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Bar Bulletin

September 22, 2021 • Volume 60, No. 18

Three Secrets by Natalie Christensen nataliechristensenphoto.com

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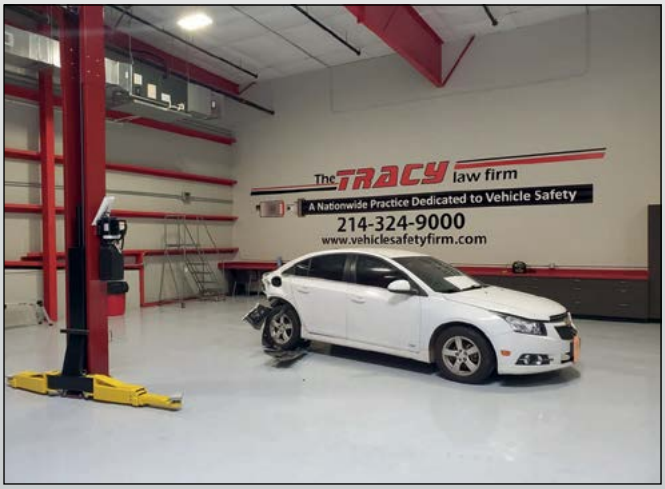
CLE PLANNER

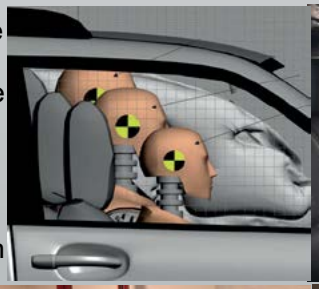
Upcoming Programming from the
CENTER FOR LEGAL EDUCATION

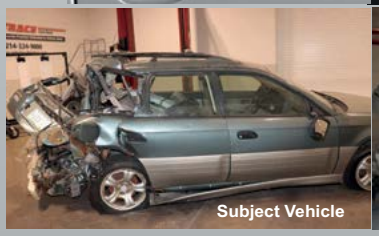
CRASHWORTHINESS:

We Didn't Invent the Word;
We DEFINED it.



Every vehicle accident case you handle has the potential to be on one of the 235 racks or in one of our six inspection bays at the firm's Forensic Research Facility. We continually study vehicle safety through the use of engineering, biomechanics, physics and innovation.





If you have any questions about a potential case, please call us. There may be vehicle safety system defects that caused your clients catastrophic injury or death.

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Meetings

September

22
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

23
Elder Law Section Board
Noon, State Bar Center

24
Immigration Law Section Board
Noon, teleconference

28
Intellectual Property Law Section Board
Noon, JAlbright Law LLC, Albuquerque

30
Trial Practice Section Board
Noon, State Bar Center

Workshops and Legal Clinics

September

22
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

October

6
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6022

27
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

November

3
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6022

About Cover Image and Artist: Natalie Christensen is a photographer based in Santa Fe and has shown work in the U.S. and internationally including London, Dusseldorf, New York and Los Angeles. She was one of five invited photographers for the exhibition The National 2018: Best of Contemporary Photography at the Fort Wayne Museum of Art and has recently been named one of "Ten Photographers to Watch" by the Los Angeles Center of Digital Art. Her photographs are in the permanent collections of the Fort Wayne Museum of Art and the University of Texas at Tyler. In addition to pursuing her interests in art and design, Christensen has worked as a psychotherapist for more than 25 years and has been particularly influenced by the work of depth psychologist Carl Jung. This influence is evidenced in her photographs, as shadows and psychological metaphors are favored subjects. Christensen is represented by Turner Carroll Gallery in Santa Fe and Susan Spiritus Gallery in Newport Beach, C.A.

State Bar of New Mexico
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www.sbnm.org

Notices

Court News

New Mexico Supreme Court

Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at https://supremecourt.nmcourts.gov/. To view all New Mexico Rules Annotated, visit New Mexico OneSource at https://nmonesource.com/nmos/en/nav.do.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. Library Hours: Monday-Friday 8 a.m.-noon and 1 p.m.-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit https://lawlibrary.nmcourts.gov.

Administrative Office of the Courts

Notice of Mandatory E-Filing in Magistrate Court Civil Cases

Electronic filing by attorneys is required in civil cases in all Magistrate Courts statewide. E-filing and service of documents will occur through the online File & Serve system, which also will be used to submit proposed text/orders for judges to review. E-filing became mandatory effective Sept. 9. Visit the Judiciary's e-filing webpage for more information, https://www.nmcourts.gov/e-filing-magistrate-courts.

Ninth Judicial District Court

Candidate Announcement

The Ninth Judicial District Court Judicial Nominating Commission convened in-person on Wednesday, Aug. 25, at 9 a.m. at the Curry County Courthouse located at 700 N. Main, Clovis, N.M., and completed its evaluation of the nine applicants to fill the vacancy on the Ninth Judicial District Court due to the retirement of the Honorable Judge Matthew Chandler, effective Aug. 6. The commission recommends the following candidates to Governor Michelle Lujan Grisham. The names of the applicants in alphabetical order: **Jake Boazman, Brett J. Carter, Benjamin S. Cross** and **Brian Scott Stover**.

Professionalism Tip

Lawyer's Preamble

As a lawyer, I will strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers, and I will also conduct myself in accordance with the Creed of Professionalism when dealing with my client, opposing parties, their counsel, the courts, and any other person involved in the legal system, including the general public.

State Bar News

COVID-19 Pandemic Updates

The State Bar of New Mexico is committed to helping New Mexico lawyers respond optimally to the developing COVID-19 coronavirus situation. Visit https://www.sbnm.org/covid for a compilation of resources from national and local health agencies, canceled events and frequently asked questions. This page will be updated regularly during this rapidly evolving situation. Please check back often for the latest information from the State Bar of New Mexico. If you have additional questions or suggestions about the State Bar's response to the coronavirus situation, please email Executive Director Richard Spinello at rspinello@sbnm.org.

Resolutions and Motions

Resolutions and motions will be heard at 8 a.m. on Friday, Oct. 8, 2021, at the opening of the State Bar of New Mexico 2021 Annual Meeting and Member Appreciation Event. To be presented for consideration, resolutions or motions must be submitted in writing by Sept. 8 to Executive Director Richard Spinello PO Box 92860, Albuquerque, NM 87199; fax to 505-828- 3765; or email rspinello@sbnm.org.

New Mexico Judges and Lawyers Assistance Program

NMJLAP is on Facebook! Search "New Mexico Judges and Lawyers Assistance Program" to see the latest research, stories, events and trainings on legal well-being!

Monday Night Attorney Support Group

- Sept. 27 at 5:30 p.m.
- Oct. 4 at 5:30 p.m.
- Oct. 11 at 5:30 p.m.

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, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at pmoore@sbnm.org or Briggs Cheney at BCheney@DSCLAW.com and you will receive an email back with the Zoom link.

NMJLAP Committee Meetings

- Oct. 2 at 10 a.m.

The NMJLAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. Over the years the NMJLAP Committee has expanded their scope to include issues of depression, anxiety and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Judges and Lawyers Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

Employee Assistance Program

Managing Stress Tool for Members

NMJLAP contracts with The Solutions Group, The State Bar's EAP service, to bring you the following: FOUR FREE counseling sessions per issue, per year. This EAP service is designed to support you and your direct family members by offering free, confidential counseling services. Want to improve how you manage stress at home and at work? Visit https://mystresstools.com/registration/tsg-nmsba, or visit the www.solutionsbiz.com. MyStressTools is an online suite of stress management and resilience-building resources that will help you improve your overall well-being, anytime and anywhere, from any device! The online suite is available at no cost to you and your family members. Tools include:

- **My Stress Profiler:** A confidential and personalized stress assessment that provides ongoing feedback and suggestions for improving your response to 10 categories of stress, including change, financial stress, stress symptoms, worry/fear and time pressure.
- **Podcasts and videos available on demand:** Featuring experts in the field, including Dan Goleman, Ph.D., emotional intelligence; Kristin Neff, Ph.D., self-compassion; and David Katz, M.D., stress, diet and emotional eating.
- **Webinars:** Covering a variety of topics including A Step Forward: Living Through and With the Grief Process, Creating a Mindfulness Practice, and Re-entering the Workforce.

Call 505-254-3555, 866-254-3555, or visit www.solutionsbiz.com to receive FOUR FREE counseling sessions, or to learn more about the additional resources available to you and your family from the Solutions Group. Every call is completely confidential and free.

N.M. Well-Being Committee

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness.

2021 Campaign - What a Healthy Lawyer Looks Like

N.M. Well-Being Committee Meetings:

- Sept. 28, at 1 p.m.
- Nov. 30, at 1 p.m.

Upcoming Legal Well-Being in Action Podcast Release Dates:

- Sept. 22: Stigma & Counseling
- Oct. 27th: Lawyering By Video Pt. 2

Defenders in Recovery!

Defenders in Recovery meets every Wednesday night at 5:30 p.m. Our meeting schedule is as follows:

- 1st Wednesday of the month: AA meeting—discussion
- 2nd Wednesday of the month: NA Meeting—discussion
- 3rd Wednesday of the month—Book study. We will start on the AA Big Book and work our way through different AA and NA literature, including the Big Book, the Blue Book, Living Clean, 12x12, etc.
- 4th Wednesday of the month—Recovery Speaker and Monthly Birthday Celebration.

These meetings are open to all who seek recovery. We are a group of defenders supporting each other, sharing in each other's recovery. We are an anonymous group and not affiliated with any agency or business. Anonymity is the foundation of all of our traditions. Who we see in this meeting, what we say in this meeting, stays in this meeting. For the meeting link, send an email to defendersinrecovey@gmail.com or call Jen at 575-288-7958.

Legal Services and Programs Committee

Seeking Sponsors for Breaking Good High School Video Contest

The Legal Services and Programs Committee will host the sixth annual Breaking Good Video Contest for 2021. The video contest aims to provide an opportunity for New Mexico high school students to show their creative and artistic talents while learning about civil legal services available to their communities. The LSAP Committee would like to invite members or firms of the legal community to sponsor monetary prizes awarded to first, second, and third place student teams and the first place teacher sponsor. The video contest sponsors will be recognized during the presentation of the awards, to take place on 2022 Law Day, and on all promotional material for the video contest. For more information regarding details about the prize and scale and the video contest in general, or additional sponsorship information, visit sbnm.org/breakinggood.

UNM School of Law

Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at UNMLawLibref@gmail.com or voicemail at 505-277-0935. The Law Library's document delivery policy requires specific citation or document titles. Please visit our Library Guide outlining our Limited Operation Policies at: https://libguides.law.unm.edu/limitedops.

In Memoriam

Beloved husband, father, grandfather, great-grandfather, and Lakeville resident, **Robert H. Darden**, passed peacefully at home in his sleep on Aug. 15. He was 101. Bob, as he was known, was born in Raton, N.M. on Oct. 18, 1919, to Archie H. Darden, an attorney, and Annie Lou Darden nee Wood, a voice and piano instructor. He attended University of Michigan, where he received his B.A. and law degree. After his first year of law school, he was inducted into the Army Air Corps and trained as a navigator and assigned to serve as such on an unusual and transitional aircraft the YB-40, a bomber outfitted to serve as a gunship escort to defend bomber squadrons on their missions over Germany. On June 22, 1943, Bob's plane and crew joined in the defense of the first allied bombing raid over Germany's heavily-fortified Ruhr industrial district. Of the hundred aircraft on the raid, twenty-six were shot down including Bob's YB-40. He spent almost two years in POW camp at Stalag Luft III near Sagan, Germany. Returning after the war and earning his Law degree from University of Michigan, Bob served as the law clerk for the chief judge of the prestigious Tenth Circuit U.S. Court of Appeals in Denver. He was invited to join the recently-formed U.S. Small Business Administration, where he accepted positions first as Regional Counsel for the Rocky Mountain area, then assistant general counsel in Washington, D.C., then SBA's first attorney in Albuquerque, where he practiced for several years and finally the agency's regional counsel for the West Coast and Pacific islands, headquartered in San Francisco. While on a geology field trip at University of Michigan, Bob met an accomplished student and Pi Phi, Virginia Appleton of Cleveland, Ohio. After the war, the two were married in 1945 and raised four children in Albuquerque, Washington D.C., and cities in Colorado and California. While in Albuquerque, Bob and Virginia were active at St. Fatima Church and its choir, as well as St Pius X high school, which all four children attended. He loved New Mexico food and loved to hike and fish in its beautiful mountains. After retirement from government service, Bob and Virginia moved to Lakeville in 1994 to be close to their daughter Anne Richardson and grandson Barrie. They quickly became highly active within the community and were regular members of the choir at St. Mary's Church. Bob served as President of the Rotary Club of Salisbury. He and Virginia travelled throughout the U.S. and Europe, and leisurely drove from Connecticut to California in their nineties. Always athletic, Bob continued to jog, golf, hike, body surf and fish into his seventies, and swam regularly into his nineties at the Hotchkiss School Pool and Lakeville Town Grove, taking his last dip at the latter at 99. Bob was predeceased by his parents, brother William H. Darden, sister-in-law Kathryn Darden nee Taylor, and son David H. Darden. He is survived by his wife of 75 years, Virginia Appleton Darden; three children: his son and daughter-in-law, Thomas and Rebecca Darden; his daughter, Anne Richardson and Howard Aller; and his daughter and son-in-law Margaret and Steven Garber; three grandchildren, Madeleine Garber and her husband Randy Thurber, Barrie Richardson, and Kristina Darden; and one great-granddaughter, Ruth Anne Thurber.

It's with the deepest sadness we share the news of my beloved husband, **Roger A. Stansbury's** untimely and sudden death. Roger was 65, born July 31, 1956, in Chicago, Ill., and was called to the Lord on Aug. 10. Roger's spirit and entire being were a celebration of life in its fullest sense. He grew up in Worth, Ill., a south suburb of Chicago and attended Richardson High School where he played the cello in orchestra, participated in wrestling and played football. Roger was an avid Bears, Bulls and White Sox fan. He attended Loyola University of Chicago for his undergraduate degree and became an Alpha Sigma Phi brother, where he made lifelong friends. Roger continued his education, obtaining a master's degree from Keller Graduate School of Management and his juris doctor from DePaul University College of Law. He had an unquenchable thirst for knowledge regardless of its source and encouraged higher education for those he loved. Roger worked for the electro-motor division of General Motors Corporation in LaGrange, Ill., as an industrial engineer for eight years before attending law school. While attending law school, Roger clerked for the attorney general's office in Ill. After graduating law school, Roger began his 32-year legal career by accepting a job in Albuquerque with the Sager, Curran, Sturges & Tepper law firm. He also worked for the Campbell, Pica, Olson & Seegmiller firm until branching out into private practice in 1995. He was humbled and honored to serve his clients, many of whom became his friends. He was most proud of successfully presenting and arguing an easement and water rights case, before the New Mexico Supreme Court, Charles E. Olson v. H&B Properties, Inc., 118 NM 495, 882P.2d 536 (1994).Roger was a very adventurous person who loved exploring the earth, oceans and cosmos. In his youth, Roger wanted to be an oceanographer. He had salt-water tanks with sea anemones and tropical fish. Roger loved to scuba dive. He dove with barracuda in the Florida Keys, amongst the kelp fields of Catalina Island, and alongside tiger sharks and stingrays in the Maui aquarium. He explored the oceans of Bermuda, Jamaica, several locations in the Caribbean, and Hawaii; and he went drift-diving in Cozumel. Roger also loved to sail, especially in Lake Michigan. He was a member of the Columbia Yacht Club. Roger's sense of adventure led him to sky-dive and explore downhill skiing. He was an excellent skier and enjoyed skiing in Europe; Copper Mountain; Steamboat Springs; Brian Head, Utah; Durango Mountain; and throughout all the resorts in New Mexico. Roger loved animals, especially his cats! His other interests included cruising, travel, photography, developing his own film, pottery and star gazing, but his greatest passion was cooking. The culinary realm was an area where Roger's creativity and desire to please others shined to its fullest. He loved the flavors of the world, especially Asian cuisine; and those of us fortunate enough to taste his creations, were treated to gourmet cooking and baking. One area where Roger's family and friends were truly in awe, was his unique, incredibly witty sense of humor. Never hurtful, his playful sense of humor was a hallmark by which he was known and loved. Roger had the ability to take virtually any situation and identify absurdities and ironies and fold them into a joke or a witty story seemingly without any effort whatsoever. His quick-witted sense of humor brightened any room with his charismatic trademark charm. Roger met his wife Rose while taking dance lessons in the Chicagoland area. They fell in love on their first date, married in a hot air balloon and built their lives in Albuquerque. Their love endured in its fullest without interruption for 32 years. He is preceded in death by his parents Kenneth and Mildred Stansbury and his brother Raymond Stansbury. He is survived by his wife, Rosemarie (Rose) Stansbury (Meegan); his niece who was truly a daughter to him, Sara Rose Meegan; his cousin Robert Stansbury and wife Kelley; and many other nieces, nephews, brothers-in-law, sisters-in-law, cousins and fraternity brothers. Roger was the kindest, most loving, big-hearted person you ever met. He was an amazing man who will be greatly missed, but his legacy and memories will live on in our hearts.

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective August 27, 2021

PUBLISHED OPINIONS

A-1-CA-38179	State v. M Stevens	Reverse/Remand	08/24/2021
A-1-CA-39165	State v. D Becenti	Affirm/Remand	08/24/2021
A-1-CA-38623	State v. G Notah	Affirm/Reverse/Remand	08/26/2021

UNPUBLISHED OPINIONS

A-1-CA-38328	State v. J Ortiz	Affirm	08/23/2021
A-1-CA-38687	State v. E Rivera	Affirm	08/23/2021
A-1-CA-39637	CYFD v. Jason M.	Affirm	08/23/2021
A-1-CA-38693	State v. D Schult	Affirm	08/24/2021
A-1-CA-39667	CYFD v. Krystle A	Affirm	08/24/2021
A-1-CA-38109	State v. R Pruitt	Affirm/Reverse/Remand	08/26/2021

Effective September 3, 2021

UNPUBLISHED OPINIONS

A-1-CA-37920	E Ortiz v. Zia Credit Union	Reverse/Remand	08/30/2021
A-1-CA-37531	Amigos Bravos v. Water Quality Control Commission	Affirm	08/31/2021
A-1-CA-37570	State v. J Sepulveda	Affirm	08/31/2021
A-1-CA-38648	State v. F Baca	Affirm	08/31/2021
A-1-CA-39529	New Mexico HSD v. J Huffman	Affirm	08/31/2021
A-1-CA-39581	State v. Dalton O.	Reverse/Remand	08/31/2021
A-1-CA-39736	CYFD v. Jessie P	Affirm	09/01/2021

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

A Message from Chief Justice Michael E. Vigil

Dear Colleagues:

The Supreme Court of New Mexico is now seeking applications to fill vacancies on committees, boards, and commissions. Our committees, boards, and commissions play a vital role in assisting the Court with its regulation of the practice and procedures within our courts and the broader legal community. These panels have a wide range of responsibilities and functions. They regulate the practice of law, oversee continuing legal education for lawyers, administer funds to assist individuals unable to pay for legal services, and advise on long-range planning, just to name a few. Anyone who has ever served on one of the Court's committees, boards, or commissions can attest to how challenging and rewarding this work can be.

In filling these vacancies, the Court strives to appoint attorneys and judges who are able to attend committee meetings regularly and who are committed to generously volunteering of their time, talent, and energy to this important work. The Court also strives to solicit volunteers from throughout the state who will bring geographical balance and seeks to ensure that each committee, board, and commission contains a balanced representation from the various practice segments of our bar. To achieve these goals, we need volunteers representing the broad spectrum of our bench and bar who come from all corners of this great state.

If you would like to be considered to serve on a committee, board, or commission, please send your letter of interest and resume by October 1, 2021, to Jennifer Scott, Clerk of Court. The letter of interest should describe your qualifications and prioritize up to three committees of your interest. A complete list of vacancies on committees, boards, and commissions can be found on the Supreme Court's website at https://supremecourt.nmcourts.gov/current-vacancies.aspx.

On behalf of the Supreme Court, I extend our sincere appreciation to all of you who volunteer and serve in this important function within our legal system.

Sincerely yours,
Michael E. Vigil, Chief Justice

New Mexico Supreme Court Committees, Boards, and Commissions
Notice of 2021 Year-End Vacancies

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

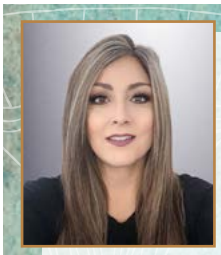
Appellate Rules Committee (1 general member position)
Board Governing the Recording of Judicial Proceedings (1 attorney position)
Board of Bar Examiners (2 general member positions)
Children's Court Rules Committee (1 attorney at CYFD with experience in abuse and neglect issues, 1 defendant's attorney with experience in delinquency issues, 1 general member position)
Client Protection Fund Commission (2 general member positions)
Code of Judicial Conduct Committee (1 magistrate judge position, 2 general member positions)
Code of Professional Conduct Committee (3 general member positions)
Disciplinary Board (1 attorney position)
Domestic Relations Rules Committee (1 general member position)
Judicial Branch Personnel Grievance Board (1 attorney with employment law experience)
Magistrate Judge Advisory Committee (5 magistrate judge positions)
Rules of Civil Procedure for State Courts Committee (2 general member positions)
Rules of Criminal Procedure for State Courts Committee (1 general member position)
Rules of Evidence Committee (3 general member positions)
Statewide Alternative Dispute Resolution Commission (2 district judge positions, 2 general member positions, 1 metropolitan court ADR representative)
Uniform Jury Instructions-Civil Committee (1 general member position)
Uniform Jury Instructions-Criminal Committee (1 general member position)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by sending a letter of interest and resume to Jennifer L. Scott, Chief Clerk, by email to nmsupremecourtclerk@nmcourts.gov, or by first class mail to P.O. Box 848, Santa Fe, NM 87504. The letter of interest should describe the applicant's qualifications and may prioritize no more than three (3) committees of interest.

The deadline for applications is Friday, Oct. 1, 2021.

State Bar of New Mexico
2021 ANNUAL AWARDS RECIPIENTS

The State Bar of New Mexico is pleased to announce the 2021 Annual Awards recipients. The Annual Awards recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. The awards will be featured during the 2021 Annual Meeting and Member Appreciation Event on Oct. 8. The Annual Meeting is free to all State Bar members to view online. To view a schedule and to register, please visit the State Bar's website at www.sbnm.org. The deadline to register is Oct. 1.

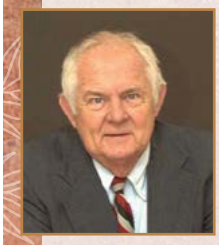


BERNICE RAMOS
Distinguished Bar Service Non-Lawyer Award

BERNICE RAMOS has been married for 22 years and has four children. She began her legal career in 1996 as a paralegal for attorney Tito Meyer in Las Cruces. In 2001, she moved to the judiciary as the court monitor for the Honorable Edmund H. Kase III and later worked for the Third Judicial District Court revitalizing their Self-Represented Litigant Division. In 2008, she became Court Manager of the Dona Ana Magistrate Court where she worked tirelessly in transitioning the court from one of the lowest performing courts to the model court in the state. She and her staff traveled around the state assisting other troubled magistrate courts. She served as the Odyssey Magistrate and Metro User Group Chair from May 2016 through June 2021, when she resigned as Court Manager of Dona Ana Magistrate Court and accepted the position of Senior Statewide Program Manager for the AOC Language Access Program.

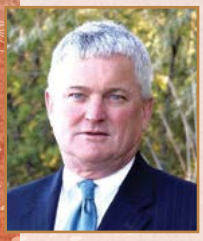
JOEY D. MOYA
Judge Sarah M. Singleton Distinguished Service Award

A New Mexico native, **JOEY MOYA** graduated from the UNM School of Law in 1988. Joey practiced law with a small civil law firm in Albuquerque before joining the Prehearing Division of the New Mexico Court of Appeals in 1990. Joey temporarily left the Prehearing Division in 1999 to serve as Administrative Assistant to then Chief Justice Pamela B. Minzner, returned to Prehearing in 2001, and became the Chief Staff Attorney and Director of the Prehearing Division in April 2002. Joey joined the Supreme Court in November 2005 as its first Chief Counsel and director of the Court's new Office of Supreme Court Counsel. On December 24, 2011, Joey became the sixth chief clerk of court for the Supreme Court of New Mexico since statehood. In 2015, Joey received the Public Lawyer of the Year Award from the Public Law Section of the State Bar of New Mexico.



FREDERICK M. HART *(posthumously)* *and* F. MICHAEL HART
Justice Pamela B. Minzner Professionalism Award

In the 55 years **FRED HART** served on the UNM Law School faculty and as Dean, he transformed the school and indeed the entire state with his unrelenting dedication to inclusion and equal opportunity. When he arrived in 1966, the law school was graduating 15 mostly white and almost entirely male students. Fred became Dean, and immediately the law school students started to "look like New Mexico" with women, Hispanic, Native American and African American students fully represented. He lived long enough to see the effects of his efforts – many women and members of minority groups on the New Mexico Bench, in politics and active in the State Bar. Hart believed that a good lawyer never forgets what a privilege it is to be part of the profession, always respects clients, fellow lawyers, judges, clerks and all those she/he comes into contact with, recognizing that lawyers are uniquely capable of making the world a better place.



MIKE HART was hooded by his father Dean Fred Hart at UNM Law School graduation in 1988. His father was always a reliable guiding star throughout his life and career. Mike is married to Hon. Alisa Hart, District Court judge - his other guiding star. Mike has dedicated 33 years of law practice to improving the lives of abused and neglected children. Immediately after law school, he prosecuted child abuse for the state, and thereafter has handled numerous lawsuits for children. He was an active leader on the team that pursued a class action requiring CYFD to make institutional changes to keep foster children safe, and he is a special prosecutor for the District Attorney's Office prosecuting cold cases in the rape kit backlog. In 2018, Mike was awarded the N. M. Trial Lawyers Association's highest honor for his career working on behalf of children and victims of sexual abuse.

NEW MEXICO CENTER ON LAW AND POVERTY

Outstanding Legal Organization Award

Founded 25 years ago, the **NEW MEXICO CENTER ON LAW AND POVERTY** advances economic and social justice through education, advocacy, and litigation. We work with New Mexicans to improve living conditions, increase opportunities, and protect rights. Recognizing that economic injustices and poverty are rooted in historical, racial, and structural inequities, the Center's focus is on achieving long-term, system wide changes in laws, programs, and policies. We partner with people on the issues most important to them by establishing connections to understand community priorities and collaborate on solutions. We represent groups of clients before administrative and rulemaking agencies and through the legislative process, protect legal rights in court through representation and impact litigation, and collaborate with partners to raise public awareness of key issues and engage in policy advocacy. Our work addresses a broad range of priorities, including healthcare, employment, food, housing, education, and financial security.

MASLYN K. LOCKE

Outstanding Young Lawyer of the Year Award

MASLYN LOCKE grew up in Los Alamos, New Mexico and, after spending the better part of the last decade studying and organizing in Lawrence, Kansas, she returned to Santa Fe to work as an environmental and economic justice advocate in her home state. Maslyn holds a Master's degree in social work policy advocacy practice and a J.D. from the University of Kansas and has been practicing law in New Mexico since 2018. Maslyn started her legal career at New Mexico Legal Aid, serving low-income New Mexicans and survivors of violence, providing legal assistance focusing on domestic violence, family law and landlord/tenant issues. In 2020, Maslyn joined the New Mexico Environmental Law Center as staff attorney, serving communities across the state and working alongside communities to fight for environmental justice and advocate against environmental racism and systemic injustice in New Mexico.

TORRI A. JACOBUS

Robert H. LaFollette Pro Bono Award

TORRI JACOBUS is the head of the City of Albuquerque's Office of Civil Rights and Managing Attorney in the Office of the City Attorney. She is expanding the City's efforts to document and address civil rights complaints. Additionally, she provides legal guidance to the City of Albuquerque to develop, promote, and implement policies reflecting the City's commitment to equity and inclusion. Torri is Chair of the New Mexico Supreme Court Commission on Equity and Justice. She is also Vice President of the New Mexico Black Lawyers Association, and she is actively involved in several initiatives to increase equity in the legal profession and broader community. Torri earned her bachelor's degree from Xavier University of Louisiana, her master's degree from the University of Tulsa, and she graduated from the University of Arkansas School of Law. When not working, Torri spends time with her husband and three children and enjoys reading novels.

JUDGE MARY W. ROSNER

Justice Seth D. Montgomery Distinguished Judicial Service Award

Judge Mary W. Rosner was elected to the Third Judicial District Court in 2012. Her docket includes domestic relations matters and civil litigation. Judge Rosner has dedicated her time on the bench to improving the relationship between the bench and family law practitioners by hosting several CLE's and professional development events. Prior to being elected, she worked as a family law attorney for over twenty-five years in Albuquerque and Las Cruces and is a Board Certified Family Law Specialist. Prior to practicing in family law, she was employed as a labor lawyer for federal employees and as a First Amendment attorney. She received her undergraduate degree from the University of New Mexico and her law degree from the University of New Mexico School of Law in 1978. She is married to fellow attorney Frank N. Chavez, and they share their home with their poodles Suzie and Velcro.

MILESTONE 50 Years of PRACTICE

Congratulations to the following attorneys who have achieved 50 years of practice! Those listed received their juris doctorates in 1971. In 1971, the voting age was lowered to 18 with the adoption of the 26th amendment, Intel released their first microprocessor, Walt Disney World opened its magical doors, and National Public Radio sent out its first broadcast. Looking back at all that has happened allows us to appreciate your significant length of service as a special occasion for the legal profession. Your careers are a testimony of your dedication and loyalty to the legal community, your clients and the State Bar.

PAUL BIDERMAN

Paul Biderman, in his 50 years as a New Mexico lawyer, focused on advancing the public interest.

After graduating NYU Law School in 1970, Biderman joined DNA Legal Services in Crownpoint, obtaining a class action judgment protecting Navajos from losing jewelry to pawnbrokers. In the attorney general's consumer division, he instituted the energy and utilities unit, wrote amendments to the Unfair Practices Act creating a private right of action, and enforced the pyramid sales laws. He taught a consumer law seminar at UNM School of Law.

As Governor Anaya's Secretary of Energy and Minerals, Biderman promoted renewable energy and environmental protection. He joined the Institute of Public Law at UNM to initiate the Judicial Education Center, eventually becoming IPL director.

Since retiring in 2011, Biderman has served as Santa Fe alternate municipal judge and taught public ethics. He analyzes bills for the state Senate. He volunteers for climate protection groups and sits on several public ethics committees. He has served on numerous non-profit boards over the years.

Biderman received the Judicial Education Award from the American Bar Association and the 2005 Public Lawyer of the Year Award from our State Bar. He and Ellen live in Santa Fe.

MICHAEL BRENNAN

Michael Brennan was born to Milton and Mary Brennan on May 7, 1945, in Sioux City, Iowa. His family moved to Sycamore, Ill. in the summer of 1946, and he attended elementary and secondary schools there, graduating from Sycamore Community High School in 1963.

In the fall of 1963, Brennan enrolled at the University of Notre Dame from which he graduated in the spring of 1968 with a BBA degree. That fall he began studies at Notre Dame Law School receiving a JD degree in 1971.

In the summer of 1971, Brennan entered on active duty in the U.S. Navy serving at the rank of lieutenant in the Judge Advocate General's Corps. During his time on active duty, he was stationed in Norfolk, Virginia; Athens, Greece; and Rota, Spain. The vast amount of his duties consisted of prosecuting and defending sailors and mariners at courts martial. Brennan was released from active duty in late October 1976 and relocated to Santa Fe where he was employed by what is now the Montgomery and Andrews firm. His primary practice area has been trying business and personal injury cases in state and federal courts in New Mexico. Brennan is admitted to practice in New Mexico, the U.S. District Court for the District of New Mexico, the U.S. 10th Circuit Court of Appeals, the U.S. Supreme Court and the U.S. Claims Court.

HARVEY FRUMAN

Harvey Fruman lists the following as his important memories of the last 50 years: "UNM Law, 1971. "I do solemnly swear..." Argued for and obtained a dismissal of an S&L's lawsuit seeking $1,005,000 from me for depriving it of its right to do business in N.M. Drafting a governor's inaugural and state of the state addresses. Each one of my "I respectfully dissent" Appellate opinions being adopted by the New Mexico Supreme Court.

California bar exam in 1989. Eleven-month long liability-only jury trial regarding an office building fire in Oakland. Engaging in litigation regarding a rocket fuel oxidizer explosion which damaged property within a 12-mile radius, requiring 50 or so trips to Las Vegas. Fire investigation on the roof-top of the tallest office building in California (I'm afraid of heights). Three weeks at a thoroughbred race-horse stud barn following a devastating fire. Working on about two dozen public utility power generation plant turbine and generator failures. Learning that methane gas from pigs can explode. Successfully representing another Governor in securities litigation. Opioid litigation.

Thank you to the states of New Mexico and California, the New Mexico Court of Appeals, Cozen O'Connor (San Diego office), and McCoy Leavitt Laskey, LLC (Albuquerque office)."

JAMES K. GILMAN

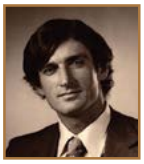
James K. Gilman is a veteran who served in Vietnam as a Lieutenant in the U.S. Army Infantry. Following graduation from UNM School of Law in 1971, he clerked for William R. Hendley on the New Mexico Court of Appeals. His private practice began with Leroy Farlow, who opposed Pete Domenici (U.S. senator, deceased) in the best appellate argument of that year at the Court of Appeals. He practiced with classmate Bob Maguire, and David Martinez, as Gilman, Maguire, and Martinez for many years.

His solo practice began handling aircraft crash cases in 1990 with the crash of a heart surgeon's jet at Double Eagle airport. From that time on, litigating aviation tort cases is passion of his professional career. Air crashes present a fascinating array of legal and regulatory, causation analysis, applied engineering, and scientific issues. His career has focused on products liability and aviation.

For more than 25 years he has been an active member of the Lawyer Pilots Bar Association, serving as its president in 2014. He is an executive member of the International Air and Transportation Safety Bar Association, formerly known as the NTSB Bar Association. He is married to Betsy LaFollette Gilman. They have five children Chad, CPA practice with masters in taxation; Connor, project developer and construction management, with masters in sports administration and MBA; Annie, BSN Nursing; Adam, paramedic fireman, degree in fire science; and Seth, CPT US Army Signal Corps, scheduling, and project management at Sandia Laboratories.

RICHARD W. HUGHES

Richard W. Hughes is a partner in the Santa Fe office of the law firm of Rothstein Donatelli LLP. A graduate of the University of Virginia (B.A., 1967) and the Yale Law School (LL.B., 1971), Hughes spent eight years on the Navajo Indian Reservation with DNA–People's Legal Services, first as a staff attorney in Shiprock, then as director of litigation, before moving to Albuquerque in 1978 to help found the firm of Luebben & Hughes, whose practice was almost exclusively in the field of federal Indian law. In 1988 he joined the Rothstein law firm in Santa Fe as a partner, and has since continued to carry on a practice focused primarily on Indian law, tribal representation and complex civil litigation. He has played a leading role in litigation, legislation and negotiations in the area of Indian gaming in New Mexico, and he continues to be involved in a wide variety of land, water, jurisdiction and other Indian law issues for tribal clients in New Mexico and elsewhere. He is currently general counsel to two New Mexico Pueblos, and special counsel to three others on various land, water and jurisdictional issues. He is the author of several law review articles on Indian law subjects, and co-author of a book on Pueblo land in New Mexico.



LOUIS MARJON

Louis Marjon reflects on the last 50 years. The draft was a big concern when I enrolled in UNM School of Law in 1968. I was drafted several times in law school. Immersing myself in selective service law, I kept myself, and many others out of the war. When I began practice in 1971, I had an almost endless stream of anxious clients. I started building my practice, and office, in a small adobe at 9621 North 4th Street, in Alameda. It is now the Law Offices of Joachim Marjon.

I became married in 1975. Our first-born son, Lucas, was severely brain damaged during birth due to medical negligence. Lucas required 24-hour care. Responsibility was denied. Lucas prevailed. I became motivated to practice the law surrounding medical neglect. We assembled an able team of top paralegals, lawyers, doctors and nurses to build a catastrophic injury practice, oriented to medical malpractice. I believe we made the state a little better.

I ended active practice when I turned 50 and rented my offices out. Since then, I have lived in Florida and Seville, Spain. I performed pro bono work for a Guantanamo project. I helped raise my daughter, Hannah, now a fashion designer in Miami. Of importance to me, I was finally able to seriously pursue my passions of running and traveling.

In 2020, I returned to New Mexico to live. I am still a member of the State Bar.

The practice of law is the best experience I ever hoped to have. I am eternally grateful to my staff, my colleagues, UNM School of Law, and many judges, for making this world better.

MEL B. O'REILLY

Mel B. O'Reilly (UNM School of Law, J.D., 1971; College of Santa Fe, B.A., Pol. Sci., 1968) presently practices with The Lawyers O'Reilly, P.C., in Albuquerque. O'Reilly was admitted to the bar on Aug. 20, 1971, before the New Mexico Supreme Court and the U.S.D.C (N.M.), and in 1974 before the U.S. Court of Appeals (10th Cir.).

He practiced in Carlsbad, Ruidoso and Albuquerque. Throughout his wide-ranging, general-practice career, O'Reilly handled civil and criminal litigation before the magistrate, probate, district, federal and appellate courts. His practice included real estate, banking, taxation, business organization, contracts, commercial transactions, estate/probate/trusts/wills, domestic relations, personal injury/wrongful death, and workers compensation.

O'Reilly served on the State Bar of New Mexico's Professional Rules Committee formulating the rules governing advertising and those creating the Lawyer's Assistance Committee; he also served on the Advisory Opinions Committee and N M. Medical Review panel. He engaged in civic affairs, including the democratic parties of New Mexico and Bernalillo County, Ruidoso's Chamber of all Commerce, Ruidoso Summer Festival, and Home Health of Lincoln Co., and was instrumental in creating and organizing other non-profit citizen-service entities serving his community.

O'Reilly and Monica, his spouse, have three sons: Colm, an electrical engineer, and Dylan and Brendan who are State Bar members.

JOHN POUND

John Pound graduated from St. Michael's High School in Santa Fe, in 1964, and UNM in 1968. He attended law school at Boston College on a presidential scholarship, graduating in 1971. While in law school, Pound met his future wife, Mary Ann Hanson, an undergraduate at Boston College.

Pound clerked in the Tenth Circuit Court of Appeals for Judge Oliver Seth. The clerkship was an invaluable experience, and not only for the intense exposure to substantive law it afforded. For Judge Seth, the law, first and foremost, was a learned profession. The greatest lesson a clerk for Judge Seth learned was to love the law for its own sake.

That lesson was compounded when Pound practiced for two decades in Judge Seth's old firm, Montgomery and Andrews, learning the trial lawyer's craft from people like A.K. Montgomery, Seth Montgomery, Frank Andrews Sr., Bill Federici, Dick Morris, and Sumner Buell.

Seeking a smaller environment, Pound practiced with Judy Herrera, Nancy Long and Mark Komer until 2015, when he downsized again. Today he is a mediator and occasional expert witness in legal malpractice cases.

While some recipients provided photos and biographies,
we want all those who have achieved this milestone to be recognized.

Patrick Brito
John Campbell
David Duncan

John Eaves
Leonard Espinosa
Stewart Forbes

Gary Martone
Stephen Natelson
John Patterson

Thomas Smidt
Paul Wainwright

Congratulations to the following attorneys who have achieved 25 years of practice! The anniversary of your significant length of service is a special occasion for the legal profession as it is a testimony of your dedication and loyalty to the legal community, your clients and the State Bar.

Kerri Allensworth
Thomas Allison
Frank Alvarez
Crystal Anson
Kathleen Ayala
Paul B. Briones
Cheryl Bada
Roberta Batley
Raymond Benavides
Linda Bennett
Jacqueline Bennett
Hon. Bryan Biedscheid
Steven Blanco
Paul Boross
Dr. James Bromberg
H. Brook Brook
Gerald Byers
Sandra Byrd
Norman Cairns
Renee Camacho
Joseph CampBell
Patrick Cargo
Allegra Carpenter
Ann Carter
William Cason
M. David Chacon
Susan Chappell
Hon. Benjamin Chavez
Steven Chavez
LTC Robert Cheshire
Denise Coca
Steffani Cochran
Rebekah Courvoisier
Michael Cowen
Cassandra Currie
Leilani Darling
Dr. Scott Davidson
Yasmin Dennig
John Dodge
Hon. Maria Dominguez
Laurence Donahue
Laura Enriquez
Jacqueline Flores
Gordon Fooks
Bryan Fox
Kelley Friedman
Melanie Fritzsche
Alvin Garcia
Diana Garcia
Monica Garcia
Michael Garcia
Stanley Giles
Jay Graif
James Grayson
Brent Hamilton
Melony Harper
Dusti Harvey
Holly Harvey
Samuel Hawthorne
Lance Himmelberger
Thomas Hoffman
Susanne Hoffman-Dooley
Robert Hogan
Dina Holcomb
Ronald Holmes
Lee Huntzinger
Daniel Ivey-Soto
Jack Jacks
Danny Jarrett
Michael Jones
Jennifer Kashar
Kristofer Knutson
Elizabeth Korsmo
Mark Kriendler Nelson
Lynn Krupnik
Lisa Kuykendall
Alexander Laks
Darin Lang
Twila Larkin
David Lauritzen
Debra Lautenschlager
Arne Leonard
Pierre Levy
C. Lopez
Raul Lopez
Dianna Luce
Melanie MacGillivray
Richard Marquez
Jeffery Martin
Vincent Martinez
Jonlyn Martinez
Javier Martinez
R. McCauley
Dara McKinney
Shay Meagle
Gianna Mendoza
Patricia Monaghan
Sarah Montoya
Hon. Kenny Montoya
Daniel Moquin
David Moraine
Daniel Morris
Kathleen Murphy
Shannon Nairn
Christopher Nevins
Christopher Ocksrider
Thomas Olsen
Jennifer Olson
Aliza Organick
Tony Ortiz
Thomas Outler
Christopher Pacheco
Terrence Padilla
Clara Padilla-Silver
Diana Parks
Cynthia Payne
Hon. Christopher Perez
Mark Perry
Julia Peters
Brian Pezzillo
Mark Pickett
Trace Rabern
Gregory Racca
Laura Ramos
Andrea Reeb
Lance Richards
Carol Rodriguez
Emma Rodriguez
Dale Rycraft
Steven Sage
Andrew Sanchez
Catherine Sanchez
Jonathan Schuchardt
Todd Schwarz
Geoffrey Scovil
Michael Shane
Ray Sharbutt
Carol Shay
Todd Silberman
David Standridge
Ashley Strauss-Martin
Mark Trujillo
Paul Trujillo
Matthew Tucker
Glenn Valdez
Chantal Van Ongevalle
Vincent Velardo
Donald Walcott
Richard Watts
David Waymire
Kimberly Wickens
Amelia Willis
Cynthia Wimberly

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LEGAL WELL-BEING:
Overcoming Fear of Stigma and Promoting Self-Care

By Evelyn Sandeen, Ph.D., ABPP

As a practicing clinical psychologist who specializes in treating professional people and who also has a son in law school, the topic of lawyer mental health is close to my heart. There is documented reason for concern: lawyers are at particular risk for psychological distress and substance overuse, even compared with other professionals in high-stress jobs[1]. Long hours, deadline-filled projects, isolating working conditions, exposure to traumatic material in the course of their jobs, stigma around admitting to mental health issues, and legal culture may all contribute to this. Additionally, there are barriers to seeking help and support from other lawyers or from mental health professionals. Fortunately, there are clear indications in the literature of actions that can be helpful in reducing stigma, improving personal and professional resilience, and overcoming barriers to seeking help as needed.

Secondary (Vicarious) Trauma

For some in the legal profession, there is daily exposure to traumatic material. Things like listening to traumatized persons' accounts, analyzing details of violent and traumatic actions, and visualizing evidence associated with acts of violence or abuse can all lead to a syndrome called vicarious traumatization. Persons who are affected in this way can have many of the symptoms of Post-Traumatic Stress Disorder (PTSD) although vicarious traumatization is a distinct phenomenon. Symptoms like heightened anxiety, intrusive thoughts or images, rumination, and problems sleeping can occur following exposure to evidence of others' suffering. This syndrome has been recognized in professions such as psychotherapy or medicine in which the professional deals with the aftereffects of traumatization. The legal profession is probably behind other client-facing professions regarding acknowledgment of secondary or vicarious traumatization[2].

Burnout and Stress

Burnout Syndrome officially became part of the International Classification of Disease handbook (ICD11) in 2019. It is defined as caused by chronic workplace stress and includes the following categories of symptoms: 1) energy depletion 2) increased mental distancing from the job through cynicism, negativity, or irritability with others, 3) reduced professional efficiency. Risk factors include low levels of control over one's work, low levels of social support, ill-defined job requirements, unrealistic deadlines and getting little or no satisfaction from one's job.

Legal Culture

While there is undeniably great diversity in legal workplace cultures, some in the field see standard legal culture as part of the problem in terms of lawyer well-being. Mark Cohen writing in Forbes describes legal culture as follows: "Legal culture was forged by white, middle-aged lawyers for their peer group…. Legal culture is rigid, hierarchical, pedigree-centric, internally-focused, cautious, reactive, and rewards input, not output."[3]. James[2] refers to legal culture as likely discouraging acknowledgment of personal vulnerability due to stiff competition for clients and jobs, and due to internalized stereotypes of lawyers as robust, self-confident and independent. Many studies have found that workplace cultures that accept bullying are associated with negative mental health outcomes for attorneys.

Stigma and other Barriers to Help Seeking

Clement et al.[4] found that stigma about mental health and substance abuse was one of several barriers to seeking help for these problems. Their review of many studies on help seeking found that internalized stigma (i.e., shame and embarrassment) had a small but consistent negative effect on help-seeking. Other factors included concerns about confidentiality, lack of access to mental health resources, a belief in self-reliance and associated denial of the need for care, and fear about the act of help-seeking itself (e.g., "will I be judged?"). Importantly, these authors found that gender stereotypes (e.g., men should be strong without needing others' help) and professional stereotypes (as mentioned above, lawyers may be unconsciously responding to stereotypes that they should be "bulletproof" and project confidence at all times) interact with stigma. In other words, for lawyers, internalized stigma associated

with admitting to mental health or substance overuse issues may be a significant barrier to recovery and renewal.

What to do?

▶ **Addressing Stigma**

One of the most effective methods of addressing stigma is to confront it head on. Yanos et al.[4] discuss selective disclosure of mental health or substance overuse struggles to others as a primary method of overcoming self-stigma. However, for this to occur within the workplace, selective disclosure must be normalized and facilitated by leaders in the workplace.

Simple acknowledgment by leaders within the workplace that the work is stressful and sometimes distressing is an important step toward de-stigmatizing mental health concerns. Legal supervision that includes discussion of the supervisee's emotional reactions and coping strategies is another method of fostering de-stigmatization.

A lack of acknowledgment of the emotional realities involved with lawyering does nothing to promote attorney well-being. In fact, denying emotional realities promotes anxiety, depression, addiction, and burnout.

▶ **Improving Legal Culture**

Leaders of firms and workgroups can take steps to improve the culture and norms of their setting[6]. Modeling and insisting on respectful interactions among attorneys and support staff, and encouragement of attorney-to-attorney collaboration and support are minimal standards for a healthy culture. Support for self-care and, if necessary, for seeking professional help should be articulated publicly and discussed regularly in supervisory or staff meetings. Clarifying job requirements and increasing attorney control over their work when possible are helpful in addressing burnout.

▶ **Resources and Practices for Resilience and Growth**

It should be emphasized that it is ***normal*** to have reactions to stressful and sometimes traumatic situations encountered by lawyers in the course of their work. It is also normal to seek relief from distress through having a cocktail at the end of the day or a bag of cookies while watching Netflix. However, it is wise to engage in self-care ***before*** normal reactions and coping strategies become a problem that decreases your well-being. Following are some suggestions:

- ***Mindfulness meditation***. There are a multitude of online resources for instruction on how to do mindfulness meditation or guided meditations. There is ample research evidence supporting meditation as a highly effective tool for modulating stress and increasing resilience. Try www.headspace.com or another online tool.
- ***Exercise***. Insert a daily walk, jog or set of bodyweight exercises into your schedule at the time you normally have a cocktail or plop down on the couch with a bag of chips. Exercise is the magic bullet that brightens mood, decreases anxiety, and improves sleep.
- ***Develop supportive connections at work***. See if you can develop at least one work buddy with whom you can transparently share your emotional reactions and receive empathy and support. This is different than just complaining; the goal is to be at least somewhat vulnerable and to give and receive emotional connection.
- ***Find meaning in your work***. What about your work can you make an expression of your values? Is your deepest value kindness, or truth, or persistence, or service? Consciously strive to tie your work to your values.
- ***Begin journaling***. There is extensive research supporting journaling thoughts and feelings being an effective method of processing difficult issues and feeling better emotionally.
- ***Gratitude journal.*** Related to the above, start a gratitude journal in which you intentionally reflect on moments/people/situations in your life for which you feel gratitude.

Pay Attention To

- ***Moderate drinking or other substance use***. Heavy or problematic drinking is defined by the National Institute of Alcohol and Alcohol Abuse as more than 4 standard drinks on any one day, or more than 14 standard drinks in a week (for men), and more than 3 standard drinks on any one day, or more than 7 standard drinks in a week (for women). If you are drinking at or above these levels, you may want to use an app like Drinker's Checkup (www.checkupandchoices.com) to help with identifying and attaining your goals regarding drinking. Although similar standards have not yet been set for cannabis use, pay attention if you find yourself using daily or find that cannabis use is replacing other healthy activities.
- ***Moderate eating and snacking***. Emotional eating (including binge eating of carbohydrates and constant snacking) can play the same role emotionally as does drinking or substance use. It can numb your emotions and contribute to weight gain, depression, and lack of initiative. Apps to monitor eating are plentiful and useful (e.g., www.myfitnesspal.com)
- ***Moderate gaming, social media engagement, pornography, or other internet "addictions"***. The internet has brought many activities to us that are easy to access, distracting, and superficially enjoyable, yet can result in feelings of depression or ennui. Increase real-life interactions with people instead. Try an app like Habitica to help you change habits in a fun way (www.habitica.com)

Seeking Professional Help

If you are experiencing thoughts of suicide, or if you have a substance use issue that you do not feel capable of controlling, or if any problem is interfering with your ability to function, you definitely should seek professional help. Of course, psychotherapy is also useful for those who simply want to feel better and more joyful. Any licensed therapist (Licensed Professional Counselor, Licensed Social Worker, Licensed Psychologist, or Licensed and Boarded Psychiatrist) is ethically mandated to keep to high standards of confidentiality. The only valid reasons for a licensed therapist to break confidentiality is if there is child or elder abuse occurring, or if you or someone else is in imminent danger.

Where/how to seek help:

- **Judges and Lawyers Assistance Program**. The New Mexico Judges and Lawyers Assistance Program (NMJLAP) is a free service for all members of the New Mexico bench and bar and law students. NMJLAP offers confidential professional and peer assistance to help individuals identify and address problems with alcohol and other drugs, depression, and other mental health/ emotional disorders, as well as with issues related to cognitive impairment. NMJLAP endeavors to improve the well-being of its members through support and early intervention, and to help reduce the public harm caused by impaired members of the legal profession. Call NMJLAP at (505) 228-1948 for more information and referrals to peer advisors.
- **The Solutions Group (EAP)**. Get help and support for yourself, your family and your employees. The Employee Assistance Program is a FREE service offered by NMJLAP. Services include up to four FREE counseling sessions per issue per year for ANY mental health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other FREE services include management consultation, stress management education, critical incident stress debriefing, video counseling, well-being webinars, and 24X7 call center. Providers are located throughout the state. To access this service call 866-254-3555 and identify with NMJLAP.
- **Word of mouth referrals**. If you know of someone who has had a good experience in psychotherapy, ask for a referral. Even if their therapist cannot see you, that person might be able to refer you to a clinician they regard as talented.
- **Psychology Today website**. This is a site for local licensed therapists which you can search for specific qualifications or specialties. Many also offer telehealth. www.psychologytoday.com
- **Panel associated with your insurance carrier**.
- **For alcohol detox:** Do not attempt to detox from alcohol dependence on your own. Alcohol withdrawal can be life-threatening. Instead, consult your physician or utilize a detox service such as the University of New Mexico's Alcohol and Substance Abuse Program (505-994-7999).
- **Hotlines or Emergency Departments**. The national suicide hotline (800-273-8255) and local emergency rooms (in Albuquerque, UNM hospital and Kaseman hospital in particular) are resources for anyone in need of immediate evaluation.

Dr. Evelyn Sandeen *is a licensed psychologist who is board-certified in clinical psychology. She has lived and worked in Albuquerque for 25 years. She has a private practice in which she specializes in psychotherapy with professional clients, training, and consultation. She can be reached at dr.evelynsandeen@gmail.com or by texting 505-681-3925. Her website is www.evelynsandeen.com.*

Endnotes

[1]Krill PR, Johnson R, Albert L. The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys. J Addict Med. 2016 Jan-Feb;10(1):46-52. doi: 10.1097/ADM.0000000000000182. PMID: 26825268; PMCID: PMC4736291.

[2]James C. Towards trauma-informed legal practice: a review. Psychiatr Psychol Law. 2020 Feb 11;27(2):275-299. doi: 10.1080/13218719.2020.1719377. PMID: 32944127; PMCID: PMC7476614.

[3]Cohen, M. https://www.forbes.com/sites/markcohen1/2017/07/03/goodbye-guild-laws-changing-culture/#951f96f70e80

[4]Clement S, Schauman O, Graham T, Maggioni F, Evans-Lacko S, Bezborodovs N, Morgan C, Rüsch N, Brown JS, Thornicroft G. What is the impact of mental health-related stigma on help-seeking? A systematic review of quantitative and qualitative studies. Psychol Med. 2015 Jan;45(1):11-27. doi: 10.1017/S0033291714000129. Epub 2014 Feb 26. PMID: 24569086.

[5]Yanos PT, Lucksted A, Drapalski AL, Roe D, Lysaker P. Interventions targeting mental health self-stigma: A review and comparison. Psychiatr Rehabil J. 2015 Jun;38(2):171-178. doi: 10.1037/prj0000100. Epub 2014 Oct 13. PMID: 25313530; PMCID: PMC4395502.

[6]Johnson, J. & Pearson, K. 6 steps for law firms looking to improve their culture. https://www.law360.com/articles/1296402

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From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-034
No. A-1-CA-36400 (filed February 26, 2020)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSHUA JACKSON,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
DREW D. TATUM, District Judge

Certiorari Denied, June 9, 2020, No. S-1-SC-38203.
Released for Publication August 11, 2020.

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Chief Public Defender
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Opinion

Jacqueline R. Medina, Judge.

{1} Defendant Joshua Jackson appeals his convictions for kidnapping with intent to commit a sexual offense, contrary to NMSA 1978, Section 30-4-1(A) (2003); two counts of criminal sexual penetration in the second degree (in the commission of a felony) (CSP II), contrary to NMSA 1978, Section 30-9-11(E)(5) (2009), two counts of felony aggravated battery against a household member, contrary to NMSA 1978, Section 30-3-16(C) (2008, amended 2018),[1] criminal sexual contact (CSC) with a deadly weapon, contrary to NMSA 1978, Section 30-9-12(C) (1993), and misdemeanor aggravated battery against a household member, contrary to Section 30-3-16(B). Defendant argues that his convictions should be vacated because the State failed to join the instant case with a previous case, in violation of our compulsory joinder rule. Defendant also challenges his convictions on the basis of double jeopardy, ineffective assistance of counsel, and sufficiency of the evidence. We hold that Defendant waived his compulsory joinder claim by failing to raise the issue before his second trial. We further hold that (1) Defendant's convictions did not violate double jeopardy, (2) Defendant failed to establish a prima facie case for ineffective assistance of counsel, and (3) Defendant failed to develop his sufficiency argument. Accordingly, we affirm.

BACKGROUND

{2} Defendant was charged in two separate cases based on events that occurred between Defendant and his former girlfriend (Victim) on April 4, 2015 and April 10, 2015. The first case, *State v. Jackson*, Ninth Judicial District Court Case No. D-905-CR-2015-00136 (*Jackson I*), was filed on May 4, 2015, and charged Defendant with kidnapping with intent to inflict physical injury and battery against a household member based upon the April 10, 2015 events. The second case, *State v. Jackson*, Ninth Judicial District Court Case No. D-905-CR-2015-00135 (*Jackson II*), was also filed on May 4, 2015—one minute before *Jackson I*—and charged Defendant with the crimes he now appeals based on the April 4, 2015 events. Defendant was arraigned in both cases at the same time on May 8, 2015. Following a jury trial in February 2016, Defendant was convicted of both crimes as charged in *Jackson I*. One year later, Defendant was found guilty of all crimes as charged in *Jackson II*. We provide the following outline of Victim's testimony given at Defendant's trials, reserving discussion of additional facts and testimony as necessary for our analysis.

Testimony from *Jackson I*

{3} Victim testified that she was in a relationship with Defendant in April 2015, who was living at her house "off and on." On the afternoon of April 10, 2015, Defendant called Victim and requested to come over to Victim's house to collect some of his belongings. When Defendant arrived, Defendant and Victim began arguing. At some point during the argument, Defendant punched Victim in the ribs. Defendant then went into the other room to collect his belongings, at which point Victim "took off running" out the front door because she was afraid Defendant would continue to hit her. Defendant ran after Victim and caught up with her in an alleyway, and Victim fell to the ground. Defendant pulled Victim's hair and dragged her back to the house by her arm.

{4} Once back in the house, Defendant locked the door, stood in front of it, and told Victim, "Stop being stupid. Don't run out there. I'm not going to hit you." When Victim agreed to stay, Defendant went into the other room to collect his belongings. At that point, Victim again "took off running" out the front door, screaming for help. Defendant again caught up with Victim, grabbed her, and began carrying her back to her house. Victim grabbed a nearby telephone pole in an attempt to stop Defendant from taking her back into the house. Defendant then bit Victim, prompting her to let go, and carried her back to the house. Sometime later, when Defendant was in another room, Victim ran out the front door for a third time, successfully escaping and alerting the authorities.

Testimony from *Jackson II*

{5} Victim testified that on April 4, Victim and Defendant began arguing at a friend's house because Defendant wanted to smoke methamphetamine, whereas Victim did not. The argument continued as Victim and Defendant returned to Victim's house, where things escalated. Defendant punched Victim in the face, prompting Victim to scream and run toward the front door. Defendant chased after Victim, locked the front door, and told the Victim "to go sit down." Even though Victim did

[1]All references shall be to the 2008 version of the statute.

not want to, she sat down. Defendant again struck Victim and told her to go into the bathroom. When Victim did not obey, Defendant dragged Victim by her hair into the bathroom.

{6} Once in the bathroom, Defendant "put all his weight" on Victim, pulled her pants down, and inserted a stick into Victim's anus. Defendant then tried to put a folding knife in Victim's vagina, cutting her in the process and causing her to bleed. At some point during the struggle, Defendant forced Victim into the bathtub and scalded her with hot water. When Victim tried to get out, Defendant stood in front of her and forced his penis in Victim's mouth. Victim bit Defendant's penis, which prompted Defendant to punch her again in her face—causing her tooth to go through her lip.

{7} Victim did not report the incident until April 16—six days after she first spoke with police regarding the April 10 incident. When asked why Victim did not report the incident right away, Victim responded, "Because I was locked in the house with him. I couldn't go nowhere." During cross-examination, defense counsel asked if Defendant ever left the house on April 4, to which Victim responded, "He didn't leave until that day I took off running from him." In response to defense counsel's question asking Victim if she smoked methamphetamine or drank before she reported the incident, Victim answered, "No, I did not drink, I didn't do nothing. I was just with him, like I couldn't even leave my house. Like we were just sitting in the house all day watching TV." Defense counsel then confirmed, "It's your testimony that he didn't leave the house at all over the next ten days?" to which Victim appeared to respond affirmatively.

DISCUSSION

I. Compulsory joinder

{8} We begin by addressing Defendant's argument that his convictions stemming from *Jackson II* should be vacated because the State violated Rule 5-203(A) NMRA, our compulsory joinder rule, by failing to join *Jackson I* and *Jackson II*. The State, in turn, argues that Defendant waived his claim for compulsory joinder because he failed to invoke Rule 5-203(A) below. Alternatively, the State argues that it was not required to join Defendant's charges because they stemmed from two separate incidents of distinct nature. We conclude that Defendant waived his compulsory joinder claim by failing to raise the issue before jeopardy attached in *Jackson II*, and that the failure to join did not constitute fundamental error. In making these determinations, we need not address the issue of whether Defendant's charges should have been joined.

Standard of Review

{9} "The proper interpretation of our Rules of Criminal Procedure is a question of law that we review de novo." *Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806. "When construing our procedural rules, we use the same rules of construction applicable to the interpretation of statutes." *State v. Aslin*, 2020-NMSC-004, ¶ 9, ___ P.3d ___ (internal quotation marks and citation omitted). "We begin by examining the plain language of the rule as well as the context in which it was promulgated, including the history of the rule and the object and purpose." *Id.* (internal quotation marks and citation omitted). "If the language of the [rule] is clear and unambiguous, we must give effect to that language and refrain from further . . . interpretation." *State v. Wilson*, 2010-NMCA-018, ¶ 9, 147 N.M. 706, 228 P.3d 490 (internal quotation marks and citation omitted). On the other hand, if the rule's language is "doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity, or contradiction," we construe the rule "according to its obvious spirit or reason." *State v. Padilla*, 2008-NMSC-006, ¶ 7, 143 N.M. 310, 176 P.3d 299 (internal quotation marks and citation omitted).

A. Compulsory Joinder and the Remedy of Dismissal

{10} "At common law, whether charges should be joined in the same indictment was a matter of prudence and discretion which rested with the judges to exercise." *State v. Gallegos*, 2007-NMSC-007, ¶ 10, 141 N.M. 185, 152 P.3d 828 (alteration, omission, internal quotation marks, and citation omitted). Following the common law, our joinder rule was originally discretionary. *See* NMSA 1953, § 41-23-10 (1972) (Vol. 6, 2d. Rep., 1975 Pocket Supp.) (providing that "[t]wo . . . or more offenses *may* be joined" (emphasis added)). In 1979, our Supreme Court exercised its supervisory powers to change our joinder rule from permissive to mandatory, recognizing "that requiring prosecutors to get their facts straight, their theories clearly in mind and trying all charges together has the salutary effect of avoiding prejudice to the defendant[,]" as well as our "distaste for piecemeal prosecutions." *Gallegos*, 2007-NMSC-007, ¶¶ 11, 14 (alteration, internal quotation marks, and citation omitted). As a result, our joinder rule, embodied in Rule 5-203(A), now provides:

> Two or more offenses *shall* be joined in one complaint, indictment or information with each offense stated in a separate count, if the offenses, whether felonies or misdemeanors or both:
>
> (1) are of the same or similar character, even if not part of a single scheme or plan; or
>
> (2) are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan.

(Emphasis added.)

{11} In *State v. Gonzales*, 2013-NMSC-016, 301 P.3d 380, our Supreme Court first answered the question of what was the proper remedy for the state's failure to join offenses under Rule 5-203(A). In *Gonzales*, the defendant drove while intoxicated and crashed her vehicle, killing a child in another vehicle. 2013-NMSC-016, ¶ 1. The state charged the defendant with, among other things, intentional and negligent child abuse. *Id.* ¶ 2. Prior to trial, the district court asked the state why it did not charge vehicular homicide in the alternative to the child abuse charges. *State v. Gonzales*, 2011-NMCA-081, ¶ 6, 150 N.M. 494, 263 P.3d 271, *aff'd on other grounds*, 2013-NMSC-016, ¶ 5. The prosecutor could not answer the question at first, "adding only that she wished they had charged the alternative vehicular homicide just to be safe." *Gonzales*, 2013-NMSC-016, ¶ 6 (alteration and internal quotation marks omitted). Nonetheless, the prosecutor went on to state that "[the] decision to charge [the d]efendant only with child abuse and not vehicular homicide was intentionally undertaken as an exercise of [the state's] discretion." *Gonzales*, 2011-NMCA-081, ¶ 6. Thus, at no point did the state pursue vehicular homicide charges against the defendant. *Id.* The defendant was eventually convicted of negligent child abuse and appealed. *See id.* ¶ 7.

{12} On appeal, this Court reversed the conviction for lack of substantial evidence that "[the d]efendant's behavior endangered a particular child that was foreseeable at the time of the accident." *Id.* ¶ 32. We further held that principles of double jeopardy barred the state from prosecuting the defendant for vehicular homicide. *Id.* ¶ 33. On certiorari, our Supreme Court affirmed the determination that the State was barred from bringing a new charge of vehicular homicide. *See Gonzales*, 2013-NMSC-016, ¶ 3. However, the Court based its holding on Rule 5-203(A) rather than double jeopardy. *Gonzales*, 2013-NMSC-016, ¶¶ 26, 34. Acknowledging that it was raising the rule sua sponte, the Court observed that double jeopardy and compulsory joinder are "two sides of the same coin. Joinder is designed to protect a defendant's double[ ]jeopardy interests where the state initially declines to prosecute him for the present offense, electing to proceed on different charges stemming from the same criminal episode." *Id.* ¶ 26 (alteration, internal quota-

tion marks, and citation omitted). The Court further observed, "The purpose of a compulsory joinder [rule], viewed as a whole, is twofold: (1) to protect a defendant from the governmental harassment of being subjected to successive trials for offenses stemming from the same criminal episode; and (2) to ensure finality without unduly burdening the judicial process by repetitious litigation." *Id.* (alteration, internal quotation marks, and citation omitted).

{13} Examining Rule 5-203(A), the Court emphasized, "Our rules of criminal procedure require that similar offenses be joined in one prosecution and not be brought piecemeal by way of sequential trials. . . . The rule is mandatory; it is not a discretionary or permissive rule; it demands that the [s]tate join certain charges." *Gonzales*, 2013-NMSC-016, ¶ 25 (internal quotation marks and citation omitted). Applying Rule 5-203(A) to the facts of the case, the Court held that vehicular homicide and child abuse were "two crimes based on the same conduct—[the d]efendant's intoxicated driving resulting in death to the victim[.]" *Gonzales*, 2013-NMSC-016, ¶ 25 (internal quotation marks omitted); *see* Rule 5-203(A)(2). Accordingly, the Court concluded that "[t]he [s]tate had no choice but to join these two offenses in one complaint, indictment or information, if it wanted to pursue them both." *Id.*; *see* Rule 5-203(A).

{14} In considering the proper remedy for the state's failure to join the defendant's charges, the Court observed,

> [w]hile the rule does not specify a remedy, we clearly intended that the rule have force. It would make little sense to have a mandatory rule with no method of enforcement; we would render it merely permissive. A bar against a subsequent prosecution on charges that should have been joined under Rule 5-203(A) is the only effective remedy to enforce the mandatory nature of the rule.

Gonzales, 2013-NMSC-016, ¶ 30. The Court went on to examine the state's actions, noting, "[t]his is not a case in which the charge the [s]tate now seeks to bring, vehicular homicide, was unknown at the time [the d]efendant was indicted." *Id.* ¶ 32. Rather, the State made deliberate, knowing decisions not to join the vehicular homicide to the pending child abuse charge, electing to pursue an "all-or-nothing trial strategy"—a strategy which the Court noted had a potentially "coercive effect" on jury deliberations. *Id.* ¶¶ 32-33 (internal quotation marks and citation omitted). In light of this, the Court determined that the state's failure to join the vehicular homicide charge in the first proceeding barred any subsequent prosecution for vehicular homicide. *Id.* ¶ 34.

B. Defendant Waived His Claim to Compulsory Joinder

{15} Unlike some other jurisdictions' compulsory joinder rules, Rule 5-203(A) is silent as to whether the defendant may waive his right to have charges joined under the rule. *Compare, e.g.*, W. Va. R. Crim. P. 8(a)(2) (1996) ("Any offense required by this rule to be prosecuted by a separate count in a single prosecution cannot be subsequently prosecuted *unless waived by the defendant*." (emphasis added)), *with* Rule 5-203(A). Although our courts have previously determined that a defendant may waive an *improper joinder* claim under Rule 5-203(A) by not raising the issue prior to trial, *see State v. Paiz*, 2011-NMSC-008, ¶ 13, 149 N.M. 412, 249 P.3d 1235, whether a defendant can waive a *failure to join claim* by failing to request joinder appears to be an issue of first impression. Finding no New Mexico law on point, we turn to other jurisdictions with compulsory joinder rules for guidance.

{16} *People v. Bossert*, 722 P.2d 998 (Colo. 1986) (en banc) is particularly instructive. At the time *Bossert* was decided, Colorado had a compulsory joinder rule providing:

> If several offenses are known to the district attorney at the time of commencing the prosecution and were committed within his judicial district, all such offenses upon which the district attorney elects to proceed must be prosecuted by separate counts in a single prosecution if they are based on the same act or series of acts arising from the same criminal episode. Any such offense not thus joined by separate count cannot thereafter be the basis of a subsequent prosecution.

Id. at 1011 (citation omitted)).[2] In *Bossert*, the state filed three cases against the defendant, two of which were tried together. *Id.* at 1000. In November 1981 the state brought the first case charging the defendant with a single count of unlawful possession of an altered motor vehicle part. *Id.* at 1000-01. One month later, the state brought a separate case charging the defendant with another count of unlawful possession of an altered motor vehicle part. *Id.* at 1001. One year later, the state brought a third case charging the defendant with three counts of felony theft by receiving and four counts of unlawful possession of altered motor vehicle parts. *Id.* at 1002. The first case proceeded to trial in May 1983, resulting in the defendant's conviction for the one count of unlawful possession. *Id.* at 1001. The latter two cases were tried jointly seven months later, resulting in a mixed verdict. *Id.* at 1002.

{17} Defendant appealed his convictions from all three cases, challenging the constitutionality of his unlawful possession charges. *Id.* at 1000. While the defendant's appeals were pending, the Colorado Supreme Court granted the defendant's motion for limited remand to the trial court to permit him to file a motion to dismiss one of the latter-tried cases because the prosecution failed to join that case with the first. *Id.* at 1011. Following the trial court's determination on remand that the state violated the compulsory joinder rule, the Colorado Supreme Court, sitting en banc, determined that despite the joinder rule's mandatory language and the absence of a provision concerning waiver, the defendant waived his claim to compulsory joinder because he failed to raise the issue before the second trial. *Id.* at 1011-12.

{18} In arriving at this conclusion, the court noted, "Although the constitutional proscriptions against double jeopardy form the basis of the compulsory joinder rule, the rule is broader than the constitutional limitation. . . . Compulsory joinder is designed to protect the accused against the oppressive effect of sequential prosecutions and to conserve judicial and legal resources that otherwise would be wasted[.]" *Id.* at 1011 (omission, internal quotation marks, and citations omitted). The court acknowledged that dismissal for failure to join was proper in cases where the defendant raises the issue prior to the beginning of the second trial because it "further[ed] the goals of compulsory joinder[.]" *Id.* Nonetheless, the court reasoned, "where . . . the defendant does not raise the issue of joinder until well after the conclusion of the second trial, neither of the public policy reasons for the compulsory joinder rule would be served [by dismissal]—the harm, if any, has occurred." *Id.*

{19} The court went on to speculate that the defendant determined that it was "strategically preferable to keep the single charge in [the first trial] separate rather than risk the consequences of jury knowledge of the other eleven counts in [the combined second trial]." *Id.* at 1012. Nonetheless, the court found the defendant's reasons irrelevant and concluded

[2]Colorado's compulsory joinder rule and statute have since been amended to expressly provide that a defendant waives his or her right to compulsory joinder by failing to object prior to the time jeopardy attaches in the first trial if the defendant (or his or her counsel) knows of additional pending prosecutions required to be joined at the time. *See* Colo. Rev. Stat. Ann. § 18-1-408(e)(2) (2000); Colo. R. Crim. P. 8(a)(1) (2003).

that its compulsory joinder rule "imposed no jurisdictional bar to the defendant's conviction in . . . the second trial." *Id.* Taking note of the American Bar Association Standards for Criminal Justice's recommendation that "[a] defendant who has been tried for one offense may thereafter move to dismiss any additional offense based upon the same conduct or the same criminal episode. . . . *The motion to dismiss must be made prior to the second trial*[,]" *id.* at 1012 n.23 (emphasis added) (internal quotation marks and citation omitted), the court concluded the defendant waived his claim to compulsory joinder because he failed to raise the issue "prior to the time at which jeopardy attache[d] in the second prosecution[.]" *Id.* at 1012.

{20} Cases from other jurisdictions with compulsory joinder rules without explicit waiver provisions reveal similar results. *See, e.g.*, *State v. Soule*, 2002 ME 51, ¶¶ 4, 10, 794 A.2d 58, 60-61 (holding that the defendant waived the protections of the compulsory joinder rule when he failed to object to proceeding to a second trial on charges arising out of the same criminal episode); *Commonwealth v. Green*, 335 A.2d 493, 497 (Pa. Super. Ct. 1975) ("It is apparent that a defendant who is aware of the charges against him can thus waive his statutory right to have them all brought in a single prosecution. . . . The intent of the statute to avoid magnifying an incident of criminal behavior out of proportion, both in terms of hardship to the individual and prejudice to his case, is not lost when an informed defendant chooses of his own to go the route of multiple trials.").

{21} We are persuaded by the logic of *Bossert* and these other jurisdictions. Like these jurisdiction's joinder rules, Rule 5-203(A) contains mandatory language and does not include a provision concerning waiver by the defendant. *Compare, e.g.*, Colo. Rev. Stat. § 18-1-408(2), *with* Rule 5-203(A). Likewise, the purpose of our rule is to protect defendants from being subjected to successive trials for offenses stemming from the same criminal episode, as well as avoid unduly burdening the judicial process by repetitious litigation. *See Gonzales*, 2013-NMSC-016, ¶ 26. These policies are not furthered, however, when the defendant does not raise the issue of joinder until after the second trial has taken place because "the harm, if any, has [already] occurred." *Bossert*, 722 P.2d at 1011. Accordingly, we hold that Defendant waived his right to have the charges joined under Rule 5-203(A) by failing to raise the issue before jeopardy attached in *Jackson II*.[3]

{22} Relying on *Gonzales*, Defendant nevertheless contends that review is proper here "in the same way that double jeopardy challenges can be brought for the first time on appeal." Defendant's reliance is misplaced. Although compulsory joinder and double jeopardy are closely related, *see Gonzales*, 2013-NMSC-016, ¶ 26, the right to joinder under Rule 5-203(A) is not the same as the constitutional guarantee to be free from double jeopardy. *See Bossert*, 722 P.2d at 1011 ("Although the constitutional proscriptions against double jeopardy form the basis of the compulsory joinder rule, the rule is broader than the constitutional limitation[.]" (citation omitted)). The double jeopardy clause protects against successive prosecutions for the same offense. *See State v. Silvas*, 2015-NMSC-006, ¶ 8, 343 P.3d 616 ("Double jeopardy protects against multiple punishments for the same offense."). The double jeopardy clause does not, however, require the State to join in a single proceeding all charges of "same or similar character" or "based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan." Rule 5-203(A); *see United States v. Sessa*, 125 F.3d 68, 73 (2d Cir. 1997) (stating that "the [d]ouble [j]eopardy [c]lause neither forbids successive prosecutions for different offenses nor requires the government to join all possible charges arising from a course of conduct in a single indictment"); *Lowery v. Estelle*, 696 F.2d 333, 342 (5th Cir. 1983) ("The double jeopardy clause does not require the state to join in a single criminal proceeding all charges arising from one criminal episode[.]").

{23} Moreover, we do not believe *Gonzales* compels this Court to dismiss Defendant's charges stemming from *Jackson II*, as *Gonzales* arose out of an entirely different procedural posture. There, the state declined to charge the defendant with the vehicular homicide charge and only decided to pursue the charge after trying and losing on the child abuse charge on appeal. *See Gonzales*, 2013-NMSC-016, ¶ 12. In contrast, the State, here, filed all of the charges against Defendant at the same time. Accordingly, this case—unlike *Gonzales*—does not fall squarely within the scenario against which Rule 5-203(A) is intended to protect (i.e., "where the state initially declines to prosecute [a defendant] for the present offense, electing to proceed on different charges stemming from the same criminal episode"). *Gonzales*, 2013-NMSC-016, ¶ 26 (alteration, internal quotation marks, and citation omitted). Additionally, *Gonzales* is distinguishable in that the defendant in that case complained that a subsequent trial for vehicular homicide would violate her double jeopardy rights *before* any additional trial took place, whereas here, Defendant failed to raise the issue until well after the second trial had completed. *See Gonzales*, 2011-NMCA-081, ¶ 33.

C. Failure to Join Did Not Constitute Fundamental Error

{24} Defendant argues that even if he was required to raise the issue of joinder below, the State's failure to join *Jackson I* and *Jackson II* constituted fundamental error because it allowed the State to "paint[] two very different versions of what supposedly happened between [Defendant] and [Victim] between April 4, 2015 and April 10, 2015—without ever having to reconcile the inconsistencies . . . [or] commit to one theory of what happened that week[.]" *See State v. Turner*, 2017-NMCA-047, ¶ 60, 396 P.3d 184 ("The doctrine of fundamental error applies only under exceptional circumstances and only to prevent a miscarriage of justice. Fundamental error must go to the foundation of the case or take from the defendant a right which was essential to his defense and which no court could or ought to permit him to waive." (internal quotation marks and citations omitted)). In support of his argument, Defendant points to several inconsistencies in Victim's testimony in *Jackson I* and *Jackson II* as to how long she was confined in her house following the April 4 incident, thus calling into question whether Defendant was only guilty of one continuing kidnapping. As we discuss below, however, there was substantial evidence of two separate kidnappings, despite any inconsistencies in Victim's testimony, and therefore, Defendant's right to be free from double jeopardy was not violated.

{25} Defendant also points out that Victim's mother testified in *Jackson I* that she saw Victim the day before the April 10 incident and did not notice any injuries at that time, and that there was no evidence that Victim had the injuries she sustained in the April 4 incident when she went to the hospital following the April 10 incident. Yet, Defendant fails to explain—nor do we see—how these inconsistencies rise to the level of fundamental error. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (stating that it is for the jury to resolve conflicts in the evidence and determine where the weight and credibility lie). Nor does Defendant explain how he could not point out these inconsistencies in *Jackson II* by calling Victim's mother as a witness or reviewing Victim's medical

[3]Because Defendant did not raise the issue of joinder at any point during the proceedings below, we leave open the question of whether a defendant who has knowledge of other pending charges waives his rights under Rule 5-203(A) if he fails to request joinder before jeopardy attaches in the first trial.

treatment following the attacks. We, therefore, do not address this argument any further. *See State v. Guerra*, 2012-NMSC-014, ¶ 21, 278 P.3d 1031 (explaining that appellate courts are under no obligation to review unclear or undeveloped arguments); *State v. Astorga*, 2016-NMCA-015, ¶ 5, 365 P.3d 53 ("The burden of demonstrating fundamental error is on the party alleging it, and the standard of review for reversal for fundamental error is an exacting one." (internal quotation marks and citations omitted)). Accordingly, Defendant has failed to demonstrate fundamental error (if there was any error at all) in not joining the charges in *Jackson I* and *Jackson II*.

II. Double Jeopardy

{26} Defendant next raises several double jeopardy arguments. First, Defendant raises a "unit of prosecution" claim, arguing that his two convictions for kidnapping in *Jackson I* and *Jackson II* violate his right to be free from double jeopardy. Second, Defendant raises two "double description" claims, arguing that his convictions in *Jackson II* for kidnapping and CSP II, as well as his convictions for CSC and aggravated battery violate double jeopardy. We address each argument in turn.

Standard of Review

{27} Double jeopardy protects against multiple punishments for the same offense. *See Swafford v. State*, 1991-NMSC-043, ¶¶ 7-8, 112 N.M. 3, 810 P.2d 1223. "Multiple punishment problems can arise from both 'double[]description' claims, in which a single act results in multiple charges under different criminal statutes, and 'unit[] of[]prosecution' claims, in which an individual is convicted of multiple violations of the same criminal statute." *State v. Bernal*, 2006-NMSC-050, ¶ 7, 140 N.M. 644, 146 P.3d 289. Appellate courts "generally review double jeopardy claims de novo." *State v. Rodriguez*, 2006-NMSC-018, ¶ 3, 139 N.M. 450, 134 P.3d 737. "However, where factual issues are intertwined with the double jeopardy analysis, we review the [district] court's fact determinations under a deferential substantial evidence standard of review." *Id.* Under such circumstances, "we view the evidence in the light most favorable to the verdict and resolve all conflicts and indulge all inferences in favor of upholding the verdict." *State v. McClendon*, 2001-NMSC-023, ¶ 3, 130 N.M. 551, 28 P.3d 1092.

A. Unit of Prosecution Claim

{28} Defendant first claims that his convictions for kidnapping in *Jackson I* and *Jackson II* violate double jeopardy because there was only evidence of a single, continuing kidnapping. Conversely, the State contends that Victim's testimony from both cases established two separate kidnappings. Although Victim's testimony in the two cases appeared inconsistent at one point, we conclude that there was sufficient evidence of two distinct kidnappings such that Defendant's kidnapping convictions do not violate double jeopardy.

{29} Because we are examining multiple convictions under the same statute, we apply a unit of prosecution analysis, which consists of a two-step inquiry to discern "whether the [L]egislature intended punishment for the entire course of conduct or for each discrete act." *Swafford*, 1991-NMSC-043, ¶ 8. In order to do this, we first "analyze the statute to determine whether the Legislature has defined the unit of prosecution and, if the statute spells out the unit of prosecution, then the court follows that language and the inquiry is complete." *State v. Olsson*, 2014-NMSC-012, ¶ 18, 324 P.3d 1230. If the unit of prosecution is not clear, we proceed to the second step to "determine whether [the] defendant's acts are separated by sufficient indicia of distinctness to justify multiple punishments." *State v. Swick*, 2012-NMSC-018, ¶ 33, 279 P.3d 747 (internal quotation marks and citation omitted). In making this determination, we look at a number of factors, including: "(1) temporal proximity of the acts; (2) location of the victim(s) during each act; (3) existence of an intervening event; (4) sequencing of acts; (5) [the] defendant's intent as evidenced by his conduct and utterances; and (6) the number of victims." *State v. Demongey*, 2008-NMCA-066, ¶ 10, 144 N.M. 333, 187 P.3d 679 (internal quotation marks and citation omitted). Although this Court has previously stated that "the unit of prosecution [for kidnapping] is clear: a kidnapping begins when the victim is initially confined and ends when the victim is released[,]" we have found it necessary to proceed to the second step of analysis to "determine if the confinement was continuous or if there were individual instances of confinement that were separated by sufficient indicia of distinctness[.]" *State v. Dombos*, 2008-NMCA-035, ¶¶ 12-13, 143 N.M. 668, 180 P.3d 675.

{30} Defendant claims that there was only evidence of a single, continuing kidnapping between April 4 and April 10, not two discrete kidnappings occurring on each of those dates. In support of this argument, Defendant appears to rely on Victim's testimony given during cross-examination in *Jackson II*, in which Victim testified that she could not leave her house following the April 4 incident, as well as Victim's apparent confirmation during cross-examination that "[it was her] testimony that [Defendant] didn't leave the house at all over the next ten days [following the April 4 incident.]"

{31} While Victim's confirmation on cross-examination in *Jackson II* that Defendant did not leave her house for the ten days following the April 4 incident was inconsistent with Victim's testimony in *Jackson I* that Defendant came over to her house on April 10, our review requires us to "resolve all conflicts and indulge all inferences in favor of upholding the verdict." *McClendon*, 2001-NMSC-023, ¶ 3; *see State v. Urioste*, 2011-NMCA-121, ¶ 19, 267 P.3d 820 ("Our primary concern is to ensure that each act supporting [a d]efendant's separate convictions was supported by sufficient evidence."). Resolving this conflict in Victim's testimony in favor of upholding the verdicts, we conclude that Victim's testimony from both *Jackson I* and *Jackson II*, as a whole, reveals sufficient evidence of two separate kidnappings.

{32} Although Victim's testimony regarding what happened between April 4 and April 10 was sparse, Victim testified in *Jackson I* that Defendant called her on April 10 and requested to come over to her house to collect some of his belongings. It thus stands to reason that Defendant had left Victim's house some time before April 10. Otherwise, he would not have needed to call Victim. It similarly stands to reason that Defendant terminated his intent to restrain Victim by freeing her before April 10, given that he requested permission from her to come over. Additionally, when defense counsel asked Victim in *Jackson II* if Defendant ever left the house on April 4, she responded, "He didn't leave until that day I took off running from him[,]"suggesting that Defendant left the house on April 10—which would be consistent with her testimony in *Jackson I*. What's more, Victim's testimony indicated that Defendant did not attempt to confine Victim on April 10 until she "took off running" after Defendant hit her during an argument.

{33} Hence, although Victim and location of Defendant's kidnappings overlap, there was sufficient evidence that the two kidnappings were separated by, at a minimum, Defendant's departure from Victim's house and his battery upon Victim, coupled with Defendant's termination of his intent to restrain Victim sometime between April 4 and April 10. This constituted sufficient indicia of distinctness between the individual instances of confinement, and, as a result, Defendant's two convictions for kidnapping do not violate double jeopardy. *See Dombos*, 2008-NMCA-035, ¶¶ 3-4, 13 (concluding that the defendant's convictions for kidnapping and false imprisonment of the same victim in the same location did not violate double jeopardy because the individual instances of confinement "were separated by days; intervening events that included consensual sex, drinking, and daily activities; and terminations of the intent to restrain").

B. Double Description Claims

{34} We now turn to Defendant's double description arguments. For double description claims, we apply the two-part test set forth in *Swafford*. We first ask "whether the conduct underlying the offenses is unitary, i.e., whether the same conduct violates both statutes." 1991-NMSC-043, ¶ 25. "When determining whether [a d]efendant's conduct was unitary, we consider whether [a d]efendant's acts are separated by sufficient indicia of distinctness." *State v. DeGraff*, 2006-NMSC-011, ¶ 27, 139 N.M. 211, 131 P.3d 61 (internal quotation marks and citation omitted). Like our unit of prosecution analysis, "[we] may consider as indicia of distinctness the separation of time or physical distance between the illegal acts, the quality and nature of the individual acts, and the objectives and results of each act." *State v. Mora*, 2003-NMCA-072, ¶ 18, 133 N.M. 746, 69 P.3d 256 (internal quotation marks and citation omitted).

{35} "If [the defendant's conduct] is unitary, we [then] consider whether it was the Legislature's intent to punish the two crimes separately." *Swick*, 2012-NMSC-018, ¶ 11. "To determine legislative intent, we look first to the language of the statute." *Silvas*, 2015-NMSC-006, ¶ 11. "Absent a clear expression of legislative intent, a court first must apply the *Blockburger* test to the elements of each statute." *Swafford*, 1991-NMSC-043, ¶ 30. "Under *Blockburger* [*v. United States*, 284 U.S. 299 (1932)], the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Swick*, 2012-NMSC-018, ¶ 12 (internal quotation marks and citation omitted).

{36} "If [the *Blockburger* analysis] establishes that one statute is subsumed within the other, the inquiry is over and the statutes are the same for double jeopardy purposes—punishment cannot be had for both." *Swafford*, 1991-NMSC-043, ¶ 30. On the other hand, "[i]f one statute requires proof of a fact that the other does not, then the Legislature is presumed to have intended a separate punishment for each statute without offending principles of double jeopardy." *Silvas*, 2015-NMSC-006, ¶ 12. "That presumption, however, is not conclusive and it may be overcome by other indicia of legislative intent[,]" *id.* ¶ 13 (internal quotation marks and citation omitted), which "may be gleaned from the statutory schemes by identifying the particular evil addressed by each statute; determining whether the statutes are usually violated together; comparing the amount of punishment inflicted for a violation of each statute; and examining other relevant factors." *Swick*, 2012-NMSC-018, ¶ 13 (internal quotation marks and citation omitted).

1. Kidnapping and CSP II

{37} Defendant contends that his convictions for kidnapping and two counts of CSP II in *Jackson II* violate double jeopardy. The State, in turn, argues that there was no double jeopardy violation because the conduct underlying Defendant's convictions for kidnapping and the two counts of CSP II was not unitary.

{38} "In specifically analyzing whether the conduct underlying kidnapping and CSP II . . . convictions is unitary, this Court has held that unitary conduct occurs when the prosecution bases its theory of kidnapping on the same force used to commit CSP II . . . even though there were alternative ways to charge the crime." *State v. Simmons*, 2018-NMCA-015, ¶ 26, 409 P.3d 1030 (alternations, internal quotation marks, and citation omitted). Here, Defendant does not appear to contend that the State premised its theory for the kidnapping conviction on the same force used to commit the CSPs. Instead, Defendant—relying on *Simmons*—argues that because the jury instructions did not specify which acts formed the basis for the kidnapping charge, this Court must assume that the jury premised Defendant's conviction for kidnapping on the same force used to commit the CSPs. *See id.* ¶ 27 ("When the conduct underlying two convictions could be unitary under the facts, but we are unsure if the jury relied on that unitary conduct for both convictions, we nevertheless assume for the purposes of our double jeopardy analysis that the conduct was unitary because one of the options/alternatives/scenarios is legally inadequate.").

{39} Defendant's reliance is misplaced. In *Simmons*, this Court was unable to rule out the possibility that the jury found that the defendant accomplished the kidnapping through the same force used to commit the acts of CSP, given the vague jury instructions provided. *See id.* In contrast, the jury in this case was instructed to find, among other things, that "[t]he restraint or confinement [used to accomplish the kidnapping] was not . . . merely incidental to the commission of a [CSP.]" Thus, *Simmons* is distinguishable, as the jury necessarily relied on distinct conduct for Defendant's kidnapping conviction. We, therefore, need not assume that the conduct underlying Defendant's convictions for kidnapping and the two counts of CSP was unitary.

{40} The State made clear in closing that it based its theory of kidnapping and the CSPs on different forces. The State argued, "Defendant kidnapped [Victim]. He restrained her when [he] grabbed her by the hair and forced her into that bathroom." Victim's testimony supported this theory. Victim testified that Defendant hit her and told her to go into the bathroom. And when Victim refused, Defendant dragged her by her hair into the bathroom. At that point, the crime of kidnapping was complete, although continuing. *See State v. Dominguez*, 2014-NMCA-064, ¶ 10, 327 P.3d 1092 ("The crime of kidnapping is complete when the defendant, with the requisite intent, restrains the victim, even though the restraint continues through the commission of a separate crime."); *see also State v. Jacobs*, 2000-NMSC-026, ¶ 24, 129 N.M. 448, 10 P.3d 127 ("[T]he key to finding the restraint element in kidnapping, separate from that involved in [CSP], is to determine the point at which the physical association between the defendant and the victim was no longer voluntary.").

{41} It was not until after Defendant had completed the kidnapping that Defendant put "all his weight" on Victim in the bathroom, forced her pants off, and committed the first act of CSP by sodomizing Victim with a stick, and the second act of CSP by forcing her to perform fellatio. *See State v. Montoya*, 2011-NMCA-074, ¶ 31, 150 N.M. 415, 259 P.3d 820 ("Sufficient indicia of distinctness exist when one crime is completed before another, and also when the conviction is supported by at least two distinct acts or forces, one which completes the first crime and another which is used in conjunction with the subsequent crime." (internal quotation marks and citation omitted)). Given Victim's testimony, the jury could have reasonably inferred an independent factual basis for Defendant's conviction for kidnapping and the CSPs. *See Urioste*, 2011-NMCA-121, ¶ 28 (affirming on the basis "that the jury could reasonably have inferred an independent factual basis for all three of [the d]efendant's convictions"). Because we conclude that Defendant's conduct was not unitary, Defendant's convictions for kidnapping and two counts of CSP II do not violate double jeopardy.

2. CSC and Aggravated Battery

{42} Next, Defendant contends that his convictions for felony aggravated battery against a household member, as charged in count four, and his conviction for CSC violate double jeopardy. Although we agree with Defendant that the conduct underlying the two convictions was unitary, we conclude that the Legislature intended to punish the two crimes separately.

{43} CSC is defined as "the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday[]" and constitutes a fourth degree felony "when the perpetrator is armed with a deadly weapon." Section 30-9-12(A), (C)(3). Consistent with UJI 14-915 NMRA, the jury was instructed to find Defendant guilty of

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1.0 EP
11 a.m.–Noon
$89 Standard Fee

Teleseminar:
IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements
1.0 G
11 a.m.–Noon
$79 Standard Fee

SEPTEMBER 24

In-Person and Webcast:
2021 Tax Law Symposium
5.8 G, 1.0 EP
9 a.m.–5 p.m.
$293 Standard Fee

Webinar:
Changing Minds Inside and Out of the Courtroom
1.0 G
11 a.m.–Noon
$89 Standard Fee

SEPTEMBER 28

In-Person and Webcast:
2021 Family Law Fall Institute
5.8 G, 1.0 EP
8:45 a.m.–5 p.m.
$293 Standard Fee

Webinar:
Staying Out of the News: How to Avoid Making the Techno-Ethical Mistakes that Put You on the Front Page
1.0 EP
11 a.m.–Noon
$89 Standard Fee

SEPTEMBER 29

Webinar:
10 Steps to Client Relationship Mastery
1.0 EP
11 a.m.–Noon
$89 Standard Fee

SEPTEMBER 30

Webinar:
Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
2–3 p.m.
$55 Standard Fee

OCTOBER 1

In-Person and Webcast:
2021 Health Law Symposium
5.0 G, 1.5 EP
8:20 a.m.–4:45 p.m.
$280 Standard Fee

OCTOBER 5

Webinar:
How to Stay "Professional" when Videoconferencing: It's Not As Hard As You Think!
1.0 EP
11 a.m.– Noon
$89 Standard Fee

OCTOBER 12

Webinar:
The Tiger King Case - Murder for Hire: The Prosecution of Joseph Maldonado-Passage
3.0 G
11 a.m.–2:15 p.m.
$179 Standard Fee

OCTOBER 13

Webinar:
Child Sex Abuse Cases: Pretrial Strategies and Proceeding to Trial
2.0 G
10 a.m.–Noon
$98 Standard Fee

Last Chance in 2021!

Webinar:
Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP

- September 30 2–3 p.m.
- December 6 1:30–2:30 p.m
- December 13 9–10 a.m.

Also available in self-study format.

OCTOBER 14

Webinar:

Immigration Law: Economic Opportunities Through Entrepreneurship Regardless of Immigration Status

1.0 G
Noon–1 p.m.
$49 Standard Fee

OCTOBER 15

In-Person and Webcast:

2021 Procurement Code Institute

3.0 G, 1.5 EP
8 a.m.–12:15 p.m.
$196 Standard Fee

OCTOBER 20

Webinar:

Whistleblowers are Heroes - Bringing Medicaid Fraudsters and Elder Abusers to Justice

2.0 G
10 a.m.–Noon
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OCTOBER 21

In-Person and Webcast:

2021 Solo and Small Firm Institute

4.0 G, 2.0 EP
8:45 a.m.–4:30 p.m.
$282 Standard Fee

OCTOBER 25

Webinar:

Rural New Mexico, Agriculture, and International Trade

2.0 G
1–3 p.m.
$98 Standard Fee

OCTOBER 27

Webinar:

Recent Developments in International Trade Law – Opportunities for New Mexico's Indian Country

3.0 G
9 a.m.–Noon
$147 Standard Fee

NOVEMBER 2

Webinar:

The O.J. Simpson Trial: Attorney Blunders, Bungles and Bloopers-PLUS Amazing PowerPoint Trial Tips

3.0 G
11 a.m.–2:15 p.m.
$179 Standard Fee

NOVEMBER 4

Webinar:

Copyright + Art: Told Through Colorful Stories and Original Artwork

2.0 G
11 a.m.–1 p.m.
$139 Standard Fee

NOVEMBER 5

Webinar:

60 Tips, Tricks, Apps & Websites in 60 Minutes

1.0 G
Noon–1 p.m.
$49 Standard Fee

Webinar:

Cross-Examination: The Big Picture and the Three Keys to Question Formation at Trial and at Depositions

1.5 G
11 a.m.–12:30 p.m.
$129 Standard Fee

NOVEMBER 9

Webinar:

How To Make Cross-Examination An Open Book Exam at Trial and at In-Person or Online Depositions

1.5 G
11 a.m.–12:30 p.m.
$129 Standard Fee

NOVEMBER 15

Webinar:

Sketching Competing Solutions in Access to Justice

1.5 EP
10 – 11:30 a.m.
$74 Standard Fee

NOVEMBER 16

Webinar:

Strategies and Techniques for Rural Community Organizing and Legal Advocacy

1.5 G
1–2:30 p.m.
$74 Standard Fee

NOVEMBER 30

Webinar:

Me Too: Sexism, Bias, and Sexual Misconduct in the Legal Profession

1.0 EP
11 a.m.– Noon
$89 Standard Fee

DECEMBER 6

Webinar:

Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204

1.0 EP
1:30 –2:30 p.m.
$55 Standard Fee

DECEMBER 13

Webinar:

Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204

1.0 EP
9–10 a.m.
$55 Standard Fee

DECEMBER 27

Webinar:

REPLAY: Minimizing Cultural Errors in Professional Practice (2020)

1.5 EP
noon–1:30 p.m.
$74 Standard Fee

DECEMBER 29

Webinar:

Replay: Revealing Unconscious Prejudice: How You Can Benefit (2020)

2.0 EP
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CSC if they determined, in relevant part, that Defendant (1) "touched or applied force to the unclothed vagina of [Victim] without [Victim's] consent"; and (2) "was armed with and used a knife[.]" Aggravated battery against a household member is defined as "the unlawful touching or application of force to the person of a household member with intent to injure that person or another" and constitutes "a third degree felony if the aggravated battery . . . is committed . . . with a deadly weapon." Section 30-3-16(A), (C)(2). In order to find Defendant guilty of felony aggravated battery against a household member, as charged in count four, the jury was instructed to find, in relevant part, that Defendant: (1) "touched or applied force to [Victim] with a knife"; (2) "intended to injure [Victim] or another"; and (3) "[Victim] was a household member of [D]efendant."

{44} The State concedes the conduct underlying Defendant's convictions for felony aggravated battery against a household member and CSC was unitary. While we are not bound by the State's concession, *see State v. Tapia*, 2015-NMCA-048, ¶ 31, 347 P.3d 738, we agree. As the jury instructions demonstrate, both of Defendant's convictions were premised on Defendant touching Victim with a knife, and the only evidence of Defendant's use of a knife against Victim came from Victim's testimony that Defendant cut her vagina with a folding knife. *See State v. Franco*, 2005-NMSC-013, ¶ 11, 137 N.M. 447, 112 P.3d 1104 (presuming unitary conduct where the state's theory at trial relied on the same conduct to convict the defendant of two crimes).

{45} Having concluded that the conduct was unitary, we turn to the second prong of our double jeopardy analysis to determine whether the Legislature intended to punish the two crimes separately. *Swick*, 2012-NMSC-018, ¶ 11. Because neither the aggravated battery against a household member statute nor the CSC statute expressly provide for multiple punishments, *see* § 30-9-12; § 30-3-16, we begin by applying the *Blockburger* test to determine whether each statutory provision requires proof of a fact which the other does not. *See Swafford*, 1991-NMSC-043, ¶ 30.

{46} As a preliminary matter, we note that the parties argue over whether we should apply the traditional or modified *Blockburger* test. *See State v. Ramirez*, 2016-NMCA-072, ¶ 18, 387 P.3d 266 ("When applying *Blockburger* to statutes that are vague and unspecific or written with many alternatives, we look to the charging documents and jury instructions to identify the specific criminal causes of action for which the defendant was convicted."). Nonetheless, we need not decide which test is appropriate because the result is the same either way. Both the aggravated battery against a household member and CSC statutes, as well as the jury instructions in this case, make clear that each crime requires proof of a fact which the other does not. The CSC statute, as well as the jury instructions require proof that Defendant touched or applied force to Victim's unclothed vagina without her consent, *see* § 30-9-12(A); UJI 14-915—a fact which is not required for aggravated battery against a household member. *See* § 30-3-16(A), (C). Likewise, both the aggravated battery against a household member statute and jury instructions require proof that Victim was a member of Defendant's household, *see id.*, a fact which was not required for CSC. *See* § 30-9-12(A); UJI 14-915.

{47} Defendant argues that the elements of aggravated battery against a household member were subsumed within the CSC charge because the State relied on the same facts and the same intent to establish both counts (i.e., Defendant's cutting of Victim's vagina). We disagree. That Victim happened to also be a household member of Defendant's does not alter the State's legal theory for CSC, which only required that Defendant commit the sexual offense on "another." Section 30-9-12(A); *cf. State v. Gutierrez*, 2012-NMCA-095, ¶ 16, 286 P.3d 608 ("That 'the person' referred to in the robbery statute was [the victim], who happened to also be a household member based on her intimate relationship with [the d]efendant, does not alter the [s]tate's legal theory of robbery. That theory simply required identification of a 'person,' not the showing of any particular relationship between 'the person' and [the d]efendant." (quoting NMSA 1978, § 30-16-2 (1973)).

{48} Similarly, that the part of Victim's body to which Defendant touched the knife happened to be her vagina, does not alter the State's legal theory for aggravated battery against a household member, which only required that Defendant touched *some part* of Victim with a knife. *See* § 30-3-16(A), (C). In other words, that the State used the same set of facts to establish a common element of both charges—in this case, the touching or applying of force to Victim with a knife—does not change the fact that each charge required proof of a fact which the other did not. Accordingly, a presumption arises that the Legislature intended a separate punishment for the violation of each statute without violating double jeopardy. *See Silvas*, 2015-NMSC-006, ¶ 12.

{49} This presumption is buttressed by the other indicia of legislative intent. While both statutes generally protect bodily integrity, they address distinct evils. *See Swafford*, 1991-NMSC-043, ¶ 32 n.7 (cautioning that too broad of an interpretation of societal interests "eviscerates the [L]egislature's intent to proscribe the narrower, distinct evils . . . by way of different statutory [provisions]")). On the one hand, the CSC statute protects individuals from unlawful intrusions into their "intimate parts." Section 30-9-12(A); *see State v. Williams*, 1986-NMCA-122, ¶ 9, 105 N.M. 214, 730 P.2d 1196 ("In defining intimate parts, the CSC statute lists five separate protected areas: the genital area, groin, buttocks, anus and breast. We hold that the legislative intent was to protect the victim from intrusions to each enumerated part." (internal quotation marks omitted)). On the other hand, the battery against a household member statute protects against the use of force against a specific group of people (i.e., household members). *Gutierrez*, 2012-NMCA-095, ¶ 20.

{50} Furthermore, it does not appear that "the statutes are usually violated together." *Swick*, 2012-NMSC-018, ¶ 13 (internal quotation marks and citation omitted). While some CSCs may be perpetrated by members of the victim's household, and some aggravated batteries on a household member may involve the application of force to the victim's "intimate parts," Defendant does not cite to—nor are we aware of—any authority that the two offenses are "usually" committed together. *See State v. Wyman*, 2008-NMCA-113, ¶ 6, 144 N.M. 701, 191 P.3d 559 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). Finally, although violation of the two statutes results in differing degrees of felonies, *compare* § 30-9-12(C) (defining CSC as a fourth degree felony when armed with a deadly weapon), *with* § 30-3-16(C) (defining aggravated battery against a household member as a third degree felony when committed with a deadly weapon), this "difference in the quantum of punishment alone is insufficient to overcome other indicia of legislative intent." *State v. Caldwell*, 2008-NMCA-049, ¶ 19, 143 N.M. 792, 182 P.3d 775. For these reasons, we hold that the Legislature intended to punish CSC and aggravated battery on a household member separately, and consequently, Defendant's convictions do not violate double jeopardy.

III. Ineffective Assistance of Counsel

{51} Defendant claims he suffered from ineffective assistance of counsel due to his counsel's failure to: (1) watch Defendant's recorded interview with police before trial, leading to the admission of otherwise inadmissible evidence; (3) move to join *Jackson I* and *Jackson II*; and (3) object to an investigating officer's testimony that a mark on Defendant's penis was consistent with a bite mark, as well as his testimony regarding domestic violence victims and their fear of retaliation. We address each argument in turn.

{52} "In order to establish a prima facie case of ineffective assistance of counsel on appeal, [the d]efendant must demonstrate that his counsel's performance fell below that of a reasonably competent attorney and that he was prejudiced by his counsel's deficient performance." *State v. Uribe-Vidal*, 2018-NMCA-008, ¶ 25, 409 P.3d 992 (internal quotation marks and citation omitted). "In determining whether a particular counsel's performance was deficient, an appellate court should presume that the performance fell within a wide range of reasonable professional assistance[,]" and we will not find ineffective assistance if "we can conceive of a reasonable trial tactic which would explain the counsel's performance[.]" *State v. Roybal*, 2002-NMSC-027, ¶ 21, 132 N.M. 657, 54 P.3d 61 (internal quotation marks and citation omitted). However, even when we cannot conceive of such a tactic explaining counsel's actions, counsel's deficient performance will not entitle a defendant to a new trial unless we determine, considering the totality of the evidence, that "there is a reasonable probability that, absent the errors, the fact[-]finder would have had a reasonable doubt respecting guilt." *Id.* ¶ 25 (internal quotation marks and citation omitted).

{53} "We review claims of ineffective assistance of counsel de novo." *State v. Pitner*, 2016-NMCA-102, ¶ 14, 385 P.3d 665 (internal quotation marks and citation omitted). "When an ineffective assistance claim is first raised on direct appeal, we evaluate the facts that are part of the record." *Roybal*, 2002-NMSC-027, ¶ 19. "If facts necessary to a full determination are not part of the record, an ineffective assistance claim is more properly brought through a habeas corpus petition[.]" *Id.*

A. Failure to Watch Video Evidence

{54} Defendant first claims his counsel was ineffective in failing to watch a video recording of Defendant's interview with police before trial. The facts as relevant to this claim are as follows. On the first day of trial, outside of the presence of the jury, the State indicated that it sought to introduce a video recording of Defendant's interview with one of the investigating officers, Officer Rodriguez. Defense counsel objected to the introduction of the video because Defendant could be seen wearing an orange prison jumpsuit but stipulated to the admission of the audio. After the State pointed out that the video had been disclosed to Defendant for a substantial period of time and there had been no motions in limine filed regarding the video, the district court agreed that the issue should have been raised earlier and asked defense counsel if he had seen the video prior to that day. Defense counsel admitted that he had not seen the video but "was aware of it." The district court sustained defense counsel's objection and permitted the audio to be played.

{55} Officer Rodriguez testified about his investigation. During Officer Rodriguez's testimony, the State played the audio of his interview of Defendant. At one point during the interview, Defendant admitted hitting Victim and pulling her back into the house, breaking her cellphone in the process. When Officer Rodriguez clarified that Defendant was talking about the April 10 incident, defense counsel objected because Defendant was referring to facts from *Jackson I*. Additionally, defense counsel objected on the grounds of Defendant's "obvious level of intoxication" during the interview. But because defense counsel had already stipulated to the admission of the audio, the district court overruled defense counsel's objection and allowed the remainder of the audio to be played.

{56} Defendant argues that his counsel's failure to watch the video led to the introduction of evidence relating to *Jackson I*—namely Defendant's admission that he hit Victim and pulled her back into the house—which amounted to unrelated prior bad act evidence. *See* Rule 11-404(B) NMRA. Defendant also argues that had counsel watched the video before trial, he would have filed a pre-trial motion challenging the voluntariness of Defendant's statements made during the interview based on Defendant's "obvious intoxication." Although we cannot conceive of a reasonable trial tactic for counsel's failure to watch the video of Defendant's interview before trial, Defendant cannot demonstrate sufficient prejudice to warrant a new trial. *See Roybal*, 2002-NMSC-027, ¶ 25.

{57} In regard to Defendant's first argument that counsel allowed the jury to hear evidence relating to the April 10 incident, we fail to see how there was a "reasonable probability" that, absent Defendant's objectionable statements, the jury would have had a reasonable doubt respecting Defendant's guilt. *Id.* Besides generally arguing that Defendant's statements were irrelevant and allowed the jury to consider that Victim's allegations "were part of a larger claim of abuse over the course of a week," Defendant fails to explain how the admission of his statements affected the jury's determination of his guilt, particularly in light of Victim's extensive testimony regarding Defendant's actions. "Given this lack of specificity, Defendant's allegation of prejudice amounts to a mere assertion[,]" which is insufficient to demonstrate prejudice. *State v. Torres*, 2005-NMCA-070, ¶ 18, 137 N.M. 607, 113 P.3d 877; *see In re Ernesto M., Jr.*, 1996-NMCA-039, ¶ 10, 121 N.M. 562, 915 P.2d 318 ("An assertion of prejudice is not a showing of prejudice.").

{58} In regard to Defendant's second argument, we are unable to determine from the audio recording the level of Defendant's intoxication—the only indication of which comes from defense counsel's objection, which is not evidence. *See State v. Hall*, 2013-NMSC-001, ¶ 28, 294 P.3d 1235 ("The mere assertions and arguments of counsel are not evidence." (internal quotation marks and citation omitted)). Moreover, even if Defendant was intoxicated during his interview, his intoxication, alone, is insufficient to render his statements involuntary. *See State v. Montano*, 2019-NMCA-019, ¶ 17, ___ P.3d ___ ("[A d]efendant's intoxication, or state of mind, alone is insufficient to render a confession involuntary without accompanying police misconduct or overreaching."). Accordingly, Defendant cannot demonstrate either requirement of ineffective assistance of counsel for counsel's failure to move to suppress his interview. *See State v. Mosley*, 2014-NMCA-094, ¶ 20, 335 P.3d 244 ("Where . . . the ineffective assistance of counsel claim is premised on counsel's failure to move to suppress evidence, [the d]efendant must establish that the facts support the motion to suppress and that a reasonably competent attorney could not have decided that such a motion was unwarranted." (internal quotation marks and citation omitted)).

B. Failure to Move for Joinder

{59} Next, Defendant claims his counsel was ineffective in failing to move for joinder of *Jackson I* and *Jackson II*. The record is undeveloped with respect to any reasons why defense counsel—who represented Defendant in both cases—would have thought it tactically wise to join the two for trial before the same jury. Yet, as the Colorado Supreme Court speculated in *Bossert*, it is possible that defense counsel, in this case, determined that it was "strategically preferable" to keep the cases separate in order to prevent the juries from learning of the facts pertaining to both incidents—facts which included disturbingly violent conduct by Defendant. 722 P.2d at 1012; *see Jacobs*, 2000-NMSC-026, ¶ 15 ("A defendant might be prejudiced if the joinder of offenses permitted the jury to hear testimony that would have been otherwise inadmissible in separate trials."). Indeed, as noted earlier, defense counsel sought to exclude evidence relating to the April 10 incident (i.e., Defendant's comments during his interview with Officer Rodriguez) in *Jackson II*, suggesting that this was his intention. Given this, we cannot say that defense counsel was ineffective in failing to join the two cases. *See Roybal*, 2002-NMSC-027, ¶ 21 ("[I]f on appeal we can conceive of a reasonable trial tactic which would explain the counsel's performance, we will not find ineffective assistance.").

C. Failure to Object to Lay-Witness Testimony

{60} Next, Defendant claims his counsel was ineffective in failing to object to Officer Rodriguez's testimony that a mark on Defendant's penis was consistent with Victim's claim that she bit Defendant's penis, which Defendant claims amounted to impermissible lay witness opinion. Defendant does not, however, develop any argument as to why it was improper for a lay witness to testify that a mark they observed on someone's body appeared consistent with a bite mark. *See State v. Winters*, 2015-NMCA-050, ¶ 11, 349 P.3d 524 ("[O]pinion testimony of lay witnesses is generally confined to matters which are within the common knowledge and experience of an average person." (internal quotation marks and citation omitted)); *see also State v. Holley*, 175 A.3d 514, 536 (Conn. 2018) ("[I]t was well within the trial court's discretion to determine that [the lay witness]'s testimony that [the defendant's accomplice]'s wounds appeared to be a bite mark, based on [the witness]'s personal observation and rational perception of [the defendant's accomplice]'s injuries, was more beneficial to the jury than a more abstract recitation or description of the size, location, and shape of the wound."). Accordingly, we decline to address Defendant's argument any further. *See State v. Dickert*, 2012-NMCA-004, ¶ 46, 268 P.3d 515 (declining to address the defendant's inadequately developed argument).

{61} Defendant also contends counsel was ineffective because he did not object to Officer Rodriguez's testimony that abuse victims may be "free to leave" an abuser but not "free [to leave] without any consequences" because, in his experience investigating domestic violence, abusers usually try to find the victim, leading to "possibly another beating." Defendant claims that this amounted to impermissible lay witness opinion akin to diagnosing Victim with "battered woman syndrome." Yet Defendant again fails to develop his argument that Officer Rodriguez's brief testimony rose to the level of opinion requiring expert qualification or how the admission of the testimony prejudiced Defendant enough to warrant a new trial. As a result, we need not, and do not, address Defendant's argument any further. *See id.* ¶ 46.

{62} In sum, Defendant fails to establish a prima facie case of ineffective assistance of counsel for any of his claims. Accordingly, his claims are more properly brought through a habeas corpus petition. *See Roybal*, 2002-NMSC-027, ¶ 19.

IV. Sufficiency of the Evidence

{63} Finally, Defendant contends that there was insufficient evidence to sustain his convictions. Defendant raises this argument, pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer* 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, which require appellate counsel to advance his argument even if the merits of the argument are questionable. Defendant summarily argues that there was insufficient evidence for his convictions because some of Victim's testimony lacked corroboration. Yet Defendant fails to develop this argument or even identify which convictions he is challenging or what essential elements lack substantial evidence. Nor does Defendant support his argument with any authority. For these reasons, we decline to address Defendant's sufficiency argument. *See State v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129 ("[A]ppellate courts will not consider an issue if no authority is cited in support of the issue and that, given no cited authority, we assume no such authority exists."); *Dickert*, 2012-NMCA-004, ¶ 46.

CONCLUSION

{64} For the foregoing reasons, we conclude that Defendant waived his claim for joinder under Rule 5-203(A) because he failed to raise the issue prior to the second trial, and that failure to join did not constitute fundamental error. Finding Defendant's remaining double jeopardy, ineffective assistance of counsel, and sufficiency arguments unpersuasive or undeveloped, we affirm.

{65} IT IS SO ORDERED.
JACQUELINE R. MEDINA, Judge

WE CONCUR:
LINDA M. VANZI, Judge
JULIE J. VARGAS, Judge

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-035
No. A-1-CA-36567 (filed April 2, 2020)

HSBC BANK USA, NATIONAL ASSOCIATION as Trustee for WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE ASSET-BACK PASS-THROUGH CERTIFICATES SERIES 2007-PA3,
Plaintiff-Appellee,
v.
DAVID W. WILES,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
SARAH M. SINGLETON, District Judge

Certiorari Denied, June 8, 2020, No. S-1-SC-38290.
Released for Publication August 11, 2020.

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Opinion

Megan P. Duffy, Judge.

{1} This is a residential foreclosure case. Defendant David Wiles appeals the district court's order granting summary judgment in favor of Plaintiff HSBC Bank USA (HSBC), on HSBC's complaint to enforce Defendant's promissory note and foreclose his mortgage. Defendant contends that HSBC had no right to foreclose his mortgage as a result of an unrecorded assignment of mortgage from the original lender, Wells Fargo Bank, N.A. (Wells Fargo), to another entity before Wells Fargo later assigned the same mortgage to HSBC. For the reasons set forth below, we affirm.

BACKGROUND

{2} On January 19, 2007, Defendant executed a promissory note (the Note) in favor of Wells Fargo. The Note is indorsed in blank. It is secured by a mortgage (Mortgage) executed by Defendant on the same day. An assignment of mortgage (Assignment), transferring the Mortgage from Wells Fargo to HSBC, was recorded in Santa Fe County on June 13, 2012.

{3} On August 13, 2012, HSBC filed a complaint for enforcement of the Note and foreclosure of the Mortgage. The Note, Mortgage, and Assignment were attached to HSBC's complaint. The district court denied HSBC's initial motion for summary judgment on the ground that material issues of fact precluded summary judgment.

{4} On May 9, 2016, by agreement of the parties, Defendant inspected his loan file at HSBC's counsel's office. Defendant was allowed to inspect and copy the Note, Mortgage, and Assignment. In the file, Defendant also found an unrecorded assignment of the mortgage (Unrecorded Assignment), dated January 19, 2007—the same date Defendant executed the Note and Mortgage—from Wells Fargo to U.S. Bank, N.A. as trustee. Because HSBC would not allow Defendant to copy that document, Defendant filed a motion to compel production of the Unrecorded Assignment and other documents defense counsel allegedly saw in HSBC's counsel's files. Four days later, HSBC filed a second motion for summary judgment.

{5} The district court granted Defendant's motion to compel in part, ordering the production of the Unrecorded Assignment but declining to compel the production of any additional documents. HSBC produced the Unrecorded Assignment later that day. The court also ordered the parties to submit supplemental briefing on HSBC's second motion for summary judgment discussing the effect, if any, of the Unrecorded Assignment. Defendant, in his supplemental response, argued that the Unrecorded Assignment created a genuine issue of material fact regarding HSBC's ownership of the Mortgage, and further, that if HSBC "cannot prove timely ownership of the mortgage, even though it may be able to prove timely ownership of the Note alone, [HSBC] has an enforceable negotiable instrument but not the right to foreclose on the mortgage. It is left with an unsecured obligation."

{6} After a hearing, the district court granted HSBC's motion in part and denied it in part. The court found HSBC had standing to execute on the Note, that Defendant was in default, and awarded HSBC a money judgment with interest. The court denied HSBC's request for summary foreclosure of the Mortgage, however, because genuine issues of material fact remained concerning the effect, if any, of the Unrecorded Assignment. The district court retained jurisdiction to resolve these questions. The district court also denied Defendant's request for relief for alleged fraud on behalf of HSBC or its counsel.

{7} HSBC moved for reconsideration. Without a hearing, the district court revised its earlier ruling and entered a final order. The district court surveyed the law of New Mexico and other jurisdictions and found that as a general rule: (1) a transfer of a mortgage without the transfer of the corresponding note is a nullity, and (2) without a showing that a party in the chain of title intended to separate the note from the mortgage, the mere existence of an unrecorded document purporting to show a transfer of the mortgage is insufficient to defeat standing to foreclose. Applying these general rules to the case at bar, the district court granted HSBC complete summary judgment as to both the Note and the Mortgage. Defendant appeals.

DISCUSSION

Standard of Review

{8} We review the district court's grant of summary judgment de novo. *Encinias v. Whitener Law Firm, P.A.*, 2013-NMSC-045,

¶ 6, 310 P.3d 611. "On appeal from the grant of summary judgment, we ordinarily review the whole record in the light most favorable to the party opposing summary judgment to determine if there is any evidence that places a genuine issue of material fact in dispute." *City of Albuquerque v. BPLW Architects & Eng'rs, Inc.*, 2009-NMCA-081, ¶ 7, 146 N.M. 717, 213 P.3d 1146. "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582.

Standing to Enforce the Note

{9} New Mexico's modern foreclosure standing rules were first set forth in *Bank of New York v. Romero*, 2014-NMSC-007, 320 P.3d 1. *Romero* established that "[s]tanding is to be determined as of the commencement of [the] suit." *Id.* ¶ 17 (internal quotation marks and citation omitted). As such, a foreclosing party "must demonstrate that it had the right to enforce the note and the right to foreclose the mortgage at the time the foreclosure suit was filed." *PNC Mortg. v. Romero*, 2016-NMCA-064, ¶ 19, 377 P.3d 461, 467 (internal quotation marks and citation omitted); *see Romero*, 2014-NMSC-007, ¶ 17 ("One who holds a note secured by a mortgage has two separate and independent remedies, which he may pursue successively or concurrently; one is on the note against the person and property of the debtor, and the other is by foreclosure to enforce the mortgage lien upon his real estate." (internal quotation marks and citation omitted)); *id.* ¶ 35 (recognizing "the separate functions that note and mortgage contracts perform in foreclosure actions[,]" where "the note is the loan and the mortgage is a pledged security for that loan"). With respect to the promissory note, the foreclosing party must demonstrate that, at the time it filed suit, it "either (1) had physical possession of the . . . note indorsed to it or indorsed in blank or (2) received the note with the right to enforcement, as required by the UCC." *Romero*, 2014-NMSC-007, ¶ 19.

{10} "[T]he holder of a note indorsed in blank may, as a general matter, enforce the note." *Deutsche Bank Nat'l Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 25, 369 P.3d 1046 (citing NMSA 1978, §§ 55-3-205(b), -301 (1992)); *see Romero*, 2014-NMSC-007, ¶ 26 ("[The] blank indorsement . . . established the [b]ank as a holder because the [b]ank [was] in possession of bearer paper[.]"). In this case, HSBC attached a copy of the Note indorsed in blank to its complaint. HSBC therefore established a prima facie case of standing to enforce the Note.

Right to Foreclose the Mortgage

{11} The only disputed issue here is whether HSBC has a right to foreclose the Mortgage. As described above, Defendant found an Unrecorded Assignment of his Mortgage in HSBC's counsel's files that purports to assign the Mortgage from the original lender, Wells Fargo, to U.S. Bank, N.A., as the trustee of a securitized trust. It is notarized and dated January 19, 2007, the same day Defendant executed his Note and Mortgage. There is no evidence the Unrecorded Assignment was ever delivered to U.S. Bank, N.A., or that it was ever recorded. Defendant contends, however, that the Unrecorded Assignment divests HSBC of standing to foreclose the Mortgage, effectively leaving HSBC with the district court's judgment on the Note and no collateral upon which to foreclose.

The Mortgage Follows the Note

{12} The law in New Mexico has long been established: The mortgage follows the note, allowing the subsequent holder of the note to enforce the mortgage even without a formal assignment of the mortgage. In 1913, our Supreme Court held:

> The transfer of a negotiable promissory note, by indorsement and delivery merely, where indorsed in blank or payable to bearer, the payment of which is secured by a mortgage or deed of trust, carries with it, in equity, the mortgage or deed of trust securities. The indorsee of the promissory note is entitled to the benefits of such mortgage, whether an assignment of the same is made or not.

Medler v. Childers, 1913-NMSC-015, ¶ 9, 17 N.M. 530, 131 P. 490 (internal quotation marks and citation omitted); *see also Simson v. Bilderbeck, Inc.*, 1966-NMSC-170, ¶ 13, 76 N.M. 667, 417 P.2d 803 ("It has frequently been held that a mortgage is but an incident to the debt, the payment of which it secures, and its ownership follows the assignment of the debt." (internal quotation marks and citation omitted)); *Hayden v. Speakman*, 1914-NMSC-077, ¶ 11, 20 N.M. 513, 150 P. 292 (Abbott, J., rehearing) (holding that "the bona fide holder of negotiable paper, transferred to him by indorsement thereon before maturity, and secured by a real estate mortgage, need not record the assignment of the mortgage"); *Stearns-Roger Mfg. Co. v. Aztec Gold Min. & Mill Co.*, 1908-NMSC-001, ¶ 33, 14 N.M. 300, 93 P. 706 ("[A mortgage] is a mere incident to the debt which it secures, upon which it depends, and which it follows and will pass with an assignment of the debt to the holder.").

{13} We can find no indication that New Mexico regards this principle as archaic, disused, or otherwise in question. To the contrary, both the legislative and judicial branches of our state government have reaffirmed the principle. Our Legislature, in 2005, codified the principle: "The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien." NMSA 1978, § 55-9-203(g) (2005). And our Supreme Court has repeatedly cited this principle favorably in its opinions clarifying New Mexico's modern foreclosure standing requirements. *See Romero*, 2014-NMSC-007, ¶ 35 (citing 55 Am. Jur. 2d *Mortgages* § 584 (2009) ("A mortgage securing the repayment of a promissory note follows the note, and thus, only the rightful owner of the note has the right to enforce the mortgage."). We decline Defendant's invitation to reconsider the long-standing principle that "the mortgage follows the note."

{14} In this case, the district court found HSBC made a prima facie case of its entitlement to foreclose the Mortgage. HSBC established that it was in possession of the Note at the time of filing by presenting the original Note indorsed in blank with its complaint. Under New Mexico law, then, when the Note indorsed in blank was transferred to HSBC prior to filing, the Mortgage followed the Note into HSBC's possession. *See Medler*, 1913-NMSC-015, ¶ 9; *see also* § 55-9-203(g); *Romero*, 2014-NMSC-007, ¶ 35; *BAC Home Loans Servicing LP v. Smith*, 2016-NMCA-025, ¶ 8, 366 P.3d 714 ("Because the right to enforce the mortgage arises from the right to enforce the note, the question of standing turns on whether the plaintiff has established timely ownership of the note."). An Assignment transferring the Mortgage from original lender Wells Fargo to HSBC was also recorded in Santa Fe County on June 13, 2012, and attached to HSBC's complaint. Therefore, there would be no question that HSBC established a prima facie showing of its right to foreclose the Mortgage, but for the issue of the Unrecorded Assignment, which predates on its face the Assignment to HSBC attached to its complaint. We thus turn to the effect, if any, of the Unrecorded Assignment.

The Unrecorded Assignment

{15} Defendant argues the Unrecorded Assignment creates a question of fact as to whether the Assignment to HSBC was valid and thus, whether HSBC has the right to enforce the mortgage. Defendant contends that the Unrecorded Assignment previously assigned the mortgage rights to another entity, and therefore, the later-dated Assignment to HSBC is of no effect. Having examined the law of New Mexico, that of other jurisdictions, and the secondary sources, we disagree. The Unrecorded Assignment is, as a matter of law, a legal nullity.

{16} No New Mexico case directly addresses Defendant's argument. However, we find strong support in the law of other jurisdictions and in the Restatement (Third) of Property (Mortgages) for the proposition that, absent evidence of a contrary intent by the parties to an assignment, the attempted assignment of a mortgage without a corresponding transfer of the note is a legal nullity. *See Deutsche Bank Nat'l Tr. Co. v. Spanos*, 961 N.Y.S.2d 200, 202-03 (N.Y. App. Div. 2013) (stating that the general rule is that "an assignment of a mortgage without assignment of the underlying note or bond is a nullity"); *see also Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, 623 (Mo. Ct. App. 2009) ("When the holder of the promissory note assigns or transfers the note, the deed of trust is also transferred. An assignment of the deed of trust separate from the note has no force. Effectively, the note and the deed of trust are inseparable, and when the promissory note is transferred, it vests in the transferee all the interest, rights, powers and security conferred by the deed of trust upon the beneficiary therein and the payee in the notes." (internal quotation marks and citations omitted)); *Montgomery Cty., Pa. v. MERSCORP, Inc.*, 16 F. Supp. 3d 542, 554-55 (E.D. Pa. 2014) (holding a note and its corresponding mortgage are inseparable and the assignment or transfer of a note secured by a mortgage is, in Pennsylvania, equivalent to an assignment of the mortgage as well), *rev'd on other grounds*, 795 F.3d 372, 375 (3d Cir. 2015); *In re Trierweiler*, 484 B.R. 783, 789 (B.A.P. 10th Cir. 2012) ("[S]ince a mortgage is only an incident to the debt it secures, a transfer of a note carries with it the mortgage security and operates as an equitable assignment of the mortgage[.]"), *aff'd* 570 F. App'x 766 (10th Cir. 2014); *see also* Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*, 53 Wm. & Mary L. Rev. 111, 119 n.34 (2011) (compiling cases from many jurisdictions finding that the note and the mortgage are inseparable and that the assignment of a mortgage alone is a nullity).

{17} The secondary sources are in accord. The Restatement (Third) of Property (Mortgages) § 5.4 (1997) stands for the proposition that the assignment of a note effectively assigns both the note and the mortgage, making the two documents legally impossible to split as a general rule. *See* Restatement (Third) of Property (Mortgages) § 5.4(a)-(b). The Restatement provides:

> (a) A transfer of an obligation secured by a mortgage also transfers the mortgage unless the parties to the transfer agree otherwise.
>
> (b) Except as otherwise required by the Uniform Commercial Code, a transfer of a mortgage also transfers the obligation the mortgage secures unless the parties to the transfer agree otherwise.
>
> (c) A mortgage may be enforced only by, or [on] behalf of, a person who is entitled to enforce the obligation the mortgage secures.

Id.; *see also Trierweiler*, 484 B.R. at 789 (finding an exception to the general rule that a mortgage transferred without the note is a nullity, for cases in which there is clear evidence of an intent to bifurcate the note and mortgage).

{18} We read the language of the Restatement (Third) of Property (Mortgages) § 5.4 to be consistent with New Mexico's modern foreclosure jurisprudence. *See, e.g.*, *Romero*, 2014-NMSC-007, ¶ 35 (favorably citing Baxter Dunaway, *Law of Distressed Real Estate*, § 24:18 (2011) for the proposition that "[t]he mortgage only secures the payment of the debt, has no life independent of the debt, and cannot be separately transferred[, and that i]f the intent of the lender is to transfer only the security interest (the mortgage), this cannot legally be done and the transfer of the mortgage without the debt would be a nullity"). And, although New Mexico has not yet formally adopted the Restatement (Third) of Property (Mortgages) approach, both our Supreme Court and our Legislature have recently cited with approval Restatement (Third) of Property (Mortgages) § 5.4 and the principles set forth therein. *See Johnston*, 2016-NMSC-013, ¶ 30; *see also* § 55-9-203(g), cmts. We therefore rely in part on the Restatement (Third) of Property (Mortgages) in support of our conclusions in the instant case.

{19} We also find support for our conclusion in public policy. The Restatement (Third) of Property (Mortgages) describes the underlying policy as follows:

> [S]eparating the obligation from the mortgage results in a practical loss of efficacy of the mortgage. When the right of enforcement of the note and the mortgage are split, the note becomes, as a practical matter, unsecured. This result is economically wasteful and confers an unwarranted windfall on the mortgagor.

Restatement (Third) of Property (Mortgages) § 5.4 cmt. a (1997). The objective of the rule "is to keep the obligation and the mortgage in the same hands unless the parties wish to separate them. This result is sometimes justified on the ground that '[a]ll the authorities agree that the debt is the principal thing and the mortgage an accessory[.]' " *Id.* cmt. b (quoting *Carpenter v. Longan*, 83 U.S. 271, 275 (1872))).[1]

{20} In this case, we apply the general rule and affirm the district court's conclusion that the Unrecorded Assignment is a legal nullity. We decline to disturb the district court's finding that there was no evidence of an intent by the parties to the Unrecorded Assignment to bifurcate the Note and Mortgage and leave the Note unsecured. Defendant does not identify any evidence of such an intent. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed."). As such, we affirm the district court's finding that the Unrecorded Assignment has no legal effect on HSBC's right to foreclose the Mortgage.

Defendant's Allegations of Fraud

{21} Defendant encourages us to draw inferences about the Unrecorded Assignment from the circumstances of Defendant's discovery of this document in the files of HSBC's counsel, which Defendant maintains constituted "a fraud on the court." In so arguing, Defendant discusses at some length the national conversation around foreclosure fraud. His argument is essentially that the alleged conduct of HSBC or its counsel must have been fraudulent because, like the financial entities discussed in the academic literature cited in Defendant's briefing, HSBC seeks in this matter to enforce a note and foreclose a mortgage. Defendant has demonstrated no factual nexus between the authority he cites and the instant case.

{22} As a general rule, averments of fraud require specificity. *See* Rule 1-009(B) NMRA ("In all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity."). Defendant's allegations of fraud on the part of HSBC or its counsel were not brought to the court below with sufficient particularity, and they accordingly found no purchase there. The district court found no fraudulent conduct on the part of HSBC in connection with Defendant's motion to compel the production of the Unrecorded Assignment, and on appeal Defendant does not challenge this finding except with unsupported innuendo concerning the "[s]ubmission [by HSBC] of fraudulent

[1]Though we also recognize those policy reasons supporting *Romero*, 2014-NMSC-007, and its progeny for requiring foreclosing parties to demonstrate strict standing requirements, we are persuaded in this case those requirements were met by HSBC as the holder of the Note and Assignment prior to filing the instant foreclosure action.

[Assignments of Mortgage] in this case." These are not facts found below; they are unsupported assertions made on appeal.

{23} This Court cannot countenance broad insinuations of fraud unsupported by competent evidence and briefed on appeal without a corresponding challenge to any specific finding or ruling made below. "[A]n appellant is bound by the findings of fact made below unless the appellant properly attacks the findings." *Martinez v. Sw. Landfills, Inc.*, 1993-NMCA-020, ¶ 18, 115 N.M. 181, 848 P.2d 1108; *see Seipert v. Johnso*n, 2003-NMCA-119, ¶ 26, 134 N.M. 394, 77 P.3d 298 ("An unchallenged finding of the trial court is binding on appeal."). To the extent Defendant is asking this Court to, sua sponte, sanction HSBC's counsel for conduct the district court did not find to be fraudulent, we decline to do so on the record before us.

{24} We conclude that Defendant failed in the district court to establish by admissible evidence a genuine issue of material fact concerning the alleged conduct of HSBC or its counsel sufficient to defeat HSBC's motion for summary judgment as to HSBC's right to foreclose the Mortgage. Summary judgment was properly granted.

CONCLUSION

{25} For the foregoing reasons, we affirm.

{26} IT IS SO ORDERED.
MEGAN P. DUFFY, Judge

WE CONCUR:
J. MILES HANISEE, Chief Judge
ZACHARY A. IVES, Judge

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-036
No. A-1-CA-37135 (filed April 21, 2020)

JACK WILLIS REYNOLDS AND
MARY LOUISE REYNOLDS
REVOCABLE TRUST AGREEMENT,
Plaintiff-Appellee,
v.
STEPHEN D. LANDAU,
Defendant-Appellant,
and
DOUG BISHOP and B.E.I. INC.,
Defendants.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY
ROBERT A. ARAGON, District Judge

Released for Publication August 11, 2020.

Mason & Isaacson, P.A.
PATRICK T. MASON
Gallup, NM
for Appellee

STEPHEN D. LANDAU
Santa Fe, NM
Pro Se Appellant

Opinion

Jacqueline R. Medina, Judge.

{1} This case arises out of an action to foreclose on a mortgage that predated the purchase of the property by a third party in a tax deed sale. The purchaser of the property, Stephen Landau, appeals the district court's judgment on the merits and order for foreclosure sale in favor of the mortgagee, the Jack Willis Reynolds and Mary Louise Reynolds Revocable Trust Agreement (the Trust). Landau, appealing pro se, raises the following issues: (1) the Trust should not be able to foreclose on a mortgage ten years after the mortgagor had its corporate status administratively cancelled; (2) the Trust's foreclosure action was barred by the statute of limitations; (3) the Trust's agreement to extend the mortgage and corresponding promissory note discharged the mortgagor's debt; (4) the district court's findings were not supported by substantial evidence; (5) the district court abused its discretion in setting trial less than a month after the close of discovery, as well as striking Landau's motion for summary judgment as untimely; (6) the district court erroneously based its judgment on issues of equity relating to the rental income Landau made off of the property; and (7) cumulative error deprived Landau of a fair trial. We affirm.

BACKGROUND

{2} On June 7, 2007, B.E.I., Inc. (BEI), a business corporation wholly owned and controlled by Doug Bishop,[1] executed a promissory note (the Note) in the principal sum of $115,000 made payable to the Trust. The Note required monthly payments of $1,200, with the remaining balance of $71,800 plus interest due on June 25, 2010. On June 25, 2007, BEI executed a mortgage (the Mortgage) on a parcel of land (the Property) it owned in McKinley County in favor of the Trust to secure the Note—including any extensions of the Note. The Note and the Mortgage were recorded together in the McKinley County Clerk's Office on June 28, 2007.

{3} Approximately one year before BEI executed the Note and Mortgage, the Office of the Public Regulation Commission (the Commission) sent BEI a notice informing it of its failure to file its annual corporate report required by the Corporate Reports Act, NMSA 1978, §§ 53-5-1 to -9 (1959, as amended through 2018). On July 21, 2007—approximately one month after BEI executed the Note and Mortgage—the Commission cancelled BEI's certificate of incorporation for failure to file the required corporate reports.[2] *See* § 53-5-7(A) (providing, in relevant part, that a corporation "shall have its certificate of incorporation canceled" for failure to file annual corporate report within sixty days of receiving notice that report is past due).

{4} On March 3, 2008, Bishop executed a personal guaranty to further secure BEI's obligations under the Note and Mortgage. Bishop made some payments on the Note but failed to pay off the remaining balance before the Note matured on June 25, 2010. Bishop also failed to pay the property taxes on the Property, resulting in the attachment of a tax lien on January 1, 2011.

{5} On March 3, 2011, the Trust sent Bishop a letter (the First Extension Letter) stating, "Pursuant to our several telecons, by copy of this letter I am informing [the escrow agent hired to collect payments due under the Note] to extend our Promissory Note [and] Mortgage to October 25, 2011." On August 20, 2011, the Trust sent Bishop a second letter (the Second Extension Letter) stating, "Pursuant to our telephone conversation on August 17, 2011[,] we agreed to again extend our Promissory Note [and] Mortgage to October 25, 2012." Unlike the First Extension Letter, Bishop signed the Second Extension Letter, indicating his agreement to the extension.

{6} Bishop continued to make sporadic payments after agreeing to the extension but did not pay off the remaining balance of the Note, which had accrued to approximately $90,000 by 2016. On July 22, 2016, the New Mexico Department of Taxation and Revenue (the Department) sold the Property for approximately $6,000 at public auction to Landau—a third party. Following the sale, the Department delivered to Landau a deed to the Property "convey[ing] . . . all of the former property owner's interest in the . . . [P]roperty . . .as of the date the [S]tate's lien for real property taxes arose . . . subject only

[1]Although the record is silent as to who owned BEI, the parties do not dispute that Bishop was BEI's sole shareholder.

[2]BEI never applied for reinstatement of its corporate status. *See* NMSA 1978, § 53-11-12(B) (2003) (providing that a "corporation administratively revoked" for failure to file corporate reports required pursuant to Section 53-5-2 may apply for reinstatement within two years of revocation).

to perfected interests in the real property existing before the date the property tax lien arose[.]"

{7} On August 18, 2016, Landau succeeded in a quiet title action against BEI and Bishop. The Trust filed the instant action on March 13, 2017 against BEI, Bishop, and Landau, seeking to collect the remaining balance of the Note and to foreclose on the Mortgage. Only Landau, acting pro se,[3] responded to the suit. The district court held a Rule 1-016 NMRA scheduling conference on August 29, 2017, and scheduled a bench trial for November 8, 2017. The court also initially set the discovery deadline for October 1, 2017, but extended the deadline to October 15 upon Landau's request. The court did not set any other deadlines or enter a scheduling order.

{8} Landau filed a motion for summary judgment on November 3, 2017, arguing the Trust could not foreclose on the Mortgage because: (1) BEI's corporate status was cancelled almost ten years prior to the suit, and thus the survival period to bring suit against the corporation had expired; (2) Bishop discharged BEI's debt by agreeing to the extensions on behalf of himself personally; and (3) the six-year statute of limitations for foreclosing on the Mortgage had run and the extension letters were insufficient to revive the limitations period because neither was notarized or recorded, as required by NMSA 1978, Section 37-1-16 (1957).

{9} The Trust moved to strike Landau's motion as untimely. On November 8, 2017, the district court granted the Trust's motion to strike, and the case proceeded to trial as scheduled. The only witnesses to testify were Landau and Brad Reynolds, the successor trustee to the Trust, neither of whom had any first-hand knowledge of the Trust's dealings with BEI and Bishop.

{10} The district court ruled from the bench in the Trust's favor "as a matter of law and equity," ordered foreclosure and sale of the Property, and asked the Trust to prepare an order reflecting the court's judgment. On November 17, 2017, Landau filed a request for findings of fact and conclusions of law pursuant to Rule 1-052 NMRA, which included his proposed findings and conclusions. The district court did not rule on Landau's request but approved the form of order submitted by the Trust three days later, which included findings of fact and conclusions of law.[4] The court's findings and conclusions did not include any of the ones submitted by Landau. On November 20, 2017, the district court as relevant to this appeal, concluded that the Trust was not barred from suing BEI for foreclosure because New Mexico's survival statute for business corporations, NMSA 1978, § 53-16-24 (1967), did not contain an express time limit for filing suit against a dissolved corporation.

{11} The court further concluded that the Trust's foreclosure action was timely because: (1) Bishop and BEI entered into a "valid agreement in writing to defer the payment of the full amount due under the Mortgage and Note to October 25, 2012, thus tolling the statute of limitations[, pursuant to NMSA 1978, Section 37-1-3(A) (2015);]" and (2) the continued payments on the Note revived the statute of limitations pursuant to Section 37-1-16. The court ordered the Mortgage foreclosed and appointed a special master to conduct a foreclosure sale of the Property to pay off the remaining balance of the Note, reserving jurisdiction to render a deficiency judgment against Bishop and BEI. The court denied Landau's motion to reconsider, **[2 RP 274]** and this appeal followed.

DISCUSSION

{12} Before we address Landau's arguments, a brief background on the tax deed sale process is useful. New Mexico's Property Tax Code (the Code) provides that, with certain exceptions not applicable to this case, "taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed . . . [and] . . . continues until the taxes and any penalty and interest are paid." NMSA 1978, § 7-38-48 (2003). The Department may seize and sell real property to satisfy a tax delinquency on the property three years following the date the taxes first became delinquent. *See* NMSA 1978, § 7-38-65(A) (2013). In order to do this, the Department must first satisfy certain notice requirements and list the property at a public auction. *See* NMSA 1978, § 7-38-66 (2018) (identifying notice requirements); NMSA 1978, § 7-38-67(C) (2005) (requiring property to be sold at a public auction).

{13} Prior to the auction, the Department must set a minimum purchase price, which it determines by considering "the value of the property owner's interest in the real property, the amount of all delinquent taxes, penalties and interest for which it is being sold and the costs." Section 7-38-67(E). Often times, the minimum purchase price is set significantly below the property's fair market value. *See, e.g.*, *Cochrell v. Mitchell*, 2003-NMCA-094, ¶¶ 3, 5, 134 N.M. 180, 75 P.3d 396 (setting minimum bid at $4,000 on property worth between $100,000 and $144,000); *see also Valenzuela v. Snyder*, 2014-NMCA-061, ¶ 17, 326 P.3d 1120 (setting minimum bid at $215 on property worth $25,000). One of the reasons for this is that "the purchaser at the tax sale buys, knowing the uncertainty of the title which is reflected in the purchaser's offer." *Valenzuela*, 2014-NMCA-061, ¶ 23 (alterations, internal quotation marks, and citation omitted).

{14} Once a property is purchased at auction, and the purchaser timely pays the amount due, the Department shall execute and deliver a deed to the purchaser. NMSA 1978, § 7-38-70(A) (1982). Historically, the sale of real property to satisfy a tax lien in New Mexico was said to provide a "paramount title cutting off all prior liens, [e]ncumbrances and interests of every character." *Alamogordo Improvement Co. v. Hennessee*, 1936-NMSC-018, ¶ 6, 40 N.M. 162, 56 P.2d 1127. However, the Code now provides:

> If the real property was sold substantially in accordance with the . . . Code, the deed [delivered to the tax deed sale purchaser] conveys all of the former property owner's interest in the real property as of the date the state's lien for real property taxes arose . . . , *subject only to perfected interests in the real property existing before the date the property tax lien arose.*

Section 7-38-70(B) (emphasis added).

{15} As relevant to this case, a mortgage constitutes an interest in real property and may be perfected by filing it for record "in the office of the county clerk of the county or counties in which the real estate affected thereby is situated." NMSA 1978, § 14-9-1 (1991); *see* NMSA 1978, § 14-9-2 (1886-87) (providing that recorded instruments "shall be notice to all the world of the existence and contents of the instruments"); *Connelly v. Wertz*, 1993-NMCA-090, ¶ 15, 115 N.M. 803, 858 P.2d 1282 ("An instrument such as a deed or mortgage is said to become perfect or perfected when recorded (or registered) or filed for record, because it then becomes good as to all the world." (internal quotation marks and citation omitted)), *overruled on other*

[3]Other than retaining counsel to represent him at trial, Landau was pro se throughout the case.

[4]It does not appear the Trust submitted any separate proposed findings of fact and conclusions of law, only the final form of order. The Trust does not dispute Landau's assertion that the district court's findings and conclusions are identical to the findings of fact and conclusions of law included in the Trust's final form of order, we therefore assume the court adopted the findings and conclusions verbatim.

grounds by Sw. Land Inv., Inc. v. Hubbart, 1993-NMSC-072, ¶ 7, 116 N.M. 742, 867 P.2d 412.

{16} Because perfected mortgages are discoverable by a search of the county clerk's records, it is incumbent on tax deed buyers to perform a title search and diligently investigate the existence and status of any such mortgage prior to purchasing the property. *See F & S Co. v. Gentry*, 1985-NMSC-065, ¶ 8, 103 N.M. 54, 702 P.2d 999 (stating that "[a]nything discoverable from a reasonably prudent search of . . . records [maintained by the county clerk] would serve as constructive notice"); *see also Camino Real Enters., Inc. v. Ortega*, 1988-NMSC-061, ¶ 3, 107 N.M. 387, 758 P.2d 801 ("[W]here the facts brought to the knowledge of the intending purchaser are such that in the exercise of ordinary care he ought to inquire, but does not, and his failure to do so amounts to gross or culpable negligence, he will be charged with a knowledge of all the facts which the inquiry, pursued with reasonable diligence, would have revealed." (internal quotation marks and citation omitted)).

{17} Although Landau claims he did not have actual knowledge of the Mortgage at the time he purchased the Property in the tax deed sale, he does not dispute that the Mortgage was properly recorded in accordance with Section 14-9-1 before the property tax lien arose. Thus, the underlying question of whether Landau's interest in the Property he received from the tax deed sale was subject to the Mortgage does not appear to be in dispute, only the Trust's ability to foreclose on the Mortgage. With this in mind, we proceed to address Landau's arguments.

Standard of Review

{18} Landau raises both factual and legal questions. Challenges to a district court's factual findings will not be disturbed on appeal so long as they are supported by substantial evidence. *Segal v. Goodman*, 1993-NMSC-018, ¶ 15, 115 N.M. 349, 851 P.2d 471. "Substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion." *Robey v. Parnell*, 2017-NMCA-038, ¶ 10, 392 P.3d 642 (internal quotation marks and citation omitted). "In reviewing a claim of insufficient evidence, we resolve all disputes of facts in favor of the successful party and indulge all reasonable inferences in support of the prevailing party." *Id.* (alteration, internal quotation marks, and citation omitted). "[T]his court will not reweigh the evidence nor substitute our judgment for that of the fact-finder." *Id.* (alteration, internal quotation marks, and citation omitted). While this standard is generally deferential, we may relax our usual deference when the district court adopts verbatim the prevailing party's extensive requested findings and conclusions. *See Los Vigiles Land Grant v. Rebar Haygood Ranch, LLC*, 2014-NMCA-017, ¶ 2, 317 P.3d 842.

{19} We review de novo challenges to a district court's conclusions of law. *Robey*, 2017-NMCA-038, ¶ 11. To the extent addressing these issues requires us to engage in statutory interpretation, "our charge is to determine and give effect to the Legislature's intent." *Little v. Jacobs*, 2014-NMCA-105, ¶ 7, 336 P.3d 398 (internal quotation marks and citation omitted). In order to do this, we look first to the plain language of the statute. *See Cook v. Anding*, 2008-NMSC-035, ¶ 7, 144 N.M. 400, 188 P.3d 1151. "[W]hen a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 40, 320 P.3d 1 (internal quotation marks and citation omitted). This Court "will not read into a statute language which is not there, particularly if it makes sense as written." *State ex rel. Duran v. Anaya*, 1985-NMSC-044, ¶ 10, 102 N.M. 609, 698 P.2d 882.

I. BEI's Administrative Cancellation Does Not Bar the Trust's Suit

{20} Landau argues the Trust should be barred from foreclosing on the Mortgage because BEI had its corporate status administratively cancelled almost ten years before the Trust brought suit. "At common law, a corporation ceased to exist on the date it was dissolved, and all actions pending against it abated." *Quintana v. Los Alamos Med. Ctr., Inc.*, 1994-NMCA-162, ¶ 5, 119 N.M. 312, 889 P.2d 1234. In order to ameliorate the harsh results of the rule on those who sought to bring suit against dissolved corporations, New Mexico, like other states, enacted a corporate survival statute to extend the period for settling claims against a dissolved corporation. *See Smith v. Halliburton Co.*, 1994-NMCA-055, ¶ 12, 118 N.M. 179, 879 P.2d 1198 ("In order to ease that harsh effect [of the common law rule], a number of states have enacted corporate survival statutes to extend the period for settling claims against a dissolved corporation."); *see also Quintana*, 1994-NMCA-162, ¶ 6 (noting that all states have adopted survival statutes). "Once the survival period has ended, the corporation ceases to exist and can no longer be sued." *Quintana*, 1994-NMCA-162, ¶ 6. New Mexico's survival statute applicable to business corporations provides:

> The dissolution of a corporation does not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to the dissolution and any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers may take such corporate or other action as appropriate to protect the remedy, right or claim.

Section 53-16-24.

{21} In this case, we note that BEI's certificate of incorporation was administratively "cancelled" pursuant to Section 53-5-7, rather than voluntarily or involuntarily "dissolved," pursuant to NMSA 1978, Sections 53-16-1 to -3, -13 (1967, as amended through 2003). Because the parties do not dispute that these terms have any meaningful difference, and because the Legislature has not enacted a separate survival statute for administratively cancelled corporations, we treat BEI's administrative cancellation as having the same effect as a dissolution for purposes of our discussion. *See* § 53-5-7.1 ("A domestic corporation whose certificate of incorporation has been canceled . . . pursuant to Section 53-5-7 . . . shall be stricken from the files of the [C]ommission . . . without further proceedings."); G. Van Ingen, Annotation, *Power of Corporation After Expiration or Forfeiture of its Charter; Effects of Dissolution*, 97 A.L.R. 477 (1935) ("The dissolution of a corporation is the termination of its corporate existence in any manner, whether by the expiration of its charter, a decree of the court, an act of the legislature, a governmental decree, or the voluntary act of its members.").

{22} Although Landau recognizes that Section 53-16-24 does not contain an express time limit on the survival of remedies against dissolved business corporations, he contends this Court should establish such a limit. In support of this argument, Landau points out that the majority of states have adopted an express time limit on the survival of remedies against dissolved corporations. *See Smith*, 1994-NMCA-055, ¶ 12 (noting that the majority of survival statutes specify a time in which a suit can be brought against a dissolved corporation). Landau also points out that New Mexico provides express survival periods for non-profit corporations, limited liability companies, and limited partnerships. *See* NMSA 1978, § 53-8-63 (1975) (providing a two-year survival period for non-profit corporations), NMSA 1978, § 53-19-46(C) (1995) (providing a three-year survival period for limited liability companies), NMSA 1978, § 54-2A-807(C) (2007) (providing a five-year survival period for limited partnerships).

{23} Landau's reliance on these authorities is misplaced. First, Landau cannot point to a single state that has judicially

enacted a survival period—as Landau now requests from this Court. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (stating that when a party fails to cite authority for an argument, we may assume none exists). Second, that our Legislature has enacted express survival periods for other legal entities but not business corporations cuts against Landau's argument. "When there are provisions in analogous statutes that a party contends should be present in the statute at issue in the case, we utilize the process of negative inference to reason that the absence of such provisions in the statute at issue is intentional." *State v. Lucero*, 1992-NMCA-103, ¶ 6, 114 N.M. 460, 840 P.2d 607. Hence, these enactments demonstrate that the Legislature knows how to create an express survival period for business corporations if it intends to do so, and through negative inference we assume the absence of an express survival period in Section 53-16-24 is intentional. *Cf. Patterson v. Globe Am. Cas. Co.*, 1984-NMCA-076, ¶ 10, 101 N.M. 541, 685 P.2d 396 (observing that the defendant's citation to other statutes providing a private right of action demonstrates, by negative inference, that the lack of a provision for a private action under the Unfair Insurance Practices Act was intentional), *recognized on other grounds as stated in Starko, Inc. v. Presbyterian Health Plan, Inc.*, 2012-NMCA-053, 276 P.3d 252.

{24} Though Landau may debate the merits of the Legislature's decision not to provide a limitation period in Section 53-16-24, our role is to construe statutes as written, not to second-guess the Legislature's policy decisions. *See State v. Maestas*, 2007-NMSC-001, ¶ 14, 140 N.M. 836, 149 P.3d 933 ("We adhere to the principle that a statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration." (alteration, internal quotation marks, and citation omitted)). Accordingly, we decline to read into Section 53-16-24 a limitation period. Because BEI executed the Note and Mortgage prior to its administrative cancellation, the Trust is not barred from foreclosing on the Mortgage. *See* § 53-16-24.

{25} Landau alternatively argues that allowing the Trust to foreclose on the Property would be inequitable because BEI had a duty to liquidate its assets and wind up its affairs after having its corporate status cancelled, and Bishop should not be permitted to "benefit from the corporate veil of his long-ago dissolved corporation[] and avoid[] judgment personally for . . . failing in his obligation to the Trust." However, Landau provides no authority for the proposition that the district court could invoke its equitable jurisdiction to prevent the foreclosure in light of Section 53-16-24's indefinite survival period. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2 (stating that when a party fails to cite authority for an argument, we may assume none exists); *Gzaskow v. Pub. Emps. Ret. Bd.*, 2017-NMCA-064, ¶ 39, 403 P.3d 694 ("That a court may not exercise an equitable remedy to accomplish a goal that a statute has foreclosed is well recognized by courts throughout the United States.").

{26} Moreover, even if the district court could exercise its equitable jurisdiction in the manner Landau requests, his argument rests on the faulty premise that Bishop avoided the consequences of his actions. To the contrary, Bishop—apparently BEI's sole shareholder—was the de facto owner of the Property being foreclosed upon. *See McCauley v. Tom McCauley & Son, Inc.*, 1986-NMCA-065, ¶ 48, 104 N.M. 523, 724 P.2d 232 ("It is fundamental, of course, that the corporation has a personality distinct from that of its shareholders, and that the latter neither own the corporate property nor the corporate earnings. The shareholder simply has an expectancy in each, and he becomes the owner of a portion of each only when the corporation is liquidated[.]" (internal quotation marks and citation omitted)). Additionally, the district court found Bishop personally liable for any deficiency owed to the Trust should the Property sale not cover the amounts owing under the Note. We therefore decline to further consider this argument.

II. The Extension Letters Tolled the Statute of Limitations

{27} Landau argues that the Trust was barred by the statute of limitations from foreclosing on the Mortgage because the Trust failed to revive the statutory period pursuant to Section 37-1-16. The limitations period applicable to actions founded upon contractual obligations contained in promissory notes (such as the foreclosure action in this case) is six years. *See* § 37-1-3(A). Generally, the limitations period begins to run on the promissory note's maturity date. *See Joslin v. Gregory*, 2003-NMCA-133, ¶ 9, 134 N.M. 527, 80 P.3d 464 (observing that the statute of limitations normally begins to run for the entire balance of a promissory note on the date of maturity). However, the limitations period for promissory notes requiring installment payments begins to run only with respect to each installment when due. *See LSF9 Master Participation Tr. v. Sanchez*, 2019-NMCA-055, ¶¶ 12-13, 450 P.3d 413 (construing a note promising periodic payments as an installment contract and holding that the statute of limitations began to run with respect to each installment when due).

{28} In this case, the statute of limitations began to run with respect to each monthly installment when due and with respect to the remaining balance of the Note on June 25, 2010, the date the Note matured. Thus, the Trust had until June 25, 2016, at the latest, to bring an action to foreclose on the Mortgage in satisfaction of the Note's debt unless the limitations period was tolled or revived. *See* § 31-1-3(A). The district court held that the statute of limitations was both tolled and revived, concluding: (1) the extension letters tolled the statute of limitations pursuant to Section 37-1-3(A) and (2) the continued payments on the Note revived the statute of limitations pursuant to Section 37-1-16.

{29} Because we agree that the extension letters tolled the statute of limitations under Section 37-1-3(A) long enough for the Trust to bring this foreclosure action within the six-year limitations period, we need not address whether the payments also revived the statute of limitations under Section 37-1-16. *See In re Estates of Brown v. Dickinson*, 2000-NMCA-030, ¶ 18, 128 N.M. 825, 999 P.2d 1057 ("We may affirm the district court on an alternate ground where it has reached the correct result and where reliance on an alternate ground would not be unfair to the appellant."). We explain. Section 37-1-3(A) provides, in relevant part:

> If the payee of any . . . promissory note . . . enters into any contract or agreement in writing to defer the payment thereof, or contracts or agrees not to assert any claim against the payor or against the assets of the payor until the happening of some contingency, the time during the period from the execution of the contract or agreement and the happening of the contingency shall not be included in computing the six-year period of limitation[.]

Hence, "the time elapsing between the making of the contract [made pursuant to Section 37-1-3(A)] and the happening of the condition when performance became due should not be counted [when calculating the six-year limitation period]." *Harp v. Gourley*, 1961-NMSC-026, ¶ 29, 68 N.M. 162, 359 P.2d 942.

{30} In this case, the Trust sent Bishop two extension letters: the First Extension Letter on March 3, 2011, extending the Note and Mortgage to October 25, 2011, and the Second Extension Letter on August 20, 2011, extending the Note and Mortgage to October 25, 2012. These letters were sufficient to toll the statute of limitations for collecting on the Note and foreclosing

on the Mortgage because they constituted an "agreement in writing to defer the payment" on the Note and Mortgage.[5] Section 37-1-3(A). Thus, the time between March 3, 2011 (the date of the First Extension Letter) and October 25, 2012 (the date to which the Second Extension Letter extended the Note and Mortgage)—one year, seven months, and twenty-two days—should not be included in computing the six-year limitation period. *Id.* Subtracting this period from the period between the Note's original maturity date and the date the Trust filed its foreclosure action—six years, eight months, and sixteen days would bring the Trust's action within the six-year limitations period.[6]

{31} Landau's argument focuses on the district court's conclusion that Bishop and BEI's continued payments on the Note and Mortgage revived the statute of limitations pursuant to Section 37-1-16, which provides:

> Causes of action founded upon contract shall be revived by the making of any partial or installment payment thereon or by an admission that the debt is unpaid, as well as by a new promise to pay the same; but such admission or new promise must be in writing, signed by the party to be charged therewith. . . . *Provided, that no admission that the debt is unpaid or new promise to pay the same shall be effective to extend the lien of any mortgage upon real estate or any interest therein given to secure the original indebtedness, unless the payment is accompanied by an admission or promise and unless such admission that the debt is unpaid or new promise to pay the same, signed by the party to be charged therewith and acknowledged by such party in the form prescribed by law for the acknowledgments of instruments affecting real estate, shall be filed for record in the office of the county clerk where said original mortgage is of record, prior to the date when any action to foreclose said mortgage lien would otherwise be barred under existing law*[.]

(Emphasis added.) In light of the emphasized language, Landau argues that the statute of limitations for foreclosing on the Mortgage was not revived because Bishop did not sign the First Extension Letter and the Trust failed to have the Second Extension Letter notarized and recorded.[7] Thus, Landau argues, any action to foreclose on the Mortgage was untimely.

{32} Landau's reliance on Section 37-1-16 is misplaced. Even if the payments were insufficient to revive the statute of limitations for foreclosing on the Mortgage without a notarized and recorded agreement in accordance with Section 37-1-16, the extension letters satisfied Section 37-1-3(A)'s tolling provision, bringing the action within the applicable limitations period. As it was not necessary for the extension letters to meet the requirements of the revival statute, any examination of this issue would be an exercise of futility. *See Sheraden v. Black*, 1988-NMCA-016, ¶ 10, 107 N.M. 76, 752 P.2d 791 ("It is well settled in New Mexico that the function of a reviewing court on appeal is to correct erroneous results, not to correct errors that, even if corrected, would not change the result."). We therefore hold that the Trust was not barred by the statute of limitations from foreclosing on the Mortgage.

III. The Trust's Mortgage Was Not Discharged by the Extension Letters

{33} Landau argues that Bishop's agreement to extend the Note and Mortgage discharged BEI's debt and extinguished the Mortgage. In support of this argument, Landau cites *Farmington Nat'l Bank v. Basin Plastics, Inc.*, 1980-NMSC-092, ¶ 7, 94 N.M. 668, 615 P.2d 985, in which our Supreme Court observed, "It has been held that an agreement between a payee and maker of a note to extend the time of payment of the note discharges any co-maker who has not consented to the extension." Landau's argument rests on the assumption that Bishop agreed to the extensions on behalf of himself and not BEI. However, as we discuss below, there is substantial evidence that Bishop entered into the extension agreement on behalf of BEI. Accordingly, Landau's argument fails.

IV. Substantial Evidence Supports All Material Findings of Fact

{34} Plaintiff challenges several of the district court's findings of fact, claiming that they are not supported by substantial evidence. We address each challenge in turn.

A. Verbatim Adoption of the Trust's Findings and Conclusions

{35} Landau contends that the district court abdicated its judicial responsibility by adopting all of the Trust's findings and conclusions included in its final form of order. He argues that we should remand for the district court to enter its own findings and conclusions. We agree "the [district] court is required to exercise independent judgment in arriving at its decision and should generally avoid verbatim adoption of all of the findings and conclusions submitted by a party." *Pollock v. Ramirez*, 1994-NMCA-011, ¶ 28, 117 N.M. 187, 870 P.2d 149. "This practice can all too often result in unsupported, ambiguous, inconsistent, overreaching, or unnecessary findings and conclusions." *Los Vigiles Land Grant*, 2014-NMCA-017, ¶ 2. For this reason, we caution the district court to avoid the wholesale verbatim adoption of the prevailing party's proposed findings and conclusions, as was done in this case.

{36} Nonetheless, a district court's verbatim adoption of proposed findings is not error so long as the findings are supported by substantial evidence. *See Gila Res. Info. Project v. N.M. Water Quality Control Comm'n*, 2018-NMSC-025, ¶ 40, 417 P.3d 369. As we discuss below, substantial evidence supports the findings of fact material to this appeal. Consequently, we decline to remand to the district court.

B. Bishop Agreed to Extend the Note and Mortgage on Behalf of BEI

[5]Landau summarily argues that the extension letters did not "defer the payment of the debt" because they only extended the Note's maturity date and provided that "regular payments must continue to be made according to the original terms of the Note." As Landau does not develop an argument as to how an extension of the Note's maturity date does not "defer the payment of the debt," we decline to address this contention. *See Titus v. City of Albuquerque*, 2011-NMCA-038, ¶ 30, 149 N.M. 556, 252 P.3d 780 ("This Court has no duty to review an argument that is not adequately developed."); *Date, Black's Law Dictionary* (11th ed. 2019) (defining "maturity date" as "[t]he date when a debt falls due, such as a debt on a promissory note or bond").

[6]We note that, even taking the tolled period into account, some of the uncollected monthly payments due prior to the Note's original maturity date may have been barred by the statute of limitations. *See LSF9 Master Participation Tr.*, 2019-NMCA-055, ¶¶ 12-13 (holding that the statute of limitations began to run with respect to each installment when due). However, it is unclear what payments Bishop made before the Note's original maturity date. Given the unclear record, and given that Landau does not raise this issue on appeal, we decline to address this issue. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed.").

[7]Landau also argues that the extensions were insufficient to revive the statute of limitations for foreclosing on the Mortgage because Bishop signed the Second Extension Letter on behalf of himself personally, and not on behalf of BEI—the mortgagor. As we discuss later, there was substantial evidence that Bishop agreed to the extensions on behalf of BEI.

{37} Landau challenges the district court's finding that the Trust granted two extensions of the Note and Mortgage to BEI, which the court concluded constituted "a valid agreement in writing to defer the payment of the full amount due under the Mortgage and Note to October 25, 2012, thus tolling the statute of limitations." Specifically, Landau argues that the extension letters were insufficient to toll the statute of limitations for foreclosing on the Mortgage because BEI—the mortgagor and record holder of title to the Property—did not agree to the extension. Rather, Landau claims Bishop agreed to the extension on behalf of himself personally because both extension letters were addressed to Bishop without mentioning BEI, and the Second Extension Letter was signed by Bishop without any notation that he was signing on behalf of BEI.

{38} In support of his argument, Landau cites NMSA 1978, Section 55-3-402(b)(1) (1992), which provides, "If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument." That a representative may be personally liable on an instrument such as a promissory note when the form of the signature is ambiguous does not necessarily mean that the form of the signature must be clear in order to bind the person or entity being represented. Indeed, Section 55-3-402(a) provides:

> If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person *or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract*. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" *and the represented person is liable on the instrument, whether or not identified in the instrument*.

(Emphases added.); *see also* § 55-3-402 cmt. 1 ("Subsection (a) states when the represented person is bound on an instrument if the instrument is signed by a representative. If under the law of agency the represented person would be bound by the act of the representative in signing either the name of the represented person or that of the representative, the signature is the authorized signature of the represented person."). Thus, Landau's reliance on Section 55-3-402(b) is misplaced.

{39} While neither letter was explicitly directed to Bishop in his capacity as a representative for BEI, and Bishop did not indicate the capacity in which he signed the Second Extension Letter, we conclude there was sufficient evidence that Bishop agreed to the extension on behalf of BEI. First, both letters mention BEI in the reference line indicating the escrow account the Trust set up to receive payments on the Note and Mortgage. Moreover, the Second Extension Letter that Bishop signed stated, "Pursuant to our telephone conversation on August 17th, 2011[,] we agreed again [to] extend *our Promissory Note and Mortgage* to October 25, 2012." It is reasonable to infer that both Bishop and the Trust understood Bishop could only extend the Mortgage if he did so on behalf of BEI.[8] In light of the foregoing, we conclude there was substantial evidence that Bishop agreed to extend the Note and Mortgage to October 25, 2012, on behalf of BEI.

C. The Note and Mortgage Were Not Void Ab Initio

{40} Next, Landau argues that the Note and the Mortgage—which were both signed by Bishop on behalf of BEI—were void ab initio because there was insufficient evidence that Bishop had authority to contract on behalf of BEI and pledge the Property as collateral. Specifically, Landau takes issue with the Trust's failure to introduce evidence of any documented formal proceedings in which BEI gave Bishop such authority. Without such proof, Landau argues, there was insufficient evidence for the district court to conclude Bishop had authority. We disagree.

{41} Although the district court did not specifically find that Bishop had authority to contract on behalf of BEI and pledge the Property as collateral, it found that Bishop and BEI executed the Mortgage and Note. Implicit in this finding is that Bishop had authority to contract on behalf of BEI and pledge the Property as collateral. Support for this conclusion comes from BEI's articles of incorporation, which listed Bishop as the sole incorporator and initial director. *See* NMSA 1978, § 53-11-35(A) (1987) ("All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in the Business Corporation Act or the articles of incorporation.").

{42} Landau argues that this evidence was insufficient to prove that Bishop had authority to sign the Note and Mortgage in 2007 because BEI's articles of incorporation were filed over sixteen years prior to Bishop's signing of the Note and Mortgage. However, Landau failed to present any evidence calling into question Bishop's authority to sign the Note and Mortgage on behalf of BEI. Without any evidence to the contrary, it was reasonable for the district court to infer from the articles of incorporation that Bishop, being the sole director of record, vested himself with authority to contract on behalf of BEI and pledge the Property as collateral. *See Robey*, 2017-NMCA-038, ¶ 10 ("In reviewing a claim of insufficient evidence, we . . . indulge all reasonable inferences in support of the prevailing party." (alteration, internal quotation marks, and citation omitted)).

D. Remaining Challenges

{43} Landau additionally challenges three other findings. First, Landau appears to challenge the finding that "[Bishop] and [BEI] executed a Promissory Mortgage and Note" because he reads it to erroneously imply that: (1) the Note and Mortgage were one document and (2) Bishop executed the Note and Mortgage on behalf of himself in addition to BEI. Second, Landau challenges the finding that Bishop and BEI made sporadic payments on the Note up until 2017 because it was unclear who actually made the payments. Lastly, Landau challenges the finding that Bishop validly executed a personal guaranty to secure payment on the Note because the guaranty lacked consideration. However, Landau does not explain, and we fail to see, how any of these challenges (if successful) would change the district court's ultimate holding for which Landau seeks reversal (i.e., foreclosure of the Mortgage).

{44} In regard to the first argument, we fail to see how the district court's purportedly mistaken finding that the Mortgage and Note were one document and that Bishop also executed the Note and Mortgage on behalf of himself in addition to BEI would affect the validity of the Mortgage. As to the second argument, whether BEI or Bishop continued to make payments (or not) is of no import because, as discussed above, the Trust and BEI entered into an agreement in writing to defer the payment on the Note pursuant to Section 37-1-3(A), which tolled the statute of limitations. Consequently, evidence of continued payments was not necessary to revive the limitations period for foreclosing on the Mortgage pursuant to Section 37-1-16.

{45} In regard to the last argument, Bishop's personal guaranty only affects whether the Trust could go after him personally and does not affect the validity of the Mortgage.

[8]Neither party disputes that Bishop had the power to agree to the extension on behalf of BEI despite its cancelled certificate of incorporation. See § 53-16-24 ("The dissolution of a corporation does not take away or impair any remedy available . . . against the corporation . . . for any right or claim existing, or any liability incurred, prior to the dissolution . . . . The shareholders, directors and officers may take such corporate or other action as appropriate to protect the remedy, right or claim." (emphasis added)).

See Guaranty, Black's Law Dictionary (11th ed. 2019) (defining "guaranty" as "[a] promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance"). Accordingly, we fail to see how this finding is relevant to Landau's appeal. Given the foregoing, we need not address these arguments further. *See Sheraden*, 1988-NMCA-016, ¶ 10 ("It is well settled in New Mexico that the function of a reviewing court on appeal is to correct erroneous results, not to correct errors that, even if corrected, would not change the result.").

V. Issues Relating to Scheduling

{46} Landau raises two related arguments against the propriety of the district court's scheduling. We review the district court's management of its docket for an abuse of discretion. *See Grassie v. Roswell Hosp. Corp.*, 2011-NMCA-024, ¶ 88, 150 N.M. 283, 258 P.3d 1075.

{47} First, Landau argues the district court abused its discretion in setting trial less than a month after the discovery deadline because it did not give Landau sufficient time to request additional discovery, file dispositive motions, or prepare for trial. Yet Landau agreed to the district court's deadlines set at the scheduling conference and failed to request a continuance before trial. *See Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d 791 ("In order to preserve an issue for appeal, [a party] must have made a timely and specific objection that apprised the district court of the nature of the claimed error and that allows the district court to make an intelligent ruling thereon.").

{48} Recognizing this lack of preservation, Landau points out that he was pro se at the time of the scheduling conference, and that the attorney he hired to represent him at trial did not comply with Landau's request to move for a continuance. In support of his latter contention, Landau points to an e-mail attached to his reply in support of his post-judgment motion to reconsider in which Landau asked his attorney if it was too late to seek a continuance on October 17, 2017.

{49} Landau's arguments fail for two reasons. First, "[p]ro se litigants must comply with the rules and orders of the court and will not be treated differently than litigants with counsel." *Woodhull v. Meinel*, 2009-NMCA-015, ¶ 30, 145 N.M. 533, 202 P.3d 126. Second, a party is bound by his attorney's actions unless he can demonstrate personal diligence that was thwarted by gross negligence of his attorney. *See Adams v. Para-Chem S., Inc.*, 1998-NMCA-161, ¶ 15, 126 N.M. 189, 967 P.2d 864. Landau has not demonstrated that his attorney's failure to request a continuance twenty-two days before trial was grossly negligent. Indeed, Landau stated in his reply in support of his motion to reconsider that his attorney did not request a continuance because he believed "that there was not enough time, that the [district c]ourt would not look favorably upon any such action and it appeared the [c]ourt was set against allowing any further time." Landau also stated that his attorney attempted to reach an agreement for a continuance with the Trust. Under these circumstances, we fail to see how Landau's attorney's actions were grossly negligent. Accordingly, Landau is bound by his attorney's failure to request a continuance, and consequently, his failure to preserve Landau's argument regarding the district court's scheduling.

{50} Next, Landau argues the district court abused its discretion in failing to set a pretrial deadline for dispositive motions and then striking Landau's motion for summary judgment as untimely. However, the district court was not required to set a deadline for dispositive motions. *See* Rule 1-016(B)(2) (providing that "a judge *may* . . . enter a scheduling order that limits the time . . . to file and hear motions" (emphasis added)). Moreover, the district court properly struck Landau's motion for summary judgment—filed five days before trial—as untimely because it did not provide sufficient time for the Trust to respond, nor did it provide the district court with reasonable time to dispose of the motion. *See* Rule 1-056(D)(1) NMRA ("Motions for summary judgment will not be considered unless filed within a reasonable time prior to the date of trial to allow sufficient time for the opposing party to file a response and affidavits, depositions or other documentary evidence and to permit the court reasonable time to dispose of the motion."). Although we understand there was little time between the discovery deadline and the trial, as explained above, it was incumbent on Landau to timely raise this issue. He failed to do so. Accordingly, we perceive no abuse of discretion in the lack of a pretrial deadline for dispositive motions and the striking of Landau's motion for summary judgment.

VI. Equitable Issues Relating to Landau's Income From the Property

{51} Landau argues the district court erroneously based its judgment on equitable grounds relating to the rental income he made off of the Property after he purchased it. Initially, we note it is unclear if the district court based its judgment on any equitable ground relating to Landau's rental income. While the court noted the purchase price and rental income of the Property in its findings, and ordered the Mortgage "foreclosed as a matter of law and equity[,]" it did not mention Landau's income anywhere else in its findings or conclusions.

{52} Even if the district court did take the rental income into account, and even if this was improper (as Landau contends), Landau fails to demonstrate how the district court's ultimate ruling in favor of the Trust would have been different absent this consideration. As the district court concluded, the Trust timely brought its action to foreclose on a mortgage perfected prior to the date the tax lien on the Property arose. *See* § 7-38-70(B). Thus, Landau asks us to correct a purported error that, even if corrected, would not change the result of this case. This we will not do. *See Sheraden*, 1988-NMCA-016, ¶ 10 ("It is well settled in New Mexico that the function of a reviewing court on appeal is to correct erroneous results, not to correct errors that, even if corrected, would not change the result."). We therefore decline to address Landau's contention that the district court improperly considered his rental income in rendering its judgment.

VII. Cumulative Error

{53} Finally, Landau claims that the district court's scheduling and failure to consider Landau's proposed findings and conclusions deprived him of a fair trial such that reversal is required, even if each alleged error is not reversible on its own. *See Coates v. Wal-Mart Stores, Inc.*, 1999-NMSC-013, ¶ 57, 127 N.M. 47, 976 P.2d 999 ("Reversal may be required when the cumulative impact of errors during a trial is so prejudicial that a party was denied a fair trial."). As already stated, Landau failed to preserve the alleged errors relating to the district court's scheduling. Further, Landau's claim that the district court failed to consider his proposed findings and conclusions is without support in the record. Although the district court adopted verbatim the findings and conclusions included in the Trust's form of order, it did so only after Landau submitted his proposed findings and conclusions.

{54} Without any evidence that the district court actually failed to consider Landau's proposed findings and conclusions—as opposed to considering and rejecting them—we presume the latter. *See Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the appellate court presumes that the district court is correct, and the burden is on the appellant to clearly demonstrate that the district court erred). For these reasons, we find no cumulative error. *See Coates*, 1999-NMSC-013, ¶ 57 ("[S]ince no prejudicial errors or irregularities exist in the points raised on appeal, no errors exist to cumulate in denial of a fair trial.").

CONCLUSION

{55} For the foregoing reasons, we affirm.

{56} IT IS SO ORDERED.
JACQUELINE R. MEDINA, Judge

WE CONCUR:
LINDA M. VANZI, Judge
BRIANA H. ZAMORA, Judge

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The City of Albuquerque Legal Department is seeking a Deputy City Attorney for its Property and Finance Division. The work includes management, oversight and development of the Property and Finance Division's Managing Attorneys, Assistant City Attorneys and staff. This person will track legal projects, timelines, deliverables, and project requirements within the division. Out-side of managerial duties, work includes but is not limited to: contract drafting, analysis, and negotiations; drafting ordinances; drafting regulatory law; assisting with Inspection of Public Records Act requests; procurement; providing general legal advice in matters regarding public finance, commercial transactions, real estate transactions, public works, and risk management; review of intergovernmental agreements; and civil litigation. Attention to detail and strong writing skills are essential. Seven (7)+ years of legal experience, including three (3)+ years of management experience is preferred. An applicant must be an active member of the State Bar of New Mexico, in good standing. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Commercial Liability Defense, Coverage Litigation Attorney P/T Maybe F/T

Our well-established, regional, law practice seeks a contract or possibly full time attorney with considerable litigation experience, including familiarity with details of pleading, motion practice, and of course legal research and writing. We work in the are of insurance law, defense of tort claims, regulatory matters, and business and corporate support. A successful candidate will have excellent academics and five or more years of experience in these or highly similar areas of practice. Intimate familiarity with state and federal rule of civil procedure. Admission to the NM bar a must; admission to CO, UT, WY a plus. Apply with a resume, salary history, and five-page legal writing sample. Work may be part time 20+ hours per week moving to full time with firm benefits as case load develops. We are open to "of counsel" relationships with independent solo practitioners. We are open to attorneys working from our offices in Durango, CO, or in ABQ or SAF or nearby. Compensation for billable hours at hourly rate to be agreed, generally in the range of $45 - $65 per hour. Attorneys with significant seniority and experience may earn more. F/T accrues benefits. Apply with resume, 5-10p legal writing example to revans@evanslawfirm.com with "NM Attorney applicant" in the subject line.

Entry Level and Experienced Trial Attorneys

The Thirteenth Judicial District Attorney's Office is seeking entry level as well as experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

Associate Attorneys

Mynatt Martínez Springer P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking associate attorneys with 0-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@mmslawpc.com.

Associate Attorney

Scott & Kienzle, P.A. is hiring an Associate Attorney (0 to 8 years experience). Practice areas include insurance defense, collections, creditor bankruptcy, and Indian law. Associate Attorney needed to undertake significant responsibility: opening a file, pretrial, trial, and appeal. Lateral hires welcome. Please email a letter of interest, salary range, and résumé to john@kienzlelaw.com.

Experienced Prosecutor

The 13th Judicial District Attorney's Office has created a new position. We are looking for an experienced prosecutor who is self-motivated, can handle a smaller but complex case load covering different types of felony's with little to no supervision. This position will carry cases in all three of our district offices so travel will be required. This position can be based in the county office of choice (Belen, Bernalillo or Grants). Schedule will be flexible but dependent upon scheduled court hearings. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us for an application.

Domestic Relations Hearing Officer Family Court

The Second Judicial District Court is accepting applications for a full-time, term At-Will Domestic Relations Hearing Officer in Family Court (position #00000530). Under the supervision of the Pre-siding Family Court Judge, applicant will be assigned a child support caseload. May also be as-signed caseloads to include domestic relations and domestic violence matters. Consistent with Rule 1-053.2 duties may include: (1) review petitions for indigency; (2) conduct hearings on all petitions and motions, both before and after entry of the decree; (3) in child support enforcement division case, carry out the statutory duties of a child support hearing officer; (4) carry out the statutory du-ties of a domestic violence special commissioner and utilize the procedures as set for in Rule 1-053.1 NMRA; (5) assist the court in carrying out the purposes of the Domestic Relations Mediation Act; and (6) prepare recommendations for review and final approval by the court.matters consistent with Rule 1-053.2. duties Qualifications: J.D. from an accredited law school, New Mexico licensed attorney in good standing, minimum of (5) years of experience in the practice of law with at least 20% of practice having been in family law or domestic relations matters, ability to establish effective working relationships with judges, the legal community, and staff; and to communicate complex rules clearly and concisely, respond with tact and courtesy both orally and in writing, extensive knowledge of New Mexico and federal case law, constitution and statutes; court rules, policies and procedures; manual and computer legal research and analysis, a work record of dependability and reliability, attention to detail, accuracy, confidentiality, and effective organizational skills and the ability to pass a background check. SALARY: $53.25 hourly, plus benefits. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM 87102. Applications without copies of information requested on the employment application will be rejected. Application and resume supplemental form may be obtained on the NM Judicial Branch web page at www.nmcourts.gov. CLOSES: September 24, 2021 at 5:00 p.m. EOE. Applicants selected for an interview must notify the Human Resource Division of the need for an accommodation.

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.

Associate Attorney position at Rebecca Kitson Law

Amazing bilingual advocate needed! We are seeking an Associate Attorney with passion and commitment to help immigrants in all areas of relief. Full-time, full benefits, position will be based out of our Albuquerque location. Can be admitted to practice in any state, but NM law license preferred. Must be fluent in Spanish. No experience necessary. Depending upon experience, duties will include case work, drafting appeals/motions, legal research, case opening, representing clients at hearings/USCIS interviews. Salary DOE. We are proud to be an inclusive, supportive firm for our staff and our clients. Salary DOE. Please email Resume, Letter of Intent, and Writing Sample to L. Becca Patterson, Assistant Office Manager at lp@rkitsonlaw.com. Full fluency in Spanish and English required. Law License required

Chief Children's Court Attorney Position

The Children, Youth and Families Department is seeking to fill the Chief Children's Court Attorney position to be housed in any CYFD office in the state. Salary range is $81,823- $142,372 annually, depending on experience and qualifications. Incumbent will be responsible for direction and management of Children's Court Attorneys and legal staff located throughout the state who handle civil child abuse and neglect cases and termination of parental rights cases. The ideal candidate must have a Juris Doctorate from an accredited school of law, be licensed as an attorney by the Supreme Court of New Mexico and have the requisite combination of executive management and educational experience. Benefits include medical, dental, vision, paid vacation, and a retirement package. For information, please contact: Marisa Salazar (505)659-8952. To apply for this position, go to www.state.nm.us/spo/. The State of New Mexico is an EOE.

State of New Mexico – General Counsel

The State of New Mexico seeks to hire General Counsel for the Office of Children, Youth & Families Department (CYFD), the Department of Public Education (PED), the Department of Game and Fish (DGF), the Regulation & Licensing Division (RLD), New Mexico Livestock Board (NMLB) and Expo New Mexico. Minimum qualifications include a Juris Doctorate degree from an accredited school of law, admission to the New Mexico Bar, and five (5) years of relevant experience in the practice of law. Salary will be determined commensurate with experience. Please submit a cover letter, resume and references to donicia.herrera@state.nm.us. The State of New Mexico is an Equal Opportunity Employer.

Associate Attorney

Riley, Shane & Keller, P.A., an AV-rated Albuquerque defense firm formed in 1982, seeks an associate attorney for an appellate/research writing position. We seek a person with appellate experience, an interest in legal writing and strong writing skills. The position is full-time with a virtual work setting and flexible schedule. We offer an excellent salary, benefits and pension package. Please submit a resume, references and writing samples to our Office Manager by fax, (505) 883-4362 or mvelasquez@rsk-law.com.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is an aggressive, successful Albuquerque-based complex civil commercial and tort litigation firm seeking an extremely hardworking and diligent associate attorney with great academic credentials. This is a terrific opportunity for the right lawyer, if you are interested in a long term future with this firm. Up to 3-5 years of experience is preferred. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

Senior Trial Attorney 1st Judicial District Attorney

The First Judicial District Attorney's Office is seeking an experienced attorney. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us.

Full-time Associate Attorney

Davis & Gilchrist, PC, is an AV-rated boutique litigation and trial law firm focused on healthcare False Claims Act cases, physician privilege suspension cases, government whistleblowers, general employment, and legal malpractice cases, is seeking a full time associate attorney to help with brief writing, discovery, depositions, and trials. We offer a work-life balanced approach to the practice of law. We do not have billable hour requirements. We do not track vacation or sick leave. We do require that our lawyers do excellent work in a timely fashion for our clients. We are looking for someone with 1-5 years of litigation experience, including taking and defending depositions, drafting and answering discovery, solid research and writing skills, ability to go with the flow, and a sense of humor. We offer a competitive salary with the potential for performance-based bonuses, health insurance, and a 401K plan. Learn more about us at www.davisglichristlaw.com. Send resume and writing sample to lawfirm@davisgilchristlaw.com.

Associate General Counsel

This in-house counsel position in Albuquerque is responsible for providing legal knowledge, counsel, and advice in areas of major focus for Blue Cross and Blue Shield of New Mexico such as provider network, health care management, sales and marketing, and/or regulatory rate, form and compliance plan filings. With very limited supervision, the position will be responsible for various legal projects and issues which may include providing in-depth legal drafting, advice/counsel and support for negotiations and contracting with health care providers, utilization management activities, negotiations and contracting with insured and self-funded employer groups, and/or responses to, and appropriate resolution of, regulator filing or other concerns. This position will contribute to strategic direction and will handle complex legal matters and large projects. Apply to https://bit.ly/2WpkWYG. JOB REQUIREMENTS: Juris Doctor degree from ABA-accredited law school; License to practice law in New Mexico or willing and able to become licensed soon after hire; At least 8 years' experience as an attorney-at-law; Excellent analytical, drafting, and problem-solving skills; Commitment to furnishing high quality and solutions-oriented legal services; Self-starter who thrives in fast-paced legal practice; Business and strategic acumen and commitment to business partnering; Clear and concise verbal and written communication skills; Interpersonal, negotiation, and diplomacy skills. PREFERRED JOB REQUIREMENTS: 3+ years' recent experience in health care law and/or health insurance law; Experience furnishing legal support for health insurer operations; Experience working with health insurance regulators.

Staff Attorney

Enlace Comunitaro is a non-profit organization searching for a full-time staff attorney. The staff attorney would provide legal assistance and representation to low-income victims of domestic violence in family law and domestic matters cases. In addition, the staff attorney prepares legal research, gives legal advice, and provides legal and policy analysis of issues. Bilingual (Spanish/English) preferred. Please send resume to jobs@enlacenm.org

Experienced Trial Attorney

The Ninth Judicial District Attorney's Office is seeking an experienced trial attorney for our Clovis office. Come join an office that is offering jury trial experience. In addition, we offer in depth mentoring and an excellent work environment. Salary commensurate with experience between $75k-90k per year. Send resume and references to Steve North, snorth@da.state.nm.us.

Position Announcement CJA Panel Resource Counsel 2021-12

The Federal Public Defender for the District of New Mexico is seeking a full-time attorney to serve as the Criminal Justice Act (CJA) Panel Resource Counsel for the District of New Mexico. The ideal candidate will be able to start no later than February 1, 2022. Job Description: The CJA Panel Resource Counsel will work closely with the Courts, the Federal Public Defender, the Defender Services Office and the members of the CJA Panel to improve the quality of representation, assist in providing efficient management of CJA resources and provide support for CJA Panel lawyers. Duties will include providing training and assistance to CJA Panel attorneys, case assignments, assisting CJA Panel attorneys and the Court with the efficient processing of vouchers for reimbursement, participation on the CJA Panel selection committee, and other duties as assigned consistent with the mission of the position. The CJA Panel Resource Counsel will be required to supervise other staff in carrying out these functions. This is a full-time FPD position that will not permit court appearances or the private practice of law. Requirements: Applicants must have graduated from an accredited law school, be licensed by the highest court of a state, federal territory, or the District of Columbia; and be a member in good standing in all courts where admitted to practice. Applicants must have an established working knowledge and demonstrated command of federal criminal law; at least five years' experience practicing federal criminal law; significant experience working under the Criminal Justice Act; either as a CJA Panel lawyer or in a Federal Defender Organization, and proficiency with data management and automation technology. The successful applicant also must be a self-starter with a positive work ethic, a reputation for personal and professional integrity, and an ability to work well with the Court, the Federal Public Defender, the Defender Services Office and members of the CJA Panel. There is a preference for applicants with experience working with the eVoucher electronic billing and payment system. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. Salary is dependent upon qualifications and experience. Salary is payable only by electronic funds transfer (direct deposit). Conditions of Employment: Appointment to the position is contingent upon the successful completion of a background check and/or investigation including an FBI name and fingerprint check. All employees must be fully vaccinated for Covid-19 prior to entrance on duty. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will." You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. Application Information: In one PDF document, please submit a statement of interest, detailed resume, and three references to: Margaret A. Katze, Federal Public Defender, FDNM-HR@fd.org, Reference 2021-12 in the subject. Applications must be received by October 1st, 2021. Position will remain open until filled and is subject to the availability of funding. The Federal Public Defender operates under the authority of the Criminal Justice Act, 18 U.S.C. § 3006A. The Federal Public Defender is an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Managing City Attorney

The City of Albuquerque Legal Department is hiring a Managing City Attorney for the Property and Finance Division. The work includes management, oversight and development of Assistant City Attorneys, paralegals and staff. Other duties include but are not limited to: contract drafting, review, analysis, and negotiations; drafting ordinances; regulatory law; Inspection of Public Records Act; procurement; public works and construction law; real property; municipal finance; risk management; advising City Council, boards and commissions; intergovernmental agreements; dispute resolution; municipal ordinance enforcement; condemnation; and civil litigation. Attention to timelines, detail and strong writing skills are essential. Five (5)+ years' experience including (1)+ years of management experience is preferred. Applicants must be an active member of the State Bar of New Mexico, in good standing. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Public Defender

The Pueblo of Laguna is seeking applicants for the position of: PUBLIC DEFENDER. Represents indigent clients accused of violating ordinances of the Pueblo of Laguna, ensures efficient and effective legal advocacy. Performs necessary tasks to provide competent advocacy including arrangements for setting of bail and posting of bond, pretrial conferences, representation in court appearances, and post-trial representation. For more information, contact the Pueblo of Laguna Human Resources Office at (505) 552-6654 or visit our website www.lagunapueblo-nsn.gov

Judicial Wellness Program Manager

The New Mexico Judges and Lawyers Assistance Program (NMJLAP) invites qualified and knowledgeable applicants to join our team as a full-time (30 hours per week) Judicial Wellness Manager. The successful incumbent will focus on judges, judicial staff, and their immediate family members who are affected by a wide range of personal and professional issues. NMJLAP seeks a licensed clinician (LADAC, LMHC, LPCC, LISW, or LMSW) who has previously worked with high-functioning professionals. Knowledge of the legal system in NM is a plus, particularly as it pertains to the process of becoming a judge and the stressors of that unique job. $40,000-$45,000 per year, depending on experience and qualifications. Generous benefits package included. EOE. Qualified applicants should submit a resume and cover letter to HR@sbnm.org. Visit https://www.sbnm.org/Portals/NMBAR/PubRes/State%20Bar%20Careers/Judicial%20Wellness%20Program%20Manager.pdf?ver=rK_s2TWDGH4CpS9tPHx-1w%3d%3d for full details and application instructions.

Paralegal Position Available

Small personal injury law firm in Albuquerque looking for a friendly and motivated individual to join our team as a full-time paralegal. Experience managing injury cases and/or a high volume of cases preferred, but not required. Duties include client communication, pleading preparation, and medical record management. Remote work is not being offered at this time. COVID-19 vaccination required. Pay is DOE. Inquiries should be emailed to saige@weemslaw.com. All inquires will be kept confidential.

Legal Assistant

Cuddy & McCarthy, LLP, a leading New Mexico law firm, has an excellent opportunity for an experienced legal assistant in our Santa Fe office. If you're a motivated, detail-oriented person who enjoys a positive work environment, then join our team at Cuddy & McCarthy! We are looking for an experienced legal assistant to cover a range of duties, which include: providing administrative support to attorneys, interaction with clients, organization of client documents in paper and electronic files, drafting and filing of legal documents, and managing attorney calendars and deadlines. Requirements for this position are: 2 or more years' experience as a legal secretary or legal assistant, proficient in Outlook calendaring, excellent communication and client services skills, editing and proofreading skills, strong organizational and document assembly skills. Cuddy & McCarthy offers a competitive compensation and benefits package. Please forward your resume to our Executive Director at: agarcia@cuddymccarthy.com.

Paralegal

Full-time position in ABQ. Make a move now and enjoy a generous signing bonus. Are you an experienced Paralegal wanting a change? We might be just what you need! Bring your expertise and focus on the clients. No covering phones, billing, or other non-Paralegal work, no working late or on weekends, or while on vacation. We celebrate our Paralegals – they are the backbone of our practice. Our Attorneys are nice and respectful – no giant egos or temper tantrums. If you are serious about making a change, or just want more info, contact us in strict confidence to learn more or if you'd like to apply, see the instructions below. Two years Paralegal experience-family, criminal, or civil. Excellent written and oral skills. Enjoys working with a team. You'll be working on family law cases-divorce, custody, wills & estates, DVOP, nuptials, guardianships, adoptions. Work closely with clients, adverse, courts. Organize case materials and conduct discovery. Draft and file legal documents. Manage attorney and case calendars. Proofread and finalize correspondence and filings. Assist with the drafting and reviewing of legal documents. You'll enjoy friendliness, camaraderie, teamwork, respect. Annual bonuses, benefits, great pay. Benefits include health and dental, 401k and profit sharing, serious annual bonuses. Associates degree, Paralegal certification, or other degree. Experience can be substituted, road miles count. Send us an email with resume or call us in confidence. Contact Jill Potts, jill@kufferlaw.com or call me in confidence at 505-253-0947.

Legal Assistant

5+ years' experience in civil litigation Extensive experience with practice management, calendaring, word processing, state and federal court filings required. Must be highly organized and detail oriented with good customer service and multi-tasking skills. Position needs include support for multiple attorneys producing a high volume of work in a fast-paced office. Please send your resume to humanresources@cplawnm.com.

Administrative Assistant

Riley, Shane & Keller, P.A., an AV-rated Albuquerque defense firm formed in 1982, seeks a full or part-time position for an administrative assistant. Good computer skills including Word and Excel required. Prior law firm bookkeeping experience helpful. Excellent salary, pension and benefits. Qualified applicants should submit a resume to our Office Manager by fax, (505) 883-4362 or mvelasquez@rsk-law.com.

Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is $20.69 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to $21.71 per hour. Competitive benefits provided and available on first day of employment. Please apply at https://www.governmentjobs.com/careers/cabq.

Public Finance Paralegal
Sutin, Thayer & Browne is looking to hire a full-time Public Finance Paralegal. Please visit our website for full job description, https://sutinfirm.com/our-firm/careers/. Competitive salary and full benefits package. Send resume to sor@sutinfirm.com.

Paralegal
Paralegal position in established commercial civil litigation firm. Requires minimum of 3-5 years' prior experience with knowledge of State and Federal District Court rules and filing procedures; factual and legal online research; trial preparation; case management and processing of documents including acquisition, review, summarizing and indexing of same; drafting discovery and related pleadings; maintaining and monitoring docketing calendars; oral and written communications with clients, counsel, and other case contacts; familiar with use of electronic databases and legal-use software technology. Must be organized and detail-oriented professional with excellent computer skills. All inquiries confidential. Salary DOE. Competitive benefits. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Paralegal
Paralegal receptionist needed criminal defense firm. Start immediately for part-time 32 hours/wk. Potential full-time as needed. Phones, legal drafting, transcription, case and client management. Court/legal experience preferred. $14.00 to $18.00/hr DOE. Call: Frechette 505-379-0544

Paralegal/Legal Assistant
Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be honest, highly motivated, detail oriented, organized, proficient with computers & excellent writing skills. Duties include requesting and reviewing medical records and bills, meeting with clients, opening claims with insurance companies and preparing demand packages. We offer a very competitive salary, a retirement plan funded by the firm, full health insurance benefits, paid vacation and sick leave, bonuses and opportunities to move up. We are a very busy law firm and are looking for an exceptional assistant who can work efficiently. Please submit your resume to personalinjury2020@gmail.com

Service

Forensic Genealogist
Certified, experienced genealogist: find heirs, analyze DNA tests, research land grants & more. www.marypenner.com, 505-321-1353.

Miscellaneous

Want To Purchase
Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

Search for Will
I am looking for a Will and or Family Trust done by Luis A. Segarra, deceased, If you have done the original of either and or have the originals or copies please call me @505-892-4855. I represent the current Personal Representative of the Estate which was filed as an intestate estate. Dennis M. Feld, Attorney, 505-892-4855

2021 *Bar Bulletin* Publishing and Submission Schedule

The *Bar Bulletin* publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, three weeks prior to publication.**

For more advertising information, contact: Marcia C. Ulibarri at 505-797-6058 or email mulibarri@sbnm.org

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

Now Hiring

We only do one thing — fight for people — and we do it well. And we need your help. The Spence Law Firm New Mexico, LLC, is growing: this is your chance to join our team in Albuquerque and make a difference out there! Must be ready to hit the ground running — you will be part of a team working integrally on high-level plaintiff's cases. Full-spectrum plaintiff's work. Drafting pleadings, discovery, taking depositions, settlement work; and trying cases to juries. Must be motivated; good with people; read, write, and think critically. Litigation experience preferred; good soul, confidence, a sharp mind, and the right attitude, required. Comp. salary, strong benefits, opportunity of a lifetime. Looking for superstars, please. Is this you? Email letter of interest, resume, references to:

recruiting@spencelawyers.com

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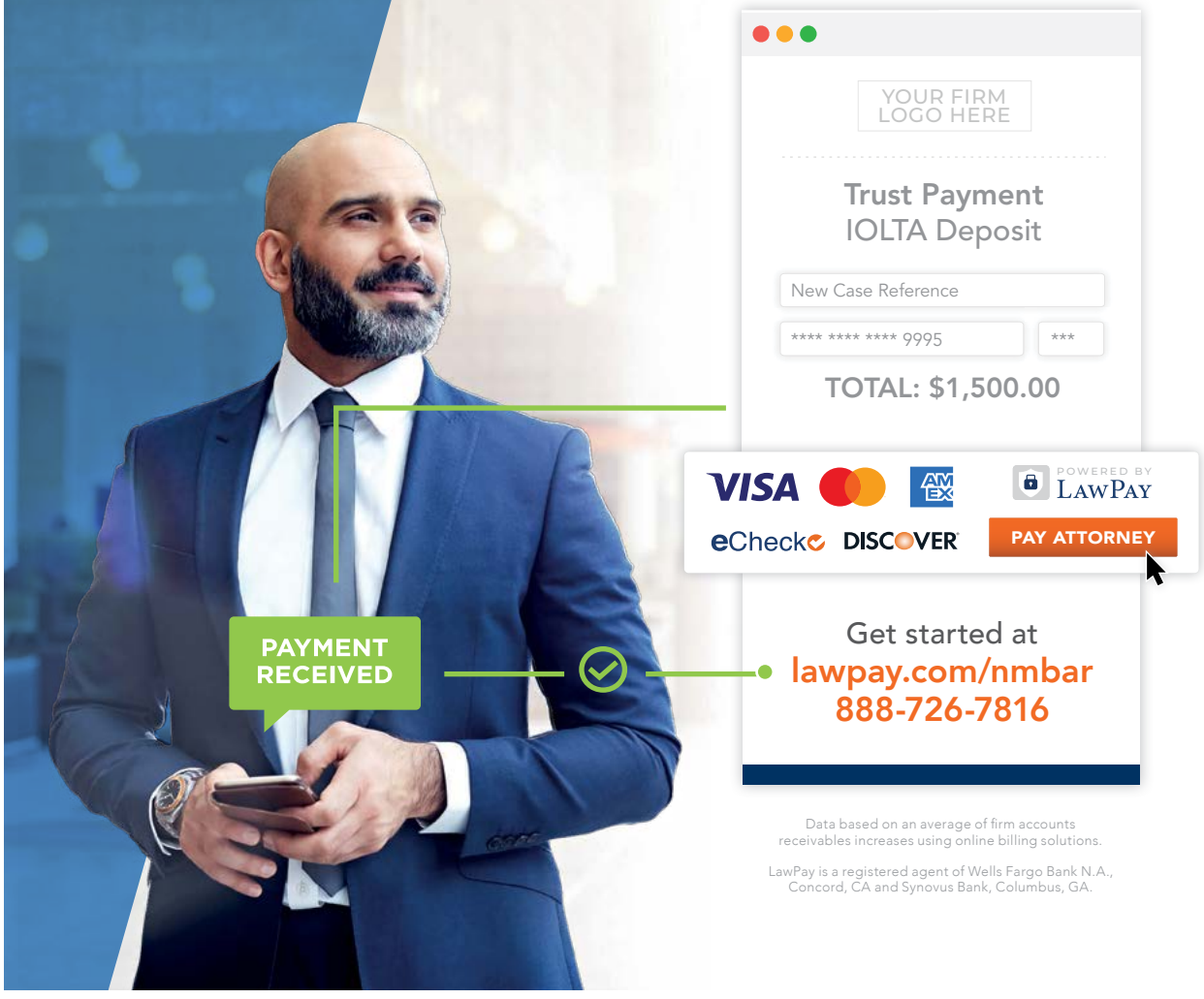

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