Official Publication of the State Bar of New Mexico

DIGITAL

BAR BULLETIN

February 25, 2026 • Volume 65, No. 4

Adobe Charm, by Pamela Elam

(see page 5)

Inside This Issue

New Mexico State Bar Foundation

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Bryan Stevenson

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February – April Programs

February 26
Appellate Basics for Attorneys: Navigating the New Mexico Court of Appeals (Live Replay)
1.5 G
Noon–1:30 p.m.
WEBINAR
https://bit.ly/CLE-02262026-A

February 27
2026 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Noon–1 p.m.
WEBINAR
https://bit.ly/CLE-02272026-A

March 2
Service Level Agreements in Technology Contracting
1.0 G
11 a.m.–Noon
TELESEMINAR
https://bit.ly/CLE-03022026-A

March 4
Governance for Nonprofit and Exempt Organizations
1.0 G
11 a.m.–Noon
TELESEMINAR
https://bit.ly/CLE-03042026-A

March 9
Indemnification & Hold Harmless Agreements in Real Estate Transactions
1.0 G
11 a.m.–Noon
TELESEMINAR
https://bit.ly/CLE-03092026-A

March 10
Lincoln on Professionalism
1.3 EP
11 a.m.–12:20 p.m.
WEBINAR
https://bit.ly/CLE-03102026-B

March 13
ChatGPT Unveiled: Revolutionizing the Practice of Law in the AI Era
1.0 G
11 a.m.–Noon
WEBINAR
https://bit.ly/CLE-03132026-B

March 16
Product Distribution Agreements
1.0 G
11 a.m.–Noon
TELESEMINAR
https://bit.ly/CLE-03162026-A

March 18
True Crime Ethics & Trial Practice: Jeffrey Dahmer and Wild Bill Cody: Lies, Deceit and the Ethical Rules, Can Attorneys Practice Deception?
1.0 EP, 1.0 G
11 a.m.–1 p.m.
WEBINAR
https://bit.ly/CLE-03182026-A

March 23
Escrow Agreements in Business & Commercial Transactions
1.0 G
11 a.m.–Noon
TELESEMINAR
https://bit.ly/CLE-03232026-A

March 24
True Crime Ethics: The Alec Baldwin Dismissal and the Karen Read Acquittal
2.0 EP
11 a.m.–1 p.m.
WEBINAR
https://bit.ly/CLE-03242026-A

April 24
2026 Spring Family Law Institute: What You Need to Know About All Kinds of Custody
8:45 a.m.–4:15 p.m.
6.0 G
IN-PERSON AND WEBINAR
https://bit.ly/CLE-04242026-A

CLE Registration

Check our website for more updates to our program schedule!

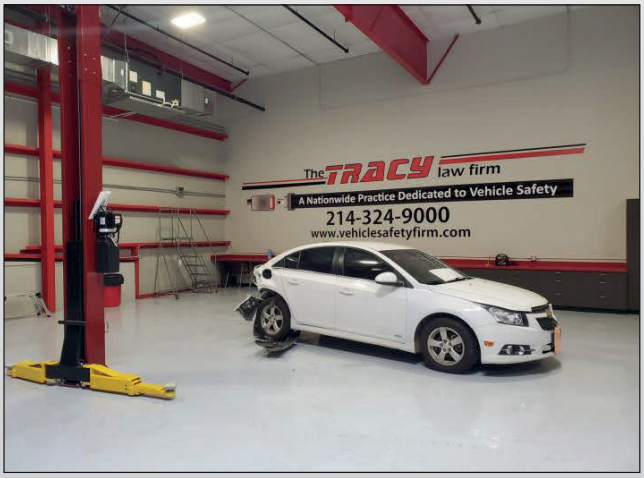
Ways to Register:

Online: https://cle.sbnm.org Phone: 505-797-6020 Email: cleonline@sbnm.org

REGISTER EARLY! Advance registration is recommended. Online registration closes one day ahead of each program. **CLE Cancellations & Refunds:** We understand that plans change. If you find you can no longer attend a program, please contact the Center for Legal Education. We are happy to assist you by transferring your registration to a future CLE event or providing a refund, subject to Center policy. **MCLE Credit Information:** The NM State Bar Foundation's Center for Legal Education is an accredited CLE course provider. **Note:** Programs subject to change without notice.

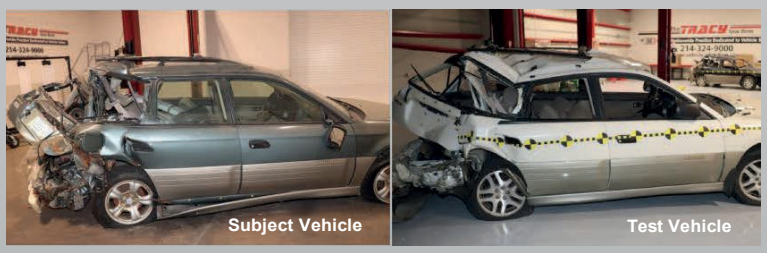
IS YOUR CASE AT A RECOVERY DEAD-END?

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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BAR BULLETIN

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505-797-6000 • 800-876-6227
Fax: 505-828-3765 • address@sbnm.org

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www.sbnm.org

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About Cover Image and Artist: Pamela Elam is passionate about art, and it is the only way she survived the pandemic. Bombarded with images of death, global shutdown, and uncertainty, she created this vibrant body of work. At a time when when everything seemed so bleak, she focused on the reasons why she loves New Mexico; abundance of color, iconic images, and nature. Her use of acrylic gouache on canvas imbues positivity, joy and, hope while paying homage to the Land of Enchantment. Pamela teaches art for the Rio Rancho Public Schools and always look forward to planting the seeds for a lifelong love of art in as many of her students as possible. Her art is permanently on exhibition at Artsy Accents Gallery in Corrales.

Editor's Note:

2026: Online Classifieds Are Here

Dear Readers of the *Bar Bulletin*,

The State Bar of New Mexico ("the State Bar") will launch a new online classifieds platform on Feb. 25. This transition marks an important step in modernizing how classified advertisements are submitted, managed and accessed by members of the legal community. The new platform is designed to improve classified advertisement visibility, accessibility and ease of use for both advertisers and readers. Classified advertisements will be easier to post, purchase, manage, renew and view, helping ensure that listings reach the membership more efficiently.

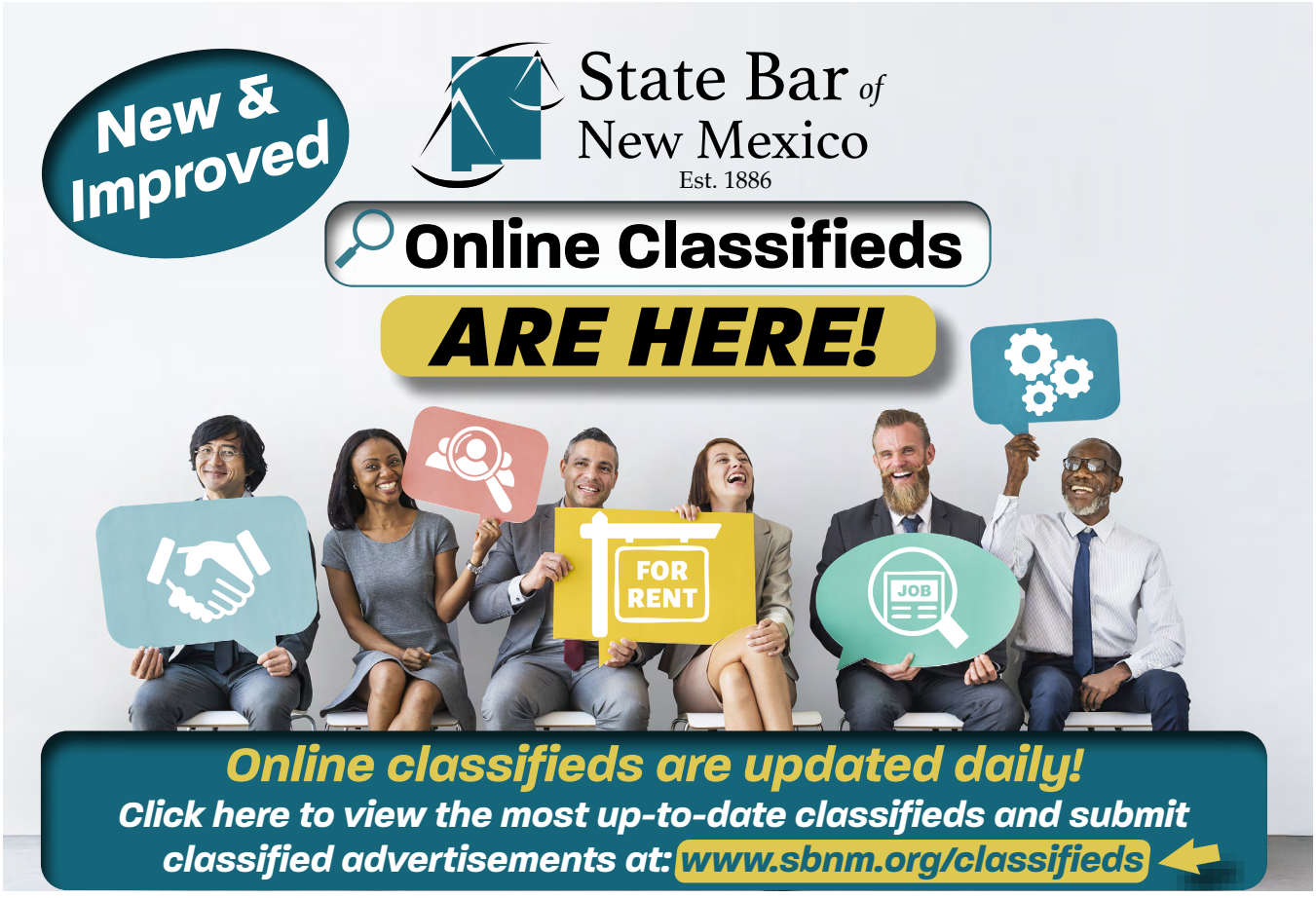
Beginning Feb. 25, classified advertisements will appear on the State Bar's new webpage at www.sbnm.org/classifieds. Existing classified advertisements will continue to run as previously scheduled in the Bar Bulletin and online, with no action required from current advertisers during the transition.

During this transition, Jazmin Velazquez will serve as the State Bar's point of contact for all classified and display advertising inquiries. Jazmin Velazquez may be contacted at marketing@sbnm.org or 505-797-6070.

The State Bar remains committed to delivering communications tools that are clear, accessible and responsive to the needs of the profession. This new online classified advertisement platform reflects that ongoing commitment.

Sincerely,

Brandon McIntyre
Editor of the *Bar Bulletin*



Tune In On March 16!

Season 6, Episode 1:
When Burnout Speaks

In the next episode from the New Mexico Well-Being Committee podcast, we explore how burnout shows up for hard-working attorneys—often disguised as "normal stress" or simply part of the job. We discuss why burnout can persist even when commitment, competence, and ethics remain intact.

You'll also learn why creative expression is an evidence-backed tool for nervous system regulation, especially for analytical, high-control professions. Finally, we share realistic, time-respectful ways busy attorneys can begin small creative practices that actually help.

What if burnout isn't a failure, but a signal—
and what's one low-risk experiment you could try this week?

Listen for **FREE** on March 16 at **www.sbnm.org/LWBApodcast**

LEGAL
Well-Being
in Action

State Bar of New Mexico
Est. 1886

Section Spotlight

Indian Law Section

State Bar *of* New Mexico
Indian Law Section

1. What are the main functions of your Section?
The Indian Law Section seeks to provide support, information and education for New Mexico attorneys and law students practicing or seeking to practice Indian law. Each year our Section hosts an annual CLE, outreach events, awards scholarships to law students and presents the Indian Law Section Attorney Achievement Award to recognize the extraordinary accomplishments of our members.

2. What makes the Indian Law Section unique in comparison to the State Bar's other Sections?
The Indian Law Section is unique because it is a very active section that is primarily mentorship focused. We hold multiple outreach events throughout the year to provide opportunities for practitioners, law students and the State Bar's other Sections to network. We are also unique in that we provide two scholarship opportunities to law students each year: an annual Bar Preparation Scholarship and the Karl E. Johnson Memorial Scholarship. Lastly, our section works hard to recognize the amazing accomplishments of our members in the form of an annual Attorney Achievement Award.

3. What do you feel inspires the members in your Section in their area(s) of practice?
Our members primarily represent Tribes and Native individuals. Our practice requires knowledge of almost all areas of law – contracts, property and real estate, intellectual property, administrative law, constitutional law, criminal law, to name just a few! It's an exciting, dynamic and creative legal field where our members are working to materially improve the lives of our clients.

4. How do you feel the Indian Law Section fits within the greater New Mexico legal landscape?
There are 23 federally recognized Tribes in New Mexico, so the Section plays a critical role in advancing the field of Indian law, including increasing the understanding of the importance of tribal sovereignty, the sometimes complex jurisdictional issues and the development of tribal legal systems.

5. What does your Section feel are the most difficult challenges in your area(s) of practice? How do you recommend members overcome them?
Indian law is often described as a pendulum, with law and policy that is constantly changing. For that reason, the Section recommends that members attend our annual CLE to learn about updates in the field, especially when it comes to recent Supreme Court and 10th Circuit decisions that affect Tribes and Native individuals in New Mexico.

6. What activities and events can your Section's members look forward to throughout the year?
Throughout the year, members of the Indian Law Section can look forward to a dynamic mix of engagement, learning, and connection grounded in the Section's long-standing traditions and its renewed focus on mentorship. Building on past outreach and networking events, the Section will continue to offer periodic opportunities for members, law students, and colleagues from across the state to connect in both formal and informal settings. Specifically, look out for event announcements that cater to networking engagement and fundraising for our 2 scholarships that are both fun and educational.

The Section's signature Indian Law CLE remains a cornerstone of our programming (DATE TBA), providing timely and practical updates on legal developments affecting tribal nations and Native communities. Additionally, guided by the reinvigorated Mentorship Committee Mission Statement, the Section is realigning its activities and content to better foster relationships across experience levels and practice settings. Members are encouraged not only to attend events, but to actively participate, share knowledge, and consider becoming involved in Section leadership and programming. Together, these efforts reflect the Section's commitment to strengthening our community, supporting the next generation of Indian law practitioners, and sustaining meaningful professional connections throughout the year.

7. What words of wisdom would your Section give to aspiring attorneys looking to build a successful practice in your Section's area(s) of law?
Reach out and ask for help! The Indian Law Section is a tight-knit community that is always looking for ways to support and encourage practitioners and law students interested in this area of law. We encourage aspiring attorneys to reach out, attend our outreach and CLE events, and ask questions.

Please email notices desired for publication to notices@sbnm.org.

Court News

New Mexico Supreme Court

Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at **https://supremecourt.nmcourts.gov**. To view all New Mexico Rules Annotated, visit New Mexico OneSource at **https://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** or visit: **https://lawlibrary.nmcourts.gov.**

First Judicial District Court

Notice of Destruction of Exhibits in Criminal, Sequestered Miscellaneous and Civil Cases 1973 to 2010

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules and Rule LR1-113 NMRA, the First Judicial District Court will destroy exhibits filed with the court, in Criminal, Sequestered Miscellaneous and Civil cases within the years 1973 to 2010 included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel representing parties with exhibits admitted within the applicable case date range and seeking retrieval prior to final disposition may contact the Court Clerk's Office at 505-455-8274 to verify exhibit information during regular business hours (8 a.m. to 5 p.m. (MT), Monday through Friday) through March 15. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant(s) exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the specified date will be considered abandoned and will be destroyed by Order of the Court.

Professionalism Tip

Judge's Preamble:

As a judge, I will strive to ensure that judicial proceedings are fair, efficient and conducive to the ascertainment of the truth. In order to carry out that responsibility, I will comply with the letter and spirit of the Code of Judicial Conduct, and I will ensure that judicial proceedings are conducted with fitting dignity and decorum.

Third Judicial District Court

Notice of Destruction of Exhibits

Pursuant to the New Mexico Judicial Retention and Destruction Schedules, the Third Judicial District Court in Las Cruces, New Mexico will destroy exhibits filed with the Court in civil cases for the years of 1996 to 2024. Cases on appeal are excluded. Parties and their attorneys are advised that exhibits may be retrieved until March 30, 2026. Should you have cases with exhibits, please verify exhibit information with the Court by calling at 575-528-8357 from 8 a.m. to 4 p.m. (MT), Monday through Friday. All exhibits will be released in their entirety. Exhibits not claimed by March 30 will be considered abandoned and will be destroyed by Order of the Court.

Eleventh Judicial District Court (San Juan County)

Notice of Mass Reassignment to Judge Brenna Clani-Washinawatok

Effective Feb. 2, pursuant to his authority in Rule 23-109 NMRA, the Chief Judge of the Eleventh Judicial District Court has directed a mass reassignment of PQ cases from Judge Stephen Wayne, Division VIII, to Judge Brenna Clani-Washinawatok, Division VI. Pursuant to Rule 1-088.1 NMRA, parties who have not yet exercised a peremptory excusal in a case being reassigned in this mass reassignment will have 10 business days from Feb. 25 to excuse Judge Brenna Clani-Washinawatok.

U.S. District Court, District of New Mexico

Notice to Federal Bench & Bar Association Members

The 2026 Bench & Bar Spending Plan has been approved in the amount of $88,975.00 for 13 identified projects. To view the detailed spending plan, please see the "Attorney Information" page on the Court's website at **https://www.nmd.uscourts.gov/**.

Notice for Reappointment of Incumbent United States Magistrate Judge

The current term of office of Part-Time United States Magistrate Judge Barbara Smith Evans is due to expire on Sept. 10. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. The duties of a magistrate judge in this court include the following: (1) presiding over most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) presiding over various pretrial matters and evidentiary proceedings on delegation from a district judge, (4) taking of felony pleas, and (5) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether either incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to: **MJMSP@nmcourt.uscourts.gov**. Questions or issues may be directed to Lucy Carruthers at 505-348-2126. Comments must be received by Feb. 27.

State Bar News

Access to Justice Fund Grant Commission

2026-2027 Grant Process Now Open

The State Bar of New Mexico Access to Justice Fund Grant Commission now seeks grant applications from nonprofit organizations that provide civil legal services to low-income New Mexicans within the scope of the State Plan. Upon review of the applications, the Grant Commission will make the final decision regarding applicants to be awarded grants and the amount of each grant. The deadline for proposals is April 2 at noon. The Request for Proposals can be found at: **https://www.sbnm.org/Leadership/Commissions/Access-to-Justice-Fund-Grant-Commission**. Contact the ATJFG Administrator at: **ATJFG_Admin@sbnm.org**

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**.

Off the Record Support Group

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

UNM School of Law

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.**

Your Voice

in the Bar Bulletin

Share Your Insights. Strengthen Our Community.

Have an idea, experience or perspective worth sharing with New Mexico's legal community?

The *Bar Bulletin* invites attorneys of all backgrounds and experience levels to contribute thoughtful articles on topics shaping the profession - whether they explore evolving case law, ethical considerations or reflections on practice and service.

Selected articles will be published in the *Bar Bulletin* and may be featured on the State Bar of New Mexico's social media platforms.

To recognize outstanding writing and encourage participation, the authors of the best-written articles will receive a monetary honorarium of **$300 and special acknowledgment in the publication!**

Articles must be submitted by March 31, 2026 for consideration.

Visit sbnm.org/Submit-An-Article to learn how to submit your article.

All submissions must be approved by the Communications Advisory Committee prior to publication and may be edited. The State Bar of New Mexico reserves the right not to publish a submission. Decisions regarding editing and publication are within the discretion of the State Bar of New Mexico.

Questions may be directed to brandon.mcintyre@sbnm.org.

State Bar of New Mexico
Est. 1886

New Mexico Black Lawyers Association: *A Voice for Civil Rights in New Mexico*

By Brandon McIntyre

With Black History Month comes an opportunity not only to commemorate the past but to reflect on the enduring responsibility carried forward by institutions and individuals alike. It is a moment to recognize the lasting impact of the African American community's civic engagement and its central role in advancing equality and equity under the law.

New Mexico's legal community is distinguished by the breadth of organizations, nonprofits and voluntary bar associations that support both the profession and the public. These institutions provide legal education, professional development and avenues for service rooted in civic responsibility. Among them, the New Mexico Black Lawyers Association ("NMBLA") has long stood as a pillar of New Mexico's legal landscape, serving not only its namesake community, but the state at large, through decades of advocacy, education and leadership.

On Jan. 15, 2025, NMBLA hosted a continuing legal education program titled "Dr. King's Legacy of Hope in Action: Lessons for Lawyers and Leadership" at the State Bar Center. The CLE examined the life and legacy of Martin Luther King Jr., one of the most consequential figures in American history. A principled advocate for civil rights and nonviolent change, King's vision remains deeply relevant to the work of the legal profession. That vision continues to find expression through NMBLA's sustained leadership and service within New Mexico's legal community.

An Organization Grounded in Justice, Values and Action

Established in 1982, the New Mexico Black Lawyers Association operates under four guiding principles: conducting continuing legal education, improving judicial selection and tenure, studying legislative needs affecting the state and community and protecting the civil rights of New Mexico's residents through the legal profession.

"The New Mexico Black Lawyers Association was created to support the professional development of Black attorneys while also addressing the broader needs of our communities through education, advocacy and service," said Hope Thomas, president of NMBLA. "At its core, NMBLA exists to ensure that the legal profession remains engaged in protecting civil rights and promoting equal justice."

That commitment is echoed by Aja N. Brooks, who served as a past president of both the State Bar of New Mexico and NMBLA. "NMBLA has always been grounded in the idea that lawyers have a responsibility beyond their individual practices," Brooks said. "The organization brings people together who believe that

leadership in the legal profession means service to the courts, the legal community and the principles of justice."

Through this mission, NMBLA gives form to a collective voice, one that supports attorneys while advocating on behalf of historically underserved and marginalized communities across New Mexico.

How the Legal Profession Carries Forward Dr. King's Vision

"Nonviolence is not passive resistance to evil; it is active nonviolent resistance to evil," King wrote in Stride Toward Freedom: The Montgomery Story. His emphasis on disciplined, principled action remains foundational to the legal profession's role in advancing justice.

Professor Marsha K. Hardeman, a longtime educator and presenter at NMBLA's CLE, underscored the continued relevance of King's philosophy. "Doing what is right does not always come with approval," she said. "Lawyers have tools—nonviolent tools—within the legal system to advocate for those without power. With the privilege of legal education comes an obligation to give back."

Dean Alfred Mathewson, dean emeritus of the University of New Mexico School of Law and another CLE speaker, emphasized the legal system's role as a nonviolent mechanism for resolving conflict. "The legal process itself is a nonviolent way of resolving disputes," Mathewson said. "It is one of the primary ways society avoids resolving conflict through force."

In this way, NMBLA functions as a living expression of King's vision, translating moral clarity into institutional action.

Timeless Values, Contemporary Work

NMBLA's programs are deliberately pragmatic, offering attorneys tools that translate civil rights principles into daily practice. "Our continuing legal education programs are designed to respond to real challenges facing our communities, not simply to reflect on history," Thomas said.

Professor Sonia Gipson Rankin of the University of New Mexico School of Law highlighted the organization's impact on mentorship and the legal pipeline. "NMBLA's work in mentorship and the legal pipeline is one of the most direct ways civil rights principles are sustained," Rankin said. "Connecting students and new attorneys to the profession ensures that access to justice is not theoretical, but lived."

Civil rights advocacy remains a central focus of the organization. "There are many ways to protect civil rights," Rankin added. "Organizations like NMBLA help lawyers understand how to use their positions, wherever they are, to ensure procedural justice." Brooks echoed that perspective, noting that "through mentorship, leadership development and advocacy, NMBLA helps ensure that the values underlying civil rights work are passed on to the next generation of attorneys."

The Work That Remains

The civil rights movement of the 1960s produced landmark progress, including the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968. These statutes reshaped American law and expanded access to justice nationwide.

At the state level, New Mexico advanced those principles through the New Mexico Civil Rights Act of 2021, which created a state law cause of action for constitutional violations by public bodies or persons acting on their behalf and eliminated qualified immunity as a defense in those cases. The Act reflects a commitment to making civil rights enforceable, not merely aspirational.

Yet challenges persist. "Many legal victories we believed were settled are being challenged again," Hardeman said. "Voting rights, citizenship and fundamental civil protections are not guaranteed forever."

Rankin pointed to persistent disparities and emerging threats. "Even though there have been important legal gains, we still see disparities in employment, education, health care and access to justice," she said. "As technology advances, issues of surveillance and privacy will increasingly affect the most vulnerable communities first."

Mathewson cautioned against complacency. "We cannot simply rely on Dr. King's dream," he said. "We have to recognize what has been accomplished, and what has not, and then decide how we continue the work."

New Mexico's Legal Culture and NMBLA's Impact

New Mexico has developed a legal culture that treats civil rights as both a legal and communal responsibility. Legislative action, including the Civil Rights Act, reflects that commitment, as do economic supports designed to make legal rights meaningful in practice.

"What New Mexico has done that is particularly important is recognize that legal rights alone are not enough," Rankin said. "Providing economic support alongside legal protections is what makes justice meaningful in people's daily lives."

Hardeman emphasized the state's strong tradition of volunteerism. "In New Mexico, there is a clear understanding that law is not separate from community," she said. "It is part of how community is sustained."

Dialogue, Mathewson added, lies at the center of that community-oriented approach. "If we are going to shape a shared future, we have to talk to each other," he said. "We cannot shape communities or legal frameworks without dialogue."

Within this environment, NMBLA plays a collaborative but critical role. "NMBLA's work is grounded in responding to the needs of New Mexico's communities through education, mentorship and advocacy, while working alongside the broader legal community to advance justice," Thomas said.

"Voluntary bar associations like NMBLA strengthen New Mexico's legal culture by ensuring that civil rights, equity and service remain central to how the profession understands its role," Brooks added.

Together Toward Justice

Martin Luther King Jr.'s legacy endures not because his work is complete, but because it remains unfinished. "Dr. King understood that meaningful change required institutions willing to carry the work forward," Brooks said. "That responsibility does not end; it is renewed with each generation of legal leadership."

For NMBLA, that commitment is ongoing. "Year after year, we remain committed to education, mentorship and advocacy that serve both the legal profession and the communities it exists to protect," Thomas said.

As Hardeman observed, the lessons of history are not abstract. "History," she said, "is about survival, justice and hope."

SMALL BUSINESS WEBINAR SERIES:
PART TWO (2) OF A TWO(2) PART SERIES

Suing Over an Unpaid Invoice: What a Small Business Owner Needs to Know

Wednesday, March 11, 2026
12-1 p.m. (MT)

Free webinar about when a small business should sue a non-paying customer. This webinar will be presented by a New Mexico Licensed attorney. Part two of a two-part series.

Do you operate a small business and have a nonpaying customer? Do you wonder: When you decide to bring a lawsuit, what steps do you take? If you win a lawsuit, how do you collect? If you encounter these questions, then please attend **The Small Business Webinar Series** to address the non- paying customer. Specifically, learn about **magistrate court or metro court** steps to take to sue and collect your justly due payment. This 3/11/26 webinar is part two (2) of a series entitled: **Suing over an unpaid invoice: what a small business owner needs to know.** Part one (1) of the series occurred on February 11, 2026, and is available for viewing **HERE**.
CLICK HERE TO ATTEND THE 3/11/26 WEBINAR.

Modest Means Helpline is a civil legal telephone helpline and attorney referral service of the New Mexico State Bar Foundation. The Modest Means Helpline assists New Mexico residents with incomes below 500%* of the federal poverty guidelines. The Modest Means Helpline can assist in civil legal matters including but not limited to domestic relations (divorce, child custody, kinship guardianship, domestic violence), landlord/tenant, small business issues, consumer, and probate.

The Modest Means Helpline's staff attorneys provide legal advice by phone and, if appropriate, may refer the case to volunteer attorneys for representation ranging from pro bono legal advice to limited or full representation. Those interested may reach the Modest Means Helpline at 505-797-6013 or 888-857-9935, Monday through Friday, between the hours of 8 a.m. and 5 p.m.

* The federal poverty guidelines are calculated by household size. In 2025, an income at 500% of the FPG is $78,250 for household of 1 and $160,750 for a household of 4.

New Mexico State Bar Foundation
Modest Means Helpline

505-797-6013 • 888-857-9935

An Inclusive Interview

Equity in Justice

with Jamshed "JJ" Jehangir

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 and belonging in our profession is beneficial to all legal employers; be they private firms, government entities or nonprofits.

This *Inclusive Interview* is with Jamshed "JJ" Jehangir. JJ has been practicing law for two and a half years and is currently a solo practitioner, Public Defender Contract Attorney, and member of the committee for the Rules of Criminal Procedure.

Q. What is your background?

A. I grew up in the west suburbs of Chicago where my childhood was consumed by a love for music. I played percussion in my high school's wind ensemble, orchestra, and jazz band before attending the University of Miami in Coral Gables, Florida, to major in music performance. After my first year of college, my interests shifted, and I found a passion for ultra-distance endurance sports, history, and literature. I also met my future wife, Cheryl, who was a fellow musician-turned-academic (we have now been together 16 years!). Upon receiving my undergraduate degree in history, I accepted a commission as an officer in the United States Marine Corps and spent my time in service in Quantico, Virginia, and San Diego, California. Following the Marines, I enjoyed a few years working at bakeries, bike shops, and doing other fun gigs before enrolling in law school at UNM. After receiving my Juris Doctor diploma and passing the bar in 2023, I spent a year at the public defender, and then clerked for Justice C. Shannon Bacon at the New Mexico Supreme Court. I started my own practice in Fall 2025.

Q. What made you want to become a lawyer?

A. One of my duties in the Marine Corps was to review non-judicial punishment documents for my boss, who was chief of staff of the unit. I mostly reviewed the legal documents for form, but my boss would often ask for my thoughts on whether the recommended punishments were fair. I always found myself advocating for the individuals who were in trouble and trying to understand the alleged incidents from their perspective. I genuinely enjoyed the work, and it felt important to argue in favor of the accused. I am not certain this fully made me want to become a lawyer, but it definitely sparked my interest in the law and put law school on my radar. I think my reasons for actually applying to law school and becoming a lawyer may be less interesting, but not altogether uncommon: I was looking for a new career, enjoyed reading and writing, and had access to the GI Bill to fund three years of education, so law school made sense.

Q. Who is your hero in the legal profession? Whose career or work do you wish to emulate?

A. I am the product of a handful of dedicated professors who shaped me as a lawyer. Thus, I would say my legal heroes are every law school professor who shows up day after day and year after year teaching their subjects with passion, enthusiasm, and skill. I do not want to emulate any specific person's work or career, and instead hope to forge my own unique path. To be sure, I will be influenced by the myriad lawyers, judges, and justices I admire.

Q. What has been the biggest challenge in your legal career?

A. This may seem odd, but I am very proud of my reputation at the jail. I have had inmates tell me that other inmates told them that I am a lawyer who will pick up the phone, come visit, and ultimately do a good job on the case. These are the reviews that matter most.

Q. What is your favorite part of your current position?

A. I struggle with disconnecting from work once the day is over. I often go to bed thinking about a case or legal issue, and wake up thinking about it. I know this inability to unplug is not a virtue, nor is it sustainable in the long run. It has literally made me lose my hair.

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

A. Your background is your strength, so lean into it, not away from it. And you are not only wanted in the legal profession, but you are needed. I wish someone told me it is OK to start your own practice early in your career if you feel ready.

Q. What 3 things would you take with you to a deserted island, and why?

A. I would take (1) my Crockett and Jones "Harvard" loafers in dark brown shell cordovan, (2) mink oil (to keep them properly conditioned, of course), and (3) a shoehorn (to avoid creasing the heal counter). Look, for the most part I live modestly. For example, I drive a 2000 Mazda B2500 pickup truck with well over 200,000 miles on it and a disintegrating interior. But I admittedly indulge in nice dress shoes. They change the way you walk through the world, and if I find myself on a deserted island, I still want to carry myself with confidence.

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

A. In struggling to answer this question I recognize that I likely take certain privileges for granted. I know other members of our profession deal with issues, hardships, and barriers to entry of which I am blissfully unaware. So, my answer is for the bench and bar to listen and act when members of the profession share their thoughts, feelings, and ideas for improvement regarding inclusivity. If I had to offer one tangible idea, I think it would be great if the law school offered a class on starting your own law practice. Many folks, including individuals from diverse backgrounds, do not fit the new-attorney paradigm of becoming a clerk, public defender, prosecutor, or joining a large firm. Rather, they can best flex their unique skills and practice in their field of choice—and geographic location of choice, e.g., rural—by starting their own practice.

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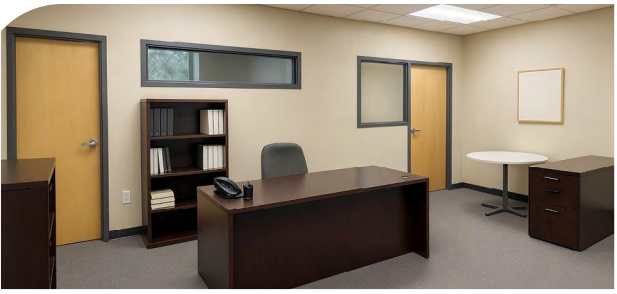

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Legal Education Calendar

February

26 **Appellate Basics for Attorneys: Navigating the New Mexico Court of Appeals (Live Replay)**
1.5 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-02262026-A

26 **A 'Negative' DME Isn't Always Negative**
1.0 G
Web Cast (Live Credits)
New Mexico Trial Lawyers Association & Foundation
https://www.nmtla.org

27 **2026 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204**
1.0 EP
Webinar
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https://bit.ly/CLE-02272026-A

27 **Damages in Practice: Valuation, Proof, and Recovery**
5.5 G
Web Cast (Live Credits)
New Mexico Trial Lawyers Association & Foundation
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March

2 **Service Level Agreements in Technology Contracting**
1.0 G
Teleseminar
NMSBF Center for Legal Education
https://bit.ly/CLE-03022026-A

4 **Governance for Nonprofit and Exempt Organizations**
1.0 G
Teleseminar
NMSBF Center for Legal Education
https://bit.ly/CLE-03042026-A

4 **Dennis Chavez Memorial Lectureship in Law & Civil Rights**
1.5 G
Live Program
University of New Mexico School of Law
forms.unm.edu/forms/chavez

10 **Lincoln on Professionalism**
1.3 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-03102026-A

13 **ChatGPT Unveiled: Revolutionizing the Practice of Law in the AI Era**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-03132026-A

18 **True Crime Ethics & Trial Practice: Jeffrey Dahmer and Wild Bill Cody: Lies, Deceit and the Ethical Rules, Can Attorneys Practice Deception?**
1.0 G, 1.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-03182026-A

20 **eDiscovery for the Rest of Us: Production of Electronically Stored Information (ESI) - Part 5**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-03202026-A

23 **When and Why Law Firms Should Consider Using a Managed Technology Service Provider**
1.0 G, 1.0 EP
In-Person
Mark Fidel, JD, Fidel Consulting Group
https://www.fidelconsultinggroup.com/

24 **True Crime Ethics: The Alec Baldwin Dismissal and the Karen Read Acquittal**
2.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-03242026-A

27 **Pee-wee Herman and the Criminal Justice System's History of Bias Against the Gay Community**
1.0 EP
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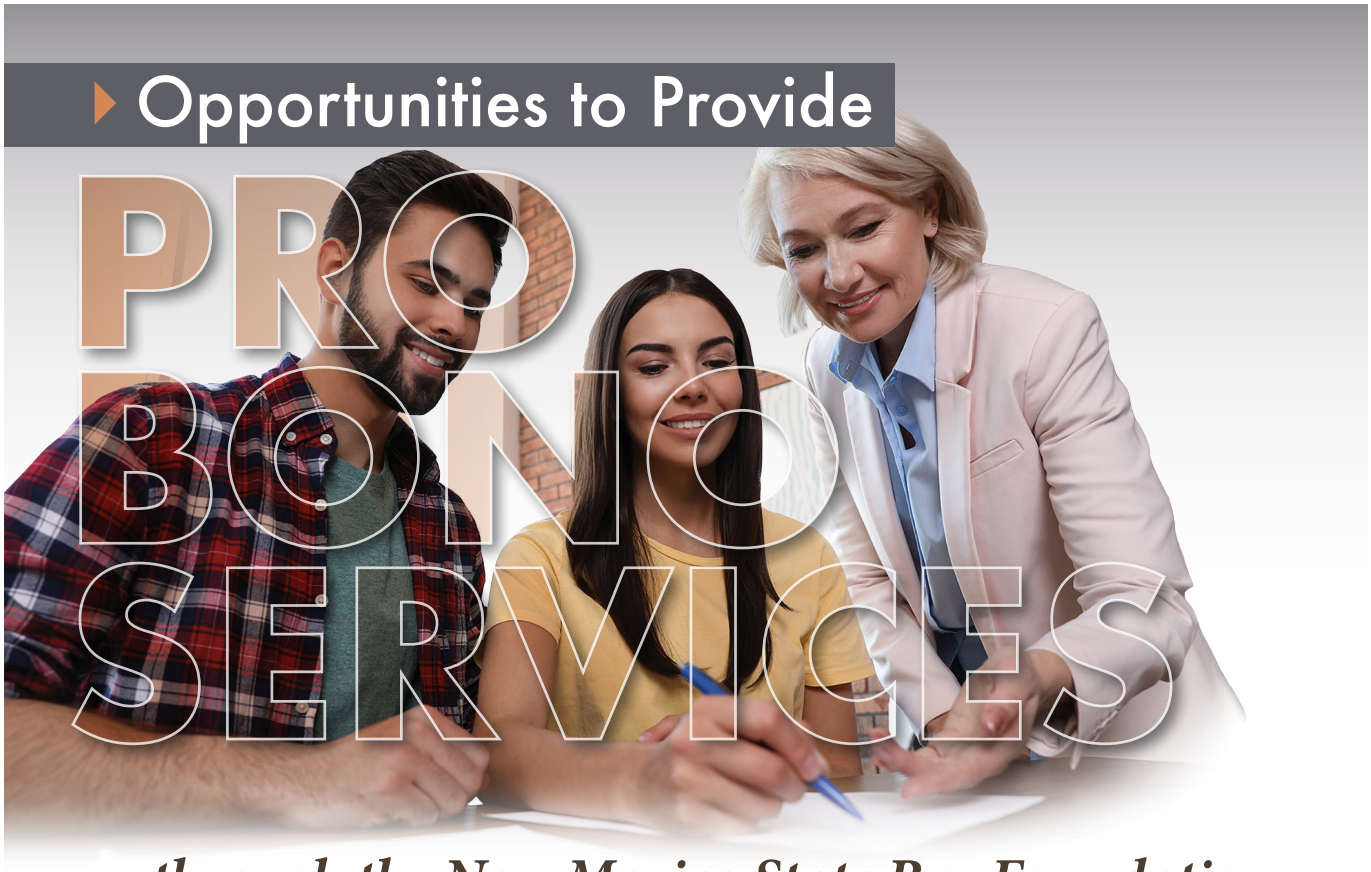

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-030
No. S-1-SC-40221 (filed April 28, 2025)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JESUS GARCIA,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
Cindy M. Mercer, District Judge

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

for Appellant

Raúl Torrez, Attorney General
Emily Miller,
Assistant Attorney General
Albuquerque, NM

for Appellee

CONSOLIDATED WITH

No. S-1-SC-40225

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ALEXANDRO MONTELONGO-MURILLO,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
Cindy M. Mercer, District Judge

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

for Appellant

Raúl Torrez, Attorney General
Teresa M. Ryan,
Assistant Solicitor General
Santa Fe, NM

for Appellee

OPINION

VARGAS, Justice.

{1} In a joint trial, Defendants Jesus Garcia and Alexandro Montelongo-Murillo (together Codefendants) were convicted of first-degree murder and other crimes arising from a deadly drive-by shooting. Prior to trial, the district court excluded the testimony of an eyewitness who would have testified that he saw another person commit the crime. Even though this eyewitness was on the State's witness list from the beginning of the case and the prosecutor interviewed him pretrial, the district court excluded his testimony under Rule 5-502 NMRA for the sole reason that the defense had not specifically listed his name and address on the defense witness list. On appeal, only Defendant Garcia properly challenged the exclusion of this eyewitness. But because this issue affected the fundamental rights of both Codefendants, we consolidated their appeals and reach the issue sua sponte in the case of Defendant Montelongo-Murillo.

{2} We hold that the exclusion of the eyewitness deprived both Codefendants of their constitutional right to present a defense. Accordingly, we reverse and remand for a new trial.

{3} Having granted a new trial, we do not reach the other issues raised on appeal save for the admissibility of a separate eyewitness identification that Codefendants claim was impermissibly suggestive pursuant to *State v. Martinez*, 2021-NMSC-002, 478 P.3d 880. We hold that *Martinez* does not require suppression of that eyewitness identification and therefore the district court did not err in denying Codefendants' motion to suppress.

I. BACKGROUND

A. The Crime

{4} Daniel and Scott Sandoval, two brothers, were at home in Meadow Lake, New Mexico when Daniel saw an SUV approaching. Frightened, Daniel told Scott, "We got to go. We got to go." As the SUV came to a stop behind Daniel's white Buick, Daniel and Scott "dived into the car" and sped away. Before getting in the car, Scott saw the driver and passenger of the SUV for "just a few seconds." The SUV pursued them, and the occupants of the SUV began shooting at Daniel and Scott.

{5} Scott ducked down and called 911 from his cell phone. Over the next fourteen minutes, he stayed on the line with the 911 operator while the occupants of the SUV continued to follow and shoot at them. Daniel told Scott that "Boxer" was after him. Scott tried to direct Daniel to drive in the middle of the road to prevent the SUV from overtaking the car, but he was unsuccessful. The SUV pulled up alongside the Buick and Daniel was shot in the head, causing the car to veer off the road.

{6} The assailants continued to shoot at Scott as he jumped out of the car and sought shelter in a nearby house. The assailants circled back to the Buick and "started shoot-

ing up the whole car" with Daniel still in it, using "all kind of rounds, a lot of rounds . . . like a war," as Scott later testified, "with somebody that didn't even have a gun." When the assailants left, Scott got into the driver's seat and drove Daniel in the bullet-riddled Buick back to their mother's house.

{7} Daniel would later die of his injuries.

B. The Nonstandard Eyewitness Identification Procedure

{8} The first law enforcement officer to arrive on scene was Sergeant Joseph Rowland of the Valencia County Sheriff's Office. No suspects had been identified at that time, but Scott told Sergeant Rowland that "Boxer" shot Daniel. Other family members thought Jesús Kime and Steven Benavidez could have been responsible because of certain Facebook postings.

{9} Sergeant Rowland heard over the radio that Codefendants had been apprehended while hiding in an irrigation ditch after apparently abandoning an SUV. At the same time, Sergeant Rowland also learned that Steven Benavidez, another potential suspect, had been shot near one of the crime scenes. In order to determine which of the two sets of suspects were the shooters—Defendant Garcia and Defendant Montelongo-Murillo, or Jesús Kime and Steven Benavidez—Sergeant Rowland decided to search through the database of driver's license photographs to show Scott all four of the suspects. Sergeant Rowland could not find a driver's license photograph of Steven Benavidez, but he obtained photographs of Codefendants and Jesús Kime. Sergeant Rowland did not record the identification interview with Scott.

{10} According to Scott, Sergeant Rowland displayed photographs of Codefendants, which were arranged side-by-side on the screen of Sergeant Rowland's cell phone. Scott stated, "That's the guys." Sergeant Rowland asked Scott, "Is this them?" Scott confirmed, "That's them."

{11} Sergeant Rowland described the identification procedure differently. According to Sergeant Rowland, he took out his laptop and showed Scott the three photographs sequentially, asking Scott "if any one of them were 'Boxer.'" The first photograph shown to Scott was of Defendant Garcia. Scott positively identified Defendant Garcia as "Boxer," and he "identified somewhat" Defendant Montelongo-Murillo "as possibly being the second person in the vehicle that was shooting at him and his brother." Scott did not recognize Jesús Kime. Scott was not shown a photograph of Steven Benavidez.

C. Eyewitness Lorenzo Montaño

{12} Along the route of the drive-by shooting, Lorenzo Montaño was at home having a barbecue with two or three other men when he heard gunshots. He told the children who were playing in the yard to go inside. He then saw a brown SUV chasing a white sedan. He recognized the man hanging out of the passenger side of the SUV, shooting at the sedan, as Steven Benavidez.

{13} Shortly after Montaño witnessed the shooting, Steven Benavidez and his girlfriend broke into Montaño's home, armed with a knife, and demanded money from Montaño. Montaño shot Benavidez and his girlfriend, injuring them nonfatally.[1] Montaño told Benavidez, "You killed Daniel Sandoval," the victim in the drive-by shooting.

{14} That day, Detective Bert Lopez of the Valencia County Sheriff's Office interviewed Montaño about what he had seen. Montaño reported that the other people with him at the barbecue also recognized the shooter as Steven Benavidez, and he gave police the name of at least one of the other witnesses. Detective Lopez made an audio/video recording of his interview of Montaño, which the State would later provide to the defense as part of discovery.

{15} Detective Lopez later served Steven Benavidez with a warrant while he was in jail on other charges. After interrogating Steven Benavidez, Detective Lopez determined that he was not involved in the drive-by shooting, and the warrant was dismissed. Detective Lopez also investigated the other suspect named by the victim's family, Jesús "Killer" Kime, and determined that he was not a person of interest either. Detective Lopez did not explain his reasons for dropping the investigation into these alternate suspects other than to state that Scott did not know who they were, and "the brunt of the force was pushing against" them.

D. Pretrial Proceedings and the Motion to Exclude Montaño

{16} On April 4, 2019, a grand jury indicted Codefendants for first-degree murder and related charges stemming from the drive-by shooting. A few weeks later, before Codefendants had been arraigned, the State filed a witness list that included eyewitness Montaño. Apparently like the other lay witnesses, the State gave Montaño's address as "c/o District Attorney's Office" in Belen. During the pretrial period, the State followed up with seven amended witness lists, all of which included Montaño, and all of which gave his address as the district attorney's office.

{17} On May 3, 2022, Codefendants filed a joint notice of intent to call witnesses, which listed a single named expert witness followed by, in all caps and underlined, "ANY WITNESS CALLED, REVEALED, OR DISCLOSED BY THE STATE." Trial was set for October 31, 2022 through November 16, 2022.

{18} On the morning of October 26, 2022, one of the defense attorneys emailed the prosecutor a subpoena for Montaño to appear at trial. The prosecutor informed the defense attorney that the State would not be calling Montaño at trial, and the defense attorney responded that, in that case, he would personally attempt to serve Montaño with the subpoena. That afternoon, the defense attorney had Montaño served and filed the return of service with the district court.

{19} That same afternoon, the prosecutor filed a Motion to Exclude Lorenzo Montaño or in the Alternative to Compel a Pretrial Interview. Although the State admitted that Montaño was on the State's witness list and his address was listed as care of the district attorney's office, the prosecutor stated that "Montaño has never provided a pretrial interview" and "the [S]tate has not had contact with . . . Montaño since the inception of this case." Despite having provided the defense with the audio recording of Detective Lopez's interview of Montaño, the prosecutor alleged that "[t]he [S]tate has never spoken to" Montaño and "is uncertain what if any substantive value his potential testimony may provide at trial." Although the prosecutor had a physical address for

[1] The State never charged Montaño for the shooting of Steven Benavidez.

Montaño, she asserted that "the [S]tate has never independently confirmed this address and is unaware if [Montaño] still maintains a residence at this address."

{20} The prosecutor argued that under Rule 5-502(A)(3), Codefendants had a duty to identify any defense witnesses by name and address within thirty days after arraignment, and the defense witness list incorporating the State's witnesses by reference "does not comport with the [R]ule" and "does not put the [S]tate on notice of witnesses that the defense is going to use in their case in chief." The purpose of Rule 5-502(A)(3), the prosecutor argued, was to "prevent[] defense counsel from surprising the [S]tate at trial with witnesses that the [S]tate was unaware the defense intended on calling at trial." Without further argument, the prosecutor asked the district court to exclude Montaño as a defense witness, or, in the alternative, "to compel defense counsel to have him participate in a pretrial interview and to further order that it is the defense counsel's responsibility to subpoena this witness . . . for trial."

{21} Codefendants filed a response to the State's motion to exclude Montaño, in which they argued that "[t]he State was already on notice where to find or contact Mr. Montaño. The defense had no other contact information than what was already provided" by the State. Codefendants argued that the State was not "surprised" by Montaño because he was their own witness, whom they had already interviewed, and it would be unreasonable to require the defense to retype the names and addresses of all of the State's witnesses. Codefendants pointed out that Montaño had now been served by both parties, and the parties had scheduled a cooperative pretrial interview with Montaño at the district attorney's office.

E. The Hearing on the Motion to Exclude Montaño as a Defense Witness

{22} On November 1, 2022, the second day of voir dire, the district court heard argument on the State's motion to exclude Montaño. The State acknowledged that it had interviewed Montaño the previous Friday, but nevertheless sought to exclude Montaño as a witness because the defense had not provided adequate notice of its intention to call him. The prosecutor argued that "to allow the introduction of this witness at trial is the functional equivalent of trial by ambush." Specifically, the prosecutor argued that "the State just hasn't had an opportunity, given the timing of [Montaño's] pretrial interview, to research the other individuals that were part of the barbecue and see if they, in fact, corroborate his recollection of events."

{23} The prosecutor claimed that "the prejudice to the State, if it can be evaluated as such, is simply that there were other [people] at that residence at the time that the witness says that he saw" Steven Benavidez and the State had not interviewed those people. The prosecutor admitted, "I am aware of what [Montaño] would likely say," but explained that "in terms of rebuttal, Your Honor, I don't even believe that we're going to be able to interview people that might have information that contradicts what Lorenzo Montaño is saying. And for that reason, the State is moving for his exclusion of witnesses."

{24} The defense argued that there was no surprise because Montaño was the State's witness, and the defense only knew of his existence because of the recorded interview provided to the defense by the State. Moreover, the defense argued that Montaño was "a critical witness for the defense" because "he is exculpatory" in that he would testify that he saw another person commit the crime.

{25} The district court asked the defense, "if he's such a critical witness . . . why did you wait until just before trial to identify him as a witness you intended to call?" The district court noted that Rule 5-502 "is clear" and "requires a list of names, addresses, and witnesses the defense intends to call."

{26} The defense answered that the practice of reserving the right to call an opposing party's witnesses is quite typical and argued that it would be "somewhat redundant" to list the names and addresses of the State's forty listed witnesses. The defense added that the police interview with Montaño was conducted by the case agent, Detective Lopez, who would be seated at counsel table, and that nothing had substantively changed in Montaño's testimony from that original statement to the pretrial interview. Defense counsel argued that the State had not shown how it would be prejudiced by the defense calling Montaño under these circumstances, pointing out that it was unlike a situation where "we found a witness who was hiding out in California and suddenly brought him into New Mexico . . . the week before the trial begins and they learn about this for the first time." Instead, the defense argued, "they knew about this man," including "what he was saying . . . that he was available . . . the address for him . . . where he could be found, where he could be served with a subpoena."

{27} The prosecutor responded that "the State is aware of what Lorenzo Montaño would or may testify to," but "the disclaimer to not follow the Rule [5-502] can't be that I knew or the State's attorneys knew about this." Instead, the prosecutor argued, Rule 5-502(A) requires that the defense "put us on notice" of "who they intend to call" within thirty days after arraignment. The prosecutor asserted that "the pretrial interview does not cure" the prejudice, which was "that there were multiple individuals at this party who had witnessed presumptively the same thing . . . and we don't have the capability of folks that aren't named in discovery to follow up with them."

{28} The district court ruled that Rule 5-502(A)'s requirement that the defendant disclose a witness list to the State within thirty days after arraignment was controlling. The district court judge admonished the defense, stating, "[t]he defense had access to the same information that the State did with regard to this particular witness" and "had opportunity to specifically put the State on notice that they intended to call him as a witness. Merely saying that 'We reserve the right to call any witness that the State may call,' is not the same thing as disclosing witnesses you intend to call." The district court found "that it is prejudicial to the State to wait until this point to identify a witness" and "[i]f he's that critical, he should have been identified" to give the State the "opportunity to determine whether there are witnesses who have information that either is consistent with or contrary to what the information is being provided by that witness." Therefore, the district court excluded Montaño's testimony.

F. Trial

{29} Codefendants were tried jointly in a nine-day trial. The jury found Codefendants guilty of first-degree murder (willful and deliberate), conspiracy to commit first-degree murder, and attempted first-degree murder. The district court sentenced each Codefendant to forty-eight years in prison.

II. DISCUSSION

{30} We first discuss how the district court's decision to exclude Montaño was reversible error and our reasons for granting the remedy of reversal for new trial to Codefendants despite the deficiencies in Defendant Montelongo-Murillo's briefing. We next discuss the admissibility of Scott's eyewitness identification of Codefendants under our precedent in *Martinez* and hold that, although the eyewitness identification procedure was suggestive, the district court correctly held that the eyewitness identifications were admissible because of the ongoing public safety emergency at the time. Finally, we review the sufficiency of the evidence and determine that substantial evidence supported the convictions, therefore retrial is warranted on all charges.

A. The Exclusion of Eyewitness Montaño Was Reversible Error

{31} The district court abused its discretion in excluding Montaño in two ways. First, it abused its discretion by determining that Codefendants had violated Rule 5-502(A)(3) by reserving the right to call any of the State's witnesses instead of retyping the names of the State's witnesses on their witness list. We hold that Codefendants did not violate Rule 5-502. Instead, the practice of reserving the right to call an opposing party's witnesses satisfies the purposes of the Rule, and we hold that neither the State nor the defense is required to retype the names and addresses of an opposing party's witnesses onto their witness list under Rule 5-501 NMRA or Rule 5-502.

{32} Second, even if Codefendants had violated a rule, the district court abused its discretion by failing to analyze the propriety of witness exclusion under the standard set out in *McCarty v. State*, 1988-NMSC-079, ¶¶ 9-10, 107 N.M. 651, 763 P.2d 360, which clearly establishes that exclusion of a defense witness in a criminal prosecution is an extreme sanction of last resort. In the case of defense witnesses, a presumption of admissibility of the testimony applies, and the sanction of witness exclusion should only be used in the most egregious circumstances. No such circumstances were presented here, where the defense merely attempted to call one of the State's own witnesses.

1. Standard of review

{33} A district court's decision to exclude a witness is reviewed for abuse of discretion. *State v. Le Mier*, 2017-NMSC-017, ¶ 22, 394 P.3d 959 (reviewing for abuse of discretion the district court's exclusion of a state's witness for the prosecution's failure to comply with discovery disclosure orders); *McCarty*, 1988-NMSC-079, ¶ 17 (reviewing for abuse of discretion the district court's exclusion of a defense witness for failure to comply with alibi notice deadlines). "A court abuses its discretion when its ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Harper*, 2011-NMSC-044, ¶ 16, 150 N.M. 745, 266 P.3d 25 (internal quotation marks and citation omitted). "Trial courts possess broad discretionary authority to decide what sanction to impose when a discovery order is violated." *Le Mier*, 2017-NMSC-017, ¶ 22. And "[i]t is clear that a trial court does have the discretion to preclude defense testimony as a sanction for failure to comply" with court rules. *McCarty*, 1988-NMSC-079, ¶ 15 (citation omitted).

{34} "Preclusion, however, constitutes a conscious mandatory distortion of the fact-finding process whenever applied. Before a defendant's sixth amendment rights are derogated as a sanction for noncompliance, a trial judge must exercise his discretion within recognized parameters." *Id.* (citation omitted). In every case, but particularly in the case of exclusion of a defense witness, the "trial court should seek to apply sanctions that affect the evidence at trial and the merits of the case as little as possible." *Harper*, 2011-NMSC-044, ¶ 16 (text only)[2] (citation omitted).

2. The defense did not violate Rule 5-502 and the district court had no basis to impose any sanction on Codefendants

{35} The district court excluded Montaño on the sole ground that the defense witness list violated Rule 5-502(A)(3) because it purported to reserve a general right to call any of the State's witnesses rather than individually listing the "names and addresses of the witnesses the defendant intends to call at the trial." *Id.* Based solely on its plain text, the district court interpreted Rule 5-502(A)(3) to prohibit the defense from calling a State's witness unless the defendant specifically retyped the name and address from the State's witness list into Defendant's witness list. We hold that our witness disclosure rules, Rule 5-501 and Rule 5-502, require no such redundancy.

{36} On the contrary, our witness disclosure rules, like all discovery rules, are liberally construed to effectuate their underlying purpose. *See Santa Fe Pac. Gold Corp. v. United Nuclear Corp.*, 2007-NMCA-133, ¶ 13, 143 N.M. 215, 175 P.3d 309 (citing *Carter v. Burn Constr. Co., Inc.*, 1973-NMCA-156, ¶ 10, 85 N.M. 27, 508 P.2d 1324) ("[D]iscovery rules are liberally construed to enable parties to easily obtain the relevant facts before trial."). "The purpose of discovery in a criminal case, indeed the purpose of a trial itself, is to ascertain the truth." *State v. Manus*, 1979-NMSC-035, ¶ 36, 93 N.M. 95, 597 P.2d 280, *overruled on other grounds by Sells v. State*, 1982-NMSC-125, ¶ 9, 98 N.M. 786, 653 P.2d 162. The purpose of the witness disclosure rules is to allow for witness interviews and thereby to facilitate case preparation. *See Le Mier*, 2017-NMSC-017, ¶ 23 (discussing witness disclosure rules).

{37} The district court's narrow reading of Rule 5-502(A)(3) would effectively invalidate any clause on a witness list reserving the right to call an opposing party's witnesses. But the purpose of the witness disclosure rule—to facilitate interviews—has already been met with regard to a party's own witnesses. As a matter of common sense, a party has already interviewed its

[2] "(Text only)" indicates the omission of nonessential punctuation marks—including internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text otherwise unchanged.

own witnesses before including them on a witness list; if not, the party would have no basis to believe that the witness would have any relevant information for the trial. Requiring counsel to retype the names and addresses of opposing counsel's witnesses onto the defense's witness list would not add to the truth-seeking purpose of discovery but would only add needless administrative burden to all parties.

{38} In sum, a party provides adequate notice of intent to call an opposing party's witnesses by including a general statement reserving the right to call the opposing party's witnesses. Neither Rule 5-501 nor Rule 5-502 require any additional form of notice. Codefendants' witness list that included a general statement reserving the right to call the State's witnesses provided adequate notice to the State of its intent to call Montaño, the State's witness. In that way, Codefendants' witness list satisfied the underlying purpose of Rule 5-502; and, the district court abused its discretion when it found that the defense violated Rule 5-502. *See State v. Orona*, 1979-NMSC-011, ¶ 6, 92 N.M. 450, 589 P.2d 1041 ("[T]he purpose of [requiring the state to provide the defendant a witness list is] to assist defense counsel in the preparation of a defense by providing the opportunity to interview the government's witnesses." (citing *Gregory v. United States*, 369 F.2d 185 (D.C. Cir. 1966))); *State v. Ferry*, 2018-NMSC-004, ¶ 2, 409 P.3d 918 (holding that an abuse of discretion occurs, inter alia, when the district court fails to correctly apply legal principles that lead to only one correct outcome).

3. Under the *McCarty* standard for exclusion of defense witnesses, the district court abused its discretion by imposing the extreme sanction of witness exclusion

{39} In this case, the defense did not violate Rule 5-502. But even if it had, the district court erred when it failed to analyze whether the defense witness should be excluded under the factors articulated in *McCarty*, 1988-NMSC-079, ¶¶ 9-10. Therefore, we find it prudent to provide guidance on this standard that should be applied whenever the state seeks to exclude a witness for the defense in criminal matters.

{40} As a general rule, "[t]he exclusion of witnesses is a severe sanction that raises questions about the fairness of the judicial process," and where exclusion of a witness prevents a party from making its prima facie case, the sanction "should not be imposed except in extreme cases, and only after an adequate hearing to determine the reasons for the violation and the prejudicial effect on the opposing party." *Harper*, 2011-NMSC-044, ¶ 21 (citations omitted); *accord, e.g.*, *Le Mier*, 2017-NMSC-017, ¶ 21 ("When exercising their discretionary power, our courts must be ever mindful of the fact that witness exclusion is a severe sanction and one that should be utilized as a sanction of last resort."). This strong policy preference in favor of the admission of witness testimony—articulated in *Harper* and *Le Mier* in the context of exclusion of a state's witness—comes into starker relief when the witness will be called by the defense and requires consideration of matters beyond those set out in these two cases.

{41} The exclusion of a defense witness may deprive a defendant of his or her constitutional right to present a defense as guaranteed by the compulsory process clause of the Sixth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution. *See, e.g.*, *Taylor v. Illinois*, 484 U.S. 400, 408-09 (1988) ("The [defendant's] right to offer testimony is . . . grounded in the Sixth Amendment."); *see also Washington v. Texas*, 388 U.S. 14, 19 (1967) ("The right to offer the testimony of witnesses . . . is in plain terms the right to present a defense[.] . . . This right is a fundamental element of due process of law."). Likewise, under certain circumstances, the exclusion of a defense witness may violate Article II, Section 14 of the New Mexico Constitution, which provides every accused with "the right . . . to have compulsory process to compel the attendance of necessary witnesses in his behalf."

{42} Although these rights are not absolute, this Court has long recognized that when a court rule conflicts with a defendant's right to present a defense, we presume that the court rule must yield. *See McCarty*, 1988-NMSC-079, ¶ 9 (discussing with approval the holding in *Fendler v. Goldsmith*, 728 F.2d 1181, 1188 (9th Cir. 1983), that the Sixth Amendment does require a presumption that defense witnesses be permitted to testify); *but see Taylor*, 484 U.S. at 410, 414-15 (holding that the Sixth Amendment does not pose an absolute bar to the exclusion of defense witnesses). In *McCarty*, this Court held that the district court abused its discretion in precluding alibi testimony proffered by the defense, even though the defense failed to file a timely notice of alibi as required by Rule 5-508 NMRA. *McCarty*, 1988-NMSC-079, ¶ 17. The *McCarty* Court recognized that the district court's discretion to exclude defense witnesses must take into account "the fundamental character of the defendant's right to offer the testimony of witnesses in his favor." *Id.* ¶ 7. Therefore, "preclusion" of a defense witness "is only appropriate in limited circumstances." *Id.*

{43} *McCarty* adopted a balancing test for the exclusion of a defense witness as established in *Fendler*, 728 F.2d at 1188, and cited in *Taylor*, 484 U.S. at 415 n.19. The balancing test explicitly incorporates a presumption against exclusion, explaining, "'[a]t the outset we emphasize that for a balancing test to meet Sixth Amendment standards, it must begin with a presumption against exclusion of otherwise admissible defense evidence. No other approach adequately protects the right to present a defense.'" *McCarty*, 1988-NMSC-079, ¶ 9 (quoting *Fendler*, 728 F.2d at 1188). The district court in this case did not consider, much less apply, this mandatory presumption to the admission of Montaño's testimony.

{44} After applying the presumption, *McCarty* then requires the district court to balance: "(1) the effectiveness of less severe sanctions, (2) the impact of preclusion on the evidence at trial and the outcome of the case, (3) the extent of prosecutorial surprise or prejudice, and (4) whether the violation was willful." 1988-NMSC-079, ¶ 10. We conclude that three of these factors are substantially equivalent to the *Harper* factors—which apply to all parties, not just criminal defendants—in that the district court must consider intentionality, prejudice, and less severe sanctions. *See Harper*, 2011-NMSC-044, ¶ 2 (holding that "exclusion of witnesses requires" (1) "an intentional violation of a court order," (2) "prejudice to the opposing party, and" (3) "consideration

of less severe sanctions"). However, when contemplating the exclusion of a defense witness, the *McCarty* test adds the gloss that district courts "should balance the potential for prejudice to the prosecution against the impact on the defense and whether the evidence might have been material to the outcome of the trial." 1988-NMSC-079, ¶ 10 (citation omitted). The district court did not conduct any part of this balancing test. When the *McCarty* balancing test is applied to Montaño's testimony, the presumption against exclusion cannot be overcome.

{45} First, the district court moved immediately to the most extreme sanction of witness exclusion without considering lesser sanctions. Even though the State had originally sought two remedies—exclusion of the witness or a pretrial interview—the district court did not explore whether the State, having obtained the alternative relief it sought, was now without prejudice. Moreover, the district court did not explore any other remedies such as resetting trial. Unlike in *Le Mier* where the district court "gave the [s]tate multiple and varying opportunities to cure its discovery violations and imposed exclusion only after progressive sanctions failed to produce the desired effect," the district court in this case did not give defense counsel any means by which counsel could cure any perceived problem with the witness. 2017-NMSC-017, ¶ 28. Instead, it moved immediately to the harshest sanction available: exclusion.

{46} Second, the impact of exclusion on the defense was devastating. As Defendant Garcia argues, without Montaño's testimony, the defense was unable to put forth affirmative exculpatory testimony. Therefore, Codefendants were unable to present their prima facie defense theory to the jury: namely, that someone else—Steven Benavidez—was responsible for the crimes of which they were accused. And like in *McCarty*, Montaño's "precluded testimony was critical to the defense's ability to impeach the credibility of the State's key witness"—Scott Sandoval. 1988-NMSC-079, ¶ 17.

{47} Third, the prosecution would have been neither surprised nor prejudiced by the admission of Montaño's testimony. Certainly, the State cannot claim surprise as to the testimony of its own witness, particularly when the prosecutor readily admitted that she had interviewed Montaño and was therefore "aware of what [Montaño] would likely say." As to prejudice, the State asserted that it was prejudiced for one reason alone: other people who were at home with Montaño at the time of the event also witnessed what happened, and the State had not interviewed *them*. The district court agreed that the State should have been given "an opportunity to determine whether there are witnesses who have information that either is consistent with or contrary to" Montaño's anticipated testimony.

{48} But the defense did not deprive the State of its opportunity to interview these witnesses. The State was first made aware of their existence through its initial interview with Montaño on or about the date of the crime. If the State did not interview them, that was its own investigative choice. Nothing requires the police to follow up on every investigative lead in a case. *State v. Ware*, 1994-NMSC-091, ¶ 16, 118 N.M. 319, 881 P.2d 679 ("[T]he failure to gather evidence is not the same as the failure to preserve evidence, and . . . the [s]tate generally has no duty to collect particular evidence."). Police may have had good reason for not interviewing those people. But the key fact is that the direction of the investigation was determined by the State, not defense. The defense did not conceal the existence of those witnesses or otherwise withhold evidence from the State. Therefore, the defense did not "prejudice" the State. *See Harper*, 2011-NMSC-044, ¶ 19 ("'[T]he concept of 'prejudice' in this context is limited to an adverse impact upon the defense's ability to prepare and present its case.'" (quoting 5 Wayne R. LaFave, et al., *Criminal Procedure* § 20.6(b), at 495-96 (3d ed. 2010)). The State was able to prepare and present its case; that it chose not to follow up on certain eyewitness interviews does not mean that it would be prejudiced by testimony from one eyewitness whom it had interviewed.

{49} Lastly, the defense did not act with the requisite culpability. Even if the district court were correct that the defense violated Rule 5-502—which it did not—we stress that violation of a discovery rule is generally not equivalent to the "intentional violation of a court order" that was a prerequisite to witness exclusion in *Harper*, 2011-NMSC-044, ¶ 2, and, without more, is not tantamount to the willful violation that is discussed in the *McCarty* balancing test, 1988-NMSC-079, ¶ 10.

{50} In *Le Mier*, this Court characterized the district court's ruling as being "appropriately lenient" after the state violated Rule 5-501, the discovery rule requiring the state to provide witness addresses. *Le Mier*, 2017-NMSC-017, ¶ 23. It was only after the state subsequently violated two written court orders and multiple oral ones, accepting "progressive sanctions" along the way, that the district court ultimately imposed the extreme sanction of witness exclusion. *Id.* ¶ 28. This distinction indicates that a mere rule violation, without more, is not as culpable as "an intentional violation of a court order," *Harper*, 2011-NMSC-044, ¶ 2, and should not result in witness exclusion. Instead, absent evidence of culpable conduct, leniency is appropriate for a mere rule violation. *Le Mier*, 2017-NMSC-017, ¶ 23; *see also State v. Quintana*, 1974-NMCA-095, ¶ 8, 86 N.M. 666, 526 P.2d 808 (failing to comply with the witness disclosure rule did not result in exclusion); *Manus*, 1979-NMSC-035, ¶¶ 40-42 (same).

{51} The district court judge made no finding that the defense acted willfully, and the record contains no grounds for such a finding. *Cf., e.g.*, *State v. Stills*, 1998-NMSC-009, ¶ 43, 125 N.M. 66, 957 P.2d 51 (affirming the district court's exclusion of a defense witness based on the judge's finding that "defense counsel was engaging in delay tactics, that preclusion was necessary to protect the integrity of the judicial system, and efficient administration of justice"). Instead in this case, the record reflects that defense counsel followed standard practice in reserving the right to call a State's witness, and then fully cooperated in procuring that witness for the prosecution to interview prior to trial when the prosecutor decided against calling the witness on behalf of the State.

{52} In sum, before the district court excludes a witness for the defense in a criminal proceeding, it must first apply the presumption against exclusion recognized by *McCarty* and then apply the *McCarty* balancing test, considering the three factors set out in *Harper* and affirmed in *Le Mier*—

(1) effectiveness of less severe sanctions; (2) the extent of surprise or prejudice to the prosecution; (3) whether the violation was willful—as well as the additional, fourth factor identified by the *McCarty* Court: (4) the impact of preclusion on the evidence at trial and the outcome of the case. In this case, the district court did not consider and apply *McCarty*'s test for the exclusion of defense witnesses. It did not apply the mandatory presumption against the exclusion of Montaño's testimony. It did not consider other sanctions, properly assess prejudice, or determine that the defense acted with the requisite culpability, as also required by *Harper*. And, finally, it did not consider the impact of exclusion on the defense's case. As Defendant Garcia persuasively argues, there is little doubt that Montaño's testimony was crucial to the defense because he was an eyewitness to the homicide at issue and he would testify that someone else—a plausible alternate suspect—committed the crime. This evidence is quintessential exculpatory evidence that, if believed, could completely change the outcome of trial.

{53} Here, like in *McCarty*, we conclude that "under the facts and circumstances of this case it would be unreasonable to weigh the balance against the defendant." 1988-NMSC-079, ¶ 17. Therefore, even if the defense had violated Rule 5-502, the district court would have abused its discretion by excluding Montaño as a defense witness. *See Harper*, 2011-NMSC-044, ¶ 16 ("A court abuses its discretion when its ruling is clearly against the logic and effect of the facts and circumstances of the case." (internal quotation marks and citation omitted)).

4. The remedy

{54} The remedy for the erroneous exclusion of a defense witness is reversal and remand. *See, e.g.*, *McCarty*, 1988-NMSC-079, ¶ 18 (reversing the district court's ruling excluding defense witnesses and remanding for a new trial); *cf. Harper*, 2011-NMSC-044, ¶ 28 (reversing and remanding after holding that the district court abused its discretion by excluding the state's witnesses).

{55} We note that, on appeal, only Defendant Garcia properly raised the dispositive issue of witness exclusion. In contrast, Defendant Montelongo-Murillo omitted any discussion of this issue except in a footnote that purported to incorporate Defendant Garcia's brief by reference. Defendant Montelongo-Murillo's footnote does not meet the briefing standards required by our appellate rules. *See* Rule 12-318(A)(4) NMRA (requiring each issue in a brief in chief to include a discussion of the "standard of review, the contentions of the appellant, and [preservation] . . . , with citations to authorities, record proper, transcript of proceedings, or exhibits relied on. Applicable New Mexico decisions shall be cited"); Rule 12-317 NMRA (setting forth requirements for joinder or consolidation of appeals). We will generally not reach any issue raised in this manner, and we admonish counsel not to follow this practice in the future. *See State v. Aragon*, 1990-NMCA-001, ¶ 4, 109 N.M. 632, 788 P.2d 932 (rejecting arguments by reference to extrinsic documents so as to avoid forcing parties and the Court to search the record and pleadings, to speculate as to the issues on appeal, and to prevent parties from sidestepping page limits); *United Nuclear Corp. v. State ex rel. Martinez*, 1994-NMCA-031, ¶ 5, 117 N.M. 232, 870 P.2d 1390 (declining to review arguments that a party sought to incorporate by reference and noting, "[t]his is an unacceptable briefing practice, and we will not reexamine these other pleadings in this appeal").

{56} However, "[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). In denying Codefendants the right to present the testimony of an exculpatory witness, the district court infringed on the fundamental rights of both Defendant Garcia and Defendant Montelongo-Murillo, who were tried jointly. Under these circumstances, this Court has the equitable power to provide a remedy to both Codefendants despite the deficiencies in Defendant Montelongo-Murillo's briefing. *See State v. Cruz*, 2021-NMSC-015, ¶¶ 29-30, 486 P.3d 1 (exercising discretion to reach an issue affecting the defendant's fundamental rights, even though counsel had not raised the issue); *see also* Rule 12-321(B)(2)(d) NMRA (permitting "the appellate court, in its discretion" to reach "issues involving . . . fundamental rights of a party" even when the issue is not properly preserved). Accordingly, we exercise our discretion to reverse and remand both of these consolidated cases.

B. *Martinez* Does Not Require the Suppression of Scott Sandoval's Eyewitness Identification of Codefendants

{57} Codefendants filed a joint motion to suppress the eyewitness identifications that Scott made to Sergeant Rowland in the immediate aftermath of the crime, arguing that the nonstandard identification procedure that Sergeant Rowland used was so highly suggestive that the admission of the evidence would violate due process under *Martinez*. The district court denied the motion, finding that "[a] state of emergency existed in the Meadowlake District" during the time of Scott's identifications, the suspects "were at large, armed and dangerous, and present in the Meadowlake area," and "additional 911 calls were placed in reference to another shooting nearby wherein two individuals had been shot, . . . and Sergeant Rowland did not know if these shootings were connected." Given those facts, the district court concluded that the identification procedure did not violate Codefendants' due process rights under *Martinez*, "because there was a sufficient law enforcement justification" for the procedure.

{58} On appeal, Codefendants challenge that ruling on the same grounds asserted below. For the following reasons, we affirm.

1. Legal standards

a. Standard of review

{59} This Court reviews the denial of a motion to suppress an eyewitness identification "as a mixed question of fact and law, with the Court viewing the facts in the manner most favorable to the prevailing party, and drawing all reasonable inferences in support of the court's decision." *Martinez*, 2021-NMSC-002, ¶ 25 (text only) (citation omitted). The application of law to those facts is then subject to a de novo standard of review. *Id.* Finally, we review for harmless error if any error is discovered. *Id.* ¶ *79.*

b. The *Martinez* test

{60} In *Martinez*, we adopted a per se rule of exclusion for unnecessarily suggestive eyewitness identification procedures used by police. *Id.* Under *Martinez*, "if a witness makes an identification of a defendant as a result of a police identification procedure

that is unnecessarily suggestive and conducive to irreparable misidentification, the identification and any subsequent identification by the same witness must be suppressed." *Id.* We made clear that determining whether an identification procedure was "*unnecessarily* suggestive" involves an inquiry into "whether the police have a *good reason* to use a suggestive identification procedure in the first instance." *Id.*

{61} Thus, the *Martinez* test for the admissibility of an eyewitness identification proceeds in two parts. First, the defendant has the burden "to establish prima facie that some aspect of the identification procedure employed by the police was suggestive." 2021-NMSC-002, ¶ 80. If the defendant meets that burden, "the burden shifts to the state to prove by clear and convincing evidence *either* that (1) the procedure employed was not so suggestive as to materially taint the identification . . . *or* (2) good reason existed for the police to employ the suggestive procedure in the first instance." *Id.* This latter element—that "good reason existed for the police to employ the suggestive procedure"—was the basis of the district court's ruling in this case. *Id.*

{62} The "good reason" standard articulated in *Martinez* is one that we adopted from Massachusetts, which has a well-developed body of law construing that term. *See id.* ¶ 79 (stating that "[t]his rule in part mirrors the Massachusetts approach," and citing *Commonwealth v. Johnson*, 45 N.E.3d 83, 88 (Mass. 2016)). Therefore, Massachusetts law informs the applicable standard for good reason in New Mexico. Massachusetts courts assess good reason by examining, essentially, police necessity. Specifically, the Massachusetts standard examines:

> "the nature of the crime involved and corresponding concerns for public safety; the need for efficient police investigation in the immediate aftermath of a crime; and the usefulness of prompt confirmation of the accuracy of investigatory information, which, if in error, will release the police quickly to follow another track."

Johnson, 45 N.E.3d at 88 (quoting *Commonwealth v. Austin*, 657 N.E.2d 458, 461 (Mass. 1995)).

{63} Under this standard, the State can meet its burden to show good reason by demonstrating that a suggestive identification was conducted for a legitimate law enforcement purpose, such as protecting public safety or quickly confirming the identity of an assailant in the immediate aftermath of a crime. *See id.* If the State meets that burden, then the suggestive identification is admissible. *Martinez* only requires suppression of the identification "[i]f the state fails to carry its responsive burden." 2021-NMSC-002, ¶ 80.

2. Analysis

{64} Viewing the facts in the light most favorable to the State and "drawing all reasonable inferences in support" of the district court's ruling, *id.* ¶ 25, *the district court reasonably concluded that the suggestive identification was nonetheless admissible because* "good reason existed for the police to employ the suggestive procedure in the first instance," *id.* ¶ 80. The good reason standard was met because of the ongoing emergency situation that existed at the time.

{65} The evidence showed that the incident was extremely violent, of an extended duration over multiple locations, and open-ended. There was more than one suspected shooter, and these armed and dangerous men were at large in the small Meadow Lake community. Three distinct crime scenes had to be secured and the route between them investigated. Law enforcement resources were stretched beyond capacity. Dispatchers were flooded with nonstop calls all shift. Additionally, while police were still investigating Daniel's fatal shooting, they received reports that one of the potential suspects, Steven Benavidez, had been shot and was lying in the middle of the road. Callers were reporting that men were jumping fences and trying to enter houses. As Sergeant Rowland summarized, "[i]t was dangerous for everyone." That evidence provided ample support for the district court's finding that police were operating under "[a] state of emergency" at the time Sergeant Rowland conducted the suggestive identification.

{66} The district court correctly concluded that the state of emergency provided good reason for the suggestive eyewitness identification procedure. As stated previously, the *Martinez* good reason standard can be interpreted through Massachusetts law, which examines three factors: (1) "'the nature of the crime involved and corresponding concerns for public safety'"; (2) "'the need for efficient police investigation in the immediate aftermath of a crime'"; and (3) "'the usefulness of prompt confirmation of the accuracy of investigatory information, which, if in error, will release the police quickly to follow another track.'" *Johnson*, 45 N.E.3d at 88 (quoting *Austin*, 657 N.E.2d at 461). All of these factors weighed in favor of a finding of good reason in this case.

{67} In this case, the nature of the crime was extremely violent and dangerous—murder, attempted murder, and any number of potential crimes associated with shooting from a moving vehicle in an inhabited area—and the corresponding concerns for public safety were similarly high. *Cf. Austin*, 657 N.E.2d at 461-62 (noting that because "at least one dangerous bank robber was at large, and that whoever was involved could either escape altogether or strike again with possible injury to, or loss of, human life" there was "extremely good justification" for the suggestive identification procedure). Given that police resources were overwhelmed, police had to be efficient in their investigation in the immediate aftermath of this crime. *Cf. Stovall v. Denno*, 388 U.S. 293, 301-02 (1967) (holding that a showup identification at a witness's hospital bed was justified because the witness could have exonerated defendant and "[n]o one knew how long [the witness] might live"), *abrogated by United States v. Johnson*, 457 U.S. 537, 543-44 (1982). Finally, because police did not know whether the shootings were connected, confirmatory information would have been essential to resolving these incidents and restoring public safety. *See Austin*, 657 N.E.2d at 462 ("[T]he police needed to determine, as quickly as possible, whether the robberies were committed by a single individual. Based on the identification by the witnesses (or the lack thereof), the police in these communities would know whether they were dealing with one bank robber or more, and could focus their investigation accordingly.").

{68} We do not condone the suggestive eyewitness identification procedure that was used in this case. However, given the

exigent circumstances, it was reasonable for the district court to conclude that law enforcement had good reason to use the suggestive identification procedure, and, therefore, the admission of evidence of the identification did not violate Codefendants' due process rights. *See generally* 16C C.J.S. *Constitutional Law* § 1677, at 340 (2015) ("[E]xigent circumstances generally will weigh in favor of concluding that a showup identification procedure . . . did not violate due process guarantees, because a showup procedure may be necessary to quickly confirm the identity of a suspect or to ensure the release of an innocent suspect."). Therefore, the district court did not err in admitting the evidence under *Martinez*.

C. Retrial Is Warranted Because the Convictions Were Supported By Sufficient Evidence

{69} "Having concluded that the error in this case mandates reversal, to avoid double jeopardy concerns, we must examine whether sufficient evidence in this case supports retrying" both Codefendants. *State v. Suazo*, 2017-NMSC-011, ¶ 32, 390 P.3d 674. In conducting this review, we ask "whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction." *Id.* (text only) (citation omitted).

{70} The essential elements were as follows. The jury was instructed that it could find Codefendants guilty of first-degree willful and deliberate murder if it found that they (1) killed Daniel Sandoval (2) "with the deliberate intention to take away [his] life." The jury was instructed that it could find Codefendants guilty of conspiracy to commit first-degree murder if it found that they (1) "by words or acts agreed to commit first degree murder" and (2) "intended to commit first degree murder." Finally, the jury was instructed that it could find Codefendants guilty of attempted first-degree murder if it found that they (1) "intended to commit" first-degree murder and (2) "began to do an act which constituted a substantial part of the first degree murder but failed" to complete the murder of Scott Sandoval.

{71} The evidence supporting all of these elements included evidence that Scott identified Defendant Garcia as the driver and Defendant Montelongo-Murillo as the passenger in the SUV used in the shooting; Scott was specifically targeted by the shooters after he jumped out of the car and fled on foot; Defendant Garcia had a longstanding feud with Daniel and had previously tried to kill Daniel by shooting at him from a vehicle; Codefendants were discovered together hiding in a ditch after Daniel was killed; Defendant Montelongo-Murillo's DNA and fingerprints were found in the abandoned SUV near the location that Daniel was killed; the DNA of Defendant Garcia "could not be eliminated as possible contributor[]" to items tested inside the SUV; and Codefendants had recently purchased the SUV together.

{72} From this evidence, a rational jury could have concluded beyond a reasonable doubt that Codefendants agreed to kill Daniel, deliberately killed Daniel, and attempted to kill Scott. Because each element of the crimes charged were supported by substantial evidence, retrial is permitted.

III. CONCLUSION

{73} For the foregoing reasons, we reverse Codefendants' convictions and remand for a new trial. A new trial is warranted because sufficient evidence supported the convictions.

{74} IT IS SO ORDERED.

JULIE J. VARGAS, Justice

WE CONCUR:

DAVID K. THOMSON, Chief Justice

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-031
No. S-1-SC-40416 (filed May 1, 2025)

TODD LOPEZ, as Personal Representative of the Wrongful Death Estate of RICHARD PAIZ and LORETTA PAIZ, individually,
Plaintiffs-Respondents,
v.
PRESBYTERIAN HEALTHCARE SERVICES, HOSPITALIST MEDICINE PHYSICIANS OF TEXAS, PLLC d/b/a SOUND PHYSICIANS HOLDINGS LLC, KENNETH DALE, and KARAN MAHAJAN,
Defendants-Petitioners.

ORIGINAL PROCEEDING ON CERTIORARI
Francis J. Mathew, District Judge

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OPINION

THOMSON, Chief Justice.

{1} At common law, any cause of action for a tort resulting in death died with the plaintiff. *Chavez v. Regents of Univ. of N.M.*, 1985-NMSC-114, ¶ 7, 103 N.M. 606, 711 P.2d 883. In 1882, the Legislature abrogated that common-law principle by enacting the Wrongful Death Act (WDA or the Act), creating a right of recovery for statutory beneficiaries and accountability for a tortfeasor's actions resulting in death. *See* NMSA 1978, §§ 41-2-1 to -4 (1882, as amended through 2001);[1] *Romero v. Byers*, 1994-NMSC-031, ¶ 15, 117 N.M. 422, 872 P.2d 840 ("By prior common law, a right of action for personal injuries was extinguished by the death of the person injured, and no civil action could be maintained for a tort resulting in death. Legislative enactment of the [WDA] created a new cause of action in derogation of the common law." (citations omitted)). To facilitate actions under the WDA, the Act requires that "[e]very action mentioned in [the WDA] *shall be brought by and in the name of the personal representative of the deceased person*." Section 41-2-3 (emphasis added).

{2} We resolve the question of whether failure to petition for appointment of a WDA Personal Representative (WDA PR or PR) deprives a court of subject matter jurisdiction under the Statutory Standing Rule that, "'[W]hen a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction. Standing then becomes a jurisdictional prerequisite to an action.'" *Deutsche Bank Nat'l Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 11, 369 P.3d 1046 (quoting *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9 n.1, 144 N.M. 471, 188 P.3d 1222). Here, the district court applied the Statutory Standing Rule to conclude that it lacked subject matter jurisdiction over Plaintiff who failed to petition for appointment as the PR until after the case was filed. We disagree with that application of the Statutory Standing Rule. Neither the text of the WDA nor the role of PRs in wrongful death actions supports the conclusion that a PR's failure to petition for formal appointment as the WDA PR at or before the time of filing the complaint deprives the PR of standing and a court of jurisdiction. We affirm the Court of Appeals' reversal of the district court, and clarify the application of the Statutory Standing Rule to the WDA.

I. BACKGROUND

{3} The lawsuit arose out of the alleged wrongful death of Richard Paiz following his care with Presbyterian Healthcare Services (Presbyterian). Respondent, Todd Lopez (Lopez), filed WDA claims against Petitioners Presbyterian and Hospitalist Medicine Physicians of Texas, PLLC, d/b/a Sound Physicians Holdings, LLC (Sound Physicians), identifying himself in the caption of the complaint as "Todd Lopez, as Personal Representative of the Wrongful

[1] The WDA provides, "Whenever the death of a person shall be caused by the wrongful act, neglect or default of another, . . . then . . . the person who . . . would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured." Section 41-2-1.

Death Estate of Richard Paiz." After discovery revealed that Lopez never petitioned for appointment as Mr. Paiz's WDA PR, Lopez subsequently moved for appointment as the WDA PR and substitution as the real party in interest under Rule 1-017(A) NMRA. Presbyterian and Sound Physicians opposed the motion, arguing that Lopez failed to comply with the requirements of Rule 1-017(B) for appointing a WDA PR and that Lopez had not highlighted a mistake of fact justifying substitution under Rule 1-017(A). The district court ordered supplemental briefing on jurisdiction, directing the parties to the Statutory Standing Rule as articulated in *Johnston*. 2016-NMSC-013, ¶¶ 10-11 (stating that "[w]hen a statute creates a cause of action, . . . standing is a jurisdictional prerequisite" to bringing that action (alteration in original) (internal quotation marks and citations omitted)). Following a hearing on the parties' briefing, the district court dismissed the WDA claims, reasoning that, absent appointment as the PR, Lopez did not have standing to bring the claims under the WDA and that the court, therefore, lacked subject matter jurisdiction over the case under the Statutory Standing Rule. The district court certified the issue for interlocutory appeal.

{4} On interlocutory appeal, the Court of Appeals reversed after conducting its own standing analysis under the WDA with Judge Bustamante specially concurring. *Lopez v. Presbyterian Healthcare Servs.*, 2024-NMCA-055, ¶ 19, 553 P.3d 481. The Court reasoned that it is the *decedent* who has standing under the WDA but lacks capacity, so the WDA designates the PR as a nominal party to facilitate the lawsuit. *See id.* Given the purely administrative role of WDA PRs, the court concluded, the proper remedy was that articulated in this Court's opinion in *Chavez*: that where there is a defect in the ministerial act of appointing a WDA PR, the solution is to substitute a properly appointed PR as the real party in interest and relate that substitution back to the filing of the complaint where the requirements of Rule 1-015 NMRA and Rule 1-017 are satisfied. *Id.* ¶¶ 21-22 (citing *Chavez*, 1985-NMSC-114, ¶ 8). Presbyterian and Sound Physicians appealed and argue that this Court's reasoning in *Chavez* has been analytically superseded by the emergence of the Statutory Standing Rule and an amendment to Rule 1-017 clarifying the requirements for appointing a WDA PR.

II. DISCUSSION

{5} We agree with the Court of Appeals that failure to petition for appointment as the WDA PR at or before the time of filing is not a jurisdictional defect warranting dismissal under the Statutory Standing Rule. We arrive at our conclusion, however, based on the plain language of the WDA and our courts' longstanding interpretation of that Act. Put simply, while the Legislature may impose limitations on a court's review of causes of action that the Legislature itself created by specifying who may sue, it has not imposed requirements on the time and manner of a WDA PR's appointment necessary for the PR to secure standing and for a court to hear the claims.

A. Statutory Standing and Subject Matter Jurisdiction

{6} Article VI, Section 13 of the New Mexico Constitution provides, "The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as provided by law." Article VI, Section 13 of the New Mexico Constitution grants district courts two distinct forms of subject matter jurisdiction: jurisdiction over common-law claims and jurisdiction over claims created by statute. *Phoenix Funding, LLC v. Aurora Loan Servs., LLC*, 2017-NMSC-010, ¶ 20, 390 P.3d 174 ("New Mexico courts have general subject matter jurisdiction over common-law claims."); *Ottino v. Ottino*, 2001-NMCA-012, ¶ 7, 130 N.M. 168, 21 P.3d 37 ("[T]he district court is possessed of two forms of jurisdiction: original and statutory.").

{7} Requirements for standing under each form of jurisdiction are distinct. Standing is prudential in common-law causes of action, "imposed not by the Constitution or by statute but by the judicial branch on itself to serve judicial economy and the proper—and properly limited—role of courts in a democratic society." *Phoenix Funding*, 2017-NMSC-010, ¶ 20 (internal quotation marks and citation omitted). Accordingly, standing in common-law cases is not jurisdictional. *Id.* ¶ 18 ("Because the requirement of a plaintiff's standing is not derived from a constitutional limitation of the judiciary to decide cases or controversies, it is not a jurisdictional prerequisite.").

{8} In contrast, standing is a jurisdictional prerequisite for causes of action created by statute. Indeed, where "the Legislature empowers the courts to adjudicate a new kind of claim . . . , the Legislature may condition the exercise of that power on the plaintiff's satisfaction of certain prerequisites." *Id.* ¶ 19. Standing in such cases is governed by the language of the statute rather than prudential considerations. *Prot. & Advoc. Sys., Inc. v. Presbyterian Healthcare Servs.*, 1999-NMCA-122, ¶ 21, 128 N.M. 73, 989 P.2d 890 ("In the case before us, however, we do not conduct our own analysis of prudential considerations, because standing is governed by specific statutory language.").

{9} In this case, the Court of Appeals applied prudential standing factors to determine standing under the WDA, concluding that because the PR did not suffer the injury alleged against the tortfeasor and does not have any interest in the litigation, standing does not rest with the PR. *Lopez*, 2024-NMCA-055, ¶¶ 18-19 ("The WDA grants the PR no cause of action, the PR has no injury in fact, and no interest of the PR's is protected by the WDA."). To support its conclusion, the Court of Appeals reads this Court's opinion in *Key* as incorporating prudential considerations into its statutory standing analysis. *See Lopez*, 2024-NMCA-055, ¶ 14 (citing *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 11, 121 N.M. 764, 918 P.2d 350).

{10} This is problematic, however, because *Key* does not, in fact, distinguish between statutory standing and the question of whether a statute contemplates a cause of action, asserting that there is, in fact, no distinction between the two. *See Key*, 1996-NMSC-038, ¶¶ 10-11 (reasoning that "[w]hether we ask if Key had standing to sue or whether we ask if the Act provided Key with a cause of action, we must look to the Legislature's intent as expressed in the Act or other relevant authority"). Despite *Key*'s treatment of the two concepts, courts have since treated statutory standing as a unique inquiry and more clearly developed the "zone of interests" analysis, which looks to

whether a statute contemplated a cause of action for a particular *injury*. *Id.* ¶ 11 (internal quotation marks and citation omitted); *see Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 8, 453 P.3d 434 ("[The parties] argue over whether the UPA contemplates *competitor standing*. However, a more precise framing of the issue is whether the UPA creates a cause of action to recover lost profits damages from a competitor.").

{11} While both the statutory standing and zone of interests analyses shape standing under a particular statute, each asks a different question; zone of interests asks whether the plaintiff has alleged a cognizable injury under the statute while statutory standing asks whether the plaintiff has satisfied certain statutory preconditions to judicial review. Indeed, a close reading of *Key* reveals its nature as a case that incorporated prudential considerations into analyzing whether a statute contemplates a particular cause of action for a particular class of plaintiffs. *See Key*, 1996-NMSC-038, ¶¶ 29-32, 35-38, 41. Accordingly, the Court of Appeals' use of prudential considerations was not proper when applying the Statutory Standing Rule, which only looks to the text of the statute to determine standing. *Prot. & Advoc. Sys., Inc.*, 1999-NMCA-122, ¶ 21 ("In the case before us, however, we do not conduct our own analysis of prudential considerations, because standing is governed by specific statutory language.").

{12} Zeroing in on the development of the Statutory Standing Rule as a distinct analysis, the parties and Court of Appeals' concurrence leverage the history of the Statutory Standing Rule as a distinct doctrine in contrasting ways. Lopez and the Court of Appeals' concurrence assert that the Rule first appeared in a footnote in *ACLU of N.M.*, 2008-NMSC-045, ¶ 9 n.1. *Lopez*, 2024-NMCA-055, ¶¶ 26-30 (Bustamante, J., specially concurring). They criticize the footnote for relying on out-of-state law that has since been overturned and argue that those origins place the Statutory Standing Rule on shaky ground, requiring us to "overrule" the footnote and the cases that rely on it. *See id.* In contrast, Petitioners argue that the Statutory Standing Rule developed after this Court decided *Chavez*, 1985-NMSC-114. Paired with the recent amendment to Rule 1-017 clarifying the requirements of WDA PRs, Petitioners argue that the Rule analytically superseded the holding in *Chavez* that failure to appoint a PR is *not* a jurisdictional defect. 1985-NMSC-114, ¶ 11.

{13} We do not find merit in either argument. Contrary to the timeline that the parties and Court of Appeals provide, the core principles underlying the Statutory Standing Rule long predate the footnote in *ACLU of N.M. See Ickes v. Brimhall*, 1938-NMSC-036, ¶ 12, 42 N.M. 412, 79 P.2d 942 (observing in the context of the WDA that "Where a statute gives the cause of action, and designates the persons who may sue, they alone are authorized to bring suit." (internal quotation marks and citation omitted)); *see also Heckathorn v. Heckathorn*, 1967-NMSC-017, ¶ 11, 77 N.M. 369, 423 P.2d 410 (holding that satisfying the statutory residency period ahead of instituting a divorce proceeding was a "necessary jurisdictional prerequisite," though not expressly referencing standing); *Prot. & Advoc. Sys., Inc.*, 1999-NMCA-122, ¶ 21 ("[S]tanding is governed by specific statutory language."). While it may have recently solidified in cases like *Johnston* and *Phoenix Funding*, it was not conjured from thin air as the Court of Appeals' concurrence and Lopez suggest. Nor, as Respondent suggests, did the Statutory Standing Rule's development "analytically supersede" earlier court precedent. As we explain, the Statutory Standing Rule is fully reconcilable with the holding of *Chavez* based on the plain language of the WDA and Rule 1-017.

{14} Nor do we find merit in the suggestion that the Statutory Standing Rule, as a tool for assessing a court's jurisdiction, should be forgone in favor of the analysis put forth in *Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, ¶ 23, 109 N.M. 683, 789 P.2d 1250. *See also Lopez*, 2024-NMCA-055, ¶¶ 31-34 (Bustamante, J., specially concurring). In *Sundance*, homeowners challenged the judgment of the district court in favor of a contractor on the grounds that the contractor failed to state a claim under the controlling statute and, therefore, the district court lacked jurisdiction to enter the judgment. 1990-NMSC-031, ¶¶ 10-11. The Court rejected that argument and concluded that failure to state a claim is not a jurisdictional defect "since it would make jurisdiction turn on the underlying validity *vel non* of a claim—the very question to be determined by the court in the exercise of its jurisdiction." *Id.* ¶ 15. That is, "the jurisdiction of a district court does not depend on how the court decides a contested issue submitted to it." *Id.* Here, the Court of Appeals' concurrence argues that the same logic could apply to statutory standing. *See Lopez,* 2024-NMCA-055, ¶ 34 (Bustamante, J., specially concurring).

{15} However, the Court in *Sundance* did not address standing, nor does the concurrence in *Lopez* address the important and meaningful differences between standing and failure to state a claim, the latter requiring a judgment on the merits. *See Sundance*, 1990-NMSC-031, ¶¶ 15-16, 23. Rather, the reasoning in *Sundance* is more akin to the zone of interests analysis, which, as we have stated, is distinct from a standing analysis. And ultimately the *Lopez* concurrence overlooks the core reasoning of the Statutory Standing Rule: that where the Legislature confers jurisdiction via a statute, it may condition courts' exercise of that jurisdiction on the plaintiff satisfying enumerated preconditions to secure standing. We now turn to whether the WDA falls within that category of action and what conditions it imposes on a plaintiff.

B. The WDA Creates a Statutory Cause of Action

{16} The Court of Appeals assumed, without analyzing, that the WDA created a statutory cause of action. This question is critical, however, because application of the Statutory Standing Rule to the WDA requires, first, that the WDA created a new cause of action that did not exist at common law. *See Johnston*, 2016-NMSC-013, ¶ 10 (declining to apply the Statutory Standing Rule where the cause of action was codified by but not created by statute). If we were to conclude that the WDA *did not* create a statutory cause of action, then standing would not be a jurisdictional issue in this case and prudential standing considerations, like those employed by the Court of Appeals, would control. *See Prot. & Advoc. Sys., Inc.*, 1999-NMCA-122, ¶ 19.

{17} We hold that by establishing a cause of action for wrongful death and a right to recovery for statutory beneficiaries—neither of which existed at common law—the WDA creates a statutory cause of action subject to the Statutory Standing Rule. Because this question has been a source of confusion for courts since the early days of the WDA, we take this opportunity to explain our reasoning and offer clarity.

{18} New Mexico courts, including this Court, have been inconsistent in their characterization of the WDA, oscillating between interpreting the WDA as a statute that creates a new action and accompanying rights and one that merely transmits the *decedent's* rights to the PR. Whether the WDA creates new claims or merely lifts a common-law bar to claims, empowering the PR to pursue an action in tort despite the death of the injured party, has been an ongoing analytical struggle with little clarity. For instance, in 1936 this Court explained that:

> [the WDA] does not, as is often supposed, create a new cause of action. It transmits to the [PR] a cause of action when the injured person would have had one had death not ensued. In other words, the cause of action does not abate by reason of the death of the person injured.

Hogsett v. Hanna, 1936-NMSC-063, ¶ 9, 41 N.M. 22, 63 P.2d 540 (citations omitted); *see also Estate of Krahmer ex rel. Peck v. Laurel Healthcare Providers, LLC*, 2014-NMCA-001, ¶ 7, 315 P.3d 298 ("Since the early days of statehood, New Mexico courts have characterized the Act as a statute that transmits the decedent's rights to file a claim to the representative of the wrongful death estate."). Still, the Court in *Hogsett* acknowledged that the purpose of the WDA was to create a means to hold negligent actors liable even where the injured party dies, where historically the tortfeasor would be relieved of liability upon the death of the plaintiff. 1936-NMSC-063, ¶ 12 ("A careful reading of the sections under consideration suggests that the first thought of the [L]egislature was to create a cause of action against a culpable party. . . . It did not intend to relieve the tort feasor from liability in any event." (internal quotation marks and citation omitted)). In that way, the Court understood the WDA as doing more than simply preserving recovery—the Act also establishes a new manner of deterrence and accountability that did not exist before. More recently, the Court reiterated that interpretation, observing that "New Mexico's WDA was intended to *replace* the common-law rule barring recovery in cases of wrongful death so as to allow recovery and to *discourage and punish* negligent behavior by corporations." *Estate of Brice v. Toyota Motor Corp.*, 2016-NMSC-018, ¶ 20, 373 P.3d 977 (emphasis added).

{19} Unfortunately, those holdings and observations are contradicted by caselaw clearly stating that any action for wrongful death is purely statutory as opposed to an act that merely lifts a bar to existing common-law claims. *See Stang v. Hertz Corp.*, 1969-NMCA-118, ¶ 9, 81 N.M. 69, 463 P.2d 45 ("The right to recover damages for wrongful death is entirely statutory."), *aff'd*, 1970-NMSC-048, ¶ 9, 81 N.M. 348, 467 P.2d 14; *Folz v. State*, 1990-NMSC-075, ¶ 26, 110 N.M. 457, 797 P.2d 246 ("[I]t must be remembered that a wrongful death action, as a statutory action, is *sui generis*. Common law concepts, while informative, are not dispositive of statutory law."). Indeed, *Chavez*—the case upon which Lopez primarily relies—states that, "At common law there was no right of action for wrongful death. Any such right of action is purely statutory. The statutory authority for a death action in New Mexico may be found in the Wrongful Death Act." 1985-NMSC-114, ¶ 7 (citations omitted). This idea was reiterated in *Romero*: "Legislative enactment of the Wrongful Death Act *created a new cause of action* in derogation of the common law." 1994-NMSC-031, ¶ 15 (emphasis added).

{20} At the core of this confusion is the question of whether the WDA is a survival statute, a wrongful death statute, or a hybrid of the two. Survival statutes preserve the actions that the decedent could have brought and, critically here, limit damages to those that the *decedent* could have recovered. Cindy Domingue-Hendrickson, *Wrongful Death New Mexico Adopts Hedonic Damages in the Context of Wrongful Death Actions: Sears v. Nissan (Romero v. Byers)*, 25 N.M. L. Rev. 385, 387-88 (1995). In contrast, wrongful death statutes create a cause of action that only arises at the decedent's passing and, in addition to harm to the decedent, takes into consideration harm to beneficiaries resulting from the death. *Id.* Some statutes combine aspects of survival and wrongful death statutes. *Id.* at 389.

{21} It is the plain language of the WDA that reveals its true nature as a hybrid statute. First, the WDA states that the tortfeasor shall be liable for wrongful acts resulting in death that the tortfeasor would have been liable for but-for the death. Section 41-2-1. That provision expresses its nature as a survival statute by limiting causes of action under the WDA to those that the decedent could have brought. However, the WDA right of recovery for harm to *beneficiaries* pulls the WDA out of the realm of pure survival and adds a component only found in wrongful death statutes, providing that the jury may "tak[e] into consideration the pecuniary injury resulting from the death to the surviving party entitled to the judgment." Section 41-2-3.

{22} The hybrid nature of the WDA is reflected in caselaw as well, as this Court explained in *Baca v. Baca*:

> The right to recover damages for the wrongful death of a person is entirely statutory. . . . While the wrongful death act was said in [previous cases] to be a survival statute, it has actually been held to be one in survival only in the sense that the cause of action accrues at the date of the injury and does not create a new cause of action upon the death of the injured person. The problem here present, where the recovery is not for the benefit of the estate, although brought by the personal representative, but is for the benefit of certain named beneficiaries, injects a consideration not present in the usual survival statute.

1963-NMSC-043, ¶ 14, 71 N.M. 468, 379 P.2d 765 (citations omitted). The Court in *Baca* went on to discuss a 1961 amendment establishing that a WDA action accrues at the date of the decedent's *death*

and does not exist as a claim prior to that death, "thereby suggesting the possibility that the [L]egislature considered the statute as not being one of survival." *Id.* ¶ 15.

{23} The WDA clearly creates a statutory cause of action. A claim under the WDA accrues at the date of death and subjects the tortfeasor to liability for causing death that did not exist at common law. Further, the WDA creates an action to benefit statutory beneficiaries who had no means to recover for the wrongful death at common law. Although the vehicle for recovery is limited to those claims that the decedent could have brought, the fact remains that those actions died with the injured party at common law and the WDA confers a distinct action through which the beneficiaries may recover and the tortfeasor may be held accountable. Accordingly, we conclude that applying the Statutory Standing Rule is appropriate and now explain what the Rule and the plain language of the WDA require of PRs in order to establish jurisdiction.

C. The WDA Does Not Require a PR to Petition for Formal Appointment to Secure Standing and a Court to Exercise Jurisdiction

{24} When analyzing the requirements that the Legislature contemplated in order for a PR to have standing to bring a WDA action, we look first to the plain language of the statute. *Gandydancer*, 2019-NMSC-021, ¶ 13. "In addition to looking at the statutory language, we also consider the history and background of the statute." *Id.* (internal quotation marks and citation omitted).

{25} Under the plain language of the WDA, the Legislature simply did not impose the formal appointment of a PR as a prerequisite to bringing a WDA claim. While the Legislature was clear that any WDA action shall be brought by the decedent's PR, the statute is silent as to formal appointment. Section 41-2-3. The basic requirements for WDA PRs are derived from two sources: the WDA itself and Rule 1-017(B), which was amended in 2014 to clarify the requirements for appointing a WDA PR. *See* Rule 1-017(B) comm. cmt. 2014 Amendment. As we explain, neither source imposes a requirement for formal appointment for the PR to have standing to bring a WDA claim.

1. The plain language of the WDA does not require a PR to petition for appointment to secure standing

{26} As originally enacted, the WDA empowered the statutory beneficiaries to bring the wrongful death action. *Estate of Lajeuenesse ex rel. Boswell v. Bd. of Regents of Univ. of N.M.*, 2013-NMCA-004, ¶ 11, 292 P.3d 485. However, the Legislature amended the WDA in 1891 to grant the PR "the sole right to pursue the action." *Id.* That section now provides that "[e]very action mentioned in Section 41-2-1 NMSA 1978 shall be brought by and in the name of the personal representative of the deceased person." Section 41-2-3.

{27} While the WDA is clear that a wrongful death action shall be brought by the PR, it does not include language requiring that the PR be appointed for that specific purpose. *See id.* As a result, prior to the 2014 amendment to Rule 1-017(B), courts broadly construed who may serve as a PR for purposes of a wrongful death action. *See Henkel v. Hood*, 1945-NMSC-006, ¶¶ 8, 11-12, 49 N.M. 45, 156 P.2d 790 (holding that the "community administrator" of the decedent's estate under Texas law could act as a PR under the WDA); *Torres v. Sierra*, 1976-NMCA-064, ¶¶ 16-17, 89 N.M. 441, 553 P.2d 721 (determining that an estate administrator "comes within the category of 'personal representative'" under the WDA (citations omitted)); *Oakey v. Tyson*, 2017-NMCA-078, ¶ 21, 404 P.3d 810 (acknowledging the ambiguity in the WDA and holding that a probate PR could act as the PR for a WDA claim before the 2014 Rule 1-017(B) amendment).

{28} Critical here, the text of the WDA also does not dictate *when* the PR must be appointed. Consequently, courts have long concluded that failure to secure appointment of a PR before bringing the suit was not a jurisdictional defect and did not render the complaint a nullity. *See Chavez*, 1985-NMSC-114, ¶ 15; *Martinez v. Segovia*, 2003-NMCA-023, ¶ 8, 133 N.M. 240, 62 P.3d 331. Instead, as this Court held in *Chavez*, where there was some defect in appointment, the proper remedy was substituting a duly appointed PR as the real party in interest under Rule 1-017(A) and relating back to the filing of the complaint under Rule 1-015(C) rather than dismissing. *Chavez*, 1985-NMSC-114, ¶¶ 11-14.

{29} That flexibility has been facilitated by an enduring understanding of PRs as merely nominal parties who act for the benefit of the statutory beneficiaries. *Id.* ¶ 10. Indeed, the Court in *Chavez* rooted its holding in the longstanding idea that, "[i]t is merely 'incidental' that a 'personal representative' is named to bring a wrongful death action." *Id.* ¶ 8 (quoting *Henkel*, 1945-NMSC-006, ¶ 9). And because WDA PRs act as a sort of procedural placeholder for decedents, the interest of justice called for substitution and relation back rather than dismissal. *Id.* ¶¶ 8, 20.

{30} We agree and reaffirm our holding in *Chavez*. While the WDA is clear that actions for wrongful death "shall be brought by and in the name of the personal representative," nothing in the statute's language requires that the PR petition for formal appointment by a court prior to bringing claims under the WDA. Section 41-2-3. The Legislature simply did not impose a requirement that the PR petition for appointment or be court-appointed in order to have standing, and the Court will not read such language into the statute. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, 226 P.3d 611 ("We will not read into a statute language which is not there." (internal quotation marks and citation omitted)).

{31} Accordingly, we conclude that failure to petition for appointment as the WDA PR does not deprive a PR of standing under the text of the WDA, nor does it deprive a court of jurisdiction over a claim brought by a PR who has not petitioned for formal appointment. Where there is a defect in appointment, the proper remedy is to substitute a properly appointed PR as the real party in interest under Rule 1-017(A) and relate that substitution back to the filing of the complaint under Rule 1-015 where the requirements of those rules are satisfied.

2. Rule 1-017(B) does not require that a WDA PR petition for appointment to secure standing and for a court to exercise jurisdiction

{32} Like the text of the WDA, Rule 1-017(B) does not require that a PR be formally appointed to have standing and for a court to have jurisdiction over the WDA

claim. In 2014, Rule 1-017 was amended to add Subsection B, which specifically addresses the requirements of WDA PRs, providing:

> Wrongful death actions; personal representative. An action for wrongful death brought under Section 41-2-1 NMSA 1978 *shall be brought by the personal representative appointed by the district court for that purpose* under Section 41-2-3 NMSA 1978. A petition to appoint a personal representative may be brought *before* the wrongful death action is filed or *with* the wrongful death action itself.

Rule 1-017(B) (emphasis added).

{33} Petitioners rely on the amendment to advance their argument that *Chavez* has been analytically superseded. They assert that the clarity the Rule provides regarding PR requirements under the WDA paired with the emergence of the Statutory Standing Rule functionally overrules *Chavez*'s holding. That assertion is not supported by the text of the Rule, its commentary, or the caselaw interpreting the amendment's impact on *Chavez*.

{34} The Rule identifies two times at which appointment of a WDA PR may be achieved: (1) before the WDA action is filed or (2) upon filing the complaint itself. Rule 1-017(B). It does not, however, mandate that the appointment *shall* occur at one of those two points, and we decline to read such a mandate into the text of the Rule. Nor does it appear that the committee that proposed the enacted Rule contemplated such a mandate. Instead, the committee commentary includes a reference to *Chavez*, providing that, "Failure to appoint a personal representative before the filing of a wrongful death action is not a jurisdictional defect and, under proper circumstances, may be accomplished after the action is filed. *See Chavez v. Regents of University of New Mexico*, 1985-NMSC-114." Rule 1-017(B) comm. cmt. 2014 Amendment.

{35} The only case to interpret the impact of the Rule 1-017(B) amendment concluded that our holding in *Chavez* still controls. *Oakey*, 2017-NMCA-078, ¶¶ 31-34. In *Oakey*, the Court of Appeals held that under pre-Rule 1-017(B) law, a probate PR had authority to bring and settle a claim under the WDA. *Id.* Although the Court of Appeals concluded that Rule 1-017(B) was inapplicable given the timing of the case, the court went on to observe that

> [e]ven if the law in effect . . . did require that a probate PR obtain a separate appointment as a WDA PR, the proper remedy for the "honest mistake" of failing to do so would be the ministerial act of appointing the probate PR as WDA PR (or appointing a different person as WDA PR, as the district court did here), effective as of the filing of the original complaint, and ratifying what had happened since, as in *Chavez*, 1985-NMSC-114, ¶¶ 11-20.

Id. ¶ 34.

{36} We agree with the Court of Appeals' conclusion in *Oakey*. Rule 1-017(B) articulates an administrative process for appointing a WDA PR; it provides functional clarity for practitioners where the WDA left room for confusion. The Rule does not, however, create standing requirements otherwise not imposed by the WDA itself. Rather, where the process laid out in Rule 1-017(B) for petitioning for and securing appointment as the WDA PR breaks down—as it did in this case—the proper remedy is substituting a court-appointed PR as the real party in interest and relating that substitution back to the filing of the complaint where the requirements of Rule 1-015 and Rule 1-017(A) are satisfied.

III. CONCLUSION

{37} The WDA is a statutory cause of action for which standing is a jurisdictional prerequisite. However, neither the text of the WDA nor the role of PRs in wrongful death actions supports the conclusion that a PR's failure to petition for formal appointment as the WDA PR at or before the time of filing the complaint deprives the PR of standing and a court of jurisdiction over the action. Accordingly, we affirm the Court of Appeals' reversal of the district court and hold that the proper remedy where there is a defect in appointment is substituting a court-appointed PR as the real party in interest and relating that substitution back to the filing of the complaint where the requirements of Rule 1-015 and Rule 1-017(A) are satisfied. We remand to the district court with instructions to review Lopez's motion for appointment as the WDA PR of Richard Paiz's wrongful death estate under those rules.

{38} IT IS SO ORDERED.

DAVID K. THOMSON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-032
No. S-1-SC-40573 (filed May 5, 2025)

MIMI STEWART,
Petitioner,
v.
THE HON. DANIEL E. RAMCZYK,
District Court Judge, Second Judicial District Court,
Respondent,
and
JACOB CANDELARIA,
Real Party in Interest.

ORIGINAL PROCEEDING

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OPINION

THOMSON, Chief Justice.

{1} This opinion is this Court's first opportunity to interpret the scope and meaning of the New Mexico Constitution's Speech or Debate Clause. N.M. Const. art. IV, § 13 ("Members of the legislature shall . . . not be questioned in any other place for any speech or debate or for any vote cast in either house.") Senate President Pro Tempore Mimi Stewart asks this Court to grant a writ of superintending control to answer two questions as to whether this Clause immunizes her from the consequences of reassigning then-Senator Jacob Candelaria's office in the State Capitol and his seat on the Senate floor. They are: (1) whether the district court erred when it concluded that it had to examine her motives before deciding whether she was entitled to legislative immunity under the Clause and (2) whether she is entitled to legislative immunity.

{2} The United States Supreme Court has held that the United States Constitution's Speech or Debate Clause provides immunity for those "engaged in the sphere of legitimate legislative activity." *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 732 (1980) (internal quotation marks and citation omitted); *see also* U.S. Const. art. I, § 6, cl. 1. It has also been recognized under federal law that state legislators enjoy common-law immunity from liability for their legislative acts, which is conterminous with that accorded to federal legislators under the Speech or Debate Clause for civil actions. *See Consumers Union*, 446 U.S. at 733 (explaining that "we generally have equated the legislative immunity to which state legislators are entitled under [42 U.S.C.] § 1983 to that accorded Congressmen under the Constitution").

{3} In this opinion, we reference federal cases for guidance but emphasize that we do not adopt federal law nor do these cases compel our result. *See Michigan v. Long*, 463 U.S. 1032, 1041 (1983) ("If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached."). Instead, our opinion rests separately, adequately, and independently on the New Mexico Constitution's Speech or Debate Clause. *See id.* ("If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision."); *see also* N.M. Const. art. IV, § 13. We hold that Stewart's motive is irrelevant and that she is entitled to legislative immunity as a matter of law under the New Mexico Constitution. When legislative immunity applies, recourse is found not in the courts, but at the ballot box. *See EEOC v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011). Consequently, we grant the writ and remand this case to the district court with instructions to dismiss Candelaria's complaint against Stewart.

[1] Established by statute, the New Mexico Legislative Education Study Committee is a "permanent joint interim committee of the [L]egislature." NMSA 1978, § 2-10-1 (1979). It is composed of ten legislators, four from the Senate and six from the House. Id. The Committee is tasked with conducting "a continuing study of all education in New Mexico" and hiring a director, who serves at the Committee's pleasure. NMSA 1978, § 2-10-3 (1979); NMSA 1978, § 2-10-2 (1982).

I. BACKGROUND

{4} In the summer of 2021, allegations of unlawful workplace discrimination on the basis of race and sexual orientation were lodged against Rachel Gudgel, then-director of the New Mexico Legislative Education Study Committee (LESC). As a member of the LESC, Senate President Pro Tempore Mimi Stewart was one of ten legislators tasked with casting votes related to the LESC's responsibilities, including the hiring and oversight of the director.[1] NMSA 1978, §§ 2-10-1 to -3 (1971, as amended through 1982). Jacob Candelaria, then-senator, alleged that Stewart used her authority as a member of the Committee to protect Gudgel from being terminated. He specifically alleged that Stewart "either voted to continue employing Ms. Gudgel or against proposals to terminate her as a member of the Legislative Education Study Committee."

{5} Candelaria opposed Gudgel's continued employment as director, and as he describes, "began to openly and pointedly criticize Ms. Stewart for minimizing the allegations of unlawful discrimination . . . thus ossifying race and sexual orientation based discrimination within Legislative agencies." In the press and on social media, Candelaria asserted that "Ms. Stewart had herself engaged in an unlawful discriminatory practice by turning a blind eye toward clear evidence of discrimination by Ms. Gudgel, who is non-Hispanic white."

{6} Candelaria alleged that Stewart, in her role as Senate President Pro Tempore and in response to this criticism, relocated his "office in the Roundhouse from the ground floor with a window to a less desirable location on the third floor without a window" and "mov[ed] his seat on the Senate Floor to a less desirable location in the front row."

{7} In 2022, Candelaria filed a complaint against Stewart alleging unlawful retaliation in violation of the New Mexico Human Rights Act (NMHRA), NMSA 1978, §§ 28-1-1 to -15 (1969, as amended through 2024), seeking monetary damages. In response to the complaint, Stewart filed a motion for judgment on the pleadings. Stewart argued that her assignments of office space in the State Capitol and seats on the Senate floor are legislative acts for which she is entitled to immunity under the Speech or Debate Clauses of the New Mexico Constitution and the United Stated Constitution. *See* N.M. Const. art. IV, § 13; U.S. Const. art. I, § 6, cl. 1. Candelaria maintained that as a legislator, "[w]here your office is, is incredibly important. And it is a highly prized and sought-after accommodation . . . . It matters." Candelaria explained that he learned of Stewart's decision through an email entitled "Administrative notice."

{8} The district court denied Stewart's motion, reasoning that in order to decide whether Stewart's acts are protected by legislative immunity, it must examine Stewart's motives for moving Candelaria's office and seat. The court granted Stewart leave to file an application for interlocutory appeal. *See* NMSA 1978, § 39-3-4 (1999); Rule 12-203 NMRA.

{9} Stewart instead filed a petition for a writ of superintending control and a request for a stay with this Court. *See* N.M. Const. art. VI, § 3 (giving this Court "superintending control over all inferior courts"); Rule 12-504 NMRA (describing the procedure for extraordinary writs); Rule 12-207 NMRA (authorizing the appellate review and stay of district court orders). We granted the request to stay the district court proceedings. We held oral argument on this matter on December 12, 2024, and ruled from the bench, granting the writ and holding that the district court erred and Stewart is entitled to legislative immunity under the New Mexico Constitution's Speech or Debate Clause, *see* N.M. Const. art. IV, § 13.

II. DISCUSSION

{10} We grant Stewart's petition for a writ of superintending control under Article VI, Section 3 of the New Mexico Constitution and describe the foundational principles of legislative immunity under Article IV, Section 13 of the New Mexico Constitution. Applying a de novo standard of review, we explain that the district court violated a firmly established principle of legislative immunity in concluding that it needed to examine Stewart's motives for moving Candelaria's office in the State Capitol and his seat on the Senate floor before deciding whether her acts are legitimate legislative activities. *See N.M. Pub. Regul. Comm'n v. New Mexican, Inc.*, 2024-NMSC-025, ¶ 17, 562 P.3d 548 ("This Court reviews the district court's grant of a Rule 1-012(C) NMRA motion for judgment on the pleadings de novo.").

{11} We conclude that Senate President Pro Tempore Stewart has the authority to both allocate resources and make decisions related to structuring the Senate's deliberative process, acts that are both legitimate legislative activities. Consequently, we hold that Stewart is immune in the present case, and we remand this case to the district court to dismiss Candelaria's complaint.

A. Our Exercise of Superintending Control

{12} "Article VI, Section 3 of the New Mexico Constitution confers on this Court superintending control over all inferior courts and the power to issue writs necessary or proper for the complete exercise of our jurisdiction and to hear and determine the same." *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 9, 539 P.3d 272 (internal quotation marks and citation omitted). The power of superintending control "enables the Court to control the course of litigation in inferior courts and to correct any *specie* of error." *Grisham v. Romero*, 2021-NMSC-009, ¶ 15, 483 P.3d 545 (internal quotation marks and citation omitted). The Court employs this power "in exceptional circumstances: where the remedy by appeal seems wholly inadequate or where otherwise necessary to prevent irreparable mischief, great, extraordinary, or exceptional hardship, or costly delays and unusual burdens of expense." *Id.* (brackets, ellipsis, internal quotation marks, and citation omitted).

{13} We exercise our superintending control power in this case because remedy by appeal would be wholly inadequate. It is a firmly established principle that a court may not inquire into the motive or intent behind an act to determine if legislative immunity applies. *See Bogan v. Scott-Harris*, 523 U.S. 44, 54-55 (1998). If we allowed the district court case to proceed, Stewart would be forced to respond to discovery about her motive, precisely the burden the immunity is meant to prevent, before the grant of a final, appealable order. *See Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam) (explaining that the United States Speech or Debate Clause protects federal

legislators "not only from the consequences of litigation's results but also from the burden of defending themselves"). Answering this question now, "at the earliest moment," will ensure that Stewart is not subject to further interference by the judicial branch, which raises significant separation of powers issues. *See Romero*, 2021-NMSC-009, ¶ 15 ("We may also exercise the power of superintending control where it is deemed to be in the public interest to settle the question involved at the earliest moment." (internal quotation marks and citation omitted)); *United States v. Johnson*, 383 U.S. 169, 178 (1966) ("In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders."). Further, we write to provide a clear answer under New Mexico law to this constitutional question of first impression. *See Van Soelen*, 2023-NMSC-027, ¶ 10 (granting the writ of superintending control to consider a partisan gerrymandering claim, a matter of first impression "without clear answers under New Mexico law," that implicated both the "constitutional right to vote and the Legislature's constitutional responsibility for redistricting" (internal quotation marks and citation omitted)); *State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, ¶¶ 31-32, 410 P.3d 201 (granting the writ of superintending control to consider "the new detention authority created by [a recent] constitutional amendment" because it was "an issue of first impression without clear answers under New Mexico law" (ellipsis, internal quotation marks, and citation omitted)). We write to offer guidance to lower courts on how to properly apply the law of legislative immunity under the New Mexico Constitution's Speech or Debate Clause. *See Van Soelen*, 2023-NMSC-027, ¶ 9 (explaining that when this Court grants a writ of superintending control, it "may offer guidance to lower courts on how to properly apply the law") (internal quotation marks and citation omitted)).

B. Legislative Immunity

{14} Under the New Mexico Constitution's Speech or Debate Clause, "[m]embers of the legislature shall . . . not be questioned in any other place for any speech or debate or for any vote cast in either house." N.M. Const. art. IV, § 13. Stewart claims legislative immunity under both the New Mexico and the United States Constitutions' Speech or Debate Clauses, arguing that the federal Clause "has been held to extend to local legislators as well as federal legislators." However, that is unambiguously incorrect. "The Clause is, by its terms, limited to members of Congress." *Nat'l Ass'n of Soc. Workers v. Harwood*, 69 F.3d 622, 629 (1st Cir. 1995); *see also Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 404 (1979) ("The Speech or Debate Clause of the United States Constitution is no more applicable to the members of state legislatures than to the members of [Tahoe Regional Planning Agency]."). Instead, under federal law, "state legislators enjoy *common-law* immunity from liability for their legislative acts." *Consumers Union*, 446 U.S. at 732 (emphasis added); *see also Lake Country Ests.*, 440 U.S. at 404. In short, the immunity Stewart claims under the United States Constitution does not exist. Thus, we will only consider her claim under the New Mexico Constitution.

{15} Our appellate courts have never before had the opportunity to interpret our Constitution's Speech or Debate Clause. Since the language of our Clause and the United States Constitution's Speech or Debate Clause are "substantially similar," we may look to federal caselaw for guidance. *Compare* N.M. Const. art. IV, § 13 ("Members of the legislature shall . . . not be questioned in any other place for any speech or debate or for any vote cast in either house."), *with* U.S. Const. art. I, § 6, cl. 1 ("[F]or any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place."). *Gandydancer, LLC v. Rock House GCM, LLC*, 2019-NMSC-021, ¶ 38, 453 P.3d 434 ("We agree that it is appropriate to look for guidance in analogous law in other states or the federal system if New Mexico case law does not answer the question presented. However, interpretations of the laws of other jurisdictions provide guidance only if the analogous law is substantially similar . . . ." (internal quotation marks and citation omitted)). Further, because the federal common law immunity for state legislators is "similar in origin and rationale to that accorded Congressmen under the Speech or Debate Clause," we also look to caselaw interpreting that immunity for guidance. *Consumers Union*, 446 U.S. at 732; *see also Lake Country Ests.*, 440 U.S. at 405. In drawing on federal law, however, we are not adopting the federal courts' interpretations nor any particular approach to parsing the nuances of a legislator's immunity from suit. *See, e.g.*, Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 Wm. & Mary L. Rev. 221,

[2] District Judge Ramczyk and Candelaria argue that direct or interlocutory appeal, or a writ of error, would have been more appropriate in this case. First, while a writ of superintending control may not be used as a substitute for direct or interlocutory appeal, this Court may, of course, grant the writ when the case before it justifies our doing so. State ex rel. Schiff v. Murdoch, 1986-NMSC-040, ¶ 4, 104 N.M. 344, 721 P.2d 770. Second, while we have written that "we do not deem an exercise of our power of superintending control to be as appropriate a means for implementation of the collateral order doctrine as issuance of a writ of error," Carrillo v. Rostro, 1992-NMSC-054, ¶ 31, 114 N.M. 607, 845 P.2d 130 (emphasis added), we have never precluded issuance of a writ of superintending control to implement the doctrine.

Importantly, we question whether the collateral order doctrine is even applicable here, as Judge Ramczyk did not "conclusively determine the disputed question": whether Stewart was entitled to legislative immunity. Id. ¶ 16 (internal quotation marks and citation omitted). Instead, he found that the court had to examine Stewart's motives behind her acts before determining whether she was entitled to the immunity. While Judge Ramczyk's decision effectively stripped Stewart of the protections of legislative immunity, as explained later in this opinion, we do not reach a conclusion here regarding whether this decision alone was sufficient to invoke the collateral order doctrine as grounds for a writ of error.

265-70 (2003) (discussing different state's interpretations of the scope of protected legislative activity); *Cruz-Guzman v. State*, 916 N.W.2d 1, 13 (Minn. 2018) ("As appellants suggest, the House and Senate are essentially arguing that the Minnesota Constitution provides them with absolute immunity for violating a duty that the constitution specifically imposes on the Legislature. We decline to interpret one provision in the constitution—the Speech or Debate Clause—to immunize the Legislature from meeting its obligation under more specific constitutional provisions—the Education, Equal Protection, and Due Process Clauses.") Instead, we rely on principles of legislative immunity as articulated through federal caselaw to resolve the case before us, which does not require delving into the more complex and controversial areas of the immunity. *Compare Chappell v. Robbins*, 73 F.3d 918, 921-22 (9th Cir. 1996) (explaining that "legislative immunity bars any RICO claim . . . based on . . . acceptance of bribes" because the proximate cause of the plaintiff's injuries was "writing a bill, voting for it, and persuading others to vote for it"—legitimate legislative activities), *with United States v. Brewster*, 408 U.S. 501, 525-26 (1972) (explaining that legislative immunity does not bar a bribery claim under 18 U.S.C. § 201(c) because the plaintiff did not need to show that the bribe impacted speech, debate, or voting, since "acceptance of the bribe is the violation of the statute, not performance of the illegal promise").

{16} The purpose of the immunity is to ensure "that the legislative function may be performed independently without fear of outside interference." *Consumers Union*, 446 U.S. at 731. "The reason for the [immunity] is clear":

> "In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense."

Tenney v. Brandhove, 341 U.S. 367, 373 (1951) (quoting James Wilson, II, *The Works of James Wilson* 38 (Andrews ed., 1896)). Thus, the immunity exists not for the benefit of legislators, "but to support the rights of the people." *Id.* at 373-74 (internal quotation marks and citation omitted). The immunity reinforces the separation of powers by "protecting against possible prosecution by an unfriendly executive and conviction by a hostile judiciary." *Johnson*, 383 U.S. at 179. This function speaks directly to the Clause's historical roots: its language mirrors the English Bill of Rights of 1689, the culmination of a struggle for parliamentary supremacy over the monarchy. *Id.* at 178. The difference is that the legislative branch, unlike Parliament, is a coordinate but not supreme branch. *Brewster*, 408 U.S. at 508. Thus, the immunity must be enforced with respect to the balance of power between the three coequal branches of government. *Id.* And along with the Clause's historical roots pointing toward preservation of the separation of powers, the Clause has long been held to also provide immunity from private actions. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 502 (1975). Private actions, just like those brought by the executive branch, divert legislators' attention from their work and bring judicial power to bear, imperiling legislative independence. *Id.* at 503. The immunity protects legislators "not only from the consequences of litigation's results but also from the burden of defending themselves" when they are "engaged in the sphere of legitimate legislative activity." *Consumers Union*, 446 U.S. at 732 (internal quotation marks and citations omitted).

{17} We answer first whether a legislator's motive or intent is relevant to determining whether an act is a legitimate legislative activity. Concluding that neither is relevant, we then explain why moving Candelaria's office in the State Capitol and his seat on the Senate floor are both legitimate legislative activities for which Stewart is entitled to immunity.

C. The District Court Violated a Firmly Established Principle of Legislative Immunity in Concluding That It Had to Examine Stewart's Motives Before Deciding Whether Her Acts Are Legitimate Legislative Activities

{18} It is a firmly established principle that "[w]hether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it." *Bogan*, 523 U.S. at 54; *see also Sable v. Myers*, 563 F.3d 1120, 1124 (10th Cir. 2009).[3] The proposition that a court may not inquire into a legislator's motive or intent "has remained unquestioned." *Tenney*, 341 U.S. at 377; *see also Brewster*, 408 U.S. at 525 ("It is *beyond doubt* that the Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." (emphasis added)). This is because the immunity "would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives." *Tenney*, 341 U.S. at 377. Simply put, "[t]he claim of an unworthy purpose does not destroy the privilege." *Id.* Thus, it is er-

[3] All federal circuit courts have ruled similarly. See Torres-Rivera v. Calderon-Serra, 412 F.3d 205, 213 (1st Cir. 2005); NRP Holdings LLC v. City of Buffalo, 916 F.3d 177, 191 (2d Cir. 2019); Baraka v. McGreevey, 481 F.3d 187, 201 (3d Cir. 2007); Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cnty., 684 F.3d 462, 470 (4th Cir. 2012); La Union Del Pueblo Entero v. Abbott, 68 F.4th 228, 238 (5th Cir. 2023); Anders v. Cuevas, 984 F.3d 1166, 1181 (6th Cir. 2021); McCann v. Brady, 909 F.3d 193, 196 (7th Cir. 2018); Leapheart v. Williamson, 705 F.3d 310, 313 (8th Cir. 2013); Norse v. City of Santa Cruz, 629 F.3d 966, 977 (9th Cir. 2010); Weissman v. Nat'l Ass'n of Secs. Dealers, Inc., 500 F.3d 1293, 1297 (11th Cir. 2007); Rangel v. Boehner, 785 F.3d 19, 24 (D.C. Cir. 2015).

ror for a court to inquire into a legislator's motive or intent "in resolving the logically prior question of whether their acts were legislative." *Bogan*, 523 U.S. at 54.

{19} Both Stewart and Candelaria acknowledge this firmly established principle. Nevertheless the district court found, on its own and without citing authority, that it needed to examine Stewart's motive to decide whether her acts were legitimate legislative activities and ordered discovery to that effect. The district court erred in reasoning that judgment on the pleadings was not appropriate because the court first had to examine Stewart's motives before ruling on whether her acts are legitimate legislative activities. Thus, we proceed to consider that question "stripped of all considerations of intent and motive." *Id.* at 55.

D. Stewart's Acts Are Legitimate Legislative Activities, and She Is Entitled to Immunity

{20} Individuals are entitled to immunity when they are "engaged in the sphere of legitimate legislative activity." *Consumers Union*, 446 U.S. at 732 (internal quotation marks and citation omitted). "The heart of the Clause is speech or debate in either House." *Gravel v. United States*, 408 U.S. 606, 625 (1972). However, legitimate legislative activities include those "beyond just voting on legislation" or "discussion or speechmaking on the legislative floor." *Sable*, 563 F.3d at 1124; *Reeder v. Madigan*, 780 F.3d 799, 802 (7th Cir. 2015). The immunity applies to "those things generally done in a session of the House by one of its members in relation to the business before it." *Brewster*, 408 U.S. at 512-13 (internal quotation marks and citation omitted).

{21} Thus, the immunity also covers acts that are "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *Gravel*, 408 U.S. at 625. The immunity extends "to matters beyond pure speech or debate . . . when necessary to prevent indirect impairment of . . . deliberations." *Id.* (internal quotation marks and citation omitted). In other words, *Gravel* provides two routes to legislative immunity for acts outside "the heart of the Clause": those integral to the deliberative and communicative process *of passing or rejecting legislation* and *other matters within the legislature's jurisdiction under the Constitution*. *Id.* Acts outside the sphere of legitimate legislative activity are commonly classified as political or administrative, though this case does not require us to explore the nuance of these categories. *See, e.g.*, *Brewster*, 408 U.S. at 512 (example of a definition of a political act); *Alexander v. Holden*, 66 F.3d 62, 65-67 (4th Cir. 1995) (example of a court distinguishing between legitimate legislative activities and administrative acts).

{22} Stewart argues, and we agree, that her reassignment of Candelaria's office in the State Capitol and his seat on the Senate floor are both legitimate legislative activities for which she is entitled to immunity.

{23} When Stewart, as Senate President Pro Tempore and a "presiding officer," is acting as President of the Senate, she is charged with "preserv[ing] order and decorum" and "decid[ing] all questions of procedure and order." *See* N.M. Const. art. IV, § 8; N.M. Senate Rules 4-1, 4-3 & 4-5 (55th Leg., 2021), https://www.nmlegis.gov/publications/Legislative_Procedure/senate_rules_21.pdf (last visited Apr. 29, 2025). She claims this gives her the authority to assign offices and seats on the Senate floor. Our reasoning and holdings that follow are limited to the facts of this case, specifically Stewart's unique role in the Senate and Candelaria's status as a then-senator.

1. Stewart's reassignment of Candelaria's office in the State Capitol involves the allocation of resources, thus is a legitimate legislative activity

{24} Courts have held that the allocation of party resources is integral to both the deliberative and communicative process of passing or rejecting legislation and other matters within the legislature's jurisdiction under the Constitution. *See Kent v. Ohio House of Representatives Democratic Caucus*, 33 F.4th 359, 366 (6th Cir. 2022) (relying on the first rationale: the allocation of party resources is integral to the deliberative and communicative process of passing or rejecting legislation); *Youngblood v. DeWeese*, 352 F.3d 836, 841 (3rd Cir. 2003) (relying on the second rationale: the allocation of party resources is integral to other matters within the legislature's jurisdiction under the Constitution); *see also Gravel*, 408 U.S. at 625. Candelaria believes that these cases are distinguishable, pointing out that Stewart is tasked with allocating the resources of the *legislative branch* and the leaders in *Kent* and *Youngblood* were tasked with allocating the resources of a *political party*. *See* N.M. Senate Rules 4-1, 4-3 & 4-5 (55th Leg., 2021), https://www.nmlegis.gov/publications/Legislative_Procedure/senate_rules_21.pdf (last visited Apr. 29, 2025). We find this to be a distinction without a difference and believe that the facts of these cases are otherwise analogous and their rationale persuasive for the case before us.

{25} In *Kent*, the Minority Leader of the Ohio House of Representatives blocked the publication of a fellow representative's press release, which he claimed included "unauthorized signatures" and was a tool "to further [the representative's] own political interest or personal vendetta." 33 F.4th at 360-61. The Minority Leader called a successful vote to remove the representative from the Democratic caucus, causing her to lose access to caucus resources such as support staff and meetings with other members. *Id.* at 361. The court reasoned that "[j]udicial intervention in such decisions would necessarily frustrate the representatives' ability to structure the deliberative process as they see fit." *Id.* at 366. In reasoning as such, the court seemed to rest its holding that allocating caucus resources was a legitimate legislative activity on the rationale that it is "'integral' to [the] 'deliberative and communicative processes'" of passing or rejecting legislation. *See id.* (quoting *Gravel*, 408 U.S. at 625).

{26} Just as in *Kent*, where a disagreement with legislative leadership led to a legislator losing access to support staff and meetings with colleagues, Stewart argues that her decision to move Candelaria's office "impacts [his] access to staff and other Senators." Candelaria admits that his new office location was "less desirable." Before the district court, he admitted, "[w]here your office is, is incredibly important. And

it is a highly prized and sought-after accommodation . . . . It matters." Just like the court in *Kent*, we think it imprudent to intervene in how legislators structure their internal deliberative and communicative processes.

{27} In *Youngblood*, a Pennsylvania state representative alleged that "in retaliation for her dissent against the party leadership, they denied her an adequate budget allocation for district office staffing and constituent services." 352 F.3d at 838. The court held that this denial was a legitimate legislative activity because it was a "'matter[] which the Constitution places within the jurisdiction of either House.'" *Id.* at 841 (quoting *Gravel*, 408 U.S. at 625). That "matter" was appropriating the very funds at issue, allocated by the legislature pursuant to Pennsylvania Constitution Article III, Section 11, which states, "'The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools . . . .'" *Youngblood*, 352 F.3d at 841.

{28} Again, a disagreement with legislative leadership led to a legislator losing access to support staff, similar to the case before us. Further, just as in *Youngblood*, it is also within our Legislature's jurisdiction under our Constitution to pass "[g]eneral appropriation bills [that] embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools and other expenses required by existing laws . . . ." N.M. Const. art. IV, § 16. Thus, to the extent that moving Candelaria's office involved the allocation of funds, Stewart's act is a legitimate legislative activity.

{29} Finally, we agree with the court in *Youngblood* that scrutinizing the manner in which the Legislature allocates its resources "would compromise the independence of the legislative branch, the very principle legislative immunity is intended to protect." 352 F.3d at 842; *see also McCann v. Brady*, 909 F.3d 193, 198 (7th Cir. 2018) ("The Speech or Debate Clause, and the doctrine of legislative immunity on which it rests, essentially tells the courts to stay out of the internal workings of the legislative process."). Therefore, we decline to do so and hold that Stewart's reassignment of Candelaria's office in the State Capitol is a legitimate legislative activity for which she is entitled to immunity.

2. Stewart's reassignment of Candelaria's seat on the Senate floor is a decision related to structuring the deliberative process, thus is a legitimate legislative activity

{30} Stewart argues that "reassigning a Senator's seat on the Senate floor is a decision related to structuring the deliberative process on that floor." Courts have held that the regulation of *lobbyists' admission* to a House or Senate floor is a legitimate legislative activity. In *Harwood*, a Rhode Island House of Representatives rule banned lobbyists from the floor while the House was in session. 69 F.3d at 632-33. The court reasoned that regulating lobbyist presence on the floor "necessarily affects the manner in which the House conducts its most characteristic legislative functions" and held that it was a legitimate legislative activity because it was "'an integral part of the deliberative and communicative processes by which Members participate in . . . House proceedings with respect to the consideration and passage or rejection of proposed legislation.'" *Id.* at 632 (quoting *Gravel*, 408 U.S. at 625). Similarly, in *Reeder*, the Illinois state Senate denied a journalist media credentials because his employer was registered as a lobbyist, consequently denying him access to the floor. 780 F.3d at 803. The court reasoned the decision was "legislative in nature, and integrally so," and held that it was a legitimate legislative activity because it was "'necessary to prevent indirect impairment of . . . deliberations.'" *Id.* (quoting *Gravel*, 408 U.S. at 625 (using the second phrase to summarize the two routes to immunity for acts outside "the heart of the Clause")). Since the *Reeder* Court did not mention other matters within the legislature's jurisdiction under the Constitution, it seems that the court rested its holding on the rationale that the decision was integral to the deliberative and communicative process of passing or rejecting legislation. *See Gravel*, 408 U.S. at 625.

{31} We find the reasoning of these cases persuasive and believe it logically follows that regulation of a *senator's seat* is even more integral to the deliberative and communicative process of passing or rejecting legislation than a *lobbyist's admission* to the floor. *See id.* Candelaria admitted that his new seat in the front row was "less desirable." Consequently, we hold that Stewart's reassignment of Candelaria's seat on the Senate floor is a legitimate legislative activity for which she is entitled to immunity.

3. Candelaria's arguments that Stewart's acts are not legitimate legislative activities are unavailing

{32} Candelaria makes three arguments that Stewart's acts are not legitimate legislative activities and thus that she is not entitled to immunity: Stewart's activities do not satisfy the *Gravel* test, a textual difference between the United States and New Mexico Speech or Debate Clauses indicates that the New Mexico Clause is to be interpreted more narrowly, and Stewart admitted that her acts were administrative rather than legislative. We explain our disagreement with these arguments in turn.

{33} First, Candelaria argues that Stewart's acts "are . . . not an integral part of the deliberative and communicative process by which Legislators participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *See Gravel*, 408 U.S. at 625. He contends that because Senators could participate and vote in committee meetings and floor sessions remotely during the COVID-19 pandemic, office and seat locations are necessarily not "integral" to the legislative process. We acknowledge that the COVID-19 pandemic required the Senate to adapt its procedures in unprecedented ways. We decline to reach a decision on legislative immunity based on changes the Senate was forced to make in an unprecedented situation.

{34} Additionally, we note that this argument could be construed as at odds with Candelaria's complaint in this matter. He admitted before the district court, "[w]here your office is, is incredibly important. And it is a highly prized and sought-after accom-

modation . . . . It matters." His complaint similarly described his new office and seat as "less desirable." If we were to accept Candelaria's argument, we would be acknowledging that the basis of his NMHRA complaint is inconsequential to his core functions as a legislator. *Cf. Reeder*, 780 F.3d at 805-06 ("[I]t is an odd argument . . . since if accepted, it would suggest that access he wants is of little or no value.").

{35} Second, Candelaria argues that the New Mexico Speech or Debate Clause must be interpreted more narrowly than its counterpart in the United States Constitution. The United States Constitution Speech or Debate Clause provides, in relevant part:

> Senators and Representatives . . . shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S. Const. art. I, § 6, cl. 1. The New Mexico Speech or Debate Clause provides:

> Members of the legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and on going to and returning from the same. And they shall not be questioned in any other place for any speech or debate *or for any vote cast in either house*.

N.M. Const. art. IV, § 13 (emphasis added). Candelaria argues that the inclusion of the additional phrase "or for any vote cast in either house" in the New Mexico Speech or Debate Clause provides strong evidence that our framers intended to grant immunity "only for official acts taken by a member of the Legislature, during the proceedings of the Legislature, and regarding a matter before it—i.e. a matter requiring a vote."

{36} Candelaria's reading of this textual difference is flawed because he neglects to acknowledge that the additional language in New Mexico's Clause is disjunctive. Legislators cannot be questioned for "speech or debate *or* for any vote cast in either house." *Id.* (emphasis added). "[T]he word 'or' should be given its normal disjunctive meaning unless the context . . . demands otherwise." *Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 9, 110 N.M. 314, 795 P.2d 1006. Thus, the language in New Mexico's Clause explicitly identifies an *additional* ground for immunity and in no way *limits* immunity to legislators during proceedings on matters requiring a vote.

{37} Third, Candelaria claims Stewart "admitted that her actions were administrative" by informing Candelaria in an email titled "Administrative notice" that his office and seat would be moved. Administrative acts not entitled to legislative immunity may include personnel decisions, among others. *See, e.g.*, *Alexander*, 66 F.3d at 66; *Leapheart v. Williamson*, 705 F.3d 310, 314 (8th Cir. 2013).

{38} However, Stewart's language does not suggest that she was admitting, as a legal matter, that her actions were administrative for the purpose of legislative immunity. *Cf. Baxter v. Gannaway*, 1991-NMCA-120, ¶ 21, 113 N.M. 45, 822 P.2d 1128 ("For the rule on judicial admissions to apply, the admission must be unequivocal and it must relate to facts and not personal opinion."). Moreover, it is the responsibility of the judiciary to interpret and apply the protections of the New Mexico Constitution. *See Van Soelen*, 2023-NMSC-027, ¶ 36. Parties cannot usurp the role of the courts by making "admissions" about how our Constitution should be interpreted.

III. CONCLUSION

{39} The district court erred in concluding that it had to examine Stewart's motives behind her acts before deciding whether her reassignment of Candelaria's office in the State Capitol and his seat on the Senate floor are legitimate legislative activities. We conclude that both of Stewart's acts are legitimate legislative activities for which she is entitled to immunity. Consequently, we remand this case to the district court with instructions to dismiss Candelaria's complaint against Stewart.

{40} IT IS SO ORDERED.

DAVID K. THOMSON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-033
No. S-1-SC-40126 (filed May 8, 2025)

MANUEL LERMA,
Plaintiff-Respondent,
v.
STATE OF NEW MEXICO and NEW MEXICO DEPARTMENTOF CORRECTIONS,
Defendants-Petitioners.

ORIGINAL PROCEEDING ON CERTIORARI
James Lawrence Sanchez, District Judge

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for Petitioners

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OPINION

THOMSON, Chief Justice.

{1} This opinion establishes the proper standard for evaluating when *a public employee's disclosure of illegality or other wrongdoing on the part of a public employer* is protected from reprisal under New Mexico's Whistleblower Protection Act (NMWPA), NMSA 1978, §§ 10-16C-1 to -6 (2010). More specifically, we settle the question whether the disclosure is required to pertain to a matter of public benefit in order to qualify for protection under the NMWPA.

{2} As the record below reveals, this question was not presented by the parties, but by the Court of Appeals on its own initiative. Answering it in the negative, the Court of Appeals created a conflict in its own precedential decisions, resulting in a stalemate over the public benefit issue within our sparse public whistleblower case law. The Court of Appeals' opinion here and an earlier opinion by that Court are conflicting and irreconcilable in terms of the public benefit issue. *Compare Lerma v. State*, 2024-NMCA-011, ¶ 23, 541 P.3d 151 (rejecting "the public benefit limitation adopted by *Wills*"), *with Wills v. Bd. of Regents of Univ. of N.M.*, 2015-NMCA-105, ¶ 20, 357 P.3d 453 (protecting only "'whistleblowing' that benefits the public").

{3} We conclude that the *Lerma* Court's unrequested departure from *Wills* created a jurisprudential disruption to a critical aspect of the NMWPA. On the merits, we correct the statutory analysis in *Lerma* as an all-too-narrow reading of the text of the NMWPA, a reading unaccompanied by any alternative methods of statutory construction. *See Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 37, 147 N.M. 583, 227 P.3d 73 (explaining that further interpretation is precluded only when "a statute contains language which is clear and unambiguous" (internal quotation marks and citation omitted)); *Bishop v. Evangelical Good Samaritan Soc'y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361 (explaining that "we go beyond the mere text of the statute" "when the literal meaning . . . would be absurd, unreasonable, or otherwise inappropriate"). Further, we reaffirm what the *Wills* Court held: only communications "that benefit[] the public . . . [are] protected" under the NMWPA. 2015-NMCA-105, ¶ 20. Consequently, we reverse and remand.

I. BACKGROUND

A. Factual Background

{4} Plaintiff Manuel Lerma, a corrections officer with sixteen years of experience working for Defendant New Mexico Department of Corrections (DOC), voluntarily transferred from one New Mexico prison facility to another and was assigned to transportation duties at the new location. Plaintiff's duties included guarding the prison's sally port. The sally port comprised two adjoining gates, and Plaintiff described the "standard procedure" for operating a dual-gate system "to have one gate closed . . . when you open [the other] gate" as a "safety protocol."

{5} Plaintiff's "strict" enforcement of the sally port protocol quickly caused disagreement between Plaintiff and several other transportation division corrections officers, who wanted Plaintiff to leave both gates open "at the same time . . . so they could come and go as they pleased." Plaintiff alleges that one day while he was driving home from the prison, his vehicle "kept [being] block[ed]" when it was sandwiched between two vehicles, each driven by a DOC employee, causing him to pull his vehicle over and stop in an empty lot. Plaintiff, "fearing for [his] life," was beaten by a fellow corrections officer. A prison supervisory lieutenant filmed the altercation using his

agency-issued cell phone.

{6} Plaintiff timely reported the two work-related issues. Plaintiff reported the persistent pushback he faced from his coworkers on the sally port issue to the supervisory transport lieutenant who, perhaps coincidentally, was later involved in the violent roadside encounter. He reported the roadside beating to the director of the prison facility's security threat investigative unit and two deputy wardens. Both the transport lieutenant and the corrections officer who together initiated the violent roadside episode were cited and disciplined for misconduct as a result of what the DOC acknowledged constituted "egregious conduct."

B. Procedural Background

{7} Plaintiff filed a claim under the NMWPA in response to the events described above. In the district court, both parties accepted as a given the efficacy of the public benefit requirement in evaluating public employee whistleblower claims recognized by *Wills*, 2015-NMCA-105, ¶ 20. The parties centered their attention on the merits of their respective showings relating to the public benefit inquiry, not on whether such proof is required. Defendants DOC and the State argued that Plaintiff's reporting did not qualify as whistleblowing activity since his reporting would not, if disclosed, serve the public benefit as required by *Wills*. Plaintiff, on the other hand, pointed out that he reported both the battery and his coworkers' failure to follow safety protocol regarding sally ports, disclosures that are in the public benefit.

{8} The district court granted Defendants' motion for summary judgment and dismissed the complaint in a three-sentence order that was devoid of analysis, citation of authority, and material facts upon which the conclusion was based.

{9} The parties adhered to the same fact-specific approach in addressing the public benefit issue before the Court of Appeals. Plaintiff reiterated that his disclosure of the sally port controversy served to further DOC's policies in preventing prisoner escapes while Defendants again cited *Wills* in reprising their contention that Plaintiff's disclosures "primarily benefited" him personally, not the public.

{10} Despite the fact-intensive, *Wills*-based presentations submitted by the parties in the district court, the Court of Appeals panel abandoned the public benefit principles expressly adopted in that case. *See Lerma*, 2024-NMCA-011, ¶¶ 15-25 (addressing and "reject[ing]" on its own initiative the public benefit requirement announced in *Wills* without characterizing its analysis as sua sponte, explaining the source of the Court's authority to do so, or affording any deference to the *Wills* Court's earlier statutory analysis).

{11} This Court granted Defendants' petition for certiorari, agreeing to consider two distinct but related issues: (1) whether a public employee's communication that involves "a matter of private interest" rather than one relating to "a matter of public concern" is protected under the NMWPA and, assuming the first question is answered in the negative, (2) whether the communications here involve a matter of public benefit and are thus protected from retaliation under the statute. We quash the second, fact-based issue—one that remains unanswered despite being the subject of the parties' exclusive attention in the Court of Appeals—as improvidently granted. We decide only the statutory analysis issue and leave it to the Court of Appeals to determine on remand the outcome of Defendants' summary judgment motion.

II. DISCUSSION

{12} The opinion of the Court of Appeals in this case has resulted in two different panels of our Court of Appeals in two separate cases reaching diametrically opposed conclusions on the question whether a disclosure must pertain to a matter of public benefit for a whistleblowing action to be brought under the NMWPA. While this stalemate persists, our whistleblower jurisprudence provides no clear legal guidance on this important aspect of whistleblowing disputes.

{13} Before addressing the merits of the appeal, we consider the problems created by the proactive approach taken by the Court of Appeals in deciding this case.

A. The Problems Created by the Court of Appeals' Opinion

{14} Both the Court of Appeals' sua sponte treatment of the unraised issue, whether a public benefit limitation is properly read into the NMWPA, and the lack of deference shown by the *Lerma* Court to the *Wills* Court's prior interpretation of the statute were improper.

{15} The unanimous Court of Appeals panel in *Wills*, 2015-NMCA-105, ¶ 20, held that the NMWPA protects a whistleblower from retaliation for a disclosure "that benefits the public by exposing unlawful and improper actions by government employees," while the unanimous panel in *Lerma*, 2024-NMCA-011, ¶¶ 23-24, reached the contrary conclusion that the statute does not "require[] a plaintiff to prove that [a] communication benefited the public" in expressly "reject[ing] the public benefit limitation adopted by *Wills*."

{16} The Court's unorthodox approach—declining to decide the narrow, case-specific issues the parties presented—served to minimize, if not ignore, the limited but critical role an intermediate appellate court plays in error-correction. *See* Daniel John Meador, *Appellate Courts in the United States* 12, 18 (2d ed. 2006) (Thomson/West) (observing that the "primary mission" of an intermediate appellate court is "to apply the existing law of the jurisdiction as best it can interpret it, not to make new law" or otherwise assume "responsib[ility] for the definitive enunciation of the state's law"). At the same time our Court of Appeals encroached upon this Court's distinct and essential function of deciding new law. *See* Victor Eugene Flango, *State Supreme Court Opinions as Law Development*, 11 J. App. Prac. & Process 105, 105-06 (2010) (noting that state supreme courts, as courts of last resort, are "primarily concerned with the development and declaration of law" and, indeed, that the "primary rationale for the creation of intermediate appellate courts [was] to dispose of the bulk of appeals so that supreme courts [could] focus on cases with significant policy implications or cases of high salience to the public"); *see also* John W. Poulus, *The Judicial Process and Substantive Criminal Law: The Legacy of Roger Traynor*, 29 Loyola L.A. L. Rev. 429, 456-57

(1996) (recognizing the import of a state supreme court's "law-maintaining" function in "promot[ing] the uniformity of law within the state by overruling discordant authority in the lower appellate courts . . . [and in] clarif[ying] existing law").

{17} The lack of deference shown by the Court of Appeals panel to its fellow panel's prior precedential opinion in *Wills* runs counter to even the most liberal interpretation of the law-of-the-circuit doctrine, under which "considerable weight" must be given by later panels to prior panel decisions of the same court, and it is "rarely appropriate" to part ways with a prior precedent "just to move from one side of a conflict to another." *United States v. Reyes-Hernandez*, 624 F.3d 405, 412 (7th Cir. 2010) (internal quotation marks and citations omitted). Although the "law-of-the-circuit doctrine" was initially a creature of federal law, it has been adopted and applied in one form or another by state courts as well. *See* 21 C.J.S. *Courts* § 200 & nn.1-11 (2016) (internal quotation marks omitted) (collecting federal and state cases).

{18} New Mexico courts have not yet directly addressed the doctrine, and, in the absence of briefing on the issue by the parties, we decline to address it. However, familiar principles of stare decisis dictate that a subsequent panel facing an identical issue of statutory interpretation must give *some* degree of deference to the holding of a prior panel of the same court. *See Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, ¶ 7, 133 N.M. 661, 68 P.3d 901 (explaining that stare decisis "dictates adherence to precedent" and "require[s] a compelling reason to overrule [a] prior case[]"); *see also Shepard v. United States*, 544 U.S. 13, 23 (2005) ("[T]he claim to adhere to case law is generally powerful once a decision has settled statutory meaning."). Private litigants and governmental institutions were operating under *Wills*, a case dating back to 2015. Such an opinion left undisturbed creates reliance in its application and a sudden departure needs to be thoughtfully considered.

{19} We need not definitively address the consequences of the errors we ascribe to the Court of Appeals because we conclude, as explained below, that there was a substantive error—the Court of Appeals' statutory analysis of the NMWPA—that independently requires reversal. It is sufficient to say that the interests of judicial economy and clarity, as well as the integrity of this state's whistleblower jurisprudence, would have been best served had the Court of Appeals approached the matter differently in three ways: (1) by fulfilling its error-correction responsibilities by resolving the appeal as it was presented by the parties under the long-prevailing public benefit standard articulated in *Wills*; (2) by noting and explaining its disagreement with that standard; and (3) by encouraging this Court to take up the issue on certiorari review. The approach followed by the Court of Appeals left the bench and bar of this state without any meaningful guidance on the all-important public benefit issue for too long and with little corresponding benefit. We turn now to the merits of this appeal.

B. The Statutory Analysis by the Court of Appeals Was Substantively Flawed

1. Standard of review

{20} Appellate review of orders that grant or deny summary judgment is de novo. *Cahn v. Berryman*, 2018-NMSC-002, ¶ 12, 408 P.3d 1012. "Summary judgment is appropriate in the absence of any genuine issues of material fact and where the movant is entitled to judgment as a matter of law." *Id.* (internal quotation marks and citation omitted). In circumstances where, as here, our summary judgment analysis entails statutory interpretation, de novo review again applies. *Jones v. City of Albuquerque Police Dep't*, 2020-NMSC-013, ¶ 17, 470 P.3d 252.

{21} "In interpreting statutes, we seek to give effect to the Legislature's intent, and in determining intent we look to the language used and consider the statute's history and background." *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13, 121 N.M. 764, 918 P.2d 350. Under the plain meaning rule, "when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Truong*, 2010-NMSC-009, ¶ 37 (brackets, internal quotation marks, and citation omitted).

{22} However, "[w]e must also consider the practical implications and the legislative purpose of a statute, and when the literal meaning of a statute would be absurd, unreasonable, or otherwise inappropriate in application, we go beyond the mere text of the statute." *Bishop*, 2009-NMSC-036, ¶ 11. "Although appellate courts will not read into a statute language which is not there, we do read the act in its entirety and construe each part in connection with every other part in order to produce a harmonious whole." *Britton v. Off. of Att'y Gen.*, 2019-NMCA-002, ¶ 28, 433 P.3d 320 (brackets, internal quotation marks, and citation omitted). "For the purpose of determining the legislative intent we may look to the title, and ordinarily it may be considered as a part of the act if necessary to its construction." *Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 2012-NMSC-039, ¶ 18, 289 P.3d 1232 (internal quotation marks and citation omitted).[1]

[1] "Headings and titles may not be used in construing a statute or rule unless they are contained in the enrolled and engrossed bill or rule as adopted. NMSA 1978, § 12-2A-13 (1997); see Black's Law Dictionary 186 (9th ed. 2009) (defining an 'engrossed bill' as a 'bill in a form ready for final passage by a legislative chamber' and an 'enrolled bill' as a 'bill passed by both houses of the legislature and signed by their presiding officers')." Tri-State, 2012-NMSC-039, ¶ 18. Both the statutory section enumerating this principle and the Black's Law Dictionary definitions are the same today. See § 12-2A-13; Black's Law Dictionary (12th ed. 2024). Because both the House Bill 165 and Session Law refer to the act at issue as the "Whistleblower Protection Act," we conclude that the enrolled and engrossed requirements are met and proceed to consider the NMWPA's title in determining legislative intent. See Tri-State, 2012-NMSC-039, ¶ 19 (considering an act's title to determine legislative intent when the senate bill and session law both included the relevant language); H.B. 165, 49th Leg., 2d Reg. Sess. (N.M. 2010) ("ENACTING THE WHISTLEBLOWER PROTECTION ACT"); accord 2010 N.M. Laws, ch. 12, § 1 (same).

2. Text and purpose of the NMWPA

{23} The NMWPA's "short title" is the "Whistleblower Protection Act." § 10-16C-1 ("This act may be cited as the 'Whistleblower Protection Act.'"); *see also* §§ 10-16C-2, -4 to -6 (referring to the act by its title). This appeal centers on the interplay between Sections 10-16C-2 and 10-16C-3 of the NMWPA. Section 10-16C-3(A) prohibits a public employer from taking retaliatory action against a public employee who "communicates to the public employer or a third party" conduct that the "employee believes in good faith" to be an "unlawful or improper act." Section 10-16C-2(E) defines the term "unlawful or improper act" as comprising "a practice, procedure, action or failure to act on the part of a public employer that"

> (1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state; (2) constitutes malfeasance in public office; or (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

{24} The policy goals of the NMWPA are to promote "transparent government and the rule of law." *Flores v. Herrera*, 2016-NMSC-033, ¶ 9, 384 P.3d 1070; *see also Velasquez v. Regents of N. N.M. Coll.*, 2021-NMCA-007, ¶¶ 27, 65, 484 P.3d 970 (reiterating the policy goals articulated in *Flores* and adding that the NMWPA also aims "to encourage employees to engage in whistleblowing and other protected activity and, when they do so, to discourage employers from retaliating").

3. The Court of Appeals' textual reading of the NMWPA is unduly narrow

{25} The Court of Appeals panel in *Lerma* correctly reasoned that "analysis of what the Legislature intended to protect must be driven primarily by the plain language of the NMWPA." *Lerma*, 2024-NMCA-011, ¶ 11 (citing *Martinez v. Cornejo*, 2009-NMCA-011, ¶ 11, 146 N.M. 223, 208 P.3d 443). The *Lerma* Court criticized the *Wills* Court for skipping statutory interpretation's key first step—a plain meaning analysis. *Id.* ¶ 21. However, in focusing myopically on the primacy of plain meaning and on that methodological error of the *Wills* Court, the *Lerma* Court skipped an equally important step mandated by our statutory interpretation jurisprudence. The *Lerma* Court never considered whether the statutory language of the NMWPA is ambiguous or if the literal meaning "would be absurd, unreasonable, or otherwise inappropriate," necessitating further inquiry. *See Truong*, 2010-NMSC-009, ¶ 37; *Bishop*, 2009-NMSC-036, ¶ 11. Instead, the *Lerma* Court simply "found nothing in the text of the NMWPA . . . that requires . . . that the communication pertain to a matter of public concern or benefit the public." *Lerma*, 2024-NMCA-011, ¶ 11. This lack of engagement with the statutory text was error.

{26} From a purely textual perspective, the *Lerma* Court was correct in concluding that no express mandate in the text of the NMWPA requires a disclosure of information to bear on a matter of public benefit in order to be protected from retaliation under the statute. *See id.* But it is equally true that no countervailing mandate in the text of the NMWPA permits personal employment grievances to qualify as protected conduct under the statute. In fact, a public employee who reports a matter that "constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public" as defined in Section 10-16C-2(E)(3) is specifically protected from employer reprisals under Section 10-16C-3(A) for "communicat[ing]" that "unlawful or improper act." Disclosure of any of these matters would benefit the public, consistent with the definition of the term "whistleblower," discussed in the next section.

{27} We disagree with the Court of Appeals' reasoning in *Lerma*, 2024-NMCA-011, ¶¶ 11, 24, that its strict textual analysis of the NMWPA was "buttressed" by the absence from UJI 13-2322 NMRA of any direct mention of a public benefit requirement. *Id.* (explaining the scope of "protected activity" and defining "unlawful or improper act" as those terms are used in the NMWPA). To begin, this absence should come as no surprise, considering that the instruction defines the term "unlawful or improper act" by tracking the express language of the statute.

{28} The absence of the public benefit requirement from the instruction carries no value as evidence of legislative intent. The language adopted by this Court in its jury instructions are generally viewed as "a presumptively correct statement of the law." *Lerma*, 2024-NMCA-011, ¶ 11 (citing *State v. Wilson*, 1994-NMSC-009, ¶ 5, 116 N.M. 793, 867 P.2d 1175). But the key term here is *presumptively*, and thus not conclusively. The uniform jury instructions meticulously adopted by this Court are sometimes found to be incorrect and require subsequent modification or revision. *See, e.g.*, *State v. Taylor*, 2024-NMSC-011, ¶ 1, 548 P.3d 82 (noting recent amendments to our jury instructions for child abuse that were instigated by separate instances in which they were found to be lacking, one because the instructions did not "adequately capture[] the true nature of the crime and the legislative intent behind the statute" and the other because "dissonance between our case law and our jury instructions caused confusion" (internal quotation marks and citations omitted)). This is a matter that we refer to the appropriate rules committees to review.

A. A broader statutory analysis is warranted and indicates that the Legislature intended a public benefit requirement

{29} In place of the purely textual analysis undertaken by the Court of Appeals, legislative intent is best determined in this case by making use of the full array of interpretive tools available to a reviewing court. The failure to read a public benefit requirement in the NMWPA "would be absurd, unreasonable, or otherwise inappropriate in application." *Bishop*, 2009-NMSC-036, ¶ 11. Although we "will not read into a statute language which is not there," we must construe the parts of the NMWPA harmoniously, including the act's title. *See Britton*, 2019-NMCA-002, ¶ 28 (internal quotation marks and citation omitted) (explaining that construing parts of an act harmoniously need not involve reading into an act language that is not there); *Tri-State*, 2012-NMSC-039, ¶ 18 (explaining that a title may be considered part of an act if "necessary to its construction"). Here, the title of the

NMWPA and its body includes a term of art that carries its own idiosyncratic meaning: *whistleblower*. *See* § 10-16C-1 ("This act may be cited as the 'Whistleblower Protection Act.'"); §§ 10-16C-2, -4 to -6 (referring to the act by its title in the statutory text).

{30} The repeated use of the term *whistleblower* in the NMWPA's title and body is a strong indicator of legislative intent for a public benefit requirement. The Legislature "is presumed to know the law, including the laws of statutory construction" as well as definitions of technical and other terms of art. *Chavez v. Am. Life & Cas. Ins. Co.*, 1994-NMSC-037, ¶ 9, 117 N.M. 393, 872 P.2d 366; *see also* 73 Am. Jur. 2d *Statutes* § 143 (2012) ("It is a cardinal rule of statutory construction that when [a legislature] employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken."). Since neither the NMWPA nor our caselaw define the term whistleblower, "we look for guidance" without adopting "analogous law in other states or the federal system" that "is substantially similar to the [NMWPA]". *Gandydancer, LLC v. Rock House GCM, LLC*, 2019-NMSC-021, ¶ 38, 453 P.3d 434 (internal quotation marks and citation omitted).[2] Federal guidance is frequently considered in statutory analysis by New Mexico courts. *Compare State v. Loza*, 2018-NMSC-034, ¶ 12, 426 P.3d 34 (pointing to the similarities between New Mexico's Racketeering Act and the federal counterpart RICO statute in recognizing that "we look to federal cases interpreting RICO for guidance in interpreting our Act"), *and Trujillo v. N. Rio Arriba Elec. Co-op, Inc.*, 2002-NMSC-004, ¶ 8, 131 N.M. 607, 431 P.3d 333 (looking to the federal Americans with Disabilities Act for guidance in interpreting New Mexico's Human Rights Act where the relevant terms used in the two counterpart statutes, though different, were "viewed as interchangeable"), *with Velasquez*, 2021-NMCA-007, ¶ 31 (declining to adhere to federal whistleblower precedent in determining whether a particular communication concerning the use of grant funds constituted protected conduct under the NMWPA, in view of the "material difference between the plain language of the [New Mexico] and federal [whistleblower] statutes" in connection with the "waste of funds" element of Section 10-16C-2(E)(3), an element not germane to the case at hand).

{31} The term "whistleblower" has been defined as a person "who, believing that the public interest overrides the interest of the organization [that individual] serves, publicly blows the whistle if the organization is involved in corrupt, illegal, fraudulent, or harmful activity." *Young v. Schering Corp.*, 660 A.2d 1153, 1157 (N.J. 1995) (internal quotation marks omitted) (quoting *Whistle Blowing: the Report of the Conference on Professional Responsibility* vii (Ralph Nader et al., 1972)); *see also* Robert G. Vaughn, *The Successes and Failures of Whistleblower Laws* ii (Edward Elgar Publ'g Ltd. 2012) (dedicating the author's whistleblowing treatise to "all those whistleblowers whose courage, perseverance, and suffering have contributed to the common good").

{32} Further, as the surveys of federal whistleblower case law undertaken by both *Wills* and *Montgomery v. Eastern Correctional Institution*, make clear, the distinction between "communications that benefit the public or pertain to matters of public concern," *Wills*, 2015-NMCA-105, ¶ 20, and "complaints by federal government employees that a supervisor's behavior violated the employee's individual employment rights," *Montgomery*, 835 A.2d 169, 178 (Md. 2003), is key in determining if whistleblower liability attaches under federal law. There are significant differences between the two statutory schemes—state and federal—that warn against imposing federally derived exemptions, restrictions, or expansions upon the NMWPA. That said, from a definitional perspective, we accept some circuit court conclusions that whistleblower disclosures "serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary governmental expenditures." *Spruill v. Merit Sys. Prot. Bd.*, 978 F.2d 679, 692 (Fed. Cir. 1992) (internal quotation marks and citation omitted); *see also Ellison v. Merit Sys. Prot. Bd.*, 7 F.3d 1031, 1035 (Fed. Cir. 1993) (explaining that whistleblowers "disclose government illegality, waste, and corruption"). The *Wills* Court's reliance on this line of cases is perhaps one reason the *Lerma* Court took issue with its reasoning. In the end, however, these federal cases are helpful in delineating what would be considered a purely private grievance and one involving public benefit by description of what type of claim is maintained purely in administrative claims and what is allowed to proceed outside of that and actionable through the federal WPA. *See, e.g.*, *Spruill*, 978 F.2d 679; *Ellison*, 7 F.3d 1031.

{33} The *Lerma* Court believed that the *Wills* Court misinterpreted federal precedent, construing the *policy* underlying the federal statute as a *substantive legal requirement* that a communication is protected under the federal WPA only if it serves a public benefit. *Lerma*, 2024-NMCA-011, ¶ 22. Further, the *Lerma* Court believed that *policy* considerations were irrelevant to its analysis, considering the NMWPA's clear plain language, and doubted that the policies behind the NMWPA and WPA are similar. *Id.* ¶ 22 n.3. But as we have explained, we must construe the NMWPA harmoniously with its title, its wording, and the presumption the Legislature used this specific term with an understanding of its definition. While the policies behind the NMWPA and WPA are similar, we respect the differences in the two acts, and our analysis maintains its solid footing on the construction of the statute itself.

{34} The Court of Appeals, in reaching out to resolve this case on a threshold basis not advanced by the parties, adopted an unduly narrow textual reading of the NMWPA and failed to properly employ the statutory interpretation tools at its disposal. This was error that demands correction irrespective of the ultimate outcome of Defendants' summary judgment motion or the prudence

[2] The first and third elements of Section 10-16C-2(E) closely track the provisions of the federal WPA. See 5 U.S.C. § 2302(a)(2)(D). The NMWPA and the federal WPA diverge in one respect: The waste of funds element set out in the WPA is modified by the adjective gross, while that same element in the NMWPA has no modifier. Compare 5 U.S.C. § 2302(a)(2)(D)(ii), with § 10-16C-2(E)(3).

and prescience of Amici's dire predictions of the consequences that would flow from an affirmance of the *Lerma* panel's narrow statutory analysis of the NMWPA.

C. *Wills* Remains Good Law on the Public Benefit Requirement

{35} In rejecting *Lerma*'s premise that the protected status of a public employee's communication under the NMWPA should no longer "hinge on whether [it] pertains to a matter of public concern or on whether [it] furthers a public interest," 2024-NMSC-011, ¶ 15, we recognize that the contrary view expressed in *Wills* remains good law on this point. As the *Wills* Court held, communications that "[do] not pertain to a matter of public concern" are not "protected whistleblowing activity." 2015-NMCA-105, ¶¶ 18, 21 (internal quotation marks omitted).

{36} However, the *Wills* Court observed that "courts interpreting the federal whistleblower protection law have distinguished 'whistleblowing' that benefits the public by exposing unlawful and improper actions by government employees from communications regarding personal personnel grievances that *primarily* benefit the individual employee." *Id.* ¶ 20 (emphasis added) (citing *Whitmore v. Dep't of Labor*, 680 F.3d 1353, 1368 (Fed Cir. 2012); *Winfield v. Dep't of Veterans Affs.*, 348 Fed. App'x 577, 580 (Fed. Cir. 2009) (per curiam); *Riley v. Dep't of Homeland Sec.*, 315 Fed. App'x 267, 270 (Fed. Cir. 2009); *Willis v. Dep't of Agric.*, 141 F.3d 1139, 1143 (Fed. Cir. 1998); *Montgomery*, 835 A.2d at 180). But we find no language supporting a primacy requirement in the cases cited to support this observation. In engaging in the fact-specific inquiry that *Wills* requires, New Mexico courts need to be mindful that "there is nothing inherently contradictory about disclosing serious misconduct [that bears 'directly on a matter of significant public concern,'] while also defending one's own professional reputation," and that public employee disclosures of government misconduct that are capable of standing "separate and apart from [any] individualized personnel dispute" may well be deserving of whistleblower protection. *See Coleman v. District of Columbia*, 794 F.3d 49, 59 (D.C. Cir. 2015). Therefore, *Coleman* supports the view that we adopt today: a public employee's disclosure of illegality or wrongdoing qualifies for protected whistleblower status, if otherwise eligible, so long as the disclosure confers a benefit on the public, irrespective of which benefit—public or personal—may be said to predominate.

III. CONCLUSION

{37} We reverse the ruling of the Court of Appeals insofar as it rejected a public benefit requirement for a public employee's disclosure to qualify for whistleblower protection under the NMWPA. We remand the case to the Court of Appeals to determine, consistent with this opinion, whether Defendants are entitled to summary judgment dismissing the complaint.

{38} IT IS SO ORDERED.

DAVID K. THOMSON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-034
No. S-1-SC-40427 (filed June 2, 2025)

BRAD BOLEN a/k/a BRADLEY CARROL BOLEN,
Plaintiff-Petitioner,
v.
NEW MEXICO RACING COMMISSION; and FABIAN LOPEZ, Records Custodian for New Mexico Racing Commission,
Defendants-Respondents.

ORIGINAL PROCEEDING ON CERTIORARI
Joshua A. Allison, District Judge

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OPINION

ZAMORA, Justice.

I. INTRODUCTION

{1} The New Mexico Civil Rights Act (CRA), NMSA 1978, §§ 41-4A-1 to -13 (2021), authorizes a person to sue a public body for deprivations of the rights, privileges, and immunities guaranteed by the Bill of Rights in Article II, Sections 17 and 18 of the New Mexico Constitution. Bradley Bolen (Bolen) asserted a claim under the CRA against the New Mexico Racing Commission (NMRC), alleging that NMRC violated his state constitutional rights by pursuing a vindictive prosecution against him. NMRC moved for summary judgment, arguing that it was entitled to judicial immunity in pursuing an administrative disciplinary proceeding against Bolen. The district court denied NMRC's motion, concluding that the defense of judicial immunity is unavailable to a public body sued under the CRA. The Court of Appeals reversed, holding both that the defense is available to a public body and that NMRC is entitled to immunity under the facts presented. *Bolen v. N.M. Racing Comm'n*, 2024-NMCA-056, ¶¶ 12, 20, 553 P.3d 492.

{2} We granted certiorari to consider the following question: Is judicial immunity a defense available to a public body sued under the CRA? We answer: Yes, a public body may raise judicial immunity as an affirmative defense to claims brought pursuant to the CRA. We explain that judicial immunity, which applies to judges, advocates, and witnesses, may be consistently applied under the CRA to preserve the role of the judiciary in protecting a person's constitutional rights. We also articulate a framework for determining when that defense applies to quasi-judicial adjudicatory proceedings in the executive branch. However, as the record and arguments presented here are insufficient to resolve the question of NMRC's entitlement to immunity, we reverse the Court of Appeals to the extent it held that NMRC is immune from Bolen's CRA claim. We remand to the district court for further proceedings consistent with this opinion.

II. BACKGROUND

{3} NMRC is a state administrative agency that regulates New Mexico's horse racing industry. *See* NMSA 1978, §§ 60-1A-1 to -30 (2007, as amended through 2023). Bolen is a horse trainer licensed by NMRC.

{4} In July 2021, Bolen got into an argument with an NMRC racing steward.[1] The disagreement arose when the steward refused to reinstate the license of an assistant trainer whom Bolen wished to employ. The assistant trainer left the room and returned with Bolen on speakerphone, who then argued with the steward about reinstating the trainer. The parties do not dispute that Bolen criticized the steward during the phone call.

{5} NMRC initiated an administrative disciplinary action against Bolen, asserting that

[1] A racing "'steward'" is "an employee of [NMRC] who supervises horse races and oversees a race meet while in progress, including holding hearings regarding licensees and enforcing the rule of [NMRC] and the horse racetrack." Section 60-1A-2 (GG).

Bolen transgressed regulations prohibiting "conduct or reputation [which] may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting." 16.47.1.8(L)(1)(i) NMAC. A panel of three stewards presided over an evidentiary hearing on the asserted infraction, found that Bolen violated 16.47.1.8(L)(1)(i) NMAC, and issued a $500 citation that would be waived and abated so long as Bolen had no additional violations within one year.

{6} Bolen appealed the ruling under regulations that entitle him to a de novo hearing before an independent administrative hearing officer. 15.2.1.9(A)(6)(b), (B)(7)(a) NMAC. Bolen also sued NMRC in the district court, asserting a claim under the CRA for a violation of his rights to free speech and due process under Article II, Sections 17 and 18 of the New Mexico Constitution. Bolen alleged that NMRC pursued the disciplinary proceeding in retaliation for his protected speech with the steward and for a previous, unrelated lawsuit he had filed against NMRC's Executive Director. Bolen ultimately withdrew his administrative appeal, choosing only to pursue litigation in the district court.

{7} Bolen and NMRC subsequently filed cross-motions for summary judgment. In relevant part, Bolen argued that NMRC violated his constitutional free speech and petition rights by "initiat[ing] . . . a vindictive prosecution in retaliation for his exercise of those rights." In its motion, NMRC argued that its "quasi-judicial administrative actions" in pursuing the disciplinary proceeding against Bolen entitle it to absolute immunity from Bolen's CRA claim.

{8} The district court refused to extend quasi-judicial immunity to NMRC. Relying on jurisprudence construing the federal civil rights act, 42 U.S.C. § 1983 (hereinafter § 1983), the district court reasoned that judicial immunity is based on public policies which "protect[] an *individual defendant* from *personal liability* from damages." The district court decided that these policies were not implicated under the CRA because the enactment only authorizes a plaintiff to sue a public body, which is defined as a governmental entity. *See* § 41-4A-3(C) (providing that "[c]laims brought pursuant to the [CRA] shall be brought exclusively against a public body"); § 41-4A-2 (defining "public body" to include a list of specified governmental entities). The district court, therefore, concluded that the defense of judicial immunity is unavailable to NMRC.

{9} NMRC sought and the Court of Appeals granted an interlocutory appeal. The Court of Appeals held that the district court erred. *Bolen*, 2024-NMCA-056, ¶ 1. First, the Court of Appeals concluded that the plain language of Section 41-4A-10, which preserves certain immunity defenses, confirms that judicial immunity is available to a public body in defense of a CRA claim. *Bolen*, 2024- NMCA-056, ¶ 12. Second, the Court of Appeals recognized that officials serving in prosecutorial capacities may be entitled to quasi-judicial immunity. *Id.* ¶ 18. Third, the Court of Appeals applied a three-part formula articulated in *Horwitz v. State Bd. of Med. Exam'rs*, 822 F.2d 1508, 1513 (10th Cir. 1987), to hold that NMRC is entitled to quasi-judicial immunity under the facts of the case. *Bolen*, 2024-NMCA-056, ¶¶ 17, 28. The Court of Appeals, therefore, reversed the district court and "remand[ed] with instructions to enter summary judgment in favor of NMRC on Bolen's [CRA] claims." *Id.* ¶ 28.

{10} Bolen petitioned this Court to grant a writ of certiorari. We granted certiorari and now affirm the Court of Appeals, in part, and reverse, in part.

III. DISCUSSION

{11} The CRA was enacted by our Legislature in 2021 as a state analogue to federal civil rights litigation under § 1983. *See* 2021 N.M. Laws, ch. 119, §§ 1 to 14; *see also* N.M. Civ. Rts. Comm'n, *New Mexico Civil Rights Commission Report*, at 1 (2020) (recommending that the Legislature enact "a state analogue to [§] 1983" and proposing draft legislation that was later enacted, with substantial revision, as the CRA). Because this is our first time construing this landmark legislation, and because its context informs our analysis, we begin with a brief summary of the CRA and the context in which it was promulgated.

{12} Prior to the enactment of the CRA, a person seeking damages for deprivation of constitutional rights by an entity or official of the State of New Mexico had few means of redress. Such a person could sue a state official under § 1983, but only for rights secured under the United States Constitution. *See* § 1983 (creating a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States). Such a person could also assert a claim under the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -27, -30 (1976, as amended through 2020). Sections 41-4-5 through -12 of the TCA, discuss liabilities permitting a person to maintain an action for injuries resulting from the "deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico," but only, for example, "when caused by law enforcement officers while acting within the scope of their duties," § 41-4-12 (defining the TCA liability of law enforcement officers). Outside of this limited immunity waiver, New Mexico retained sovereign immunity[2] from claimed deprivations of constitutional rights, § 41-4-4(A), and previously enacted "no statute analogous to § 1983 that would provide for damages against government entities or their officials for past violations of state statutes or the state Constitution." *Carter v. City of Las Cruces*, 1996-NMCA-047, ¶ 13, 121 N.M. 580, 915 P.2d 336.

{13} The Legislature enacted the CRA to address this gap by creating a private cause of action for a person deprived of state constitutional rights by the acts or omissions of New Mexico governmental entities and officials. *See* § 41-4A-1; § 41-4A-3. The CRA provides, in relevant part,

> A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under

[2] State ex rel. Evans v. Field, 1921-NMSC-082, ¶ 6, 27 N.M. 384, 201 P. 1059 ("It is a fundamental doctrine at common law and everywhere in America that no sovereign state can be sued in its own courts or in any other without its consent and permission.").

> color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.

Section 41-4A-3(B). The CRA defines a public body to include "a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding." Section 41-4A-2. Claims asserted under the CRA "shall be brought exclusively against a public body," and the public body may be held vicariously liable for the "conduct of individuals acting on behalf of, under color of or within the course and scope of the authority of the public body." Section 41-4A-3(C).

{14} Among its notable features, the CRA prohibits the use of qualified immunity as a defense to a claim brought pursuant to that act. Section 41-4A-4. Qualified immunity is a defense available to state officials sued in a personal capacity under § 1983 and provides immunity from damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The CRA also waives sovereign immunity for claims brought pursuant to that act and prohibits raising sovereign immunity as a defense to a CRA claim. Section 41-4A-9. However, the CRA explicitly preserves other immunity defenses, providing,

> The prohibition on the use of the defense of qualified immunity pursuant to [CRA Section 41-4A-4] and the waiver of sovereign immunity pursuant to [CRA Section 41-4A-9] shall not abrogate judicial immunity, legislative immunity or any other constitutional, statutory or common law immunity.

Section 41-4A-10. The dispute in the current proceeding primarily centers on the meaning of Section 41-4A-10.

{15} The parties here agree that Section 41-4A-10 expressly preserves judicial immunity. But the parties disagree about whether judicial immunity extends to governmental entities. Bolen argues that judicial immunity is a doctrine that "protects people and not entities" and, therefore, that a public body may not rely on judicial immunity in defense of a CRA claim. NMRC responds that the CRA's plain language establishes that judicial immunity is an available defense. Our resolution of this dispute hinges on the Legislature's intent with respect to the defenses available to a public body sued under the CRA. We review questions of statutory interpretation de novo. *State v. Off. of Pub. Def. ex rel. Muqqddin*, 2012-NMSC-029, ¶ 13, 285 P.3d 622.

A. Judicial Immunity Is Available to Public Bodies Sued Under the CRA

{16} We consider whether a public body may raise judicial immunity as an affirmative defense to a CRA claim. We ground our analysis in well-settled principles of statutory construction. Our primary task in construing a statute is to ascertain and give effect to legislative intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. When construing legislative intent, we use the statute's plain language as our primary guide. *State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939. "We will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions." *Regents of Univ. of N.M. v. N.M. Fed'n of Tchrs.*, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236.

{17} However, "we have not relied upon the literal meaning of a statute when such an application would be absurd, unreasonable, or otherwise inappropriate." *Rivera*, 2004-NMSC-001, ¶ 13. And if there is "genuine uncertainty as to what the legislature was trying to accomplish," then it is our "responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. To resolve uncertainty in the meaning of a statute, we may examine "the context in which [the statute] was promulgated, including the history of the statute and the object and purpose the Legislature sought to accomplish." *State v. Nick R.*, 2009-NMSC-050, ¶ 11, 147 N.M. 182, 218 P.3d 868 (internal quotation marks and citation omitted). We may also look to other enactments in pari materia. *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 22, 148 N.M. 426, 237 P.3d 728.

1. The plain language of the CRA preserves judicial immunity

{18} We begin with the language of Section 41-4A-10. Bolen suggests that the statutory language is ambiguous as it does not clearly provide a public body with the defense of judicial immunity. NMRC responds that Section 41-4A-10, if read in harmony with the other provisions of the CRA, permits a public body to assert judicial immunity in defense of a CRA claim. NMRC argues that failing to recognize that public bodies may assert judicial immunity would render Section 41-4A-10 superfluous.

{19} We agree with Bolen that the language of Section 41-4A-10, standing alone, is ambiguous with respect to the question presented. Section 41-4A-10 expressly states that the CRA's prohibition of qualified immunity and waiver of sovereign immunity "shall not abrogate" judicial immunity, but the statute is silent about whether judicial immunity is otherwise available to a public body in defense of a CRA claim. *See Abrogate*, *Black's Law Dictionary* (12th ed. 2024) (defining abrogate as "[t]o abolish (a law or custom) by formal or authoritative action, to annul or repeal"). Thus, the wording of the statute does not conclusively resolve the issue.

{20} But we also agree with NMRC that Section 41-4A-10 would be meaningless if judicial immunity is unavailable to a public body in defense of a CRA claim. In interpreting the language of a statute, we must give meaning to each word and "'avoid rendering the Legislature's language superfluous.'" *State v. Farish*, 2021-NMSC-030, ¶ 11, 499 P.3d 622 (quoting *Baker*, 2013-NMSC-043, ¶ 24). Further, we must also consider the entirety of an enactment and "construe each part in connection with every other part to produce a harmonious whole." *Pirtle v. Legis. Council Comm. of N.M. Legislature*, 2021-NMSC-026, ¶ 14, 492 P.3d 586 (internal quotation marks and citation omitted). Given that Section 41-4A-3(C) only permits a CRA claim to be

brought "against a public body," it is logical that, by expressly preserving judicial immunity in Section 41-4A-10, the Legislature contemplated that a public body would be able to raise judicial immunity as an affirmative defense. The statutory language of the CRA, therefore, strongly suggests that judicial immunity is an available defense for a public body.

2. Judicial immunity extends to governmental entities

{21} Despite this statutory language, Bolen suggests that permitting a public body to raise judicial immunity is inconsistent with the policy rationale underlying the doctrine. Bolen claims that judicial immunity is based on policies intended to protect individual defendants from personal liability. Bolen suggests that these policies are not implicated under the CRA because claims can only be asserted against a governmental entity.

{22} We disagree with Bolen's premise. While *qualified* immunity reflects policies concerned with protecting individual state officials from personal liability under § 1983, *see Owen v. City of Independence, Mo.*, 445 U.S. 622, 653 (1980), "personal liability . . . [is] less compelling, if not wholly inapplicable, when the liability of the [governmental] entity is at issue." Judicial immunity, like other *absolute* immunities, is a common law doctrine that primarily protects "the proper functioning of the office." *Van de Kamp v. Goldstein*, 555 U.S. 335, 345 (2009) (internal quotation marks and citation omitted). Courts extend judicial immunity to "those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of the *public business*." *Butz v. Economou*, 438 U.S. 478, 507 (1978) (emphasis added). Judicial immunity is, therefore, "justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." *Forrester v White*, 484 U.S. 219, 227 (1988), *superseded by statute on other grounds as stated in Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 929 (9th Cir. 2004).

{23} We have previously extended judicial immunity from actions for damages to "'courts of either limited or general jurisdiction . . . while acting within their jurisdiction.'" *Edwards v. Wiley*, 1962-NMSC-116, ¶ 7, 70 N.M. 400, 374 P.2d 284 (quoting *Shaw v. Moon*, 245 P. 318, 319 (Or. 1926)); *see also Galindo v. W. States Collection Co.*, 1970-NMCA-118, ¶ 13, 82 N.M. 149, 477 P.2d 325 ("Judicial officers are not liable for erroneously exercising their judicial powers. They are, however, liable for acting wholly in excess of their jurisdiction."). The doctrine of judicial immunity was "'originally developed to preserve the autonomy and integrity of the judiciary.'" *Collins ex rel. Collins v. Tabet*, 1991-NMSC-013, ¶ 24, 111 N.M. 391, 806 P.2d 40 (citation omitted), *abrogated on other grounds by State v. Mares*, 2024-NMSC-002, ¶ 2, 543 P.3d 1198; *see also Vickrey v. Dunivan*, 1955-NMSC-006, ¶ 7, 59 N.M. 90, 279 P.2d 853 ("No rule is more firmly established than that judicial officers are not liable for the erroneous exercise of judicial powers vested in them."). As "the settled doctrine of the English courts for many centuries," judicial immunity is applied "for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences." *Bradley v. Fisher*, 13 Wall. 335, 80 U.S. 335, 347, 349 n.16 (1871) (internal quotation marks and citation omitted). This is because judicial "errors may be corrected on appeal," and a judge "should not have to fear that unsatisfied litigants may hound [the judge] with litigation charging malice or corruption." *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Judicial immunity similarly discourages collateral attacks on judicial orders and encourages litigants to rely on established court procedure as the means of correcting judicial error. *Forrester*, 484 U.S. at 225.

{24} The United States Supreme Court has interpreted judicial immunity to include not only judges, but also those who "participate" in the adjudicatory process. *See Butz*, 438 U.S. at 509. These participants include, in addition to judges, "grand jurors, petit jurors, advocates, and witnesses." *Id.* In placing grand jurors and advocates—such as, prosecutors—under the umbrella of judicial immunity, the Supreme Court has recognized these actors exercise a discretionary judgment on the basis of evidence presented to them that is functionally comparable to the judgment passed by a judge. *See Imbler v. Pachtman*, 424 U.S. 409, 423 n.20 (1976) (citing *Turpen v. Booth*, 56 Cal. 65 (1880)). Consequently, the same considerations underlying the immunity of judges—broadly, upholding the "independence" and "usefulness" of the office, *see Bradley*, 13 Wall. 335, 80 U.S. at 348-49—also form the basis for immunity of grand jurors and prosecutors. *See Imbler*, 424 U.S. at 422-23.

{25} The policy rationale underlying the doctrine of judicial immunity—preserving the autonomy and integrity of the judiciary—applies equally to individuals and governmental entities. If we were to hold that judicial immunity protects individuals but not entities, then litigants who are dissatisfied with a judge's order could circumvent the purpose and effects of the doctrine simply by suing a judicial entity instead of an individual judge. Thus, outside of the § 1983 context, other courts have extended judicial immunity to governmental entities performing judicial and quasi-judicial functions. *See, e.g.*, Restatement (Second) of Torts § 895B (1965) ("Even when a [s]tate is subject to tort liability, it and its governmental agencies are immune to the liability for acts and omissions constituting . . . the exercise of a judicial or legislative function."); *Marion Superior Ct. Prob. Dep't v. Trapuzzano*, 223 N.E.3d 282, 289-90 (Ind. Ct. App. 2023) (applying quasi-judicial immunity to a probation department), *transfer denied sub nom. Marion Cnty. Superior Ct. Prob. Dep't v. Trapuzzano*, 232 N.E.3d 646 (Table) (Ind. 2024); *Reddy v. Karr*, 9 P.3d 927, 931 (Wash. Ct. App. 2000) ("'[T]he public policy which requires immunity for the [individual officer] also requires immunity for both the state and the county for acts of judicial and quasi-judicial officers in the performance of the duties which rest upon them.'" (second alteration in original) (citation omitted)); *Rahrer v. Bd. of Psych.*, 2000 MT 9, ¶ 13, 993 P.2d 680 ("[T]he objectives sought by granting immunity to individual officers—free, independent, and untrammeled action—would be seriously impaired or destroyed if we did not extend immunity to the state and its agencies."). We, therefore, conclude that the doctrine of judicial immunity extends to claims for damages asserted against a governmental entity, including a public body sued under the CRA.

3. Unlike § 1983, the CRA does not distinguish between individual and official-capacity immunity defenses

{26} The district court here nevertheless decided that jurisprudence interpreting § 1983 clarifies that judicial immunity is unavailable to a public body. Under § 1983, judicial immunity may be asserted by a state official when sued in a personal capacity. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). But in a § 1983 official-capacity suit, which is considered an action against a governmental entity in all but name, the only immunity defenses available "are forms of sovereign immunity that the entity, qua entity, may possess, such as the Eleventh Amendment." *Id.* at 167 (emphasis omitted); *see also Hafer v. Melo*, 502 U.S. 21, 25 (1991) ("[T]he only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses."). The district court here essentially equated a CRA claim to a § 1983 official-capacity suit, concluding that a public body, like an entity sued under § 1983, cannot raise judicial immunity as a defense. Bolen defends the district court's reasoning as correct.

{27} Although we agree with the district court that § 1983 is in pari materia with the CRA, we disagree that the jurisprudence construing § 1983 controls the question presented here. The CRA does not maintain § 1983's distinction between personal-capacity and official-capacity suits, and we decline to import this distinction in the absence of a clearer indication of a legislative intent to do so. *See State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125 ("We will not read into a statute any words that are not there, particularly when the statute is complete and makes sense as written."); *cf. also Flores v. Herrera*, 2016-NMSC-033, ¶¶ 11-12, 384 P.3d 1070 (declining to interpret a statute as providing a personal-capacity claim against a state officer in part because the "Legislature knows how to expressly impose personal liability on a public employee," but "provided no textual indication of any intent to impose personal liability on a state officer").

{28} Rather, § 1983's distinction between personal-capacity and official-capacity suits reflects jurisdictional limitations placed on the federal courts arising from state sovereign immunity and the Eleventh Amendment to the United States Constitution. *Hafer*, 502 U.S. at 27; *Graham*, 473 U.S. at 169; *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). These jurisdictional limitations do not pertain to claims asserted pursuant to the CRA, as "the Eleventh Amendment does not apply in state courts." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 63-64 (1989).

{29} The plain language of the CRA also confirms that § 1983's distinction between official and personal-capacity suits does not exist under our state's civil rights legislation. Unlike the CRA, a § 1983 claim cannot be asserted against a state government or its entities but may be asserted against an individual state official in either a personal or official capacity. *Will*, 491 U.S. at 66-71; *Graham*, 473 U.S. at 165-66. A personal-capacity suit seeks to impose personal liability on the official. *Scheuer v. Rhodes*, 416 U.S. 232, 239 (1974), *overruled on other grounds as recognized by Davis v. Scherer*, 468 U.S. 183, 188, 191 (1984); *see also* § 41-4-4(B)(2), (C), (D)(2) (addressing indemnification of public employees for constitutional torts occurring within the scope of duty). An official-capacity suit is considered a suit against the governmental entity itself. *Ford Motor Co. v. Dep't of Treasury of Ind.*, 323 U.S. 459, 464 (1945), *overruled on other grounds by Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 623 (2002); *Ex parte Young*, 209 U.S. 123, 151 (1908), *superseded by statute on other grounds as stated in EEOC v. Peabody W. Coal Co.*, 610 F.3d 1070, 1085 (9th Cir. 2010). A court may award retroactive damages in a § 1983 personal-capacity suit. *Quern v. Jordan*, 440 U.S. 332, 336-37 (1979). In an official-capacity suit, however, a court typically may award only prospective relief such as an injunction. *Graham*, 473 U.S. at 167 n.14; *but see Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 662, 690-91 (1978) (providing that a court may award damages in an official-capacity suit against a municipality, but only if the asserted constitutional violation arose out of an official custom or policy). In contrast, the CRA draws no distinction between the remedies available based on the capacity of the suit, but instead provides that a court may award damages, injunctive, and equitable relief exclusively against a public body due to its conduct or the conduct of individuals acting on its behalf. Section 41-4A-3(B), (C).

{30} Similarly, an official sued in a personal capacity under § 1983 can raise the defense of qualified or absolute immunity, but an official or municipality sued in an official capacity cannot rely on these defenses. *Graham*, 473 U.S. at 166; *Owen*, 445 U.S. at 652-57. The CRA expressly prohibits qualified immunity from being raised as a defense to claims asserted pursuant to that act. Section 41-4A-4. The Legislature's express prohibition of qualified immunity, despite that defense being unavailable to an entity under § 1983, suggests that the Legislature did not intend for CRA claims to mirror § 1983 with respect to the defenses available to litigants. The Legislature is presumed to know the law when enacting a statute, *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 16, 453 P.3d 434, including the law pertaining to the unavailability of qualified immunity as a defense to a § 1983 official-capacity suit. Accordingly, the § 1983 jurisprudence cited by the district court is inapposite to the question presented.

{31} As discussed in the preceding subsection, the policy rationale underlying judicial immunity applies equally to both individuals and governmental entities. Because Section 41-4A-10 expressly preserves judicial immunity, we hold that a public body may raise judicial immunity in affirmative defense of a claim for damages asserted pursuant to the CRA. The district court erred by concluding otherwise. We, therefore, affirm the Court of Appeals in reversing the district court. *Bolen*, 2024-NMCA-056, ¶ 12.

4. Judicial immunity must be applied consistently with the CRA's purpose

{32} Bolen also suggests that extending judicial immunity to public bodies would defeat the purpose of the CRA, which is to provide a remedy to persons deprived of their state constitutional rights by New Mexico entities and officials. Bolen suggests that permitting a public body to assert absolute immunity to a CRA claim would effectively immunize unconstitutional conduct so long as the conduct bears any connection to an adjudicatory proceeding.

Although we acknowledge the potential for conflict between judicial immunity and the remedy provided by the CRA, we conclude that judicial immunity can be applied consistently with the CRA if it is tailored to promote the doctrine's underlying rationale.

{33} This Court previously explored the scope of judicial immunity in *Collins*, 1991-NMSC-013. In *Collins*, we recognized that judicial immunity extends to judges and "various persons whose adjudicatory functions or other involvement with the judicial process have been thought to warrant protection from harassment, intimidation, or other interference with their ability to engage in impartial decision-making." *Id.* ¶ 18. Thus, we held that a guardian ad litem is immune when functioning as an "'arm of the court'" in assessing whether a tort claim settlement is in the best interests of a child. *Id.* ¶ 16 (citation omitted). However, we declined to extend immunity to "a guardian ad litem who is *not* acting as a 'friend of the court,'" but instead "is acting as an advocate for his client's position—representing the pecuniary interests of the *child* instead of looking into the fairness of the settlement (for the child) on behalf of the *court*." *Id.* ¶ 27. We explained that "the basic reason for conferring quasi-judicial immunity on the guardian does not exist" when the guardian ad litem is not performing a judicial function. *Id.* We remanded the case to the district court for a "limited factual inquiry" into the nature of the guardian ad litem's conduct with respect to the settlement negotiations at issue in that case. *Id.* ¶¶ 15, 42-45.

{34} Later, in *Kimbrell v. Kimbrell*, 2014-NMSC-027, 331 P.3d 915, we explained that a guardian ad litem, court-appointed to assist the court in making custody determinations, is immune for conduct taken in the performance of that function. *Id.* ¶¶ 2, 8, 17. We reasoned that the interests behind judicial immunity were implicated because (a) the guardian ad litem performs a judicial function when helping a court make custody determinations, (b) "the threat of civil liability [would] impair the guardian ad litem's ability" to perform that function, and (c) "procedural safeguards . . . are available to protect against misconduct" in the performance of that function. *Id.* ¶¶ 12-13. We, therefore, held that the guardian ad litem was entitled to immunity to the extent that her actions did not clearly fall outside of "the scope of [the district court's] appointment." *Id.* ¶¶ 2, 13-14, 17.

{35} Our opinions in *Collins* and *Kimbrell* thus extend immunity to individuals and entities functioning as an *arm of the court* by performing tasks integral to a judicial proceeding. *See, e.g.*, *Hunnicutt v. Sewell*, 2009-NMCA-121, ¶¶ 12-13, 147 N.M. 272, 219 P.3d 529 (applying *Collins* to extend judicial immunity to certain functionaries of a district court); *Lowrey v. Argueta*, 2024-NMCA-034, ¶¶ 9-11, 545 P.3d 1208 (applying *Collins* and *Kimbrell* in determining the immunity of a probation officer and supervisor acting as arms of the metropolitan court). Contrary to Bolen's assertion, we do not view this narrow application of judicial immunity as inconsistent with the purpose of the CRA. The CRA's purpose is to provide persons with a means of securing the rights, privileges, and immunities recognized by our state constitution. When applied consistent with its purpose, judicial immunity "'preserve[s] the autonomy and integrity of the judiciary,'" *Collins*, 1991-NMSC-013, ¶ 24 (citation omitted), thus ensuring that our state courts remain independent and available to vindicate deprivations of a person's state constitutional rights.

{36} As the Court of Appeals here correctly noted, we have not yet considered the scope of judicial immunity in the context of a proceeding like the one presented here, which involves a quasi-judicial adjudication in the executive branch. *Bolen*, 2024-NMCA-056, ¶ 15. *Collins* and *Kimbrell* both involved conduct tied to a judicial proceeding and thus had no occasion to consider whether judicial immunity extends to an administrative agency's adjudicatory proceedings. Therefore, to ensure judicial immunity is extended only so far as warranted by its policy justification, we next explore the scope of judicial immunity in the context of an adjudicatory proceeding in the executive branch.

5. Judicial immunity extends to administrative proceedings when both the proceeding and the challenged conduct are judicial in nature

{37} Bolen does not dispute that judicial immunity may extend to officials performing quasi-judicial functions in the executive branch. Although we are not bound by this concession, we agree and hold that judicial immunity, in certain circumstances, may extend to individuals and governmental entities performing quasi-judicial functions in the executive branch. *See Collins*, 1991-NMSC-013, ¶ 18 (citing *Butz*, 438 U.S. at 512-14 for the proposition that judicial immunity extends to a "federal hearing examiner or administrative law judge"); *City of Albuquerque v. Chavez*, 1997-NMCA-054, ¶ 17, 123 N.M. 428, 941 P.2d 509 (noting "that the Tenth Circuit recently held that personnel hearing officers who hear grievances . . . are entitled to absolute immunity from damages actions under . . . § 1983"). An administrative agency's adjudicatory proceedings often mimic judicial proceedings to the extent that the agency may "investigate facts, weigh evidence, draw conclusions as a basis for official action, and exercise discretion of a judicial nature." *State ex rel. Battershell v. City of Albuquerque*, 1989-NMCA-045, ¶ 16, 108 N.M. 658, 777 P.2d 386 (citing *Duke City Lumber Co. v. N.M. Env't Improvement Bd.*, 1980-NMCA-160, 95 N.M. 401, 622 P.2d 709). However, not all administrative proceedings possess sufficient "identification with the judicial process of the kind and depth [to] occasion[] absolute immunity." *Cleavinger v. Saxner*, 474 U.S. 193, 206 (1985). Thus, in the context of adjudicatory proceedings in the executive branch, we believe an additional layer of analysis is needed to determine whether the proceeding is sufficiently analogous to the judicial process so as to implicate the policies underlying judicial immunity. *Butz*, 438 U.S. at 508, 513 (summarizing support for according federal agency adjudicators immunity from suits for damages); *see also Imbler*, 424 U.S. at 421 (explaining that the extension of absolute immunity to an official requires "a considered inquiry into the immunity historically accorded the relevant official at

common law and the interests behind it").

{38} We, therefore, require courts addressing questions of judicial immunity in the context of an adjudicatory proceeding in the executive branch to consider both (1) whether the adjudicatory proceeding shares enough characteristics of the judicial process to warrant the extension of judicial immunity to the proceeding and (2) whether the conduct at issue consists of a judicial function. We briefly elucidate considerations relevant to these inquiries in the next two subsections. We also emphasize that judicial immunity should extend no further than necessary to achieve the policy goals of protecting independent decision-making and ensuring the integrity of an established adjudicatory process. *See Collins*, 1991-NMSC-013, ¶¶ 17-18, 42 (explaining the policy rationale for judicial immunity and emphasizing that "[a]bsolute immunity will be 'extended no further than its justification would warrant'" (citation omitted)). An individual or entity seeking judicial immunity bears the burden of showing that the immunity should apply. *See id.* ¶ 42 (noting that judicial immunity "is an affirmative defense, and the burden of proving it lies with the person asserting it").

a. Considerations relevant to the judicial nature of the administrative proceeding

{39} In evaluating whether judicial immunity attaches to an administrative agency's adjudicatory proceedings, we take guidance from the United States Supreme Court's opinion in *Butz*, 438 U.S. at 508-16. In *Butz*, the United States Supreme Court considered whether the petitioners, federal agency officials, were immune from a civil rights claim alleging that the officials initiated and pursued a vindictive prosecution against the respondent. *Id.* at 480-85, 508-16. The federal circuit court in *Butz* had concluded that immunity does not extend to officials performing quasi-judicial functions in the executive branch. *Id.* at 511. The Supreme Court disagreed, reasoning that "[t]he cluster of immunities protecting the various participants in judge-supervised trials stems from the characteristics of the judicial process rather than its location." *Id.* at 512. The United States Supreme Court concluded that "adjudication within a federal administrative agency shares enough of the characteristics of the judicial process that those who participate in such adjudication should also be immune from suits for damages." *Id.* at 512-13. The Court thus extended immunity to the federal officials performing judicial and prosecutorial functions in the agency proceeding, including the hearing examiner who presided over the proceeding, *id.* at 513-14, the officials who initiated and continued the proceeding, *id.* at 515-16, and the agency attorney who presented evidence at the proceeding, *id.* at 516-17.

{40} *Butz* establishes that judicial immunity may extend to adjudicatory proceedings in the executive branch if those proceedings share sufficient "characteristics of the judicial process" so as to implicate the policies justifying absolute immunity from suit. 438 U.S. at 512-13. The "characteristics of the judicial process" that *Butz* deemed relevant include (1) the need to insulate individuals performing tasks integral to the proceeding from harassment or intimidation, (2) the presence of safeguards that "reduce the need for private damages actions" to control "unconstitutional conduct," (3) the decision-maker's insulation from political influence, (4) "the importance of precedent in resolving controversies," (5) the adversarial nature of the proceeding, and (6) "the correctability of error on appeal." *Id.* at 512; *see also Cleavinger*, 474 U.S. at 202 (summarizing the factors considered by *Butz*). While no one factor is dispositive, *Butz*'s six factors provide a comprehensive framework for deciding whether an adjudicatory proceeding is sufficiently judicial in nature so as to warrant immunity from damages suits. We, therefore, adopt *Butz*'s factors as the method for deciding whether judicial immunity attaches to an adjudicatory proceeding in New Mexico's executive branch.

b. Considerations relevant to the judicial nature of the conduct

{41} In addition to determining that immunity attaches to an adjudicatory proceeding, a court must also consider whether the conduct challenged in the claim is judicial in nature. Judicial immunity protects individuals and governmental entities from liability when functioning as an "'arm of the court'" or, in other words, when performing a function that is integral to a judicial or quasi-judicial proceeding. *Collins*, 1991-NMSC-013, ¶¶ 16, 19; *see also Butz*, 438 U.S. at 513 (extending immunity to a federal hearing examiner because the examiner's role "is 'functionally comparable' to that of a judge"). For example, a guardian ad litem performs a judicial function when assisting a court to adjudicate the best interests of a child. *Collins*, 1991-NMSC-013, ¶ 16. However, immunity does not extend to conduct that is not a judicial function, *id.* ¶ 27, such as when the conduct amounts to an administrative act, or when the conduct is taken "in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57, 361 n.10 (1978) (internal quotation marks and citation omitted).

{42} Whether a claim of immunity for conduct that challenges a judicial function is a question of law for a judge or is a question of fact must be decided based on the circumstances presented. *Collins*, 1991-NMSC-013, ¶ 40. In some circumstances it may be clear that a claim challenges a judicial function. *See Kimbrell*, 2014-NMSC-027, ¶ 17 (concluding that a guardian ad litem clearly functions as an "arm of the court" when assisting in custody determinations). In other circumstances, a limited factual inquiry may be necessary to determine whether and to what extent a claim challenges a judicial function. *See Collins*, 1991-NMSC-013, ¶¶ 41-42 (remanding for a limited factual inquiry into the nature of the guardian ad litem's appointment with respect to a tort claim settlement and the extent to which the guardian ad litem's conduct fell within the scope of that appointment).

{43} We see a limited factual inquiry as important in the context of a CRA claim. Under the CRA, a public body may be made vicariously liable for acts and omissions of individuals acting on its behalf, § 41-4A-3(C), some of whom may or may not be performing judicial functions. A court considering a public body's entitlement to judicial immunity should, therefore, carefully parse the challenged conduct to determine whether and to what extent that conduct consists of a judicial function. Judicial immunity will protect a public body from liability only when both the nature of

the proceeding and the nature of the challenged conduct merit absolute protection from suit.

B. The Court of Appeals Erred in Holding That NMRC Is Immune

{44} Because the district court concluded the defense of judicial immunity is unavailable to NMRC, the district court made no findings relevant to either the nature of NMRC's adjudicatory proceedings or the nature of any conduct challenged in Bolen's CRA claim. The Court of Appeals nonetheless concluded that NMRC is immune under the facts and circumstances of the case. *See Bolen*, 2024-NMCA-056, ¶¶ 13-27. We reverse the Court of Appeals in this regard.

{45} In deciding NMRC's immunity, the Court of Appeals relied on a three-part formula adopted by the Tenth Circuit in *Horwitz*, 822 F.2d at 1513. *Bolen*, 2024-NMCA-056, ¶ 17. According to *Horwitz*, judicial immunity applies when "the following formula is satisfied: (a) the officials' functions must be similar to those involved in the judicial process, (b) the officials' actions must be likely to result in damages lawsuits by disappointed parties, and (c) there must exist sufficient safeguards in the regulatory framework to control unconstitutional conduct." *Horwitz*, 822 F.2d at 1513. Applying this formula, the Court of Appeals decided NMRC is immune because (a) NMRC's actions in initiating a proceeding, holding a hearing, taking evidence, and entering findings pursuant to its regulations are similar to the actions of those involved in the judicial process, *Bolen*, 2024-NMCA-056, ¶¶ 22, 25, (b) a federal district court has previously recognized that NMRC is subject to a large number of lawsuits, which may interfere with independent decision-making, *id.* ¶ 26, and (c) NMRC's administrative rules, and especially 15.2.1.9(A) NMAC, set forth procedural safeguards applicable to the disciplinary action at issue, and Bolen did not clearly contest the existence of sufficient procedural safeguards. *Id.* ¶ 27.

{46} The formula applied by the Court of Appeals is similar to the factors we considered in *Kimbrell*, 2014-NMSC-027, ¶¶ 12-13, in deciding that immunity extended to a guardian ad litem helping a court make custody determinations. However, as discussed above, *Kimbrell* does not fully encapsulate the analysis we deem necessary when deciding whether judicial immunity attaches to an adjudicatory proceeding in the executive branch. Henceforth, our state courts should more fully examine the judicial nature of an administrative agency's adjudicatory proceedings using *Butz*'s six factors before determining the judicial nature of the challenged conduct.

{47} As the Court of Appeals did not have the benefit of the framework we elucidate in this opinion, the Court of Appeals' analysis is incomplete. The parties' briefing and arguments on certiorari also do not sufficiently address either the nature of NMRC's proceedings or the nature of NMRC's conduct such that we could complete this analysis. The parties should be given a full opportunity to address these issues before NMRC's entitlement to immunity is decided. Moreover, in his arguments before this Court, Bolen disputes whether the conduct challenged in his CRA claim consists of a judicial function. This dispute presents factual issues which must be resolved in the first instance by the district court. *See Collins*, 1991-NMSC-013, ¶¶ 40-41 (explaining that whether a defendant was performing a function entitled to immunity, and whether that immunity was absolute, depends on the facts and circumstances presented). We, therefore, remand this matter to the district court for further proceedings in conformance with our opinion.

IV. CONCLUSION

{48} The CRA expressly preserves judicial immunity as a defense. Section 41-4A-10. Judicial immunity is justified by public policies supporting independent decision-making and ensuring the integrity of a judicial or quasi-judicial process. These policies apply to both individuals and governmental entities performing judicial functions. We, therefore, affirm the Court of Appeals insofar as it reversed the district court and held that judicial immunity is available to a public body in defense of a CRA claim. We reverse the Court of Appeals insofar as it determined that NMRC is immune to Bolen's CRA claim. Instead, the district court must first decide whether and to what extent NMRC is immune using the framework set forth in this opinion. We remand this matter to the district court.

{49} IT IS SO ORDERED.

BRIANA H. ZAMORA, Justice

WE CONCUR:

DAVID K. THOMSON, Chief Justice

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

FORMAL OPINION

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

Filing Date: 12/30/2025

No. A-1-CA-42426

CITIBANK, N.A.,
Plaintiff/Counterdefendant-Appellant,
v.
LEANNE MOYER,
Defendant/Counterclaimant-Appellee.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
James Lawrence Sanchez, District Court Judge

Ballard Spahr LLP
Matthew A. Morr
Denver, CO

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for Appellant

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Nicholas H. Mattison
Albuquerque, NM

for Appellee

Introduction of Opinion

Plaintiff Citibank, N.A. appeals the district court's order denying its motion to compel Defendant Leanne Moyer (Consumer) to arbitration and to stay the district court proceedings. The district court concluded that Citibank acted inconsistently with the terms of the parties' arbitration agreement, thereby excusing Consumer from her contractual obligation to arbitrate, and waiving Citibank's right to compel arbitration and stay the court proceedings. For the reasons stated below, we reverse and remand for entry of an order compelling arbitration and staying the district court proceedings in accordance with the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, the governing law adopted by the arbitration agreement.

Jane B. Yohalem, Judge
WE CONCUR:
Zachary A. Ives, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-42426**

FORMAL OPINION

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

Filing Date: 1/2/2026

No. A-1-CA-41682

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
EDGAR GUZMAN,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
T. Glenn Ellington, District Court Judge

Raúl Torrez, Attorney General
Teresa Ryan, Assistant Solicitor General
Santa Fe, NM

for Appellant

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

for Appellee

Introduction of Opinion

Our Supreme Court has established a legal framework for district courts to apply in order to impose "extreme" sanctions, like exclusion of a witness or dismissal. State v. Harper, 2011-NMSC-044, ¶¶ 16, 27, 150 N.M. 745, 266 P.3d 25; State v. Le Mier, 2017-NMSC-017, ¶ 15, 394 P.3d 959. District courts must consider culpability, prejudice, and the availability of lesser sanctions (the Harper/Le Mier factors) and must explain the reasoning supporting the sanction imposed. Le Mier, 2017-NMSC-017, ¶¶ 15, 20. On appeal, the State argues that the district court's decision to exclude several late-disclosed witnesses was an abuse of discretion because (1) the district court did not consider or explain its evaluation of lesser sanctions on the record as required by Harper and Le Mier; and (2) the district court improperly weighed and applied the Harper/Le Mier factors. We affirm the district court's exercise of discretion to impose an extreme sanction because (1) the record demonstrates that the district court considered the Harper/Le Mier factors and explained its reasoning; and (2) the sanction is not contrary to the facts or circumstances of the case.

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

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-41682**

FORMAL OPINION

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

Filing Date: 1/9/2026

No. A-1-CA-41790

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SHAUN GERALD PAGLINAWAN
Defendant-Appellant.

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

Raúl Torrez, Attorney General
Felicity Strachan, Assistant Solicitor General
Santa Fe, NM

for Appellee

Wadsworth Law, LLC
Mathew R. Wadsworth
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for Appellant

Introduction of Opinion

At Defendant Shaun Paglinawan's jury trial, a police officer testified that in his opinion, based on his training and experience, the activity at a particular residence and certain items found there, including specific quantities of fentanyl as well as some methamphetamine, were indicative of trafficking of controlled substances. The State did not provide notice that the officer would testify as an expert, and the officer was neither acknowledged nor qualified as an expert at trial—but Defendant did not object to the testimony. The jury convicted Defendant of two counts of trafficking of controlled substances (fentanyl and methamphetamine), contrary to NMSA 1978, Section 30-31-20(A)(3) (2006) (prohibiting the trafficking of controlled substances by possession with intent to distribute). Defendant appeals the convictions and argues that the admission of the officer's testimony was plain error. We conclude that while the officer's testimony was expert testimony as defined by Rule 11-702 NMRA, under the circumstances, its admission was not plain error. **View full PDF online.**

Katherine A. Wray, Judge
WE CONCUR:
Jane B. Yohalem, Judge
Kristopher N. Houghton, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-41790**

FORMAL OPINION

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

Filing Date: 1/27/2026

No. A-1-CA-42290

FELIX VALDEZ and GRACE VALDEZ,
Plaintiffs/Counterdefendants-Appellants,
v.
BOARD OF TRUSTEES OF THE JUAN BAUTISTA VALDEZ LAND GRANT,
Defendant/Intervenor/Counterclaimant-Appellee,
and
JUAN BAUTISTA VALDEZ LAND GRANT, INC.,
Defendant-Appellee,
and
JUAN DURAN JR., URSULA DURAN, ELIZABETH HOLLAND, and LEVI C. VALDEZ,
Defendants.

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY
Kathleen McGarry Ellenwood, District Court Judge

Atler Law Firm, P.C.
Timothy J. Atler
Jazmine J. Johnston
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Albuquerque, NM

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Michael T. Pottow
Santa Fe, NM

for Appellants

New Mexico Legal Aid
David Benavidez, Et al.
Santa Fe, NM

for Appellees

Introduction of Opinion

This case stems from a quiet title dispute over land that falls within the Juan Bautista Valdez Land Grant in Rio Arriba County, New Mexico. A federal patent from 1913 confirms the "private land claim" to "the [h]eirs, [l]egal [r]epresentatives, and [a]ssigns of Juan Bautista Valdez." Plaintiffs Felix and Grace Valdez sought to quiet title in their favor, claiming they are direct descendants of Juan Bautista Valdez and thus "heirs" in the language of the federal patent. Defendants Juan Bautista Valdez Land Grant, Inc. and Board of Trustees of the Juan Bautista Valdez Land Grant moved for partial summary judgment, claiming that Plaintiffs were seeking to retry matters resolved by the federal patent. The district court agreed, concluded that it lacked jurisdiction, and granted Defendants' motion for partial summary judgment. Despite doing so, however, the district court reached the merits, made findings of fact, and quieted title in Defendants without Defendants requesting it to do so. Plaintiffs appeal, and we reverse.

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

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-42290**

MEMORANDUM OPINION

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

No. A-1-CA-41964
Bruni-Karr Agency
v.
John Sheridan

Introduction of Opinion

This is a landlord-tenant case under New Mexico's Uniform Owner-Resident Relations Act (UORRA), NMSA 1978, §§ 47-8-1- to -52 (1975, as amended through 2025). Landlord Bruni-Karr Agency originally filed this case in metropolitan court. Tenant John Sheridan appealed to the district court, which, in a de novo proceeding, granted Landlord's request to terminate Tenant's lease, rejected Tenant's retaliation defense, and required Tenant to vacate the premises. Tenant claims that the proceedings in the district court denied him the trial de novo that he was entitled to on appeal under UORRA, and thereby denied him due process. We conclude that the procedures in the district court satisfied the statutory requirement for a trial de novo and the federal and state constitutional requirement for due process of law. We therefore affirm.

Jane B. Yohalem, Judge
WE CONCUR:
Zachary A. Ives, Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit:
https://bit.ly/A-1-CA-41964

No. A-1-CA-41750
Robert F. Dilley
v.
New Mexico Corrections Department

Introduction of Opinion

This appeal is before this Court on remand from certification under Rule 12- 606 NMRA to our Supreme Court. Our Supreme Court held this matter in abeyance pending the Court's disposition in Bolen v. New Mexico Racing Commission, 2025- NMSC-034, 578 P.3d 1121. Our Supreme Court having issued an opinion in Bolen on June 2, 2025, the Supreme Court remanded this appeal to this Court for further proceedings consistent with Bolen. We now address the issues raised by Plaintiff Robert F. Dilley, in light of our Supreme Court's opinion in Bolen, and affirm.

Jane B. Yohalem, Judge
WE CONCUR:
Jacqueline R. Medina, Chief Judge
Jennifer L. Attrep, Judge

To read the entire opinion, please visit:
https://bit.ly/A-1-CA-41750

No. A-1-CA-42619
In the Matter of Malachi D.

Introduction of Opinion

In these consolidated appeals in two different juvenile delinquency cases, Child challenges the district courts' denials of his motions to dismiss with prejudice, arguing that his adjudicatory hearings were untimely. See Rule 10-243(F)(2) NMRA (requiring that a case be dismissed with prejudice if the adjudicatory hearing "does not commence within the time limits provided in this rule, including any court-ordered extensions"). We dismiss Child's appeal in the first case, In re Malachi D., No. D-503-JR-2024-00065 (5th Jud. Dist. Ct. Nov. 14, 2024), as moot and refer a problem to the Children's Court Rules Committee for its consideration. In Child's appeal in the second case, In re Malachi D., No. D-503-JR-2025-00014 (5th Jud. Dist. Ct. Feb. 21, 2025), we reverse and remand for further proceedings consistent with this opinion. We discuss each appeal in turn.

Zachary A. Ives, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit:
https://bit.ly/A-1-CA-42619

MEMORANDUM OPINION

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

No. A-1-CA-42291
Caitlin D'Agostino
v.
New Mexico Taxation & Revenue Department

Introduction of Opinion

In this case, brought pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2025), Plaintiff appeals from the district court's order denying her motion for attorney fees after the district court concluded that Defendant's offer of settlement made pursuant to Rule 1-068(A) NMRA unambiguously included attorney fees. Plaintiff offers several arguments in support of reversal. Unpersuaded, we affirm.

Gerald E. Baca, Judge
WE CONCUR:
Megan P. Duffy, Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit:
https://bit.ly/A-1-CA-42291

No. A-1-CA-41983
State of New Mexico
v.
David Alberto Avalos-Solis

Introduction of Opinion

Defendant David Alberto Avalos-Solis challenges his conviction for one count of criminal sexual contact of a minor in the second-degree, contrary to NMSA 1978, Section 30-9-13(B)(1) (2003). Defendant raises four issues on appeal: (1) the State improperly refreshed the complaining witness's recollection; (2) the district court abused its discretion by admitting the State's expert witness's testimony; (3) prosecutorial misconduct deprived him of a fair trial; and (4) cumulative error resulted in a fundamentally unfair trial. We affirm.

Jacqueline R. Medina, Chief Judge
WE CONCUR:
J. Miles Hanisee, Judge
Jennifer L. Attrep, Judge

To read the entire opinion, please visit:
https://bit.ly/A-1-CA-41983

No. A-1-CA-42303
State of New Mexico
v.
Darin Munoz

Introduction of Opinion

Defendant appeals the district court's amended order revoking probation and commitment (Amended Order) to the New Mexico Corrections Department (NMCD), on the ground that he is entitled to an additional 180 days confinement credit for time served at the Lea County Detention Center (LCDC) from May 7, 2018 to November 2, 2018. We agree with Defendant and remand for the district court to resentence accordingly.

Jacqueline R. Medina, Chief Judge
WE CONCUR:
J. Miles Hanisee, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit:
https://bit.ly/A-1-CA-42303

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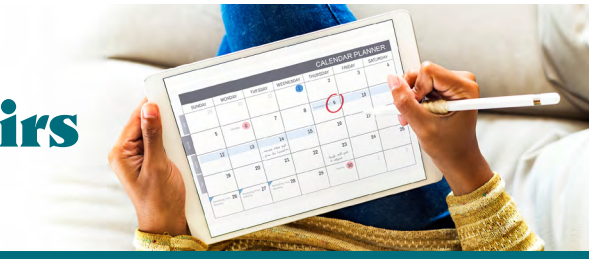

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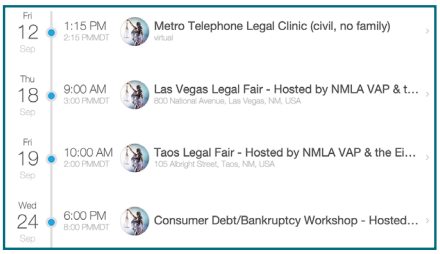

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The Native American Disability Law Center seeks an experienced and energetic attorney to join our litigation team. Interested in addressing unique legal issues impacting Native American children and families in the beautiful Four Corners region? We want to hear from you! The Law Center provides free legal services to Native Americans with disabilities living on or near the Navajo, Hopi, San Juan Southern Paiute, Southern Ute, and Ute Mountain Ute reservations. With offices located in Farmington, New Mexico and Flagstaff, Arizona, we serve a broad geographical area in the Four Corners Region of Utah, Colorado, Arizona, and New Mexico. Attorneys at the Law Center represent clients in administrative hearings, as well as tribal, state and federal court actions. Attorneys also work with tribal governments on legislation and policies affecting individuals with disabilities. The Law Center currently seeks an attorney to focus on education issues impacting Native American students with disabilities. Applicants must have a demonstrable interest in issues facing individuals with disabilities & other disenfranchised communities. Knowledge of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act is preferred, but consideration will be given to experienced attorneys with a desire to learn these areas of law. Other areas of practice may include employment and housing discrimination, and violations of civil rights based on disability. Because of the high level of independence & responsibility, 2+ years of experience is preferred. Preference is given to individuals with experience providing civil legal services and in the social justice sector. We are especially interested in talking with applicants with disabilities or those enrolled with a Native American community. Admission to the Utah, Arizona, Colorado, or New Mexico Bar or the ability to apply for admission on waiver to Arizona or New Mexico is preferred. Lack of any disciplinary history and the ability to take the next available state and tribal bar exam is required. Salary: Depends upon experience but salaries are competitive with Arizona & New Mexico government salaries. Excellent benefits including paid medical insurance, employer contribution to the retirement plan, and generous leave policy. Underlining the importance of our work, the Law Center offers a supportive and collaborative work environment. If interested, please submit cover letter, resume, and writing sample (no more than 10 pages) to: Melissa MacDougall, Advocacy Director, Native American Disability Law Center, 905 W. Apache Street, Farmington, New Mexico 87401; mmacdougall@nativedisabilitylaw.org

Attorney Positions
Great opportunity for those seeking courtroom experience! Hands-on mentoring with experienced trial attorneys. The Eleventh Judicial District Attorney's Office, Division I (McKinnley County), is accepting resumes for the positions of Assistant Trial Attorney, Trial Attorney and Senior Trial Attorney. Salary is based on experience and the NM District Attorney Personnel and Compensation Plan ($75,193.00 to $110,788.00). Send resumes to Lori Holesinger, HR Manager, 335 S. Miller Ave., Farmington, NM 87401, or via e-mail lholesinger@da.state.nm.us. Equal Opportunity Employer.

Litigation Attorney
Priest & Miller, LLP is aggressively seeking an experienced litigation attorney to join our high-level civil defense practice. We handle sophisticated, high-exposure matters involving medical malpractice, wrongful death, catastrophic injury, and oil-and-gas accidents. This position is ideal for an attorney with 3-5 years of solid litigation experience who wants real responsibility, meaningful courtroom work, and direct client contact—not document-review purgatory. Candidates should be confident, self-directed, and able to perform in a fast-paced, deadline-driven environment while still valuing collaboration and strategy. We offer top-tier compensation, a robust benefits package, and a flexible work environment that respects performance and results. Advancement is based on merit—not seniority or politics. All inquiries will be handled strictly confidentially. Please submit your resume to Resume@PriestMillerLaw.com

Associate
NM Probate & Estate Lawyers seeks an associate (2–10 years) for probate and estate litigation, with accelerated partnership potential. Litigation experience preferred. Flexible compensation and schedules, including part-time. We prioritize high-quality client work and quality of life. Please email eric@nmprobatelaw.com

Seeking Civil Litigation Attorneys
Serpe Andrews, PLLC is a growing regional civil defense firm currently seeking associate attorneys with 2+ years of experience to work in our New Mexico offices. Serpe Andrews provides civil defense in a range of areas, including medical malpractice, employment, personal injury, and government liability. The candidate must be licensed in New Mexico. Prior litigation experience is highly preferred. A successful candidate will have a strong interest in practicing throughout all stages of litigation, from preliminary investigations to jury trials. Remote work options are available. Very competitive salary and benefits packages include quarterly bonuses, 401K plan, medical/dental/vision plan, and tech stipends. Interested candidates should send cover letter and resume to Leslie Rodriguez (lrodriguez@serpeandrews.com) with "New Mexico Attorney Position" in the subject line.

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 Lovington, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to nshreve@da.state.nm.us

Associate County Attorney or Assistant County Attorney

JOB TITLE: Associate County Attorney or Assistant County Attorney CLASSIFICATION: Exempt DEPARTMENT/DIVISION: County Attorney's Office SUPERVISOR: County Attorney. Code : 26074-1. Salary Ranges: Associate County Attorney -$100,698 - $163,971/yr. Assistant County Attorney -$116,571 - $189,818/yr. Position Summary: Under supervision and at the direction of the County Attorney and the Deputy County Attorney, provides legal advice and counsel, prepares legal research, assists in developing ordinance and administrative regulations, provides legal, and policy analysis of issues, and drafts and negotiates contracts. Maintains confidentiality of information as required by the Rules of Professional Conduct. The Associate County Attorney/Assistant County Attorney serves at the pleasure of the County Attorney. Minimum Qualifications for Associate County Attorney: Juris Doctorate Degree from an accredited law school; Active member in good standing with the New Mexico State Bar, or if licensed in another state, obtain and abide by the rules of a limited license pursuant to SCRA 15-304. Preferred Qualifications for Associate County Attorney: Experience with Department of Energy regulations; Public utilities, employment and labor law, and litigation experience. Minimum Qualifications for Assistant County Attorney; Juris Doctorate Degree from an accredited law school; Five years of experience providing legal representation to public or private sector policymakers; Active member in good standing with the New Mexico State Bar, or if licensed in another state, obtain and abide by the rules of a limited license pursuant to SCRA 15-304. Preferred Qualifications for Assistant County Attorney: Experience with Department of Energy regulations; Land Use, Public utilities, employment and labor law, and litigation experience. Job Detail

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.

Associate Attorney Sought

Description: Our top-rated regional litigation defense firm is seeking an associate to join our busy practice in our Albuquerque office. We have opportunities for associates who want to hit the ground running with interesting cases and strong mentors. The ideal candidate will have civil litigation experience, a strong background in legal research and writing, and will be comfortable working in a fast-paced environment. The successful candidate will be responsible for providing legal advice to clients, preparing legal documents, and representing clients in court proceedings, including trial. This is an excellent opportunity for a motivated individual to join a highly respected AV-rated law firm and gain valuable experience in the legal field. Salary for this role is competitive with a full benefits package, straightforward partner/shareholder track and a casual work environment. If you join us, you will be well supported with the infrastructure of a multi-state firm and a group of professionals that want you to succeed. Apply by sending your resume and writing sample to the contact listed in this ad. Additional info: Full time, indefinite; Competitive salaries based on experience. Contact: Paula palvarez@raylaw.com

Of Counsel

Stiff, Garcia & Associates, LLC is a defense litigation firm. We offer a relaxed and professional workplace. We ask you to be dedicated and experienced. Our work schedule is flexible and remote is acceptable after an initial training period. You can work as much as you want, and we will pay you on a per hour billed basis. We offer medical, dental, long-term disability and 401K -6% matching for full time. Please email your resume to karrants@stifflaw.com

Entry Level and Experienced Attorneys

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

Associate Attorney

Quiñones Law Firm LLC is a well-established civil defense firm in Santa Fe, NM in search of a full-time associate attorney with minimum 5 years legal experience or 2-3 years background in civil defense work. Must be willing to work a minimum of 35 billable hours per week. Generous compensation and health benefits. Please send resume and writing sample to quinoneslaw@cybermesa.com

CJA Panel Assistant/ Administrative Assistant

The Federal Public Defender for the District of New Mexico is seeking a full-time CJA Panel Assistant or CJA Administrative Assistant to the CJA Coordinating Attorney (CJACA) for the District of New Mexico in the Albuquerque office. This is a temporary position with the possibility of extension and/or conversion to a permanent position, subject to funding availability. The CJACA oversees the administration and management of the district's CJA panel attorney program. Duties and Responsibilities: This position provides support services to the CJACA, CJA panel members, service providers, and the District Court. The assistant will provide support in a variety of areas including assisting the CJACA with all aspects of program administration and management; facilitating communications between CJA panel attorneys and their clients; assisting the CJACA in designing and presenting training programs for CJA panel members; assisting panel members and the Court with the efficient processing of vouchers for reimbursement and authorizations for service providers, travel and other case-related expenses; preparing and assisting in the preparation of various CJA forms and verifying their compliance with requirements; contacting panel members to determine availability for the expeditious assignments of counsel in criminal cases; monitoring court dockets to determine changes in representation of CJA clients; assisting in the maintenance of lists of panel members and service providers to assist the CJACA; disseminating information to the panel and service providers regarding CJA policies and procedures; maintaining internal records and statistics regarding CJA appointments for use by the clerk's office, the court, and others; maintaining updated information regarding the CJA Guidelines, federal travel guidelines, local rules of the court for the District of New Mexico; assisting with coordination of travel for panel attorneys and service providers in accordance with federal travel regulations; and other duties as assigned consistent with the mission of the position. Required Qualifications: Applicants must have a reliable and motivated work ethic, a reputation for personal and professional integrity and an ability to work well with the CJACA, the Federal Public Defender, the Court and members of the CJA panel. Applicants must have a high school degree or equivalent and the requisite experience. Must have a valid driver's license and ability to travel as needed to field offices and/or for training. Must possess excellent oral and written skills, and strong interpersonal and organizational abilities. Preferred Qualifications: Substantial experience with federal criminal practice; and substantial experience with various computer programs, including word processing, spreadsheets, PACER and CM/ECF, and billing and timekeeping programs. There is a preference for applicants with a working knowledge of the electronic CJA eVoucher system, either as an administrator or from the perspective as a user. Spanish language proficiency is highly desired. Salary and Benefits: This is a full-time, at-will temporary position within the federal judiciary with the possibility of extension and/or conversion to a permanent position, subject to funding availability. The starting salary range is $45,901 to $90,479, based on experience and qualifications. The position includes a benefits package featuring health coverage; earned annual and sick leave; paid federal holidays; access to the Employee Assistance Program (EAP) where employees benefit from wellness resources and programming, and regular continuing education opportunities. Telework may be available depending on workload. How to Apply: Interested applicants should submit a single pdf document that includes a cover letter, resume, and three references via email to the attention of: Michelle Dworak, Administrative Officer; FDNM-HR@fd.org; Subject: 2026-02 CJA Panel Assistant. Application Deadline: March 1, 2026. Applications are reviewed on a rolling basis. The position may remain open until filled and is subject to funding availability. Please, no phone inquiries. Only candidates selected for an interview will be contacted. Conditions of Employment: This is a temporary position with the possibility of extension and/or conversion to a permanent position, subject to funding availability. Employment is subject to a background check, including fingerprinting. This position is part of the excepted service and does not carry Civil Service tenure. U.S. citizenship or authorization to work in the U.S. and receive compensation as a federal employee is required. Salary is paid via direct deposit. For more information about our office, please visit: https://nm.fd.org/

Equity in Justice Program Manager

The State Bar of New Mexico seeks qualified applicants to join our team as a full-time (40 hours/week) Equity in Justice Program Manager. The successful incumbent will provide support for State Bar committees, sections, and divisions ("groups") implementing diversity, inclusion, and equity in justice projects/initiatives. The position works alongside various groups and State Bar members engaged in eliminating biases and inequalities within New Mexico's justice system and promoting participation by underrepresented communities in State Bar programs and activities. Salary: $56,000-$65,000/year, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.

Development Program Director

The New Mexico State Bar Foundation seeks qualified applicants to join our team as a full-time (40 hours/week) Development Program Director. The successful incumbent will be responsible for leading fundraising efforts for the New Mexico State Bar Foundation, creating and managing a comprehensive fundraising strategy, building relationships with stakeholders, cultivating donors and sponsors, securing grant funding, and organizing Foundation fundraising events. Salary: $68,000-$78,000/year, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.

Paralegal

Plaintiff civil litigation firm in Albuquerque seeks paralegal to support complex personal injury practice. Responsibilities include drafting/e-filing pleadings, managing discovery/court deadlines, maintaining client communication, and assisting with trial preparation. Submit resume to nicole@dbuchananlaw.com

Legal Assistant / Senior Legal Assistant

The Federal Public Defender for the District of New Mexico is seeking a full-time Legal Assistant or Senior Legal Assistant in the Albuquerque office. The mission of our office is to provide high quality, effective, and ethical legal representation to our clients charged with federal crimes. We are an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. Duties and Responsibilities: This position provides support to attorneys in the office and acts as a liaison between attorneys and clients. The assistant will interact and communicate frequently with other FPD staff, clients and their families, court personnel, and the public; will use advanced knowledge of legal terminology, Microsoft Word, Adobe Acrobat, and Case management programs (Defender Data, SECRIS, CM/ECF, PACER, etc.); prepare memorandums, motions, pleadings, and other correspondence; edit and proof-read documents; electronically file pleadings; answer phones and general inquiries about the defender organization and program operations; accurately maintain and manage calendars for multiple attorneys; manage digital and paper case files; proactively anticipate needs of attorneys to include sending reminders of appointments, commitments, and deadlines; screen incoming mail and route mail appropriately; transport documents between the office, courthouse, and post office; and effectively perform all other duties as assigned. Required Qualifications: Applicants must have a strong, reliable, self-motivated work ethic, and an ability to work well with minimal supervision. Must possess social and emotional intelligence, have effective people and communication skills, and be able to work collaboratively in a team environment. Must possess excellent oral and written skills and have a strong ability to prioritize and organize your day. Applicants must have a high school degree or equivalent. One to three years' experience, at least one of which must be prior legal assistant experience. Must have a valid driver's license and ability to travel as needed to field offices and/or for training. Must be dedicated to the organization's mission and have an interest in indigent defense. Preferred Qualifications: Experience with federal criminal practice; experience with office confidentiality clauses such as attorney/client privilege; certificate or degree in paralegal studies or criminal justice; previous leadership/training/mentoring experience; ability to analyze and make recommendations for process improvements; and Spanish language proficiency is highly desired. Salary and Benefits: This is a full-time, at-will position within the federal judiciary. The salary range is JSP 6/1 at $45,901 to JSP 9/10 at $81,114, based on experience and qualifications. The position includes a comprehensive benefits package, featuring health, dental, vision, and life insurance; 13 to 26 days of earned annual leave depending on years of service; 13 days of earned sick leave per year; and 12 weeks of paid parental leave after one year of service. Employees also receive 11 paid federal holidays, participate in the Federal Employees Retirement System (FERS), and may contribute to the Thrift Savings Plan (TSP) with up to 5 percent government matching. The position is eligible for Public Service Loan Forgiveness (PSLF), access to the Employee Assistance Program (EAP), access to wellness resources and programming, credit for prior federal service, and regular continuing education opportunities. A one day per week telework option may be available depending on workload and office needs. How to Apply: Interested applicants should submit a single pdf document that includes a cover letter, resume, and three references via email to the attention of: Michelle Dworak, Administrative Officer; FDNM-HR@fd.org; Subject: 2026-03 Legal Assistant. Application Deadline: Applications reviewed on a rolling basis with priority given to those who apply by March 1, 2026. The position will remain open until filled and is subject to funding availability. More than one position may be filled from this posting. Please, no phone inquiries. Only candidates selected for an interview will be contacted. Conditions of Employment: Employment is subject to a background check, including fingerprinting. This position is part of the excepted service and does not carry Civil Service tenure. U.S. citizenship or authorization to work in the U.S. and receive compensation as a federal employee is required. Salary is paid via direct deposit. For more information about our office, please visit: https://nm.fd.org/

Legal Secretary/Legal Assistant

Established law firm seeks experienced assistant for solo practice. Must have ability to multi-task state and federal court workload including, e-filing, and service of pleadings and discovery, direct client contact and filing and case management. Successful candidate will have meticulous organizational skills, calendar and deadline management and attention to detail. Word, Outlook and Ado-be expertise required, as well as excellent proofreading skills. Compensation commensurate with experience. Resumes should be submitted to talyoung@yahoo.com. Qualified applicants only, please.

Legal Assistant

Priest & Miller, LLP is seeking an experienced Legal Assistant to join our civil-litigation defense firm. This is a full-time, salaried, non-billable position supporting attorneys handling medical malpractice, wrongful death, and complex liability matters. Duties include managing litigation files, calendaring and deadlines, state and federal e-filing, drafting and proofreading correspondence and pleadings, and communicating with clients and opposing counsel. Qualified candidates will have 2–5 years of litigation experience, strong organizational and communication skills, and proficiency with Microsoft Outlook and document formatting. We offer highly competitive pay and a comprehensive benefits package, including health, dental, vision, 401(k), profit sharing, PTO, and NM Supreme Court holidays. All inquiries will be kept confidential. Please email your resume to Resume@PriestMillerLaw.com

Paralegal

A busy trust and estate litigation team seeks a paralegal with significant civil litigation experience, preferably in the area of trust, estates, and protective proceedings. We are an established, centrally located Albuquerque law firm with great benefits, including competitive wages, profit sharing, health insurance, schedule flexibility, and a friendly office environment. We are looking for a candidate with strong leadership and communication skills who is an outstanding team player. Please send resume to rejent@hurleyfirm.com

Paralegal
Priest & Miller, LLP is seeking an experienced Paralegal to join our civil-litigation defense firm. This is a full-time, in-person position supporting attorneys in medical malpractice, wrongful death, and complex liability matters. Responsibilities include case and trial preparation, document review and organization, legal research, drafting pleadings and discovery, managing deadlines and case-management systems, and coordinating with clients, witnesses, and opposing counsel. Qualified candidates will have at least two years of litigation paralegal experience, strong organizational and writing skills, and familiarity with legal research platforms such as Westlaw or Lexis. A paralegal certificate is preferred. We offer highly competitive pay and a comprehensive benefits package, including health, dental, vision, 401(k), profit sharing, PTO, and NM Supreme Court holidays. All inquiries will kept confidential. Please email your resume to Resume@PriestMillerLaw.com

Experienced Litigation Paralegal
Paralegal for civil litigation department. Five plus years of experience in litigation (commercial, defense litigation preferred). Paralegal certificate a plus. Extensive knowledge of litigation procedures in New Mexico, proficient in office applications and software, attention to detail and deadlines, proficient in word processing and grammar skills, motivated and able to assist and support busy litigation team in large and complex litigation cases, multi-attorney docket and calendar system, and trial. Competitive benefits package. Salary is commensurate with experience. Additional info: Full time, indefinite; Competitive salaries based on experience. Contact: Paula palvarez@raylaw.com

Services

Freelance Attorney
Available for high-quality research, writing projects, litigation support, and appeals. Over 15 years of experience, former federal law clerk, licensed in New Mexico and Texas. Competitive rates. Email info@hmaliklaw.com or call (972) 382-9111.

Office Space

State Bar Center Office Suite for Rent
Perfect for a solo professional or small business. Includes two private offices, reception area, building security and access control. Convenient location and professional setting. For more information about the office suite, please visit https://www.sbnm.org/About-Us/Office-Suite-Rental or contact Jazmin Velasquez, Guest Services & Facilities Manager at the State Bar of New Mexico at Jazmin.Velazquez@sbnm.org or 505-797-6070.

Office Space Available Immediately
Offices at 116 Granite, NW; one office 350 sq ft ($380/mo); two offices 300 sq. ft. ($325./mo each); Shared entrance and security system. Offices include weekly janitorial service, utilities, parking lot dedicated spaces, common area kitchenette and restrooms, security system. Shared owner/manager Frechette and Associates. Contact 505-247-8558

Office Space Available Immediately
1650 sq. ft. suite at 120 Granite, NW; reception area, one office 10x12; four offices 10x11. Private entrance and security system. Office building includes weekly janitorial service, utilities, parking lot dedicated spaces, common area kitchenette and restrooms, security system. Owner/manager Frechette and Associates. $1500/month. Contact 505-247-8558

Built for the Practice of Law | 3733 Eubank Blvd NE
Located along the Eubank corridor, this 4,141± SF building on a 14,610 SF lot is thoughtfully configured for attorneys who value privacy, flow, and professionalism. The layout includes seven private offices, a conference room, and an open area ideal for paralegals and support staff. Well-maintained, functional. Call Tim House to schedule a private tour. 505-998-1031

Nob Hill Office For Lease
3115-3117 Silver SE; 1500 sq. ft.; Great for firm. Parking included. $1750/mo. (505) 280-8309.

Office For Rent:
Two Santa Fe Offices Available January 1,2026. Two adjacent offices in a six-office professional suite. Centrally located in The Saint Francis Professional Center, the suite has a large reception area, kitchenette, and ample parking for clients. Rent includes alarm, utilities, and janitorial services. $975 mo/both 505-795-0077.

Office Space Available –
Law Offices at 2014 Central Ave Southwest Albuquerque Downtown/Old Town. Two private furnished offices available in a beautiful law building. $1,000/month per office, including utilities. Conference room, kitchen. Internet. High Speed Color Copier. Rent one or both offices. Inquiries: Vigil Law Firm 505-243-1706 or caroline@zlaws.com

Miscellaneous

Inquiry For Lost Will
Any person or firm in possession of a Last Will and Testament for Carol Ann Polaco (DOB: December 14, 1938), who resided in Albuquerque and passed away on November 7, 2023, please contact Kirt Pulaski at 678-200-6092 or kirtski@gmail.com.

Seeking Will
Seeking help to find the lawyer who possibly drafted a will for a Mr. Larry Dale Holman from Rio Ranch NM. Please contact Larry Don Holman at holmanthor@yahoo.com with any information thank you.

A Guide to

State Bar of New Mexico
Est. 1886

The State Bar of New Mexico's Digital Communications

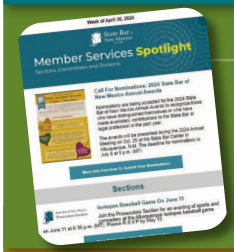
As part of our mission to serve New Mexico's legal community, the State Bar of New Mexico is dedicated to ensuring that licensees are up-to-date with the latest information and announcements via regular digital e-newsletters and email communications. From news pertinent to New Mexico courts to pro bono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

Bar Bulletin

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

eNews

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

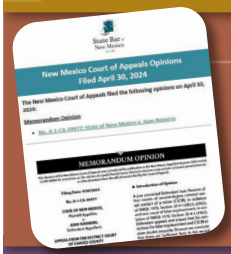


Member Services Spotlight

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

CLE Weekly Roundup

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



New Mexico Court of Appeals Opinions

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

Pro Bono Quarterly Newsletter

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

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! The Pro Bono Quarterly Newsletter is sent to all members of the State Bar of New Mexico via email once a quarter. Be on the lookout for it!

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

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