evaluate the Executive Director.

### Role of Ambassador

- › Communicate regularly with constituents and hold at least one annual event within the district.
- › Promote State Bar programs and activities
- › Represent the State Bar at meetings and events within the district.
- › Help recruit and retain new board members
- › Support the New Mexico State Bar Foundation's mission and purposes.

Pursuant to the State Bar Bylaws, following are the names of the commissioners whose terms are expiring and their districts from which they were elected:

### Second Judicial District – One Position

#### *Bernalillo County*

- › Currently held by Steven S. Scholl

### Third and Sixth Judicial Districts – Three Positions

#### *(two three-year terms; one one-year term)*

#### *Dona Ana, Grant, Hidalgo and Luna Counties*

- › One currently held by Connie J. Flores
- › One currently held by Chrystian J. Gonzalez (*one-year term; remainder of unexpired term*)
- › One currently held by David L. Lutz (*ineligible for reelection*)

### Fifth Judicial District – One Position

#### *Chavez, Eddy and Lea Counties*

- › Currently held by Parker B. Folse

### Seventh and Thirteenth Judicial Districts – Two Positions

#### *Catron, Sierra, Socorro, Torrance, Cibola, Sandoval and Valencia Counties*

- › One currently held by Jessica A. Perez
- › One currently held by Simone M. Seiler

### Eleventh Judicial District – One Position

#### *McKinley and San Juan Counties*

- › Currently held by Joseph F. Sawyer (*ineligible for reelection*)

### Twelfth Judicial District – One Position

#### *Lincoln and Otero Counties*

- › Currently held by Erinna M. "Erin" Atkins (*ineligible for reelection*)

**Send all nomination petitions in one packet by email to [bbc@sbnm.org](mailto:bbc@sbnm.org)**

Or drop off to: Executive Director Richard B. Spinello, Esq.  
5121 Masthead St. NE, Albuquerque, NM 87109

**— PETITIONS MUST BE RECEIVED BY 5 P.M. MT, OCT. 6, 2025 —**

Direct inquiries to 505-797-6038 or [kbecker@sbnm.org](mailto:kbecker@sbnm.org).





## Nomination Petition for Board of Bar Commissioners

I, the undersigned, State Bar member in good standing and who has a principal place of practice (address of record) in the \_\_\_\_\_ District<sup>1</sup>, hereby nominate \_\_\_\_\_, whose principal place of practice (address of record) is located in the \_\_\_\_\_ District.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address (principal place of practice)

\_\_\_\_\_  
Date

*<sup>1</sup>Members whose principal place of practice is located in El Paso County, Texas, are represented by, nominate and vote in the Third and Sixth Judicial Districts.*

To make a nomination, complete all information in this petition and send to the nominee by either method below:

- **Electronically** by going to [www.sbnm.org/BBCnominationpetition2025](http://www.sbnm.org/BBCnominationpetition2025); or
- **Hard copy** by printing the online form or completing this form and mailing or emailing it to the nominee.

*Do not submit this petition directly to the State Bar. The nominee is responsible for collecting all nomination petitions and submitting them to the State Bar in either a single email or a single mailed packet **no later than 5:00 p.m. MT on October 6, 2025.***



## State Bar of New Mexico *New Officer Swearing-In*

**P**rior to the commencement of the 2025 Annual Meeting on July 31, three new officers were officially sworn into the State Bar of New Mexico's Board of Bar Commissioners ("BBC"), including Chrystian J. Gonzalez (3rd and 6th Judicial Districts), Dylan O'Reilly (Out-of-State District) and Lauren Riley (Young Lawyers Division Chair). The swearing-in was conducted at Sandia Resort & Casino by New Mexico Supreme Court Chief Justice David K. Thomson.



**Chrystian J. Gonzalez** is a Children's Court Attorney for the New Mexico Children, Youth, and Families Department's Las Cruces office. He also currently serves as Treasurer for the Southern New Mexico Bar Association and has been recognized for his contributions to pro bono work in the southern New Mexico regions.



**Dylan O'Reilly** has been with Miller Stratvert PA since graduating from the University of New Mexico School of Law in 1999. He currently practices in the firm's Santa Fe office, where he handles commercial litigation, transactions and mediations. In 2021, Dylan was appointed to the New Mexico Board of Bar Examiners.



**Lauren Riley** practices Family Law at Batley Riley Family Law, P.A. in Albuquerque. She practices in all aspects of family law including divorce, custody, child support, kinship-guardianship, divorce modification and assisting clients with Prenuptial and Postnuptial Agreements. Lauren is the current Chair of the State Bar of New Mexico's Young Lawyers Division and serves as a board member of the State Bar of New Mexico Family Law Section.

The swearing-in ceremony served as a key moment for these three accomplished legal professionals and their fellow colleagues on the Board of Bar Commissioners before the 2025 Annual Meeting's programing and events kicked off later in the afternoon.



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# The State Bar of New Mexico's 2025 *Past Presidents' Dinner & President's Award*



Each year, the President of the State Bar of New Mexico chooses an individual to honor for their exemplary service in the legal community. This year, President Aja N. Brooks selected **Judge Angela J. Jewell** for her accomplishments and role in her personal and professional development in the legal field, as well as for Judge Jewell's contributions to the legal community. As Judge Jewell was unable to attend the event, her daughter, Taja Jewell, accepted the award on her behalf.

*State Bar of New Mexico President Aja N. Brooks presents the President's Award to Taja Jewell, receiving the award on behalf of recipient Judge Angela J. Jewell.*

## *2025 Past Presidents' Dinner*



*State Bar of New Mexico Past Presidents (from left to right): Richard L. "Rick" Kraft, Benjamin I. Sherman, Gerald G. "Jerry" Dixon, Erinna M. "Erin" Atkins, 2025 State Bar of New Mexico President Aja N. Brooks, Daniel J. "Dan" O'Brien, Hon. Henry A. Alaniz, Carolyn A. Wolf, Arturo L. Jaramillo, Robert N. Hilgendorf, Hon. Alan C. Torgerson, Erika E. Anderson, Mary T. Torres, Craig A. Orraj and Dennis E. Jontz.*



*State Bar of New Mexico President Aja N. Brooks and her husband Johnn Osborn.*





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Est. 1886



## The State Bar of New Mexico's 2025 Annual Meeting Highlights



The State Bar of New Mexico ("State Bar") 2025 Annual Meeting took place from July 31 to Aug. 2 at the Sandia Resort & Casino in Albuquerque, N.M. The 2025 Annual Meeting's theme was "Together Towards Justice," highlighting the New Mexico legal community's collective commitment to justice for all. There was an option to attend virtually on Friday, Aug. 1, the day of the conference that included Bryan Stevenson's keynote address.

Well-attended by many legal professionals based in New Mexico and surrounding states, the 2025 Annual Meeting commenced on Thursday, July 31, beginning with the debut of the State Bar of New Mexico's New Mexico Attorney's Oath Presentation. The video presentation featured various members of New Mexico's legal community reciting the New Mexico Attorney's Oath. A poignant introduction immediately followed with opening remarks from State Bar President Aja N. Brooks.

President Brooks went on to highlight "Together Towards Justice" as the 2025 Annual Meeting's theme before previewing the conference programming and activities to come, including the plenary presentations and breakout sessions, well-being activities, the New Mexico State Bar Foundation's Glitz in a Glass event and more.



Following President Brooks' opening remarks, the first day of the Annual Meeting consisted of two plenary presentations, including "Justice by Design: Artificial Intelligence, Law, and the Future of Us," presented by Professor Sonia Gipson Rankin and "The Commander in Chief at High-Tide, Wherever that Line May Be," presented by Professor Joshua Kastenber; both of which covered highly relevant topics at an in-depth level by University of New Mexico School of Law professors. The evening concluded with the Welcome Reception followed by the Annual Awards Ceremony (see page X), honoring several distinguished members of New Mexico's legal community for their contributions and accomplishments in New Mexico. The State Bar ended the evening with a screening of "Just Mercy," the 2019 film adaptation of 2025 Annual Meeting Keynote Speaker Bryan Stevenson's memoir of the same name.



Friday, Aug. 1 began with introductory remarks by President Brooks, who provided some updates from State Bar as well as introductions for New Mexico Supreme Court Chief Justice David K. Thomson and Keynote Speaker Bryan Stevenson. Chief Justice Thomson gave some remarks on the New Mexico Judiciary, giving attorneys and legal professionals an overview of recent developments in the New Mexico courts as well as words of gratitude to the State Bar and New Mexico legal community for their work and achievements in the legal field.





Stevenson, a renowned civil rights attorney with accomplishments ranging from fighting for the wrongfully incarcerated to founding the Equal Justice Initiative, provided an inspiring keynote address on the importance of justice for all and representing the underserved. He cited multiple uplifting stories in which he assisted clients who were desperate in their battle for justice, illustrating the importance of serving underrepresented communities.

The rest of the day included two more plenary sessions. The first plenary session, a Judicial Panel featured New Mexico Supreme Court Chief Justice David K. Thomson, Senior Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice Julie J. Vargas and Justice Briana H. Zamora. The Supreme Court echoed the words of Stevenson and provided in-depth answers to questions submitted to them from the legal community, allowing for the bench and bar to connect in a very direct format.



Attendees were visited by the Southwest Canine Corps of Volunteers, Inc., who brought along adorable therapy dogs. While many of the event's plenaries and breakout sessions covered a range of serious topics, these furry canines gave attendees an opportunity to have some fun by spending time with the friendly pooches.

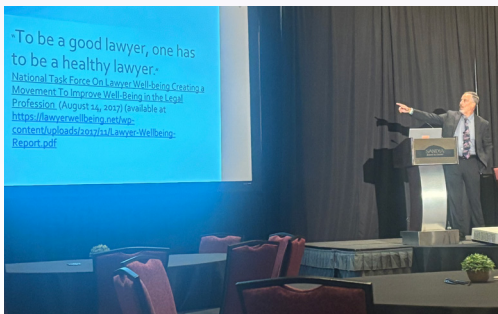
On Friday afternoon, New Mexico State Bar Foundation ("Bar Foundation") President Stefanie K. Davis spoke about the mission of the Bar Foundation and its upcoming events and activities, including the 2025 Golf Classic. After her remarks, Friday's second plenary session, "Law, Justice, and the Holocaust: How the Supreme Courts Failed Germany," covered the Nazi regime and how legal professionals responded to its changes to law in Germany. During the plenary, Roberta Cooper Ramo, who was the first woman elected as President of the American Bar Association, provided modern context for the events that took place in Germany. Additionally, Kendal Jones and Sarah Reza, who oversee the operations of the United States Holocaust Memorial Museum's Law and Justice Initiative, guided attendees through how legal professionals in Germany at the time adjusted to changes in German law by the Nazi regime.

Friday evening included four separate events, including the President's Reception, the New Mexico State Bar Foundation's Glitz in a Glass event (see page 19), the Texas Tech University School of Law's Hospitality Lounge and the Young Lawyers Division's Pub-Style Trivia. Each event allowed attendees and State Bar to connect and enjoy diverse entertainment during the final evening of the 2025 Annual Meeting.



Saturday, Aug. 2 began with two breakout sessions followed by the final plenary session, "Navigating the New Frontier: Ethical Uses of Generative Artificial Intelligence," presented by Professor Sonia Gipson Rankin. Another angle on the use of AI in law, the plenary provided a practical and insightful angle on the implementation of artificial intelligence in legal practice.

The 2025 Annual Meeting concluded with final remarks by President Brooks, who thanked the legal community for its support and gave encouraging words to State Bar President-Elect Allison H. Block-Chavez, who will serve as the 2026 President of the State Bar of New Mexico.



# Recognizing Excellence

## The State Bar of New Mexico's 2025 Annual Awards Ceremony



The State Bar of New Mexico presents the prestigious Annual Awards to legal professionals who have distinguished themselves or have made exemplary contributions to the State Bar or legal profession over the last year. The following award recipients were recognized for their excellence in service on the evening of July 31 during the 2025 Annual Meeting.



### WILLIAM "BILL" WORKMAN

#### Distinguished Bar Service Non-Lawyer Award

*Recognizes non-lawyers who have provided valuable service and contributions to the legal profession over a significant period of time.*

**William "Bill" Workman** was born in upstate New York in 1972 and moved to several states before settling in Farmington, New Mexico, where he obtained degrees in legal assistance and business administration. He started a career as a paralegal with the New Mexico Public Defender Office in the year 2000 and worked providing legal support to the Department's defense attorneys until retiring from the state in 2025 to pursue other activities.



### DAVID J. STOUT

#### Excellence in Well-Being Award

*Many individuals have made significant contributions to the improvement of legal professional well-being to include destigmatizing mental health, strengthening resiliency and creating a synergistic approach to work and life. This award was created to recognize an individual or organization that has made an outstanding positive contribution to the New Mexico legal community's well-being.*

**David J. Stout** is a Regents Lecturer at the University of New Mexico School of Law. He primarily teaches in the legal writing and communication program. He also teaches Torts, Evidence, Insurance Law and Professional Responsibility. His most important job at the law school is to coordinate the virtual food pantry for students who don't have enough money for food. Prior to joining the law school faculty on a full-time basis, Professor Stout was a practicing trial lawyer for 28 years specializing in products liability, governmental liability and insurance bad faith. Stout has chaired numerous Supreme Court committees including the Code of Judicial Conduct that rewrote the New Mexico Code of Judicial Conduct and the Code of Professional Conduct Committee. He currently serves as the chair of the Disciplinary Board. Stout owes his life to the State Bar of New Mexico's Lawyer Assistance Program Committee and has been a long-time member of that committee serving as co-chair from 2015-2019. Stout tries to help law students and lawyers struggling with addiction, depression and other conditions that interfere with their professional and personal lives.





## LEON HOWARD III

### Judge Sarah M. Singleton Distinguished Service Award

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

**Leon Howard III** is the Executive Director of the ACLU of New Mexico and a proud graduate of the University of New Mexico School of Law. Raised in Albuquerque's International District, Leon's path to leadership has been shaped by his lived experience and his unwavering belief in the power of community. For over fifteen years, he has worked to dismantle systemic injustice through civil rights litigation, policy reform, and public education. Leon is widely respected for his grounded, strategic advocacy on behalf of underrepresented communities across the state. He has also contributed his leadership to several boards and committees, including the New Mexico Innocence & Justice Project, the State Bar of New Mexico's Committee on Diversity, the New Mexico Black Lawyers Association, and the UNM Master of Public Policy Advisory Panel. At every step, Leon remains committed to building a more just New Mexico, where the law protects everyone, not just the powerful.

## JUDGE JOSHUA A. ALLISON and GERALD G. DIXON

### Justice Pamela B. Minzner Professionalism Award

*Recognizes attorneys and/or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.*



**Judge Joshua A. Allison** was raised in Lincoln, Illinois, a small farm community in the middle of the state that is the only town in the world named for Abraham Lincoln before he became President of the United States. Judge Allison is the proud son of a Presbyterian pastor and a high school English teacher. He worked on a hog farm growing up, and his family vacationed at Ghost Ranch near Abiquiu when he was young. It was on those vacations where Judge Allison developed a love for our high desert. Judge Allison graduated from Millikin University in Decatur, Illinois in 1996 with a degree in History. He came to New Mexico in 2000. After graduating from University of New Mexico School of Law, Judge Allison clerked for then-Chief Justice Edward L. Chávez of the New Mexico Supreme Court. Following his clerkship, he worked as a civil litigator for ten years before taking the bench in 2019.



**Gerald G. "Jerry" Dixon** is a founding member of Dixon-Scholl-Carrillo-P.A. and practices in the areas of professional malpractice defense, construction litigation and real estate. He also serves as a mediator and arbitrator. Jerry served as President of the State Bar of New Mexico in 2019 and the New Mexico State Bar Foundation in 2018 and 2024. He was President of the Albuquerque Bar Association in 1994. He has served as a Trustee for the Texas Tech School of Law Foundation since 2005 and for the Texas Tech University Foundation since 2022. Jerry was named Outstanding Attorney by the Albuquerque Bar Association in 2014 and received the 2014 Distinguished Service Award from Texas Tech School of Law. He provides pro bono services through New Mexico Christian Legal Aid. Jerry was a Visiting Professor of Law in 2012 at the University of National and World Economy in Sofia, Bulgaria and in 2015 at South-West University in Blagoevgrad, Bulgaria.





## SONIA M. GIPSON RANKIN

### Justice Pamela B. Minzner

### Outstanding Women's Advocacy Award

*Recognizes attorneys who have provided legal assistance to women who are unrepresented or underserved, or advocated for causes that will benefit and/or further the rights of women within the previous calendar year.*

**Sonia M. Gipson Rankin** is a legal scholar and computer scientist whose work expands access and opportunity for women in law and technology. She draws on her interdisciplinary training to confront systemic barriers, especially those affecting women of color. She serves the legal profession through the New Mexico Supreme Court's Equity and Justice Commission, the State Bar of New Mexico's Committee on Diversity, and the tech sector through a National Academies initiative promoting women of color in STEM. Whether teaching, giving interviews, or engaging broad audiences, she approaches issues of algorithmic bias, kinship care, inclusive leadership and criminal justice reform with clarity, conviction, and care. A dedicated mentor, she supports students through Moms of Law, the Black Law Students Association and other student organizations and has also served her faith community by directing the women's ministry and teaching Sunday School. Her contributions have been recognized with the UNM Women in STEM Award (2022) and the Professor Pamela B. Minzner Award for Excellence & Professionalism (2023) and the Albuquerque Business Journal Women of Influence Award (2018). She and her husband raised their three children in New Mexico.



## NEW MEXICO CHRISTIAN LEGAL AID, INC.

### Outstanding Legal Organization Award

*Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.*

**New Mexico Christian Legal Aid, Inc.** was founded upon the belief that many of the legal problems of the poor and homeless also involve spiritually related issues. NMCLA was formed in 1998 to provide a unique combination of high-quality legal and spiritual counsel to the poor and homeless. Over 125 NMCLA volunteer attorneys have provided services to approximately 10,000 clients. The legal services are generally provided at local missions and organizations that serve the homeless such as The Rock

at Noon Day, Albuquerque Rescue Mission/Steelbridge, Joy Junction, Salvation Army, Little Brothers of the Good Shepherd and several others. Group sessions are also conducted at the program facilities to give instruction on many poverty law topics. The attorneys are trained in poverty law and counseling with one to two CLE programs per year.



## EDUARDO RAMIREZ

### Outstanding Young Lawyer of the Year Award

*Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism by demonstrating a commitment to clients' causes and to public service, enhancing the image of the legal profession.*

**Eduardo Ramirez** is an Assistant Public Defender with the Law Offices of the Public Defender in the Hobbs Office. Eduardo joined the LOPD family in February of 2021 after relocating to New Mexico at the end of 2020. Eduardo earned his law school degree from the University

of Colorado Law School, graduating in May 2019. He is the first in his family to not only graduate from college, but also law school. Since as far back as he can remember, Eduardo has always had a passion for helping individuals who are underprivileged and impoverished. Growing up in poverty himself, he saw many people struggle with the criminal justice system and just how important effective representation is. As an adult, Eduardo has learned the importance of self-care, to continue representing clients to the best of his ability. He helps with their criminal case but also makes efforts to better their lives. Eduardo is a zealous advocate, and his goal is to eventually rid the notion of a "public pretender." Luckily, he has amazing mentorship and colleagues down in Hobbs who help him, and he would not be the attorney he is without them. Outside of work, Eduardo enjoys being involved in the community, caring for his various plants, and his lovely Pit Bull, Izabel.



## EVANGELINA F. MERCADO

### Robert H. LaFollette Pro Bono Award

*Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.*

**Evangelina F. Mercado** has spent the majority of her legal career assisting the indigent, disadvantaged and victimized. Ms. Mercado grew up in Las Cruces and graduated from New Mexico State University. Thereafter, she graduated from Southern Methodist University Dedman School of Law. Upon graduation, she was employed by El Paso, Texas County

Attorney's Office and 34th Judicial District Attorney's Office in El Paso, Texas. In June 1999, she began working as a staff attorney for the Las Cruces Office of New Mexico Legal Aid. Shortly thereafter, she transitioned into a managerial position and is currently the regional managing attorney for the southern region of New Mexico. Ms. Mercado supervises staff of attorneys in communities throughout the southern region, as well as paralegals/legal assistants and community volunteers. New Mexico Legal Aid provides legal assistance to clients in domestic violence, domestic relations, housing, economic security and consumer protection. Additionally, the office provides in house clinics for pro se divorce and paternity actions. Ms. Mercado has been providing legal services to New Mexican Legal Aid clients for the past 26 years.



## JUDGE STAN WHITAKER

### Justice Seth D. Montgomery Distinguished Judicial Service Award

*Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and the bar.*

**Judge Stan Whitaker** was born in Denver, Colorado. His family moved to Albuquerque in 1962 when his stepfather helped start the Quarters Restaurant on Yale Blvd. Judge Whitaker

grew up in Albuquerque, graduating from Sandia High School in 1975. He has been married to his high school sweetheart, Barbra, for 46 years. They have two grown children and one darling granddaughter, (Gigi). He attended the University of Kansas on a track scholarship from 1975 to 1980, graduating with a Bachelor of Science Degree in Education. He attended Law School at the University of New Mexico School of Law, earning his Juris Doctorate in 1989. After law school, he worked as an Assistant District Attorney in the Felony Child Abuse/Family Crimes Unit with the Bernalillo County District Attorney's Office from 1993 to 1996. He also worked as a Special Commissioner for Domestic Violence with the Second Judicial District Court from 1996 to 2002. From 2002 to 2006, he worked as Assistant United States Attorney, Firearms/Violent Crimes Division from 2002 to 2006. In June of 2006, he was appointed by Gov. Bill Richardson to the bench as a District Judge with the Second Judicial District Court presiding over Domestic Relations cases and felony criminal matters. He served as the Chief Presiding Judge of the Second Judicial District Court from 2019 to 2022. Judge Whitaker retired from the bench in December of 2024.

*Thank You to*

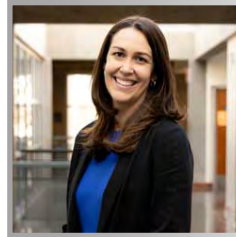
# University of New Mexico School of Law Professors

*For Your Participation During the 2025 Annual Meeting*



## **Justice by Design: Artificial Intelligence, Law, and the Future of Us**

Professor Sonia M. Gipson Rankin,  
University of New Mexico  
School of Law



## **Addressing the Housing Crisis in New Mexico**

Professor Allison Freedman,  
University of New Mexico  
School of Law



## **The Legal Status of Racial Diversity and Equity Initiatives**

Professor Vinay Harpalani,  
University of New Mexico  
School of Law



## **Environmental Justice: Past, Present, and Near Future**

Professor Cliff Villa,  
University of New Mexico  
School of Law



## **Tribal and State Collaborations - Sovereigns Working Together to Better One Another**

Professor Nadine Padilla,  
University of New Mexico  
School of Law, Associate Justice,  
Isleta Pueblo Appellate Court



## **Manliness and the Constitution**

Associate Dean John Min Kang,  
University of New Mexico  
School of Law



## **The Commander in Chief at High-Tide, Wherever that Line May Be**

Professor Joshua Kastenberg,  
University of New Mexico  
School of Law



## **Navigating the New Frontier: Ethical Uses of Gen AI in Legal Practice**

Professor Sonia M. Gipson  
Rankin, University of New Mexico  
School of Law



New Mexico  
State Bar Foundation

Select 2025 Annual Meeting sessions may be available to be viewed in the future as Live Replay or On-Demand CLE courses. Please contact the **New Mexico State Bar Foundation** Center for Legal Education at [cleonline@sbnm.org](mailto:cleonline@sbnm.org) for more information.



# The New Mexico State Bar Foundation's *Glitz in a Glass Event*



During each Annual Meeting, the New Mexico State Bar Foundation ("Bar Foundation") hosts events and activities to fundraise for the Bar Foundation's various legal services and programs, including the Legal Resources for the Elderly Program, the Modest Means Helpline and the Center for Legal Education.

This year, the Bar Foundation held a Glitz in a Glass event on Friday, Aug. 1 on the beautiful Sandia Resort & Casino's patio overlooking the majestic Sandia Mountains. Prizes for the event included two \$50 gift cards to the Daily Grind Café, two free On-Demand CLE courses provided by the Center for Legal Education, registration for one player during the Bar Foundation's 2025 Golf Classic, one fancy getaway in Taos, a one-night stay at Sandia Resort & Casino and the penultimate prize, a three-carat diamond valued at \$5,000, provided by Rio Grande Jewelry.

Taking place during the President's Reception on the second night of the Annual Meeting, Bar Foundation President Stefanie K. Davis introduced the possible prizes before conducting the drawing for each prize. Pictured are a few prize winners as well as candid moments during the glamorous event.

President Davis concluded the event by stressing the importance of the work of the Bar Foundation and highlighting the upcoming New Mexico State Bar Foundation Golf Classic.



# Legal Education Calendar

## September

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| <p><b>11 2025 Employment and Labor Law Institute</b><br/>4.1 G, 1.0 EP, 1.0 EIJ<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09112025">https://bit.ly/CLE-09112025</a></p>             | <p><b>17 WEBINAR: Appellate Series, Session 6: You Are What You Write! The Ethical Implications of Appellate</b><br/>1.0 EP<br/>Web Cast (Live Credits)<br/>Administrative Office of the U.S. Courts<br/><a href="http://www.uscourts.gov">www.uscourts.gov</a></p> | <p><b>24 Dying with Dignity: End of Life Services in New Mexico</b><br/>2.0 G<br/>Online On Demand (Self-Study)<br/>New Mexico Women's Bar Association<br/><a href="http://www.nmwba.org">www.nmwba.org</a></p>                                |
| <p><b>12 Trial Ready – Command the Courtroom: Stories that Stick, Skills that Win</b><br/>7.0 G<br/>Live Program<br/>New Mexico Trial Lawyers Association &amp; Foundation<br/><a href="http://www.nmtla.org">www.nmtla.org</a></p>     | <p><b>17 Elder Law Institute</b><br/>4.0 G, 1.0 EP<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09172025">https://bit.ly/CLE-09172025</a></p>  | <p><b>25 Environmental Justice on Life Support: Maintaining a Commitment to Equity</b><br/>1.0 EIJ<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09252025">https://bit.ly/CLE-09252025</a></p> |
| <p><b>12-14 Taking and Defending 19-21 Depositions</b><br/>31.0 G, 4.5 EP<br/>Live Program<br/>UNM School of Law<br/><a href="http://lawschool.unm.edu/cle/upcoming.html">lawschool.unm.edu/cle/upcoming.html</a></p>                   | <p><b>19 New Mexico Appellate Practice Institute</b><br/>5.7 G, 1.0 EP<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09192025">https://bit.ly/CLE-09192025</a></p>  | <p><b>25 Ethics, Juror Misconduct, and Jury Tampering: The Murdaugh Motion For New Trial</b><br/>2.0 EP<br/>Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09252025-2">https://bit.ly/CLE-09252025-2</a></p>     |
| <p><b>12 Real Estate Guarantees</b><br/>1.0 G<br/>Teleseminar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/09122025-Tel">https://bit.ly/09122025-Tel</a></p>  | <p><b>19 Governance Principles &amp; Management Agreements for Non-Profits</b><br/>1.0 G<br/>Teleseminar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09192025-Tel">https://bit.ly/CLE-09192025-Tel</a></p>                                 | <p><b>26 Fall Family Law Institute</b><br/>6.0 G<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09262025">https://bit.ly/CLE-09262025</a></p>   |
| <p><b>16 Professionalism: Moving from Principle to Practice to Progress</b><br/>1.0 EP<br/>Web Cast (Live Credits)<br/>Third Judicial District Court<br/><a href="http://thirddistrict.nmcourts.gov">thirddistrict.nmcourts.gov</a></p> | <p><b>20 Rights in Motion: Legal Strategies for Advocacy in a Changing World</b><br/>5.5 G<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/09202025">https://bit.ly/09202025</a></p>                                      | <p><b>26 Why Women Attorneys Get Paid Less: What's Gender Bias Got to Do With it?</b><br/>1.0 EIJ<br/>Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-09262025-2">https://bit.ly/CLE-09262025-2</a></p>           |

## October

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| <p><b>7 Teicher Tuesdays: The Ethics of Asking for Work</b><br/>1.0 EP<br/>Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-10072025">https://bit.ly/CLE-10072025</a></p> | <p><b>8 How to Practice: Adult Guardianship and Conservatorship (Virtual)</b><br/>3.0 G, 1.0 EP<br/>In-Person or Webinar<br/>NMSBF Center for Legal Education<br/><a href="https://bit.ly/CLE-10082025">https://bit.ly/CLE-10082025</a></p> | <p><b>21 AI, Explained: From Code to Courtroom and Beyond</b><br/>2.0 G, 1.0 EP<br/>Live Program<br/>United States District Court, District of New Mexico<br/><a href="https://www.nmd.uscourts.gov">https://www.nmd.uscourts.gov</a></p> |
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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](mailto: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>.



# We the People

## 10 Ways to Celebrate Constitution Day

**Constitution Day** commemorates the signing of the U.S. Constitution on Sept. 17, 1787, and presents a unique opportunity for our legal community to celebrate and reflect on the enduring importance of the U.S. Constitution and the Rule of Law.

1. **Volunteer to teach a lesson on the Constitution:** The **American Bar Association** offers resources for attorneys to give presentations to students about the Constitution, enabling legal professionals to engage with the next generation and share their knowledge in the spirit of public service.
2. **Participate in a “Civil Discourse” program:** Engage in activities like those offered by the **United States Courts**, which bring together federal judges and volunteer lawyers to foster civil conversation and understanding of constitutional principles to high school, college and law school students.
3. **Recite or watch the U.S. Constitution preamble:** Join in the tradition of reciting the **Preamble to the U.S. Constitution** with your colleagues or watch the **National Constitution Center’s Constitution Preamble Reading** via Zoom on Sept. 17.
4. **Observe or participate in naturalization ceremonies:** Witnessing new citizens taking the Oath of Allegiance is a powerful reminder of the significance of the Constitution and the rights and responsibilities it bestows. Find **New Mexico naturalization ceremony schedules and locations**.
5. **Volunteer to serve as a judge for a Mock Trial Competition:** Mock trial competitions help students gain oral advocacy and critical thinking skills by allowing them to present a simulated case in front of a judge and jury. The **Center for Civic Values** offers opportunities to volunteer for both high school and middle school competitions.
6. **Utilize online resources:** Explore and leverage the wide array of online resources and materials offered by organizations like the **American Political Science Association**, the **American Bar Association** and the **Bill of Rights Institute** that include lesson plans, documentaries, videos and interactive tools.
7. **Speak to local community members about the importance of the Constitution:** Consider visiting a local community group, like the **Rotary Club** or **Kiwanis Club**, to speak about the Constitution and its relevance today.
8. **Write a Bar Bulletin article:** Share your perspective on a particular constitutional issue or the importance of Constitution Day for the **Bar Bulletin** to offer your insights and engage in broader public discourse.
9. **Share an educational video:** Consider sharing an entertaining and educational video about the history of the U.S. Constitution via email or social media, such as PBS’s short video **History in a Nutshell: Birth of the Constitution**.
10. **Reflect on the Constitution’s impact:** Take time for personal reflection on how the Constitution has shaped the nation and the role of lawyers in upholding its principles and protecting individual liberties.



# *Read the* **PRO BONO** **QUARTERLY NEWSLETTER!**

The State Bar of New Mexico's **Pro Bono Quarterly Newsletter** is the New Mexico legal community's premier source for information on **pro bono work** and **access to justice** in New Mexico!

## *Newsletter Content Includes:*

- Pro Bono News & Announcements
- Civil Legal Service Provider Information
- Volunteer Opportunities
- Articles & Features
- Access to Justice Resources

*And much more!*



*Have an idea* for a pro bono feature or an opportunity for pro bono work you would like to share? Email **notices@sbnm.org** to include your information or articles in a **Pro Bono Quarterly Newsletter!**

To view each newsletter, visit  
**<https://bit.ly/Pro-Bono-Newsletter>**



State Bar of  
New Mexico  
Est. 1886



# Opportunities for Pro Bono Service CALENDAR

## September

- 12 Free Monthly Telephonic Legal Clinic**  
Telephone  
Bernalillo County Metropolitan Court  
To register, call 505-841-9817  
Location: Virtual

## October

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| <p><b>10 Free Monthly Telephonic Legal Clinic</b><br/>Telephone<br/>Bernalillo County Metropolitan Court<br/>To register, call 505-841-9817<br/>Location: Virtual</p> | <p><b>21 San Juan County Teleclinic</b><br/>In-Person<br/>San Juan County<br/>To register, call 505-326-2256 at 1 p.m. (MT) on the day of the clinic. An attorney will call back between 2:30 p.m. and 5 p.m. that same day.<br/>Location: San Juan County</p> | <p><b>23 Statewide Legal Teleclinic</b><br/>Telephonic<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>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



## September

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| <p><b>12 Free Monthly Telephonic Legal Clinic</b><br/>Telephone<br/>Bernalillo County Metropolitan Court<br/>To register, call 505-841-9817<br/>Location: Virtual</p> | <p><b>24 Consumer Debt/Bankruptcy Workshop</b><br/>Virtual<br/>State Bar of New Mexico<br/>Call 505-797-6094<br/>Location: Virtual</p> |
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## October

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| <p><b>10 Free Monthly Telephonic Legal Clinic</b><br/>Telephone<br/>Bernalillo County Metropolitan Court<br/>To register, call 505-841-9817<br/>Location: Virtual</p> | <p><b>21 San Juan County Teleclinic</b><br/>In-Person<br/>San Juan County<br/>To register, call 505-326-2256 at 1 p.m. (MT) on the day of the clinic. An attorney will call back between 2:30 p.m. and 5 p.m. that same day.<br/>Location: San Juan County</p> | <p><b>23 Statewide Legal Teleclinic</b><br/>Telephonic<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Virtual</p> |
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**Arturo L. Jaramillo**, the first Hispanic president of the State Bar of New Mexico, developed the Summer Law Clerk Program in 1993 to provide inclusive equal employment opportunities for first year law students from diverse backgrounds historically underrepresented in the legal profession by offering students the opportunity to clerk in legal settings that provide a foundation for their careers in the law. More than 200 first-year law students have participated in the program over the years, working in the best legal environments in New Mexico in private firms, non-profits, and governmental entities.

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***To learn more, please contact the organizers of the program!***



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**ABBY LEWIS**  
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State Bar of New Mexico  
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## Section and Division Meeting Occurrence Schedule

Sections	Occurrence (Month, Day of Week)	Time, Venue of Occurrence
Animal Law	Monthly / Second Wednesday	Noon (MT) / Virtual
Appellate Law	Monthly / First Tuesday	Noon (MT) / Virtual
Bankruptcy Law	Monthly / Second Tuesday	Noon (MT) / Bankruptcy Court & Virtual
Business Law	Monthly / Second Tuesday	11 a.m. (MT) / Virtual
Cannabis Law	Monthly / Second Friday	9 a.m. (MT) / Virtual
Children's Law	Monthly / Third Monday	Noon (MT) / Virtual
Elder Law	Monthly / First Friday	Noon (MT) / Virtual
Employment and Labor Law	Monthly / First Wednesday	12:30 p.m. (MT) / Virtual
Family Law	Monthly / Third Friday	9 a.m. (MT) / Virtual
Health Law	Monthly / First Tuesday	9 a.m. (MT) / Virtual
Immigration Law	Monthly / Last Friday	Noon (MT) / Virtual
Indian Law	Every Other Month / Third Friday	Noon (MT) / Virtual
Intellectual Property Law	Monthly / Fourth Tuesday	Noon (MT) / Virtual
NREEL Law	Monthly / Fourth Tuesday	Noon (MT) / Virtual
Prosecutors	Every Other Month / Second Friday	Noon (MT) / Virtual
Public Law	Monthly / Third Wednesday	Noon (MT) / Virtual
Real Property, Trust and Estate	Every Other Month / Second Tuesday	Noon (MT) / Virtual
Trust and Estate Division	Every Other Month / Second Tuesday	Noon (MT) / Virtual
Real Property Division	Every Other Month / First Tuesday	Noon (MT) / Virtual
Solo and Small Firm Law	Monthly / Third Tuesday	9 a.m. (MT) / Virtual
Tax Law	Monday / Second Tuesday	9 a.m. (MT) / Virtual

Divisions	Occurrence (Month, Day of Week)	Time, Venue of Occurrence
Senior Lawyers Division	Every Other Month / Third Tuesday	3:30 p.m. (MT) / Virtual
Young Lawyers Division	Varies / Saturdays	10 a.m. (MT) / Virtual

# An INCLUSIVE INTERVIEW



## with Kim Nguyen, Esq.



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. As part of that mission, we bring you the series "Inclusive Interviews." We call these *inclusive* interviews both as a play on words and as a contrast to the term "Exclusive Interview."

Because legal employers with inclusive hiring and employment practices have a bigger talent pool from which to hire and access to a larger client base, these interviews serve to amplify that growing and cultivating inclusivity in our profession is beneficial to all legal employers, be they private firms, government entities or nonprofits.

This *Inclusive Interview* is Kim Nguyen, Esq. Kim has been practicing law since 2022 and is currently an Associate Attorney at Ray Peña McChristian.

**Q:** What is your background?

**A:** I was born in a small town in southern Vietnam. My family and I traded in the life that we had in our home country to be low-income Americans in California. I attended college in California where I graduated magna cum laude with a BA in journalism and public relations and awarded the overall graduate in my department from Chico State. Right after graduation, I started my legal education at Washington and Lee University where I developed an interest in helping indigent communities from my summer internship at Contra Costa Public Defenders and my school's Criminal Justice Clinic. After law school, I moved to New Mexico with my pug and began practicing criminal defense at the Law Offices of the Public Defender. After two years at LOPD, I transitioned to civil defense.

**Q:** What made you want to become a lawyer?

**A:** A big part of being a lawyer is the constant learning that takes place, which matches my view that learning does not stop after graduation. My love for learning was cultivated from the stories that my mom told me growing up. My mom's childhood was war-torn, so she had limited educational opportunities. From her stories, I began placing great value in education which lead me to develop a love for learning.

**Q:** Who is your hero in the legal profession? Who's career or work do you wish to emulate?

**A:** Sonia Sotomayor. It is so inspirational that Sotomayor came from the Bronx housing projects to a Supreme Court Justice who champions the rights of marginalized communities and emphasize the importance of empathy and understanding in the context of the legal system.





**Q:** What has been your greatest accomplishment in your legal career or of what in your legal career are you the most proud?

**A:** The day I became a lawyer. I was working as a limited practitioner at the Public Defender's Office when I found out I passed the bar. It was a huge wave of relief because not passing meant I'd move back to California. My parents flew out from California for the swearing in ceremony and they were so happy to have the first lawyer in the family.

**Q:** What has been the biggest challenge you have had in your legal career?

**A:** The biggest challenge was overcoming the feeling of inadequacy within my legal career and develop confidence.

**Q:** What is your advice for new lawyers who are from diverse backgrounds? What do you wish someone had told you when you were starting your legal career?

**A:** My advice is to have confidence in your abilities and knowledge because you are going to do great.

**Q:** What advice would you give for overcoming these feelings of inadequacy and believing oneself can be great?

**A:** I think overcoming impostor syndrome is an individual journey, there's no one size fits all. For me, I had to really work on my confidence and deal with my personal insecurities. I focused on my physical and mental health. Moreover, I felt more confident when I felt more prepared. My biggest advice is to focus on your physical and mental health.

**Q:** What is your favorite part of your current position?

**A:** I really enjoy writing, and a big part of my current position requires writing motions.

**Q:** If you could have one superpower, what would it be, and why?

**A:** I'd like to be able to teleport because I'd save so much money on travel.

**Q:** What is something the legal profession in New Mexico can do to be more inclusive?

**A:** New Mexico can offer more volunteering programs and opportunities that includes training into the relevant area of law. I think volunteering create a more inclusive community and it is also a great opportunity to get experience in a less familiar field of law.

***Interested in being the subject of an Inclusive Interview?***

Contact SBNM Equity in Justice Attorney Abby Lewis at [abby.lewis@sbnm.org](mailto:abby.lewis@sbnm.org).



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

In accordance with Rule 23-106.1 NMRA, the Supreme Court has approved out-of-cycle rule amendments. What follows is a summary of amendments that the Court approved on August 25, 2025. The amendments are effective October 9, 2025. The full text of the amendments in markup format and the related orders are available on the Court's website [here](#). The approved rule amendments will also be available on [NMOneSource.com](#) by their effective date.

### Rules of Civil Procedure for State Courts Committee, Rules of Criminal Procedure for State Courts Committee, and Children's Court Rules and Forms Committee

***Punitive Contempt*** – Reinstated and Amended Rules 1-093, 2-110, 3-110, 5-112, 6-111, 7-111, 8-110, and 10-169 NMRA; Reinstated and Amended Form 9-611 NMRA; Amended Forms 9-612, 9-614, and 9-615 NMRA

On recommendation of the Rules of Civil Procedure for State Courts Committee, the Rules of Criminal Procedure for State Courts Committee, and the Children's Courts Rules and Forms Committee, the Supreme Court approved the reinstatement and amendment of Rules 1-093, 2-110, 3-110, 5-112, 6-111, 7-111, 8-110, and 10-169 NMRA. The Court also approved the Rules of Criminal Procedure Committee's recommendation to reinstate and amend Form 9-611 NMRA and to amend Forms 9-612, 9-614, and 9-615 NMRA. The reinstated and amended rules and forms are intended to provide guidance to judges when imposing punitive contempt sanctions, clarify the procedures for direct and indirect punitive contempt, and ensure due process is afforded to punitive contempt defendants.

### Rules of Criminal Procedure for State Courts Committee

***Fines, Fees, and Costs*** – Amended Rules 5-701, 6-207.1, 7-207.1, and 8-206.1 NMRA

On recommendation of the Rules of Criminal Procedure for State Courts Committee, the Supreme Court has approved amendments to Rules 5-701, 6-207.1, 7-207.1, and 8-206.1 NMRA. The amendments reflect recent statutory changes that eliminate the assessment of post-adjudication court fees, provide additional ways to pay fines, fees, and costs through alternative means, and increase the credits a person receives towards fines, fees, and costs for performing community service or serving a period of confinement.

### Supreme Court

***Post-Adjudication Fees and Bench Warrant Fee*** – Amended Rules 5-209, 6-205, 7-205, 8-204, and 10-251.1 NMRA; Amended Forms 9-104B, 9-212B, 9-212C, 9-601, 9-602, 9-603, 9-604, 9-605, 9-606, and 9-618 NMRA

The Supreme Court approved amendments to Rules 5-209, 6-205, 7-205, 8-204, and 10-251.1 NMRA and Forms 9-104B, 9-212A, 9-212B, 9-212C, 9-601, 9-602, 9-603, 9-604, 9-605, 9-606, and 9-618 NMRA. The amended rules and forms are intended to implement recent statutory amendments that eliminated the assessment of post-adjudication court fees and the administrative bench warrant fee, increased community service opportunities, and increased the credits a person receives towards fines, fees, and costs for performing community service or serving a period of confinement. The amendments also reflect technical changes and statutory and case law changes regarding appeals from the limited jurisdiction courts.

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

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



## ► From the New Mexico Supreme Court

<https://www.nmcompcomm.us>

From the New Mexico Supreme Court

**Opinion Number: 2025-NMSC-012**

No: S-1-SC-39522 (filed January 9, 2025)

**MONICA GALLOWAY, SHAWNA MAESTAS, and JOLENE GONZALES**

Plaintiffs-Petitioners,

v.

**NEW MEXICO OFFICE OF THE SUPERINTENDENT OF INSURANCE,**

Defendant-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI**

Francis J. Mathew, District Judge

Egolf + Ferlic + Martinez

+ Harwood, LLC

Katherine M. Ferlic

Kristina Martinez

Mark A. Cox

Heather Tanner

Katherine E. Murray

Santa Fe, NM

for Petitioners

Office of Superintendent of Insurance

R. Alfred Walker

Lawrence M. Marcus

Santa Fe, NM

New Mexico Department

of Information Technology

Todd S. Baran

Santa Fe, NM

for Respondent

## OPINION

**THOMSON, Chief Justice.**

### I. INTRODUCTION

{1} The Fraud Against Taxpayers Act (FATA), NMSA 1978, §§ 44-9-1 to -14 (2007, as amended through 2015), imposes civil liability for knowingly presenting a false or fraudulent claim for payment to the State.<sup>1</sup> See § 44-9-3(A)(1). FATA is unique in that it provides for a civil action known as *qui tam*, where a private party, known as a relator, can enforce FATA's terms on behalf of the State. See § 44-9-5(A). When a relator initiates enforcement and files the initial complaint, the New Mexico Attorney General (AG) must "diligently investigate [the] suspected violations." See § 44-9-4(A). The AG must then make a decision: (1) intervene, take over the action, and share fifteen to twenty-five percent of any

proceeds with the *qui tam* plaintiff, see § 44-9-5(C); § 44-9-7(A)(1), or (2) allow the *qui tam* plaintiff to control the action and keep twenty-five to thirty percent of the recovery, see § 44-9-6(F); § 44-9-7(B). Regardless of the State's decision to intervene, the State may also "elect to pursue [its] claim through any *alternate remedy* available, including an administrative proceeding to determine a *civil money penalty*." Section 44-9-6(H) (emphasis added). This opinion clarifies when FATA entitles a relator to a share of proceeds collected by the State through an alternate remedy, in this case an administrative audit.

{2} A group of relators, Monica Galloway, Shawna Maestas, and Jolene Gonzales (collectively Plaintiffs), contend they have a right to a share of a \$15.6 million recovery collected from Presbyterian Health Plan (PHP) and Presbyterian Insurance Company (PIC) by the New Mexico Office of the Superintendent of Insurance (OSI).

Unlike FATA's intervention provision, the alternate remedy provision does not stipulate a recovery percentage for relators. See § 44-9-6(H). Its terms are more general, acknowledging that when the AG pursues an alternate remedy, the "qui tam plaintiff shall have the *same rights* in [the alternate remedy] proceeding as the qui tam plaintiff would have had if the action had continued" in district court. Section 44-9-6(H) (emphasis added). But FATA offers courts little guidance in distinguishing a relator entitled to an award from one that is not.

{3} The standard approach for determining a relator's right to an award looks for "overlap" between the relator's complaint and the settlement agreement arising from the alternate proceeding. *United States ex rel. Rille v. PricewaterhouseCoopers LLP*, 803 F.3d 368, 373 (8th Cir. 2015) (requiring that "a relator seeking recovery must establish that there exists an overlap between Relator's allegations and the conduct discussed in the settlement agreement" (brackets, internal quotation marks, and citation omitted)). If there is sufficient overlap, the relator is entitled to a share of the proceeds. See *id.* at 374. The central issue here is the degree of overlap required to reach sufficiency.

{4} Plaintiffs' complaint<sup>2</sup> alleged that PHP took unlawful deductions and credits that led to the underpayment of premium taxes for fourteen years from 2000 to 2014. Health insurance companies, like PHP, are required to pay a premium tax based on the gross amounts of premium and policy fees received. NMSA 1978, § 7-40-3(A) (2023) ("The premium tax is imposed at a rate of three and three-thousandths percent of the gross premiums and membership and policy fees received or written by a taxpayer."). An insurer may reduce its total tax payment through deductions and credits. See NMSA 1978, § 7-40-6 (2023) (describing Medical Insurance Pool credits); NMSA 1978, § 59A-6-5(B) (2018) (discussing overpayment refund). Plaintiffs accused PHP of underpaying its premium taxes by abusing both. After investigating Plaintiffs' claims,

<sup>1</sup> Our reference to "State" includes both the New Mexico Attorney General and State agencies such as the New Mexico Office of the Superintendent of Insurance. Where the distinction is important, we reference the entities separately.

<sup>2</sup> Throughout this opinion our reference to Plaintiffs' *complaint* is to the amended complaint.

## ► From the New Mexico Supreme Court

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the AG's office intervened, joining PIC and Presbyterian Network, Inc. (PNI) with PHP as defendants and adding additional claims against PHP. The AG then settled only two years of Plaintiffs' decade-plus allegations and pursued the remaining claims through an OSI administrative proceeding—an audit, the alternate remedy at issue. The audit resulted in a \$15.6 million recovery stemming from PHP and PIC's underpayment of its premium taxes by improperly applying Medical Insurance Pool (MIP) credits. Neither the Plaintiffs' complaint nor the State's intervening complaint mentioned MIP credits.

{5} Plaintiffs moved to recover a percentage share of the proceeds collected from the audit, believing the alternate remedy resulted from their original *qui tam* complaint. The district court denied Plaintiffs' recovery, finding there was insufficient overlap between Plaintiffs' FATA lawsuit and the administrative recovery because Plaintiffs' complaint failed to specifically name MIP credits. The district court's holding relied on *United States ex rel. Bledsoe v. Community Health Systems, Inc.*, 501 F.3d 493 (6th Cir. 2007), and the heightened pleading standard set forth in New Mexico's Rule 1-009(B) NMRA for averments of fraud.<sup>3</sup> Rule 1-009(B) ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity"). The Court of Appeals affirmed. See *Galloway v. N.M. Office of Superintendent of Ins.*, A-1-CA-38974, mem. op. ¶¶ 22, 27 (N.M. Ct. App. July 14, 2022) (nonprecedential).

{6} We disagree that such an exacting pleading standard is appropriate for an overlap analysis. The degree of overlap required by the district court is one of perfect identity. That sort of mirror-image standard is contrary to New Mexico's pleading standards, frustrates the purpose and principles of FATA, and lacks textual support. For these reasons, and others described in this opinion, we forgo entirely the use of a plead-

ing standard to determine a relator's right to an award and instead adopt the material elements test from FATA's first-to-file rule. See § 44-9-5(E). In order to prevent parasitic claims of fraud by opportunistic parties, the False Claims Act, 31 USC §§ 3729-3733 (2024) (FCA), and FATA contain first-to-file provisions that bar subsequent related actions "alleging the same material elements of fraud described in [the] earlier suit, regardless of whether the allegations incorporate somewhat different details." *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1189 (9th Cir. 2001), *overruled on other grounds*, *Stein v. Kaiser Found. Health Plan, Inc.*, 115 F.4th 1244, 1246-47 (9th Cir. 2024). We apply the material elements test in the alternate remedy context to determine if a State's subsequent action or settlement is sufficiently related to a *qui tam* plaintiff's earlier FATA claim to warrant a share of the proceeds for the *qui tam* plaintiff.

{7} While it is important to establish "what" the appropriate standard is for an overlap analysis and "how" to apply it, clarity is needed as to "when" a court applies the material elements test. We hold that the material elements test is not a default requirement whenever the State pursues an alternate remedy. It is not required when the government litigates the claim through intervention. As we discuss, when the alternate remedy is merely a continuation of the State's intervention, the relator's rights under the alternate remedy provision have already been determined by the intervention statute. See § 44-9-7(A) (providing that where the State intervenes and proceeds with an action brought by a relator, the relator shall receive ten to twenty-five percent of the proceeds depending on the nature of the information provided and the relator's level of contribution).

{8} Although the district court makes the final determination, the record demonstrates that the State's alternate remedy and subsequent recovery from PHP is merely

a continuation of Plaintiffs' original FATA action. The district court will need to conduct an overlap analysis using the material elements test to determine whether relators are entitled to a share of the recovery. Therefore, we vacate the Court of Appeals memorandum opinion and remand to the district court for findings consistent with this opinion.<sup>4</sup>

### A. Background

{9} *Qui tam* actions date back to our nation's earliest days at the First Congress. See "[E]numeration" Act of Mar. 1, 1790, 1st Cong. Sess. II, ch. 2, § 3, 1 Stat. 101, 102 (enforcing marshals' misfeasance in census-taking); "[R]egulation of Seamen" Act of July 20, 1790, 1st Cong. Sess. II, ch. 29, § 1, 1 Stat. 131, 131 (allowing for *qui tam* actions against ship commanders who fail to contract with the seamen). They have played an enforcement role in contexts ranging from the prevention of slave trafficking with foreign nations to the seizing of illegally imported liquor. See "Slave Trade" Act of Mar. 22, 1794, 3rd Cong. Sess. I, ch. 11, §§ 2, 4, 1 Stat. 347, 349 & n.(a) (illustrating an early informer statute that provided a bounty to public, nongovernmental informers for the value of the seized ship); "Distilled Spirits" Act of Mar. 3, 1791, 1st Cong. Sess. III, ch. 15, § 44, 1 Stat. 199, 209. *Qui tam* actions take their modern form in statutes like the FCA. Originally enacted during the Civil War, the Northern armies found themselves short-handed of supplies because of "gross abuses" and "stupendous frauds" by defense contractors. H.R. Rep. No. 2, 37th Cong., 2d Sess., 71, 99 (1861). President Lincoln called upon Congress to pass the FCA to stem the bilking of the federal fisc. See 132 Cong. Rec. 22339 (1986) (statement of Rep. Howard Berman). The FCA turned the general public into "a posse of ad hoc deputies to uncover and prosecute frauds against the government" in exchange for a share of the recovered proceeds. *United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 184 (5th Cir. 2009) (emphasis, internal quotation

<sup>3</sup> Similar to the facts of this case, *Bledsoe* was appealed twice to the Sixth Circuit. Some courts refer to the cases as *Bledsoe I* and *Bledsoe II*. Because we are focused on *Bledsoe II*, our reference to "Bledsoe" is to the heightened pleading standard applied in *Bledsoe II*.

<sup>4</sup> To the extent the district court finds overlap for claims against either PIC or PHP, the relators' share was set at twenty percent of total recovery in the settlement agreement.



## ► From the New Mexico Supreme Court

marks, and citation omitted).

{10} Well over a hundred years after FCA enactment, the New Mexico Legislature adopted a similar statute. FATA, in part, prohibits a person from making “a false, misleading or fraudulent record to conceal, avoid or decrease an obligation to pay . . . the state or a political subdivision.” Section 44-9-3(A)(4). Like its federal counterpart, FATA vests private parties with standing to bring actions on behalf of the State in exchange for a portion of the proceeds. *See generally* § 44-9-5.

### 1. Plaintiffs’ complaint

{11} Plaintiffs, as employees of the OSI, believed that PHP had underpaid premium taxes through unlawful deductions and improper credits. After exhausting administrative remedies,<sup>5</sup> Plaintiffs filed a FATA lawsuit against PHP alleging a comprehensive scheme of filing fraudulent tax returns based, in part, on general and specific allegations of unlawfully claimed deductions and improper credits to reduce PHP’s premium tax liability. The complaint accused PHP of at least \$55 million in unlawful deductions and at least \$40 million in improper credits totaling more than \$95 million owed to the State. As mandated by FATA, Plaintiffs also demanded treble damages, making Plaintiffs’ claim potentially worth \$285 million. *See* § 44-9-3(C)(1). Pertinent to this case, only three types of credits reduce premium tax liability: MIP credits, Health Alliance credits, and overpayment credits. None of Plaintiffs’ allegations referenced any of the credits by type, including MIP credits.

### 2. Attorney General investigation and strategy memo

{12} Once Plaintiffs filed their FATA suit, the AG had sixty days to investigate and notify the court of its intent to intervene or allow Plaintiffs to proceed with the action. *See* § 44-9-5(D). The AG extended the sixty-day period and investigated Plaintiffs’ claims for almost a year. Two key events transpired during the investigation.

{13} First, the AG disclosed a copy of the lawsuit to OSI while the case was still under seal. The Office of the State Auditor and OSI

then hired an independent auditor, Examination Resources (ER), to “[r]ecalculate premium tax liability, payments received, and resulting net over or underpayments . . . for each year from 2003 to 2016.” OSI opened two administrative collection dockets, one for PHP and one for PIC. During the course of the audit, Plaintiffs gave direct assistance to ER, providing documents, analysis, and deep reviews of PHP’s tax history. This audit—and the subsequent recovery—comprise the alternate remedy that is the focus of this appeal.

{14} Second, during the investigation, and prior to intervening, the AG’s office circulated a strategy memo that discussed different FATA provisions the AG could employ to limit Plaintiffs’ recovery. The memo noted that “we can either wait to [limit recovery when] the case generates proceeds, or we can approach the relators prior to intervention and attempt to bind them to a particular share.” The option of not intervening and pursuing an alternate remedy was also discussed, noting that “[the AG’s] alternate proceeding would *closely mirror the qui tam* action, [so] it will be difficult for us to articulate to the Court our reasons for initiating separate litigation” (emphasis added).

### 3. Intervention and amended complaint

{15} Three months after distributing the strategy memo, the AG intervened. Notably, the AG did not move to narrow or dismiss Plaintiffs’ FATA claim or in any way argue that the Plaintiffs’ complaint lacked specificity in its pleading. *See, e.g.,* § 44-9-6(B) (allowing the State to seek dismissal for good cause). Rather, the AG’s complaint reasserted Plaintiffs’ FATA claim, joined two additional defendants: Presbyterian Insurance Company, Inc. (PIC) and Presbyterian Network, Inc. (PNI),<sup>6</sup> and alleged five additional statutory and common-law claims against PHP. Repeating many of Plaintiffs’ allegations, the AG detailed a “15+ year fraudulent enterprise to avoid responsibility for tens of millions of dollars to which New Mexico taxpayers are entitled” and

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demanding inter alia treble damages as allowed by FATA. The AG’s complaint did not specifically reference MIP credits or allege fraud related to MIP credits.

### 4. Settlement

{16} A few months after the State intervened, the AG’s office began settlement negotiations with Plaintiffs and PHP. The settlement was two-fold. First, the AG settled the FATA lawsuit with PHP. While Plaintiffs’ action alleged improper deductions and credits spanning over a decade from 2000 to 2014, the AG limited the settlement to two years, 2003 and 2004, of unlawful “Medicaid Premium Tax and Premium Tax Credits” claimed by PHP. PHP agreed to pay over fifteen million dollars, of which Plaintiffs received a relator share of twenty percent. The agreement released PHP of liability for all additional claims arising out of the FATA suit except for “the findings contained in or related [to] the [ER] Report,” which OSI remained free to pursue in the administrative proceedings against PHP and PIC. Second, the AG entered into a separate agreement with Plaintiffs that provided as follows:

The pursuit of recoveries by OSI related to the ER Report or related findings by the Office of the State Auditor, which is hereby delegated by the AG to OSI, is *deemed an alternate remedy* as defined in 44-9-6(H), and encompass[es] the Relators’ right to a share of the proceeds under 44-9-7(A).

(Emphasis added.)

{17} A few months after executing the settlement agreements, the audit concluded, and OSI issued findings that PHP and PIC had “misapplied” MIP credits from 2003 through 2016, resulting in a net underpayment of premium taxes by PHP of approximately \$14.4 million and by PIC of \$1.2 million. OSI also concluded that PHP underpaid \$14.4 million in taxes based on erroneously applied overpayment credits and erroneous political subdivisions but found that the FATA settlement satisfied this amount. OSI collected \$15.6 million

<sup>5</sup> Plaintiffs reported the fraud to the OSI, the FBI, the New Mexico Attorney General, and the Legislative Finance Committee, all of whom decided not to take action.

<sup>6</sup> PNI owns the common stock of PHP and PIC.

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from PHP and PIC for the misapplied MIP credits and placed twenty percent in a suspense fund, presumably in anticipation of Plaintiffs' demand to obtain a share of the OSI recovery.<sup>7</sup>

### 5. Plaintiffs' attempted recovery of alternate remedy proceeds

{18} Plaintiffs brought a declaratory judgment action against OSI seeking a twenty percent *qui tam* share of the \$15.6 million recovered from the alternate remedy proceeding. The district court denied Plaintiffs' motion, relying on *Bledsoe*'s requirement that "[p]leading an actual false claim with particularity is an indispensable element of a complaint that alleges a[n] FCA violation." *Bledsoe*, 501 F.3d at 504. Because "Plaintiffs' FATA Lawsuit made no claim related to MIP credits and did not name either PNI or PIC as a defendant," the district court found the complaint lacked the required specificity to allow recovery of proceeds from the alternate remedy.

{19} Plaintiffs appealed, and the Court of Appeals initially remanded to the district court for additional findings and conclusions to address, in part, whether there was overlap "between Plaintiffs' *qui tam* lawsuit and the administrative proceedings [and] to what extent that overlap informed the district court's relevant conclusions of law."<sup>8</sup> Reasserting Rule 1-009(B)'s heightened pleading standard, the district court found that "[t]here was no overlap between the FATA Lawsuit and [the OSI proceedings because] Plaintiffs failed to bring a claim for MIP credits against PHP, PIC and PNI."

{20} With the aid of the additional findings, a divided Court of Appeals panel affirmed the district court's denial of Plaintiffs' claim for a share of the OSI recovery. The Court viewed the "narrow question" as whether the OSI recovery "qualifies as proceeds of a claim brought by Plaintiffs in their *qui tam* action." *Galloway*, A-1-CA-38974, mem. op. ¶ 17. The majority held that sufficient evidence supported the district court's finding of no overlap, in part because neither "Medical Insurance Pool"

nor the acronym 'MIP' appears in Plaintiffs' amended *qui tam* complaint." *Id.* ¶ 22. The Court did not directly cite *Bledsoe*. However, by affirming the district court based primarily on the absence of a claim related to MIP credits, the Court of Appeals imported the district court's reliance on *Bledsoe* into its analysis.

{21} The dissent disagreed with the majority on three distinct grounds. First, the dissent took issue with the majority's implicit acceptance of *Bledsoe*. See *Galloway*, A-1-CA-38974, mem. op. ¶ 29 (Henderson, J., concurring in part and dissenting in part). The dissent noted that *Bledsoe*'s exacting pleading rule is unusual even among federal circuit courts. *Id.* ¶ 32 (citing cases) (Henderson, J., concurring in part and dissenting in part). Second, the dissent observed the discontinuity in using a pleading standard that tests the sufficiency of a complaint at the initiation of an action to determine an award at its conclusion and "warned of the perverse incentive for the government [to use *Bledsoe*] to strip *qui tam* plaintiffs of earned proceeds." *Id.* (citing *Roberts v. Accenture, LLP*, 707 F.3d 1011, 1017-18 (8th Cir. 2013)). Finally, the dissent argued that adopting *Bledsoe*'s strict standard runs afoul of the spirit of FATA "and the incentive for individuals to bring fraud to light." *Id.* The dissent would have remanded for further findings and conclusions under a less demanding standard. See *id.* ¶¶ 29, 31, 33.

### II. DISCUSSION

{22} At first glance, this appeal presents a single question: what pleading standard is appropriate for an overlap analysis when the State pursues an alternate remedy? We agree with Plaintiffs that *Bledsoe*'s strict Federal Rule of Civil Procedure 9(b) (hereinafter Rule 9(b)) standard applied by the district court and implicitly adopted by the Court of Appeals is contrary to New Mexico's pleading provisions and the purpose of FATA. However, two important questions remain unresolved. First, is a pleading standard the correct test to determine whether a relator should receive a share of the recovery? And

second, must courts always apply an overlap test whenever there is an alternate remedy? We answer "no" to both questions. As to the first question, we decide instead to adopt the principles of the material elements test to determine a relator's right to an award. As to the second question, we determine that overlap analysis does not apply where claims under an alternate remedy proceeding are found to be continuous from the relator's FATA complaint.

{23} Our conclusion keeps one eye on the text of FATA and the other on its intent and purpose. As we have stated before, FATA attempts to achieve the golden mean between limiting "parasitic" *qui tam* plaintiffs while also providing an incentive for meritorious *qui tam* plaintiffs to pursue their claims." *State ex rel. Foy v. Austin Cap. Mgmt., Ltd.*, 2015-NMSC-025, ¶ 17, 355 P.3d 1; *Roberts*, 707 F.3d at 1018 ("A primary purpose of the FCA is to encourage whistleblowers to come forward with allegations of fraud perpetrated upon the government."). Like the FCA, FATA "encourage[s] legitimate relators to file *quickly* by protecting the spoils of the first to bring a claim" through provisions like the statutory first-to-file rules. *In re Nat. Gas Royalties Qui Tam Litig.*, 566 F.3d 956, 961 (10th Cir. 2009) (emphasis added); Section 44-9-5(E) ("[N]o person other than the attorney general . . . may intervene or bring a related action based on the [first-to-file FATA action]."). By "spur[ring] the prompt reporting of fraud," the FCA (and FATA) place "a premium on the timeliest complaints over the most detailed." Brian D. Howe, *Conflicting Requirements of Notice: The Incorporation of Rule 9(b) into the [FCA]'s First-to-File Bar*, 113 Mich. L. Rev. 559, 582 (2015) (internal quotation marks omitted) (quoting *United States ex rel. Branch Consultants v. Allstate Ins. Co.*, 560 F.3d 371, 377 (5th Cir. 2009)). The judicial tools employed to determine a relator's entitlement to recovery must conform with FATA's objectives.

{24} *Bledsoe*, relied on by the district court to deny Plaintiffs' award, both undermines

<sup>7</sup> Notably, the call for the audit does not appear to specifically reference MIP credits or any of the premium tax credits by name.

<sup>8</sup> The Court of Appeals also remanded two additional issues regarding the evidentiary basis of the district court's decision and the interplay between the amounts recovered by the OSI and FATA proceedings. However, neither issue is before this Court, so they remain unaddressed in this opinion.

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FATA's objective to promote timely claims and encourages, rather than limits, parasitic claims. Parasitic claims may arise not only from opportunistic third-party relators but also from the State. FATA's framework implies a cooperative relationship where relators assist the government in rooting out fraud in exchange for a reward. However, this mutually beneficial partnership belies the often adversarial posture between the State and *qui tam* plaintiffs. Adopting *Bledsoe*'s mirror-image standard, where a relator's complaint must specifically mention each fraud, would allow the State to intervene and then, by pursuing an alternate remedy, could easily dissociate the relator from any award based on subtle nonidentical facts. *Rille*, 803 F.3d at 373-74 ("[P]roceeds of 'the claim must extend to proceeds of a settlement in which the conduct contemplated in the settlement agreement . . . overlap[s] with the conduct alleged in [the] Relator's complaint.' Otherwise, the government could deprive the relator of his right to recover simply by recasting the same or similar factual allegations in a new claim or by pursuing the substance of the relator's claim in an alternate proceeding." (second and third alterations and omission in original) (citation omitted)). *Bledsoe*'s mirror-image pleading standard would create disparate outcomes depending on the State's position or alternate remedy to the relator's claim. The path chosen by the State should not dictate or limit a *qui tam* plaintiff's ability to recover a share of an award. A relator should be afforded the same access to potential recovery—that is to say, the relator should have the *same rights* to recovery—regardless of whether the State intervenes, the State pursues an alternate remedy, or the relator retains control of the action (albeit the percentage shares may differ). Allowing otherwise would frustrate worthy *qui tam* plaintiffs from pursuing claims. Our adoption of the material elements test attempts to balance these concerns.

{25} We are, therefore, compelled to reject *Bledsoe*'s hypertechnical application of Rule 9(b). In the next section, we discuss why an exacting pleading standard is inappropriate to appraise the *sufficiency* of a complaint or to perform an *overlap* analysis. While this case does not directly impli-

cate the adequacy of Plaintiffs' complaint, we address both issues—sufficiency and overlap—because of how the district court applied *Bledsoe*'s pleading standard to determine the award. We also conclude, more generally, that a pleading standard used to assess the sufficiency of the complaint at the start of an action is inconsistent with an overlap analysis that determines a relator's reward at the conclusion of the action. The material elements test addresses these deficiencies, balancing the informational disparity between complaint and settlement while ensuring that only deserving relators share in the recovery. Finally, we hold that claims considered under alternate remedy proceedings are not de facto subject to an overlap analysis. Rather, only those claims that arise under the alternate remedy provision are subject to further scrutiny.

### A. *Bledsoe* Is Not an Appropriate Test for the Sufficiency of a Complaint or for Overlap

{26} Because we are called upon to interpret FATA and our rules of civil procedure for pleading fraud, our review is de novo. *Chatterjee v. King*, 2012-NMSC-019, ¶ 11, 280 P.3d 283 ("Statutory interpretation is an issue of law, which we review de novo." (internal quotation marks and citation omitted)); *Becenti v. Becenti*, 2004-NMCA-091, ¶ 6, 136 N.M. 124, 94 P.3d 867 ("[W]hen called upon to apply and interpret rules of civil procedure, we review these questions de novo."). "We find the cases construing FATA's federal analogue, the [FCA], helpful in understanding the context and purpose of FATA." *Foy*, 2015-NMSC-025, ¶ 16.

#### 1. *Bledsoe* tests the sufficiency of a complaint, not overlap

{27} We first note that we do not read *Bledsoe* as articulating or applying a test for *overlap* but as a post hoc examination of the sufficiency of a relator's pleadings. In *Bledsoe*, the Sixth Circuit examined whether a relator was due a share of proceeds from an alternate remedy proceeding after the government declined to intervene in the FCA claim. *Bledsoe*, 501 F.3d at 497. The *Bledsoe* Court, however, never reached the overlap inquiry. Rather, the court scrutinized the relator's amended complaint "paragraph-by-paragraph" to determine whether each allegation of fraudulent conduct was pled

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with sufficient particularity. *Id.* at 509, 512-15. Except for a single allegation of fraud relating to a particular patient, *id.* at 514-15, the court held that the relator had not sufficiently pled a valid *qui tam* claim, *id.* at 522. Because the relevant claims were not viable, "there [was] no prospect for relators to recover on their claims," and so overlap was not possible. *Id.* at 522.

{28} Here, the district court merged *Bledsoe*'s pleading standard with an overlap analysis. The district court quoted *Bledsoe*'s holding "that pleading an actual false claim with particularity is an indispensable element of a complaint that alleges a[n] FCA violation in compliance with Rule 9(b)." *Bledsoe*, 501 F.3d at 504. The district court then found, "There was no overlap between the FATA Lawsuit and [the audit findings because] Plaintiffs failed to bring a claim for MIP credits against PHP, PIC, and PNI."

{29} We admit that the district court's ultimate conclusion is unclear. One reading is that the court found the complaint facially insufficient; that is, in the district court's view in reliance on *Bledsoe*, because there was no valid *qui tam* claim, there was no entitlement to a reward. On the other hand, the district court may have concluded that Plaintiffs' complaint was not sufficient to allege a claim of fraud related to MIP credits, thus barring recovery. However, under either application—sufficiency or overlap—*Bledsoe*'s heightened scrutiny reveals several immediate flaws.

#### 2. *Bledsoe*'s heightened pleading standard

{30} As a sufficiency benchmark, *Bledsoe*'s standard is unsupported by the history of Rule 9(b), conflicts with other federal jurisdictions interpreting FCA claims, is wholly inconsistent with New Mexico pleading norms under Rule 1-009(B), and ignores stark differences between common law fraud claims and FATA.

{31} The history underlying Rule 9(b) is scant, and what is available does not support *Bledsoe*'s strict approach. The Advisory Committee Notes to the original 1937 rules indicate only that Rule 9(b) was drawn from the English Rules under the Judicature Act. See Rule 9(b) advisory comm. notes (1937 adoption). In the United States, the nineteenth-century Field Codes, precursor



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to the Rules of Civil Procedure, did not mandate a particularity requirement for pleading fraud. Christopher M. Fairman, *An Invitation to the Rulemakers—Strike Rule 9(b)*, 38 U.C. Davis L. Rev. 281, 284 (2004). Historians assume the rule is an artifact of the merger of the courts of law and equity, but justification for the rule's adoption is unclear. See Ni Qian, *Necessary Evils: How to Stop Worrying and Love Qui Tam*, 2013 Colum. Bus. L. Rev. 594, 614 (2013). Even the Honorable Charles E. Clark, one of the chief architects of the Federal Rules, said that Rule 9(b) “probably states only what courts would do anyhow and may not be considered absolutely essential.” Hon. Charles E. Clark, *Simplified Pleading*, 2 F.R.D. 456, 463-64 (1943).

{32} Given the absence of history and commentary, the justifications for Rule 9(b)'s particularity standard are judicially contrived. Chief among those is the twofold explanation that a heightened pleading standard “afford[s] a defendant fair notice of the plaintiff's claim and . . . safeguards [the] defendant's reputation and goodwill from improvident charges of wrongdoing.” *Ross v. Bolton*, 904 F.2d 819, 823 (2d Cir. 1990) (emphasis added). Of course, it remains unclear how standard notice pleading requirements fail to put defendants on notice when the subject matter is fraud. Neither is it clear the basis upon which fraud against the government warrants a special badge of reputational ignominy when compared to other actions in intentional tort or professional malpractice where standard pleading requirements are acceptable. See, e.g., *Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 8, 335 P.3d 1243 (discussing a medical malpractice claim under a Rule 1-008 NMRA notice pleading standard); *Hefferman v. Bass*, 467 F.3d 596, 600 (7th Cir. 2006) (analyzing a legal malpractice claim under the federal notice pleading standard, Federal Rule of Civil Procedure 8 (hereinafter Rule 8)).

{33} Against this backdrop, we note that the rigid pleading standard set forth in

*Bledsoe* has been rejected in numerous federal jurisdictions interpreting Rule 9(b) in FCA claims. *Foglia v. Renal Ventures Mgmt., LLC*, 754 F.3d 153, 156 (3d Cir. 2014) (noting that several jurisdictions have held that a “rigid pleading standard . . . is unsupported by Rule 9(b) and undermines the FCA's effectiveness as a tool to combat fraud against the United States” (internal quotation marks and citation omitted)); *Galloway*, A-1-CA-38974, mem. op. ¶ 32 (Henderson, J., concurring in part and dissenting in part) (noting that *Bledsoe* is unusual among federal courts applying Rule 9(b) and cataloging cases in support). We agree with those courts that read Rule 9(b) in conjunction with Rule 8(a), which requires “a short and plain statement of the claim.” See *Grubbs*, 565 F.3d at 185-86 (“Rule 9(b) supplements but does not supplant Rule 8(a)'s notice pleading.”); *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010) (rejecting *Bledsoe*'s strict approach to pleading in FCA claims).

{34} *Bledsoe*'s reading of Rule 9(b) is also inconsistent with our interpretation of New Mexico's Rule 1-009(B). Throughout the past eighty-five years, “this Court has maintained our state's notice pleading requirements, emphasizing our policy of avoiding insistence on hypertechnical form and exacting language.” *Zamora*, 2014-NMSC-035, ¶ 10; *Kysar v. BP Am. Prod. Co.*, 2012-NMCA-036, ¶ 28, 273 P.3d 867 (“[O]ur rules merely require pleadings to contain a short and plain statement of the claim or defense, and each pleading averment to be ‘simple, concise and direct,’ even when pleading with particularity.” (citation omitted)). Our notice pleading standard extends to matters that must be pled with particularity under Rule 1-009(B). *Robertson v. Carmel Builders Real Est.*, 2004-NMCA-056, ¶ 34, 135 N.M. 641, 92 P.3d 653 (“The evidentiary details of a claim of fraud need not be alleged.”). Rule 1-009(B) should not be read to abrogate the efficiency and simplicity of notice pleading. Rather, the “rule is context specific and flexible and must remain so to achieve the

remedial purpose” of FATA. *Grubbs*, 565 F.3d at 190 (discussing Rule 9(b) in the context of the FCA).

{35} Finally, the stark differences between the statutory requirements of common law fraud and FATA countenance New Mexico's flexible approach to pleading requirements. An action brought under common law fraud requires:

[(1)] that a representation was made as a statement of fact which was untrue and known to be untrue by the party making it, or else recklessly made; [(2)] that it was made with intent to deceive and for the purpose of inducing the other party to act upon it; and [(3)] that the other party did in fact rely on it and [(4)] was induced thereby to act to his injury or damage.

*Sauter v. St. Michael's Coll.*, 1962-NMSC-107, ¶ 9, 70 N.M. 380, 374 P.2d 134 (emphasis added). Placing *Fraud* in the title of FATA (*Fraud* Against Taxpayers Act) does not immediately put FATA on par with its common law namesake that formed the backdrop of Rule 9(b)'s heightened pleading standard. Unlike a common law fraud claim, a claim under FATA does not require a showing of specific intent, reliance, or injury. FATA's basic requirement for a violation is that a party “knowingly present . . . a false or fraudulent claim.” See § 44-9-3(A)(1). FATA expressly does not require that a defendant have a specific intent to defraud. Section 44-9-3(B) (“Proof of specific intent to defraud is not required for a violation of Subsection A of this section.”). Further, because a breach of FATA's terms occurs at the presentment of the claim, there is no requirement of reliance or a showing that the State suffered an injury. Merely showing that the violation occurred suffices to recover a monetary penalty. Section 44-9-3(C)(2) (establishing a “civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation [of FATA]” (emphasis added)).<sup>9</sup> To the extent that

<sup>9</sup> Even when FATA makes it a violation to “conspire to defraud the [S]tate,” the violation occurs once a person “obtain[s] approval . . . on a false or fraudulent claim,” without the requirement that the State paid the claim. Section 44-9-3(A)(3). Similarly, it is also a breach of FATA's terms to “make” a record for the purpose of obtaining approval or supporting a fraudulent claim. Section 44-9-3(A)(2) (making it a violation to “knowingly make . . . a false, misleading or fraudulent record . . . to obtain or support the approval of . . . a false or fraudulent claim” (emphasis added)).

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pleading a FATA claim is an action based in “fraud,” it is clearly distinct from our traditional understanding of common law fraud. *Grubbs*, 565 F.3d at 189 (“[A] claim under the False Claims Act and a claim under common law or securities fraud are not on the same plane.”).

### 3. *Bledsoe* is not an appropriate overlap test

{36} We also decline to adopt *Bledsoe*’s pleading standard to determine a relator’s eligibility for an award. As a tool for conducting an overlap analysis, *Bledsoe*’s standard contradicts the plain language of FATA and undermines FATA’s goal of encouraging whistleblowers by allowing the State to unfairly limit recovery.

{37} In support of the district court’s finding of no overlap, the Court of Appeals advanced a statutory construction argument that when the State “proceeds with an action brought by a qui tam plaintiff,” the relator’s share of the recovery is limited to the action “as ‘brought by’ the qui tam plaintiff.” *Galloway*, A-1-CA-38974, mem. op. ¶ 17 (first emphasis in original) (quoting § 44-9-7(A)). The Court of Appeals emphatically concluded that recovery “cannot encompass more” than what is in the complaint. *Id.* But nothing in the statute suggests that a complaint must be so narrowly construed. {38} On the contrary, the Legislature noted that when the State proceeds with the action, the relator shall receive a portion of the recovery. Section 44-9-7(A). The State proceeds with the action only after

“diligently investigat[ing]” the relator’s allegations. Section 44-9-4(A). If the State adds related claims or expands upon the initial complaint, FATA provides for that recovery. There is no language expressing the intent of the Legislature to restrict the relator’s proceeds to a preinvestigatory or pre-alternate-remedy state.<sup>10</sup> The retroactive application of *Bledsoe* ignores the realities of investigation and discovery inherent in trial or administrative proceedings where additional and related violations are uncovered. It also overlooks the informational asymmetry faced by many relators, where evidence is withheld or unobtainable until the State investigates or a court applies the powers of discovery. *United States ex rel. Williams v. Martin-Baker Aircraft Co.*, 389 F.3d 1251, 1258 (D.C. Cir. 2004) (recognizing that plaintiffs may be unable to meet the particularity standard of Rule 9(b) because of lack of access to documents under the defendant’s control).<sup>11</sup>

{39} Further, if the State forgoes intervention, the relator “shall have the right to conduct the action.” Section 44-9-6(F). The relator’s right to proceed means they may develop the action, including amending their complaint as necessary to conform with the evidence. See Rule 1-015(B) NMRA. *Bledsoe* frustrates a relator’s right to participate in the natural development of a proceeding when an alternate remedy is pursued because the analysis is strictly confined to the complaint. Importantly, it also means that a relator who continues

independently seemingly has greater rights to recovery than when an overlap analysis is applied, frustrating FATA’s declaration that a relator should have the same rights in an alternate remedy proceeding as they would if the action continued in district court. Section 44-9-6(H).

{40} Accepting *Bledsoe* would also encourage gamesmanship by the State. By simultaneously limiting recovery to the complaint “as ‘brought by’ the qui tam plaintiff” and then, at the conclusion of an alternate remedy proceeding, requiring an exacting description of the fraud (in this case MIP credits), deserving plaintiffs may be easily stripped of their reward. *Galloway*, A-1-CA-38974, mem. op. ¶ 17 (emphasis added) (quoting § 44-9-7(A)). As already discussed, New Mexico pleading standards are more flexible than the hypertechnical approach in *Bledsoe*. Thus, a FATA complaint sufficiently pled under Rule 1-009(B) at the beginning of a proceeding may ultimately be insufficient to survive an overlap analysis at its conclusion. The State, operating with the benefit of investigation and discovery, need only premise settlement on a claim technically distinct from the plaintiff’s complaint to preclude recovery. To allow such gamesmanship is to encourage it.<sup>12</sup>

{41} Requiring perfect overlap also hinders the prompt reporting of fraud. We read provisions like a first-to-file rule that bars subsequent related actions as incentivizing (and preferring) the timely filing of com-

<sup>10</sup> The Court of Appeals quotes the Eighth Circuit’s discussion in *Rille* that recovery under the FCA is limited to “the proceeds of the settlement of the claim brought by the [qui tam plaintiffs], and only that claim.” *Galloway*, A-1-CA-38974, mem. op. ¶ 24 (quoting *Rille*, 803 F.3d at 374). The *Rille* Court placed great weight on the FCA’s use of “settlement of the claim,” reasoning that reference to the claim expressed legislative intent to limit a relator’s share of a settlement to the claim as initially brought in the complaint. *Rille*, 803 F.3d at 372 (emphasis added); see also 31 U.S. § 3730(d)(1) (2024). Whatever persuasive merit this argument may carry is irrelevant here. When drafting FATA, the Legislature did not include language that limited the settlement to a claim, providing relators with an award for the entirety “of the proceeds of the action or settlement.” Section 44-9-7(A)(1). We find these distinctions indicative of a legislative intent to prefer recovery and thereby encourage relators to bring claims to the government’s attention.

<sup>11</sup> Withholding of evidence is precisely what happened to Plaintiffs. PHP refused to submit the requested documentation as part of the relators’ initial audit on behalf of OSI.

<sup>12</sup> We also note that applying a pleading standard at the conclusion of the case denies the relator the opportunity to cure any pleading deficiency. *Roberts*, 707 F.3d at 1018 (“If the government is allowed to contend at the conclusion of a case that a relator’s initial allegations were insufficient, even though the government implicitly acknowledged the legal sufficiency of the pleadings by choosing to intervene, the relator no longer has the opportunity to cure the deficiency. We find nothing in the FCA’s statutory text to support this type of post hoc use of Rule 9(b) to deny a relator the right to a share of the settlement proceeds in an action in which the government intervenes.”).

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plaints. *Branch Consultants*, 560 F.3d at 377 (noting that the first-to-file rule is meant to “spur the prompt reporting of fraud” (internal quotation marks and citation omitted)). A relator concerned that a technical detail will preclude recovery may delay or avoid reporting the fraud at all, further hampering FATA’s objectives.

{42} Thus, we find no reason to apply *Bledsoe*’s standard to determine overlap. Applying an overlap standard at the conclusion of a proceeding that demands a greater level of specificity in pleading than that required to survive a sufficiency challenge is antithetical to encouraging whistleblower claims. This Court declines to support an approach that would allow the government to simply push a matter into an alternate proceeding and preclude a relator’s fair share based on a post hoc hypertechnical review.

### **B. The Standard for Assessing Overlap**

{43} Our concerns with *Bledsoe* identify important criteria for an overlap analysis. An overlap analysis must ensure that the State’s chosen path of pursuing an alternate remedy does not inherently limit the possibility of recovery for a deserving relator. The appropriate test for overlap must accomplish this goal, all while limiting unworthy *qui tam* plaintiffs from taking part in an award. The standard for determining a relator’s award must encourage the prompt reporting of claims while acknowledging the time and informational constraints inhered in filing a *qui tam* action. The test for overlap must capture the natural progression of an action, where parties gain additional information after the initiation of a suit. And importantly, it must also be fair.

{44} We think any heightened pleading standard, even one consistent with New Mexico’s flexible approach, will frustrate these goals. First, the policy objectives of a pleading standard are mismatched with those of an overlap analysis. Fundamentally, Rule 1-009(B) concerns an adversarial relationship where one party is alleging that the other has committed fraud. Rule 1-009(B) functions as a reputational safeguard that gives notice of the specific fraudulent activity so the party can prepare a responsive pleading. In contrast, the relationship be-

tween the State and relator, at least ideally, is one that is mutually beneficial to both parties, where the relator informs the State of fraudulent behavior and then recovers a share of the returns. Thus, reputational justifications for Rule 1-009(B) are inapplicable in an overlap analysis; the State is not suffering reputational harm, nor is it accused of fraudulent behavior. Quite the opposite, the State is the defrauded party.

{45} These disparate objectives counsel different scopes of inquiry. A pleading standard, by its nature, concentrates on the adequacy of the complaint, and only the complaint, at the initiation of an action. It does not connect the dots between the complaint and the ultimate settlement because the action has just initiated. This is a crucial flaw in an overlap analysis where the central question is whether the relator’s FATA action and the alternate remedy are sufficiently related to warrant a relator’s recovery. The answer may often reside in the complaint, but it may also come through required disclosures, the State’s investigation, or later-acquired evidence. Section 44-9-5(C) (requiring that the *qui tam* plaintiff provide a written disclosure of material evidence and information). An overlap analysis should be broad enough to consider this information but narrow enough to prevent windfalls for unworthy relators.

{46} We, therefore, adopt the material elements test from the first-to-file rule and adapt it to assessing a relator’s eligibility for a share of recovery. 31 USC § 3730(b)(5) (2024) (“[N]o person other than the Government may intervene or bring a related [FCA] action based on the facts underlying the pending action.”); see § 44-9-5(E) (describing New Mexico’s version of the first-to-file rule). The first-to-file rule prevents parasitic claims by barring subsequent *related actions* when the first complaint “provides the government sufficient information to pursue an investigation into the allegedly fraudulent practices.” *Roberts*, 707 F.3d at 1018 (internal quotation marks and citation omitted). The material elements test balances the informational asymmetry between filing a complaint and settlement

and ensures the prompt reporting of claims while also preventing successive opportunistic actions.<sup>13</sup> Of course, our application does not bar recovery by the State as would occur to a third-party under the first-to-file rule. As adapted to an overlap analysis, a relator is entitled to a share of the proceeds if their FATA action put the government on notice of the related frauds uncovered during the alternate remedy proceeding. *United States ex rel. Ven-A-Care of the Fla. Keys, Inc. v. Baxter Healthcare Corp.*, 772 F.3d 932, 937-38 (1st Cir. 2014) (“[T]he first-to-file rule requires that we check to see whether the complaint in the first *qui tam* suit provided enough detail to ensure that the government knows the essential facts of a fraudulent scheme—for once the government knows that much, it has enough information to discover related frauds.” (internal quotation marks and citation omitted)).

{47} This section will first articulate the material elements test as applied to an overlap analysis. We then proceed to describe those situations requiring an overlap analysis. If an alternate remedy is merely a continuation of an intervention, we have no reason to create an additional extra-textual obstacle to a relator’s recovery. While we remand to the district court for further consideration, we believe the record in this case shows that, in the matter of PHP, the alternate remedy was merely an extension of the intervention. Finally, in the event the district court finds that the alternate remedy was not part of the intervention proceedings, we conclude by highlighting factual elements important in the overlap analysis.

### **1. First-to-file rule applied to overlap**

{48} When a *qui tam* complaint is filed under the FCA or FATA, no person other than the attorney general “may intervene or bring a *related action based on the facts underlying the pending action*.” See 31 U.S.C. § 3730(b)(5) (2024); § 44-9-5(E) (emphasis added). The first-to-file rule “functions both to eliminate parasitic plaintiffs who piggyback off the claims of a prior relator, and to encourage legitimate relators to file quickly by protecting the spoils of the first to bring a claim.” *Foy*, 2015-NMSC-025, ¶ 17 (citation omitted). The “first-to-file”

<sup>13</sup> New Mexico has not adopted a formal test for FATA’s first-to-file rule, so we rely on federal decisions for guidance.



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provision intentionally creates a race to the courthouse. When a later *qui tam* plaintiff files a similar claim, a court must decide whether the subsequent filing is *related* to the initial claim and therefore barred by the earlier suit, or if the new action pleads a sufficiently different fraud such that it may proceed on its own.

{49} Early on, federal courts were asked to interpret the first-to-file provision narrowly, barring only those later-filed claims where the alleged facts are identical to the first-filed *qui tam* complaint. *United States ex rel. LaCorte v. SmithKline Beecham Clinical Laboratories, Inc.*, 149 F.3d 227, 232 (3d Cir. 1998). This would have allowed multiple relators to take a share of the proceeds whenever the subsequent relator pled slightly different details. This technical approach mimics the application of *Bledsoe* in an overlap inquiry. Courts uniformly dismissed this approach as antithetical to the legislative intent of the FCA because the risk of piggyback claims would diminish the incentive for relators to promptly bring actions. *LaCorte*, 149 F.3d at 234 (“Under . . . [an] overly narrow interpretation, dozens of relators could expect to share a recovery for the same conduct, decreasing their incentive to bring a *qui tam* action in the first place.”); see also *Lujan*, 243 F.3d at 1189 (rejecting an identical facts test); accord *United States ex rel. Hampton v. Columbia/HCA Healthcare Corp.*, 318 F.3d 214, 218 (D.C. Cir. 2003); *United States ex rel. Duxbury v. Ortho Biotech Prods., L.P.*, 579 F.3d 13, 32 (1st Cir. 2009); *Grynberg v. Koch Gateway Pipeline Co.*, 390 F.3d 1276, 1280 (10th Cir. 2004).

{50} Instead, when determining whether actions were related under the first-to-file provision, these federal circuits have adopted standards that are variations on a central theme. Known as the essential facts or material elements test, the general rule is that a subsequent action is related, and therefore, barred from a share of the proceeds, if it “alleg[es] the same material elements of fraud described in an earlier suit, regardless of whether the allegations incorporate somewhat different details.” *Lujan*, 243 F.3d at 1189. As the Tenth Circuit framed the inquiry, “so long as a subsequent complaint raises the same or a related claim based in significant measure on the core fact

or general conduct relied upon in the first *qui tam* action, the first-to-file bar applies.” *Grynberg*, 390 F.3d at 1279 (citation omitted). The Third Circuit put it succinctly, stating that “once the government knows the essential facts of a fraudulent scheme, it has enough information to discover related frauds.” *LaCorte*, 149 F.3d at 234. The First Circuit applies a two-part test that looks at “(1) the relationship between the fraud alleged in the two *qui tam* actions and (2) the extent to which the facts alleged in the first-filed *qui tam* action suffice to provide the government with notice of the fraud that has been alleged by the second.” *Ven-A-Care*, 772 F.3d at 937. We find these various phrasings appropriate for a factual overlap review and adopt the material elements test for this purpose. When a relator’s complaint pleads sufficient facts to put the government on notice of the related fraud in the alternate remedy proceeding, the relator deserves a share of the award.

{51} As a test for determining recovery, the material elements test most closely adheres to FATA’s goal of achieving a “golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own.” *Id.* at 944 (internal quotation marks and citation omitted). The test’s flexibility also promotes the prompt reporting of fraud by not requiring a perfect overlap between the two complaints. A *qui tam* plaintiff may recover so long as the relator’s action put the State on notice of the fraud underlying the alternate remedy, regardless of whether the government’s claim “incorporate[s] somewhat different details.” *United States ex rel. Carson v. Manor Care, Inc.*, 851 F.3d 293, 302 (4th Cir. 2017) (internal quotation marks and citation omitted). Differences such as those of “geographic location or added facts will not save a subsequent case.” *Id.* (internal quotation marks and citation omitted).

{52} For example, in *Manor Care*, the Fourth Circuit broadly applied the material elements test and barred a subsequent claim despite alleging additional modalities of fraud across different geographic locations. *Id.* at 304. There, the initial relator

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filed a *qui tam* suit against a Manor Care nursing facility in Virginia, alleging the facility overbilled Medicare for physical therapy and rehabilitation costs. The initial relator claimed that the facility “regularly and fraudulently classified its patients as needing more physical therapy than necessary and instructed its physical therapists to spend more time than needed with the patients, resulting in higher Medicare payments.” *Id.* at 300. A subsequent relator filed an FCA action alleging a separate Manor Care nursing facility in Pennsylvania overbilled by invoicing the government for services never provided, categorizing nonskilled therapy as skilled, and billing for unnecessary therapy. *Id.* at 300-01. The subsequent complaint also alleged that the nursing facility defrauded the government by “consistently administering modalities like electric stimulation, diathermy, and ultra sound to inappropriate patients” and incentivized these actions through bonuses provided to facility directors. *Id.* at 304 (internal quotation marks and citation omitted). The subsequent relator argued the different locations and “modalities” of fraud were sufficiently distinct to allow recovery. *Id.* The Fourth Circuit disagreed, noting that the two complaints were “materially similar” and the “earlier-filed complaint provide[d] the government with enough knowledge of essential facts of the scheme to discover related fraud.” *Id.* (internal quotation marks and citation omitted).

{53} The Manor Care approach underscores the pitfalls of applying a pleading standard like *Bledsoe*’s in an overlap analysis. If the Fourth Circuit in *Manor Care* had instead applied *Bledsoe*’s hypertechnical approach, the additional factual details would have allowed the subsequent plaintiff’s suit to proceed. *Branch Consultants*, 560 F.3d at 378 (“Any construction of [the first-to-file provision] that focused on the details of the later-filed action would allow an infinite number of copycat *qui tam* actions to proceed so long as the relator in each case alleged one additional instance of the previously exposed fraud.”). In the context of an overlap analysis, the government, by incorporating technically distinct details, could deprive the relator of any share of the recovery despite the relator having equipped

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the government with sufficient information to investigate and discover the related frauds. See *United States ex rel. Batiste v. SLM Corp.*, 659 F.3d 1204, 1209 (D.C. Cir. 2011). Such a result would frustrate rather than further the recovery of fraud against the State.

{54} In the present case, OSI counters that a broad overlap standard will injure the State's fisc. Under oath, the AG similarly acknowledged the duty to maximize recovery for the State. But whatever duty the AG and OSI perceive as limiting a deserving relator's award is not echoed by FATA. FATA does not cap the dollar amount that a qui tam plaintiff may recover from a successful claim. Instead, FATA uniformly describes a qui tam plaintiff's share as a percentage of "the proceeds of the action or settlement." Sections 44-9-7(A), (B). FATA further provides that "[a]ny award to a qui tam plaintiff shall be paid out of the proceeds of the action or settlement, if any," and that "[t]he state . . . is entitled to all proceeds collected in an action or settlement not awarded to a qui tam plaintiff." Section 44-9-7(D), (E). Perhaps most significantly, FATA provides for treble damages to ensure that the government will be made whole and "to reward the qui tam plaintiff for exposing fraud and corruption in state government." Foy, 2015-NMSC-025, ¶ 40. The State's decision to forgo treble damages—alleged at \$285 million—and pursue an alternate remedy where treble damages are unavailable was the State's, not the relators. And in a case like this one, brought by current and former employees of a "state or political [entity]," FATA requires a showing that the qui tam plaintiff exhausted internal reporting procedures and that "the state or political subdivision failed to act on the information provided within a reasonable period of time." Section 44-9-9(A). Here, prior to filing their complaint, Plaintiffs reported the suspected fraud directly to OSI and the New Mexico AG's office, both of whom did not pursue the investigation. These provisions guarantee that a qui tam plaintiff's recovery will be paid from a source of funds that the State already declined to pursue. They also guarantee that both the qui tam plaintiff and the State will be rewarded by the qui tam plaintiff's initiation of a successful

FATA action.

{55} Finally, the material elements test should not be viewed as supporting a catalyst theory of recovery where a relator is entitled to an award for unrelated claims exposed during the course of the alternate remedy proceeding. The material elements test does not support additional claims that merely "resulted from" the investigation of the relator's allegations or whose discovery was "caused by" the relator's claim. *Rille*, 803 F.3d at 374 (citation omitted). The subsequent claim pursued by the State must be more than causally connected to the original FATA action. The alternate remedy proceeding and the relator's allegations must relate substantively to each other. Allowing for catalyst recovery would not further FATA's purpose of encouraging meritorious qui tam plaintiffs to come forward with their claims.

### 2. When to apply an overlap test

{56} The material elements test provides courts with a framework to determine if a relator deserves a share of the alternate recovery. But it does not answer the question of *when* a court should apply the test. The first question a court should ask when confronted with a relator's demand for a share of the proceeds is whether an overlap analysis is necessary. An overlap analysis is required when an alternate remedy is merely a continuation of the FATA action, or if the State separately pursued an alternate remedy. A court's initial inquiry must determine whether the government's *claim* is part of an intervention and, thus, an extension of the relator's claim or if the claim is a wholly separate proceeding arising under the alternate remedy provision. An overlap analysis requires a claim-by-claim comparison of the plaintiff's FATA action, including the relator's complaint and the government's intervening claim (if applicable), and the contents of the settlement agreement or the findings of the subsequent administrative proceeding, whichever applies. This inquiry is not meant to be a substitute for an overlap analysis or function as a pseudo-overlap inquiry; it is meant only to determine whether the rights entitled to the plaintiff under the alternate remedy provision were already established by the State's intervention.

{57} When the State pursues its *claim* through an alternate remedy proceeding, the *qui tam* plaintiff has the *same rights* as if the action continued in the district court. See § 44-9-6(H) (FATA's "alternate remedy" provision). The State's *claim*, as that term is employed in the alternate remedy provision, encompasses two general possibilities. First, the State's claim may be an extension of the relator's FATA action, such as when the State intervenes and subsequently pursues an alternate remedy as a continuation of the *qui tam* plaintiff's original action. When an alternate remedy is merely a continuation of the FATA action in which the State intervened, no overlap analysis is required. In these cases, the rights afforded to the relator have already been determined by the intervention provision. See *id.*; § 44-9-7(A). In contrast, the government's claim may be wholly separate from the plaintiff's FATA claim. In such cases, when the State's claim arises under the alternate remedy provision, courts should apply an overlap analysis. *Rille*, 803 F.3d at 378 (Bye, J., dissenting) ("Typically, a factual overlap analysis is required in cases arising under [the FCA's] alternate remedy provisions, *not intervention cases*." (emphasis added)).

{58} This bifurcated framework is consistent with FATA's recovery limitations. Our Legislature has provided only three mechanisms for reducing a relator's recovery once the State intervenes, none of which apply here. See § 44-9-7(A)(2) (limiting a relator's share to ten percent "if the court finds that the action was based primarily on disclosures of specific information, not provided by the qui tam plaintiff, relating to allegations or transactions [in other hearings, proceedings, or other publicly available sources]"); § 44-9-7(C)(1) (reducing a relator's recovery when the relator "planned or initiated the violation [of FATA] upon which the action was based"); § 44-9-7(C)(2) (precluding recovery of a share of the proceeds when the relator "is convicted of criminal conduct arising from that person's role in the violation [of FATA]"). Applying an overlap analysis to an intervention case introduces a fourth limitation on a relator's recovery that is not supported by statute.

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{59} If, on the other hand, the State separately pursued an alternate remedy, a court would apply a factual overlap analysis because the State's claim would arise under the alternate remedy statute. The present case implicates aspects of *both* scenarios; the government intervened, settled a portion of the claims, and dismissed the action, but the "remaining claims" were resolved through an alternate remedy.<sup>14</sup> *Galloway*, A-1-CA-38974, mem. op. ¶¶ 16, 17. While more complicated, the central question remains the same: Is the alternate remedy merely a continuation of the relator's FATA action?

{60} While we remand to the district court to make this determination, we see nothing in our review that suggests the alternate remedy pursued against PHP is anything other than an administrative pursuit of Plaintiffs' FATA claim. We consider it a necessary precondition to conducting an overlap analysis that the claim be outside of the relator's action. Here, after a year of investigating Plaintiffs' allegations, the government intervened. Tellingly, the AG did not move to limit or dismiss Plaintiffs' claim on any of the grounds available under FATA or Rule 1-009(B). See, e.g., § 44-9-6(B). The AG joined two additional defendants, PNI and PIC, and alleged five additional claims against PHP. Each of the supplemental claims was against PHP, the original defendant, and based on allegations from the Plaintiffs' FATA complaint. Complaint in Intervention, *Galloway v. Presbyterian Health Plan, Inc.*, D-101-CV-2016-01596, ¶ 104 (1st Jud. Dist. Ct. July 11, 2017) (alleging an insurance code violation for underpaying Medicaid premium taxes); *id.* ¶ 109 (asserting PHP was unjustly enriched by claiming unlawful deductions against premium tax

returns); *id.* ¶¶ 114-18 (alleging that the acts under the FATA violation were also sufficient for a common law fraud claim); *id.* ¶ 121 (claiming that PHP made negligent representations of material facts related to the unlawful deductions and credits); *id.* ¶ 128 (averring that PHP's failure to pay its tax obligations constituted constructive fraud). The AG then settled only two of the fourteen years of Plaintiffs' claims against PHP, dismissing the entirety of the FATA action with prejudice and delegating the "remaining claims" to OSI. The settlement agreement between Plaintiffs and the AG tacitly connects the two proceedings, stating that "[t]he pursuit of recoveries by OSI related to the ER Report . . . is deemed an alternate remedy."<sup>16</sup>

{61} Also notable is the striking resemblance between the FATA claim and the call of the audit. After the AG's office showed the Plaintiffs' complaint to OSI, the Office of the State Auditor and OSI hired an independent auditor to "[r]ecalculate premium tax liability, payments received, and resulting net over or underpayments . . . for each year from 2003 to 2016" (alteration in original).<sup>17</sup> By comparison, Plaintiffs' FATA claim alleged that PHP's "application of unlawfully-obtained premium tax credits allowed it to avoid payment of more than [\$40 million] in premium taxes." The government's claim in the alternate remedy proceeding as it pertains to PHP is a continuation of Plaintiffs' action.<sup>18</sup>

### 3. Application of the overlap analysis

{62} We provide the district court with the following guideposts when applying the material elements test to determine Plaintiffs' entitlement to an award under an overlap analysis. Plaintiffs have a right to a share of the proceeds if the State's MIP

claim is "based upon the same material elements of fraud as the [relator's] suit, even though the subsequent [alternate remedy proceeding] may incorporate somewhat different details." *Manor Care*, 851 F.3d at 302 (internal quotation marks and citation omitted). As we have established, the district court should examine "the relationship between the fraud alleged" in the Plaintiffs' FATA action and the State's alternate remedy settlement as well as "the extent to which the facts alleged [by Plaintiffs] . . . suffice[d] to provide the government with notice of the [MIP] fraud." *Ven-A-Care*, 772 F.3d at 937. {63} From an evidentiary standpoint, the trial court may examine any pertinent evidence including the complaints, administrative conclusions, depositions, evidence collected during the State's investigation, and settlement agreement. In the usual case, a court will likely not have the expansive record it does here, nor does the court require it. The typical analysis will involve comparing complaints and settlement agreements "side-by-side, and asking whether the [settlement of the alternate remedy proceeding encompasses] a fraudulent scheme the government already would be equipped to investigate based on the first complaint." *Manor Care*, 851 F.3d at 303. The material elements test is designed to be "quickly and easily determinable" so even when there is additional evidence beyond the pleadings, the matter is likely to be decided on the complaints. *In re Nat. Gas*, 566 F.3d at 964. But to whatever degree there is extrinsic evidence that assists a court in its determination, the court should heed its utility. {64} With this legal and evidentiary framework in mind, we observe that the record suggests a finding that Plaintiffs' allegations put the State on notice of PHP's

<sup>14</sup> Some federal courts have discussed alternate remedy proceedings as "an alternative to intervening in a qui tam action." U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc., 342 F.3d 634, 648 (6th Cir. 2003). However, as the facts of this case illustrate, the State does not have to make an either/or decision and can pursue both paths during the course of a recovery.

<sup>15</sup> We acknowledge that some claims may be continuations of a qui tam plaintiff's original action and others may not. Overlap analysis would only be applied to those that were not a part of the original action, not the remaining intervening claims.

<sup>16</sup> To avoid excluding deserving relators from recovery, where there is an intervention and alternate remedy, we think a "fair, adequate and reasonable" settlement agreement should stipulate the relationship between relators' FATA action and the alternate remedy. Section 44-9-6(C).

<sup>17</sup> We note that the record does not indicate that the contract for the ER audit specifically mentioned MIP credits.

<sup>18</sup> Because there were no claims brought against PIC, we cannot say that the alternate remedy was an extension of Plaintiffs' intervention. Therefore, an overlap analysis is appropriate.



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improper application of MIP credits.<sup>19</sup> Plaintiffs' complaint specifically mentions that PHP took unlawful *credits* against their premium tax liability. According to the record, there are only three such credits: MIP credits, Health Alliance credits, and overpayment credits. The parties disagree over whether Plaintiffs' complaint truly encompassed MIP credits and not solely overpayment credits. Plaintiffs cite the complaint's explicit mention of credits and the year-by-year dollar amounts of fraud, exhibits (a workbook explaining the credits), and discussions that they contend alerted the State to MIP credits specifically. The State disagrees with Plaintiffs' presentation of the evidence, and we acknowledge that the record is unclear as to the extent MIP credits were discussed. However, the material elements test does not require a smoking gun that MIP credits were explicitly presented, but only that Plaintiffs provided sufficient information for the State, "once [it] knows the essential facts of a fraudulent scheme, . . . to discover the related fraud." *LaCorte*, 149 F.3d at 234. On this point, we find it difficult to believe that the investigation of one unlawful credit would not naturally encompass the investigation of the other, especially, as here, when the relators uncovered the fraud *during* an MIP audit that ultimately went unheeded by OSI officials and the AG's office.

{65} The disagreements in the record between Plaintiffs and the State are of degree and not in kind. The overt parallels between *Manor Care* and the facts of this case are illustrative. In *Manor Care*, the first relator alleged that the nursing facility overbilled for "skilled physical therapy and rehabilitation costs," providing examples of the manner in which the fraud occurred.

851 F.3d at 300. Here, Plaintiffs alleged the unlawful application of credits against PHP's premium tax liability, breaking down the dollar amount of fraud by year. The second relator in *Manor Care* maintained that by adding different "modalities" of the fraud, such as overbilling for various procedures "like electric stimulation" that were not in the first relator's complaint, the subsequent complaint alleged a separate scheme. *Id.* at 304. Similarly, the State here argues that Plaintiffs are not entitled to an award because the settlement agreement included a specific type of unlawful credit, MIP credits, that was not specifically named in the complaint.

{66} *Manor Care*'s holding appears to be on point on the facts here. The State's settlement agreement is based on allegations that are "materially similar" to those of Plaintiffs—the reduction of premium tax payments through the improper application of credits. *Id.* at 304. The "conduct contemplated in" the results of the OSI audit—findings of PHP's improper application of MIP credits—appears to overlap significantly with the "conduct alleged in [Plaintiffs'] complaint," the application of unlawful credits. *Rille*, 803 F.3d at 373-74 (internal quotation marks and citation omitted). Plaintiffs' allegations also appear to "provide the government with enough knowledge of essential facts of [PHP's underpayment] scheme to discover [the] related [MIP credit] fraud." *Manor Care*, 851 F.3d at 304 (internal quotation marks and citation omitted).

{67} We remind courts that FATA's goal of reducing parasitic claims includes those subsequent claims by the State. The AG's strategy memorandum to reduce Plaintiffs' recovery is a reminder that while FATA

implies a mutually beneficial relationship between relator and State, this is not always the reality. This shift from the *shared interest* of fraud reduction to adversaries is unfortunate but hardly unique to New Mexico. *United States v. United States ex rel. Thornton*, 207 F.3d 769, 773 (5th Cir. 2000) ("It comes as no surprise that while the government and relator have litigated on the same side, their interests diverge when it comes time to pay the relator's share."); *United States v. Gen. Elec.*, 808 F. Supp. 580, 584 (S.D. Ohio 1992) (order) ("The reason [for the adversarial posture of the Justice Department] continues to be unknown, but the attitude is clear."). Regardless, such an adversarial posture is not supported by FATA, and we remind courts to be vigilant in their review of FATA proceedings.

### III. CONCLUSION

{68} For the foregoing reasons, we vacate the Court of Appeals decision and remand to the district court for findings consistent with this opinion. We advise the district court to first determine whether either or both of the PHP and PIC alternate remedy proceedings are continuations of Plaintiffs' FATA action. If the court finds that a proceeding was brought separately under the alternate remedy statute, the court should perform an overlap analysis between Plaintiffs' lawsuit and the specific collection docket using the material elements test.

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

**DAVID K. THOMSON, Chief Justice**

**WE CONCUR:**

**MICHAEL E. VIGIL, Justice**

**C. SHANNON BACON, Justice**

**BRIANA H. ZAMORA, Justice**

**LISA CHAVEZ ORTEGA, Judge**

**Sitting by designation**

<sup>19</sup> We do not have a complete record of the exhibits to make additional insights into the outcome of an overlap analysis for PIC. As a sister company of parent PNI, both of which were added to the State's complaint in intervention, it seems natural to investigate related organizations operating in New Mexico that might be committing the same types of fraud. That said, the State's complaint did not contain allegations against PIC, so the district court will need to determine if the Plaintiffs' complaint or any subsequent evidence put the State on notice of PIC's unlawful reporting of credits.

# FORMAL OPINION

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**Filing Date: 08/21/2025**

**No. A-1-CA-41444**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**DANIEL MONTOYA,**

Defendant-Appellant.

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

Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Charles J. Gutierrez, Senior Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Kimberly Chavez Cook, Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Defendant was convicted of the following sex crimes perpetrated against Child when she was five years old: (1) four counts (Counts 1, 2, 3, and 4) of criminal sexual penetration of a minor (CSPM) (under the age of thirteen), contrary to NMSA 1978, Section 30-9-11(D)(1) (2009); (2) four counts (Counts 5, 6, 7, and 8) of criminal sexual contact of a minor (CSCM), contrary to NMSA 1978, Section 30-9-13(C)(1) (2003); and (3) one count (Count 9) of contributing to the delinquency of a minor, contrary to NMSA 1978, Section 30-6-3 (1990). Child was nearly nine years old when she testified at Defendant's trial. Defendant's primary claim on appeal is that the district court erred in allowing the State to play for the jury the minimally redacted videotape of Child's safehouse interview as a recorded recollection under Rule 11-803(5) NMRA. Alternatively, Defendant claims plain error in the district court's failure to exclude portions of Child's safehouse interview under Rule 11-403 NMRA, as more prejudicial than probative, and under Rule 11-404(B) NMRA, as prejudicial evidence of uncharged conduct.

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Jane B. Yohalem, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-41444>

# MEMORANDUM OPINION

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**No. A-1-CA-41295**  
**State of New Mexico**  
**v.**  
**Bruce Lee**

## Introduction of Opinion

Defendant Bruce Lee appeals his conviction of one count of criminal sexual contact of a minor in the second degree (child under the age of thirteen) (CSCM), contrary to NMSA 1978, Section 30-9-13(B)(1) (2003). On appeal, Defendant argues (1) he received ineffective assistance of counsel; and (2) there was insufficient evidence to support a conviction because the testimony of the victim (Victim) was unreliable given her mental health. For the reasons that follow, we affirm.

Jacqueline R. Medina, Judge  
WE CONCUR:  
Shammara H. Henderson, Judge  
Gerald E. Baca, Judge

To read the entire opinion,  
please visit:  
<https://bit.ly/A-1-CA-41295>

**No. A-1-CA-40688**  
**State of New Mexico**  
**v.**  
**Larry K. Fitzgerald**

## Introduction of Opinion

Defendant Larry Fitzgerald appeals his conviction for receiving stolen property over \$20,000 (NMSA 1978, § 30-16-11 (2006)), following a jury trial. Defendant argues that (1) the district court erred by limiting Defendant's cross-examination of a State's witness, and (2) Defendant's convictions not supported by substantial evidence. We affirm.

Jennifer L. Attrep, Judge  
WE CONCUR:  
Jacqueline R. Medina, Chief  
Judge  
Gerald E. Baca, Judge

To read the entire opinion,  
please visit:  
<https://bit.ly/A-1-CA-40688>

**No. A-1-CA-38037**  
**State of New Mexico**  
**v.**  
**Theodore Jason Lujan**

## Introduction of Opinion

Defendant Theodore Jason Lujan was convicted of child abuse for endangering his child, T.L., by exposing him to cocaine, contrary to NMSA 1978, Section 30-6-1(D) (2009). Defendant appeals, arguing that the given instruction misstated the mens rea for child abuse by endangerment and that his conviction is not supported by sufficient evidence.<sup>1</sup> We reject his jury instruction argument, but reverse his conviction based on insufficient evidence.

Zachary A. Ives, Judge  
WE CONCUR:  
Jennifer L. Attrep, Judge  
Megan P. Duffy, Judge

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## Brian S. Colón

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Brian Colón is the Managing Partner of Singleton Schreiber's New Mexico offices, with over 30 years of professional experience and 20+ years as a practicing attorney. A former New Mexico State Auditor and Democratic Party Chair, he's known for his deep commitment to public service, legal advocacy, and community engagement. Mr. Colón has led major recoveries for New Mexicans, advancing accessibility reforms, and serving in leadership roles across legal and nonprofit sectors.

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

### In-House Attorney

AMREP Southwest Inc. is a major holder of land, leading developer of real estate and award-winning homebuilder located in Rio Rancho, NM. ASW is currently seeking an in-house attorney. The in-house attorney will assist the General Counsel with handling a range of day-to-day matters, including real property development, acquisitions and sales, leasing, title review, corporate governance, assisting with litigation, legal research and providing legal advice to ASW's leadership. The ideal candidate must be able to multitask in a fast-paced environment and work both independently and as part of a team. Experience in the real estate industry is a plus. Requirements: authorized to practice law in NM; 1+ years' of law firm or in-house legal experience; effective written and verbal communication skills; the ability to learn on the job; strong attention to detail; and excellent computer skills. This is a full-time position with competitive salary commensurate with experience, a full benefits package, 401K match and the opportunity for advancement. Please send resume to: travisw@aswinc.com.

### Internal Legal Counsel

New Mexico Tech seeks the following positions: Internal Legal Counsel. For full description of position visit <https://nmt.edu/hr/Internal%20Legal%20Counsel%200609825.pdf>. Please contact Jessica Dennis, Human Resources Coordinator Brown Hall Room 118, (575)-835-5370

### Associate Attorney

Bradfute Sayer, P.C.—a boutique law firm based in Albuquerque and Santa Fe—is hiring an Associate Attorney or Of Counsel to support a dynamic mix of energy, tech, and infrastructure clients as they navigate complex federal and state regulatory landscapes. Our firm advises on a broad range of matters including AI and data center development, oil and gas, water treatment and reuse, hydrogen, renewable energy, and public land use throughout New Mexico. Key responsibilities include: Conducting precise legal research and preparing memoranda, filings, and contracts; Assisting with permit applications, regulatory processes, and enforcement actions; Presenting nuanced technical concepts to public officials and regulators; Supporting client engagement and stakeholder communications. You'll work closely with attorneys who bring deep experience in New Mexico's energy and water policies, offering mentorship and opportunities to collaborate with regulators, industry leaders, and community partners. Ideal candidates will bring: Strong legal research, writing, and communication skills; Initiative, attention to detail, and a genuine interest in energy, environmental, and administrative law; Active New Mexico bar membership or immediate eligibility. We offer: Competitive compensation package; Health benefits, 401(k), and paid time off; Full coverage of bar dues and CLE requirements. To apply, please send a resume and cover letter to [kathy@bradfutelaw.com](mailto:kathy@bradfutelaw.com). Learn more about our work at [www.bradfutelaw.com](http://www.bradfutelaw.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](mailto:paralegal3.bleuslaw@gmail.com).



### **Staff Counsel**

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client and claims survey results, resolved ratio, and subrogation results; ADHERES to the GEICO Code of Conduct, company policies, and operating principles; MEETS attendance standard of the business location, to perform necessary job functions and to facilitate interaction with subordinates and management. MEETS the requirements specified below: Must be able to travel as required, including but not limited, to attend trials, hearings, depositions, management meetings and conferences; Must be able, with or without accommodation, to perform the essential functions which include, but are not limited to, thinking (concentrating, focusing, assimilating information), reading, writing, listening, typing, speaking, bending, reaching, lifting, and standing for extended periods; Must be able to travel as required, including but not limited, to attend trials, hearings, depositions, management meetings and conferences; Must be able to use a keyboard and a mouse; Must be able to access and utilize multiple pieces of office equipment that may require simultaneous use; Must be able to communicate in a professional manner in person, via telephone and written correspondence/email; Must be able to document files in a clear, concise, professional written manner, to be understood by customers, clients, co-workers and other employees of the organization; Must be able to follow complex instructions, resolve conflicts or facilitate conflict resolution, and have strong organization/priority setting and multi-tasking skills; Must be able to learn and apply large amounts of technical and procedural information; Must demonstrate successful performance in handling primary trial responsibility for cases of significant severity and complexity. Must have the following education and experience: Must be licensed in good standing to practice law in applicable jurisdictions, and meet and maintain licensing requirements including mandatory Continuing Legal Education (CLE) requirements where applicable; Must have a minimum of seven years of litigation experience, including insurance defense or personal injury; Management experience preferred.

### **Judicial Clerkships, Court of Appeals Judge Kristopher Houghton**

Recently Appointed Court of Appeals Judge Kristopher Houghton is accepting applications for two clerkship positions to begin as soon as possible. This is an excellent opportunity for new or seasoned attorneys to work directly with an appellate judge and write judicial opinions on appeals across all areas of the law. Court of Appeals law clerk salaries are set by Supreme Court Order and currently are \$82,600 for 0-2 years of experience, \$93,356 for 2-4 years of experience and \$97,264 for more than 4 years of experience. Applicants should submit a one-page letter of interest, resume, law school transcript, writing sample (no more than ten pages), and a list of three references to the Clerk of the Court, Mark Reynolds, via email at [coamhr@nmcourts.gov](mailto:coamhr@nmcourts.gov).

### **Associate Attorney**

Fadduol, Cluff, Hardy, & Conaway, P.C. continues to grow. Our successful Personal Injury Law firm is currently seeking an Associate Attorney in our Albuquerque, NM office. Associates will have immediate opportunities to be fully involved in every aspect of a case, including taking and defending depositions, drafting, responding to, and arguing motions, actively participating in trials, and building relationships with clients. Starting salaries begin at six figures and are negotiable based on experience. New associates have the opportunity to experience mentorship and training by our team of experienced attorneys. Additionally, associate attorneys immediately qualify for significant bonuses based on performance. We also offer generous retirement (7.5% employer contribution), health, and benefit plans. FCHC is seeking associates looking for a long-term position with the opportunity to grow and a commensurate willingness to work hard to better both themselves and the firm. To apply, please send your resume and a writing sample to Isaac Lopez at [ilopez@fchclaw.com](mailto:ilopez@fchclaw.com).

### **Assistant Public Defender**

The Public Defender at the Pueblo of Isleta is hiring an Assistant Public Defender to provide in-house counsel to clients where the Public Defender has a conflict of interest as well as to assist the Public Defender in cases where there is no conflict. The Assistant Public Defender will represent Native Americans in charged with crimes at the Pueblo of Isleta when the cases are filed in Tribal Court. The position is grant-funded for three years. Applicants should send their letter of interest, resume, and application to [poiemployment@isletapueblo.com](mailto:poiemployment@isletapueblo.com). The application can be found on the Pueblo of Isleta Careers webpage at <https://www.isletapueblo.com>.

### **Ninth Judicial District Court - Domestic Relations Hearing Officer**

The Ninth Judicial District Court (Curry and Roosevelt Counties) is currently accepting applications for a full-time, at-will Domestic Relations Hearing Officer. The Domestic Relations Hearing Officer will hear matters in both counties. Applicants must hold a J.D. from an accredited law school, a license to practice law in New Mexico, and five years of experience in the practice of law with at least 20% of said practice having been in family law or domestic relations matters. For a complete job description and application instructions, please visit the careers section on the New Mexico Judiciary's website at [www.nmcourts.gov/careers](http://www.nmcourts.gov/careers).

### **Assistant District Attorney**

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney ( \$ 80,218.00 ) to a Senior Trial Attorney ( \$100,272.00), based upon experience. Must be licensed in the United States. This position is located in the Carlsbad, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to [nshreve@da.state.nm.us](mailto:nshreve@da.state.nm.us)

### **Managing Attorney (FT – At-Will)**

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#### **Civil Division**

The Second Judicial District Court, Civil Court is accepting applications for an At-Will Managing Attorney. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and eight (8) years of experience in the practice of civil law, of which four years must have been as a supervisor. The Managing Attorney will be responsible for overseeing the operations and administration of the Civil Division. Responsibilities include, but are not limited to, overseeing information provided to the Presiding Judge on behalf of the Civil Division; implement and oversee substantive procedural matters and judicial operations at the direction of the Presiding Judge; legal research and analysis; prepares reports, memoranda and orders; legislative analysis; analyze reports and data and interpret trends or patterns; serve as a subject matter expert; supervise four or more staff; and work with ten judicial officers, court personnel, the Administrative Office of the Courts, and the Supreme Court. Target Pay: \$65,709 hourly or \$136,675 annually, plus benefits. Send application or resume supplemental form, proof of education, and a writing sample to the Second Judicial District Court, Human Resource Office, to [2ndjobapply@nmcourts.gov](mailto:2ndjobapply@nmcourts.gov) or mail to P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Application and resume supplemental form may be obtained on the Judicial Branch web page at [www.nmcourts.gov](http://www.nmcourts.gov). CLOSSES: Wednesday, September 24, 2025 at 5:00PM.

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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](http://www.simonsfirm.com). To apply, send a cover letter, resume, and writing sample to Audra Burdwell at [aburdwell@simonsfirm.com](mailto:aburdwell@simonsfirm.com). All inquiries will be treated with the utmost confidentiality.



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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!

### Senior Trial Attorney and Deputy District Attorney

The 12th Judicial District Attorney's Office, serving Otero and Lincoln counties, is seeking a Senior Trial Attorney and a Deputy District Attorney. Employment will primarily be based out of the Alamogordo office. The 12th Judicial District is recognized as one of the leading districts in the state for the number of jury trials conducted each year. If you are seeking meaningful trial experience, you want to advance your career as a prosecutor, and work with a dedicated team to fight for the justice of victims - Come Join Our Team! Must be admitted to the New Mexico State Bar. Salary range \$100,000-122,000 DOE. Full benefits package and one of the best retirement plans (PERA) in the country. Email resume to: sgann@da.state.nm.us or visit our website https://12th.nmdas.com/

### Regulatory Attorney Position

PNM has an opening for a regulatory attorney position at an Attorney III or IV level, depending on experience. Attorney will represent the corporation in complex utility matters and administrative proceedings; conduct legal research; draft corporate legal documents; and handle complex transactions. Litigation experience in utility law or before state agencies or FERC desirable. Juris doctorate degree from an accredited law school, with a minimum of eight years related experience in the actual practice of law. Must be licensed to practice law in New Mexico within one year of the hiring date. To read a full job description and apply, go to https://careers.txnmenergy.com/jobs/14690053-regulatory-attorney-iii-or-iv, register, upload a resume and answer all posting questions. PNM Resources and affiliates are Equal Opportunity/Affirmative Action employers. Women, minorities, disabled individuals and veterans are encouraged to apply.

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### **Paralegal**

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks sharp, energetic Paralegal. Must be a self-starter, detail-oriented, organized, and have excellent communication skills. Paralegal degree, insurance defense and/or personal injury experience required. Bilingual in Spanish a plus. Please e-mail your resume and list of references to [karrants@stiffllaw.com](mailto:karrants@stiffllaw.com)

### **Experienced Legal Assistant**

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

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**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:  
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The publication schedule can be found at  
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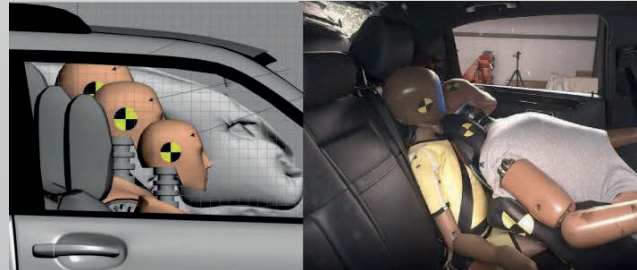
# IS YOUR CASE AT A RECOVERY DEAD-END?

Maybe not because you may have a **CRASHWORTHINESS** case.

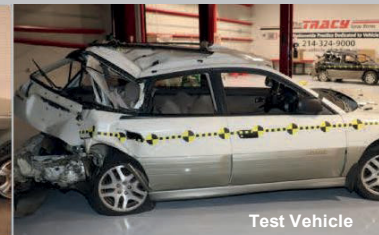
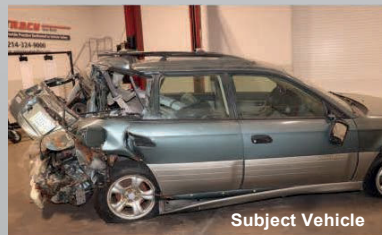


## Crashworthiness

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



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



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