

DIGITAL BAR BULLETIN

February 11, 2026 • Volume 65, No. 3



PWB Sunset at Kaanapali Beach, by Julia McFall

(see page 4)

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SPECIAL FEATURE
New Mexico State Bar
Foundation
2026
Board of Directors

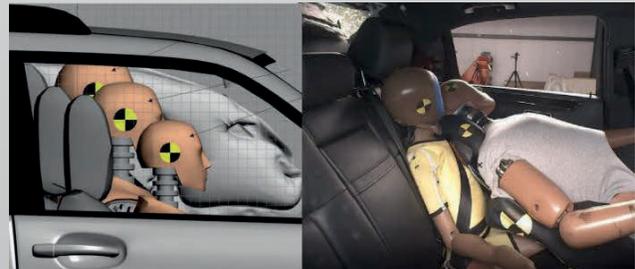
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focuses on how the vehicle's safety systems performed, not who caused the accident. At my firm's Crash Lab, we continually study vehicle safety through engineering, biomechanics, physics, testing and innovation.



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About Cover Image and Artist: Julia McFall was admitted into the State Bar of New Mexico in Oct. 2013 and was the inaugural law clerk of Justice Barbara Vigil of the New Mexico Supreme Court. She also clerked for Judge (now Justice) Michael Vigil of the New Mexico Court of Appeals. Ms. McFall recently became a shareholder at the civil litigation firm of Atkinson, Baker & Rodriguez, PC. Ms. McFall enjoys painting acrylic on canvas.

Editor's Note:

2026: A Year of Two Anniversaries



Dear Readers of the *Bar Bulletin*,

This year marks two distinguished anniversaries for the legal community in New Mexico. In 2026, the State Bar of New Mexico (“the State Bar”) commemorates its 140th anniversary. Founded in January 1886, prior to New Mexico’s statehood, the State Bar has long served as a foundational institution within New Mexico’s legal landscape. Its guiding principles continue to shape how the State Bar supports the legal profession while providing accessible legal tools and resources to the public.

Many of these legal tools and public-facing resources are delivered through the New Mexico State Bar Foundation (“the Bar Foundation”). Established by the State Bar’s governing body, the Board of Bar Commissioners, in February 1991, the Bar Foundation marks its 35th anniversary this year. Over more than three decades, the Bar Foundation has expanded its services and reach across the state. Through the Center for Legal Education, it provides continuing legal education courses for the New Mexico legal community.

In addition, the Bar Foundation hosts two statewide helplines as well as regular workshops for the public. The Legal Resources for the Elderly Program and the Modest Means Helpline have both proven successful legal helplines for New Mexico residents. Similarly, the Bar Foundation’s workshops addressing consumer debt/bankruptcy and divorce, led by New Mexico attorneys, have long been integral to the Bar Foundation’s purpose of empowering the public with tools for solutions to significant legal burdens many New Mexicans face each year.

Each new year is marked by resolutions and goals. This year, the State Bar and the Bar Foundation move forward with a shared focus on serving the legal community and the public, guided by the longstanding commitments that continue to inform their work.

Sincerely,

Brandon McIntyre
Editor of the *Bar Bulletin*



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



A Message from **New Mexico** **State Bar Foundation** *President*

Elizabeth J. Travis

Greetings, Peers and Fellow Advocates,

My name is Elizabeth J. Travis, and I am honored to introduce myself as the 2026 President of the New Mexico State Bar Foundation (“the Bar Foundation”). My goal this year is to continue delivering on our mission to serve the public and the legal profession, as my predecessors have, with determination and dedication.

I would like to begin by recognizing the Bar Foundation’s Immediate Past President, Stefanie K. Davis. In 2025, she led the Bar Foundation with passion and spirit, during an extraordinarily difficult time for all legal service providers. While keeping the programs on course, her term also saw the beginning of exciting new initiatives that I believe will have a profound impact as we continue to develop and implement them through 2026 and beyond.

I am excited to share that 2026 marks the Bar Foundation’s 35th anniversary. In February 1991, the Board of Bar Commissioners established the Bar Foundation as the State Bar of New Mexico’s charitable arm and steward to the public. Since then, the Bar Foundation has evolved significantly through the implementation of new programs and initiatives that have become cornerstones in New Mexico’s legal infrastructure.

With the 2023-2025 Three-Year Strategic Plan having come to a close, the Bar Foundation’s 2026-2028 Three-Year Strategic Plan is now underway. This introduces an excellent opportunity for the Bar Foundation to expand its fundamental purpose of increasing access to justice. Our Strategic Plan includes several new goals that we believe will bring New Mexicans greater means of legal empowerment and strengthen our community in new and profound ways.

The Bar Foundation’s Center for Legal Education (“the Center”) remains one of its most prominent resources for New Mexico’s legal community. Through a growing catalog of self-study and live programming, the Center supports attorneys in meeting evolving professional requirements while maintaining high standards of competence and service. Following the implementation of revisions to the Supreme Court’s Rule Set 18, Rules for Continuing Legal Education, in 2024, the Center significantly expanded its self-study offerings, supporting attorneys’ ability to complete all required CLE credits through flexible, on-demand courses. The Center continues to develop live programming that addresses timely legal issues affecting both the profession and the public. Together, these efforts ensure that legal education in New Mexico remains accessible, relevant and responsive to the needs of the state.

As the State Bar of New Mexico’s companion nonprofit 501(c)(3) organization, the Bar Foundation pursues its mission to serve the community with important legal resources for New Mexicans otherwise unable to obtain legal assistance. The Bar Foundation’s longstanding Legal Resources for the Elderly Program (“LREP”) continues, after over 30 years of service, its mission to serve thousands of New Mexicans 55 years of age and older. Since July 1, 2025, LREP has served over 1,100 clients and handled nearly 1,300 cases. As the year goes on, we expect to reach more of New Mexico’s senior population and, importantly, equip seniors to meet their legal needs as they plan for the future.

The Modest Means Helpline (“MMH”), established in 2022, has proven itself to be a powerful tool for New Mexicans needing legal advice. Benefitting nearly 24,000 New Mexico residents as of Dec. 31, 2025, the Modest Means Helpline continues to strengthen our state’s legal foundation by reaching traditionally underserved populations with access to justice. The Bar Foundation’s workshops are an important component of its legal assistance efforts. In addition to regularly scheduled workshops led by LREP, the Bar Foundation’s Legal Services Department holds clinics addressing areas such as divorce, consumer debt and bankruptcy. By connecting volunteer attorneys with New Mexico residents, these workshops open the door to meaningful volunteer opportunities for legal professionals while equipping participants with practical knowledge and tools to address pressing legal challenges.

While my colleagues on the Bar Foundation Board and I take great pride in the success of these legal services, we are committed to bringing and expanding upon new projects and developments. The Foundation’s fundraising events provide critical support for the Foundation’s work. For the past several years, the Bar Foundation has held annual golf tournaments. From the Tanoan Country Club in 2024 to the Sandia Golf Club in 2025, the New Mexico State Bar Foundation Golf Classic, which directly supports the Bar Foundation’s civil legal service programs, has become a staple event. I look forward to seeing you at this year’s Golf Classic this Fall. Additionally, the Foundation holds exciting fundraising events each year at the State Bar of New Mexico’s Annual Meeting, taking place this year from August 13 to 15 in Ignacio, Colorado. Be on the lookout for additional details about both events.

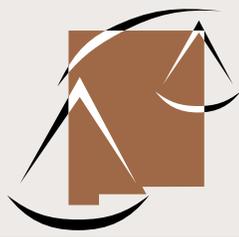
The Bar Foundation’s programs and means of legal help to the public owe their success to not only the work of the Bar Foundation’s hard-working staff but also the support of our legal community. Through your donations and participation in the Bar Foundation’s activities and events, the Bar Foundation’s helplines and other resources can continue to grow and help thousands of New Mexicans. I want to thank every one of you for your contributions. Donations can be made to the Foundation year-round at www.sbnm.org/donate. Be on the lookout throughout 2026 for new ways to conveniently make donations to the Foundation. We appreciate all your support and the inspiring impact it has made in our community.

Leading the Bar Foundation carries a responsibility shared across the legal community. Together through sustained commitment and support, we can continue strengthening the programs and resources that serve New Mexico’s diverse population and uphold access to justice statewide. Let me conclude by expressing my gratitude and honor to continue my service through the Foundation’s work as president. I look forward to a strong year ahead supporting legal services in New Mexico.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth J. Travis". The signature is written in a cursive, flowing style.

Elizabeth J. Travis



New Mexico State Bar Foundation

2026 | Board of Directors

2026 OFFICERS

President



Elizabeth J. Travis

505-216-6399
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Elizabeth J. Travis is a solo practitioner who represents civil clients, including small businesses, nonprofit organizations and boards, and provides ADR services as an arbitrator and mediator. She also volunteers as an arbitrator in the Bar's Fee Arbitration Program. Liz also is appointed to the City of Santa Fe's Independent Audit Committee. In addition to being the State Bar Foundation Board President, Liz serves on the State Bar Board of Bar Commissioners (1st Judicial District), the State Bar's Ethics Advisory Committee and Alternative Dispute Resolution Steering Committee, and the New Mexico Supreme Court's Disciplinary Board and Client Protection Fund Committee. Liz's other legal organization memberships include: the American Bar Association, Dispute Resolution and Professional Responsibility Sections and the Construction Industry Forum and the Oliver Seth American Inn of Court. Liz is licensed to practice in state and federal courts in New Mexico and California. She is a graduate of St. John's College, Santa Fe (BA), USC School of Engineering (MS), and University of the Pacific, McGeorge School of Law (JD).

President-Elect



Mitchell L. Mender

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Mitchell L. Mender is a founding partner of The Law Offices of Larsen and Mender P.C., located in Clovis, N.M. His practice focuses primarily on criminal law, family law, and personal injury. Mitch is a graduate of Brigham Young University. He graduated from Vermont Law School in their accelerated Juris Doctorate program. He started his career as a prosecutor with the Ninth Judicial District Attorney's Office, where he was awarded prosecutor of the year for the District in 2018 and 2019. Subsequently, he worked at the New Mexico Law Offices of the Public Defender where he represented indigent clients. Additionally, he sits on the Board of Directors for the Hartley House, the local domestic violence shelter. He and his wife, Robyn, enjoy traveling and spending time with their three children.

2026 OFFICERS



Secretary-Treasurer

Stephanie Wagner

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steramirez@hotmail.com

Stephanie Wagner is the AVP of Business Development for Nusenda Credit Union. She oversees a team of 10 team members that focus on providing free financial education, financial tools and resources, and support to businesses and organizations throughout New Mexico. Stephanie's background is in Communications, Business Development and she has worked in the non-profit sector for over 15 years. Stephanie's relationship with the State Bar of New Mexico began in 2016 when she was the Director of Development and oversaw all fundraising efforts. She has continued to be part of the Bar Foundation's board and continues to have strong relationships with the legal community. Stephanie enjoys spending time with her husband Mike and eight-year-old daughter Emma.



Immediate Past President

Stefanie K. Davis

202-295-1563
skd@georgetown.edu

Stefanie K. Davis is the Deputy General Counsel for Administrative Law and Regulatory Practice and Ethics Officer in the Office of Legal Affairs (OLA) at the Legal Services Corporation (LSC). Her portfolio includes supervising OLA's regulatory drafting and statutory interpretation practice, managing OLA's Graduate Law Fellow and internal training programs, and coordinating the work of LSC's Opioid and Veterans Task Forces. She is the author of the first-ever chapter on access to justice in the recently published ABA Guide to Federal Agency Adjudication (3rd ed.) and a regular speaker on both access to justice and the opioid epidemic. She joined LSC in 2013 from the Office of the General Counsel at the U.S. Department of Health and Human Services. She began her legal career at the Washington Legal Clinic for the Homeless in Washington, DC. Stefanie is licensed to practice law in New Mexico, the District of Columbia, and Maryland. She is a 2002 graduate of Georgetown University Law Center and a 1997 graduate, magna cum laude, of the University of New Mexico. She was born and raised in Gallup and now lives in Albuquerque with her husband, six-year-old son, and Akita dog.

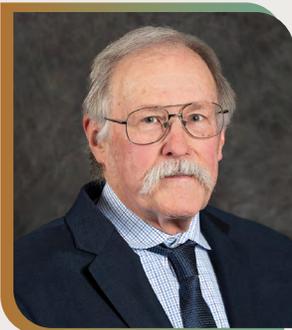
2026 DIRECTORS



Allison H. Block-Chavez

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ablockchavez@abqlawnm.com

Allison H. Block-Chavez, is passionate about service through the State Bar and advancing a strong, ethical, and inclusive legal profession. She is dedicated to supporting lawyers and strengthening access to justice for communities throughout New Mexico. She is a partner and attorney at Aldridge, Hammar & Wexler, P.A., in Albuquerque, where her practice focuses on estate planning, trust administration, probate matters, real estate, and creditors' rights. She is currently serving as the President for the State Bar of New Mexico. She previously served as Chair of the Young Lawyers Division of the State Bar of New Mexico and as the Young Lawyer Delegate to the American Bar Association House of Delegates. Allison is a graduate of the University of New Mexico School of Law and the Anderson School of Management, and she served as a judicial law clerk to Chief Judge Michael E. Vigil of the New Mexico Court of Appeals. In her free time, Allison embraces the joyful chaos of life with twin toddlers, traveling, and indulging her love of trivia.



Hon. Carl J. Butkus

505-975-5001
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Retired Judge **Carl J. Butkus** is a graduate of the University of Pennsylvania (1971) and the Gonzaga University School of Law (1977). He was appointed District Judge in the Second Judicial District in 2005 and retired at the end of 2020. He was selected as the 2015 State District Court Judge of the Year by the New Mexico Chapter of the American Board of Trial Advocates. Prior to that, he was in the private practice of law state-wide from 1978-2005. From 1977-78, he was law clerk to Hon. William R. Hendley of the New Mexico Court of Appeals. Among other things, he has been Chair of the New Mexico Supreme Court Rules of Civil Procedure Committee, President of the H. Vearle Payne Inn of Court, Member of the State Bar Civil Justice Reform Committee and State Bar Liaison to the Federal Judicial Conference.



Sean FitzPatrick

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A trial lawyer at heart, **Sean FitzPatrick** started his career trying felony and misdemeanor criminal cases as a prosecutor in Farmington, New Mexico. After about 30 of those trials, Sean began representing injured New Mexicans through his firm FitzPatrick Law, LLC in 2016. Outside of running his own firm where he primarily represents plaintiffs in insurance and injury cases, Sean has a history of service in New Mexico including his current positions on the Board of Bar Commissioners, the New Mexico State Bar Foundation Board, the New Mexico Trial Lawyers Board, the New Mexico Trial Lawyers Foundation, the Uniform Civil Jury Instruction Committee, liaison to the Board of Bar Examiners, and chairing the New Mexico State Bar Well Being Committee. Previously Sean served on the Young Lawyers Division Board, Cannabis Law Section Board, and the Natural Resources Energy and Environmental Law Section Board. In addition to his love of being a lawyer, Sean loves being a dad and spending time with his son Liam.

2026 DIRECTORS



Joseph F. Sawyer

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Joseph F. Sawyer serves as the County Attorney for San Juan County. A Farmington native, he attended the University of New Mexico (B.A., 1995) and Notre Dame Law School (J.D., 1999). Prior to working for San Juan County, Joe spent several years in private practice and worked for the 11th Judicial District Attorney's Office in Farmington. Joe represented District II (San Juan, McKinley, Cibola and Valencia counties), then the Eleventh Judicial District on the Board of Bar Commissioners from 2015 to 2025. He served as president of the San Juan County Bar Association in 2011 and was on the State Bar of New Mexico Young Lawyers Division Board of Directors from 2006 to 2007. Joe and his wife Ana enjoy backpacking, mountain biking, traveling and spending time with their two daughters.



Lucy Sinkular

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Lucy H. Sinkular is Of Counsel at Horton Mullins PC. Admitted to practice in 1994, Lucy comes from a family of lawyers and loves the law. Lucy is passionate about New Mexicans' access to justice and maintains an active pro bono case load in addition to her regular practice. Lucy enjoys her service on the board of the Family Law Section and the Domestic Relations Rules Committee. Her immediate family includes her husband Scott who is a scientist at NNSA, their daughter who is conducting post-doctoral research and their son who is a CPA. Lucy and Scott are also parents to two very spoiled black labs. Lucy serves as the Senior Warden for her Episcopal Church in Albuquerque. When not practicing law or volunteering for the Bar, Lucy can frequently be found pursuing outdoor hobbies of camping, running, cycling and hiking.

New Mexico State Bar Foundation Mission Statement

The **New Mexico State Bar Foundation** advances the legal community's commitment to serve the legal profession and people of New Mexico. Through member donations, fundraising and programs, the Foundation provides and promotes access to legal services to underserved New Mexicans. The Foundation also supports public service, education and diversity, as well as organizations consistent with this mission.



New Mexico
State Bar Foundation

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

Professionalism Tip

With respect to the public and to other persons involved in the legal system:

I will commit to the goals of the legal profession, and to my responsibilities to public service, improvement of administration of justice, civic influence, and my contribution of voluntary and uncompensated time for those persons who cannot afford adequate legal assistance.

will be considered abandoned and will be destroyed by Order of the Court.

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

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.

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect

with colleagues and to know you are not in this alone. Join the meeting via Zoom at <https://bit.ly/attorneysupportgroup>.

UNM SCHOOL OF LAW 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 Center for Civic Values Judges Needed for Gene Franchini High School Mock Trial Competition

The Gene Franchini New Mexico High School Mock Trial Competition is seeking volunteer judges for its qualifier rounds Feb. 20 - 21 in Albuquerque, N.M. This hands-on experience builds critical thinking, confidence and a deeper understanding of the justice system. Tentative participants may sign up at:

registration.civicvalues.org/mock-trial/registration. The mock trial requires **100 judges per round**. Volunteers may earn CLE credits for their participation in the event. The deadline for registration is Feb. 4. For questions, contact Kristen at the Center for Civic Values at 505-764-9417 or Kristen@civicvalues.org.

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>.

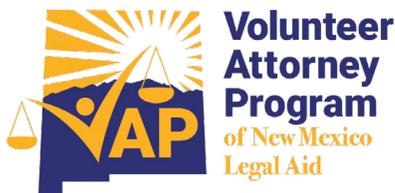
Featured Member Benefit



PracticePanther is the leading all-in-one legal practice management software trusted by tens of thousands of legal professionals in more than 170 countries. Designed to simplify operations and enhance productivity, PracticePanther centralizes case management, legal billing, attorney time tracking, document automation, payment processing, and client communication in a single, secure cloud-based platform.

Praised for its ease of use and reliability, PracticePanther empowers firms to automate workflows, capture time seamlessly, and get paid faster—from any device, anywhere. State Bar of New Mexico members can receive an exclusive 10% off their first year on PracticePanther's annual Business plan.

Learn more at: https://www.practicepanther.com/new-mexico-bar?utm_source=new-mexico-bar&utm_medium=website&utm_campaign=member-benefits&utm_id=partnerships.



Call For Volunteer Attorneys

Pro Bono Appellate Project – New Mexico Court of Appeals

The **New Mexico Court of Appeals** in conjunction with the **State Bar of New Mexico Appellate Practice Section**, **New Mexico Legal Aid's Volunteer Attorney Program (VAP)**, and the **Modest Means Helpline (MMH)** of the New Mexico State Bar Foundation, invites New Mexico attorneys to join the Pro Bono Appellate Project. This initiative is designed to expand access to justice by providing pro bono appellate representation to low-income, self-represented litigants.

About the Program

This program will operate through the New Mexico Court of Appeals. Eligible pro se civil litigants, assigned to the general calendar, will be screened by VAP or MMH for financial eligibility and potential conflicts. Once screened, eligible cases will be circulated to a panel of volunteer attorneys who may evaluate the case and, if they choose, represent the referred litigant. Malpractice coverage is provided to participating attorneys through VAP/NMLA or MMH/NMSBF.

Role of Participating Partners

- ▶ **Appellate Practice Section:** Promotes the program, recruits volunteer attorneys, monitors program operations, and collaborates with partner entities to address procedural or operational needs.
- ▶ **Court of Appeals:** Approve and support the program through appropriate rules, orders, and procedures and facilitate temporary stays while eligibility screening and placement efforts occur.
- ▶ **VAP and MMH:** Screen litigants for eligibility, conduct conflict checks, prepare case summaries, circulate opportunities to volunteer attorneys, and provide malpractice coverage.

Pro Bono Opportunity for Attorneys

Volunteer attorneys play a central role in ensuring access to justice for New Mexicans who cannot afford counsel. Attorneys may:

- ▶ Evaluate referred cases with the record on appeal made available for review.
- ▶ Decide whether to accept for full representation after evaluation; therefore, providing pro bono assistance to litigants who face significant barriers navigating the appellate process.

Join the Pro Bono Appellate Panel

Attorneys willing to volunteer for appellate matters are encouraged to join the attorney pool. To learn more, visit <https://www.sbnm.org/Bar-Foundation/Pro-Bono-Opportunities-New-Mexico-State-Bar-Foundation>, or to sign up, visit <https://www.cognitofirms.com/VAPECHO/ProBonoAppellateProjectVolunteerAttorneySignUp>.

Sincerely,

Judge Zachary A. Ives
New Mexico Court of Appeals

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at the State Bar Center



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www.sbnm.org/StateBarCenter



A CONVERSATION ABOUT MODERNIZING THE PROFESSION

All over the country, states are considering new ways to obtain law licensure and expand access to justice. New Mexico is no exception!

JOIN US! WE WANT TO HEAR FROM YOU

When: February 19, 2026, 1:30 – 2:30 PM
(Reception to follow from 2:30 – 3:00 PM)

Where: State Bar of New Mexico
5121 Masthead NE, Albuquerque, NM 87109
Online option available.

New Mexico Supreme Court
Justices Julie Vargas and Shannon Bacon
will discuss our state’s exploration
of skills-based examinations
and allied legal professionals.



What is a
skills-based
examination?

**RSVP by
February 18**

What is an
Allied Legal
Professional?

RSVP at <https://bit.ly/ModernizingtheProfession>
Questions?

modernbar@nmcourts.gov

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Images have been enhanced using Artificial Intelligence.

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AN INCLUSIVE INTERVIEW



with Niesha I. Esene



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 Niesha I. Esene. Niesha has been practicing law for 8 years and is an Assistant Public Defender at the Law Office of the Public Defender in Roswell.

Q: What is your background?

A: I'm a wife and a new mom to a 9-month-old. I'm proud of the life and community we're building in New Mexico. My family story is a true blend of places, cultures, and grit—my mom was from Chicago, Illinois, and she met my father, born in Lagos, Nigeria. I joke that I'm "mixed with Black and *more* Black," but the truth is that being Nigerian-American has deeply shaped how I view work, service, and success. My father has always been a strong anchor and example in my life—he reminds me often that he came to this country with \$127 and built something meaningful through discipline and determination.

In my family higher education wasn't always a guaranteed path, so I carry a lot of pride in being the only lawyer in my family—and the person who holds the highest degree in my family. Becoming a lawyer wasn't easy; I'm honest about that because I know someone reading this may need to hear it: I went to law school in Arizona, and I took the bar exam three times before passing on my fourth attempt—with a score high enough to practice in any UBE state. That's my plug for anyone preparing for the bar: you can do it.

I was diagnosed with ADHD in 2012, and looking back, so much started to make sense—especially once I entered law school. I learned how to advocate for myself the same way I advocate for my clients; honesty, structure, and support. Therapy, self-awareness, and more inclusive professional environments made a real difference. That journey is part of my story, and it's also part of why I care so much about inclusion and making space for people who don't fit the traditional mold.

I'm a trial attorney with eight years of multi-state experience (AZ/NM/NV). I double majored at UNM in **Theatre Arts** and **Communication/Public Broadcasting**. Theatre taught me how to read people, tell a story, listen closely, and communicate with clarity—skills that translate directly into trial work and persuasive advocacy.

In my current role with the Public Defender's Office, I've learned that legal work is never only about the legal work. You see the societal issues underneath the charges—poverty, trauma, addiction, mental health, instability—and you learn quickly that being a strong lawyer means being a steady human being. I am honored to stand next to my clients and defend their rights, especially when they feel forgotten or judged before they've even been heard.



Q: What made you want to become a lawyer?

A: In my Nigerian background, there's a joke: you have three choices—doctor, engineer, or lawyer. I'm not good at math (so engineering was out), and I don't like blood (so medicine was out), so...here we are.

I loved speech and debate in school, and advocacy always stayed in the back of my mind. It became less about “winning an argument” and more about using my voice to protect people—especially those who don't have power, resources, or a fair shot without someone standing next to them.

Q: Who is your hero in the legal profession?

A: Bryan Stevenson. I admire his client-centered courage—his ability to stay grounded, tell the truth plainly, and keep dignity at the center of the work even when the system is doing everything it can to strip it away. I want my career to reflect that same combination of excellence and humanity: fearless advocacy, disciplined preparation, and a steady commitment to justice.

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

A: Breaking barriers as a Black woman attorney has been one of the hardest parts of this profession. There are still moments where people second-guess your competence, test your boundaries, or assume you need to “prove” what others are automatically granted.

I've learned to stay disciplined and prepared, and remember the work isn't about me—it's about protecting the client's rights. I've also learned that excellence is important, but community is essential. Support systems, mentorship, and spaces where you can breathe matter just as much as case law.

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

A: The clients—always. People ask defense attorneys, “How do you defend these people?” and my answer is simple: **because I'm a champion of the Constitution.**

It is an honor to stand next to someone on what may be the worst day of their life and make sure their rights are real—not just words on paper. Public defense also teaches you that legal issues are rarely “just legal”—they're tied to housing, addiction, trauma, poverty, and mental health.

Q: What is your advice for new lawyers from diverse backgrounds?

A: Don't shrink yourself to make other people comfortable. Your voice, your culture, your story, and your perspective are not “extras”—they are part of what makes you a strong advocate.

Find mentors who truly want to see you win and build a community that supports you outside of the courtroom too. Keep a running file of your wins and strengths (you'll need it when imposter syndrome shows up), and don't be afraid to pursue leadership early. You belong here—act like it.

Q: If you could have a meal with any person, who would it be?

A: I would choose **Judge Constance Baker Motley**. I'd want to hear, directly from her, what it took to carry herself with excellence through eras and rooms that were not built for her—and still shape the law in a way that opened doors for others. I'd ask how she protected her peace while doing hard work, and what she would tell Black women lawyers today about staying both powerful and whole.

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

A: It can build inclusion by expanding access and leadership beyond the major metros. That means more programming, mentorship, and bar initiatives that reach rural and remote communities—where talented lawyers and future lawyers may not have the same networks or visibility.

Personally, I'm working toward that kind of inclusion through community-building: I want to help launch a **Southern New Mexico women lawyers group** and continue developing a **Junior League chapter in Roswell**. Inclusion becomes real when people are invited in, developed, and trusted with leadership.

Interested in being the subject of an Inclusive Interview?

Contact SBNM Equity in Justice Attorney Abby Lewis at abby.lewis@sbnm.org.



February

- | | | |
|---|--|--|
| <p>17 Bias in Minutes
1.0 G
Web Cast (Live Credits)
New Mexico Trial Lawyers
Association & Foundation
https://www.nmtla.org</p> | <p>20 Taking and Defending
Depositions
31.0 G, 4.5 EP
Live Program
University of New Mexico School
of Law
https://lawschool.unm.edu</p> | <p>25 Motions That Matter
1.0 G
Web Cast (Live Credits)
New Mexico Trial Lawyers
Association & Foundation
https://www.nmtla.org</p> |
| <p>18 Discovering Implicit Biases in
Jury Selection
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-02182026-A</p> | <p>23 Disparities and Inequities
of Water Use by AI and Data
Facilities in New Mexico
1.0 EIJ
Live Program
University of New Mexico School
of Law
https://lawschool.unm.edu</p> | <p>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</p> |
| <p>20 Bryan Stevenson: 2025 Annual
Meeting Keynote Address
(Live Replay)
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-02202026-B</p> | <p>24 True Crime Ethics: The Alec
Baldwin Dismissal and Karen
Read Acquittal
2.0 EP
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-02242026-A</p> | <p>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</p> |
| <p>20 A Day in the Life: Practical
Examples of Artificial Intelligence
in Law Firms
1.0 G
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-02202026-A</p> | <p>25 Pee-wee Herman and the
Criminal Justice System’s
History of Bias Against the Gay
Community
1.0 EIJ
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-02252026-A</p> | <p>27 2026 Basics of Trust Accounting:
How to Comply with Disciplinary
Board Rule 17-204
1.0 EP
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-02272026-A</p> |
| | | <p>27 Damages in Practice: Valuation,
Proof, and Recovery
5.5 G
Web Cast (Live Credits)
New Mexico Trial Lawyers
Association & Foundation
https://www.nmtla.org</p> |

March

- | | | |
|--|---|---|
| <p>4 Dennis Chavez Memorial
Lectureship in Law & Civil Rights
1.5 G
Live Program
University of New Mexico School
of Law
https://lawschool.unm.edu</p> | <p>10 Lincoln on Professionalism
1.3 EP
Webinar
NMSBF Center for Legal
Education
https://bit.ly/CLE-03102026-A</p> | <p>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</p> |
|--|---|---|

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

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

Approved Jan. 27, 2026

In accordance with Rules 23-106.1 and 23-106.2 NMRA, the Supreme Court has approved out-of-cycle rule amendments. What follows is a summary of amendments that the Court approved on January 27, 2026. Unless otherwise noted in the history note at the end of each approved rule or form, the amendments will take effect on March 13, 2026. The full text of the amendments in markup format and the related orders are available on the Court's website [here](#). Approved rule amendments will also appear on [NMOneSource.com](#) by their effective date.

Third Judicial District Court

Local Rules for the Third Judicial District Court - New LR3-115, LR3-116, and LR3-117 NMRA; Amended LR3-105, LR3-106, LR3-112, LR3-203, and LR3-207 NMRA; Withdrawn LR3-102 NMRA

The Supreme Court approved the Third Judicial District Court's recommendation to adopt and amend various local rules in the District. The new and amended local rules are intended to clarify the District's security and recording policies; streamline and clarify procedures on filing, evidentiary hearings, and court interpreters in civil and criminal proceedings; and prepare for a paperless case management system. The Court also approved the District's recommendation to withdraw LR3-102 NMRA to ensure consistency with statewide rules governing contempt.

Supreme Court

Committee Meetings and Voting by Email - Amended Rule 23-106 NMRA

The Supreme Court approved amendments to Rule 23-106 NMRA that require rules committee chairs to set and conduct no fewer than six meetings per year, and to require chairs to notify the Supreme Court Clerk's Office when cancelling two or more consecutive meetings. The amendments also allow committee members to vote by email, if requested by the chair and approved by all members.

Qualifications for Judicial Nominees - New Rule 23-117 NMRA

The Supreme Court approved the adoption of new Rule 23-117 NMRA, which clarifies that members of the bar admitted under any licensure method in Rule Set 15, including limited license holders, are considered to be in the actual practice of law or a "licensed member of the bar" for purposes of judicial nomination.

Misdemeanor Crime of Domestic Violence (MCDV) Reporting Form - Amended Form 9-515A NMRA

The Supreme Court approved amendments to Form 9-515A NMRA that adds a section identifying the victim, allows the judge to determine at the sentencing hearing whether a qualifying relationship between the defendant and the victim existed, and includes a section that notifies the defendant whether the Administrative Office of the Courts (AOC) will report them to the National Instant Criminal Background Check System (NICS).

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

<https://supremecourt.nmcourts.gov/rules-forms-files/approved-amendments-to-rules-and-forms/2026-approved-amendments-to-rules-and-forms/>



Opportunities for Pro Bono Service CALENDAR

February

- | | | |
|--|---|--|
| <p>12 General Legal Clinic
In-Person
Senior Citizens Law Office
To register, call 505-764-6436
Location: Barelmas Senior Center</p> | <p>17 Estate Planning & Institutional Care Medicaid
In-Person
Senior Citizens Law Office
To register, call 505-265-2300
Location: Highland Senior Center</p> | <p>17 San Juan County Teleclinic
Telephone
San Juan County
To register, call 505-326-2256 at 1 p.m. (MT) on the day of the clinic. An attorney will call back between 2:30 p.m. and 5 p.m. that same day.</p> |
| <p>18 Power of Attorney Workshop
In-Person
Senior Citizens Law Office
To register, call 505-764-6436
Location: Barelmas Senior Center</p> | <p>18 Wednesday Workshop
In-Person
New Mexico Immigrant Law Center
To register, call 505-247-1023
El Centro de Igualdad y Derechos</p> | <p>19 Statewide Legal Teleclinic
Telephone
Statewide
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Virtual</p> |

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



Resources for the Public CALENDAR

February

- | | | |
|--|---|--|
| <p>12 General Legal Clinic
In-Person
Senior Citizens Law Office
To register, call 505-764-6436
Location: Barelmas Senior Center</p> | <p>17 Estate Planning & Institutional Care Medicaid
In-Person
Senior Citizens Law Office
To register, call 505-265-2300
Location: Highland Senior Center</p> | <p>17 San Juan County Teleclinic
Telephone
San Juan County
To register, call 505-326-2256 at 1 p.m. (MT) on the day of the clinic. An attorney will call back between 2:30 p.m. and 5 p.m. that same day.
Location: San Juan County</p> |
| <p>18 Power of Attorney Workshop
In-Person
Senior Citizens Law Office
To register, call 505-764-6436
Location: Barelmas Senior Center</p> | <p>18 Wednesday Workshop
In-Person
New Mexico Immigrant Law Center
To register, call 505-247-1023
El Centro de Igualdad y Derechos</p> | <p>19 Statewide Legal Teleclinic
Telephone
Statewide
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Virtual</p> |

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

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Tristyn Leah McDaniel

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Hannah Kathleen Hutchins

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Robert C. Conklin	F.E. Beth Schmuck Lindsey	Scott Seitter
Michael Edward Connelly	David Paul Lopez	William D. Slease
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Charles B. Gurd	Brad Wesley Odell	Carl Tyler Will
	Kevin Donald O'Leary	Hope M. Wynn

► **Clerk's Certificates Of Change to Withdrawn Status As Of January 2026**

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Spencer Fane LLP is pleased to announce **Joseph M. Dworak** has joined the Santa Fe, New Mexico, office as an of counsel attorney in the Governmental Affairs, Litigation and Dispute Resolution, Environmental Law, and Energy Law practice groups.



Gallagher & Kennedy is pleased to announce that corporate, securities, and business law attorney **Guillaume J. Aimé** has been elected a shareholder effective January 1, 2026. Guillaume advises businesses of all sizes on a broad range of corporate and securities matters, including capital raising, mergers and acquisitions, venture financing, and SEC compliance for private and public companies.



Modrall Sperling is pleased to announce that **Bayard Roberts IV** has been elected as a shareholder at the firm. Bayard practices in the transactions department, where he focuses on matters involving commercial real estate, renewable energy development, torts, commercial liability and natural resource law. Bayard was recognized as a Southwest Rising Star by Southwest Super Lawyers® and is listed in Best Lawyers in America®, Ones to Watch.



Jay J. Athey, an attorney in the Albuquerque office of Littler, the world's largest employment and labor law practice representing management, has been elevated to shareholder, effective Jan. 1, 2026. Athey partners with management to develop practical solutions to complex employment challenges. He maintains an active practice in New Mexico, Montana and Florida, representing employers in workplace law matters.



Attorney **Raylee Starnes** joined Holland & Hart's Santa Fe office as an associate this year and was recently admitted to the State Bar of New Mexico. Raylee brings valuable experience from her Midland roots and oil and gas litigation background to help clients navigate complex regulatory and administrative challenges.

Taft, one of the fastest growing law firms in the nation, and **Morris, Manning & Martin LLP**, a highly regarded firm with offices in Atlanta and Washington, D.C., announced the completion of their merger, effective December 31, 2025 – a significant milestone in Taft's long-term strategic growth plan. The combination, Taft's third in 2025, creates an Am Law 100 firm with more than 1,250 attorneys in 25 offices nationwide and projected revenues exceeding \$1 billion.



Kevin K. Washburn, Professor of Law at the University of California, Berkeley School of Law, was nominated to serve as 2026 President-Elect of the Association of American Law Schools (AALS). Danielle M. Conway, Dean and Donald J. Farage Professor of Law at Penn State Dickinson Law, was inducted as President of AALS for 2026.



Amber Macias has been recognized by Albuquerque Business First as a Woman Who Means Business, honoring her leadership and contributions as a business owner and attorney in New Mexico. The recognition highlights her work building and leading a family law practice serving clients throughout the state. Amber will be formally recognized at the Women Who Mean Business awards event on March 27.

In Memoriam

After joyfully celebrating his 100th birthday with over 100 family and friends in attendance on November 10, 2024, **Thomas O. Olson** died peacefully at his home in Aurora, CO. on January 17, 2025, with his children at his side. Among the dwindling number of WW II Combat Veterans, he was graced to the end by a sound inquisitive mind, a clear memory, a sunny disposition, and a warm, caring heart. Tom and his beloved wife, Rosemary, raised their family in Albuquerque beginning in 1955 where he became a respected member of the NM Bar Association, practicing in the public and private sectors primarily in the areas of water law and rights, Native American law (primarily representing several Pueblos and Tribes), and Federal Contracts administration. He retired from active practice in 1990 but maintained inactive status and interest in the law until his death. After retirement, Tom and Rosemary traveled extensively worldwide, as well as to visit their children and grandchildren until her death, December 7, 2004. In 2013, Tom moved to Aurora, Co to live with his oldest daughter, Kristin, where he greatly enjoyed the rest of his life, particularly having time with the Adams' family and many new friends and even adapting to the colder winters! In addition to his wife, Rosemary, Tom was preceded in death by his younger brother, Carroll, and his beloved grandson, Brendan Falde. He is survived by his three children, Tom and wife Bonnie, Kristine Falde, and Sigrid and longtime partner, Chris Wood: his grandchildren Megan Falde Adams and husband, Brendan, Nels Olson and wife Faith Kirk, Kari Olson and husband John Roesgen, Thomas M (Tommy) Olson, and his great grandchildren Garrett and Owen Adams, Mirabelle Olson and Eddy Roesgen.

Robert P. Tinnin, Jr., founder of the Tinnin Law Firm in Albuquerque, NM, died on August 24, 2025. Albuquerque born and raised, Bobby, or Tinnin as he was also affectionately known, was a true renaissance man with an iconic laugh and a legendary personality. A real hometown boy, in his early years Tinnin gathered wild asparagus along the ditches; rushed to fill sandbags with any threat of 4th Street flooding, drove the delivery truck for Marina's dry cleaners, and ate his favorite enchiladas at Duran's. He was a member of a club created by neighborhood kids who wrote and produced plays. Their teacher dubbed them the "Park Avenue Gang". He loved the ease of living at Park Plaza and appreciated his view of the beautiful sunsets. As much as he loved Albuquerque, his other happy places were New Orleans, Louisiana, La Jolla, California, and Rome, Italy. Tinnin attended Manzano Day School, Lew Wallace Elementary, Washington Middle School, Albuquerque High School, and Brown University. He received a Bachelor of Arts from the University of New Mexico where he was a member of Sigma Chi. He received his law degree from Indiana University, with distinction, where he served as Note Editor for the Indiana Law Review. An accomplished labor and employment attorney with an outstanding legal mind, Tinnin began his career as a law clerk to the Honorable Oliver Seth of the US Court of Appeals for the Tenth Circuit. He was known for his work with his former firm Poole, Tinnin & Martin prior to founding the Tinnin Law Firm with his partner, Stanly Kotovsky, in 2004. He was a past president of both the State Bar of New Mexico and the New Mexico Bar Foundation, and an active member of the American Bar Association where he served on various committees of the Labor and Employment and Litigation Sections. He was a member of the American Academy of Hospital Attorneys and a fellow of the American Bar Foundation. He was recognized as a Southwest Super Lawyer and had been selected for listing in every edition of The Best Lawyers in America. Tinnin was the editor-in-chief of Employment Law Desk Book for New Mexico Employers. He devoted faithful

service to the Employer's Counsel Network and served as chair of the Board of Ethics and Campaign Practices for the City of Albuquerque. His professional associations led to lifelong friendships that meant the world to him.

In addition to his successful professional career, Tinnin was a fly fisherman, a black diamond and double-black diamond skier, and a fiercely competitive golfer, a sport he wryly described as being about "outdoor drinking and gambling." He cherished his golfing friends and was a proud legacy member and past president of the Albuquerque Country Club.

From an early age, Tinnin was a bird hunter known for his spot-on turkey call, which he revived every Thanksgiving. He holds the state swimming record for the 50-meter freestyle, a record that can't be beaten, as they no longer run the competition. An avid sports fan and life-long subscriber to Sports Illustrated from its very first issue, Tinnin held season basketball tickets to UNM's Lobos, five rows behind the bench, and was devoted to the Dallas Cowboys. Beyond sports, Tinnin delighted in the poetry of Ogden Nash and was an art collector. He had a green thumb and was drawn to nature and nature programs. One of his favorite memories was taking a trip down the Colorado River with his sons, Josh and Sean and hiking the Bright Angel trail out of the Grand Canyon. A lover of music, Tinnin knew the lyrics to every song, especially Hank Williams and all of Outlaw Country. His CB Radio handle was "Cosmic Cowboy." He had a ZZ Top Backstage Pass sticker affixed to his court briefcase, and was a true Beatles believer, his favorites being "All You Need Is Love" and "Let it Be." In the heart of the Peace Movement he would stand on Central Avenue in downtown Albuquerque, hand out fresh flowers to passers-by and say, "I love you," in true hippie fashion; though he ultimately credited his wife Libby with teaching him what true love really is. Tinnin liked to go to dinner, which was always an adventure, not just because he was always teed up for a laugh, but also because a parade of friends and acquaintances would inevitably, endlessly stop by his table to say a fond hello. He was an accomplished Chinese cook and a follower of Julia Child and the Art of French Cooking. The not-so-secret ingredients for his New Year's Day Hoppin' John were bourbon and jalapeños. Active in the Democratic Party, Tinnin was proud of helping to get the signatures needed for Jimmy Carter to be on the ballot. A personal note from President Carter hung on his office wall, and Tinnin would fondly refer to him as, "my friend Jimmy." Another political highlight was being invited to observe the Watergate hearings. Deeply inclusive and egalitarian in spirit, Tinnin was a leader of Equal Access to Justice, a patron of the National Institute of Flamenco, and a sponsor of New Day Youth and Family Services. He was always a willing and available mentor. Tinnin has been lovingly described as a person who was pure of heart with good motivations, and as a "silver coin, half salt". Devilishly handsome with white hair, bright blue eyes, and a Hollywood tan, Tinnin was always the best-looking and best dressed. He had smooth moves on the dance floor - he took dance class every semester in college and kept the party going long after that. We like to imagine he still is. Tinnin is survived by his wife, Elizabeth "Libby" Madden; son, Joshua Tinnin (Santa Fe, NM); stepson, Sean Tinning and his wife, Charlene (Horseshoe Bay, TX); his dear baby sister, Nancy Milski and her husband, Danny (Grand Junction, CO); brother, Thomas Tinnin (Albuquerque, NM); and close cousin, Fred Luthy (Albuquerque, NM). We'd like to thank the staff at Park Plaza Condominiums, the leadership and employees at The Retreat Healthcare, and Tinnin's caregiver friends, especially Tai and Bird. We are so grateful for your continued support.

In Memoriam

Gloria J. McCary passed into the spirit world on Monday, September 22, 2025, at the age of 81 in Hospice at home, with her husband by her side. She is survived by her beloved husband of 40 years, Roger A. Finzel. Her son, by another marriage, Connor McCary preceded her in death, as did her mother, Beatrice Haller. She grew up in Altoona, PA until age 11, when her family moved to Miami, Florida. She was awarded a scholarship to the University of Miami. Along the way she worked as a part-time secretary and police dispatcher. She moved to Albuquerque with her husband, Jim Javins, where both obtained Master's Degrees at UNM while working as elementary school teachers at Queen of Heaven Catholic school. When her husband died from a window breaking and falling on them at a restaurant, Gloria went to work as a State Probation officer. She married Mr. McCary, had Connor McCary, and expanded her lifelong love of horses. She was an equestrian excelling in hunter jumper, dressage, and western. She owned a horse farm and bred paint horses. Gloria trailered her horses herself and competed throughout the southwest. She also raised a variety of dogs and bred hybrid wolves. She was an animal lover and rescued any animal in need. She was on the Board of Project Coyote advocating for coexistence with them. Fulfilling her interest in criminal law, she sold the horse farm to pay for law school. After Law school she went to work as an assistant public defender in Albuquerque. With her vast experience as a probation officer, she immediately started defending felony cases. She promptly won 8 acquittals in a row. Unfortunately, the case load (as with other public defenders) kept climbing regardless of her time in trials. As such she could not fulfill her oath to properly represent her clients, so she resigned. She was hired by the District Attorney's office in Albuquerque where she prosecuted within the ethics of her oath, dismissing, plea bargaining or convicting at trial as the evidence warranted. Because of her experience and ability, she even successfully prosecuted a case with 3 days preparation when the assigned attorney took ill. Thereafter she expanded her skills as an attorney by prosecuting cases in Santa Fe and Las Cruces. She eventually became a Deputy District attorney in Socorro New Mexico. When other District attorney's offices had conflicts in prosecuting first degree cases, they farmed them out to Socorro and Gloria with D.A. Clint Wellborn prosecuted cases throughout New Mexico. When the commute became too much, Gloria resigned and was later hired as a State Public Defender in Albuquerque assigned to Major Crimes. With others in that unit, she defended first degree cases all over the state when smaller public defender offices needed help. Without bravado or bragging she welcomed younger attorneys to her cases. She was a consummate professional, brilliant trial attorney and a mentor to new attorneys. Throughout her career she tried and defended more cases (200 trials) in more jurisdictions than most attorneys ever see. For all but the last few years she and her husband, Roger Finzel, enjoyed riding their horses along the ditches and in the Bosque in Las Lunas and Corrales. She is surely now once again, enjoying rides with her horses, (especially Bart) dogs and wolves at her side. She is terribly missed.

Donna Marie Christensen, 83, beloved wife and mother, passed away on April 22, 2025, after prolonged illness surrounded by family in Albuquerque. Donna was born on September 7, 1941, to George J. Christensen and Anita Tohtsoni, in Rehoboth, NM. She grew up in Church Rock and graduated from Gallup High School in 1959, after which she worked as a medical secretary while managing a family. She continued to explore educational and career opportunities, attaining a graduate degree in education from UNM, enabling her to teach English at Gallup High School. While at GHS she also supported students through development of the American Indian Club. After relocating to Santa Fe, in 1976, she counseled students at the Institute of American Indian Arts. Her desire to further support the American Indian Community compelled her to enter law school at UNM where she earned a Juris Doctorate in 1981, with a focus on water/land rights. From 1983-1987 she was the Director for the Navajo Public Defender Office, worked under the Attorney General, and was ultimately appointed Attorney General of the Navajo Nation from 1991-1992. She retired from the Office of Chief Counsel with the U.S. Department of Energy where she was also manager of the Native American Employees Program. Additionally she served on the Boards of the Maxwell Museum of Anthropology, Navajo Education, and served as Emeritus Member of First Nations Community HealthSource Board of Directors. Other achievements include mentor in Albuquerque Public Schools Focus Program and volunteer facilitator for the Juvenile Probation Family Circle in Gallup. Donna was warm, engaging, and intellectually curious, making each person who met her feel special. Her surviving family include her loving husband of 35 years, Mark L. Money, her children, Mark Parra, Melissa Parra and her husband Michael Schiffer, and Michelle Parra and her husband Sean Hearn, and her stepson Mark J. Money; her grandchildren, Tesla Hendrickx and her husband Ted Hendrickx, Owen Hearn, Maura Hearn, Mitchell Hearn, Cas Money and his wife Shannyn Spiess, and her great-grandson Henry Hendrickx. She is also survived by her sister, Mattie Christensen, and her husband Richard Showalter, as well as numerous cousins and relatives from the Navajo Reservation.

In Memoriam

It is with deep sadness that we announce the passing of Barbara **Jennifer de Weever**, who left this world on March 27, 2025, at the age of 88. Born on August 28, 1936, in Golden Fleece, British Guiana (presently Guyana), she was the cherished daughter of Guy Egbert Leon de Weever and Irmin Evelyn de Weever (nee Bryce). Barbara immigrated to the United States in 1954, where after graduating from Brooklyn College of the City University of New York with honors, she became a dedicated registered nurse specializing in neonatal and private duty care. In 1957, she married Oscar Aubrey Baynes, from Georgetown, British Guyana, and together they had six beloved children. In 1973, the family made their new home in Albuquerque, New Mexico, where Barbara continued her nursing career. Soon after, she made a determination to change careers and proudly graduated with honors from the University of New Mexico. She later pursued her legal education at UNM Law School, earning her Juris Doctorate. In 1983, Barbara found love again with William McKinstry. Her passion for justice and equality propelled her career as an Assistant District Attorney in Albuquerque and later as an Assistant City Attorney for the City of Santa Fe, from which she eventually retired. A devoted community leader, Barbara served on numerous boards, including Open Hands and Leadership Santa Fe. She was a former member of the NM Black Lawyers Association and the Daughters of the British Empire. Barbara's love for classical music, opera, calypso, and Guyanese folk music reflected her vibrant spirit. Known for her ethics, intelligence, generosity, and kindness, she was a lifelong Democrat and actively contributed to various political campaigns, serving as a delegate at the 2008 Democratic National Convention. Barbara is preceded in death by her father, Guy Egbert Leon de Weever; her mother, Irmin Evelyn de Weever; her brother, Godfrey de Weever; and her son, Christopher Cedric Bayne, of Santa Fe. She is survived by her loving husband, William McKinstry, of Santa Fe, NM; her sister, Dr. Jacqueline de Weever, of Brooklyn, NY; and Joseph Permaul, of Toronto, Canada. She leaves behind her children: Jennifer Bayne, Dr. Gillian Bayne and husband, Max (Brooklyn, NY), Gregory Bayne (Santa Fe, NM), Guy Bayne (Albuquerque, NM), Carolyn Bayne (Albuquerque, NM); and stepchildren, Juliana Josey, Michael McKinstry, and Kerry McKinstry. Her grandchildren, Jamilah McDaniel (Santa Fe), Samir Morrow (Albuquerque), Ethan Andrews (Brooklyn), Sade Morrow (Albuquerque), Brandon McKinstry, Tatiana McKinstry; and her daughter, Naomi; along with her great-grandson, Kyrie Bentz, will carry her strong legacy forward.

Eddie Michael Gallegos, age 78, beloved father, grandfather, brother, and friend, after a long illness passed away on February 17, 2025. He was preceded in death by his parents Eddie and Mary Agnes Gallegos, his brother Mark/Marcus Gallegos and his son Marcello Gallegos. He was a 1964 graduate of Sandia High School, where he received All State in football and wrestling. He enlisted in the Navy in 1965. After bootcamp, he went to Corpsman School and was then attached to the Vietnam Field Marine Services as a "Doc" where he earned a Field Marine Service Medal, multiple Purple Hearts and a Bronze Star for heroism in combat. He was wounded and medically discharged. He became a History Teacher and taught at Del Norte High School. He then achieved a Law Degree at UNM. Eddie practiced law for the NM General Attorney, City of Albuquerque, Albuquerque Police Department, City of Rio Rancho, Sandoval County and private practice. Although Eddie had many accomplishments, the job he took most pride in was being Grandpa. He was loving, caring, extremely generous, and enriched the lives of everyone he encountered. Eddie leaves behind his brother Reginald Gallegos, son Simon Gallegos, grandsons Nathan Gallegos, Brandon Gallegos and Gioni Essex and his beloved daughter-in-law Amanda Torralvo. Services will be held at the Santa Fe National Cemetery on March 24, 2025 at 1:30pm. All who wish to attend are welcome to come and recognize the life of the beloved Eddie Gallegos.

Philip Ashby, a lawyer and District Judge, died in Highlands Ranch, CO, with his wife of 68 years, Jane, and family at his side. He was 94 years old. Phil was born and raised in Madison, WI. After graduating from the University of Wisconsin in 1952, he served in the Army as a Supply Corp Officer stationed in Greenland. After two years of service, he attended the University of Colorado, earning a law degree in 1956. It was there that he met Jane. While working for the Department of Interior in Denver, he was transferred to New Mexico, the state Phil and Jane called home for over 60 years. Phil spent many years in private practice in Albuquerque, specializing in Native American Law, as a tribal council for several Pueblos. He later served as a State District Judge and finished his long legal career advising in mediation and arbitration. Phil enjoyed classical music, especially opera, attending countless live performances. He and Jane were often found at the local golf courses and played a round of golf in all 50 states. Phil loved being outdoors, especially fishing, which he did frequently while taking his family on extended camping trips throughout the western states and Canada. He and Jane also traveled extensively throughout the world during his retirement years. Phil was never at a loss for a funny story or joke with his excellent comedic timing and infectious laugh. He is preceded in death by his son George. Survivors include his wife Jane, daughters Cynthia of Highlands Ranch, CO, Diane of Las Cruces, NM, Karen (Jeff Flack) of Carmel, CA, and his grandchildren Evan (Sasha Figel) and Audrey Flack. In lieu of flowers, support Phil's love of reading history by patronizing a local bookstore. The family will be hosting a celebration of life open house in Albuquerque in March.

In Memoriam

Patrick “Pat” Hurley of Albuquerque, NM, went to be with our Lord and Savior on June 25, 2025. Born in Amarillo, TX in 1937, and raised in Tucumcari, NM, he first discovered the rhythm of life on the drums with the Tucumcari Rattler Band, graduating from Tucumcari High School in 1955. Pat went on to study Mechanical Engineering at Stanford University, where he met Nannette, the love of his life, at a Phi Gamma Delta mixer. Following graduation in 1959, he served in the U.S. Army at Fort Ord in Salinas. Pat and Nannette married in La Jolla in August 1960, before returning to Albuquerque to begin what would become a remarkable career. Pat’s professional journey began as an engineer at Sandia National Laboratories in Albuquerque. While at Sandia, he earned a Master’s in Engineering at the University of New Mexico (UNM). Driven by a deep passion for learning and helping others, Pat later shifted to law, enrolling in UNM’s Law School. He graduated at the top of his class in 1968 and passed the New Mexico Bar shortly thereafter. For over fifty years, he specialized in real estate transactions and estate planning. Starting his legal career at Keleher and McLeod, Pat went on to found The Hurley Law Firm in 1997. Pat’s exceptional integrity and dedication earned him numerous accolades, but perhaps his most lasting legacy is the countless clients he served and mentored through the years. He valued his partners and staff, always fostering an environment of mutual respect and collaboration. An avid lover of the mountains, Pat treasured his time at the family cabin in Taos Ski Valley. He built bridges, felled trees, and tackled projects big and small. He enjoyed the company of family and friends on the porch afterwards, often with a cold beverage in hand. His love for the arts, particularly New Mexico artists, led him to contribute many years of service to the Capitol Arts Foundation. He loved music of all types and enjoyed attending live concerts with loved ones. In retirement, he stayed active, walking over 10,000 steps daily, and honed his creativity by making punched tin frames and decorative items, which he generously gifted to family and friends. Throughout their marriage, Pat and Nannette traveled extensively, both in the US and abroad, but his greatest joy came from spending time with his family and five beloved grandchildren. He is survived by his devoted wife of sixty five years, Nannette; daughter, Suzanne (Greg McCombs) of Ventura, CA; and their sons, Ryan (San Clemente, CA) and Andrew (San Jose, CA); son, Patrick of Albuquerque, NM; and son, Davis (Laura Pearson) of Denver, CO; and their children, Isabelle (Boston, MA), Sloan (Denver, CO), and Miles (Denver, CO). He will be forever missed.

John L. Walker, defender of the Constitution, fighter for the underdog, and protector of animals died quietly on September 12, 2025, in Albuquerque, NM. He was born in California on May 13, 1944. An Army brat, he woke up in a different state every three years, graduating from Palmer High School, Colorado Springs, in 1962. John honored a family tradition of military service as a cadet at West Point. There, he found novel ways to resist authority. In 1965 he wrote a formal complaint challenging the Army’s requirement to attend weekly religious services, citing the Establishment Clause of the First Amendment, his first “legal brief,” long before the idea of law school planted itself in his head. He continued to get into “good trouble” as an undergrad at the University of Denver. After getting arrested at an anti-war protest, he joined an ACLU suit that overturned the University’s in loco parentis policy. John earned his J.D. degree at UNM School of Law in 1972. He then worked in the University’s fledgling Law Clinic, and in the Indian Law and Water Law programs. After a brief but productive time in private practice, he joined the NM State Public Defender’s office, where he found his true passion: representing indigent people in criminal and civil rights matters. He had a particular love for Appeals and Habeas Corpus, and argued before both the New Mexico and the U.S. Supreme Courts. John had a rich life outside the P.D.’s offices, too, often contributing his legal skills pro bono, usually to test established authority. He co-represented and advised plaintiffs and volunteers in a dispute with UNM Regents and Administration, helping to develop fair and responsive governance at its public radio station, KUNM-FM. John’s love of animals, especially cats, stoked an interest in Animal Law. He often advised rescuers and organizations. He helped strengthen existing animal welfare measures in Albuquerque. He cared for several colonies of “community cats” in the city, with Trap, Neuter, Return. He and his wife fed and saved cats around the world. He took time to ski the black-diamond runs at Taos every winter, and spent summers trout fishing in the Rio Grande Gorge. He loved basketball, and like “everyone,” he was a Lobo (“Woof woof woof!”). John was preceded in death by his parents, John R. Walker and Jeanne Lloyd Walker. He leaves behind his devoted wife, Chris Martan, whom he “defended against all enemies, foreign and domestic”; his beloved daughter Tacha Walker Vandeck; his cherished granddaughter Bailey Reese Vandeck; his stepmother Virginia (Ginnie) Walker; several cousins; and innumerable cats.

In Memoriam

Hunter Lee Geer passed away on February 7, 2025, in Albuquerque, New Mexico. He was born on July 29, 1935, in Hopkinsville, Kentucky and was 89. Hunter was the son of Emmit Forrest Geer and Etta Riley Mason. After World War II, Hunter and his family moved to New Mexico where he graduated from Albuquerque High School in 1954. Hunter went on to graduate from New Mexico State University and was very involved in Real Estate development until he entered the University of New Mexico School of Law, graduating in 1966. Hunter began his law career as Assistant Dean at Loyola Law School in Los Angeles. He returned to New Mexico to become Assistant Dean at the UNM School of Law and was instrumental in establishing the American Indian Law Center. The American Indian Law Center was developed to encourage and support Native Americans in pursuing careers in law and beyond. In 1975, Hunter opened his private practice, specializing in Real Estate Law. Outside of his professional life, Hunter remained very active with the UNM School of Law and enjoyed golf and volunteering at Popejoy Hall. Hunter is survived by his beloved wife of 48 years, Harlene Geer; and his children and grandchildren, Kelly Austin (Chuck) and Ashley and Josh; Derek Geer (Jennifer); Darby Karchut (Wes); Lee Geer (Robin) and Roshelle; Krista Tricarico (Andrew) and Sydney and Haley; Stephanie Tallent (Brent) and Samuel and Ellie; and six great-grandchildren.



Charles "C. Gene" Samberson, 91, long-time resident of Lovington, family man, lawyer, legislator, and public servant in New Mexico passed away peacefully on Saturday, September 20, 2025, leaving behind a legacy of faith, leadership, and civic duty. Gene was born in 1934 in Hobbs, New Mexico, to Alton Abner ("Buck") and Lucille Samberson. He built a life rooted in faith, family, and public service. Gene attended the University of New Mexico, earning his bachelor's degree in accounting

and later attended the University of New Mexico, earning his Juris Doctorate, in preparation of a career that would span many decades and cast a wide sphere of influence. Gene began his life of service in the US Army and then transitioned to his legal career in Lovington under the mentorship of Finis L. Heidel. Shortly thereafter, he felt a calling to public service, serving in the New Mexico House of Representatives from 1970 to 1988. During that time, he twice held the position of Speaker of the House: first from 1979 to 1982, and again from 1985 to 1987. Samberson earned a reputation as a consensus-builder who could navigate deep ideological divides, bringing balance and a new voice to the legislature. In addition to his legislative work, Samberson was a practicing lawyer in Lovington-known for his ethics, fairness, and commitment to his clients and community. He was a member of the law firm Heidel, Samberson, Cox & McMahon in Lovington, where he practiced for over six decades. His peers recognized his legal ability and moral character-he earned an AV Preeminent peer rating, a distinction reflecting lawyers' recognition of his professional excellence. Samberson also served as a Regent for the University of New Mexico from 1989 to 1994, further underscoring his commitment to education and civic responsibility. In recognition of his service to the community, he was awarded: the Silver Concho Award from the Cowboy Hall of Fame, Lovington Citizen of the Year Award, University of the Southwest Trustee of Free Enterprise, and the Statesman Award from the Albuquerque Chamber of Commerce. Throughout his career, he was guided by a belief in public service as a calling. Whether in the courtroom, or the

Capitol, Gene Samberson worked to ensure that rural voices in New Mexico had a seat at the table. While Gene enjoyed politics, the law, and public service, he loved serving at his church as both a deacon and an elder, serving over many decades. He was a man of faith and passed that legacy on to his two sons. Gene was also an avid fisherman and hunter and loved doing that with his sons and his grandkids. He is survived by his loving wife of 63 years, Gail Samberson, his son Greg (Shannon) Samberson, his son Gary (Melinda) Samberson, five grandchildren (Sheridan, Sloane, Gavin, Gareth, and Gannon), his nephew Brian Samberson, and extended family and friends.

James C. McKay died on December 26, 2025 after enduring ALS (Lou Gehrig's Disease) with grace, resolve and dignity. Before entering Law School, Jim served in Vietnam, and received numerous awards for his service, including the Silver Star for Gallantry in Action. Jim graduated from Seattle University and subsequently from UNM Law School as President of his class in 1978. He was the first in his family to graduate from college and the first Wind River Shoshone to graduate from law school. He met his wife Janet in law school. They both practiced law in Santa Fe for many years, where Jim became City Attorney for the City of Santa Fe, and subsequently Judge Advocate for the State of New Mexico with the New Mexico Army National Guard. Jim retired from the Guard as a Colonel in the US Army, and moved to Scottsdale, AZ with Janet in 2016. He is survived by Janet, their 3 children and 3 grandchildren

It is with heavy hearts that we announce the passing of **Phillip "Phil" Baiamonte**. Born in 1931 in Hot Springs, NM, Phil had a natural curiosity and enthusiasm for life. He was particularly passionate about being on the road whether on his motorcycle or driving his truck. After graduating from college, Phil married his college sweetheart, Patricia Margaret Beck, beginning a lifelong partnership. He then entered law school, earning his degree and began an impressive legal career as a JAG officer for the US Army, a solo law practitioner, and an esteemed District Court Judge. Phil and Pat were proud parents to four sons, Rob, Tom, Jim, and Nick. In his later years, Phil returned to his passions, spending countless days working on his motorcycle, drinking coffee at the TA truck stop, and driving all over New Mexico. He cherished time with his sons and their families and delighted in getting to be a great-grandfather. Phil was known for his remarkable storytelling, captivating his family and friends til the very end. Phil is survived by his sons, Rob (Terry), Tom (Esther), and Jim's wife, Kim; 5 grandchildren; and 4 great-grandchildren. He is reunited in peace with his wife and sons, Jim and Nick. Phil's life was a testament to the power of love, storytelling, and embracing the simple joys. We all know he will enjoy the ride in Heaven.



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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-025
No. S-1-SC-39989 (filed March 27, 2025)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CRAIG TALBERT SMITH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Brett R. Loveless, District Judge

Bennett J. Baur, Chief Public Defender
Kimberly Chavez Cook,
Appellate Defender
Mark A. Peralta-Silva,
Assistant Appellate Defender
Santa Fe, NM

for Appellant

Raúl Torrez, Attorney General
Eric J. Orona, Assistant Solicitor
General
Santa Fe, NM

for Appellee

OPINION

THOMSON, Chief Justice.

I. INTRODUCTION

{1} Defendant Craig Talbert Smith challenges his convictions for first degree murder (willful and deliberate), conspiracy to commit first degree murder, kidnapping, aggravated burglary, and tampering with evidence. Defendant raises three issues for our review: (1) Did the district court abuse its discretion in denying Defendant’s two motions for mistrial when a juror became ill during deliberations? (2) Is Defendant’s conviction for conspiracy to commit first degree murder supported by sufficient evidence? and (3) Was Defendant’s counsel ineffective because she was appointed approximately three months prior to trial?

{2} We determine that the district court did not abuse its discretion in denying Defendant’s motions for mistrial and that Defendant’s conspiracy conviction is supported by sufficient evidence. We further conclude that Defendant has not

shown ineffective assistance of counsel. We therefore affirm Defendant’s conviction and sentence.

II. DISCUSSION

A. Denial of Defendant’s Motions for Mistrial

{3} As his first issue on appeal, Defendant challenges the district court’s denial of his two motions for mistrial. Defendant’s trial spanned from October 26, 2022, to November 9, 2022. At that time, this Court had implemented public health emergency protocols designed to minimize the spread and impact of the COVID-19 pandemic. *See* New Mexico Judiciary Public Health Emergency Protocols, Supreme Court Ord. No. 20-8500-025 (July 6, 2020, as amended by Supreme Court Ord. No. 22-8500-010 (eff. March 21, 2022)). Protocol 1(B), Health Screening and Self-Isolation Procedures, prohibited individuals who could not pass a series of health screening questions from entering the courthouse. *Id.*

{4} Defendant’s trial proceeded for six and one-half days in compliance with the

protocols, and the case was submitted to the jury in the early afternoon of November 2, 2022. The next morning, a juror reported that she was sick with a fever. In accordance with court protocols, because the juror could not pass the screening questions, she was prohibited from entering the courthouse. The district court explored a variety of options with the parties in view of the juror’s unavailability, including proceeding with eleven jurors, resuming deliberations with the sick juror attending via telecommunications, or recessing deliberations until the juror recovered and was allowed to reenter the courthouse. Defendant objected to the alternatives proposed by the district court and moved for a mistrial; the State opposed. After considering the parties’ positions, the district court denied Defendant’s first motion for mistrial and suspended deliberations for one week, until November 9, 2022. The court indicated that it would reassess whether deliberations could resume on that date.

{5} By November 9, the juror had recovered and was permitted to return to the courthouse. However, two other jurors reported having been exposed to family members who had tested positive for COVID-19, and accordingly the two could not pass the health screening questions for courthouse access. Defendant made a second motion for mistrial; the State opposed and suggested the district court seek an exemption from the public health emergency protocols. The district court subsequently asked this Court for an exemption, proposing to implement other health-protective measures that would allow the jurors to resume deliberations. This Court granted the exemption, and jury deliberations resumed around 1 p.m. on November 9. Just over an hour later, the jury returned a verdict.

{6} Defendant contends that the district court erred in denying his two motions for mistrial and instead suspending deliberations. We review the district court’s denial of a motion for mistrial for an abuse of discretion. *State v. Sena*, 2020-NMSC-011, ¶ 15, 470 P.3d 227. “An abuse of discretion occurs when the ruling is

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clearly against the logic and effect of the facts and circumstances of the case.” *State v. Sanchez*, 2020-NMSC-017, ¶ 21, 476 P.3d 889 (internal quotation marks and citation omitted). “A court abuses its discretion if it applies an incorrect standard, incorrect substantive law, or its discretionary decision is premised on a misapprehension of the law.” *State v. Fernandez*, 2023-NMSC-005, ¶ 8, 528 P.3d 621 (internal quotation marks and citation omitted). “When there exist reasons both supporting and detracting from a trial court decision, there is no abuse of discretion.” *State v. Moreland*, 2008-NMSC-031, ¶ 9, 144 N.M. 192, 185 P.3d 363 (internal quotation marks and citation omitted); see also *State v. Layne*, 2008-NMCA-103, ¶ 7, 144 N.M. 574, 189 P.3d 707 (“The very essence of discretion is that there will be reasons for the district court to rule either way on an issue, and whatever way the district court rules will not be an abuse of discretion.”).

{7} When reviewing the district court’s decision on a motion for mistrial, we are mindful that “[t]he trial judge is in a much better position to know whether a miscarriage of justice has taken place and his opinion is entitled to great weight in the absence of a clearly erroneous decision.” *State v. Sutphin*, 1988-NMSC-031, ¶ 18, 107 N.M. 126, 753 P.2d 1314 (internal quotation marks and citation omitted). “The power to declare a mistrial should be exercised with the greatest caution.” *State v. Smith*, 2016-NMSC-007, ¶ 69, 367 P.3d 420 (internal quotation marks and citation omitted). A district court therefore should explore reasonable alternatives before declaring a mistrial. *State v. Messier*, 1984-NMCA-085, ¶ 14, 101 N.M. 582, 686 P.2d 272; see also *State v. Vanderdussen*, 2018-NMCA-041, ¶ 17, 420 P.3d 609 (“[T]he proposed alternatives to a mistrial must be feasible or reasonable.”). In some circumstances, a juror’s illness or unavailability may support declaration of a mistrial. See *Messier*, 1984-NMCA-085, ¶¶ 11-12 (“Manifest necessity for the declaration of a mistrial has been upheld . . . under certain circumstances where a judge, juror or witness has become ill or unavailable.”); *State v. Salazar*, 1997-NMCA-088, ¶¶ 8, 17, 124 N.M. 23, 946

P.2d 227 (affirming that manifest necessity supported the declaration of a mistrial when a juror became unavailable due to a migraine). Yet in other circumstances, declaring a mistrial may seem an unnecessary waste of time and resources, and a reasonable continuance may be warranted. See *Messier*, 1984-NMCA-085, ¶ 14 (“Where a reasonable continuance may resolve the problem, it should be undertaken in lieu of granting a mistrial.”); see also *State v. Sanchez*, 2000-NMSC-021, ¶ 9, 129 N.M. 284, 6 P.3d 486 (“When a juror becomes disabled during deliberations, . . . the trial court has limited options. Granting a mistrial may seem an unnecessary waste of scarce resources. Granting a continuance may be impractical.”).

{8} We review each of Defendant’s two motions for mistrial under this abuse of discretion standard of review.

1. Defendant’s first motion for mistrial
{9} Defendant contends that the district court abused its discretion in denying his first motion for mistrial because the court’s decision to suspend deliberations violated his right to a fair trial. Defendant asserts that deliberations are a critical point in trial and that he was prejudiced by the suspension during jury deliberations. We agree that deliberations are critical; but, under the circumstances presented, we conclude the district court had good cause to grant a continuance. As the matter had already been submitted when the juror became ill, the district court could not substitute that juror with an alternate. See Rule 5-605(B) NMRA (“Alternate jurors . . . shall replace jurors who, *prior to the time the jury retires to consider its verdict*, become or are found to be unable or disqualified to perform their duties.” (emphasis added)); *Sanchez*, 2000-NMSC-021, ¶ 23 (holding that post-submission substitution of a juror is reversible error under Rule 5-605(B) unless the state can show “that the trial court took adequate steps to ensure the integrity of the jury process”). The district court proposed reasonable alternatives that may have allowed the jurors to resume deliberations despite the juror’s illness, which Defendant rejected. Now on appeal, Defendant concedes that there was no

alternative to mistrial that he would have accepted. The district court therefore did not err in concluding that a continuance was warranted.

{10} We likewise conclude that the recess in deliberations did not prejudice Defendant. Defendant argues that he was prejudiced because his case was relatively complex and seven days was a lengthy suspension during which the jurors’ memories of the evidence could have been affected. We disagree with Defendant’s characterization of the complexity of his case and the length of the suspension. Even though presentation of evidence lasted six days, Defendant’s trial was relatively straightforward as the State primarily relied on a few key witnesses and exhibits connecting Defendant to the crime. And seven days was not a long interruption in view of the fact that the trial took place in the midst of a global pandemic that disrupted many aspects of everyday life, including jurors’ access to the courthouse. Cf. *Smith*, 2016-NMSC-007, ¶ 71 (concluding that a district court did not abuse its discretion in denying a motion for mistrial and instead ordering a midtrial recess of ten days to benefit the defense). Thus, we do not believe that either the complexity of the case or the length of the recess prejudiced Defendant in his trial.

{11} Defendant also suggests that the jury could have been exposed to prejudicial media coverage during the recess in deliberations, noting that several news organizations reported on his trial. But we do not see any prejudice arising from the jury’s exposure to publicity under the circumstances presented. Generally, when it appears that jurors may have been exposed to inherently prejudicial publicity mid-trial, we require the district court to canvass the jury to determine whether any juror has been actually exposed to the publicity, and if so, to evaluate whether this exposure compromises the fairness of the trial. See *State v. Holly*, 2009-NMSC-004, ¶¶ 19-24, 145 N.M. 513, 201 P.3d 844; see also *State v. House*, 1999-NMSC-014, ¶¶ 25-26, 57, 127 N.M. 151, 978 P.2d 967 (recognizing the right to an impartial jury in the context of assessing a motion for change in venue due to pretrial publicity). Here, before the

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recess in deliberations, Defendant expressed concerns that the jury could be exposed to prejudicial publicity during the break. The district court indicated that it would be amenable to canvassing the jury on return from the recess. However, Defendant did not raise the issue again before deliberations resumed. We view Defendant's silence as a tacit admission that the jury was not actually exposed to prejudicial publicity during the break. *Cf. State v. Astorga*, 2015-NMSC-007, ¶ 70, 343 P.3d 1245 (concluding that a defendant "tacitly agree[d] that there was no evidence of actual prejudice" from exposure to pretrial publicity where the defendant did not renew a motion for change of venue after voir dire). Further, we note that the district court instructed the jury at each recess to avoid media coverage about the case and even specifically warned jurors to avoid certain news organizations that were reporting on the proceedings. Defendant therefore has not shown prejudice arising from the jury's exposure to publicity during the break.

{12} In short, we conclude that the circumstances warranted a continuance and the recess did not deny Defendant his right to a fair trial. The recess in deliberations thus fell within the wide "scope of the trial court's inherent authority to control and manage trial proceedings and preserve the integrity of the trial process." *Smith*, 2016-NMSC-007, ¶ 71 (brackets, internal quotation marks, and citation omitted). We therefore decide that the district court did not abuse its discretion by denying Defendant's first motion for mistrial.

2. Defendant's second motion for mistrial

{13} We next consider the district court's decision to deny Defendant's second motion for mistrial and to resume deliberations on November 9, 2022. Defendant asserts that the court's decision to resume deliberations denied him a fair trial because the jury was at risk of rushing to judgment on return from the break. Defendant points out that one juror had a doctor's appointment on the morning of November 10, 2022, and another juror was unavailable on November 11, 2022, due to prearranged travel.

{14} However, before resuming deliberations, the district court asked the

jurors to inform the court if they would feel rushed to reach a verdict. None of the jurors indicated that they would feel rushed. The district court also sought and obtained permission for the jury to deliberate one hour past the courthouse's closing time on November 9, and the jury would have been able to deliberate for almost a full day on November 10 before breaking for a long weekend. Given these circumstances, the district court logically determined that there was sufficient time to resume deliberations on November 9.

{15} The timing of the jury's verdict fails to indicate that the jury felt rushed to reach a verdict. Although the jury returned its verdict shortly after resuming deliberations, the jury had already deliberated for a half day and on strong evidence of Defendant's guilt. More to the point, we review the district court's decision to resume deliberations based on the circumstances as presented at the time of the court's decision, not in hindsight. *Cf. State v. Perez*, 1980-NMSC-143, ¶ 5, 95 N.M. 262, 620 P.2d 1287 (evaluating whether the district court abused its discretion by denying a motion for a continuance based on information available to the court at the time of its decision). We therefore do not see an abuse of discretion in the district court's decision to deny Defendant's second motion for mistrial and resume deliberations on November 9.

{16} In sum, the district court denied Defendant's two motions for mistrial after carefully weighing the facts and circumstances presented. We see no misunderstanding of law in the district court's decisions. We therefore conclude that the district court did not err by denying Defendant's two motions for mistrial.

B. Sufficiency of the Evidence for the Conspiracy Conviction

{17} For his second issue, Defendant asserts that his conviction for conspiracy to commit first degree murder was based on insufficient evidence. In reviewing whether sufficient evidence supports a conviction, we consider "whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *Sutphin*,

1988-NMSC-031, ¶ 21. Our task is to determine whether, on careful scrutiny of the record, "any rational jury could have found each element of the crime to be established beyond a reasonable doubt." *State v. Garcia*, 1992-NMSC-048, ¶ 27, 114 N.M. 269, 837 P.2d 862.

{18} When reviewing the record, we view the evidence in the light most favorable to the jury's verdict, remaining cognizant that "the jury is free to reject Defendant's version of the facts." *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). This Court will "not invade the jury's province as fact-finder by second-guessing the jury's decision concerning the credibility of witnesses, reweighing the evidence, or substituting its judgment for that of the jury." *State v. Garcia*, 2016-NMSC-034, ¶ 15, 384 P.3d 1076 (brackets, internal quotation marks, and citation omitted). And "[w]e are at all times mindful of the jury's fundamental role as factfinder in our system of justice and the independent responsibility of the courts to ensure that the jury's decisions are supportable by evidence in the record, rather than mere guess or conjecture." *State v. Gallegos*, 2011-NMSC-027, ¶ 15, 149 N.M. 704, 254 P.3d 655 (internal quotation marks and citation omitted).

1. Factual background to Defendant's conspiracy conviction

{19} Defendant was convicted of crimes surrounding the murder of his elderly aunt, Josephine Ortega, at her Northeast Albuquerque home. Defendant's ex-girlfriend, Evonne Jaramillo, served as the State's primary witness at trial. According to Jaramillo, Defendant murdered Ortega because he needed money to pay off a \$50,000 drug debt and knew that his aunt kept a large amount of cash in her home.

{20} Jaramillo testified that, on the night of the murder, she drove a rental car to an apartment complex in Ortega's neighborhood. Jaramillo met Defendant there and joined him in his truck. Sitting together in Defendant's truck, Jaramillo gave herself "eighty ccs" of heroin and then administered "a whole syringe full" of methamphetamine to Defendant.

{21} A short while later, they drove over

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to Ortega's house and parked on the street. Defendant then called Ortega using Jaramillo's cell phone, telling Ortega that he was outside and wanted to talk. Ortega, who lived alone, let Defendant inside her home.

{22} Jaramillo testified that she waited outside for approximately twenty-five minutes while Defendant was inside Ortega's home. Jaramillo said she spent most of this time waiting in the truck, but at one point she exited the vehicle, looked around the outside of the house, smoked a cigarette, and urinated next to Ortega's home. Defendant eventually returned wearing latex gloves and carrying a plastic shopping bag. The bag contained approximately \$98,000 in cash, although Jaramillo claimed not to know what was in the bag at the time Defendant left the house.

{23} Defendant and Jaramillo drove off together in Defendant's truck, leaving Jaramillo's rental car at the apartment complex near Ortega's home. Later that evening, while Defendant counted the money in the couple's RV, Jaramillo asked how Defendant got the money from Ortega. Defendant told her that "he had to kill her for it." When Jaramillo stated that she had not heard a gunshot, Defendant replied that he had suffocated Ortega because he did not want the neighbors to hear. Jaramillo testified that Defendant gave her some of the money, paid off his debt, and bought more drugs.

{24} Ortega's friend, Ninfa Martinez, testified that she arrived the next morning to pick up Ortega for a monthly lunch date. Martinez discovered the front door to Ortega's house slightly ajar, the sliding back door wide open, and the bedrooms in disarray. Ortega was found lying face down on the floor of her bedroom. Ortega's hands had been restrained behind her back with zip ties. Two plastic shopping bags and a kitchen trash bag had been placed over her head and secured around her neck with duct tape. A medical examiner concluded that Ortega had asphyxiated due to obstruction of her airway and that the manner of death was homicide.

{25} About a week prior to the murder, Defendant and Jaramillo were recorded on video surveillance shopping together at a Northeast Albuquerque Walmart.

According to a receipt later obtained by investigators, Defendant purchased zip ties, latex gloves, wet wipes, and a flashlight along with a few miscellaneous items. The zip ties were the same brand and type of zip ties that were used to restrain Ortega. At trial, Jaramillo admitted to shopping with Defendant but testified that she did not know what Defendant was purchasing at the time. However, surveillance videos show Jaramillo pushing a nearly empty cart with the zip ties visible from checkout and later leaving the store carrying a plastic shopping bag with the zip ties poking out from the top.

{26} Also about a week prior to the murder, Defendant visited Ortega for Mother's Day, bringing her donuts and flowers. It had been around two years since Defendant had last visited. Jaramillo also waited outside Ortega's home in Defendant's truck during this Mother's Day visit.

2. Defendant's conspiracy conviction is supported by substantial evidence

{27} We now consider whether the record supports Defendant's conviction for conspiracy to commit willful and deliberate first degree murder. "Conspiracy consists of knowingly combining with another for the purpose of committing a felony within or without this state." NMSA 1978, § 30-28-2(A) (1979). "The gist of conspiracy under the statute is an agreement between two or more persons to commit a felony." *Gallegos*, 2011-NMSC-027, ¶ 25 (internal quotation marks and citation omitted). "Conspiracy is a specific intent crime." *State v. Varela*, 1999-NMSC-045, ¶ 42, 128 N.M. 454, 993 P.2d 1280. "In order to be convicted of conspiracy, the defendant must have the requisite intent to agree and the intent to commit the offense that is the object of the conspiracy." *Gallegos*, 2011-NMSC-027, ¶ 25 (internal quotation marks and citation omitted). "[I]t is not necessary in order to establish a conspiracy to prove a formal agreement to accomplish the illegal act." *State v. Deaton*, 1964-NMSC-062, ¶ 5, 74 N.M. 87, 390 P.2d 966. "Due to the typically clandestine nature of conspiracies, the prosecution's proof of a conspiracy is seldom direct evidence of the agreement." *State v. Saiz*, 2017-NMCA-072, ¶ 24, 404 P.3d 422. A conspiracy, therefore, may be established

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by circumstantial evidence, as "[g]enerally, the agreement is a matter of inference from the facts and circumstances." *Gallegos*, 2011-NMSC-027, ¶ 26 (internal quotation marks and citation omitted).

{28} The parties agree that the jury instruction on Defendant's conspiracy charge is law of the case and controls our inquiry into the sufficiency of the evidence supporting his conviction. *State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409. As relevant to our analysis, the jury was instructed as follows:

For you to find the defendant guilty of conspiracy to commit first degree murder by a deliberate killing as charged in Count 2 or conspiracy to commit kidnapping as charged in Count 4 or conspiracy to commit aggravated burglary as charged in Count 6, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant and another person by words or acts agreed together to commit first degree murder by a deliberate killing or kidnapping or aggravated burglary;

2. The defendant and the other person intended to commit first degree murder by a deliberate killing or kidnapping or aggravated burglary;

3. This happened in New Mexico on or between the 18th and 19th days of May, 2017.

The jury found that Defendant had conspired to commit first degree murder, kidnapping, and aggravated burglary. Consistent with our case law, the district court vacated the conspiracy to commit kidnapping and conspiracy to commit aggravated burglary convictions on double jeopardy grounds, leaving in place Defendant's conviction for conspiracy to commit first degree murder by deliberate killing. See *Gallegos*, 2011-NMSC-027, ¶ 55 (explaining that the Legislature intended to establish "a rebuttable

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presumption that multiple crimes are the object of only one, overarching, conspiratorial agreement subject to one, severe punishment set at the highest crime conspired to be committed”).

{29} Defendant asserts that insufficient evidence supports the jury’s finding that Defendant and another person agreed to commit deliberate murder. He emphasizes testimony by Jaramillo where she claimed not to know that Defendant was going to murder Ortega. For example, Jaramillo testified that she did not pay attention to the items Defendant purchased at Walmart that were likely used in the killing, that she did not enter Ortega’s home on the night of the murder, and that she did not know what was in the plastic shopping bag Defendant was carrying when he returned to his truck. Defendant also referenced other parts of Jaramillo’s testimony where she suggested that she only learned that Defendant killed Ortega later that evening, when she asked him how he got the money. Defendant argues that this testimony shows that he and Jaramillo did not agree to deliberately kill Ortega.

{30} However, Jaramillo’s testimony claiming ignorance of Defendant’s actions was contradicted by other evidence of the couple’s activities before and during the night of the murder. For example, Jaramillo testified that she knew Defendant’s motive for killing Ortega. Defendant told Jaramillo that he owed approximately \$50,000 to a “street brother” named Jesse and that Defendant’s immediate family was in danger if he did not repay the debt. He also told Jaramillo that he knew that Ortega kept a large amount of cash in her home.

{31} The State also submitted evidence showing that Jaramillo helped Defendant plan to carry out the murder. There was testimony that Defendant visited his aunt for the first time in two years about a week prior to the murder. Jaramillo testified that she waited outside in Defendant’s truck during this visit. The jury could reasonably infer that Defendant and Jaramillo visited Ortega in preparation for the murder.

{32} Also, around a week prior to the murder, Defendant and Jaramillo shopped at a Northeast Albuquerque Walmart and purchased items that the jury could

reasonably infer were used in the murder, including the zip ties used to restrain Ortega. Although Jaramillo claimed that she did not know what Defendant was purchasing, video surveillance shows that Jaramillo pushed a nearly empty cart with the items through the store, was with Defendant as he paid for the items at checkout, and carried the purchases out of the store. In view of this video evidence, the jury could have reasonably rejected Jaramillo’s claim that she was oblivious to what Defendant was purchasing.

{33} Defendant’s and Jaramillo’s activities on the night of the murder also support an agreement to deliberately kill Ortega. Jaramillo testified that she drove separately to meet Defendant in Ortega’s neighborhood. She then joined Defendant in his truck, where they got high together and drove to Ortega’s house. Defendant borrowed Jaramillo’s cell phone to call Ortega, asking if he could come inside. Ortega knew the Defendant, as he was her nephew and had recently visited. Defendant made no efforts to conceal his identity when entering Ortega’s home, creating a reasonable inference that Defendant entered the home intending to kill his aunt after robbing her since she knew him and would be able to identify him.

{34} Jaramillo testified that she waited in Defendant’s truck for nearly half an hour while Defendant was in Ortega’s home. Although Jaramillo asserted that she did not go inside the house, Jaramillo admitted that she smoked a cigarette which was found on Ortega’s back patio. Jaramillo also admitted that she urinated next to Ortega’s home. According to Ortega’s friend who discovered Ortega the next morning, the sliding back doors to the house were wide open the morning after the murder. Based on this evidence, the jury could reasonably infer that Jaramillo either went inside Ortega’s home or at least went close enough to know what Defendant was doing inside the home.

{35} Jaramillo also testified that, after the murder, Defendant joined her in the truck carrying a plastic bag containing “hundred-dollar bills.” Jaramillo claimed not to know what was in the bag at the time; yet Jaramillo later accepted some of

the money when Defendant gave it to her. Jaramillo also drove off with Defendant in his truck, abandoning her rental car at a nearby apartment complex. The State’s theory at trial was that Jaramillo served as Defendant’s lookout. We agree that this was a reasonable inference based on all of the evidence presented. Indeed, we discern that the jury likely believed Jaramillo insofar as she implicated Defendant in the murder, but disbelieved Jaramillo’s claims of ignorance about the murder as merely an attempt to minimize her own culpability. We defer to the jury’s determinations of witness credibility. *See Garcia*, 2016-NMSC-034, ¶ 15.

{36} Viewing the record in favor of the jury’s verdict, sufficient evidence shows beyond a reasonable doubt that Defendant and Jaramillo conspired to deliberately murder Ortega. From the testimony and exhibits presented, the jury could reasonably infer that Defendant and Jaramillo both knew of and participated in a scheme that involved burglarizing, kidnapping, and killing Ortega in order to obtain the cash in her home, and we defer to such reasonable inferences. *See State v. Sena*, A-1-CA-38819, mem. op. ¶ 5 (N.M. Ct. App. Oct. 22, 2020) (showing deference to a jury’s reasonable inference of a conspiracy based on circumstantial evidence alone); *Gallegos*, 2011-NMSC-027, ¶ 26 (“The agreement need not be verbal, but may be shown to exist by acts which demonstrate that the alleged co-conspirator knew of and participated in the scheme.” (internal quotation marks and citation omitted)). We therefore conclude that the State presented sufficient evidence on which the jury could find that Defendant and Jaramillo conspired to commit first degree murder by deliberate killing.

C. Ineffective Assistance of Counsel

{37} Defendant raises ineffective assistance of counsel as his third and final issue on appeal. Specifically, Defendant contends that counsel was deficient because three months was an insufficient amount of time to prepare for his defense.

{38} Defendant was charged with crimes associated with Ortega’s murder on April 3, 2018. Throughout most of the pretrial proceedings, Defendant was represented

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by privately retained counsel. On June 30, 2022, defense counsel moved to withdraw based on a concurrent conflict of interest that had arisen while the case was pending. The district court granted the motion to withdraw over Defendant's objection and appointed the Law Offices of the Public Defender to represent Defendant. Trial counsel entered her appearance on July 26, 2022. Soon after, counsel moved to continue a September 2022 trial setting and asked that trial be rescheduled for November 1, 2022, or later. The district court subsequently scheduled trial for October 25 through November 7, 2022.

{39} Defendant concedes that the district court effectively granted his counsel's motion to continue with this late October trial setting. Thus, we do not consider whether denial of a continuance was an abuse of discretion or resulted in the denial of effective assistance of counsel. *See State v. Salazar*, 2007-NMSC-004, ¶¶ 13-14, 141 N.M. 148, 152 P.3d 135 (articulating the standard of review for claims that the district court abused its discretion in denying a continuance and that the denial of a continuance led to ineffective assistance of counsel); *see also State v. Brazeal*, 1990-NMCA-010, ¶ 15, 109 N.M. 752, 790 P.2d 1033 (evaluating whether the denial of a continuance amounted to ineffective assistance of counsel). Rather, Defendant asserts that three months was insufficient time for trial counsel to prepare to defend him because he was facing capital charges, the State's case relied on multiple witnesses and hundreds of exhibits, and trial counsel had other trials scheduled in the three-month time period between her entry of appearance and trial.

{40} An ineffective assistance of counsel claim has two components: first, the defendant must show that "counsel's performance was deficient," and second, the defendant must show that counsel's "deficient performance prejudiced the defense." *State v. Hunter*, 2006-NMSC-043, ¶ 12, 140 N.M. 406, 143 P.3d 168 (internal quotation marks and citation omitted). Counsel's performance was deficient if the performance "fell below an objective standard of reasonableness . . . tak[ing] into account all of the circumstances

surrounding the defense." *Lytle v. Jordan*, 2001-NMSC-016, ¶ 26, 130 N.M. 198, 22 P.3d 666 (internal quotation marks and citation omitted). Counsel's deficient performance prejudiced the defendant if "there is a reasonable probability that, but for the deficient performance, the result of the proceeding would have been different." *Id.* ¶ 27. A defendant usually bears the burden of establishing both deficiency and prejudice in an ineffective assistance of counsel claim; however, we will presume prejudice on rare occasions where it is unlikely that any counsel, though fully competent, would be able to render effective assistance. *State v. Grogan*, 2007-NMSC-039, ¶ 12, 142 N.M. 107, 163 P.3d 494; *United States v. Cronin*, 466 U.S. 648, 659-60 (1984). For example, we presume prejudice when a defendant was completely denied the assistance of counsel at a critical stage of proceedings, when counsel entirely "fail[ed] to subject the prosecution's case to meaningful adversarial testing," or where the defendant was "denied the right of effective cross-examination." *Grogan*, 2007-NMSC-039, ¶ 12 (internal quotation marks and citation omitted); *see also State v. Hildreth*, 2022-NMSC-012, ¶ 32, 506 P.3d 354; *Cronin*, 466 U.S. at 659.

{41} After reviewing the record, we conclude that Defendant has not shown his trial counsel's performance was deficient. Although counsel was appointed only three months prior to trial, the case was relatively straightforward and trial counsel had the benefit of prior counsel's preparations. *Cf. State v. Hernandez*, 1993-NMSC-007, ¶ 24, 115 N.M. 6, 846 P.2d 312 (listing factors for considering ineffective assistance of counsel claim based on denial of a continuance, including "the amount of time available to prepare a defense, the complexity of the issues involved in the case, the experience of trial counsel, and the reasons proffered by trial counsel for requesting a continuance"). Trial counsel also pursued a reasonable defense strategy, arguing in closing that Jaramillo carried out the murder with other accomplices and only incriminated Defendant in exchange for a plea deal. And trial counsel also effectively cross-examined the State's witnesses and appeared to be well versed in the issues and evidence presented

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in the case. We therefore see no deficient performance arising from the amount of time that counsel had to prepare for trial.

{42} Defendant also has not shown that he was prejudiced by any deficient performance, and we do not view three months as being, per se, an insufficient amount of time to prepare for trial such that we would presume prejudice. For example, in *Brazeal*, our Court of Appeals concluded that a week was sufficient time for counsel to prepare because it "was a simple case, defense counsel was experienced, and defense counsel was greatly aided in preparation by the prior work on the case." 1990-NMCA-010, ¶ 20. Similarly, the State's case against Defendant was relatively simple, trial counsel was experienced, and counsel was also aided by prior counsel's preparations. Thus, Defendant has not sustained his ineffective assistance of counsel claim.

III. CONCLUSION

{43} The district court did not abuse its discretion in denying Defendant's two motions for mistrial. Defendant's conspiracy conviction is supported by sufficient evidence of an agreement to commit first degree murder. Defendant has not shown that his counsel was deficient or that he was prejudiced by counsel's deficient performance. We therefore affirm Defendant's judgment and sentence and remand this matter to the district court.

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

DAVID K. THOMSON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

JULIE J. VARGAS, Justice

**C. SHANNON BACON, Justice,
dissenting**

BACON,

Justice (dissenting in part).

{45} The State's evidence supporting the charge of conspiracy to commit first-degree murder by deliberate killing was thin. Because the evidence was purely circumstantial, the jury necessarily drew inferences to arrive at facts of consequence. The validity of those inferences gives me pause. They were not reasonable ones grounded in logic, sense, or reason.

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Instead, each necessary inference was either an implausible one based on overly broad generalizations and conjecture, or a plausible-but-improbable one selected from equally plausible competing inferences. So, although I join the majority in denying Defendant's claims that he was deprived of a fair trial and received ineffective assistance of counsel, I respectfully dissent from its holding that there was sufficient evidence supporting Defendant's conviction for conspiracy to commit first-degree murder by deliberate killing.

I. SUFFICIENCY OF THE EVIDENCE

{46} This Court follows a deceptively simple test to determine whether a criminal conviction is supported by sufficient evidence. First, the evidence is viewed in the light most favorable to the verdict. *State v. Trossman*, 2009-NMSC-034, ¶ 16, 146 N.M. 462, 212 P.3d 350. Then, this Court must make “a legal determination of whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt.” *Id.* (quoting *State v. Lopez*, 2008-NMCA-111, ¶ 14, 144 N.M. 705, 191 P.3d 563). Although appellate courts are highly deferential to a jury's decisions, it is “the independent responsibility of the courts to ensure that the jury's decisions are supportable by evidence in the record, rather than mere guess or conjecture.” *State v. Vigil*, 2010-NMSC-003, ¶ 4, 147 N.M. 537, 226 P.3d 636 (internal quotation marks and citation omitted). This principle

necessarily requires a reviewing court to distinguish between conclusions based on reasonable inferences and those based on speculation—not always a straightforward task. See *Romero v. State*, 1991-NMCA-042, ¶ 38, 112 N.M. 291, 814 P.2d 1019 (“[T]he line between speculation and reasonable inference is not always clear.”), *rev'd in part on other grounds*, 1991-NMSC-071, 112 N.M. 332, 815 P.2d 628.

{47} In determining the line between reasonable inference and speculation, we have recognized “[e]vidence equally consistent with two hypotheses tends to prove neither . . . [and] does not, without more, provide a basis for adopting either one—especially beyond a reasonable doubt.”¹ *State v. Garcia*, 1992-NMSC-048, ¶ 32, 114 N.M. 269, 837 P.2d 862 (internal quotation marks and citation omitted). Put another way, if evidence plausibly, but could not *probably*, lead to a particular inference because the evidence—in the light most favorable to the verdict—equally supports multiple inferences, then any conclusion by the trier of fact would necessarily entail guesswork. See *State v. Stephenson*, 2017-NMSC-002, ¶ 26, 389 P.3d 272 (“Evidence from which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition.” (text only)² (citation omitted)). *Probability* is the ingredient that separates a reasonable inference from speculation. See *United States v. Summers*, 414 F.3d 1287, 1295 (10th Cir. 2005) (“An inference is reasonable if it flows from logical and probabilistic reasoning, i.e.,

with experience serving as the touchstone, a jury's inference is permissible where there is a *reasonable probability* that the conclusion flows from the facts in evidence.” (emphasis added) (internal quotation marks and citation omitted)).

{48} Because this Court must not reweigh evidence nor substitute our judgment for that of the trier of fact, see *State v. Garcia*, 2005-NMSC-017, ¶ 12, 138 N.M. 1, 116 P.3d 72, the question for us is whether a reasonable trier of fact *could* find the inference to be probably true *when viewing the evidence in the light most favorable to the verdict*.³ Cf. *Huddleston v. United States*, 485 U.S. 681, 690 (1988) (“In determining whether the [g]overnment has introduced sufficient evidence to meet [Federal] Rule [of Evidence] 104(b), the trial court neither weighs credibility nor makes a finding that the [g]overnment has proved the conditional fact by a preponderance of the evidence. The court simply examines all the evidence in the case and decides *whether the jury could reasonably find the conditional fact . . . by a preponderance of the evidence*.” (emphasis added)); see generally David S. Schwartz, *A Foundation Theory of Evidence*, 100 Geo. L.J. 95, 126 (2011) (“Indeed, foundation is the burden of production applied on a more specific level of detail, to items of evidence rather than to a claim as a whole. That accounts for why the standard is the same for both: evidence sufficient to support a finding.”).

{49} In this case, in order for the State to prove conspiracy to commit murder it needed to prove Defendant agreed with

¹ This concept is divisive, but maintains acceptance in a number of jurisdictions. See *Linton v. Saba*, 812 F.3d 112, 123 (1st Cir. 2016) (“Where any reasonable jurist would conclude that evidence viewed in the light most favorable to the verdict gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence . . . this Court must reverse because equipoise is tantamount to reasonable doubt.” (internal quotation marks and citation omitted)); *United States v. Weidner*, 437 F.3d 1023, 1032 (10th Cir. 2006) (“[W]here such evidence is equally consistent with both guilt and innocence the conviction cannot be sustained.” (internal quotation marks and citation omitted)); *United States v. Louis*, 861 F.3d 1330, 1333 (11th Cir. 2017) (“If the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, then a reasonable jury must necessarily entertain a reasonable doubt.” (text only) (citation omitted)). However, it is not without its criticisms. See *State v. Wall*, 2020 UT App 36, ¶ 54, 460 P.3d 1058 (“[T]he fact that we can identify an equally plausible alternative inference is not nearly enough to set [a] verdict aside.” (second alteration in original) (internal quotation marks and citation omitted)); *State v. Chaney*, 967 S.W.2d 47, 54 (Mo. 1998) (en banc) (“Because the equally valid inferences rule is at war with the due process standard governing an appellate court's review of the sufficiency of evidence, the equally valid inferences rule should no longer be applied.”).

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.

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another to commit first-degree murder by deliberate killing, and Defendant and another intended to commit first-degree murder by deliberate killing. The majority is right in concluding that the State presented sufficient evidence to prove Defendant and another, Jaramillo, arrived at an agreement to commit *some* act. However, the State did not present sufficient evidence to show *murder* was the objective of the agreement, or Jaramillo intended to commit murder.

{50} As discussed next, each of the evidentiary components of the State's case—viewed individually and then as a whole—falls short of establishing murder was the objective of the agreement between Defendant and Jaramillo.

III. ANALYSIS

A. Evidentiary Components

1. Jaramillo's knowledge of Defendant's motive

{51} Jaramillo testified that Defendant told her he was in debt for \$50,000 and his aunt kept a large amount of cash in her house. While evidence of motive can be used to support an inference of intent, mere *knowledge of* motive does little to prove agreement or intent. See *State v. Rojo*, 1999-NMSC-001, ¶ 24, 126 N.M. 438, 971 P.2d 829 (concluding the physical evidence supported deliberate intent “[w]hen combined with the evidence concerning [the d]efendant's motive for the killing”); *State v. Motes*, 1994-NMSC-115, ¶ 14, 118 N.M. 727, 885 P.2d 648 (considering evidence of motive in assessment of whether the defendant had a deliberate intent to kill). Even though Jaramillo knew *why* Defendant may have wanted to kill the victim, it does not follow that she knew Defendant intended to do so, nor does it lead to a plausible inference that she shared that

motive. Further, considering Defendant's motive was to get money, the State did not introduce evidence to show that killing was a necessary or preferred method to accomplish the motive, and so there was a gap between the motive of theft and the act of killing left unfilled by the State.

2. Jaramillo accompanied Defendant to visit the victim a week prior

{52} The majority concludes because Jaramillo accompanied Defendant to visit the victim a week prior to the murder, a reasonable inference could be that Jaramillo agreed to and intended to commit murder. While I agree that Jaramillo's presence during this visit is sufficient to establish Defendant and Jaramillo had some sort of agreement to commit a crime involving the victim, nothing about the joint visit could reveal the probable crime. The State presented no evidence that could support a logical link between the visit to the victim and the planning of her murder, as opposed to planning any other criminal act against her.

3. Jaramillo was with Defendant when he purchased zip ties

{53} The State's evidence revealed, despite her assertions to the contrary, Jaramillo knew Defendant purchased zip ties and those zip ties could have been the same ones used in the murder. While Jaramillo's knowledge of the purchase of zip ties could lead to an inference that she and Defendant agreed to enact some criminal plan, zip ties do not prove murder could have been the likely plan. Zip ties, unlike a gun or hatchet or poison, could not lead to a probable inference of killing because many crimes against people involve restraint or fastening, and the State presented no evidence that Jaramillo knew or intended the zip ties

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would be used for such purposes during the course of a murder. That the zip ties were eventually used by Defendant in the murder could not support a probable inference that Jaramillo knew or intended they would be used in such a way, as opposed to being used for any other crime involving restraint or fastening, because she was not present during the killing.

4. Jaramillo drove separately to the victim's neighborhood

{54} In its briefing, the State characterized the fact that Jaramillo drove to the victim's neighborhood separately as “odd.” Oddities are the stuff of reasonable suspicion, not proof beyond a reasonable doubt. Characterizing the behavior as “odd” revealed the State itself could not find the logical link between driving separately and Jaramillo's agreement and intent to commit murder. The State's inability to articulate a logical link is understandable because there is not one. While driving separately and meeting at the same location could clearly show a scheme and plan, nothing about it makes murder a plausible plan. Without more, carpooling only circumstantially proves agreement, but has no tendency to show the objective of the agreement was murder.

5. Defendant and Jaramillo got high in Defendant's truck

{55} Like the fact that Jaramillo drove separately, the State characterized Defendant's and Jaramillo's drug use prior to the murder as “odd.” For this fact, I disagree with that characterization, and believe drug use could have a reasonable explanation: viewed in the light most favorable to the State, drug use could circumstantially show Defendant and Jaramillo were preparing to commit a crime, and they decided to alter

³ Our Court of Appeals has often said “[w]hen a defendant argues that the evidence and inferences present two equally reasonable hypotheses, one consistent with guilt and another consistent with innocence, our answer is that by its verdict, the jury has necessarily found the hypothesis of guilt more reasonable than the hypothesis of innocence.” *State v. Montoya*, 2005-NMCA-078, ¶ 3, 137 N.M. 713, 114 P.3d 393. This is true, but the analysis does not stop there. The duty of this Court is to determine whether any rational trier of fact could have found the hypothesis of guilt more reasonable than other plausible alternatives. If, after looking at the evidence relied upon to support the verdict in the light most favorable to the verdict, we find—based on logic and reason—such evidence could not support a conclusion that an inference is probably true because other equally plausible alternatives exist, then a trier of fact would not be permitted to make the inference. This does not require a reweighing of the evidence, and is simply another way of asking whether the evidence was sufficient. See *State v. Vigil*, 1990-NMSC-066, ¶ 6, 110 N.M. 254, 794 P.2d 728 (describing the reasonable-hypothesis-of-innocence analysis as “nothing more than an application of the substantial evidence rule” (internal quotation marks and citation omitted)); but see Edward J. Imwinkelried, *The Legal Sufficiency Analysis of Genuine Battles of the*

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their states of mind in order to help them do it. However, even assuming Defendant and Jaramillo intended to alter their states of mind with drugs, nothing about the drug use itself could reveal they both likely intended to commit murder rather than any other crime.

6. The murder

{56} I am cautious when examining the probative value of after-the-fact evidence because of its limited value in demonstrating earlier intent, in addition to the simple fact that hindsight bias can interfere with the reasoning process. That said, and with regard to the issues at hand, I accept that in certain circumstances the act of murder may circumstantially prove conspiracy to commit murder. *See State v. Torres*, 2018-NMSC-013, ¶ 51, 413 P.3d 467 (holding sufficient evidence supported conspiracy to commit murder when, *inter alia*, Defendant “went to the shooting scene [with two co-conspirators] before the shots were fired, [then] he ran back from the scene smelling like ‘burned matches’ immediately after the shots were fired”); *State v. Lopez*, 2005-NMSC-036, ¶ 25, 138 N.M. 521, 123 P.3d 754 (holding sufficient evidence supported conspiracy to commit first-degree felony murder when Defendant and co-conspirator “threw [the victim] into the well while he was alive . . . that they carefully, deliberately, even painstakingly first opened, then covered, and finally re-sealed the well supports an inference that they reached an agreement to kill [the victim] in the course of the robbery and that both intended his death”); *State v. Nieto*, 2000-NMSC-031, ¶ 29, 129 N.M. 688, 12 P.3d 442 (holding sufficient evidence supported conspiracy to commit first-degree murder when the defendant, *inter alia*, incapacitated a witness while co-conspirators murdered and robbed victims). In this case, however, the act of murder itself was not probative of Defendant’s and Jaramillo’s agreement and intent to commit murder because of the way the murder occurred. The State presented no evidence showing Jaramillo did anything more than wait outside the house to stand lookout. Standing lookout could not lead to a probable inference that Jaramillo agreed and intended to commit murder because the concept of having a

lookout is not logically connected with murder more than any other crime or nefarious act. Considering the State’s motive evidence, the clear alternative front-runner would be robbery. Further, the act of murder was done completely by Defendant with no physical help from Jaramillo, and outside her presence. The State needed to put forward any fact about the murder probative of *mutual* agreement and intent to *commit murder specifically*. However, no such fact was presented, and thus the evidence left open a gap wherein inferences of agreement and intent to commit non-murder were equally as plausible as murder. Accordingly, the murderous act itself was not sufficient to prove it was the intended objective of any agreement between Defendant and Jaramillo. *See Summers*, 414 F.3d at 1295, 1297 (holding “evidence of mere association or presence, *even when coupled with evidence of flight*, is not enough to support a conspiracy conviction,” where government had to prove elements of “(1) an agreement between two or more persons to break the law, (2) an overt act in furtherance of the conspiracy’s objects, and (3) that the defendant willfully joined in the conspiracy” (internal quotation marks and citation omitted)).

7. Conduct after the murder

{57} A defendant’s state of mind *prior* to an act is the central inquiry of a crime based on deliberate intent. *See* Rule 14-201 NMRA (“The word deliberate means arrived at or determined upon as a result of careful thought and the weighing of the consideration for and against the proposed course of action.”). The State argues, and the majority agrees, Jaramillo’s conduct following the murder circumstantially proves agreement and intent to commit murder. True, conduct following a crime can, in some instances, prove premeditation or deliberation by revealing a defendant’s state of mind prior to the crime. *See Torres*, 2018-NMSC-013, ¶¶ 6, 51 (holding that a co-conspirator’s statement to the defendant saying, “Oh we got the wrong . . . guy,” was sufficient, *inter alia*, to prove conspiracy to commit first-degree murder). However, in this case Jaramillo’s conduct after the murder showed nothing to prove her state of mind prior to the murder, and I am reluctant

to assign meaning to after-the-fact conduct that lacks a logical connection to the crime charged.

{58} First, Jaramillo drove away from the victim’s house with Defendant, abandoning her rental car nearby. Assigning some further reason or significance to this act could only amount to pure speculation because abandoning a car has no logical link to a prior agreement nor intent to commit murder. At most, it could show a consciousness of guilt as to some involvement in the crime, but it is not indicative of Jaramillo’s state of mind prior to the crime. *See Garcia*, 1992-NMSC-048, ¶ 31 (holding the defendant’s attempt to conceal his identity from police “did not give rise to any inference as to his state of mind *before* the [killing]”).

{59} Second, Jaramillo accepted some of the stolen money when Defendant gave it to her. Even viewing this evidence in the light most favorable to the State, which at most could support the conclusion that Jaramillo knew Defendant intended to steal money from the victim, the fact that Jaramillo accepted some of it does not plausibly support the conclusion that she agreed, intended, or even knew Defendant was going to kill the victim. Nothing about accepting the fruits of the crime indicated, in this case, Jaramillo’s state of mind prior to the crime. *See id.*

B. The Evidence as a Whole

{60} Even though no individual evidenced fact suggested Defendant and Jaramillo both agreed and intended to commit murder, sufficiency review requires evidence be viewed as a whole. *State v. Gutierrez*, 2021-NMSC-008, ¶ 61, 482 P.3d 700 (“We view the evidence as a whole and in the light most favorable to the [s]tate.”); *State v. Graham*, 2005-NMSC-004, ¶ 13, 137 N.M. 197, 109 P.3d 285 (“Th[e] divide-and-conquer approach is not contemplated in appellate review for sufficiency of the evidence.”). In this case, the evidence as a whole could not lead a trier of fact to conclude Jaramillo conspired with Defendant to commit murder without filling in gaps with speculation. The primary gap the State did not—or could not—fill involved showing what crime, specifically, Jaramillo agreed to and intended to commit. While the triers of

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fact could have drawn reasonable inferences about Jaramillo's agreement and intent to commit some criminal act, any trier of fact would have needed to look beyond the evidence in order to convict for conspiracy to commit murder. See *State v. Slade*, 2014-NMCA-088, 331 P.3d 930 (stating while permissible logical inferences may be drawn from the facts, if they "must be buttressed by surmise and conjecture" in order to convict, the conviction cannot stand" (quoting *State v. Tovar*, 1982-NMSC-119, ¶ 8, 98 N.M. 655, 651 P.2d 1299)). Leading up to the killing, there was not a single fact that could show Jaramillo probably agreed to or intended to commit murder more than any other potential crime. Because

a murder eventually occurred, it would be tempting for any trier of fact to work backwards and view every act between Defendant and Jaramillo to fit the outcome. Outcome-driven reasoning, however, is highly susceptible to conflating correlation with causation, which can lead to erroneous outcomes based not on logical inferences, but speculation that conveniently fits the verdict. That is what occurred in this case. Whatever happened in the house between Defendant and the victim was inevitably going to be taken as the purpose of a conspiracy between Defendant and Jaramillo. While the evidence supported the jury's conclusion that a conspiracy indeed

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existed, the State did not present sufficient evidence to show murder was the objective of the conspiracy. When a conclusion drawn from evidence is implausible, or plausible but improbable because equally (or *more*) plausible alternatives exist, speculation, guesswork, and conjecture are necessary to support a finding of guilt beyond a reasonable doubt. See Schwartz, *supra*, at 146 ("Plausible fictionalizing" is a very good definition of speculation."). Because the jury in this case necessarily speculated to reach its guilty verdict on the charge of conspiracy to commit first-degree murder by deliberate killing, I respectfully dissent.

C. SHANNON BACON, Justice

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-026
No. S-1-SC-39065 (filed April 7, 2025)

**BLANCHARD CORONA
RANCH, LLC,**

Plaintiff-Respondent,

v.

STEPHANIE GARCIA RICHARD,

Commissioner of Public Lands of the State of New Mexico,

Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

John P. Sugg, District Judge

New Mexico State Land Office
Ari Biernoff, General Counsel
John L. Sullivan, Senior Counsel
Richard H. Moore, Associate Counsel
Santa Fe, NM

for Petitioner

Domenici Law Firm, P.C.
Pete V. Domenici, Jr.
Lorraine Hollingsworth
Albuquerque, NM

for Respondent

OPINION

VARGAS, Justice.

{1} This case asks us to clarify what it means for a suit to have an “interest in lands” as its object under New Mexico’s venue statute. *See* NMSA 1978, Section 38-3-1(D)(1) (1988). In the underlying suit, Blanchard Corona Ranch, LLC (Blanchard) seeks a judgment declaring that the Commissioner of Public Lands of the State of New Mexico, Stephanie Garcia Richard (the Commissioner) violated State Land Office rules when she issued two wind energy leases¹ that overlapped with some of the land she had previously leased to Blanchard for grazing. On interlocutory appeal, the Commissioner challenges the district court’s order that venue is proper in Lincoln County under Section 38-3-1(D)(1). *See* § 38-3-1(D)(1) (“When lands or any

interest in lands are the object of any suit in whole or in part, the suit shall be brought in the county where the land or any portion of the land is situate.” (emphasis added)).

{2} Adopting the holding in *Kaywal, Inc. v. Avangrid Renewables, LLC*, 2021-NMCA-037, ¶ 59, 495 P.3d 550, we conclude that venue is improper in Lincoln County under Section 38-3-1(D)(1) because the relief that Blanchard seeks does not implicate an interest in lands as its object. We reverse the district court’s order and remand to dismiss the case without prejudice for improper venue.

I. BACKGROUND

{3} In 2019, the Commissioner renewed Agricultural Lease No. GM-1324-0001 (the Agricultural Lease) between the Commissioner and Blanchard, providing for grazing rights on 3478.40 acres of state trust land in Lincoln County for a five-year

term. Blanchard’s grazing rights are subject to reservations detailed in the Agricultural Lease. The Commissioner reserved the right to execute additional leases on the same land for mining and extracting purposes; to issue permits for utility easements and rights-of-way; and to execute leases “for renewable energy projects on the land.” Section 21 of the Agricultural Lease details the reservation regarding renewable energy projects:

In addition to the reservations stated in [the Lease], . . . Lessor reserves the right to execute leases for renewable energy projects on the land hereby leased, lessee consents to any such lease and agrees to cooperate in any such lease, and lessee’s failure to do so shall constitute a violation [of the Lease].

{4} On February 20, 2020, Blanchard filed a complaint seeking declaratory and injunctive relief related to the Commissioner’s auctioning of two wind energy leases that overlapped with some of the land leased to Blanchard under the Agricultural Lease. On June 1, 2020, while the claim above was pending, and with the auction process complete, the Commissioner issued two wind energy leases “for the planning and development of a wind power facility” for a term of fifty-five years on land that overlapped with several hundred acres of the Agricultural Lease. The two wind energy leases authorize the lessee to use the leased land for wind energy development projects.

{5} Blanchard dismissed its initial complaint and subsequently re-filed on September 10, 2020, forming the basis of this appeal. In its new complaint, Blanchard requested that the district court enter a judgment declaring that the Commissioner violated the requirements of State Land Office rules, 19.2.9.21(A)-(B) NMAC, when she failed to (1) “make the necessary determinations . . . that the proposed [wind energy] leases will not unreasonably interfere with [Blanchard’s] authorized uses under [the] existing [Agricultural Lease]”;

¹ The parties interchangeably refer to the two wind energy leases as the “renewable energy leases,” “business leases,” “commercial wind leases,” and “commercial leases.” For consistency, we refer to them as the “wind energy leases.”

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(2) “provide notice to [Blanchard] that new [wind energy] leases were issued for lands that were already subject to [the] existing [Agricultural Lease]”; (3) include “the necessary protections for the existing [A]gricultural [L]ease in the new [wind energy] leases”; and (4) “obtain [Blanchard’s] written consent to the new [wind energy] leases.” Lastly, Blanchard asked the district court to declare that Section 21 of the Agricultural Lease, reserving the right to execute leases for renewable energy projects to the Commissioner, is “void and unenforceable” because it also violates State Land Office rules.

{6} The Commissioner moved to dismiss the complaint, alleging, in pertinent part, that venue in Lincoln County was improper. The Commissioner argued that Section 38-3-1(D)(1) does not control because the object of the suit “is not to determine ownership or possessory interest in real estate but to challenge the lawfulness of the Commissioner’s leasing process.” The district court denied the Commissioner’s motion to dismiss, concluding that the declaratory judgment action “involves [Blanchard’s] interest in land located in Lincoln County . . . [because Blanchard] seeks a declaration from the [c]ourt as to what impact the [wind energy] leases issued to [the wind energy company] have on [its] interest.”

{7} In the Court of Appeals, the Commissioner filed a writ of error and an application for interlocutory appeal. The Court of Appeals denied both. The Commissioner then filed a writ of certiorari with this Court. This Court granted certiorari on one question: whether this suit has as its object an interest in lands under Section 38-3-1(D)(1) of New Mexico’s venue statute.

II. DISCUSSION

A. Standard of Review

{8} The Commissioner asks the Court to reverse the district court and dismiss this case without prejudice for improper venue. “A motion to dismiss for improper venue involves questions of law that we review *de novo*.” *Gardiner v. Galles Chevrolet Co.*,

2007-NMSC-052, ¶ 4, 142 N.M. 544, 168 P.3d 116. In construing New Mexico’s venue statute, “we keep in mind that our venue rules are meant to balance the interests of defendants to be sued in a convenient forum against the interests of plaintiffs to choose the forum in which to sue.” *Id.*

B. New Mexico Venue Statute

{9} The Commissioner appeals the district court’s order concluding that venue is proper in Lincoln County. Instead, the Commissioner argues that venue is proper in the county where Plaintiff resides (Bernalillo County) or the county where Defendant resides (Santa Fe County), per Section 38-3-1(G). Section 38-3-1(G) states that “[s]uits against any state officers as such shall be brought in the court of the county in which their offices are located, at the capital or in the county where a plaintiff, or any one of them in case there is more than one, resides.”

{10} Blanchard, on the other hand, argues that venue is proper in Lincoln County, the county where the land in question is situated pursuant to Section 38-3-1(D)(1). That section states, “[w]hen lands or any interest in lands are the object of any suit in whole or in part, the suit shall be brought in the county where the land or any portion of the land is situate.” Blanchard argues that an interest in lands is the object of this suit because Blanchard “is seeking a declaratory judgment as to what impact the [wind energy] leases have on [Blanchard’s] interest in lands under the [A]gricultural [L]ease.” Specifically, Blanchard alleges that the Commissioner’s “failure to follow proper procedures . . . in the issuance of the [wind energy leases] impacts [Blanchard’s] possessory interests in the land leased from the State Land Office.”

{11} The question of venue in this case therefore hinges on whether the object of this suit is an interest in lands. Blanchard argues that it is, thus, Section 38-3-1(D)(1) should control and venue is proper in Lincoln County. The Commissioner argues that an interest in land is not the object of the suit, Section 38-3-1(G) controls, and venue is proper in Bernalillo County or

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Santa Fe County.

1. Statutory construction of Section

38-3-1(D)(1)

{12} The parties fundamentally disagree about what it means for land to be the *object* of the suit under Section 38-3-1(D)(1). According to the Commissioner, an interest in lands is the object of a suit if the judgment sought *would establish* an interest in lands. Blanchard’s arguments, on the other hand, reflect a less stringent requirement: if the suit is *related to* an interest in lands, then it is the object of the suit.

{13} “When construing statutes, our guiding principle is to determine and give effect to legislative intent.” *N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm’n*, 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105. “Under the rules of statutory construction, we first turn to the plain meaning of the words at issue, often using the dictionary for guidance.” *N.M. Att’y Gen. v. N.M. Pub. Regul. Comm’n*, 2013-NMSC-042, ¶ 26, 309 P.3d 89. “We must give effect to the statute as written without room for construction unless the language is doubtful, ambiguous, or would lead to injustice, absurdity or contradiction, in which case the statute is to be construed according to its obvious spirit or reason.” *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm’n*, 2024-NMSC-012, ¶ 19, 548 P.3d 97 (text only)² (citation omitted).

{14} *Black’s Law Dictionary* defines *object of an action* as “the legal relief that a plaintiff seeks; the remedy demanded or relief sought in a lawsuit.” *Object*, *Black’s Law Dictionary* (12th ed. 2024). If we apply the dictionary definition of *object of an action* to the facts here, the relief that Blanchard seeks does not appear to have an interest in lands as its object; the legal relief that Blanchard seeks would not itself delineate, limit, or otherwise alter the parties’ property interests. Instead, Blanchard requests that the district court enter a judgment declaring that the Commissioner violated her obligations under State Land Office rules when she failed to give Blanchard proper notice of the wind energy leases. Further, Blanchard contends the section

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.

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of the Agricultural Lease allowing the Commissioner to execute additional leases on the land for renewable energy projects is void and unenforceable because the section “is contrary to and in violation of the requirements of [State Land Office rules]” Indeed, Blanchard concedes it “is not requesting that the district court rescind or revoke the Wind Leases. Rather, Blanchard is only requesting declarations relating to the Commissioner’s adherence to State Land Office rules in her leasing process.”

{15} Blanchard takes the meaning of “[w]hen lands or any interest in lands are the object of any suit” too far. See § 38-3-1(D)(1). Blanchard argues that “[t]he character of the judgment sought by [Blanchard] is directly related to [Blanchard’s] possessory interest in the land at issue.” Essentially, Blanchard asks this Court to conclude the relation of the land to the suit is sufficient to satisfy the requirement the lands be the “object of” the suit. See § 38-3-1(D)(1). There is no doubt that Blanchard has an interest in lands pursuant to the Agricultural Lease. See *Resol. Tr. Corp. v. Binford*, 1992-NMSC-068, ¶ 23, 114 N.M. 560, 844 P.2d 810 (“While the lease is personalty, the leasehold estate is an interest in land.” (internal quotation marks and citation omitted)). Also, there is no question that this case is related to that lease. But these two facts do not add up to the conclusion that the object of this suit is an interest in lands. It is not enough that “the very regulatory provisions [in question] . . . are directly related to the existing lessee’s right to possess and use the leased property,” as Blanchard contends. Just because the action is “related in some way to land” does not mean that the case should be brought in the county where the land is located. See *Kaywal*, 2021-NMCA-037, ¶ 41. The declarations that Blanchard seeks would not themselves affect Blanchard’s possessory interest or any interest established by the Agricultural Lease. As Blanchard concedes, the wind energy leases, at this juncture, have only a “potential” to impact the land, which is dependent upon the property possibly becoming unusable at some time in the future. Given that any potential impact on Blanchard’s interest lies in the future and therefore requires speculation, the object of this suit does not concern a question

of Blanchard’s actual, current possessory interest in the leased land.

{16} In sum, we conclude that the plain language of Section 38-3-1(D)(1) points to the conclusion that Blanchard’s suit does not have an interest in lands as its object because the relief Blanchard seeks would not affect a current possessory interest or any interest established by the Agricultural Lease and would only potentially affect the usability of the land in the future. Further, our reading of the plain meaning of Section 38-3-1(D)(1) aligns with its intended purpose. The “traditional rationale for local actions,” or actions brought in the county where the land in question is located, is to “ensur[e] that distant courts do not confuse title to local lands.” *Kaywal*, 2021-NMCA-037, ¶ 40. “[W]here the action, though related in some way to land, will not have an impact on title, there is no need to require the action to be brought where the land is located.” *Team Bank v. Meridian Oil Inc.*, 1994-NMSC-083, ¶ 6, 118 N.M. 147, 879 P.2d 779 (quoting T.E. Occhialino, *Walden’s Civil Procedure in New Mexico*, at 2-19 (2d ed. 1988)). In this case, there is no danger of a distant court confusing title or possessory interests to the lands in question because the relief that Blanchard seeks, if granted, would not have an impact on the leasehold interests in question. Thus, there is no need to require the action to be brought in Lincoln County.

2. New Mexico case law on Section 38-3-1(D)(1)

{17} New Mexico case law interpreting Section 38-3-1(D)(1) of the venue statute is also instructive. The Commissioner primarily relies on *Kaywal* to support her argument that an interest in land is not the object of Blanchard’s suit. In *Kaywal*, the Court of Appeals held that an interest in lands is the object of a suit under Section 38-3-1(D)(1) for suits “which have ownership or possessory interests in property as their direct purpose.” 2021-NMCA-037, ¶ 38. Specifically, *Kaywal* held that actions for trespass and nuisance do not have as their object an interest in lands under Section 38-3-1(D)(1) when “the judgment sought does not create, transfer, or revoke an interest in property.” *Id.* ¶ 59.

{18} In *Kaywal*, the defendant operated a wind energy facility on state trust

land next to the plaintiff’s ranch. *Id.* ¶ 2. After the plaintiff refused the defendant easements and licenses to access his land via the plaintiff’s ranch, the defendant began trespassing on the plaintiff’s property. *Id.* ¶¶ 3-4. Specifically, the defendant used a road on the plaintiff’s ranch, built a new “wood-plank road” on the ranch, transported and disposed of materials on the plaintiff’s ranch, dug holes under the fence that bordered the plaintiff’s ranch, and installed electric equipment along the plaintiff’s fence. *Id.* ¶ 4. The plaintiff brought an action seeking monetary and injunctive relief for trespass, nuisance, and unjust enrichment in Chaves County, the county where the plaintiff resided. *Id.* ¶ 6. The defendant moved to dismiss for improper venue, arguing that, under Section 38-3-1(D)(1), the case should have been brought in Torrance County, the county where the property in question was located. *Id.* The district court denied the defendant’s motion to dismiss for improper venue, concluding that the complaint did not have as its object an interest in lands for purposes of Section 38-3-1(D)(1). *Id.* ¶ 1.

{19} On interlocutory appeal, the Court of Appeals in *Kaywal* affirmed the district court. *Id.* The Court of Appeals reasoned that an action for trespass, even one seeking relief to enjoin a party from future trespass, “does not involve title to land” and “does not have the effect of settling title as between the parties.” *Id.* ¶ 30. Further, the Court of Appeals in *Kaywal* reasoned that “an ordinary trespass action seeks to vindicate an *existing* legal, possessory interest in land, and/or to protect it from tortious interference—it does not seek to create, transfer, or revoke the interest itself.” *Id.* ¶ 32. Thus, the Court of Appeals held that the suit did not have as its object land or interest in lands within the meaning of Section 38-3-1(D)(1) of the venue statute and was properly filed in Chaves County, where the plaintiff resided. *Id.* ¶ 44.

{20} Blanchard and the Commissioner disagree on *Kaywal*’s applicability here. The Commissioner contends that, under *Kaywal*, a suit “has an interest in lands as its object only when it seeks a judgment which would create, transfer, or revoke title or a possessory interest in land.” According

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to the Commissioner, the judgment that Blanchard seeks in this case “would have far less of a direct effect on the use of the land than the judgment sought in *Kaywal*.” In *Kaywal*, the relief sought “would have a direct and immediate impact on the use of the land involved” because the plaintiff sought to enjoin the defendants from entering the plaintiff’s property. But here, the Commissioner argues, the declaratory relief sought by Blanchard “would not itself prohibit any use of the leased state trust land.”

{21} Blanchard, on the other hand, argues that “*Kaywal* does not limit venue in this case” because *Kaywal* was a “transitory action[] for trespass and nuisance” which, the *Kaywal* Court concluded, “does not have as its object an interest in lands.” Blanchard states, “[T]he only thing that the Court [of Appeals in *Kaywal*] determined is that the venue statute does not require actions for trespass to be filed in the county where the property is located.” In this case, according to Blanchard, there is a question of “rightful possession,” raising “issues directly related to its possessory interest in the [A]gricultural [L]ease . . . including the impact on that property interest resulting from the . . . wind [energy] leases.”

{22} Still, Blanchard does rely on *Kaywal* for the proposition that adjudications of title are not the only types of actions that have as their object an interest in lands; “[q]uestions of rightful possession” do too. Blanchard quotes *Kaywal* for the proposition that a suit does not have an interest in lands as its object if it does not claim “to establish title, possession, or any other property interest in the land at issue,” and then interprets this *Kaywal* quote to mean “lawsuits that address possessory rights in land, including efforts to protect those possessory interests, have as their object an interest in lands.” But, by emphasizing “possession[] or any other property interest,” Blanchard overlooks a key part of that same *Kaywal* quote: a suit has an interest in lands as its object when there is a “claim[] to establish” a possessory interest. *Kaywal*, 2021-NMCA-037, ¶ 33 (emphasis added). It is not merely that the claim must “address” or relate to such possessory interest; the claim for relief must ask the court to make a determination about

the validity of an action to establish title, possession, or any other property interest in the land at issue. Put another way, the claim must seek to create, transfer, or revoke a possessory interest itself for land to be the object of the suit.

{23} Our own review of the case law leads us to agree with the Commissioner’s reading of *Kaywal*. We adopt the holding in *Kaywal* that a suit has an interest in lands as its object under Section 38-3-1(D)(1) when the judgment sought could create, transfer, or revoke title or a possessory interest in land. 2021-NMCA-037, ¶ 59. Our case law interpreting Section 38-3-1(D)(1) supports this conclusion. For example, our courts have held that the following types of suits have as their object an interest in lands: (1) suit to quiet title, *Jemez Land Co. v. Garcia*, 1910-NMSC-013, ¶ 18, 15 N.M. 316, 107 P. 683, *overruled on other grounds by Kalosha v. Novick*, 1973-NMSC-010, ¶ 12, 84 N.M. 502, 505 P.2d 845, (2) suit to set aside a conveyance, *Atler v. Stolz*, 1934-NMSC-079, ¶¶ 3-5, 38 N.M. 529, 37 P.2d 243, *overruled on other grounds by Kalosha*, 1973-NMSC-010, ¶ 12, (3) suit to compel a conveyance, *Catron v. Gallup Fire Brick Co.*, 1929-NMSC-029, ¶¶ 7-12, 34 N.M. 45, 277 P. 32, *overruled on other grounds by Kalosha*, 1973-NMSC-010, ¶ 12, (4) suit seeking to prohibit a party from obtaining title, *Naumburg v. Cummins*, 1982-NMSC-086, ¶ 5, 98 N.M. 274, 648 P.2d 313, and (5) actions where the parties sought a declaration of their interests in property, *Heath v. Gray*, 1954-NMSC-087, ¶¶ 3-5, 12-17, 58 N.M. 665, 274 P.2d 620, *overruled on other grounds by Kalosha*, 1973-NMSC-010, ¶ 12; *Marquez v. Juan Tafoya Land Corp.*, 1981-NMSC-080, ¶¶ 3, 8-10, 14, 96 N.M. 503, 632 P.2d 738; *Elephant Butte Irrigation Dist. v. Regents of N.M. State Univ.*, 1993-NMCA-009, ¶¶ 2, 4, 35, 115 N.M. 229, 849 P.2d 372. These are all suits where the judgment sought would create, transfer, or revoke title or a possessory interest in land.

{24} Consistent with *Kaywal*, New Mexico courts have held that a suit does not have an interest in lands as its object if the judgment sought would *not* create, transfer, or revoke title or a possessory interest in land. Our courts have held that the following types of suits do not have as their object an

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interest in lands: (1) action where the plaintiff sought to recover unpaid royalties for natural gas production, *Team Bank*, 1994-NMSC-083, ¶¶ 2-3, (2) suits seeking damages for trespass and nuisance, *Bank of Am. v. Apache Corp.*, 2008-NMCA-054, ¶¶ 3, 33, 144 N.M. 123, 184 P.3d 435; *Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶¶ 2-3, 9, 132 N.M. 382, 49 P.3d 61, (3) suit seeking damages for misrepresentation in a real estate contract, *Rito Cebolla Invs., Ltd. v. Golden W. Land Corp.*, 1980-NMCA-028, ¶¶ 2-9, 94 N.M. 121, 607 P.2d 659, and (4) insolvency proceedings against a corporation, which had an indirect effect on ownership of the corporation’s real property assets, *State ex rel. Parsons Mining Co. v. McClure*, 1913-NMSC-034, ¶¶ 1, 6, 17 N.M. 694, 133 P. 1063.

{25} This case is more like those that did not have an interest in lands as their object than those that did. The judgment that Blanchard seeks, like the judgment sought in *Kaywal*, would not itself create, transfer, or revoke title or a possessory interest in land. See *Kaywal*, 2021-NMCA-037, ¶ 32. Here, Blanchard’s action does not have the effect of settling possessory interests as between Blanchard and the Commissioner but instead seeks to vindicate Blanchard’s existing leasehold interest by challenging the procedures that the Commissioner followed to enter into the wind energy leases that overlap with the Agricultural Lease.

{26} Further, like in *McClure*, the district court’s judgment here could affect the parties’ possessory interests only indirectly, if at all. See 1913-NMSC-034, ¶ 6. In *McClure*, this Court concluded that insolvency proceedings did not have an interest in lands as the object of the suit when “sequestration and administration of the assets[, mostly real estate in the form of mining property,] of the corporation [was] merely incidental to the main object of the proceeding,” which was an adjudication regarding the corporation’s insolvency. *Id.* ¶¶ 2, 6. Here, if there was a change in possessory interests, it would be merely incidental to the main object of the proceeding, which is to determine whether the Commissioner violated State Land Office rules in its issuance of the two wind energy leases. If the district court granted the declaratory

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relief that Blanchard requests, there would only be a change to the existing leasehold interests if the Commissioner initiated additional proceedings to cancel the wind energy leases. Even if the district court did grant the declaratory relief that Blanchard seeks, any change in the existing leasehold interests would still be speculative because, instead of cancelling the wind energy leases, the Commissioner could conduct an evaluation of the wind energy leases under the terms of the State Land Office rules and modify the leases to comply with the regulations. *See* 19.2.9.21 NMAC.

Thus, the mere possibility of a change in Blanchard's possessory interests could arise only after the commencement of additional proceedings beyond the scope of this action.

III. CONCLUSION

{27} For the foregoing reasons, we reverse the district court's ruling on venue and remand to dismiss the case without prejudice for improper venue. According to Section 38-3-1(D)(1)—looking to its plain language, intended purpose, and New Mexico case law interpreting it—this case does not have as its object an interest in lands because the judgment sought would not create, transfer,

or revoke title or a possessory interest in land. *See Kaywal*, 2021-NMCA-037, ¶ 59. Thus, venue is improper in Lincoln County, Section 38-3-1(G) controls, and venue is proper in either Bernalillo County or Santa Fe County.

{28} 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

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-027

No. S-1-SC-39553 (filed April 7, 2025)

STATE OF NEW MEXICO,

Plaintiff-Respondent,

v.

**OFFICE OF THE PUBLIC DEFENDER ON BEHALF
OF NATHANIEL YAZZIE, DECEASED,**

Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

Karen L. Townsend, District Judge

Bennett J. Baur, Chief Public Defender
Kimberly Chavez Cook,
Appellate Defender
Mary Barket,
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Santa Fe, NM

for Petitioner

Raúl Torrez, Attorney General
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Santa Fe, NM

for Respondent

OPINION

ZAMORA, Justice.

{1} The fundamental question presented by this appeal is whether the attempt to cause or permit reckless child abuse is a crime under New Mexico law. We first address whether the issue is moot and whether Defendant Nathaniel Yazzie’s no contest plea bars consideration of this question. We also address as a preliminary matter whether a person can plead guilty or no contest to a nonexistent crime.

{2} We conclude that (1) the issue is not moot and a nonwaivable jurisdictional question is raised when a defendant pleads guilty or no contest to a nonexistent crime, (2) one cannot enter into a plea agreement for a nonexistent crime, and (3) attempt to cause or permit reckless child abuse is a nonexistent crime. Accordingly, we vacate Defendant’s conviction. Because Defendant died during the pendency of this appeal, we

remand to the district court for dismissal of this case.

I. BACKGROUND

{3} This case began when law enforcement conducted a welfare check at Defendant’s apartment after his downstairs neighbor “reported a loud ‘thumping’ sound coming from the apartment above.” *State v. Yazzie (Yazzie I)*, 2019-NMSC-008, ¶ 5, 437 P.3d 182. The only response to the police officer’s knocking on the door was an infant crying continuously and a young child hollering, “Mommy! Mommy, wake up!” *Id.* When the officer entered Defendant’s apartment, he found two children under six and an infant in a room in which Defendant and an adult woman were lying on the floor, passed out. *Id.* ¶¶ 6, 9. The officer also saw empty alcohol bottles lying on top of an open trash can. *Id.* ¶ 8. Defendant and the other adult were the children’s father and mother. Defendant and the children’s mother were difficult to rouse, appeared heavily intoxicated, and exhibited heavily slurred

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speech and difficulty answering basic questions. Portable breath tests indicated both adults were extremely intoxicated. The children were picked up and released into the custody of their grandmother. Defendant and the children’s mother were arrested, transported to jail, and booked for child abuse.

{4} Defendant was charged with one count of “Child Abuse – Negligently Cause (No Death or Great Bodily Harm),” contrary to NMSA 1978, Section 30-6-1(D) (2009). The criminal information was devoid of any basis for the charge other than criminal negligence. Defendant subsequently entered a conditional no contest plea to “Attempt to Commit a Felony, to wit: Child Abuse – Negligently Permit (No Death or Great Bodily Harm), a fourth degree felony,” contrary to Section 30-6-1(D). In his plea agreement, Defendant reserved his right to appeal the district court’s denial of his motion to suppress. After sentencing, Defendant appealed.

{5} The Court of Appeals reversed Defendant’s conviction holding that the district court erred in denying Defendant’s motion to suppress. The Court of Appeals did not reach the additional arguments Defendant advanced on appeal. *State v. Yazzie*, A-1-CA-34537, mem. op. ¶¶ 15, 16 (N.M. Ct. App. May 11, 2017) (nonprecedential). We reversed the Court of Appeals and held the district court properly denied Defendant’s motion to suppress. *Yazzie I*, 2019-NMSC-008, ¶¶ 12, 52. We remanded the case with instructions to the Court of Appeals to determine any remaining issues it had not reached because of its reversal on the suppression motion. *Id.* ¶ 52. Those remaining issues were Defendant’s assertion that attempt to commit negligent child abuse is a nonexistent crime and that it was fundamental error to allow him to plead to a nonexistent offense.

{6} While the case was pending before the Court of Appeals on remand, Defendant passed away, and Defendant’s appellate counsel filed a Suggestion of Death and Motion to Abate or Appoint Substitute Party. The Court of Appeals transferred that motion to this Court on the grounds that its own authority did not include abatement

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of the proceedings required under *Yazzie I*. We refused the transfer and directed the Court of Appeals to appoint a substitute party under Rule 12-301 NMRA and to hold further proceedings consistent with our mandate in *Yazzie I*. The Court of Appeals appointed the Office of the Public Defender to substitute for Defendant and pursue this appeal on his behalf.

{7} The Court of Appeals acknowledged Defendant’s challenge to the validity of his no contest plea by asserting that an attempt to negligently permit child abuse is a nonexistent crime and as such was invalid. *State v. Off. of Pub. Def. ex rel. Yazzie (OPD ex rel. Yazzie)*, A-1-CA-34537, dec. ¶ 2 (N.M. Ct. App. Aug. 16, 2022) (nonprecedential). But the Court concluded it was barred from considering this remaining challenge because Defendant’s plea agreement expressly reserved only the right to appeal his motion to suppress. *Id.* ¶ 5. We granted Defendant’s petition for certiorari.

{8} We turn now to two of the three questions presented which are (1) whether attempted negligent child abuse is a crime under New Mexico law and (2) whether a person can plead guilty to a nonexistent offense in New Mexico. Given our resolution of these questions, we need not address the third question presented, which assumed in the alternative that one could plead no contest or guilty to a nonexistent offense.

II. DISCUSSION

A. Mootness and Jurisdiction

{9} Before we address Defendant’s claim that attempted negligent child abuse is a non-existent crime, we must first determine whether Defendant’s claim is moot and whether we have jurisdiction to consider that claim.

1. Defendant’s claim is moot, but it raises a question of substantial public interest

{10} The State asserts this case is moot because Defendant passed away and is no longer subject to the terms of the plea agreement, and therefore there is no actual controversy and no possibility of “real-world relief.” As a general rule, we do not decide cases where “no actual controversy exists and [we] cannot grant actual relief.” *Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008 (internal quotation

marks and citation omitted). However, there are two exceptions to this rule. We exercise our discretion to hear a moot case when it presents an issue of substantial public interest or when the issue is capable of repetition yet has evaded review. *Id.* ¶ 10; *Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-026, ¶ 10, 283 P.3d 853. Because this case presents issues of substantial public interest, we need not determine whether the second exception applies.

{11} Issues of substantial public interest include issues of fundamental rights and the constitutional rights of criminal defendants. *See Republican Party*, 2012-NMSC-026, ¶ 10 (“A case presents an issue of substantial public interest if it . . . affects a fundamental right such as voting.”); *State v. Wheeler*, S-1-SC-37709, dec. ¶¶ 9, 13-14 (N.M. June 10, 2021) (nonprecedential) (holding that the due process right to confront and cross-examine witnesses at a parole revocation hearing presents a matter of substantial public interest). Defendant contends that his claim implicates an important separation of powers concern. He contends that the district court’s agreement to accept a guilty plea for a crime that has not been established by the Legislature usurps the Legislature’s authority to prescribe criminal punishments. *See State v. Cates*, 2023-NMSC-001, ¶ 13, 523 P.3d 570 (“Th[e] limitation on judicial authority [to impose a sentence] reflects the separation of powers notion that it is solely within the province of the Legislature to establish penalties for criminal behavior.” (internal quotation marks and citation omitted)). We conclude this case raises issues of substantial public interest that need to be addressed to establish whether the State may lawfully charge someone with attempt to commit negligent child abuse, whether such a charge may form the basis for a conviction by plea or by jury trial, and whether such a charge can be properly characterized as a lesser-included offense.

{12} For the reasons stated above, we conclude that Defendant’s appeal is moot; however, we elect to exercise our discretion to review the case as it presents an issue of substantial public interest. *Gunaji*, 2001-NMSC-028, ¶¶ 9-10.

2. A plea to a nonexistent crime raises a nonwaivable jurisdictional question that can be raised for the first time on appeal

{13} We next consider whether we have jurisdiction to decide Defendant’s appeal. Defendant contends that he pled to a nonexistent crime and his plea presents a nonwaivable jurisdictional question that can be challenged on appeal in the first instance. In the plea agreement, Defendant expressly reserved only his right to appeal the denial of his motion to suppress. He did not reserve a challenge to the validity of his conviction on the grounds he pled to a nonexistent crime. Nonetheless, he raised the issue in his first appeal to the Court of Appeals.

{14} On remand after our opinion in *Yazzie I*, the Court of Appeals pointed out that Defendant failed to reserve in his plea agreement the right to appeal any issue other than his suppression motion. It observed that voluntary guilty pleas generally result in waiver of any other objection to defects in the proceedings as well as waiver of statutory or constitutional rights, including the right to appeal. *OPD ex rel. Yazzie*, A-1-CA-34537, dec. ¶ 3. The Court of Appeals recognized that a plea agreement cannot waive a jurisdictional error, *id.*, but assumed without discussion that the plea did not implicate any jurisdictional concerns. It then concluded the terms of Defendant’s plea agreement barred it from considering Defendant’s challenge to the validity of his plea on the grounds that he pled to a nonexistent crime. *Id.* ¶¶ 2-3, 5. Because we conclude Defendant’s challenge raises a jurisdictional error, his plea agreement is not a bar to the issues he raises, which can be raised in the first instance on appeal.

{15} To date, our appellate courts have not had the opportunity to consider the validity of a criminal defendant’s plea to a nonexistent crime. This Court has, however, had the opportunity to consider a similar issue—the efficacy of a district court’s sentence imposed absent statutory authority. In *State v. Trujillo*, this Court reasoned that “[a] trial court’s power to sentence is derived exclusively from statute.” 2007-NMSC-017, ¶ 10, 141 N.M. 451, 157 P.3d 16 (internal quotation marks and citation omitted). If the district court

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was not statutorily or constitutionally permitted to sentence the defendant in the manner he was sentenced, then his sentence is illegal. *See id.* ¶ 9. *Trujillo* explained that a defendant's plea to an illegal sentence rises to the level of a jurisdictional defect. *Id.* ¶ 8. And, a defendant who pleads guilty “does not waive jurisdictional errors.” *Id.*

{16} Relying on these principles, Defendant asks us to extend this reasoning to pleas to nonexistent crimes and expressly recognize that a defendant's entry into a plea to a nonexistent crime is jurisdictionally infirm and of no force and effect. We agree that should our district courts accept pleas to nonexistent crimes without statutory authority, they do so without subject matter jurisdiction and in violation of well-established notions of separation of powers. *Cates*, 2023-NMSC-001, ¶ 13; *see also Trujillo*, 2007-NMSC-017, ¶ 8. We hold that a district court's acceptance of a guilty or no contest plea to a nonexistent crime is a jurisdictional error that cannot be waived by a plea agreement and can be raised for the first time on appeal.¹

B. Attempt to Cause or Permit Reckless Child Abuse Is a Nonexistent Crime

{17} We turn our analysis to whether Defendant pled to the nonexistent crime of negligent child abuse. To determine whether Defendant pled to a nonexistent crime, we are again called upon to review the meaning of the language in our child abuse statute. This is a question of law which is subject to de novo review. *Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61; *see also State v. Gray*, 2016-NMCA-095, ¶¶ 3, 12,

384 P.3d 1083 (conducting de novo review of whether a defendant pled guilty to a nonexistent crime).

{18} Two criminal statutes guide our analysis. The first criminalizes attempts to commit a felony. NMSA 1978, § 30-28-1 (1963, amended 2024).² The second criminalizes child abuse when a defendant acts knowingly, intentionally, or negligently. Section 30-6-1(D). The crime of negligent child abuse is more accurately referred to as reckless child abuse. *State v. Consaul*, 2014-NMSC-030, ¶ 37, 332 P.3d 850; *see also* § 30-6-1(A)(3) (defining *negligently* as acting “with a *reckless disregard* for the safety or health of the child” (emphasis added)). Because this case involves an attempt to commit reckless child abuse, we begin by considering the interplay between the specific- and general-intent theories of mens rea that we have applied to attempt crimes and the particular mens rea terms used in the child abuse statute to define that offense.

1. One cannot attempt to commit a felony that lacks specific intent

{19} In relevant part, our attempt statute provides, “Attempt to commit a felony consists of an overt act in furtherance of and *with intent to commit a felony* and tending but failing to effect its commission.” Section 30-28-1 (emphasis added). Attempt to commit a felony is an inchoate crime because the crime is not completed. *State v. Green*, 1993-NMSC-056, ¶ 21, 116 N.M. 273, 861 P.2d 954. Inchoate crimes are those in which a person has taken a “step toward the commission of another crime, the step in itself being serious enough to merit punishment.” *Inchoate Offense*, *Black's*

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Law Dictionary (12th ed. 2024) (“The three inchoate offenses are attempt, conspiracy, and solicitation.”).

{20} When assessing the mens rea for attempt crimes, we have relied on the distinction made at common law between specific intent crimes and general intent crimes. *See United States v. Bailey*, 444 U.S. 394, 403 (1980) (noting that mens rea often has been determined by reference to the common law classifications of “general intent” or “specific intent”); *accord State v. Granillo*, 2016-NMCA-094, ¶ 15, 384 P.3d 1121 (referring to specific intent and general intent as “the traditional dichotomy”). The mens rea for a specific intent crime is established when “a statute expressly requires proof of intent to do a further act or achieve a further consequence.” *State v. Brown*, 1996-NMSC-073, ¶ 22, 122 N.M. 724, 931 P.2d 69 (internal quotation marks and citation omitted); *State v. Johnson*, 1985-NMCA-074, ¶ 13, 103 N.M. 364, 707 P.2d 1174. A specific intent crime “concerns itself with the state of mind of the perpetrator.” *Johnson*, 1985-NMCA-074, ¶ 13.

{21} In contrast to specific intent crimes, general intent crimes do not concern a perpetrator's state of mind as their commission does not hinge on a perpetrator's subjective intent to do a further act or achieve a further consequence. *Brown*, 1996-NMSC-073, ¶ 22. A general intent crime requires only “conscious wrongdoing” or “the purposeful doing of an act that the law declares to be a crime.” *Id.* (internal quotation marks and citation omitted). A defendant without an intent to commit

¹ Numerous other jurisdictions have also concluded that a plea to a nonexistent crime constitutes a nonwaivable jurisdictional defect. *See, e.g., State v. Cvorovic*, 462 N.W.2d 897, 898 (Wis. Ct. App. 1990) (holding that the trial court lacked subject matter jurisdiction over the nonexistent offense of attempted fourth degree sexual assault); *Whitner v. State*, 492 S.E.2d 777, 779 (S.C. 1997) (reasoning that trial courts lack subject matter jurisdiction to accept guilty pleas to nonexistent offenses); *People v. Lopez*, 846 N.Y.S.2d 164, 165 (N.Y. App. Div. 2007) (treating a plea to a nonexistent crime as a “jurisdictional defect rendering the plea a nullity”); *State v. Crosby*, 338 So. 2d 584, 588 (La. 1976) (recognizing that the defendant's entry into an unconditional guilty plea does not waive jurisdictional defects, which include situations where the charged offense “does not constitute a crime”); *People v. Hammond*, 466 N.W.2d 335, 339 (Mich. Ct. App. 1991) (explaining that because “the state never had a legitimate interest in securing a conviction” for “a nonexistent criminal offense,” the defendant maintained the right to “appeal and allege the illegality of his plea-based conviction of a nonexistent offense”).

² Because the 2024 amendments to the 1963 attempt statute did not change the relevant language, further references to this statute are to the current version.

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a criminal act can be convicted of a general intent crime because general intent crimes do not rely on a defendant's subjective intent or knowledge. *Id.* ¶ 27 (explaining that when proof of subjective knowledge is required, an offense cannot be considered a general intent crime).

{22} Attempt is a specific intent crime because the statute requires that an individual intend to commit a particular felony. *Green*, 1993-NMSC-056, ¶ 21; *State v. Carrasco*, 2007-NMCA-152, ¶ 7, 143 N.M. 62, 172 P.3d 611; *Johnson*, 1985-NMCA-074, ¶ 10. The felony underlying an attempt charge must also be a specific intent crime. *See Johnson*, 1985-NMCA-074, ¶¶ 11-14 (reversing convictions for attempted depraved mind murder because the crime of attempt cannot be predicated on felonies which lack an element of subjective intent).

{23} Agreeing with the *Johnson* Court and finding caselaw from other jurisdictions persuasive, we held in *State v. Jernigan* that when the mental state of the crime alleged to have been attempted differs from the mental state found in the attempt statute—as when the attempted offense is not itself a specific intent crime—there is an irreconcilable discrepancy. 2006-NMSC-003, ¶¶ 17, 18, 139 N.M. 1, 127 P.3d 537. Simply put, if the underlying felony is a specific intent crime, it can be attempted. *Id.* ¶ 18 (holding that in limited circumstances, voluntary manslaughter is a specific intent crime which can support the giving of a jury instruction for attempt to commit voluntary manslaughter). But if the underlying felony does not require any subjective intent, it is a general intent crime and cannot be the subject of an attempt charge. *Id.* (“[I]t is illogical to apply attempt, a specific intent crime, to a general intent crime.”). Accordingly, to determine whether an attempt charge is valid, we look to whether the felony underlying that charge is a specific intent crime. *Id.* ¶¶ 17, 18. Here, we look to the crime of reckless child abuse.

{24} While this is our first opportunity to consider whether reckless child abuse is a specific intent crime, our appellate caselaw consistently rejects characterizing reckless conduct crimes as specific intent crimes. In *State v. Baca*, we reversed the defendant's conviction for conspiracy to

commit depraved mind murder because it was a nonexistent crime. 1997-NMSC-059, ¶¶ 2, 51, 124 N.M. 333, 950 P.2d 776. Observing that conspiracy and attempt are “paradigmatic specific intent offenses,” we agreed with the defendant that conspiracy, like attempt, is a specific intent crime which requires the defendant to also intend to commit the crime which is the object of the conspiracy. *Id.* ¶ 51 (internal quotation marks and citation omitted). We then held that depraved mind murder is a general intent crime because the killing needs *only* to result from highly reckless behavior of the accused. *Id.* Thus, one cannot conspire to commit depraved mind murder since that crime results from highly reckless behavior and does not require the subjective intent to kill.

{25} The Court of Appeals also recognized that reckless conduct crimes are not specific intent crimes. *Johnson* aptly explained that a specific intent crime “concerns itself with the state of the mind of the perpetrator” while a crime committed with “outrageous recklessness,” such as depraved mind murder, is committed irrespective of a defendant's subjective intent. 1985-NMCA-074, ¶¶ 11, 13. This led the Court to hold that “the crime of attempted depraved mind murder . . . does not exist” and to reverse the defendant's convictions for that nonexistent offense. *Id.* ¶ 14; *accord Carrasco*, 2007-NMCA-152, ¶ 7 (stating that an attempt to commit a general intent crime is “a crime that does not exist”); *State v. Herrera*, 2001-NMCA-073, ¶ 13, 131 N.M. 22, 33 P.3d 22 (acknowledging that one cannot attempt to commit a felony requiring only reckless disregard).

{26} Therefore, it is well established that one cannot attempt to commit a reckless conduct crime where the requisite mental state lacks an element of specific intent. *See also* 1 Jens David Ohlin, *Wharton's Criminal Law* § 7:4, at 186 (16th ed. 2021) (“[T]here can be no attempt to commit a crime the gravamen of which is ‘negligent’ or ‘reckless’ conduct.”). We therefore turn to the mens rea required for reckless child abuse to determine whether it, too, is a reckless conduct crime which lacks a specific intent element.

2. The mens rea for reckless child abuse does not require a specific intent

{27} Our child abuse statute lists the three mens rea, or mental states, that support criminal liability: “knowingly, intentionally or negligently.” Section 30-6-1(D). To determine whether there is a subjective intent component to reckless child abuse, we directly analyze the meaning of *negligently*. *See Consaul*, 2014-NMSC-030, ¶¶ 27-40 (analyzing the meaning of *negligently* committing child abuse in the context of our uniform jury instructions).

{28} To be convicted of reckless child abuse, a defendant must act “with a reckless disregard for the safety or health of the child.” Section 30-6-1(A)(3); *see also State v. Taylor (Taylor II)*, 2024-NMSC-011, ¶ 25, 548 P.3d 82. We have confirmed that “the reckless element of child abuse in New Mexico is properly evaluated under an objective test.” *Taylor II*, 2024-NMSC-011, ¶ 24. Because the test is objective, a defendant's subjective state of mind is not at issue and the defendant's intent is not relevant. *Id.* ¶ 26 (requiring no subjective knowledge). Thus, reckless child abuse is appropriately characterized as a general intent crime since there is no subjective intent component to the mens rea of reckless disregard. Because one can only attempt a specific intent crime, we hold that in pleading no contest to attempt to permit reckless child abuse, Defendant pled to a nonexistent crime.

{29} To hold otherwise would countenance conviction for an alleged crime which is multiple steps removed from any showing of a subjective specific intent. Our attempt statute punishes behavior that does not actually result in a completed crime. This is justified when the underlying felony offense is a specific intent crime, as it limits criminal punishment to instances where a defendant actually intends or desires—but fails—to commit a crime. *See* 1 Ohlin, *supra*, § 7:7, at 215 (remarking that in all jurisdictions, “attempt liability . . . requires . . . that the result intended or desired by the actor constitute a crime”). But criminal liability for attempt is *not*

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justified when the underlying felony offense does not require any subjective intent on the part of the defendant.

{30} The State describes the criminal information as “charging Defendant with child abuse by way of negligently causing his three children to be placed in a situation that, *in part, may have endangered* their life or health contrary to . . . [Section] 30-6-1(D).” (Emphasis added.) This is child abuse by endangerment, a special class of child abuse which punishes “conduct expos[ing] a child to a significant risk of harm, even though the child . . . suffer[s] no physical injury.” *State v. Chavez*, 2009-NMSC-035, ¶ 15, 146 N.M. 434, 211 P.3d 891 (emphasis omitted) (internal quotation marks and citation omitted); § 30-6-1(D)(1), (E). Thus, the underlying crime Defendant allegedly attempted—child abuse by endangerment—already punishes conduct that is merely a step towards an incomplete result. Defendant’s children suffered no harm, so charging Defendant with attempt to commit child endangerment creates a second level of inchoate conduct. {31} Yet a third level of attenuation is added by Defendant having pled no contest to attempt to *permit* negligent child abuse. “[C]ausing and *permitting* child abuse are distinct theories” of criminal culpability. *State v. Nichols*, 2016-NMSC-001, ¶ 32, 363 P.3d 1187 (emphasis added) (internal quotation marks omitted). Causing child abuse is premised on active abuse. *Id.* Permitting child abuse “refers to the passive act of failing to prevent someone else—a third person—from inflicting the abuse.” *Id.* ¶ 33. Thus, Defendant pled no contest to attempt to permit child endangerment by a third person. At a minimum, this level of attenuation subverts any conclusion that Defendant could have had the subjective intent to engage in the passive act of permitting child endangerment by the children’s mother, whose conduct did not actually result in harm to their children. See UJI 14-2801 NMRA (requiring the State to prove beyond a reasonable doubt that the defendant “intended to commit” the underlying felony).

{32} For the reasons stated above, we conclude that the mens rea for reckless child abuse, like the mens rea for other

reckless conduct crimes, does not require any subjective intent. Since one cannot attempt to commit a felony which does not require subjective specific intent, we hold that in pleading no contest to attempt to permit negligent child abuse, Defendant pled to a nonexistent crime. Conviction for a nonexistent crime is a jurisdictional error which invalidates Defendant’s conviction. For the same reason, we hold there is no lesser included offense of Section 30-6-1(D) of attempting to permit negligent child abuse when there is no harm to a child, as was described in the plea agreement and the district court’s judgment and sentence.

3. The State’s additional arguments are not well taken because reckless child abuse does not require subjective intent

{33} The State also argues, “Attempt to permit negligent child abuse is a cognizable crime in New Mexico because a person need not intend a specific result inconsistent with recklessness when committing the offense.” The State correctly points out that “the mens rea for reckless child abuse requires some level of conscious action above and beyond simple negligence” and asserts that “the intent required for attempt to commit reckless child abuse . . . was the intent to knowingly engage in the risky behavior.” The State avoids any discussion of the difference between specific intent and general intent crimes and our holding in *Jernigan* that one cannot attempt to commit a crime that does not require subjective specific intent. See 2006-NMSC-003, ¶ 18. Instead, it asserts that the mental state for reckless child abuse generally requires a person to “consciously disregard” a substantial and unjustifiable risk of harm to a child. The State seems to be asserting that this is a form of specific intent which validates a conviction for attempt to permit reckless child abuse. We disagree.

{34} The State relies on our references to *consciously disregard* in *Consaul*, 2014-NMSC-030, ¶ 37, and *State v. Taylor* (*Taylor I*), 2021-NMSC-023, ¶ 21, 491 P.3d 737. Both cases are distinguishable and have been superseded on that point by our opinion in *Taylor II*, 2024-NMSC-011, which was issued shortly after briefing in this case was completed. We have observed that “[t]ypical definitions of recklessness require an

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actor to consciously disregard a substantial and unjustifiable risk of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation.” *Consaul*, 2014-NMSC-030, ¶ 37. But we did not hold that *consciously disregard* was the appropriate mens rea for reckless child abuse in New Mexico. Instead, we addressed “only . . . the element of causation” when we analyzed the state’s theory of criminally reckless conduct and determined that the state had “[c]learly . . . failed to prove causation by anything approaching substantial evidence.” *Id.* ¶¶ 44, 48.

{35} In *Taylor I*, the defendants sought release while their appeal was pending pursuant to NMSA 1978, Section 31-11-1(C) (1988). *Taylor I*, 2021-NMSC-023, ¶ 1. We reviewed “only whether their appeal raise[d] a substantial question of law or fact that *if* resolved in favor of the [d]efendants would likely result in reversal or an order for a new trial.” *Id.* ¶ 9 (emphasis added) (internal quotation marks omitted) (quoting Section 31-11-1(C)(2)). As in *Consaul*, we did not resolve in *Taylor I* whether the mens rea for reckless child abuse required any subjective intent.

{36} In *Taylor II*, the defendants argued they could not be convicted of reckless child abuse for leaving very young children unattended and strapped into their car seats in a lethally hot vehicle if they acted accidentally, inadvertently, or unknowingly. 2024-NMSC-011, ¶ 23. The defendants argued that they could only be convicted of reckless child abuse if they were subjectively aware of what they had done. *Id.* This argument required explicit resolution of whether the mens rea for reckless child abuse requires proof of subjective intent. We rejected the defendants’ argument, holding instead that determining whether a defendant recklessly caused or permitted a substantial or unjustifiable risk of serious harm to a child is a purely objective standard. *Id.* ¶¶ 23-24.

{37} Given our holding in *Taylor II*, the State’s argument that Defendant’s subjective intent is an element of reckless child abuse is mistaken. Since the mens rea standard for reckless child abuse is objectively

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determined, *Id.* ¶¶ 24, 26, reckless child abuse is not a specific intent crime, and a person cannot lawfully be charged with attempting to cause or permit reckless child abuse.

III. CONCLUSION

{38} For the reasons stated above, we exercise our discretion to hear this case because it presents an issue of substantial public interest. We also conclude it raises

a nonwaivable jurisdictional question that can be raised for the first time on appeal. Finally, we hold a defendant cannot enter a plea to a nonexistent crime and that *attempt* to cause or permit reckless child abuse is a nonexistent crime. Accordingly, we vacate the no contest plea entered by Defendant, reverse the judgment and conviction, and remand to the district court to dismiss the case.

{39} **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

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-028

No. S-1-SC-40162 (filed April 21, 2025)

KATE FERLIC, as the Personal Representative of the Wrongful Death Estate of I.B-R, a deceased minor, CARISSA BREALEY, individually and as the Guardian and Next Friend of K.B.R., a minor, JAMES ROOD, individually and AIDAN BREALEY-ROOD, individually,

Plaintiffs,

v.

MESILLA VALLEY REGIONAL DISPATCH AUTHORITY, DANIEL GUTIERREZ, DAVID WOODWARD and QUINN PATTERSON, individually and as Mesilla Valley Regional Dispatch officers and employees, DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS, ARTURO HERRERA, individually and as Doña Ana County officer and employee, ADRIAN HERRERA, individually and as Doña Ana County officer and employee, NEW MEXICO DEPARTMENT OF PUBLIC SAFETY, and CITY OF LAS CRUCES,

Defendants.

CERTIFICATION FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

David Herrera Urias, United States District Judge

McGraw Law, LLC
Mollie C. McGraw
Las Cruces, NM

for Plaintiffs

Mason & Isaacson, P.A.
Thomas Lynn Isaacson
Gallup, NM

for Defendants Mesilla Valley Regional

Dispatch Authority, Daniel Gutierrez,
David Woodward, and Quinn
Patterson

Law Office of Michael Dickman
Michael Dickman
Santa Fe, NM

for Defendant New Mexico
Department of Public Safety

OPINION

VIGIL, Justice.

{1} This matter comes to us by way of a certified question from the United States District Court for the District of New Mexico pursuant to Rule 12-607 NMRA. The certification arises due to a perceived conflict in our statutes governing the

liability of a 911 dispatcher (hereinafter 911 dispatcher or emergency medical dispatcher, depending upon the context). On the one hand, the Enhanced 911 Act, NMSA 1978, §§ 63-9D-1 to -11.1 (1989, as amended through 2017), provides immunity to those covered by its provisions “except for intentional acts.” Section 63-9D-10. On the other hand, the Emergency

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Medical Services Act (EMSA), NMSA 1978, §§ 24-10B-1 to -13 (1983, as amended through 2023), as implemented by the New Mexico Tort Claims Act (NMTCA), NMSA 1978, §§ 41-4-1 to -27 and 41-4-30 (1976, as amended through 2020),¹ provides for immunity for those covered by its provisions except for damages caused by negligence. See §§ 24-10B-5, -8; § 41-4-10. As framed by the federal district court, the certified question reads: “Considering the Enhanced 911 Act . . . and the [EMSA], are 911 dispatchers immune from liability for negligence under the [NMTCA]?”

{2} Exercising our discretion to reformulate the question, see Rule 12-607(C)(4), and “limit[ing] our answer to the context of this case,” *Spurlock v. Townes*, 2016-NMSC-014, ¶ 11, 368 P.3d 1213, we examine the impact, if any, the Enhanced 911 Act has on the liability of the 911 dispatchers—and the agencies that employ them—who are alleged to have been negligent in responding to the 911 emergency medical calls underlying this proceeding. Viewing the question in this light, our answer is as follows: the immunity provision set out in Section 63-9D-10 of the Enhanced 911 Act has no bearing on the 911 dispatchers’ immunity from liability for the allegedly mishandled 911 emergency medical calls; instead, the immunity issue is ultimately governed—one way or the other—by the liability provision of Section 24-10B-8 of the EMSA. Before undertaking our legal analysis, we recite the relevant facts and procedural history of the case.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

{3} The wrongful death and related claims giving rise to this lawsuit stem from the tragic death of sixteen-year-old minor I.B-R.² I.B-R, along with his mother (Mother) and brother, was hiking on a warm summer morning in the Organ Mountains of Doña Ana County, New Mexico, when I.B-R became seriously ill. Stumbling and losing his balance, I.B-R was unable to hike back to the family car that was parked at the trailhead. Mother called 911, requesting immediate medical assistance.

¹ Section 41-4-30 was explicitly enacted as a “new section of the Tort Claims Act.” 2010 N.M. Laws, ch. 22, § 1.

² The facts are taken from Plaintiffs’ first amended complaint and the certification order issued by the federal district court.

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The emergency medical call was answered by a 911 dispatcher employed by Defendant Mesilla Valley Regional Dispatch Authority (MVRDA) and was routed digitally to Defendant New Mexico Department of Public Safety (DPS) by way of a Computer-Aided Dispatch (CAD) system that allows information about an emergency 911 call to be “see[n] and access[ed]” by DPS dispatchers (collectively, the two agencies are hereinafter referred to as Defendants). {4} Mother reported that I.B-R needed urgent help because he was overheated and unresponsive and that the two of them were stranded roughly three-quarters of a mile from the trailhead. More than an hour and twenty minutes later, and after Mother had called 911 a second time, members of the Las Cruces Fire Department reached I.B-R and brought him back to the trailhead. Despite the fire department’s efforts and the series of medical interventions that ensued, I.B-R died the following day from multi-organ failure resulting from hyperthermia heat stroke.

{5} This litigation ensued. Plaintiffs, consisting of the personal representative of I.B-R’s wrongful death estate and I.B-R’s immediate family members, brought claims for wrongful death, lost chance of survival, spoliation of evidence, and loss of consortium. The action was initially commenced in state district court and was subsequently removed to federal district court.

{6} As here relevant, Plaintiffs’ first amended complaint (FAC) primarily assigns fault to three identified MVRDA dispatchers for a series of delay-causing missteps allegedly made in responding to Mother’s 911 emergency medical calls. Among the missteps alleged were failing to “adequately convey [information regarding I.B-R’s] symptoms” to the county fire officials; incorrectly characterizing the nature of the emergency as both a “search and rescue” and a “minor medical” call; and inadvisably canceling two ambulance dispatches. But, as the federal district court discussed in its certification order, fault also may lie with the non-“synced” nature of the separate CAD systems operated by each of the Defendants, a factor which may explain in part why the CAD system

operated by DPS “incorrectly noted that [Mother] and [I.B-R] were located three and a quarter . . . miles northbound of the trailhead, instead of three quarters . . . of a mile from the trailhead.” That circumstance, the federal district court reasoned, may have dissuaded the emergency responders who were “casually gather[ed]” in the trailhead parking lot from “r[unning] or walk[ing] the trail in an [earlier] attempt to reach [I.B-R] and render necessary emergency aid.”

{7} Defendants separately moved to dismiss the FAC for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Each motion cited the Enhanced 911 Act—not the EMSA—as a basis for dismissal. And each motion maintained that the allegations set out in the FAC sound in pure negligence and are thus barred by the immunity provision of Section 63-9D-10 of the Enhanced 911 Act which, as later discussed herein, exempts certain specified enhanced 911-related conduct from suit “except for intentional acts.”

{8} Plaintiffs countered that there is no immunity for 911 dispatchers under the Enhanced 911 Act. Instead, Plaintiffs asserted that the EMSA applies to 911 dispatchers and, therefore, they can be sued under the NMTCA’s negligence standard.

{9} Prompted by understandable uncertainty over New Mexico’s statutory framework and adherence to comity, the federal district court issued its certification order in lieu of deciding Defendants’ dismissal motions without this Court’s input and stayed the matter pending this Court’s answer to the certified question. We accepted the certification.

II. DISCUSSION

A. General Principles of Statutory Construction

{10} “When construing statutes, our guiding principle is to determine and give effect to legislative intent.” *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047 (internal quotation marks and citation omitted). “We use the plain language of the statute as the primary indicator of legislative intent,” *id.* (brackets, internal quotation marks, and citation omitted), adhering to the statutory language chosen by the Legislature without “read[ing] into a statute

language which is not there, especially when it makes sense as it is written,” *State Pub. Educ. Dep’t v. Zuni Pub. Sch. Dist.*, 2018-NMSC-029, ¶ 18, 458 P.3d 362 (internal quotation marks and citation omitted). Where statutory language is doubtful or ambiguous, “we read the provisions at issue in the context of the statute as a whole, including its purposes and consequences.” *Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 23, 483 P.3d 545 (internal quotation marks and citation omitted); *accord Rutherford v. Chaves Cnty.*, 2003-NMSC-010, ¶ 24, 133 N.M. 756, 69 P.3d 1199 (“Statutes are to be read in a way that facilitates their operation and the achievement of their goals.”), *abrogated on other grounds as recognized by Belen Cons. Sch. Dist. v. Cnty. of Valencia*, 2019-NMCA-044, ¶ 9, 447 P.3d 1154, *aff’d sub nom. Nash v. Bd. of Cnty. Comm’rs*, 2021-NMSC-005, 480 P.3d 842. Additional and more specific rules of statutory construction come into play and are discussed below.

B. Defendants’ Misplaced Reliance on the Immunity Provision Contained in Section 63-9D-10 of the Enhanced 911 Act

{11} The Enhanced 911 Act, enacted in 1989 and codified in the “Railroads and Communications” chapter of our statutes, was designed, among other reasons, to promote “faster response time” in emergency situations by “enabling the development, installation and operation of enhanced 911 emergency reporting systems” and to ensure that “adequate funding [be made] available” for that salutary purpose. Section 63-9D-2(A)(4)(b), (A)(5), (B). Our Legislature thoroughly addressed these dual considerations—the “development, installation and operation” of enhanced 911 infrastructure and the provision of the necessary funding to do so—throughout the body of the statute. *See* § 63-9D-2(A)(5), (B); *see also, e.g.*, § 63-9D-3(M) (defining an *enhanced 911 system* as including “a landline, wireless, NG-911 or ESInet system consisting of network switching equipment, database, mapping and on-premises equipment”); § 63-9D-2(A)(4)(c) (providing that an enhanced 911 system “automatic[ly] rout[es]” an emergency call “to the appropriate emergency response unit”); § 63-9D-4(A) (encouraging the

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provision of enhanced 911 services by local governing bodies, individually or in “consortium,” by authorizing them to “incur costs for the purchase, lease, installation or maintenance of enhanced 911 equipment and training necessary for the establishment of an enhanced 911 system”); § 63-9D-8(A), (E) (“[C]reat[ing] in the state treasury [an] . . . enhanced 911 fund” to be used by local governing bodies, with the requisite approval, “for administering and coordinating activities associated with implementation of the Enhanced 911 Act.”). {12} In essence, the Enhanced 911 Act serves as a roadmap for the installation and operation of potentially lifesaving but costly technology-driven emergency response hardware, software, and infrastructure by local governmental entities. Notable for its absence from the statute is any language addressing the role served or job duties assumed by a 911 dispatcher in the enhanced 911 process—be it in the medical emergency call realm or otherwise. Indeed, the Legislature saw fit to include within the statute only two isolated references to what fairly can be read to be the functional equivalent of a 911 dispatcher—assigning the term *public safety answering point caller*—and confining each such reference to the statute’s definitional section. See § 63-9D-3(A), (L).

{13} Against this statutory backdrop, we examine the immunity provision set out in the version of Section 63-9D-10 in effect at all relevant times herein. In its entirety, the section reads as follows:

Enhanced 911 systems are within the governmental powers and authorities of the local governing body or state agency in the provision of services for the public health, welfare and safety. In contracting for such services or the provisioning of an enhanced 911 system, *except for intentional acts*, the local governing body, public agency, equipment supplier, communications service provider and their officers, directors, vendors, employees and agents are not liable for damages resulting from installing, maintaining or

providing enhanced 911 systems or transmitting 911 calls.

Section 63-9D-10 (emphasis added).

{14} Defendants read the immunity section broadly so as to include emergency medical dispatchers. In doing so, Defendants’ briefing focuses exclusively on the final disjunctive clause of the section’s text, urging that the phrase *transmitting 911 calls* is alone sufficient to “make[] clear” that 911 dispatchers are “subject to the [Act’s] grant of immunity.” As will be shown, this all-too-broad interpretation of the Enhanced 911 Act’s immunity provision falters on multiple levels.

{15} To begin, Defendants’ argument ignores the commonsense principle of statutory construction that a legislative body “does not alter the fundamental details of a [statutory] scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001). Succinctly stated, important changes in statutory law are not generally made through inconspicuous means. Applying that principle here, we cannot conclude that the Legislature would announce a new rule more broadly immunizing 911 dispatchers from liability except for intentional acts in the space of one phrase in a statute primarily addressing enhanced 911 infrastructure and funding that makes only isolated and generalized references to 911 dispatchers or their equivalents.

{16} This is particularly so in view of the chronology of the Enhanced 911 Act and the EMSA. The Enhanced 911 Act was enacted a scant six years after the passage of the EMSA, a statute whose purpose is to “regulate” the operation of “a comprehensive emergency medical services system in the state,” § 24-10B-2, and whose provisions lay out in clear and comprehensive terms both the job duties and licensing requirements of what it plainly characterizes as an “emergency medical dispatcher.” See § 24-10B-3(J) (defining the term to mean “a person who is trained and licensed pursuant to [the statute] to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and

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coordinate its response”); § 24-10B-4(F) (requiring the “adoption of rules pertaining to the training and licensure of emergency medical dispatchers and their instructors”). {17} In addition, and important for our purposes, the liability section of the EMSA provides as follows:

In any claim for civil damages arising out of the provision of emergency medical services by personnel described in Section 24-10B-5 . . . , *those personnel shall be considered health care providers for purposes of the [NMTCA]* if the claim is against a governmental entity or a public employee as defined by that act.

Section 24-10B-8 (emphasis added). Inasmuch as the term “emergency medical dispatcher” is prominently included among the array of emergency medical service personnel described in Section 24-10B-5 and considering that health care providers are among the public employees subject to suit under the waiver of immunity provisions of the NMTCA, see § 41-4-10, the statutory language quoted above can only be read as extending a waiver of immunity to tort claims involving emergency medical dispatchers. That being so, we are not inclined to believe that the Legislature—not long after its passage of the EMSA—would revisit the narrow topic of dispatcher-related liability/immunity in formulating and enacting the Enhanced 911 Act and, in the process, treat the subject matter with far less clarity the second time around than it did the first.

{18} Our skepticism that the Legislature purposefully chose to follow this incongruous path when it enacted the Enhanced 911 Act is only heightened by the Legislature’s 2017 amendment to the Act that raised the immunity bar from a heightened negligence standard to an intentional standard. See § 63-9D-10 annot. (June 16, 2017) (indicating that the 2017 amendment “removed negligent acts as exceptions to the immunity provision” of the section). Were we to adopt Defendants’ expansive reading of the immunity provision of Section 63-9D-10 of the Enhanced 911 Act, we would either have to read the section in isolation or assume that, in enacting and amending

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the statute, the Legislature intended to supplement and ultimately to repeal the counterpart liability provision of the EMSA. {19} In recently resolving a similar statutory dilemma, this Court rejected both of these options, noting that courts “do not read statutes in isolation” and that repeals by implication require a “clear and manifest” legislative intent to replace a prior statute with a later one and “are not favored.” *Coal. for Clean Affordable Energy v. N.M. Pub. Regul. Comm’n*, 2024-NMSC-016, ¶ 30, 549 P.3d 500 (internal quotation marks and citations omitted). And as this Court stated more than a century ago, repeals by implication are recognized only “where the last statute is so broad in its terms and so clear and explicit in its words as to show it was intended to cover the whole subject, and therefore, to displace the prior statute.” *State ex rel. Cnty. Comm’rs v. Romero*, 1914-NMSC-023, ¶ 6, 19 N.M. 1, 140 P. 1069 (internal quotation marks and citations omitted). The cryptic immunity provision set out in Section 63-9D-10 of the Enhanced 911 Act is hardly sufficient to meet this stringent standard.

{20} Lastly, just as courts resist reading statutes in isolation, so too are courts wary of reading selected snippets of a statute in isolation. *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010) (“[W]e do not . . . construe statutory phrases in isolation; we read statutes as a whole.” (omission in original) (internal quotation marks and citation omitted)); see *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 290 (2010) (recognizing that “[c]ourts have a duty to construe statutes, not isolated provisions” and cautioning courts against treating different categories of statutory language “as islands unto themselves” (internal quotation marks and citation omitted)), *superseded by statute on other grounds as stated in Lyons Twp. ex rel. Kielczynski v. Vill. of Indian Head Park*, 2017 IL App (1st) 161574, ¶ 16, 84 N.E.3d 1118; *accord Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350 (stating that courts should read statutes “in [their] entirety and construe each part in connection with every other part to produce a harmonious whole”); see also 2A Norman J. Singer &

Shambie Singer, *Sutherland Statutes and Statutory Construction* § 46.5 (7th ed. 2014) (labeling this approach “[w]hole statute’ interpretation”).

{21} Applying that principle here, it is far from clear that the phrase *transmitting 911 calls* that appears at the end of the immunity provision of Section 63-9D-10 and upon which Defendants so heavily rely was intended to encompass the work of 911 dispatchers. Given the Enhanced 911 Act’s emphasis on communications infrastructure, a more plausible view is that the *transmitting 911 calls* language found in Section 63-9D-10 was meant to apply to malfunctions related to the “automatic routing [of 911 calls] to the appropriate emergency response unit” that is a required feature of enhanced 911 systems in New Mexico. Section 63-9D-2(4)(c). As Plaintiffs effectively summed it up in opposing the dismissal motion filed by Defendant MVRDA in the pending federal court proceedings: “[T]he Enhanced 911 Act should be construed to provide immunity only for those situations where there is some technical failure in the 911 system [itself].”

{22} To be clear, we do not question the wisdom of modernizing existing statutes to clarify the immunity status of purveyors, providers, and recipients of innovative technologies. We simply conclude that the Legislature did not intend the Enhanced 911 Act to serve as a vehicle to confer immunity on 911 dispatchers, save for intentional acts. Instead, as indicated above, the Legislature previously settled the immunity issue—at least with respect to emergency medical dispatchers—when it enacted the EMSA.

C. The Narrow Scope of Our Analysis

{23} In the certification realm, this Court’s task is complete when we provide an answer to a certified question that is “determinative in that it resolves the issue in the case out of which the question arose, and the resolution of this issue materially advances the ultimate termination of the litigation.” *Schlieter v. Carlos*, 1989-NMSC-037, ¶ 4, 108 N.M. 507, 775 P.2d 709; *accord City of Las Cruces v. El Paso Elec. Co.*, 1998-NMSC-006, ¶ 24, 124 N.M. 640, 954 P.2d 72 (“Our goal in answering a question certified by the federal courts is not to finally dispose of all relevant issues in a case.”). Our answer

today—that the immunity provision found in Section 63-9D-10 of the Enhanced 911 Act plays no role in determining the liability of either the 911 dispatchers involved in the tragic incident underlying this lawsuit or their governmental employers—fully resolves the immunity issue that fueled Defendants’ motions to dismiss and gave rise to the certification order issued by the federal district court.

{24} We have no occasion to engage in any further analysis—say, for example, by applying the liability provision contained in Section 24-10B-8 of the EMSA to the facts of this case. Notably, neither of the Defendants sought relief on the basis of that statute in the federal district court or presently ask this Court in their combined briefing to weigh in on the issue. Nor would the limited factual development of the federal district court record allow us to do so. Missing from the record, for example, is a proper showing that any of the 911 dispatchers implicated in the alleged mishandling of the 911 calls involved in this case met the licensure requirements necessary to qualify for work as an emergency medical dispatcher under Section 24-10B-5 of the EMSA. Even beyond these inhibiting factors, prudence counsels us to abstain from any further analysis so as to avoid venturing into advisory opinion territory. See *Schlieter*, 1989-NMSC-037, ¶ 4 (cautioning that “[a]voidance of advisory opinions” is essential to the proper handling of certification requests); see also *Allstate Ins. Co. v. Stone*, 1993-NMSC-066, ¶ 7, 116 N.M. 464, 863 P.2d 1085 (declining to decide unnecessary certified issues to avoid issuing an advisory opinion). Our analysis, therefore, ends here.

III. CONCLUSION

{25} For the foregoing reasons, we conclude that the immunity provision of Section 63-9D-10 of the Enhanced 911 Act has no relevance in determining the potential liability of a 911 dispatcher for mishandling an emergency 911 call.

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

**MICHAEL E. VIGIL, Justice
WE CONCUR:**

DAVID K. THOMSON, Chief Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

► From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-029

No. S-1-SC-40119 (filed April 24, 2025)

BOKF, N.A.,

Plaintiff,

v.

**THE UNKNOWN HEIRS AND DEVISEES AND LEGATEES
OF LINORA P. PACHECO, Deceased, JOSE PACHECO, SANTA FE
COMMUNITY HOUSING TRUST, NEW MEXICO MORTGAGE FINANCE
AUTHORITY, and OCCUPANTS OF THE PROPERTY,**

Defendants,

and

ASHOK KAUSHAL,

Appellant-Petitioner/Cross-Respondent,

v.

SANTA FE COMMUNITY HOUSING TRUST,

Appellee-Respondent/Cross-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

Bryan Biedscheid, District Judge

Ferrance Law, P.C.

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VanAmberg, Rogers, Yepa, Abeita,

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Santa Fe, NM

for Respondent/Cross-Petitioner

OPINION

HUDSON, Judge.

{1} Fundamental guarantees of fairness, notice, the opportunity to be heard, and due process undergird both our judicial system and the validity of judgments affecting the rights of parties impacted by those judgments. This case presents an instance where our obligation to protect those guarantees must take precedence over the consideration and decision of the discrete legal issues that bring this case before us. At issue is the established legal principle

that “[a] judgment entered absent sufficient service of process upon a defendant violates due process and is void as to the defendant for want of personal jurisdiction.” *T.H. McElvain Oil & Gas Ltd. P’ship v. Grp 1: Benson-Montin-Greer Drilling Corp.*, 2017-NMSC-004, ¶ 25, 388 P.3d 240.

{2} Upon review of the proceedings in this matter, we conclude that the underlying judgment of foreclosure may be void based on the lack of service of process on the unknown heirs, legatees, and devisees of the original debtor and mortgagor, Linora P. Pacheco (Linora Pacheco), who were named as parties under NMSA 1978,

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Section 39-5-15 (1937), and separately based on the failure to name and obtain service of process on all her known heirs. Ultimately, we hold that this matter must be remanded to the district court for further fact-finding to determine whether the underlying judgment is void.

I. PROCEDURAL HISTORY

{3} Consideration of the sufficiency of service of process on claimants to the underlying property and the validity of the judgment of foreclosure requires a granular recitation of the procedural history in the district court.

A. The Complaint and Initial Service

{4} Linora Pacheco executed a promissory note and deed of trust in favor of BOKF, N.A. DBA Bank of Albuquerque, a National Banking Association (BOKF). The deed of trust granted BOKF a security interest in Linora Pacheco’s property in Santa Fe, New Mexico (the Property). After Linora Pacheco defaulted on her obligations under the promissory note, BOKF brought suit seeking judgment against Linora Pacheco on the promissory note and for foreclosure of the Property under the deed of trust.

{5} The *Complaint for Foreclosure* was filed on December 23, 2014. The complaint named Linora Pacheco and John Doe Pacheco and the junior lien holders, Santa Fe Community Housing Trust (the Trust) and New Mexico Mortgage Finance Authority, as the named defendants. ABC Corporations I-X, XYZ Partnerships I-X, John Does I-X, Jane Does I-X, and the Unknown Heirs and Devisees of any of the above, if deceased, and Occupants of the Property were named as fictional defendants.

{6} At BOKF’s request, the district court issued a summons on December 29, 2014, for the unnamed Occupants of the Property. Summonses were also issued for Linora Pacheco and John Doe Pacheco for service at the Property but were not returned.

{7} Summons returns showing service on Raymond Pacheco¹ and Bryan Pacheco as Occupants of the Property were filed on January 26, 2015.

¹ Raymond Pacheco is also variously referred to as Ray or Raymundo at different points in the record. We refer to him as Raymond for purposes of consistency.

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{8} On March 15, 2015, BOKF filed a *Motion for Service by Publication* seeking leave to serve Linora Pacheco and John Doe Pacheco by publication. As grounds for the motion, BOKF recited service could not be made on Linora or John Doe Pacheco at the Property because they lived in “Vegas,” and the firm BOKF hired to conduct a skip trace was “unable to locate a good address and phone number” for Linora and John Doe Pacheco. The *Motion for Service by Publication* included *Affidavits of Due Diligence* by the process server and the investigation agency. The affidavit by the process server states, in pertinent part:

1/4/2015 12:35 pm [Affiant] attempted service on Linora P. & John Doe Pacheco at [the Property], spoke to Ray Pacheco who stated that him and Bryan Pacheco reside here, they are Linora’s sons but her and her husband live in Vegas now. . . . [Affiant] served Occupants of the Property at [the Property] by hand delivering the documents to Ray Pacheco.

The affidavit does not indicate whether the affiant asked Raymond for an address for Linora Pacheco. The affidavit by the investigation agency states, in pertinent part:

I, [Affiant], being duly sworn upon oath state that on the 3rd day of February, 2015 at 8:12 am, I:

Located a most current address for the above subject. Details of locate:

Additional Information pertaining to this Service:

2/3/2015 8:12 am [Affiant] is unable to locate a good address or phone number for Linora & John Doe Pacheco.

{9} The district court entered an order to allow service by publication on Linora Pacheco and John Doe Pacheco. Notice was published in the Albuquerque Journal. Notice was not published in a newspaper in any of the following: the cities of Santa Fe (New Mexico) or Las Vegas (New Mexico or Nevada), or the counties of Santa Fe (New Mexico), San Miguel (New Mexico), or Clark (Nevada). The *Affidavit of Publication* filed by BOKF shows publication dates of May 25, June 1, and June 8, 2015. No motion for default was filed by BOKF. No default was entered by the district court clerk pursuant to Rule 1-055(A) NMRA (1999).²

B. Linora Pacheco’s Death

{10} Linora Pacheco died on September 16, 2015. On October 15, 2015, the Trust filed a *Suggestion of Death* indicating “the Defendant Linora P. Pacheco is deceased and died September 2015.” The *Suggestion of Death* was only served on counsel for BOKF. There is nothing in the record suggesting that the known heirs of Linora Pacheco, her sons Bryan Pacheco and Raymond Pacheco, were served or that any other potential heirs were identified and served pursuant to Rule 1-004 NMRA (2011)³ and Rule 1-025 NMRA with the *Suggestion of Death*. After the foreclosure sale, the identity of the two other surviving sons, Richard Pacheco and Joseph Pacheco,⁴ were determined by the parties to this appeal, Ashok K. Kaushal (Kaushal) and the Trust. Bryan Pacheco died on June 3, 2016. Richard Pacheco died on October 2, 2017, leaving two heirs, Claudia Urioste and Richard Martin Pacheco.

C. The Amendment of Complaint and Substitution of Parties

{11} BOKF did not file a motion seeking to substitute the unknown heirs, devisees, or legatees of Linora Pacheco as parties under Rule 1-025 after the *Suggestion of Death* was filed in October 2015. Rather, on June 13, 2016, BOKF filed a *Motion to Amend Complaint for Foreclosure*. The

motion recited as a basis for amendment, “the Complaint should be amended to substitute name the Unknown Heirs Devisees or Legatees of Linora P. Pacheco, deceased.” The motion also recited as a basis for amendment, “Plaintiff has been informed that [Linora Pacheco] is deceased. Therefore, the Complaint should be amended to substitute name the Unknown Heirs, Devisees or Legatees of [Linora Pacheco], deceased.”

{12} BOKF filed the *Amended Complaint for Foreclosure* on June 22, 2016. The *Amended Complaint for Foreclosure* named “The Unknown Heirs, Devisees and Legatees of Lenora [sic] P. Pacheco, Deceased” as the primary substituted defendants for Linora Pacheco. It also added Jose Pacheco as a defendant as the alleged spouse of Linora Pacheco. It is not clear how BOKF determined that Jose Pacheco was the alleged spouse of Linora Pacheco. Neither Raymond Pacheco nor Bryan Pacheco were named as parties despite knowledge of their identity, relation to Linora Pacheco, and whereabouts.

{13} The *Amended Complaint for Foreclosure* alleges:

3. Upon information and belief, Linora P. Pacheco is deceased and there may be heirs of said decedent *who are unknown to Plaintiff*, but who may claim an interest or right in and to the Property that is the subject matter of this action. *Plaintiff has conducted a diligent search to ascertain the names and locations of such persons; however, such information is unknown and cannot be ascertained.* Therefore, such unknown heirs have been made Defendants in this cause under the name and style as follows: Unknown Heirs, Devisees or Legatees of Linora P. Pacheco, Deceased.

² We refer to the 1999 version of Rule 1-055 that was in effect at the time of the Complaint for Foreclosure. Rule 1-055 was amended in 2016 and 2019. However, the amendments would not affect our substantive analysis.

³ We refer to the 2011 version of Rule 1-004 that was in effect at the time of the Complaint for Foreclosure. Portions of Rule 1-004 that are not at issue in this case were amended in 2021. However, the amendments would not affect our substantive analysis.

⁴ Joseph Pacheco is also variously referred to as Joe or Joseph R. Pacheco at different points in the record. We refer to him as Joseph for purposes of consistency.

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(Emphasis added.) This allegation tracks the language of Section 39-5-15, which allows a foreclosure plaintiff to proceed by naming the unknown heirs, devisees, or legatees of a deceased defendant mortgagor under certain circumstances.

D. Service of the Amended Complaint and Default Judgment

{14} A summons was issued on June 27, 2016, for the Unknown Heirs, Devisees, and Legatees of Linora Pacheco at the address of the Property. On September 30, 2016, a summons return was filed reflecting service on Jose Pacheco on September 28, 2016, at his address in Chamisal, New Mexico. Jose Pacheco and Linora Pacheco divorced twenty-five years before the promissory note and deed of trust. Jose Pacheco was subsequently dismissed as a party.

{15} On March 2, 2017, a Summons and Return for service on the Unknown Heirs, Devisees, and Legatees of Linora Pacheco was filed reflecting service on Raymond Pacheco “as the Unknown Heir, Devisee and Legatee of Lenora [sic] P. Pacheco on February 24, 2017 at [the Property]” (emphasis added). It is important to note that the summons return reflects service on Raymond Pacheco in the singular as the unknown heir, devisee, or legatee, not on behalf of others. There was never a motion filed to serve the *Amended Complaint for Foreclosure* on the unknown heirs, devisees, and legatees of Linora Pacheco by publication.

{16} BOKF filed a *Motion for Default Judgment* on May 23, 2017. A *Certificate as to the State of the Record* was filed May 31, 2017, that reflects that the unknown heirs, devisees, or legatees of Linora Pacheco were served in two ways. First, it reflects they were served by publication in the *Albuquerque Journal* on May 25, June 1, and June 8, 2015. Second, it reflects that they were served by personal service on Raymond Pacheco as “the Unknown Heir, Devisee and Legatee of Linora P. Pacheco.” It is unclear whether the *Certificate as to the State of the Record* was prepared and submitted by BOKF or prepared by the district court clerk.

{17} A *Stipulated and Default Judgment In Rem* was entered on June 29, 2017. The Property was sold at foreclosure with BOKF

bidding its judgment. An *Order Approving Special Master’s Report and Confirming Foreclosure Sale (No Deficiency)* was entered October 24, 2017.

E. Attempts at Redemption and Appeals

{18} After the foreclosure sale, Kaushal obtained an assignment of redemption rights from Raymond Pacheco and Joseph Pacheco. Kaushal then filed a *Petition for Redemption of Real Estate* on November 8, 2017. The Trust also sought to exercise redemption rights and filed *Santa Fe Community Housing Trust’s Petition for Redemption* on November 27, 2017. Various disputes arose as to the validity of the competing petitions for redemption and the required deposit. After extensive litigation of the competing redemption petitions, the district court entered its *Order Granting Santa Fe Community Housing Trust’s Petition for Redemption and Motion for Summary Judgment* on July 16, 2018.

{19} Kaushal appealed. The Court of Appeals entered its opinion and the matter was remanded to the district court in *Kaushal v. Santa Fe Community Housing Trust*, 2021-NMCA-010, ¶ 28, 484 P.3d 1020. After more litigation and disputes, Kaushal again appealed, and the Court of Appeals subsequently entered a memorandum opinion and the matter was remanded to the district court in *Kaushal v. Santa Fe Community Housing Trust*, A-1-CA-39814, mem. op. ¶ 13 (N.M. Ct. App. May 16, 2023) (nonprecedential).

{20} Both parties sought review by this Court to address issues relating to the nature, scope, and effect of redemption rights and the proper application of the doctrine of law of the case. We do not address the legal issues raised by the parties but instead decide this matter based on an analysis of the sufficiency of service of process and the impact on the underlying foreclosure judgment.

II. DISCUSSION

A. Discretionary Review of Service of Process Issues to Be Raised by the Court for the First Time on Appeal

{21} Issues relating to the service of process and the validity of the underlying

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foreclosure judgment have not been previously raised by the parties or the Court of Appeals. Therefore, we must first decide whether we can and should raise the issues for the first time on appeal. We undertake that consideration mindful that, if we determine to raise the issues, we will not reach the issues that bring this matter before us after extensive litigation and appeals by the parties to this appeal over a period of many years.

{22} In making the determination, we are guided by Rule 12-321(B) NMRA. Unlike subject matter jurisdiction, which can be raised at any time, the ability to raise and consider issues of the sufficiency of service of process for the first time on appeal is much more constrained. However, under Rule 12-321(B)(2)(a), (d), an appellate court may, in its discretion, raise an issue on its own for the first time on appeal where the issues involve “general public interest” or the “fundamental rights of a party.” Both those circumstances exist in this matter.

{23} The interests of the general public mandate that we raise the issues for the first time on appeal. The general public must have confidence in the judicial system. It is our obligation to protect the guarantees of fairness, notice, the opportunity to be heard, and due process that undergirds both our judicial system and the validity of judgments affecting the rights of parties impacted by those judgments. In this case, we must address the issue of service of process to make sure that in this case and any subsequent lawsuit, litigants understand their obligations and the rights of parties are sufficiently protected.

{24} The fundamental rights of the heirs of Linora Pacheco are also implicated. The heirs of Linora Pacheco, whether known or unknown, held legal title immediately upon her death. NMSA 1978, Section 45-3-101(B)(3) (2011) of the Uniform Probate Code provides:

B. Upon the death of a person, the person’s separate property and the person’s share of community property devolves:

...
(3) in the absence of testamentary

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disposition, to the person's heirs or to those indicated as substitutes for them in cases involving revocation, lapse, disclaimer or other circumstances pursuant to Chapter 45, Article 2, Parts 3, 4, 10 and 11 NMSA 1978 affecting the devolution of intestate estates.

If anyone is entitled to notice and an opportunity to be heard in legal proceedings affecting rights to property, the owners of the property must stand at the top of the list. Indeed, as owners holding legal title, their interests are superior to the lien claim of BOKF. "In this jurisdiction, it is well settled that a mortgage is merely a lien on, and passes no estate or interest in, the mortgaged premises." *State ex rel. Hill v. Dist. Court of Eighth Jud. Dist.*, 1968-NMSC-058, ¶ 8, 79 N.M. 33, 439 P.2d 551. Rule 1-025(A) (1) mandates that a motion to substitute parties be served on non-parties pursuant to Rule 1-004. Section 39-5-15 requires that when unknown heirs, devisees, or legatees are named, "service of process on and notice of said suit against such defendants shall be made as provided by law and the rules of court." The core purposes of service of process are to ensure notice and the opportunity to be heard. *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 26, 122 N.M. 524, 928 P.2d 250. It does not appear that the heirs of Linora Pacheco have been given proper notice or given the opportunity to assert any claims they may have had or to protect their interests in the Property. Their interests seem to have not been protected in this matter, resulting in the deprivation of their opportunity to assert their rights.

{25} We reject the argument that the heirs have known about the proceedings and have not sought to intervene so we should not take action to protect their interests. We will not make any assumption of what the heirs knew or did not know. The argument ignores the requirements of service of process and the importance of effective notice of proceedings as the predicate for an opportunity to be heard. The argument would shift the burden to appear on persons who have not received legal notice.

Therefore, we conclude that we must raise issues relating to the service of process for the first time in this matter under Rule 12-321(B)(2)(a), (d).

B. Foreclosure and Service of Process

{26} A plaintiff who holds both a promissory note and a mortgage can pursue remedies under both at the same time or can elect remedies and sue under either theory. A foreclosure proceeding seeking to enforce a lien against the property is a quasi in rem action "affording relief only against the secured property, and a suit on a bond or note is in personam." *Kepler v. Slade*, 1995-NMSC-035, ¶ 8, 119 N.M. 802, 896 P.2d 482. A quasi in rem proceeding is generally defined as an action that "affects only the interest of particular persons in the specific property as distinguished from proceedings in rem which determine interests in specific property as against the whole world." *Hill*, 1968-NMSC-058, ¶ 4.

{27} In this case, BOKF sued Linora Pacheco to obtain a money judgment based on the promissory note and to foreclose its lien on the Property created by the deed of trust. Specifically, the prayer for relief in the *Complaint for Foreclosure* requested judgment against Linora Pacheco on the promissory note for the amounts due and also sought foreclosure of its lien under the deed of trust. Therefore, at the inception of this case, it was a proceeding both in personam and quasi in rem.

{28} Even if this case is viewed as only invoking in rem jurisdiction, that fact does not change the analysis of service of process issues. The fact that a foreclosure proceeding is quasi in rem does not change the requirements for service of process on claimants to the property. "An in rem action is directed, not *against* the property per se, but rather at resolving the interests, claims, titles, and rights in that property. And it is persons—as individuals, governments, corporations—who possess those interests, claims, titles, and rights." *State v. Nunez*, 2000-NMSC-013, ¶ 78, 129 N.M. 63, 2 P.3d 264. Stated alternatively, a quasi in rem proceeding is not a safe harbor from proper service of process and does not supplant the requirements of due process.

{29} As early as our territorial days, New Mexico recognized the requirement

of proper service in quasi in rem and in rem proceedings. In *Robertson v. Mine & Smelter Supply Co.*, the Court held that a judgment in foreclosure was void where the property owners were not served. 1910-NMSC-053, ¶¶ 2, 5, 15 N.M. 606, 110 P. 1037. Similarly, *First Nat'l Bank v. Julian* involved a dispute over the division of proceeds from a foreclosure sale where a counterclaimant did not serve the property owner personally for personal jurisdiction or by publication for in rem jurisdiction. 1981-NMSC-049, ¶¶ 6-7, 96 N.M. 38, 627 P.2d 880. Despite the lack of service of the counterclaim, the Court held that there was jurisdiction under the unique facts of the case where the property owner had been served with the complaint and amended complaint and was already subject to the jurisdiction of the district court. *Id.* ¶¶ 7-9. In reaching its holding, however, the Court made clear, "We do not hold that service as provided by N.M.R. Civ. P. 5, N.M.S.A. 1978 (Repl. Pamp. 1980) and other rules can be discarded as an essential step in the normal lien foreclosure process." *Id.* ¶ 7.

{30} The Court examined the requirements of service of process in *McElvain*, 2017-NMSC-004, ¶ 25, an in rem action to quiet title, stating:

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits deprivation of property absent adequate procedural safeguards. U.S. Const. amend. XIV, § 1. The right to be heard in a court of law in response to proceedings seeking to deprive one of one's own property is a fundamental requirement of due process. "The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (internal quotation marks and citation omitted). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the

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pendency of the action and afford them an opportunity to present their objections.’ *Id.* (citations omitted). A judgment entered absent sufficient service of process upon a defendant violates due process and is void as to the defendant for want of personal jurisdiction.

The Court went on to note:

To meet the fundamental requirements of due process, a plaintiff must undertake a diligent and good faith effort to locate defendants and serve them personally with notice. But personal service is not always feasible, and in such cases constructive notice may satisfy due process.

Id. ¶ 26 (citation omitted).

{31} Turning to the facts in this case, it does not appear that service of process on the heirs of Linora Pacheco, if they were properly named, was made as required by Rules 1-004 and 1-025, and Section 39-5-15. It goes without saying that the only way to serve unknown parties, such as unknown heirs, devisees, or legatees, is through constructive service by publication. Obviously, that is true simply because the identity and whereabouts of the persons are supposed to be unknown. There was never a motion filed to serve the unknown heirs, devisees, or legatees of Linora Pacheco by publication after they were substituted as parties as the legal owners of the Property. Such a motion would have to be supported by an affidavit that detailed the diligent effort by BOKF to locate the unknown heirs, devisees, or legatees of Linora Pacheco and show why they could not be identified, located, or served. Rule 1-004(J). The unknown heirs, devisees, or legatees of Linora Pacheco were not served by publication at any stage of the proceedings.

{32} Two heirs of Linora Pacheco—Raymond and Bryan Pacheco—were known and should have been individually named as parties and personally served. Neither was named as a party. Raymond Pacheco was served, but purportedly only as an unknown heir.

{33} There is a looming question whether the remaining heirs could have been identified, individually named, and

personally served. There is a sufficient basis in the record to suggest that they could have been found and that there was not a meaningful effort to do so. Even if there were unknown heirs and Section 39-5-15 applied, there had to be service on them.

{34} The genesis of all the issues relating to whether there was proper and sufficient service of process on the heirs of Linora Pacheco and whether the *Stipulated and Default Judgment In Rem* may be void stem from BOKF’s use of and reliance on Section 39-5-15 to name the unknown heirs, devisees, or legatees of Linora Pacheco. BOKF appeared to invoke Section 39-5-15 in its Amended Complaint when it effectively substituted Linora Pacheco’s unknown heirs, devisees, or legatees as primary defendants to the suit. However, it appears that BOKF failed to satisfy the requirements of that provision. We, therefore, must address Section 39-5-15 to confirm the prerequisites for its proper use and application and to confirm the role of counsel and the court in this case and in the future. Doing so will protect potential heirs’ rights to notice and the ability to be heard, as well as protect against possible undue reliance on or misuse of Section 39-5-15.

C. Proper Use and Application of Section 39-5-15 to Protect Rights to Notice

{35} “The meaning of the language used in a statute is a question of law that we review *de novo*.” *Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61. “In determining the meaning of a statute, we start with its language. We give statutory language its ordinary and plain meaning unless the legislature indicates a different interpretation is necessary. Unless ambiguity exists, this Court must adhere to the plain meaning of the language.” *Zangara v. LSF9 Master Participation Tr.*, 2024-NMSC-021, ¶ 10, 557 P.3d 111 (internal quotation marks and citations omitted).

{36} We begin with the statute itself. Section 39-5-15 provides:

In all actions brought for the foreclosure of any real estate mortgage or deed of trust where the plaintiff alleges in his complaint that any person who is now deceased, during his lifetime, claimed a lien

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upon the real estate described in said mortgage or trust deed and further alleges either that there has been no administration of such decedent’s estate, or that the plaintiff is unable to ascertain the names, residences and whereabouts of the heirs, devisees or legatees of such deceased person he may make such unknown heirs, legatees and devisees of any such deceased person parties defendant to said cause under the name, style and designation of ‘unknown heirs, devisees, or legatees, of (here insert name of deceased person), deceased’; and service of process on and notice of said suit against such defendants shall be made as provided by law and the rules of court.

{37} Section 39-5-15 aims to enhance the efficiency and cost-effectiveness of foreclosure proceedings in situations where the mortgagor has died and there is either no probate or the heirs are unidentified or cannot be located. Although this provision benefits plaintiffs, it also imposes a responsibility—they must ensure it is utilized only in appropriate cases, prevent any potential misuse, and establish a clear record justifying its application.

{38} In effect, Section 39-5-15 allows the plaintiff to proceed quasi in rem solely against the property and establishes the procedure for doing so under the conditions defined in the statute. Proceeding quasi in rem solely against the property based on Section 39-5-15 eliminates the possibility of a deficiency judgment. Alternatively, a plaintiff could seek to enforce its claim for a money judgment in the absence of an existing probate proceeding. To do so, the plaintiff would have to file a probate proceeding and seek an appointment as a personal representative. NMSA 1978, § 45-3-103 (1975); NMSA 1978, § 45-3-104 (1975); NMSA 1978, § 45-3-203(A)(6) (2017).

{39} With the benefit of Section 39-5-15 comes obligations to limit its use to the specific circumstances set out in the statute and to comply with its requirements for service. A plaintiff seeking foreclosure must establish that Section 39-5-15, in

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fact, applies to the case. The mere fact that the defendant debtor is deceased is not enough. Section 39-5-15 must be construed consistent with the recognized fundamental requirements of due process that “a plaintiff must undertake a diligent and good faith effort to locate defendants and serve them personally with notice.” *McElvain*, 2017-NMSC-004, ¶ 26. In other words, Section 39-5-15 does not supplant the obligation of a plaintiff to undertake the diligent search mandated by due process. Rather, an allegation that the plaintiff determines there is no estate administration or that the names and whereabouts of the heirs, devisees, or legatees cannot be ascertained assumes that the plaintiff has conducted a diligent and good faith search for the heirs and is able to establish that it has done so. To construe Section 39-5-15 otherwise would undermine due process and ultimately deprive property owners of notice and the opportunity to be heard.

{40} Requiring a diligent and good faith search does not impose a significant burden or require significant costs. In addition to traditional tools historically used to locate persons, simple internet searches will often result in identifying and locating heirs. An internet search for an obituary of the deceased person often leads to an obituary that has either been published in a newspaper or posted by a funeral home on its website.⁵ Focused internet searches can easily be done on websites for local newspapers and funeral homes in the location where the person died. Once potential heirs are identified, the internet offers a myriad of resources, websites, and applications that can be used to locate persons at little or no cost. There are numerous public websites that are available online to find potential heirs. The availability of internet tools makes conducting the good faith and diligent effort to find heirs easier and more cost-efficient.

{41} An evidentiary showing of the good faith and diligent effort and the basis for invoking Section 39-5-15 to name unknown heirs, devisees, or legatees must be made

on the record prior to entry of judgment. That is true whether the unknown heirs are initially named as the primary defendants or substituted as parties at a later time. This case is a prime example of why that must be the case. BOKF was able to amend its complaint to name the unknown heirs, devisees, or legatees without making a showing that Section 39-5-15 applied or that it had complied with Section 39-5-15. BOKF then obtained a judgment without doing so.

D. Service on Unknown Heirs, Devisees, or Legatees

{42} In all instances where the unknown heirs, devisees, or legatees are named, service must be made by substituted service by publication. To do so, a plaintiff must file an affidavit under Rule 1-004(J). That affidavit must document the good faith and diligent search conducted to locate any potential heirs. Prior to entry of judgment, the trial court must satisfy itself that an adequate search has been completed and that there is a proper basis to name the unknown heirs, devisees, or legatees under Section 39-5-15 and serve them by publication. Rule 1-004(J). Similarly, where there is a request to amend a complaint to substitute unknown heirs, devisees, or legatees, an affidavit could be included either with the motion to show that there is a basis to substitute the unknown heirs, devisees, or legatees under Section 39-5-15 as parties or with a motion for service by publication.

{43} If there is a request for default judgment against the unknown heirs, devisees, or legatees, a mere allegation in a complaint that is not supported by an affidavit is insufficient to establish that an adequate search has been completed and that there is a proper basis to name the unknown heirs, devisees, or legatees under Section 39-5-15. Requiring an independent showing for invoking Section 39-5-15 protects against potential misuse or misapplication of the statute and, more importantly, protects the rights of owners of property.

{44} In this case, the allegations by BOKF in paragraph 3 of the *Amended Complaint for Foreclosure* that the names and locations of the heirs were unknown and could not be ascertained are simply incorrect and contrary to the affidavit submitted by BOKF in seeking to serve Linora Pacheco by publication. In fact, BOKF had actual knowledge of the names and whereabouts of two heirs, Raymond Pacheco and Bryan Pacheco, who were living at the Property. The fact that Kaushal and the Trust were able to identify and locate the other heirs suggests that BOKF’s allegation of a diligent search to ascertain the names and locations of Linora Pacheco’s heirs, as well as the assertion that information regarding the heirs was both unknown and could not be determined, is suspect. This is significant because it may indeed be the case that the identity and location of Linora Pacheco’s heirs were either known or easily discernible. But, yet again, based on the record, we do not know. The record is devoid of any meaningful showing of any search conducted by BOKF or what efforts and actions the search may have entailed if one was done.

{45} Legal title to the Property of Linora Pacheco passed automatically upon her death to her heirs. Section 45-3-101(B). However, neither Raymond Pacheco nor Bryan Pacheco were named individually as defendants despite the fact that BOKF had knowledge of their identity and location. Effectively, they were never named, joined, meaningfully disclosed to the district court, or served.

{46} In sum, the *Amended Complaint for Foreclosure* may be impermissibly flawed in two respects. It fails to name individual known owners of the Property and heirs of Linora Pacheco. Perhaps more importantly, the allegation used as the basis for naming the unknown heirs, devisees, or legatees is simply incorrect and contrary to the affidavit of the process server that BOKF previously submitted. As a result, the unknown heirs, devisees,

⁵ The Trust found an obituary from a funeral home for Linora Pacheco, which it attached to its pleadings seeking to enforce redemption rights after the foreclosure sale. That obituary reflected that Linora’s son Richard lived in Chamisal, New Mexico, and her sons Raymond, Bryan, and Joseph lived in Santa Fe, New Mexico.

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or legatees may not have been properly named under Section 39-5-15.

{47} We now return to the analysis of service of process on the unknown heirs, devisees, or legatees of Linora Pacheco in light of the procedural history. Simply put, it does not appear from the record that there was service of process by publication on the unknown heirs, devisees, or legatees of Linora Pacheco, even if they were properly named.

{48} There was never a motion filed to serve the unknown heirs, devisees, or legatees of Linora Pacheco by publication and no service by publication occurred. BOKF's motion for default judgment was predicated on the *Certificate as to the State of the Record*. The service by publication referred to in the *Certificate as to the State of the Record* was the attempted service by publication on Linora Pacheco prior to her death, not any service by publication on the unknown heirs, devisees, or legatees of Linora Pacheco as required by Rules 1-004 and 1-025 as well as Section 39-5-15.

{49} The *Certificate as to the State of the Record* also refers to service on Raymond Pacheco. Service on Raymond Pacheco, a known heir of Linora Pacheco, cannot be construed as service on all the unknown heirs, devisees, or legatees of Linora Pacheco. Even if service on Raymond Pacheco, a known heir, can somehow be construed as service on him as an unknown heir, the remaining known and the unknown heirs, devisees, or legatees of Linora Pacheco were never served as required by Rules 1-004 and 1-025 as well as Section 39-5-15.

{50} We also note concerns about service of the motion to amend the complaint to substitute the unknown heirs, devisees, and legatees. The motion did not include an explanation of how Section 39-5-15 allowed the unknown heirs, devisees, or legatees to be named and did not include an affidavit to show that Section 39-5-15 had been complied with. In effect, the motion to amend was a motion to substitute parties. Rule 1-025(A)(1) provides, in part:

The motion for substitution may be made by any party or by the

successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 1-005 NMRA and upon persons not parties in the manner provided in Rule 1-004 NMRA for the service of a summons.

Where parties are to be substituted, they must be served with the motion. However, that did not happen. There is nothing in the record to show service of the motion was made on known non-parties under Rule 1-004 pursuant to Rule 1-025.

{51} Generally, “the determination of whether personal jurisdiction exists is a question of law, which an appellate court reviews de novo when the relevant facts are undisputed.” *Caba Ltd. Liab. Co. v. Mustang Software, Inc.*, 1999-NMCA-089, ¶ 9, 127 N.M. 556, 984 P.2d 803. We conclude that there are issues of fact that must be determined by the district court for that determination to be made. For example, the district court should determine the basis for the allegations that the heirs of Linora Pacheco were unknown and could not be determined. The district court must also determine who submitted the *Certificate as to the State of the Record* and where the information came from. The district court will also have to determine whether BOKF made a good faith effort to identify or locate the heirs of Linora Pacheco. Finally, BOKF is not a party to this appeal. Much of the conduct at issue involves BOKF, and it should have the opportunity to participate in the determination and resolution of the issues we raise. Therefore, we conclude that this matter must be remanded to the district court to determine whether the *Stipulated and Default Judgment In Rem* is void consistent with this opinion.

E. Service by Publication on Linora Pacheco

{52} Because the district court may also have to address the service by publication on Linora Pacheco as a basis for jurisdiction supporting the judgment, we undertake to examine it.

{53} We start with the premise that “[p]rocess shall be served in a manner reasonably calculated, under all the circumstances, to apprise the defendant of

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the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.” Rule 1-004(E)(1). This is true with service by publication as well. Rule 1-004(J). In *McElvain*, we made “clear that constructive service of process by publication satisfies due process if and only if the names and addresses of the defendants to be served are not ‘reasonably ascertainable.’” 2017-NMSC-004, ¶ 31 (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983)). Importantly, we also emphasized:

Notice of court proceedings cannot just be a mere gesture, else it will not pass constitutional muster— “[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected.”

McElvain, 2017-NMSC-004, ¶ 27 (quoting *Mullane v. Cent. Hanover Bank & Tr.*, 339 U.S. 306, 315 (1950)).

{54} We now turn to the facts of this case. Service by publication was based on affidavits submitted with the motion for service by publication. The affidavit of the process server established only that Linora Pacheco lived in “Vegas.” “Vegas” could refer to either Las Vegas, New Mexico, in San Miguel County or Las Vegas, Nevada in Clark County. The affidavit of the investigation agency was ostensibly submitted to establish that the whereabouts of Linora Pacheco could not reasonably be ascertained after a diligent search. A review of the affidavit leaves one to question what, if any, diligent search was conducted. See *McElvain*, 2017-NMSC-004, ¶ 1 (“Only when a party’s whereabouts are not reasonably ascertainable following diligent search and inquiry can constructive notice substitute for personal notice of suit.”). The affidavit is terse, arguably inconsistent, and wholly lacking in necessary supportive information. It amounts to nothing more than a declaratory statement. The affidavit provides no details of what

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efforts were undertaken in any search, what tools or means were utilized to conduct a search, whether the search included internet resources and services or public databases, or other details of the search. In sum, the affidavit does not disclose the nature of the search so that a court could determine whether service by means other than publication could or could not be made. In addition, there was no supporting information that a court could use to determine what newspapers the notice should be published in.

{55} The notice was published in the Albuquerque Journal based on the district court's finding in the *Order for Service by Publication* that "The court further finds that the newspaper of general circulation in the county that is most likely to give Defendant notice of pendency of the action is *The Albuquerque Journal*." We do not question that finding. However, Rule 1-004(K)(1) instructs a court to require that notice be published in a newspaper that is most likely to give a defendant notice under certain circumstances. The rule provides, in part:

Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the defendant notice of the pendency of the action, the court *shall also order* that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is *most likely to give the defendant notice of the action*.

Rule 1-004(K)(1) (emphasis added). Although this proceeding was brought in Santa Fe County, where the Property is

located, it was known that Linora Pacheco lived in "Vegas." It is not uncommon for an action to be pending in one county, and a defendant who is to be served by publication live in another. We stress that many communities in New Mexico outside of Albuquerque are served by local newspapers. Those local newspapers are generally considered by citizens of the community as the primary source for local news, such as sports, events, and local government. As such, local newspapers are most likely to provide notice to a local resident in that community. Even if the person does not see the notice in the newspaper, often someone they know will see it and alert the person. The district court did not address in the *Order for Service by Publication* whether publication in a local newspaper in Las Vegas, New Mexico was required pursuant to Rule 1-004(K)(1). Nor did the court inquire whether "Vegas" indicated Las Vegas, New Mexico or Las Vegas, Nevada. Should the district court examine the service by publication on remand, the lack of publication in a local Las Vegas, New Mexico newspaper or in a newspaper serving Las Vegas, Nevada is a factor the court may consider.

F. Court of Appeals Published Opinion and Memorandum Opinion

{56} The district court's determination on remand whether the *Stipulated and Default Judgment In Rem* is void could materially affect whether the Court of Appeals' prior rulings are valid precedent. If the *Stipulated and Default Judgment In Rem* is void, then the subsequent sale and redemptions are similarly rendered moot, as if they never happened. In that case, the Court of Appeals' rulings are reduced to advisory opinions and removed from any justiciable

controversy. As a result, they should not be relied on as precedent in any future case. Therefore, the only appropriate thing for us to do is require that they be set aside.

{57} *Kaushal*, 2021-NMCA-010, shall be vacated and unpublished, and *Kaushal*, A-1-CA-39814, mem. op., shall be vacated.

III. CONCLUSION

{58} Following the death of Linora Pacheco, BOKF sought to enforce its rights under the promissory note and deed of trust by naming her unknown heirs, devisees, or legatees. For the reasons we have discussed, the *Stipulated and Default Judgment In Rem* may be void for lack of proper service of process on her unknown heirs, legatees, and devisees who were named as parties under Section 39-5-15, as well as failure to name and obtain service of process on the known heirs of Linora Pacheco.

{59} We conclude that this matter must be remanded to the district court for further fact-finding and a determination of the validity of the *Stipulated and Default Judgment In Rem*. As a matter of necessity to avoid future undue reliance on the Court of Appeals' rulings if the judgment is void, *Kaushal*, 2021-NMCA-010, shall be vacated and unpublished, and *Kaushal*, A-1-CA-39814, mem. op., shall be vacated.

{60} Therefore, this case is remanded to the district court for further proceedings consistent with this opinion.

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

JAMES M. HUDSON, Judge

Sitting by designation

WE CONCUR:

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

BRIANA H. ZAMORA, Justice

CURTIS R. GURLEY, Judge

Sitting by designation

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-41751
Carol Crandall
v.
Bruce C. Sanchez

Introduction of Opinion

In this probate case, Respondents Bruce, Nora, Elizabeth, and Rebecca Sanchez appeal the district court's discovery and contempt sanctions against Bruce and its grant of attorney fees to Petitioner Carol Crandall to be paid out of the Estate of Decedent Sally Sanchez. Specifically, Respondents argue that the district court erred by (1) sanctioning Nora, Elizabeth, and Rebecca for the actions of Bruce and (2) relying on the common fund doctrine to award attorney fees to be paid out of the Estate. We affirm.

Zachary A. Ives, Judge
WE CONCUR:
Jennifer L. Attrep, Judge
Gerald E. Baca, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41751>

No. A-1-CA-41575
State of New Mexico

v.
Danny Christopher Aldaz

Introduction of Opinion

A jury convicted Defendant Danny Christopher Aldaz of two counts of first degree criminal sexual penetration, contrary to NMSA 1978, Section 30-9-11 (D) (1)(2009); one count of second degree criminal sexual contact of a minor, contrary to NMSA 1978, Section 30-9-13(B)(1) (2003); and one count of third degree criminal sexual contact of a minor, contrary to Section 30-9-13(C) (1) for sexually abusing a student in his second grade class. On appeal, Defendant contends that the convictions should be reversed because the district court improperly allowed (1) an expert to testify about the process of grooming, and (2) a nurse practitioner to read portions of her chart containing Victim's statements to the jury. **View full PDF online.**

Gerald E. Baca, 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-41575>

No. A-1-CA-41905
State of New Mexico
v.
Jonathan Lee Flores

Introduction of Opinion

This matter is on appeal from Defendant Jonathan Lee Flores' sentence imposing an eight-year habitual offender enhancement on Defendant under NMSA 1978, Section 31-18-17(C) (2003). Defendant argues that there was insufficient evidence to support the validity of two of his purported prior convictions under the habitual offender enhancement statute and that the district court lacked subject matter jurisdiction to impose the habitual offender enhancement because the sentence was not issued in compliance with the statutory requirements. See NMSA 1978, §§ 31-18-17 to -20 (1977, as amended through 2003). For the following reasons, we reverse and remand to the district court to vacate Defendant's sentence and for resentencing in accordance with this disposition.

Shammara H. Henderson, Judge
WE CONCUR:
Jennifer L. Attrep, Judge
Megan P. Duffy, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41905>

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-41722

Emil Mottola

v.

Triad National Security, LLC

Introduction of Opinion

This case arises out of Respondent Triad National Security's termination of the employment of Dr. Emil Mottola, Ph.D (Petitioner). Petitioner was employed at Los Alamos National Laboratory (LANL) for over thirty years as a research scientist. The ostensible reason for the termination was Petitioner's failure to satisfy one requirement of his position, which was to seek and obtain funding to support his research projects. However, Petitioner believed his employment was terminated due to his age or in retaliation for his union activities. Pursuant to the employment contract between the parties the dispute was submitted to an arbitrator for binding arbitration.

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Jacqueline R. Medina, Chief Judge
WE CONCUR:

J. Miles Hanisee, Judge
Jane B. Yohalem, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41722>

No. A-1-CA-39744

David P. Pena

v.

State of New Mexico

Introduction of Opinion

This matter is before this Court on remand from certification to the New Mexico Supreme Court. Worker David P. Pena appeals a Workers' Compensation Administration (WCA) order (1) awarding him the maximum amount of attorney fees allowed under the fee cap (the Cap) in NMSA 1978, Section 52-1-54(I) (2013, amended 2025) for the work his attorney performed before the WCA, and (2) denying his request that his employer, the State of New Mexico (Employer), pay 100 percent of his attorney fees, pursuant to Section 52-1-54(F)(4). We affirm.

Jennifer L. Attrep, Judge
WE CONCUR:

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

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-39744>

No. A-1-CA-41613

State of New Mexico

v.

Adam Frank Crespin

Introduction of Opinion

Defendant was convicted of battery upon a peace officer, contrary to NMSA 1978, § 30-22-24 (1971); and resisting, evading or obstructing an officer (arrest), contrary to NMSA 1978, § 30-22-1(B) (1981). Defendant appeals only his conviction of battery upon a peace officer, claiming that (1) the jury's determination that he "intentionally touched or applied force to [the officer] by elbowing him in the face and pushing him to the ground" is not supported by substantial evidence; (2) the district court's admission of Defendant's drug use was plain error under Rules 11-402, 11-403, and 11-404 NMRA; (3) the State committed prosecutorial misconduct in its closing arguments by referring to evidence of Defendant's drug use; **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:

Jacqueline R. Medina, Chief Judge
Katherine A. Wray, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41613>

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-41925
State of New Mexico
v.
Josue Barragan-Lugo

No. A-1-CA-41162
David Duran
v.
Grace Duran

No. A-1-CA-42609
State of New Mexico
v.
Erineo Ortiz

Introduction of Opinion

A jury convicted Defendant of nine counts, contrary to three different statutes, NMSA 1978, § 30-9-11(C) (2009), NMSA 1978, § 30-9-13(C) (2003), and NMSA 1978, § 30-24-3(A)(3) (1997). On appeal, Defendant challenges (1) the jury instruction given by the district court to remedy a loss of evidence by the State; and (2) the midtrial amendment of the indictment to conform to the testimony. We first hold that the jury instruction was not contrary to law and was a remedy that was within the district court's discretion. Second, we conclude that the amendment to the indictment was permissible, based on the district court's determination that Defendant had notice of extended date ranges and the admission of the parties' stipulation regarding Defendant's alibi defense. We therefore affirm.

Katherine A. Wray, Judge
WE CONCUR:
Megan P. Duffy, Judge
Kristopher N. Houghton, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41925>

Introduction of Opinion

This appeal and cross-appeal arise from a dispute between neighboring landowners over an alleged breach of a real estate purchase agreement (Purchase Agreement). Plaintiff David Duran claimed that Defendant Grace Duran breached the Purchase Agreement by failing to both execute a shared well agreement and perform a lot line adjustment after she purchased a tract of land from Plaintiff. Following a bench trial, the district court concluded that Defendant breached the Purchase Agreement and ordered Defendant to sign a shared well agreement and execute a lot line adjustment. **View full PDF online.**

Gerald E. Baca, Judge
WE CONCUR:
Megan P. Duffy, Judge
Zachary A. Ives, Judge

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-41162>

Introduction of Opinion

This matter was submitted to the Court on Defendant's brief in chief pursuant to the Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and Twelfth Judicial District Courts in In re Pilot Project for Criminal Appeals, No. 2022-002, effective November 1, 2022. Following consideration of the brief in chief, the Court assigned this matter to Track 2 for additional briefing. Now having considered the brief in chief, the answer brief, and the reply brief, we affirm for the following reasons.

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

To read the entire opinion,
please visit:
<https://bit.ly/A-1-CA-42609>

DISPOSITIONAL ORDER

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-39842
Eugene W. Trujillo
v.
Luna Community College

Introduction of Opinion

This matter is before this Court on remand from certification to the New Mexico Supreme Court. Worker Eugene W. Trujillo appeals a Workers' Compensation Administration (WCA) order awarding him the maximum amount of attorney fees allowed under the fee cap (the Cap) in NMSA 1978, Section 52-1-54(l) (2013, amended 2025) for the work his attorney performed before the WCA. Worker argues on appeal that the Cap violates the separation-of-powers doctrine embodied in Article III, Section 1 of the New Mexico Constitution on the ground that it infringes on the Judiciary's "absolute power and exclusive authority to regulate the practice of law." We affirm.

Jennifer L. Attrep, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Katherine A. Wray, Judge

To read the entire dispositional order, please visit:
<https://bit.ly/A-1-CA-39842>

No. A-1-CA-42360
**State of New Mexico ex rel. Children, Youth
& Families Department**
v.
Alicia S.

Introduction of Opinion

Respondent Alicia S. (Mother) appeals from an adjudication of neglect, pursuant to NMSA 1978, Section 32A-4-2(G)(2) (2018, amended 2025). Mother argues that she received ineffective assistance of counsel at her adjudicatory hearing. Mother asserts that (1) her counsel was "ineffective by failing to advise her of the implications of admitting the abuse and neglect petition [and consequently] denying her due process rights"; and (2) that Mother's counsel convinced her to enter a plea, and that she did not do so knowingly or voluntarily and would like to revoke her plea. Mother asks this Court to reverse the adjudication or remand the case to district court. We remand for further proceedings in district court.

J. Miles Hanisee, Judge
WE CONCUR:
Megan P. Duffy, Judge
Katherine A. Wray, Judge

To read the entire dispositional order, please visit:
<https://bit.ly/A-1-CA-42360>

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Rebekah S. Taylor

We are pleased to announce that Rebekah S. Taylor has joined Sutin, Thayer & Browne APC as an Associate. Ms. Taylor brings a diverse range of experience to the firm, with expertise spanning commercial litigation, family law, cannabis law, and real estate law. We are excited to welcome her to the team and look forward to the valuable contributions she will make to the firm.

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Lisa Y.W Cospers

We are pleased to announce that Lisa Y.W. Cospers has been elected as a shareholder of the firm. Lisa is a member of our Commercial Group, where her practice focuses on estate planning, trusts & probate and liquor licensing. She was also recognized in the 2026 edition of Best Lawyers: Ones to Watch® in America. Our firm is excited to see what Lisa's future holds.

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John A. Dragovits

We are pleased to announce that John A. Dragovits has been elected as a shareholder of the firm, marking a significant milestone in his professional career. John is a member of our Commercial Group, where his practice focuses on tax law, real property law, and public finance. The firm looks forward to his continued contributions and leadership.



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Jay Goodman and Associates, Law Firm PC is dedicated to assisting clients in the areas of family law, divorce, legal separations, paternity, parental rights, adoptions, guardianships, custody issues, domestic violence, child support, spousal support, qualified domestic relations orders, estate planning and probate. Our mission is to timely and effectively respond to our clients' goals and concerns with creative consideration and seek results designed to minimize or resolve future legal problems. This includes timely court filings, attention to details, and comprehensive representation. In serving our clients, we also provide special attention to the relationships within the family dynamic, and to the best interest of our clients within the larger context of the life they are leading and the life they wish to pursue. We are in the process of hiring a Full Time Attorney licensed and in good standing in New Mexico with 2 years' experience in Family Law, and/or Probate Law. Successful applicants should have court room experience and have provided client relations with empathy and compassion. We offer excellent compensation and a comfortable team working environment with flexible hours. Please send your resume with a cover letter to: es@jaygoodman.com. Please feel welcome to visit our website at www.jaygoodman.com to find out more about us. All inquiries are maintained confidentially. Thank you for your interest.

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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

Deputy District Attorney, Senior Trial Attorney, and Assistant Trial Attorney

The 12th Judicial District Attorney's Office, serving Otero and Lincoln counties, is seeking in-house, dedicated and motivated attorneys: Deputy District Attorney (\$104,050-140,700), Senior Trial Attorney (\$100,000-127,000) & Assistant Trial Attorney-Magistrate Court (\$90,000). Salaries based upon the New Mexico District Attorney's Salary Schedule and experience. These positions are ideal for attorneys who thrive in a fast-paced courtroom environment and want to handle all aspects of criminal prosecution. The 12th Judicial District is recognized as one of the leading districts in the state for the number of jury trials conducted. If you are seeking meaningful trial experience as a prosecutor, working with a dedicated team to fight for the justice of victims-Come Join Our Team! Must be admitted to the New Mexico State Bar. Full benefits package with retirement. Email resume to: sgann@da.state.nm.us or visit our website <https://12th.nmdas.com/>

New Mexico Taxation & Revenue Department, Attorney

The NM Taxation & Revenue Department seeks an attorney to represent the Department before administrative tribunals and courts in matters involving the Tax Administration Act and the Motor Vehicle Code. The attorney may also provide legal opinions and recommendations to agency staff based on legal research and analysis on a wide array of tax issues. Preference will be given to applicants with experience in tax, administrative hearings, or trial experience. The position is a Pay Band C12, salary range \$93,551 - \$149,682 annually. For additional information or to apply contact Richard Pender, Legal Supervisor, 505-231-0169. <https://www.spo.state.nm.us/work-for-new-mexico/>.

Attorney

Opening for Associate Attorney in Silver City, New Mexico. No experience necessary. Thriving practice with partnership opportunities with focus on criminal defense, civil litigation, family law, and transactional work. Call (575) 538-2925 or send resume to Lopez, Dietzel & Perkins, P. C., david@ldplawfirm.com, Fax (575) 388-9228, P. O. Box 1289, Silver City, New Mexico 88062.

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/>

Assistant Federal Public Defender - Trial Attorney

The Office of the Federal Public Defender for the District of New Mexico is accepting applications for the position of Assistant Federal Public Defender (Trial Attorney) in our Las Cruces office. The mission of our office is to provide high quality, client-centered representation to people charged with federal crimes in New Mexico. We fight for the Sixth Amendment Right to Counsel by providing zealous and effective representation to every client. We are a team of attorneys, investigators, social workers, paralegals, interpreters, and administrative professionals committed to client-centered advocacy. We value diversity, equity, and inclusion in our workforce and strive to maintain a respectful, collaborative, and supportive office culture. Why Las Cruces? With over 300 days of sunshine, stunning mountain views, and a rich cultural mix, it's a great place to live and work. The city offers a low cost of living, easy access to outdoor adventures, and a thriving food, arts, and music scene, all within a welcoming community. Duties and Responsibilities: As a Trial Attorney, you will represent clients in all stages of federal criminal proceedings, including trial, and sentencing. The role involves managing a diverse caseload with complex legal and factual issues, developing litigation strategies, and preparing motions, pleadings, and briefs. You will appear in court to advocate on behalf of clients, conduct legal research and investigations, and maintain regular communication with clients, experts, family members, and witnesses. Collaboration is key, and you will work closely with colleagues in a supportive, team-oriented environment. Required Qualifications: J.D. from an accredited law school. Admission and good standing before the highest court of a state. License to practice in the U.S. District Court for the District of New Mexico (or ability to obtain it promptly upon hire). Become a member of the New Mexico State Bar within one year of start date. Excellent oral and written advocacy skills. Strong interpersonal and organizational abilities. Demonstrated commitment to the defense of underserved and marginalized communities. Valid driver's license and ability to travel as needed for casework, training, and

investigations. Preferred Qualifications: These qualifications are not required to be considered for this role but are highly valued. Minimum of three years of criminal defense trial experience. Spanish language proficiency. Experience working with people from diverse backgrounds and lived experiences. Salary and Benefits: This is a full-time, at-will position within the federal judiciary. The salary range is \$76,748 to \$197,100, based on experience and qualifications. The position includes a comprehensive benefits package, featuring health, dental, vision, and life insurance; 13 to 26 days of annual leave depending on years of service; 13 days of 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) and includes access to the Employee Assistance Program (EAP), credit for prior federal service, and regular continuing legal education opportunities. A one day per week telework option may be available depending on caseload, and employees benefit from access to wellness resources and programming. How to Apply: Interested applicants are invited to apply by submitting a single pdf document that includes a cover letter, resume, and three references via email to the attention of: Margaret Katze, Federal Public Defender FDNM-HR@fd.org. Subject: 2026-01 Assistant Federal Public Defender - Trial Attorney. 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.

Staff Attorney

The New Mexico Prison & Jail Project (NMPJP) is a nonprofit law firm that advocates to protect the rights of incarcerated people in New Mexico by bringing civil rights lawsuits and other legal actions on their behalf. NMPJP has an open position for a full-time staff attorney. Generous benefits package. Salary dependent on experience. The ideal candidate will have a passion for advocating for the rights of people who are incarcerated and significant experience with federal and/or state litigation. We also seek candidates with a proficiency in legal research and document drafting; and excellent written, verbal and interpersonal communication skills. Email a letter of interest, resume and legal writing sample to the selection committee at info@nmpjp.org

Assistant Trial Attorney, Trial Attorney and Senior Trial Attorney

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.

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

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@stiffllaw.com

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

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

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.

Vice President, Commercial Legal Affairs & Transactions

Presbyterian Healthcare Services (<https://www.phs.org/>) seeks a seasoned, strategic, and forward-thinking legal executive to serve in the inaugural role of Vice President, Commercial Legal Affairs & Transactions (VP). The VP, reporting directly to the SVP and General Counsel, will serve as a key advisor on complex commercial, regulatory, and governance matters that shape the enterprise. This role requires a strong leader and mentor who can translate complex legal concepts for non-legal audiences, build trust across the enterprise, and maintain strong relationships with external counsel. They must have at least ten years of experience as an attorney with expertise in healthcare transactions, possess a JD, be a graduate of an accredited law school, and be able to or currently be a member of the New Mexico State Bar. More information can be found at <https://apptrkr.com/6890727>. For confidential nominations or expressions of interest, please contact the WittKieffer search team Werner Boel and Katie Haddock at khaddock@wittkieffer.com. Presbyterian Healthcare Services complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex including sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; gender identity, and sex stereotypes. Presbyterian Healthcare Services does not exclude people or treat them less favorably because of race, color, national origin, age, disability,

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 be kept confidential. Please email your resume to Resume@PriestMillerLaw.com

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

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, SECRI, 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.fد.org/>

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

Legal Assistant – Disciplinary Board of the New Mexico Supreme Court

The Disciplinary Board of the New Mexico Supreme Court seeks a detail-oriented Legal Assistant to support attorneys and staff in attorney discipline proceedings. Duties include preparing and proofreading legal documents; maintaining confidential case files and electronic records; tracking deadlines; coordinating hearings and meetings; filing documents; and communicating professionally with attorneys, complainants, respondents, courts, and the public in accordance with Supreme Court rules. Qualifications: High school diploma or GED and at least one year of legal or administrative support experience. Strong organizational skills, attention to detail, proficiency with Microsoft Office, and the ability to handle sensitive information with discretion are required. Experience in a court or regulatory setting is preferred. Spanish speaking preferred. Salary: \$55,000-\$63,000 plus comprehensive benefits. To apply, submit a letter of interest, resume and 3 references to info@nmdisboard.org. EOE

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

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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 Velazquez, Guest Services & Facilities Manager at the State Bar of New Mexico at Jazmin.Velazquez@sbnm.org or 505-797-6070.

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

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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

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

Nob Hill Office For Lease

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

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

620 Roma NW

The building is located a few blocks from the federal, state and metropolitan courts. Monthly rent of \$550 includes utilities (except phones), internet access, fax, copiers, front desk receptionist and janitorial service. You will have access to a law library, four conference rooms, a waiting area, and off-street parking. Several office spaces are available. Call (505) 2433751 for an appointment.

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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!

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State Bar of
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