

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

October 15, 2014 • Volume 53, No. 42



First Snow by Jenifer Garcia (see page 5)

Weems Art Gallery

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Live Seminars CLE Planner

Oct. 22-23



Great Adverse Depositions: Principles and Principal Techniques, Featuring Nationally Acclaimed Teacher of Deposition Cross-Examination Skills Robert Musante

Wednesday and Thursday, Oct. 22-23, 2014 • *Live Webinar*

6.0 G Both Days
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3.0 G Wednesday Only
Standard Fee: \$129



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Live Webinar
Only

Oct. 24-25



2014 N.M. Family Law Institute: Get with the Times: Bringing Your Family Law Practice into 2015

Friday and Saturday, Oct. 24-25, 2014 • State Bar Center, Albuquerque

10.0 G **2.0 EP** Both Days
Standard Fee: \$349

Family Law Section members, government and legal services attorneys, and Paralegal Division members: \$319

Co-sponsor: Family Law Section

5.0 G **1.0 EP** Friday or Saturday Only
Standard Fee: \$219

Family Law Section members, government and legal services attorneys, and Paralegal Division members: \$189

also available via
LIVE WEBCAST
at the standard fee

Oct. 28



The Family Law Client in the Context of Immigration Law: What Every Attorney Should Know To Maximize Results for Noncitizen Clients

Tuesday, Oct. 28, 2014 • State Bar Center

Standard Fee: \$215

Immigration Law Section members, government, legal services attorneys and Paralegal Division members \$185

Webcast Fee: \$239

Co-sponsor: Immigration Law Section

5.0 G

also available via
LIVE WEBCAST

All live seminars are held at the State Bar Center, 5121 Masthead NE, Albuquerque.

They include course materials, CLE credit and filing fees for New Mexico.

Full-day programs also include continental breakfast, breaks and buffet lunch.

Register online at www.nmbarcle.org

or call 505-797-6020.



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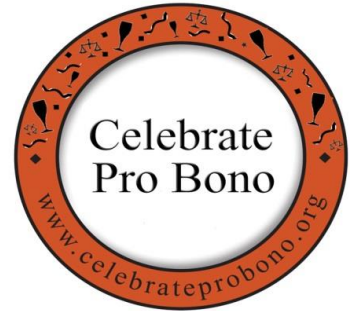
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OCTOBER 2014: Throughout the month of October, the local Judicial District Pro Bono Committees in New Mexico are hosting a number of pro bono events, including free legal fairs, recognition luncheons, and Continuing Legal Education classes. The purpose of pro bono month is to showcase the incredible difference that pro bono lawyers make to our nation, to our system of justice, to our communities and, most of all, to the clients they serve. To learn more about any of the events below, or to get involved with your local pro bono committee, please contact Aja Brooks at abrooks@nmbar.org or 505-797-6040. Thank you for your support of pro bono in New Mexico!



1st JUDICIAL DISTRICT:

Santa Fe Pro Bono Volunteer Recognition Luncheon and CLE

CLE: "Guardians Ad Litem: Before and After Kimbrell," presented by Larry B. Kronen, Esq. and Kathrin Kinzer-Ellington, Esq. (1.0 EP; CLE will occur directly after luncheon, from 12:30 p.m. – 1:30 p.m.)
The cost of the luncheon and CLE is \$10.
 Santa Fe Hilton
 (100 Sandoval St., Santa Fe)
 October 20, 11:45 a.m. – 1:30 p.m.

2nd JUDICIAL DISTRICT:

Law-La-Palooza Free Legal Fair

West Mesa Community Center
 (5500 Glenrio NW, Albuquerque)
 October 23, 3 p.m. – 6 p.m.

4th JUDICIAL DISTRICT:

Las Vegas Legal Fair

Practitioners who assist with legal fair are invited to attend Electronic Filing training at no cost
 New Mexico Highlands University
 (Student Center, 800 National Ave., Las Vegas)
 October 14, 10 a.m. – 2 p.m.

Las Vegas Pro Bono Volunteer Luncheon

El Rialto
 (141 Bridge St., Las Vegas)
 October 24, 12 p.m. – 2 p.m.

5th JUDICIAL DISTRICT (CHAVES):

Chaves County Legal Fair

Roswell Adult & Senior Center
 (807 N. Missouri Ave., Roswell)
 October 3, 1 p.m. – 5 p.m.

5th JUDICIAL DISTRICT (LEA):

Lea County Legal Fair and CLE

CLE: "Things Every Lawyer Should Know," presented by Gary Don Reagan, Esq. (1.0 G; CLE will occur directly after legal fair, from 3 p.m. – 4 p.m.)
Practitioners who assist with legal fair are invited to attend CLE at no cost.
 Legal Fair:
 Hobbs City Hall
 (3rd Floor of Annex, 200 E Broadway St., Hobbs)
 October 10, 1 p.m. – 4 p.m.

6th JUDICIAL DISTRICT:

Grant County Legal Fair

Grant County Business and Conference Center
 (Fort Bayard Room, 3031 Hwy. 180 East, Silver City)
 October 23, 1 p.m. – 5 p.m.

Luna County Legal Fair

Luna County District Courthouse
 (855 S. Platinum, Deming)
 October 24, 10 a.m. – 1 p.m.

9th JUDICIAL DISTRICT:

Pro Bono Volunteer Recognition Luncheon, CLE and Ask-A-Lawyer Free Legal Fair

CLE: Veterans Benefits, presented by David Standridge, Esq. (1.0 G pending; luncheon will occur from 11:30 a.m. – 12:30 p.m. and CLE will occur directly after the luncheon, from 12:30 p.m. – 1:30 p.m.)
The cost of the luncheon and CLE is \$15.
 Clovis Civic Center
 (801 Schepps Blvd., Clovis)
 October 24, 11:30 a.m. – 5 p.m.
 (Legal Fair will occur from 2 p.m. – 5 p.m.)

11th JUDICIAL DISTRICT (SAN JUAN):

San Juan Legal Fair

Aztec District Courthouse
 (103 South Oliver Ave., Aztec)
 October 17, 12:30 p.m. – 5:15 p.m.

11th JUDICIAL DISTRICT (MCKINLEY):

McKinley County Pro Bono Volunteer Recognition Luncheon and CLE

CLE: *Information forthcoming*
 Catholic Charities
 (503 W. Historic Hwy. 66, Gallup)
 October 29, 11:30 a.m. – 1:30 p.m.

12th JUDICIAL DISTRICT:

Otero County Legal Fair

Otero County Courthouse
 (1000 N New York Ave., Alamogordo)
 September 27, 10 a.m. – 2 p.m.

Lincoln County Legal Fair

Ruidoso Senior Center
 (501 Sudderth Drive, Ruidoso)
 October 18, 10 a.m. – 2 p.m.

13th JUDICIAL DISTRICT:

Sandoval County Legal Clinic

Sandoval County District Courthouse
 (1500 Idalia Rd., Bldg. A, Bernalillo)
 October 1, 10 a.m. – 2 p.m.

Valencia County Legal Clinic

Valencia County District Courthouse
 (1835 Hwy. 314 SW, Los Lunas)
 October 9, 10 a.m. – 2 PM

Cibola County Legal Clinic

Cibola County District Courthouse
 (515 W. High St., Grants)
 October 21, 10 a.m. – 2 p.m.



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MEETINGS

OCTOBER

- 15**
Law Practice Management,
Noon, State Bar Center
- 17**
Family Law Section BOD,
9 a.m., via teleconference
- 17**
Trial Practice Section BOD,
Noon, State Bar Center
- 21**
Appellate Practice Section BOD,
Noon, via teleconference
- 21**
Solo and Small Firm Section BOD,
11:30 a.m.; noon, presentation
- 24**
Immigration Law Section BOD,
Noon, via teleconference
- 28**
Intellectual Property Law Section BOD,
Noon, Lewis Roca Rothgerber
- 30**
Alternative Dispute Resolution Committee,
Noon, State Bar Center

STATE BAR WORKSHOPS

OCTOBER

- 17**
San Juan Legal Fair
12:30–5:15 p.m., Aztec District Courthouse,
Aztec
- 18**
Lincoln County Legal Fair
10 a.m.–2 p.m., Ruidoso Senior Center,
Ruidoso
- 21**
Cibola County Legal Clinic
10 a.m.–2 p.m., Cibola County District
Courthouse, Grants
- 22**
Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar Center
- 23**
Consumer Debt/Bankruptcy Workshop,
5:30 p.m., The Law Office of Kenneth Egan,
Las Cruces
- 23**
Grant County Legal Fair
1–5 p.m., Grant County Business and
Conference Center, Silver City
- 23**
Law-La-Palooza Free Legal Fair
3–6 p.m., West Mesa Community Center,
Albuquerque

Cover Artist: Jenifer Garcia is a self-taught artist specializing in original artwork including watercolor on paper, acrylic on canvas, hand crafted jewelry, prints and hand-painted ornaments. View more of her work at www.etsy.com/shop/SnapDragonStudiosNM.

Notices

COURT NEWS

New Mexico Supreme Court Alternative Dispute Resolution Commission 2014 Annual Report

The Statewide ADR Commission has completed its 2014 Annual Report. The Commission's accomplishments can be viewed in the report at <https://alternative.disputeresolution.nmcourts.gov/index.php/adr-commission/annual-reports.html>.

11th Judicial District Court Announcement of Vacancy (Aztec)

A vacancy on the 11th Judicial District Court will exist in Aztec as of Jan. 1, 2015, due to the expiration of the term of Hon. William C. Birdsall. This will be a general jurisdiction judge, Division I. Inquiries regarding further details of this judicial vacancy should be directed to the chief judge or the administrator of the court. Applications and information related to qualifications for the position, may be obtained from the Judicial Selection website: <http://lawschool.unm.edu/judsel/application.php>, or by contacting Raylene Weis at 505-277-4700. The deadline is 5 p.m., Nov. 19. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the office of the Secretary of State. The Judicial Nominating Committee will meet at 1 p.m. on Dec. 3, at the San Juan County Courthouse, 103 S. Oliver Drive, Aztec, to evaluate the. The Committee meeting is open to the public and anyone who wants to voice his or her opinion about a candidate will be heard.

Announcement of Vacancy (Gallup)

A vacancy on the 11th Judicial District Court will exist in Gallup as of Jan. 1, 2015, due to expiration of the term of Hon. Grant L. Foutz. This will be a general jurisdiction Judge, Division II. Inquiries regarding further details of this judicial vacancy should be directed to the chief judge or the administrator of the court. The dean of the UNM School of Law, designated by the New Mexico Constitution to Chair the Judicial District Nominating Committee, solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Constitution. Applications and informa-

Professionalism Tip

With respect to other judges:

I will be courteous, respectful and civil in my opinions.

tion related to qualifications for the position, may be obtained from the Judicial Selection website: <http://lawschool.unm.edu/judsel/application.php>, or by contacting Raylene Weis at 505-277-4700. The deadline for applications is 5 p.m., Nov. 20. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the office of the Secretary of State. The Judicial Nominating Committee will meet at 9:30 a.m., Dec. 4 at the McKinley County Courthouse, 207 W. Hill, Gallup, to evaluate the applicants for this position. The Committee meeting is open to the public and anyone who wants to voice his or her opinion about a candidate will be heard.

13th Judicial District Court Announcement of Vacancy

One vacancy will exist in the 13th Judicial District Court due to the pending expiration of the term of Hon. Camille Martinez Olguin, effective Jan. 1, 2015. This will be a general jurisdiction bench assignment in Grants (Cibola County). Further inquiries regarding details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. David Herring, chair of the Judicial Nominating Commission, solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <http://lawschool.unm.edu/judsel/application.php>. The deadline for applications is 5 p.m., Dec. 5. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the office of the Secretary of State. The Judicial Nominating Commission will meet at 10 a.m., on Dec. 12 at the Cibola County Courthouse, 515 W High St., Grants, to evaluate the applicants. The Commission meeting is open to the public and anyone who wants to voice his or her opinion about a candidate will be heard.

Bernalillo County Metropolitan Court Investiture of Judge Christopher J. Schultz

The judges and employees of the Bernalillo County Metropolitan Court invite members of the legal community and the public to attend the investiture of Hon. Christopher J. Schultz, Division IV. The ceremony will be held at 5:15 p.m. on Oct. 17 in the Bernalillo County Metropolitan Court Rotunda. A reception will follow immediately in the Metro Court Jury Assembly Room. Judges who want to participate in the ceremony should bring their robes and report to the 1st Floor Viewing Room by 5 p.m.

U.S. District Court for the District of New Mexico Proposed Amendments to Local Rules of Civil Procedure

Proposed amendments to the Local Rules of Civil Procedure of the U.S. District Court for the District of New Mexico are being considered. The proposed amendments are to D.N.M.LR-Civ. 83.2, Bar Admissions, Memberships and Dues and the addition of 83.13, Conviction of a Crime. A "redlined" version (with proposed additions underlined and proposed deletions stricken out) and a clean version of these proposed amendments are posted on the Court's website, www.nmcourt.fed.us. Members of the bar may submit comments by email to localrules@nmcourt.fed.us or by mail to U.S. District Court, Clerk's Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102, Attn: Local Rules. Comments must be submitted by Oct. 31.

U.S. Attorney's Office District of New Mexico Investiture Ceremony of U.S. Attorney Damon P. Martinez

Members of the legal community are invited to attend the ceremonial investiture of Damon P. Martinez as U.S. Attorney for the District of New Mexico. The ceremony

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UNM School of Law Maintains National Presence Through Latina Student Leaders



Amber Macias-Mayo (left) and **Dynette Cordova**, 3Ls, attended the National Latina/o Law Student Association Conference in Austin in September, representing UNM School of Law as local leaders and national student leaders. Cordova currently serves as president and Macias-Mayo as vice president of the Mexican American Law Student Association. Macias-Mayo and Cordova also serve on the National Executive Board for NLLSA; Macias-Mayo serves as treasurer and Cordova serves as a mountain regional director. The first conference gathering Latinos across the country was held in Albuquerque in 1997. Regional organizations evolved into what is known today as NLLSA. With the support of UNM School of Law, MALSA hosted the 2013 NLLSA Conference at the Roundhouse in Santa Fe. Macias-Mayo and Cordova served on the hosting committee in 2013. This year, they both served on the National Executive Board organizing the 2014 conference in partnership with the UT-Austin student leaders of the Chicano Law Student Association.



Brian S. Colón

Brian S. Colón, attorney at Robles, Rael & Anaya, PC, was selected as the outstanding volunteer fundraiser in New Mexico and has been named a 2014 National Philanthropy Day Honoree by the Association of Fundraising Professionals New Mexico Chapter. He has a civil practice and experience assisting individuals and organizations work with local, state and federally elected officials. Colón was named Outstanding Young Lawyer of the Year by the State Bar and one of the *Albuquerque Business First* 40 Under

Forty power brokers. He continues to serve with many boards of directors including the New Mexico Hispanic Bar Association and Albuquerque Community Foundation Future Fund. Colón helped found and served on Popejoy Hall's Board of Directors for a decade. He currently serves as president of the board for the UNM Alumni Association and Spanish Colonial Arts Society.

Miller Stratvert PA (Albuquerque, Farmington, Las Cruces and Santa Fe):

2015 Best Lawyers in America

Gordon S. Little (banking and finance law), **Richard L. Alvidrez** (environmental law and litigation-environmental), **Seth V. Bingham** (personal injury litigation-defense), **James J. Widland** (banking and finance law, corporate law and litigation-banking and finance)

Best Lawyers in America Lawyer of the Year

James J. Widland (banking and finance law)

Atkinson & Kelsey, PA (Albuquerque):

2014 New Mexico Super Lawyers

Virginia R. Dugan, Thomas C. Montoya and Jon A. Feder

2014 New Mexico Super Lawyers Rising Star

Tatiana D. Engelmann-Corp

2015 Best Lawyers in America

Virginia R. Dugan and Jon A. Feder

In Memoriam

Hon. Lorenzo V. Martinez (Good Looking), age 90, a resident of Los Luceros, died in his sleep on Sept. 27. Martinez was preceded in death by his wife, Juanita "Jenny" Martinez; parents, Norberto and Aurora Martinez; infant daughter, Priscilla Martinez; brother, Salomon Martinez, Pauline Martinez; sister, Stella Martinez and husband, Ismael; sister-in-law, Celina Martinez; grandson, John Anthony Martinez; in-laws, Juan and Elena Olguin, and numerous other relatives and friends. Martinez is survived by his children, Lee Martinez (Marie), Charlie Martinez (Gloria), Isabell Archuleta (Donald), Lucille Martinez-Baca (Joe), Bert Martinez (Peggy); step-daughter, Janet Garcia (Robert); brothers, Genaro Martinez and Ernesto Martinez (Maria); sisters, Rita Muñoz, Sarita Vega and Oralia Fernandez; 23 grandchildren, special great-granddaughter Ava (Lolita) Martinez, 44 great-grandchildren, and two great-great grandchildren, and numerous other loving relatives and friends.

Welcome

to the State Bar of New Mexico

Text by Evann Kleinschmidt

Photos by D.D. Wolohan

In the words of Justice Edward L. Chávez, “It’s a great day to be a lawyer.” More than 150 of the 171 who passed the July Bar exam sat excitedly as they were sworn in as new attorneys at a ceremony on Sept. 25 in Albuquerque surrounded by their friends, families and colleagues. Howard Thomas, chair of the Board of Bar Examiners, remarked that the swearing-in ceremony “is and will continue to be a special day.” State Bar President Erika Anderson and YLD Chair Ben Sherman encouraged the new attorneys to get involved. Both noted that these programs and activities have been some of the highlights of their careers. ABA Secretary Mary Torres said to always “treat people with dignity and respect.” Briggs Cheney spoke about drug and alcohol abuse and encouraged everyone not to be afraid to seek help for themselves, their friends and family or colleagues.



After Joey Moya, clerk of the Supreme Court of New Mexico, administered the oath, the Supreme Court justices present gave their best advice to the new lawyers. Justice Charles W. Daniels said “You’ve just been made members of a real justice team.” Justice Edward L. Chávez said to picture a compass marked with honesty, respect, civility and empathy and to let that guide their careers.



*State Bar President
Erika Anderson*



Briggs Cheney



*Young Lawyers Division Chair
Ben Sherman*



ABA Secretary Mary Torres



Chief Justice Barbara J. Vigil concluded by asking the new admittees to “strive to achieve gracious professionalism,” meaning to do work with honesty and integrity, be tenacious in the practice of law and be open to change and new opportunities.

Congratulations to all of the new lawyers—welcome to the State Bar!



Justice Edward L. Chávez, Chief Justice Barbara J. Vigil, Justice Charles W. Daniels

CUBA

New dates!
Nov. 9-14



At the invitation of the Union of Cuban Jurists, the State Bar of New Mexico is organizing a delegation to visit Cuba to research the country's legal system. State Bar President Erika Anderson will lead the delegation. We invite you to join in this unique opportunity.

This delegation will convene in Miami on Nov. 9 and will return to Miami on Nov. 14. Please see www.professionalsabroad.org for itinerary details.

Our delegation will undertake a comprehensive study of the Cuban legal system, from the teaching of law, to the criminal justice and judicial systems; civil and family code; business and commercial rights; and resolving domestic and international commercial conflicts. CLE credit will not be available.

A parallel program of people-to-people activities will be available for spouses and guests.

**For more information, Professionals Abroad, 1-877-298-9677
or www.professionalsabroad.org**



continued from page 6

will be held at 3 p.m. on Oct. 17 in the Rio Grande Courtroom of the Pete V. Domenici Courthouse, 333 Lomas Blvd. NW, Albuquerque. U.S. District Court Chief Judge M. Christina Armijo will preside over the ceremony and Senior U.S. District Judge James A. Parker will administer the oath of office. A reception will follow at 5 p.m. at the Barcelona Room of the Hotel Andaluz, 125 Second Street NW, Albuquerque.

STATE BAR NEWS

Attorney Support Groups

- Oct. 20, 7:30 a.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (The group meets the third Monday of the month.)
- Nov. 3, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (The group meets the first Monday of the month.)
- Nov. 10, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, Room 1119 (The group meets the second Monday of the month.)
- For more information, contact Bill Stratvert, 505-242-6845.

Animal Law Section

'Wild Friends' Presentation

UNM School of Law Senior Attorney Susan George will give an hour presentation on the School of Law's unique program, Wild Friends, at noon on Oct. 20 at the State Bar Center, as part of the Animal Law Section's Animal Talk series. Wild Friends is an experiential program combining civics education with wildlife science for students in grades 4–12 across New Mexico to teach them how they can make a difference in the world. R.S.V.P. to Evann Kleinschmidt, ekleinschmidt@nmbar.org, by Oct. 17. Beverages and cookies will be provided.

Board of Editors

Seeking New Members

The State Bar's Board of Editors has six open positions beginning Jan. 1, 2015. Current members Ian Bezpalko, Jocelyn Drennan, Jennifer Esquibel, George Kraehe, Tiffany Sanchez and Joseph Turk have completed their second two-year term and are not eligible for reappointment. The Board of Editors meets at least four times a year and by email, reviewing articles submitted to

the weekly *Bar Bulletin* and the quarterly *New Mexico Lawyer*. This volunteer board reviews submissions for suitability, edits for legal content and works with authors as needed to develop the topic or address other concerns. Primary responsibility is for the *New Mexico Lawyer*, which is generally written by members of a State Bar committee, section, or division about a specific area of the law. The Board of Editors should represent a diversity of backgrounds, ages, geographic regions of the state, ethnicity, gender, and areas of legal practice, and preferably have some experience in journalism or legal publications. We are especially seeking those outside of Albuquerque and a non-lawyer member. The State Bar president, with the approval of the Board of Bar Commissioners, appoints members of the Board of Editors, often on the recommendation of the current Board. If you are interested in being considered for a two-year term, please send a letter of interest and résumé to Managing Editor D.D. Wolohan at dwolohan@nmbar.org.

Committee on Women and the Legal Profession Seeking Nominations for Justice Minzner Award

Nominations are now being accepted for the 2014 Justice Pamela B. Minzner Outstanding Advocacy for Women Award. The award recognizes attorneys who have distinguished themselves during the prior year by providing legal assistance to women who are underrepresented or underserved or by advocating for causes that will ultimately benefit and/or further the rights of women. The Committee on Women and the Legal Profession will review the nominations and select a recipient. Those who know of an attorney whose work qualifies him or her to receive this award should submit a letter of nomination summarizing the work and efforts of the nominee to Michelle Hernandez, PO Box 2168, Albuquerque, NM 87103-2168, or mhernandez@modrall.com. The nomination deadline is Oct. 31.

Cuba Trip Rescheduled for November

If you were contemplating joining State Bar President Erika E. Anderson and the New Mexico delegation to visit the legal institutions of Havana, Cuba, but the October dates did not work out for you, you're

—Featured— Member Resource

ATTORNEY RESOURCE HELPLINE

Provides State Bar members and non-admitted attorneys information and referrals in the areas of attorney regulation, ethics, registrations (non-admitted, pro hac vice, legal service and emeritus), rules, and general practice. Contact the Office of General Counsel, rspinello@nmbar.org, 800-876-6227.

eNews

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redesigned eNews.

Get the latest updates
on CLE classes, member
benefits, and other
law-related activities
around New Mexico.

To subscribe to eNews
free of charge, contact
sbnm-eneews@nmbar.org.



in luck! The trip has been rescheduled for Nov. 9–14. A parallel cultural excursion for participants' spouse or guest is available to those who register. Full information is available at www.professionalsabroad.org or 1-877-298-9677.

Natural Resources, Energy and Environmental Law Section

'Proposed Rules for Existing Power Plants' CLE

Ryan Flynn, cabinet secretary of the state Environment Department will present "An Overview of EPA's Proposed Rules for Existing Power Plants" (1.0 G) at 5:15 p.m., Oct. 22, at the UNM School of Law, 1117 Stanford Dr. NE, Albuquerque, in Room 2402, Bratton Hall. This lecture will be hosted by UNM School of Law Natural Resources and Environmental Law Program and The Utton Center in cooperation with the State Bar Natural Resources, Energy and Environmental Law Section. Flynn will speak on the rules proposed by the EPA this past June, which are aimed at reducing greenhouse gas emissions from existing and modified fossil fuel power plants under Section 111(d) of the Clean Air Act. EPA's proposal has broad implications for the economy and the environment and is expected to generate a significant amount of litigation over the next few years. This discussion will provide an overview of the 111(d) rule-making process and discuss some of the legal issues surrounding the proposed rules. For more information, contact the Utton Center at 505-277-3253 or email burns@law.unm.edu.

Prosecutors Section

Annual Awards Nominations Due

The deadline for nominations for the annual Prosecutors Section awards is Oct. 15. The awards are given for excellence in the following categories: child abuse (Homer Campbell award), DWI, drugs, white collar, domestic violence, violent crimes (excluding domestic violence and child abuse cases) and children's court prosecutor. Criteria include: impact of the prosecution on the community; coordination with law enforcement, including training in the prosecution of the case(s); best litigated case(s) (refers to the quality of the presentation); new approach or legal theory used in the

prosecution; case management (refers to process used to manage a large quantity of cases); any other exhibition of excellence in that category of cases. Send an email to Richard T. Wilson, lludrtw@nmcourts.gov, with the name and contact information of the nominee, the category and the reasons why the nominee should receive the award.

Solo and Small Firm Section

Presentation Features

Nancy Hollander

The Solo and Small Firm Section welcomes members to its monthly board meetings at 11:30 a.m. at the State Bar Center, followed by a speaker at noon. On Oct. 21, Nancy Hollander will present "National Security, Renditions and What Is Left of the Constitution". R.S.V.P. to Evann Kleinschmidt, ekleinschmidt@nmbar.org, by Oct. 20 to guarantee lunch. Upcoming presentations include:

- Nov. 18: John Boyd, top litigator in New Mexico (voter ID)
- Jan. 20, 2015: U.S. Attorney Damon P. Martinez
- Feb. 17, 2015: Judge Harris Hartz, 10th Circuit Court of Appeals
- March 17, 2015: Former U.S. Attorney Greg Fouratt, head of the N.M. Department of Public Safety

UNM

Law Library

Hours Through Dec. 13

Building & Circulation

Monday–Thursday	8 a.m.–10 p.m.
Friday	8 a.m.–6 p.m.
Saturday	8 a.m.–5 p.m.
Sunday	Noon–8 p.m.

Reference

Monday–Friday	9 a.m.–6 p.m.
Saturday–Sunday	Closed

Closures

Nov. 27–28: Thanksgiving

Women's Law Caucus

Nominations for Award Welcome

Each year, the Women's Law Caucus at the University of New Mexico School of Law chooses an outstanding woman in the New Mexico legal community to honor in the name of former Justice Mary Walters, the first woman appointed to the New Mexico Supreme Court. The Women's Law Caucus is currently soliciting nominations for the 2014 award. For nomination

procedures, email JMWBanquet2014@gmail.com. The deadline is Oct. 31.

OTHER BARS

New Mexico Criminal Defense Lawyers Association

Criminal Defense CLE on DWI in Albuquerque

The New Mexico Criminal Defense Lawyers Association's annual DWI seminar "Castle Made Of Sand: Advanced DWI CLE Seminar" will be held on Oct. 24 at the Greater Albuquerque Association of Realtors. Topics will include driving under the influence of drugs/marijuana, police tactics and breath test trial tactics. The special guest speaker will be Virginia Landry from California, a board certified DUI defense attorney. To register, visit www.nmcdla.org.

New Mexico Hispanic Bar Association

October Luncheon and CLE

The New Mexico Hispanic Bar Association presents a luncheon and CLE on Oct. 24 at Scalo Northern Italian Grille in Albuquerque. The lunch, noon–1 p.m., will feature keynote speaker Associate Dean Robert Delcampo, Ph.D., UNM Anderson School of Management. The CLE, 1:30–2:30 p.m., "Hispanic Civil Rights Fifty Years After the Passage of the Civil Rights Act" (1.0 G) will be presented by David Urias of Freedman Boyd Hollander Goldberg Urias & Ward. For more information, cost and registration, visit www.nmhba.net.

OTHER NEWS

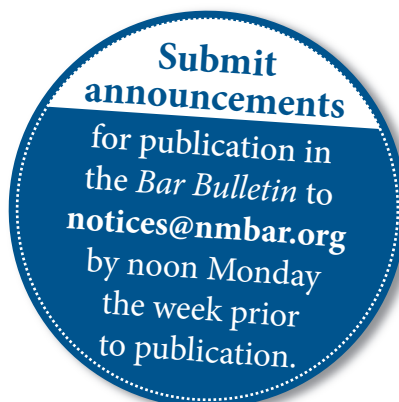
Christian Legal Aid

New Volunteer Training Seminar

Christian Legal Aid of New Mexico invites new members to join them for a new volunteer training seminar from 11 a.m.–5 p.m., Nov. 7 at the State Bar Center. The seminar will include a free lunch, free CLE credits and training as attendees learn the basics on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800 or christianlegalaids@hotmail.com.

New Mexico Workers' Compensation Administration Settlement Week

The New Mexico Workers' Compensation Administration will host "Settlement Week" Oct. 27–31. In past years, the event has been successful in streamlining the court dockets by either resolving claims or moving claims closer to settlement. In-person settlement conferences will be held at the WCA offices in Albuquerque. Parties in remote locations may participate by telephone or by video from WCA field offices in Farmington, Las Cruces, Las Vegas, Lovington, Roswell and Santa Fe. Parties wanting to have cases included in Settlement Week should contact Beverly Eschberger at 505-841-6089 or Beverly.eschberger@state.nm.us.





New Mexico Lawyers and Judges Assistance Program

Help and support are only a phone call away.

24-Hour Helpline

Attorneys/Law Students
505-228-1948 • 800-860-4914

Judges
888-502-1289

www.nmbar.org/JLAP/JLAP.html

STATE BAR MEMBERS INVITED TO PARTICIPATE IN GROUND-BREAKING RESEARCH

The State Bar of New Mexico is pleased to announce its participation in a collaboration of the American Bar Association Commission on Lawyer Assistance programs and the Hazelden Betty Ford Foundation on a groundbreaking joint research project to survey the current rates of substance use, depression and anxiety among licensed attorneys in the United States.

Beginning the week of Oct. 27, the State Bar will ask members to participate in this important national survey. Participation is voluntary and all responses are **confidential and anonymous, with no identifying information involved**. The data will be collected through an online survey and sent directly to the research scientist for analysis.

The survey is designed to capture current, reliable, and credible data about substance use and mental health issues, as well as the barriers to accessing help for these critical issues—data that has numerous benefits for virtually all sectors of the legal profession. The anticipated benefits of this research include:

- A new baseline understanding of the legal profession's challenges related to substance abuse and other mental health problems.
- A persuasive body of knowledge to initiate and guide decision making and policy development in the following key areas: continuing education requirements; Lawyer Assistance Program funding and services; bar examination and admission requirements; discipline guidelines and procedures; prevention; strategies to reduce stigma; and increased career satisfaction and longevity among members of the bar.
- Increased knowledge to reduce the barriers to help that legal professionals currently experience.

"Past studies indicate rates of addiction among legal professionals are twice that of the general population and some suggest the problem might be growing, but most of these studies were conducted 10-plus years ago," said Jill Yeagley, program manager of the State Bar's Lawyers and Judges Assistance Program. "Participating in this national research will give us timely data and increase our understanding of how these issues impact our profession, which in turn will help us better target our resources and provide the best assistance we can to our members."

For more information, contact Jill Yeagley at 505-797-6003.

2014

BOARD OF BAR COMMISSIONERS ELECTION NOTICE

Pursuant to Supreme Court Rule 24-101, the Board of Bar Commissioners is the elected governing board of the State Bar of New Mexico. **Candidates must consider that voting members of the Board of Bar Commissioners are required to do the following:**

Duties and Requirements for Board of Bar Commissioner Members:

- Attend all Board meetings (up to six per year), including the Annual Meeting of the State Bar.
- Represent the State Bar at local bar-related meetings and events.
- Communicate regularly with constituents regarding State Bar activities.
- Promote the programs and activities of the State Bar.
- Participate on Board and Supreme Court committees.
- Evaluate the State Bar's programs and operations on a regular basis.
- Ensure financial accountability for the organization.
- Support and participate in State Bar referral programs.
- Establish and enforce bylaws and policies.

Notice is hereby given that the 2014 election of six commissioners for the State Bar of New Mexico will close at noon, Dec. 1. Nominations to the office of bar commissioner shall be by the written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice is in the respective district. Members of the State Bar may nominate and sign for more than one candidate. (See the nomination petition on the next page.)

The following terms will expire Dec. 31, and need to be filled in the upcoming election. All of the positions are three-year terms and run from Jan. 1, 2015–Dec. 31, 2017.

First Bar Commissioner District

Bernalillo County

Three positions currently held by:

M. David Chacon II*

Gerald G. Dixon

Julie J. Vargas

Fifth Bar Commissioner District

Curry, DeBaca, Quay and Roosevelt counties

One position currently held by:

Wesley O. Pool*

Sixth Bar Commissioner District

Chaves, Eddy, Lea, Lincoln and Otero counties

Two positions currently held by:

Andrew J. Cloutier**

Dustin K. Hunter

*Not seeking re-election

**Ineligible to seek re-election

Send nomination petitions to:
Executive Director Joe Conte
State Bar of New Mexico
PO Box 92860
Albuquerque, NM 87199-2860
jconte@nmbar.org

Petitions must be received by 5 p.m., Oct. 17

Direct inquiries to 505-797-6099 or jconte@nmbar.org.

NOMINATION PETITION FOR BOARD OF BAR COMMISSIONERS

We, the undersigned, members in good standing of the State Bar of New Mexico, nominate _____, whose principal place of practice is in the _____ Bar Commissioner District, State of New Mexico, for the position of commissioner of the State Bar of New Mexico representing the _____ Bar Commissioner District.

Submitted _____, 2014

- | | | |
|------|--------------------|---------|
| (1) | _____ | _____ |
| | Signature | |
| | _____ | _____ |
| | Type or Print Name | Address |
| (2) | _____ | _____ |
| | Signature | |
| | _____ | _____ |
| | Type or Print Name | Address |
| (3) | _____ | _____ |
| | Signature | |
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| (10) | _____ | _____ |
| | Signature | |
| | _____ | _____ |
| | Type or Print Name | Address |

Legal Education

October

- | | | |
|--|---|---|
| <p>15 New Mexico Constitution—Current Issues
2.0 G
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>21 Skeptically Determining the Limits of Scientific Evidence V
5.0 G, 1.5 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>24 Attorney Ethics, Advertising and the Internet
1.0 EP
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>15 Incentive Trusts in Estate Planning: Promise and Peril
1.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>21 Accounting for Lawyers
6.0 G
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>24 Advanced DWI CLE
6.0 G
Live Seminar
New Mexico Criminal Defense Lawyers Association
505-992-0050
www.nmcdla.org</p> |
| <p>16 Practice Management, the Cloud, and Your Firm
3.0 G
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>21 2014 Ethicspalooza: Proper Trust Accounting
1.5 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>24–25 2014 Family Law Institute
10.0 G, 2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>16 Establishing Your Online Presence, Ethically and Professionally
2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>21 2014 Ethicspalooza: Ethically Managing Your Practice
1.5 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>28 The Family Law Client in the Context of Immigration Law
5.0 G
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>16 Advanced Oil and Gas Energy Resources
11.2 G, 1.5 EP
Video Replay
State Bar of Texas
512-427-1426
www.texasbarcle.com</p> | <p>21 Governance of Private and Family-Controlled Companies
1.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>28–29 Fiduciary and Income Tax Issues in Estate Planning, Parts 1–2
2.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>17 New Mexico Administrative Law Institute 2014
4.2 G, 2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>22–23 Great Adverse Depositions: Principles and Principal Techniques
6.0 G
Webinar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>29 Law Practice Succession—A Little Thought Now, a Lot Less Panic Later
2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |

November

- | | | |
|--|--|---|
| <p>4 2014 Probate Institute
6.0 G, 1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>6 Attorney Ethics When Supervising Other Attorneys
1.0 EP
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>11-12 Real Estate Joint Ventures, Parts 1-2
2.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>4 2014 Employment and Labor Law Institute
4.5 G, 1.5 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 2014 N.M. Family Law Institute: Get with the Times: Bringing Your Family Law Practice into 2015 (Day One)
6.0 G, 1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>13 Attorney Ethics and Dissolution of a Law Firm
1.0 EP
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>4 The ABCs of Campaign Finance Law: The Rules, Regulations and Ethical Responsibilities of Running for Public Office in New Mexico (2014 Annual Meeting)
1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 New Mexico Administrative Law Institute 2014
4.2 G, 2.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>14 Ethics and Dishonest Clients
1.0 EP
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>4 2014 Civil Procedure Update (2014 Annual Meeting)
1.0 G
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 2014 Ethicspalooza: Conflicts of Interest
1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>17-18 Estate Planning for MDs, Jds, CPAs and Other Professionals, Parts 1-2
2.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>4 Don't Call Saul: 'Breaking Bad' Ethics (2014 Annual Meeting)
1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 2014 Ethicspalooza: Charging a Reasonable Fee
1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>18 Writing and Speaking To Win with Nationally Renowned Author and Lecturer Steven Stark, Esq.
5.0 G, 1.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>4-5 Drafting Buy/Sell Agreements, Parts 1-2
2.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 The End of Law Firms? How the Cloud is Changing the Practice of Law; The ABA Model Rules with Regard to the Changing Practice of Law (2014 Annual Meeting)
1.0 G, 1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>25 2014 N.M. Family Law Institute: Get with the Times: Bringing Your Family Law Practice into 2015 (Day Two)
6.0 G, 1.0 EP
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>5 2014 Fall Elder Law Institute The Complexities of the Special Needs Trust: Drafting, Funding and Implementation
4.5 G, 1.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 Estate Planning for Pets
1.0 G
National Teleseminar
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>25 Electronic Discovery
1.0 G
Video Replay
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |

Writs of Certiorari

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective October 2, 2014

Petitions for Writ of Certiorari Filed and Pending:

				Date Petition Filed			
No. 34,921	State v. Gmitruk	COA 33,398	10/02/14	No. 34,739	Holguin v. Franco	12-501	05/21/14
No. 34,919	State v. Flores-Alvidrez	COA 33,616	09/29/14	No. 34,706	Camacho v. Sanchez	12-501	05/13/14
No. 34,910	Lujan v. N.M. Dept. of Transportation	COA 31,883	09/24/14	No. 34,615	Dominguez v. Bravo	12-501	05/12/14
No. 34,909	State v. Wheeler	COA 33,615	09/23/14	Response ordered; filed 9/18/14			
No. 34,913	Finnell v. Horton	12-501	09/22/14	No. 34,691	Wetson v. Nance	12-501	05/07/14
No. 34,902	CYFD v. Cynthia D.	COA 33,140	09/18/14	Response ordered; filed 7/14/14			
No. 34,901	State v. Seda	COA 33,018	09/18/14	No. 34,633	Vespender v. Janecka	12-501	04/29/14
No. 34,900	Heltman v. Catanach	COA 31,837	09/18/14	No. 34,589	Seager v. State	12-501	04/23/14
No. 34,899	State v. Roybal	COA 32,644	09/18/14	No. 34,574	Montano v. Hatch	12-501	04/21/14
Response filed 9/24/14				Response ordered; filed 7/14/14			
No. 34,912	Roybal v. Wrigley	12-501	09/16/14	No. 34,571	Fresquez v. State	12-501	04/07/14
No. 34,906	Gnau v. Janecka	12-501	09/15/14	No. 34,563	Benavidez v. State	12-501	02/25/14
No. 34,894	State v. Jones	COA 33,584	09/12/14	Response ordered; filed 5/28/14			
Response ordered; filed 9/30/14				No. 34,560	Hartzell v. State	12-501	02/11/14
No. 34,891	Rabo v. Terra	COA 32,697	09/12/14	Response ordered; filed 7/29/14			
No. 34,888	Gunderson v. City of Roswell	COA 32,851	09/12/14	No. 34,289	Tafoya v. Stewart	12-501	08/23/13
No. 34,907	Cantone v. Franco	12-501	09/11/14	No. 34,303	Gutierrez v. State	12-501	07/30/13
No. 34,889	State v. Ramirez	COA 33,667	09/11/14	No. 34,067	Gutierrez v. Williams	12-501	03/14/13
No. 34,887	State v. Allen	COA 32,774	09/10/14	No. 33,868	Burdex v. Bravo	12-501	11/28/12
No. 34,886	State v. Sabeerin	COA 31,412/31,895	09/10/14	Response ordered; filed 1/22/13			
No. 34,885	Savage v. State	12-501	09/08/14	No. 33,819	Chavez v. State	12-501	10/29/12
No. 34,866	State v. Yazzie	COA 32,476	09/04/14	No. 33,867	Roche v. Janecka	12-501	09/28/12
No. 34,841	State v. Lope	COA 32,511	09/04/14	No. 33,539	Contreras v. State	12-501	07/12/12
No. 34,855	Rayos v. State	COA 32,911	08/29/14	Response ordered; due 10/24/12			
Response filed 9/8/14				No. 33,630	Utley v. State	12-501	06/07/12
No. 34,826	State v. Trammel	COA 31,097	08/29/14				
Response filed 9/12/14							
No. 34,878	O'Neill v. Bravo	12-501	08/26/14				
No. 34,861	State v. Matthews	COA 33,591	08/18/14				
Response ordered; due 10/14/14							
No. 34,860	State v. Lopez	COA 33,488	08/18/14				
Response ordered; due 10/14/14							
No. 34,854	State v. Alex S.	COA 32,836	08/13/14				
No. 34,796	Miller v. Ortiz	12-501	08/08/14				
No. 34,830	State v. Mier	COA 33,493	07/25/14				
Response ordered; filed 9/12/14							
No. 34,819	McGhee v. State	12-501	07/17/14				
No. 34,812	Ruiz v. Stewart	12-501	07/11/14				
No. 34,777	State v. Dorais	COA 32,235	07/02/14				
Response filed 7/31/14							
No. 34,790	Venie v. Velasquez	COA 33,427	06/27/14				
Response ordered; due 8/22/14							
No. 34,765	Helferich v. Frawner	12-501	06/24/14				
No. 34,793	Isbert v. Nance	12-501	06/23/14				
No. 34,775	State v. Merhege	COA 32,461	06/19/14				
No. 34,776	Serna v. Franco	12-501	06/13/14				
No. 34,748	Smith v. State	12-501	06/06/14				
No. 34,731	Helferich v. Frawner	12-501	05/29/14				
No. 34,728	Martinez v. Bravo	12-501	05/29/14				

Certiorari Granted but not yet Submitted to the Court:

(Parties preparing briefs)			Date Writ Issued	
No. 33,725	State v. Pasillas	COA 31,513	09/14/12	
No. 33,837	State v. Trujillo	COA 30,563	11/02/12	
No. 33,877	State v. Alvarez	COA 31,987	12/06/12	
No. 33,930	State v. Rodriguez	COA 30,938	01/18/13	
No. 33,994	Gonzales v. Williams	COA 32,274	08/30/13	
No. 33,863	Murillo v. State	12-501	08/30/13	
No. 33,810	Gonzales v. Marcantel	12-501	08/30/13	
No. 34,363	Pielhau v. State Farm	COA 31,899	11/15/13	
No. 34,274	State v. Nolen	12-501	11/20/13	
No. 34,400	State v. Armijo	COA 32,139	12/20/13	
No. 34,488	State v. Norberto	COA 32,353	02/07/14	
No. 34,487	State v. Charlie	COA 32,504	02/07/14	
No. 34,443	Aragon v. State	12-501	02/14/14	
No. 34,516	State v. Sanchez	COA 32,994	02/14/14	
No. 34,473	Mandeville v. Presbyterian Healthcare	COA 32,999	03/07/14	
No. 34,548	State v. Davis	COA 28,219	03/14/14	
No. 34,558	State v. Ho	COA 32,482	03/21/14	
No. 34,549	State v. Nichols	COA 30,783	03/28/14	
No. 34,526	State v. Paananen	COA 31,982	03/28/14	
No. 34,522	Hobson v. Hatch	12-501	03/28/14	
No. 34,582	State v. Sanchez	COA 32,862	04/11/14	
No. 34,644	Valenzuela v. Snyder	COA 32,680	05/01/14	
No. 34,637	State v. Serros	COA 31,975	05/01/14	

Writs of Certiorari

<http://nmsupremecourt.nmcourts.gov>

No. 34,613	Ramirez v. State	COA 31,820	05/01/14	No. 34,128	Benavides v.		
No. 34,554	Miller v.				Eastern N.M. Medical	COA 32,450	12/18/13
	Bank of America	COA 31,463	05/01/14	No. 34,093	Cordova v. Cline	COA 30,546	01/15/14
No. 34,476	State v. Pfauntsch	COA 31,674	05/01/14	No. 34,194/34,204	King v. Faber	COA 34,116/31,446	02/24/14
No. 34,694	State v. Salazar	COA 33,232	06/06/14	No. 33,999	State v. Antonio T.	COA 30,827	02/26/14
No. 34,669	Hart v.			No. 33,997	State v. Antonio T.	COA 30,827	02/26/14
	Otero County Prison	12-501	06/06/14	No. 34,287	Hamaatsa v.		
No. 34,650	Scott v. Morales	COA 32,475	06/06/14		Pueblo of San Felipe	COA 31,297	03/26/14
No. 34,630	State v. Ochoa	COA 31,243	06/06/14	No. 34,120	State v. Baca	COA 31,442	03/26/14
No. 34,764	State v. Slade	COA 32,681	08/01/14	No. 34,583	State v. Djamila B.	COA 32,333	07/29/14
No. 34,789	Tran v. Bennett	COA 32,677	08/01/14	No. 34,122	State v. Steven B. consol. w/		
No. 34,769	State v. Baca	COA 32,553	08/01/14		State v. Begaye	COA 31,265/32,136	08/11/14
No. 34,786	State v. Baca	COA 32,523	08/01/14	No. 34,286	Yedidag v.		
No. 34,784	Silva v. Lovelace Health Systems, Inc.	COA 31,723	08/01/14		Roswell Clinic Corp.	COA 31,653	08/11/14
No. 34,805	King v.			No. 34,499	Perez v. N.M. Workforce Solutions Dept.	COA 32,321/32,330	08/13/14
	Behavioral Home Care	COA 31,682	08/15/14	No. 34,546	N.M. Dept. Workforce Solutions v.		
No. 34,798	State v. Maestas	COA 31,666	08/15/14		Garduno	COA 32,026	08/13/14
No. 34,843	State v. Lovato	COA 32,361	08/29/14	No. 34,271	State v. Silvas	COA 30,917	08/25/14
No. 34,834	SF Pacific Trust v.			No. 34,365	Potter v. Pierce	COA 31,595	08/25/14
	City of Albuquerque	COA 30,930	08/29/14	No. 34,435	State v. Strauch	COA 32,425	08/27/14
No. 34,772	City of Eunice v. N.M. Taxation and Revenue Dept.	COA 32,955	08/29/14	No. 34,447	Loya v. Gutierrez	COA 32,405	08/27/14
No. 34,726	Deutsche Bank v.			No. 34,295	Dominguez v. State	12-501	09/24/14
	Johnson	COA 31,503	08/29/14	No. 34,300	Behrens v. Gateway	COA 31,439	09/29/14
No. 34,668	State v. Vigil	COA 32,166	09/26/14	No. 34,501	Snow v. Warren Power	COA 32,335	10/01/14
				No. 34,455	City of Santa Fe v.		
					Tomada	COA 32,407	10/14/14
				No. 34,311	State v. Favela	COA 32,044	10/27/14
				No. 34,498	Hightower v. State	12-501	10/27/14
				No. 34,398	State v. Garcia	COA 31,429	10/29/14
				No. 34,607	Lucero v.		
					Northland Insurance	COA 32,426	10/29/14

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)		Submission Date	
No. 33,548	State v. Marquez	COA 30,565	04/15/13
No. 33,971	State v. Newman	COA 31,333	07/24/13
No. 33,808	State v. Nanco	COA 30,788	08/14/13
No. 33,862	State v. Gerardo P.	COA 31,250	08/14/13
No. 33,969	Safeway, Inc. v.		
	Rooter 2000 Plumbing	COA 30,196	08/28/13
No. 33,898	Bargman v. Skilled Healthcare Group, Inc.	COA 31,088	09/11/13
No. 33,884	Acosta v. Shell Western Exploration and Production, Inc.	COA 29,502	10/28/13
No. 34,013	Foy v. Austin Capital	COA 31,421	11/14/13
No. 34,085	Badilla v. Walmart	COA 31,162	12/04/13
No. 34,146	Madrid v.		
	Brinker Restaurant	COA 31,244	12/09/13

Petition for Writ of Certiorari Denied:

		Date Order Filed	
No. 34,882	Garcia v. Janecka	12-501	10/01/14
No. 34,859	Hacessa v. Janecka	12-501	10/01/14
No. 34,847	State v. Gerlinda C.	COA 33,537	10/01/14
No. 34,877	State v. Castillo	COA 32,850	09/30/14
No. 34,876	State v. Henderson	COA 33,636	09/30/14
No. 34,870	McDowell v. Galbriso	COA 32,356	09/30/14
No. 34,871	State v. West	COA 33,296	09/29/14

Opinions

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

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Unpublished Opinions

No. 32901	2nd Jud Dist Bernalillo CV-09-12099, R LUCERO v R SUTTEN (reverse and remand)	9/29/2014
No. 33179	2nd Jud Dist Bernalillo LR-10-48, STATE v W KELLY (affirm)	9/29/2014
No. 33557	2nd Jud Dist Bernalillo DW-10-4513, LR-11-42, STATE v A AUGUST (affirm)	9/29/2014
No. 33719	2nd Jud Dist Bernalillo LR-11-67, STATE v A VALDEZ (affirm)	9/30/2014
No. 32533	6th Jud Dist Luna CV-11-288, PURPLE LUPINE v SHERMAN (reverse and remand)	9/30/2014
No. 33746	2nd Jud Dist Bernalillo LR-12-61, STATE v M SISNEROS (affirm)	10/1/2014
No. 33759	2nd Jud Dist Bernalillo CV-14-2931, R BERNSTEIN v G GAFFNEY (affirm)	10/1/2014
No. 33606	11th Jud Dist San Juan JR-13-157-3, STATE v MILES T (affirm)	10/2/2014
No. 33609	12th Jud Dist Lincoln DM-11-151, D GONZALES v D WARNER (affirm in part, reverse in part)	10/2/2014

Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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Effective October 15, 2014

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

Comment Deadline

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2014 NMRA:

Effective Date

CHILDREN'S COURT RULES AND FORMS

10-102	Commencement of action.	08/31/14
10-315	Custody hearing.	07/01/14
10-317	Notice of change in placement.	08/31/14
10-323	Dismissal of a respondent or child; party dismissal sheet.	08/31/14
10-343	Adjudicatory hearing; time limits; continuances.	07/01/14
10-501A	Abuse and neglect party information sheet.	08/31/14
10-565	Advance notice of change of placement.	08/31/14
10-566	Emergency notice of change of placement.	08/31/14
10-567	Abuse and neglect party dismissal sheet.	08/31/14

RULES OF APPELLATE PROCEDURE

12-206A	Expedited appeals from Children's Court custody hearings.	07/01/14
12-303	Appointment of counsel.	07/01/14

RULES GOVERNING ADMISSION TO THE BAR

15 102	Admission requirements.	06/01/15
15 103	Qualifications.	06/01/15
15 105	Application fees.	06/01/15
15 107	Admission by motion.	06/01/15

SUPREME COURT GENERAL RULES

23-109	Chief judges.	04/23/14
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Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

Certiorari Granted, August 1, 2014, No. 34,769

From the New Mexico Court of Appeals

Opinion Number: 2014-NMCA-087

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.

BILLY BACA,
Defendant-Appellant
Docket No. 32,553 (filed May 14, 2014)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY STAN WHITAKER, District Judge

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Opinion

Cynthia A. Fry, Judge

{1} Defendant was convicted of commercial burglary following his participation in a shoplifting incident inside a Costco. Defendant appeals his conviction, arguing, in part, that entry into a retail store with the intention to shoplift does not constitute the crime of burglary. We agree with Defendant and conclude that the entry in this case was not an unauthorized entry under our burglary statute. Accordingly, we reverse Defendant's conviction.

BACKGROUND

{2} Defendant entered Costco with a group of people. No person in the group was a member of Costco, but one person showed the Costco greeter a Costco membership card that belonged to another person. It is not known how the person obtained the membership card. The greeter did not check the card and allowed the group to enter. Once inside, a member of the group began placing items into her purse, including items that members of the group pointed out. The group then proceeded to the checkout line, where they purchased bottled water and ice cream. Upon trying to exit the store, however, they

were detained by a Costco loss-prevention employee for attempting to steal the items in the woman's purse.

{3} At trial, the greeter and the loss-prevention employee gave somewhat conflicting accounts of Costco's policies regarding admittance to the store. For instance, the greeter initially testified that members of the public are not allowed in the store without a membership. However, the greeter also testified that although the membership cards have photos on them, it is neither routine nor within her "job description" to check the photos in order to ensure that the person presenting the card is, in fact, a member. The greeter further affirmed that a person presenting a "ten-year-old Costco card, a friend's card, [or] a card they found on the street" would be allowed to enter the store simply by displaying the card. Similarly, the loss-prevention employee testified that Costco is a "membership warehouse" and that in order to enter the store, one must be a member or a guest of a member. But, when asked specifically what Costco's policy was regarding "non-members coming into the store," the employee responded, "[n]on-members cannot make purchases." Both agreed that the "[m]embers only" signs posted out-

side Costco serve as notice to the public that only members can enter.

{4} Defendant was convicted of commercial burglary on the theory that presentation of the membership card constituted an unauthorized entry by fraud, deceit, or pretense. *State v. Ortiz*, 1978-NMCA-074, ¶ 15, 92 N.M. 166, 584 P.2d 1306 ("Whether entry by fraud, deceit or pretense is characterized as trespassory, without consent, or without authorized consent, such an entry is unauthorized."). Defendant appeals.

DISCUSSION

Standard of Review

{5} The issue before us is whether entry into Costco by a non-member using a membership card that does not belong to that person constitutes an "unauthorized entry" for purposes of our burglary statute. Statutory construction is a question of law which we review de novo. *State v. Duhon*, 2005-NMCA-120, ¶ 10, 138 N.M. 466, 122 P.3d 50. "If the language of the statute is clear and unambiguous, we must give effect to that language[.]" *State v. McWhorter*, 2005-NMCA-133, ¶ 5, 138 N.M. 580, 124 P.3d 215, unless doing so would lead to absurd, unreasonable, or unjust results. *State v. Marshall*, 2004-NMCA-104, ¶ 7, 136 N.M. 240, 96 P.3d 801. "Doubts about the construction of criminal statutes are resolved in favor of the rule of lenity." *State v. Keith*, 1985-NMCA-012, ¶ 10, 102 N.M. 462, 697 P.2d 145.

Defendant's Entry Into Costco Was Not an Unauthorized Entry Under Our Burglary Statute

{6} Burglary is defined as the "unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure . . . with the intent to commit any felony or theft therein." NMSA 1978, § 30-16-3 (1971). We presume, however, that retail stores are open to the public during business hours and, therefore, an individual who enters a retail store with the intent to shoplift is not guilty of burglary. *State v. Rogers*, 1972-NMCA-053, ¶ 7, 83 N.M. 676, 496 P.2d 169 (explaining that a business owner's permission to enter is implied when the business invites the public to enter); *State v. Tower*, 2002-NMCA-109, ¶ 7, 133 N.M. 32, 59 P.3d 1264 ("[T]he store was generally open to the public as a place of commerce. Thus, the shopping public was given authority to enter the store."). But this Court has also recognized that the revocation of an individual's permission to enter a retail

store that is otherwise open to the public is sufficient to conclude that the individual's subsequent entry into the store was unauthorized. *Id.* ¶¶ 5, 7. Thus, we must determine whether Costco's membership policies are sufficient by themselves to negate the presumption that Costco, as a retail store, is generally open to the public such that entry by a non-member during business hours constitutes an unauthorized entry under our burglary statute. We conclude that Defendant's entry into Costco, even assuming he was aware that the woman presenting the card was a non-member, is not sufficient as a matter of law to establish an unauthorized entry and thus the crime of burglary.

{7} Recently, our Supreme Court signaled a change in our state's burglary jurisprudence following its recognition that this Court had "expanded significantly the reach of the burglary statute." *State v. Office of Pub. Defender ex rel. Muqqddin*, 2012-NMSC-029, ¶ 1, 285 P.3d 622. The Supreme Court stated that our historically broad construction of the burglary statute had "transformed [the crime] into an enhancement for any crime committed in any type of structure . . . as opposed to a punishment for a harmful entry." *Id.* ¶ 3. Along these lines, the Court also noted that it has become "common to add a burglary charge [although] the entry itself did not create or add any potential of greater harm than the completed crime." *Id.* By these statements, the Supreme Court signaled that burglary charges should be viewed with a more critical eye, both by the courts and by prosecutors, to ensure that the conduct being prosecuted is the type the burglary statute is meant to deter. *See id.* ¶ 59 ("When deciding whether or not a burglary charge is appropriate, courts and [d]istrict [a]ttorneys must consider whether or not this is the type of entry the Legislature intended Section 30-16-3 to deter.").

{8} In clarifying the modern purpose of the burglary statute, our Supreme Court noted that the traditional understanding of the purpose of the burglary statute "is to protect possessory rights with respect to structures and conveyances, and to define prohibited space." *Id.* ¶ 40 (internal quotation marks and citations omitted). The Court further clarified that fundamental "among the possessory interests that [the] burglary [statute] is designed to protect is the right to exclude." *Id.* ¶ 41. Implied within the right to exclude is "some notion of a privacy interest." *Id.* ¶ 42.

And it is that privacy interest, "the feeling of violation and vulnerability that occurs when a burglar invades" a personal or prohibited space, that our burglary statute is meant to protect against. *Id.* ¶ 43.

{9} Notwithstanding Costco's membership policies, we discern no particular security or privacy interest at stake inside Costco that justifies recognizing a departure from the general rule that we presume retail stores to be open to the public. Costco shoppers pay a membership fee, or they accompany someone into the store who has paid a fee, for the opportunity to purchase goods in bulk and for any alleged pricing benefits that inhere in such purchases. Once inside, the store is similar to any other retail store in that merchandise is presented for the shopping public to purchase. Simply put, Defendant's entry into this shopping area does not implicate "the feeling of violation and vulnerability" we associate with the crime of burglary. *Id.* Furthermore, there is no unique security interest served by Costco's membership policies. The burglary statute is not just designed to "deter trespass and theft, as those are prohibited by other laws." *Id.* ¶ 40. It is instead an offense against the security of a building or habitation. *Id.* ¶¶ 34, 42. Defendant's entry into Costco during business hours, albeit deceptive, granted him access to an otherwise open shopping area, as opposed to an area "where things are stored and personal items can be kept private." *Id.* ¶ 61. Thus, as far as the privacy and security interests of the store itself are concerned, we see no heightened or unique security or privacy interest that distinguishes Costco from other retail stores that we generally consider open to the public.

{10} Our decision is not intended to implicate this Court's decision in *Tower* because we do not equate Costco's "members only" sign with the individual notice in *Tower* that revoked the defendant's permission to be on the store's property and warned the defendant that a return to the store would result in criminal charges. 2002-NMCA-109, ¶ 2.

{11} However, following *Muqqddin*, we question the continuing validity of general statements in *Tower* indicating that a retail store's notice revoking a person's permission to be on the premises is sufficient by itself to make his or her presence unauthorized under our burglary statute. 2002-NMCA-109, ¶ 8 ("[W]here a defendant has notice that he is not authorized to enter a particular area and he, nevertheless, does

so with the intent to commit a theft, he can be charged with burglary."). Similarly, we question the continuing validity of other burglary cases decided before *Muqqddin* that recognize a distinction between areas of a retail store that are considered open or closed to the public. *See e.g., State v. Sanchez*, 1987-NMCA-035, ¶¶ 1, 2, 105 N.M. 619, 735 P.2d 536 (affirming the defendant's conviction for burglary based on the unauthorized entry into the loading dock area of an auto parts store with the intent to steal). Certainly, there are areas of retail stores that may have privacy or security interests distinct from general shopping areas. *See Office of Pub. Defender ex rel. Muqqddin*, 2012-NMSC-029, ¶ 42 (stating that the violation of privacy and security interests in certain structures is the evil that the modern burglary statute is intended to deter). But those cases and circumstances are not before us in the present case, and we therefore express no opinion as to their continuing precedential value.

{12} While we recognize that Costco's membership policies allow Costco to prohibit non-members from shopping or purchasing items in the store, we are unpersuaded that the membership policies are meant to deter the same types of entry our burglary statute protects against. Harmful entries are the entries sought to be prevented by the burglary statute. *Id.* ¶ 60. Arguably, a person's entry into any retail store with the intent to steal is always harmful. For example, California's burglary statute specifically penalizes such an entry. *See Cal. Penal Code* § 459 (West 2014) ("Every person who enters any . . . store . . . with intent to commit grand or petit larceny or any felony is guilty of burglary."); *People v. Frye*, 959 P.2d 183, 212 (Cal. 1998) ("The entry need not be a trespass to support a burglary conviction. Thus, a person who enters for a felonious purpose may be found guilty of burglary even if he enters with the owner's or occupant's consent.").

{13} But New Mexico's burglary statute is not so broad. If our Legislature intended to penalize as burglars all individuals who enter a retail store with the intent to shoplift, it could have structured our statute to reflect that intention. *See State v. Ortiz*, 1978-NMCA-074, ¶ 10, 92 N.M. 166, 584 P.2d 1306 ("New Mexico requires more than an entry with the requisite criminal intent. The entry must be unauthorized."). In the absence of such legislative direction, we are hesitant to extend our burglary stat-

ute to cover conduct covered by statutes addressing other, lesser crimes. *See Office of Pub. Defender ex rel. Muqqddin*, 2012-NMSC-029, ¶¶ 50-54 (discussing the judicial expansion of burglary past legislative intent, as evidenced by statutes penalizing the same behavior as misdemeanors); *Cf. Jackson v. State*, 259 So. 2d 739, 745 (Fla. Dist. Ct. App. 1972) (McNulty, J. specially concurring) (“Lawful entry, although with sinister design, does not become unlawful retroactively merely because a planned offense is thereafter committed. A shoplifter, for example, is a thief[,] not a burglar.”). In this case, Defendant’s bypassing of Costco’s membership policies in order to gain entry into Costco “did not create or add any potential of greater harm than the completed crime.” *Office of Pub. Defender ex rel. Muqqddin*, 2012-NMSC-029, ¶ 3.

Instead, it merely allowed him access to an otherwise open shopping area.

{14} In sum, we do not believe it is our legal system’s duty to police the boundaries of Costco’s membership policies. Using the membership policies alone to punish misdemeanor behavior as a felony would be a return to the judicial expansion of the crime of burglary that our Supreme Court recently reined in. “As a felony, burglary is a serious offense with serious consequences. . . . [It] is no petty crime.” *Id.* ¶ 60. It would be an absurd application of our burglary statute to punish those who shoplift from Sam’s Club more severely than those who shoplift from Walmart. *See State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022 (stating that we reject “formalistic and mechanical statutory construction when the results would

be absurd, unreasonable, or contrary to the spirit of the statute”). We therefore conclude that Costco’s membership policies do not negate the presumption that retail stores are open to the public. Thus, Defendant’s entry into Costco, while likely impermissible as far as Costco is concerned, was not “unauthorized” in terms of our burglary statute.

CONCLUSION

{15} For the foregoing reasons, we reverse Defendant’s conviction for commercial burglary.

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

CYNTHIA A. FRY, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

M. MONICA ZAMORA, Judge

Certiorari Granted, August 1, 2014, No. 34,764

From the New Mexico Court of Appeals

Opinion Number: 2014-NMCA-088

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.

CAMERON SLADE,
Defendant-Appellant
Docket No. 32,681 (filed April 15, 2014)

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

GARY L. CLINGMAN, District Judge

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Opinion

Michael D. Bustamante, Judge

{1} Defendant Cameron Slade was convicted of attempted first degree murder after attending a party that ended with one person dead and the victim, Brian Alexander, seriously injured from multiple gunshot wounds. On appeal, Defendant maintains that there was insufficient evidence to support the jury’s verdict. We agree that the State failed to meet its burden to demonstrate that Defendant acted willfully, deliberately, and with premeditated intent to kill the victim. We further conclude that because the State elected to charge attempted first degree murder and not to instruct the jury on attempted second degree murder, double jeopardy principles bar retrial of Defendant for the lesser included charge of attempted second degree murder. Defendant’s conviction is reversed and his sentence vacated.

BACKGROUND

{2} Defendant was charged with and convicted of attempted first degree murder for the shooting of Brian Alexander at a party in Hobbs, New Mexico. Alexander suffered multiple gunshot wounds. The other essential facts are as follows.

{3} After arriving at the party, Defendant waited outside the rented hall while his friend, J.J. Royal, and his cousin, Derrick Thomas, went inside. Defendant

was carrying a .38 revolver that he had borrowed from Royal, and Royal was carrying a semiautomatic .40 caliber pistol belonging to Defendant. Shortly after Royal and Thomas entered the hall, a fight erupted and Royal and Alexander stepped in to break it up. In an attempt to stop the fighting, the party’s organizers turned on the lights and approximately thirty guests began leaving the hall. Once outside, the fight resumed a few yards away from the entrance. Royal and Alexander also left the hall and began fighting each other on a ramp just outside the hall’s entrance. A friend and roommate of Alexander’s, Alton Granville, also joined in the fight. Thomas returned to his car, which was parked a few yards away from the entrance, where he encountered Defendant. After Thomas told Defendant about the fight, Defendant wordlessly walked toward the hall entrance. Thomas then got in his car, drove toward the hall entrance, and parked in the street near the ramp.

{4} Moments later, Royal heard gunshots from an unknown location. Believing he had been shot, Royal drew the semiautomatic .40 caliber pistol and shot Granville four times, killing him. Royal also shot at Alexander several times as Alexander was running down the ramp and away from the hall entrance. Royal fired a total of six times.

{5} Eyewitness testimony about Defendant’s whereabouts during the fighting was mixed. At trial, Alexander testified that he did not see Defendant at all during the shooting, but he had testified at a preliminary hearing that he had seen Defendant in the street. Thomas testified that he did not see Defendant near the fight and never saw him fire a weapon. Royal testified that he did not see Defendant shoot at any time.

{6} After the shooting began, Defendant was seen running with Royal away from the area of the fight, while people fired at them. Defendant and Royal then ran into an alley, pursued by people in a car who were also shooting at them. Royal exchanged weapons with Defendant and fired the .38 revolver at the vehicle one or two times.

{7} Meanwhile, Thomas, whose car had been hit with one bullet, returned to his apartment. Defendant arrived approximately thirty-five minutes later and hid the semiautomatic .40 caliber pistol in a bedroom closet. This weapon was later recovered from a house in Midland, Texas, belonging to a family member of Royal’s. The barrel of the weapon had been removed.

{8} Defendant and Thomas went to the Hobbs Police Department the next day to be interviewed. Defendant instructed Thomas to say that he did not know what had happened, and Defendant told the police during the interview that he went to the party only with Thomas, that he never saw Royal that night, that he stayed in his car most of the time he was there, and that he rode home with Thomas. Thomas testified that Defendant told him that Defendant had “shot . . . Alexander once.” Royal also told police during the investigation that Defendant had admitted shooting Alexander one time, but at trial denied that Defendant had admitted to the shooting.

{9} Several different kinds of bullets and/or casings were recovered from the scene. Six Remington brand .40 caliber casings, later determined to have been fired by the semiautomatic .40 caliber pistol carried by Royal, were found near where Granville was shot. The single bullet recovered from Alexander’s clothing was shown to have been fired by the same gun as two bullets found in Granville’s body, although the forensic examiner could not assess whether the three bullets had been fired by the semiautomatic .40 caliber pistol because the barrel was missing. Five Federal brand .40 caliber casings were also recovered

from the street near where Thomas and Defendant had parked. Analysis demonstrated that the Federal casings were all fired from the same weapon, but that weapon was never recovered. One 9 mm unfired bullet was also found at the scene. A bullet fragment found in Thomas's car was determined to be a different type than the bullets taken from Granville and Alexander. No .38 caliber bullets or casings were recovered from the scene or Alexander, although the .38 revolver itself was recovered from Royal's family member.

{10} After a jury trial, Defendant was convicted of attempted first degree murder and acquitted of tampering with evidence. He was sentenced to nine years of incarceration for attempted first degree murder and one year for the use of a firearm. Additional facts are included as necessary to our discussion.

DISCUSSION

{11} Defendant argues that (1) the State's evidence fails to demonstrate that he shot Alexander at all; and (2) there was also insufficient evidence that he acted with the requisite intent for first degree murder, i.e., deliberate intent to kill. Defendant also argues that the "corpus delicti rule" was violated because the testimony as to his admission was not trustworthy and there was no independent evidence that Defendant shot Alexander. Because the disposition of Defendant's sufficiency arguments makes it unnecessary, we do not reach the latter point.

A. The Evidence of Deliberate Intent Was Insufficient

{12} Defendant argues that the evidence presented at trial was "totally insufficient" to support a conclusion that Defendant "committed any criminal act" and that the jury's verdict rested on "mere guess or speculation." Because the jury was instructed on and returned a verdict as to attempted first degree murder, we focus our analysis on the sufficiency of the evidence pertinent to that charge. We agree with Defendant's assertion that the evidence did not support a conclusion that he acted with deliberate intent. We begin by discussing the standard of review of such an assertion, first generally and then in the context of attempted first degree murder. We then apply the standard of review to the State's arguments.

1. Standard of Review

{13} On appeal, the appellate courts "review sufficiency of the evidence . . . from a highly deferential standpoint." *State v. Dowling*, 2011-NMSC-016, ¶ 20, 150

N.M. 110, 257 P.3d 930. All evidence is "viewed in the light most favorable to the [s]tate, [and we] resolv[e] all conflicts and mak[e] all permissible inferences in favor of the jury's verdict." *Id.* We examine each essential element of the crimes charged and the evidence at trial "to ensure that a rational jury could have found the facts required for each element of the conviction beyond a reasonable doubt." *Id.* The appellate courts "do not search for inferences supporting a contrary verdict or re-weigh the evidence because this type of analysis would substitute an appellate court's judgment for that of the jury." *State v. Graham*, 2005-NMSC-004, ¶ 13, 137 N.M. 197, 109 P.3d 285; see *State v. McGhee*, 1985-NMSC-047, ¶ 17, 103 N.M. 100, 703 P.2d 877 ("The determination of the weight and effect of the evidence, including all reasonable inferences to be drawn from both the direct and circumstantial evidence is a matter reserved for determination by the trier of fact.").

{14} Although appellate courts are highly deferential to a jury's decisions, it is "the independent responsibility of the courts to ensure that the jury's decisions are supportable by evidence in the record, rather than mere guess or conjecture." *State v. Vigil*, 2010-NMSC-003, ¶ 4, 147 N.M. 537, 226 P.3d 636 (internal quotation marks and citation omitted); see UJI 14-6006 NMRA (stating that the "verdict should not be based on speculation, guess[,] or conjecture"). In other words, "[e]vidence from which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition." *Baca v. Bueno Foods*, 1988-NMCA-112, ¶ 15, 108 N.M. 98, 766 P.2d 1332. This principle necessarily requires a reviewing court to distinguish between conclusions based on speculation and those based on inferences, a task that is not always straightforward. See *Romero v. State*, 1991-NMCA-042, ¶ 38, 112 N.M. 291, 814 P.2d 1019 ("[T]he line between speculation and reasonable inference is not always clear."), *aff'd in part, rev'd in part*, 1991-NMSC-071, 112 N.M. 332, 815 P.2d 628. Nevertheless, this Court has made clear that an inference must be linked to a fact in evidence. "A reasonable inference is a conclusion arrived at by a process of reasoning [which is] a rational and logical deduction from facts admitted or established by the evidence[.]" *Samora v. Bradford*, 1970-NMCA-004, ¶ 6, 81 N.M. 205, 465 P.2d 88; see *Bowman v. Inc. Cnty. of Los Alamos*, 1985-NMCA-040, ¶ 9, 102

N.M. 660, 699 P.2d 133 ("An inference is more than a supposition or conjecture. It is a logical deduction from facts which are proven, and guess work is not a substitute therefor." (internal quotation marks and citation omitted)). An ultimate inference may not be based on a series of inferences. See *United States v. Pettigrew*, 77 F.3d 1500, 1521 (5th Cir. 1996) ("[A] verdict may not rest on . . . an overly attenuated piling of inference on inference."); *Hisey v. Cashway Supermarkets, Inc.*, 1967-NMSC-081, ¶ 7, 77 N.M. 638, 426 P.2d 784 ("It is true that [the] plaintiff is entitled to [resolution of] all inferences in [its] favor but such inferences must be reasonably based on facts established by the evidence, not upon conjecture or other inferences."). Finally, even when a permissible logical inference may be drawn from the facts, if it "must be buttressed by surmise and conjecture" in order to convict, the conviction cannot stand. *State v. Tovar*, 1982-NMSC-119, ¶ 8, 98 N.M. 655, 651 P.2d 1299 (internal quotation marks and citation omitted).

2. Application of the Standard of Review to This Case

{15} A review of the sufficiency of the evidence proceeds in a two-step fashion. "First we review the evidence . . . with deference to the trial court's resolution of factual conflicts and inferences[.]" *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756. "[T]hen we make a legal determination of whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt." *Id.* (internal quotation marks and citation omitted). Thus, our review necessarily occurs within the context of the crimes charged and the standard of proof at trial. See *State v. Wynn*, 2001-NMCA-020, ¶ 5, 130 N.M. 381, 24 P.3d 816 ("We must be satisfied that the evidence was sufficient to establish the facts essential to conviction with the level of certainty required by the applicable burden of proof."); *State v. Taylor*, 2000-NMCA-072, ¶ 18, 129 N.M. 376, 8 P.3d 863 (reviewing the evidence under a clear and convincing standard of proof).

{16} Here, because Defendant was charged with attempted first degree murder, the jury was instructed in the elements of both attempt and first degree murder. See UJI 14-2801 NMRA (attempt); UJI 14-201 NMRA (first degree murder). The murder statute defines first degree murder as a "willful, deliberate[,] and premeditated" killing. NMSA 1978, § 30-2-1(A)

(1) (1994). The jury instructions associated with this statute require the jury to find that the defendant acted with “deliberate intention.” UJI 14-201(2). Under these instructions, the State was required to prove that Defendant “deliberate[ly] inten[ded]” to kill Alexander. See *State v. Hernandez*, 1998-NMCA-167, ¶ 16, 126 N.M. 377, 970 P.2d 149 (stating that “the crime of attempt to commit a felony requires a specific intent to commit the underlying felony”).

{17} The element of “willful, deliberate[,] and premeditated” intent, called “deliberate intention” in the jury instruction, distinguishes first degree murder from second degree murder. See *State v. Tafoya*, 2012-NMSC-030, ¶ 37, 285 P.3d 604 (stating that the distinction is “whether a killing was deliberate and premeditated, or . . . only rash and impulsive” (internal quotation marks and citation omitted)). What constitutes “deliberate intention” is thus a critical and difficult inquiry in first degree murder cases. See *id.* ¶ 38 (“Although a seemingly straightforward distinction to draw, time has shown that sometimes this is far from the case.”). What is clear, however, is that “first[degree] murder is reserved for the most heinous and reprehensible of killings[.]” *Id.* (alteration, internal quotation marks, and citation omitted). “Also well settled is the understanding that, due to the steep penalty reserved for first degree murder convictions, the Legislature did not mean for first degree murder to serve as a catch-all category for every intentional killing.” *Id.* Consequently, “[t]o prove first[degree] murder, the [prosecution] has a heightened burden commensurate with the severity of punishment reserved for that crime.” *State v. Adonis*, 2008-NMSC-059, ¶ 14, 145 N.M. 102, 194 P.3d 717.

{18} Uniform Jury Instruction 14-201(2) provides insight into how to distinguish between “deliberate intention” and an impulsive act.

A deliberate intention refers to the state of mind of the defendant. A deliberate intention may be inferred from all of the facts and circumstances of the killing. The word deliberate means arrived at or determined upon as a result of careful thought and the weighing of the consideration for and against the proposed course of action. A calculated judgment and decision may be arrived at in a short period of time. A mere unconsidered and rash impulse, even though it includes an intent

to kill, is not a deliberate intention to kill. To constitute a deliberate killing, the slayer must weigh and consider the question of killing and his reasons for and against such a choice.

Id.

{19} As noted in *Tafoya*, this instruction embodies two seemingly opposite ideas: (1) that “deliberate intent” requires a “high level of requisite contemplation,” and (2) that such contemplation may occur in a short period of time. See 2012-NMSC-030, ¶ 41 (stating that “[t]he notion that careful reasoning can occur in a short period of time seems somewhat counterintuitive, and . . . impulsive killings are far more likely to be the product of an expedited decision-making process than are carefully contemplated killings”). The problems posed by these apparently conflicting ideas have been addressed by New Mexico cases and scholars for over twenty years. See, e.g., *State v. Garcia*, 1992-NMSC-048, ¶ 30, 114 N.M. 269, 837 P.2d 862 (“But what is a ‘short period of time’? A second or two? If so, then it is hard to see any principled distinction between an impulsive killing and one that is deliberate and premeditated.”); Leo M. Romero, *A Critique of the Willful, Deliberate, and Premeditated Formula for Distinguishing Between First and Second Degree Murder in New Mexico*, 18 N.M. L. Rev. 73, 87 (1988) (“To engage in careful thought and to weigh the considerations for and against the proposed course of action that might result in a killing must involve the passage of time; otherwise, the formation of the intent to kill would be impulsive and rash.” (footnote omitted)).

{20} The *Tafoya* Court resolved this conflict by “recogniz[ing] that it is possible in certain cases for a jury to reasonably infer from evidence presented that the deliberative process occurred within a short period of time—the crucial element being the presentation of other evidence.” 2012-NMSC-030, ¶ 42 (emphasis omitted). Hence, in those cases where deliberate intent was found to have been formed in a short period of time, there was “evidence beyond the temporal aspect of the crime in order to find sufficient evidence of deliberation.” *Id.* In other words, mere evidence of sufficient time to form a deliberate intent is not enough to prove first degree murder. Rather, there must be other evidence that the defendant actually formed such intent. See *Adonis*, 2008-NMSC-059, ¶ 22 (“While the retrieval of a weapon before killing a victim could potentially give a killer an

opportunity to deliberate, the burden remains on the [s]tate to produce evidence that tends to show that the killer actually did so.” (internal quotation marks and citation omitted)).

{21} Such other evidence of deliberate intent may include “the large number of wounds, the evidence of a prolonged struggle, the evidence of the defendant’s attitude toward the victim, and the defendant’s own statements[.]” *State v. Flores*, 2010-NMSC-002, ¶ 21, 147 N.M. 542, 226 P.3d 641; as well as “a carefully crafted plan to kill,” or “hot pursuit of the victim,” *Taylor*, 2000-NMCA-072, ¶ 22. On appeal, these factors are viewed as a whole. We avoid “pars[ing] the testimony and view[ing] the verdict only in light of the probative value of individual pieces of evidence.” *Graham*, 2005-NMSC-004, ¶ 13. Instead, although “each component may be insufficient to support the conviction when viewed alone [they may] form substantial . . . support for the conviction when viewed as a whole.” *State v. Rojo*, 1999-NMSC-001, ¶ 23, 126 N.M. 438, 971 P.2d 829. As discussed in more detail in our discussion of the State’s arguments, the corollary to this principle is that, although it is possible for individual pieces of evidence to permit an inference of deliberate intent, in many cases they must be analyzed in the context of other evidence. Cf. *Flores*, 2010-NMSC-002, ¶ 24 (discussing the “totality of the evidence in [the] record”); *Vigil*, 2010-NMSC-003, ¶ 18 (analyzing the state’s evidence “individually or collectively”).

3. The State Failed to Present Evidence That Defendant Acted Willfully, Deliberately, and With Premeditation

{22} We now assess the sufficiency of the evidence of deliberate intent in light of the foregoing discussion. The State contends that evidence of Defendant’s premeditated and deliberate intent to kill Alexander may be inferred from (1) Defendant’s alleged motive to kill Alexander; (2) Defendant’s “arrival at the scene with a weapon”; (3) Defendant’s “demeanor and conduct after the killing”; and (4) the number of shots fired. After careful examination of the evidence in the light most favorable to the State, we conclude that an inference of deliberate intent does not follow from the evidence and that the jury would have had to speculate in order to reach that conclusion. “This it may not do.” *Vigil*, 2010-NMSC-003, ¶ 20 (internal quotation marks and citation omitted).

Motive to Kill

{23} The State argues that the jury could have reasonably inferred that Defendant had a motive to kill Alexander based on (1) Defendant's knowledge of Royal's previous conflict with Alexander, or (2) Defendant's "personal animus" toward Alexander based on their membership in rival gangs. See *Rojo*, 1999-NMSC-001, ¶ 24 (concluding that the physical evidence supported deliberate intent "[w]hen combined with the evidence concerning [the d]efendant's motive for the killing"); *State v. Motes*, 1994-NMSC-115, ¶ 14, 118 N.M. 727, 885 P.2d 648 (considering evidence of motive in assessment of whether the defendant had a deliberate intent to kill). But there was no evidence indicating that Defendant knew of Royal's conflict with Alexander, or was a member of a gang. Indeed, Alexander testified that he and Defendant never had any conflict and that he could think of no reason Defendant would have to shoot at him. Royal testified that Defendant knew that Royal was in a gang, but also stated that he could not say whether Defendant knew that Royal had a conflict with Alexander.

{24} Although the State cites to several cases in which the New Mexico Supreme Court held that an inference of motive may be drawn from past conflict, each of these cases is inapposite because, in those cases, there was evidence that the defendant himself had a history of conflict with the victim. See *State v. Coffin*, 1999-NMSC-038, ¶ 76, 128 N.M. 192, 991 P.2d 477 (stating that the defendant shot the victim after the victim witnessed the defendant shoot the victim's father); *Rojo*, 1999-NMSC-001, ¶ 22 (stating that recent termination of relationship between the defendant and the victim provided evidence of motive); *State v. Salazar*, 1997-NMSC-044, ¶¶ 4, 46, 123 N.M. 778, 945 P.2d 996 (stating that the victim and the defendant had a "troubled" relationship and the defendant "pursued" the victim just before the killing); *Motes*, 1994-NMSC-115, ¶ 14 (stating that the defendant was "distracted about the breakup of a lengthy marriage" and did not dispute that there was sufficient motive). To conclude, as the State argues, that Defendant formed a deliberate intent to kill Alexander based on Royal's gang membership and past conflict with Alexander requires at least two inferences. The first is that Royal's previous conflict with Alexander and/or gang affiliation gave Royal a mo-

tive to kill Alexander. The second is that Defendant knew of Royal's motive and would act based on that knowledge. While "[i]t is true that [the] plaintiff is entitled to [resolution of] all inferences in [its] favor[,] such inferences must be reasonably based on facts established by the evidence, not upon conjecture or other inferences." *Hisey*, 1967-NMSC-081, ¶ 7; cf. *State v. Trujillo*, 2002-NMSC-005, ¶ 58, 131 N.M. 709, 42 P.3d 814 (acknowledging "the danger of 'guilt by association' when evidence of gang membership is introduced"); *State v. Torrez*, 2009-NMSC-029, ¶¶ 26, 32, 146 N.M. 331, 210 P.3d 228 (stating that "we are especially wary of the threat of guilt by association [where the d]efendant's intent was the primary issue to be resolved at trial" and holding that the value of testimony on a gang's practices "was outweighed by the danger of unfair prejudice [in part] because there was no evidence presented at trial that [the d]efendant was a gang member at the time of the shooting"). We conclude that the evidence establishing Royal's previous conflict with Alexander and gang membership is insufficient to prove that Defendant had a motive to kill Alexander.

Arrival at the Hall With a Weapon

{25} The State maintains that Defendant's "arrival at the scene [of a shooting] with a weapon" is evidence of planning that supports a conclusion that he formed a deliberate intent to kill Alexander. It analogizes the facts here to three cases in support of this argument. In *State v. Manus*, the defendant became angry when his wife was stopped by police on the street near their house, went inside to get his gun, and returned to shoot two officers, killing one. 1979-NMSC-035, ¶¶ 3, 10, 93 N.M. 95, 597 P.2d 280 ("[The defendant's] statement that he got angry when the police stopped his wife is evidence of motive. His statement that he went and got his gun, and the testimony of shotgun shells loose on his table next to boxes of shells, is evidence which the jury could infer manifested a plan or design."), *overruled on other grounds by Sells v. State*, 1982-NMSC-125, 98 N.M. 786, 653 P.2d 162. In *State v. Lucero*, the defendant took a loaded gun to a methadone clinic where his wife was receiving treatment and shot two people, one of whom he suspected of being a police informer. 1975-NMSC-061, ¶ 7, 88 N.M. 441, 541 P.2d 430. The defendant himself was not being treated by the clinic. *Id.* Both *Manus* and *Lucero* are distinguishable from this case because in both cases there was evidence that the defendant had a mo-

tive to kill *before* he obtained the weapon. The defendant in *Manus* sought out and loaded his gun only after he became angry about his wife's detention by police. 1979-NMSC-035, ¶¶ 3, 10. Similarly, in *Lucero*, the defendant suspected the decedent of being an informant before he took the gun to the clinic. 1975-NMSC-061, ¶ 7. Thus, in those cases, the presence of the weapons was evidence of the defendants' intent to act on their motives. In contrast, here, as discussed, there was no evidence that Defendant had a motive to kill Alexander when he decided to carry the gun.

{26} Furthermore, the specific circumstances here, without evidence of motive, do not permit an inference that Defendant planned to kill Alexander when he carried the .38 revolver to the hall. *State v. Leyba*, the third case on which the state relies, provides an example. 2012-NMSC-037, ¶¶ 2, 6, 289 P.3d 1215. In that case, the defendant, a security guard, shot and killed his girlfriend and her father and was convicted of first degree murder and felony murder. *Id.* The Supreme Court reversed on the ground that the girlfriend's diary had been improperly admitted at trial. *Id.* ¶ 45. The Court further determined that admission of the diary was not harmless error, since without it "the [prosecution] could offer only loosely circumstantial evidence to create an inference of willful deliberation." *Id.* ¶ 32. The Court rejected the prosecution's argument that the fact that the defendant brought his gun to the victims' apartment indicated a plan to kill them, stating that "[the d]efendant . . . regularly carried a gun while at work, and he was on break from work when he went to [the scene] . . . Obviously, [the d]efendant's possession of the gun is still relevant. Its probative value, however, is diminished by the specific circumstances of the case." *Id.* ¶ 33. In other words, in the context of the defendant's normal practice to carry a gun while on break from work, the mere presence of the weapon was insufficient to demonstrate a willful and planned deliberate intent to kill the victims. *Id.*

{27} Here, the probative value of the fact that Defendant was carrying a .38 revolver is similarly diminished by the circumstances of this case. Defendant does not dispute that he was carrying the revolver when he went to the hall. Thomas testified that he and Defendant had recently completed a concealed weapon permit class. Defendant therefore had a legal right to carry the weapon. See U.S. Const. amend II. Royal testified that he "always

had a gun.” The testimony indicated that other guests were carrying weapons and police found five Federal brand casings at the scene that were not fired by either the semiautomatic .40 pistol or the .38 revolver, indicating at least one other weapon was fired there. Indeed, the party organizers had arranged for guests to be searched for weapons before entering the hall, indicating that they anticipated people would be carrying weapons to the party. In this context, the fact that Defendant was also carrying a weapon is not enough evidence from which to infer that he planned to kill Alexander that night.

Conduct After the Shooting

{28} The State also argues that “[l]ooking further to [the] totality of the evidence, the jury could infer Defendant intended to kill . . . Alexander from Defendant’s demeanor and conduct after the [attempted] killing.” See *Flores*, 2010-NMSC-002, ¶ 23 (“Not only may [the d]efendant’s acts before and during the crime provide evidence of intent, evidence of flight or an attempt to deceive the police may prove consciousness of guilt.” (internal quotation marks and citation omitted)). It points to evidence that Defendant fled from the scene, hid the semiautomatic .40 pistol in a closet, lied to the police about the incident, and told Thomas not to talk about what happened. It also asserts that Defendant’s statements to the effect that he had shot Alexander one time could be reasonably interpreted by the jury to indicate intent. Even viewing this evidence in the light most favorable to the verdict, we are unpersuaded that this evidence supports the attempted first degree murder verdict because this evidence tells us nothing about Defendant’s state of mind *before* the shooting, which is the central inquiry of a crime based on premeditation.

{29} First, Defendant was shot at as he ran away from the hall. Under these circumstances, assigning some further reason or significance to Defendant’s flight amounts to pure speculation. Second, even if Defendant hid the gun, lied to police, or told Thomas not to talk, these factors, while potentially indicative of a consciousness of guilt as to some involvement in the shooting, are not indicative of Defendant’s state of mind before the shooting. See *Garcia*, 1992-NMSC-048, ¶ 31 (holding that the defendant’s attempt to conceal his identity from police “did not give rise to any inference as to his state of mind *before* the [killing]”).

{30} Similarly, Defendant’s statements that he shot Alexander one time do not indicate his state of mind before the shooting. They simply indicate that he shot at Alexander at least one time. Statements like this that indicate only that a shooting occurred cannot serve as the basis for an inference about whether Defendant premeditated the shooting. See *Adonis*, 2008-NMSC-059, ¶¶ 4, 25 (stating that the defendant’s statement that shooting the victim “will teach this guy a lesson not to park in my place no more” was “insufficient on its own to prove deliberation” absent corroborative evidence that the defendant “actually deliberated” before shooting the victim (internal quotation marks omitted)); *Garcia*, 1992-NMSC-048, ¶ 32 (holding that the defendant’s statement that he would kill the victim again “does not show that [the defendant] deliberated and intended to kill his victim before the [killing]”); *Taylor*, 2000-NMCA-072, ¶ 22 (stating that the defendant’s admission to police that he shot the victim was not evidence of his deliberate intent to do so where “[w]e have no statements before the shooting that he wanted to kill [the victim] or wished her dead”).

{31} The State relies on *State v. Duran* for the proposition that intent may be inferred from post-killing statements by a defendant. See 2006-NMSC-035, ¶ 9, 140 N.M. 94, 140 P.3d 515 (“[T]he statements made by [the d]efendant would also support a jury’s finding that the killing was deliberate” where the defendant admitted killing the victim). But the statements in *Duran* were not evidence of intent simply because the defendant admitted the killing. Rather, it was the content of the statements—“[I] straight up murdered some bitch”—that supported the jury’s finding of deliberate intent because the statements evinced the defendant’s attitude toward the victim. *Id.* The Court held that the jury could infer deliberate intent from the *combination* of the defendant’s attitude and the prolonged nature of the attack. *Id.* (“When combined with evidence of [the d]efendant’s attitude toward the victim, this evidence is sufficient to support the jury’s finding that the murder of the victim was done with deliberate intent.”). In contrast, Defendant’s statements tell us nothing about his attitude toward Alexander or his state of mind before the shooting. Thus, there is no basis in Defendant’s post-incident statements from which to draw an inference that Defendant formed a deliberate intent to kill Alexander.

Number of Shots Fired

{32} The State next argues that the fact that Alexander was shot five or six times supports an inference that Defendant acted willfully and deliberately and points to cases in which evidence that a shooter continued to attack the victim after the victim was incapacitated or began leaving the scene supported an inference of intent to kill. See, e.g., *State v. Riley*, 2010-NMSC-005, ¶ 20, 147 N.M. 557, 226 P.3d 656 (deliberate intent supported where the defendant “first shot from about thirty-eight feet away and then ran towards [the v]ictim and fired four or five more shots. [The d]efendant fired two of the shots from less than four inches from [the v]ictim’s body and then shot [the v]ictim one final time as [the v]ictim was attempting to escape from the car”), *overruled on other grounds by State v. Montoya*, 2013-NMSC-020, 306 P.3d 426; *State v. Sosa*, 2000-NMSC-036, ¶ 14, 129 N.M. 767, 14 P.3d 32 (stating that “a reasonable jury could determine that [the d]efendant intended to kill [the victim] when he went to [the victim’s] home armed with a gun, waited for him to arrive, and then shot the unarmed victim numerous times” and that “[it] also could have found that [the d]efendant formed the deliberate intent to kill [the victim] during the time between shooting him in the face on his porch and pursuing the wounded and defenseless victim into the street and shooting him from behind”); *State v. Cunningham*, 2000-NMSC-009, ¶¶ 2, 28, 128 N.M. 711, 998 P.2d 176 (stating that the defendant shot at the victim multiple times with one gun, then obtained another gun from his car and fired the fatal shot with it “after [the victim] was incapacitated and defenseless”); *Coffin*, 1999-NMSC-038, ¶¶ 5, 76 (stating that the defendant shot the victim four times in the back after the victim had turned to get in his car as the defendant requested); *State v. Garcia*, 1980-NMSC-141, ¶ 4, 95 N.M. 260, 620 P.2d 1285 (stating that the defendant shot the victim after the victim had turned to run away).

{33} We reject the State’s argument. Careful review of these cases reveals that the number of shots fired takes on significance only in the context of other evidence of intent. For instance, in *Garcia*, the “[d]efendant admitted that he had accomplished his purpose of warning or scaring the deceased before he aimed and fired” and before he fired, the defendant “looked at the bottom of the gun, held his arms up with the gun straight out in

both hands, crouched a bit, hesitated a moment[,] and then fired toward the deceased.” 1980-NMSC-141, ¶ 4. In *Coffin*, a witness testified that the defendant had told him that he had killed the victim because the victim had seen him kill another person. 1999-NMSC-038, ¶ 76. In *Cunningham*, there was testimony that there was “a volley of . . . seven or eight shots[,]” a pause, then “one other distinct shot,” as well as evidence that the defendant had threatened the victim. 2000-NMSC-009, ¶¶ 6, 28, 29.

{34} The importance of analysis of the number of shots in conjunction with the totality of the circumstances was highlighted in *Tafoya* and *Adonis*. In *Tafoya*, the defendant had been drinking and taking drugs with the victims before he, “without any evidence of motive, shot [one victim] and then in very quick succession shot [the other victim].” 2012-NMSC-030, ¶ 46. The defendant fired five times, possibly pausing between the fourth and fifth shots. *Id.* ¶ 47. Although the state argued that the defendant formed an intent to kill the second victim “in order to eliminate a potential eyewitness” to the first killing, *id.* ¶ 48, the Court held that there was insufficient evidence to support attempted first degree murder because while “the law allows for a jury to infer that a short amount of time can be sufficient to form deliberate intent,” there was no evidence that deliberate intent was in fact formed. *Id.* ¶ 54. Similarly, in *Adonis*, the defendant fired multiple shots at the victim, who was getting out of a car. 2008-NMSC-059, ¶ 4. The Court held that “multiple shots . . . alone do[] not indicate that [a d]efendant deliberated before shooting [the v]ictim” and contrasted the *Adonis* facts with those in *Sosa* and *Duran*, in which there were other “details reflecting on the accused’s state of mind.” *Adonis*, 2008-NMSC-059, ¶¶ 23, 24. Since in *Adonis* such other evidence was lacking, the Court held that the evidence of multiple shots was insufficient to demonstrate deliberate intent. *Id.* But see *State v. Jett*, 1991-NMSC-011, ¶ 10, 111 N.M. 309, 805 P.2d 78 (“Regardless of what happened at the time of the first shot, . . . once [the victim] was wounded [the defendant] then fired two additional shots into her head, chest, or abdomen. Therefore, even if he had fully established his struggle contention, [the defendant’s] admission to the subsequent shots convincingly supports the verdict of first degree murder.”). {35} The State devotes a substantial portion of its brief to discussion of the

number of possible shots that could have been fired by the semiautomatic .40 pistol carried by Royal and the .38 revolver carried by Defendant. The State argues that “[t]he evidence demonstrates . . . Royal could have fired no more than twice at . . . Alexander, and that one of those bullets may have struck the pavement rather than . . . Alexander. From this, it is apparent that . . . possibly five of the bullets that struck . . . Alexander were fired by Defendant.” The State’s analysis depends on a number of presumptions and inferences. Even if we accept the State’s assertions, however, when considered in context, the number of shots in this case is not indicative of deliberate, premeditated intent to kill. There is no dispute that Royal was engaged in a fistfight near the hall entrance, that others were also fighting nearby, that Defendant went toward the entrance after learning that Royal was fighting, that someone not engaged in the fight fired a gun into the air, and that thereafter multiple shots were fired. Royal testified that, upon hearing the first shot, he believed he had been shot and immediately began shooting Granville. He agreed with defense counsel that all of the shooting occurred very quickly. Alexander also agreed that he heard ten to fifteen shots fired very quickly. One witness stated there were six or seven shots, and another testified that the shots sounded “like fireworks.” Thomas testified that there were “at least a dozen” shots from multiple guns which “rang out” right after the first shot was fired into the air. In the context of this melee, and without other evidence of Defendant’s state of mind, the number of shots fired is insufficient to support an inference that Defendant deliberated before shooting Alexander.

{36} In summary, when considered individually and collectively and in the context of the “heightened burden” on the prosecution to prove a willful, deliberate, and premeditated killing, the state’s evidence in this case is insufficient to sustain an inference of deliberate intent beyond a reasonable doubt. See *Adonis*, 2008-NMSC-059, ¶ 14.

Double Jeopardy Bars Retrial

{37} Since we conclude that the evidence was too speculative to support the jury’s verdict, we next examine whether to remand for entry of judgment on attempted second degree murder, as the State requests, or for a new trial. We conclude that remand for resentencing for attempted second degree murder is inappropriate

here. We further conclude that retrial of Defendant for attempted second degree murder would violate his right to be free from double jeopardy. We explain.

{38} Generally, “appellate courts have the authority to remand a case for entry of judgment on the lesser included offense and resentencing rather than retrial when the evidence does not support the offense for which the defendant was convicted but does support a lesser included offense.” *State v. Haynie*, 1994-NMSC-001, ¶ 4, 116 N.M. 746, 867 P.2d 416; see *Tafoya*, 2012-NMSC-030, ¶ 35 (stating that attempted second degree murder is a lesser included offense of first degree murder); § 30-2-1(B) (“Murder in the second degree is a lesser included offense of the crime of murder in the first degree.”). In *State v. Villa*, however, the Supreme Court declined to extend the so-called “direct remand” rule to those cases where a conviction is reversed based on insufficient evidence to support the greater charge and the jury had not been instructed on the lesser included offense. 2004-NMSC-031, ¶¶ 12-13, 136 N.M. 367, 98 P.3d 1017. It held that the direct remand rule did not apply under these circumstances “because a conviction of an offense not presented to the jury would deprive the defendant of notice and an opportunity to defend against that charge and would be inconsistent with New Mexico law regarding jury instructions and preservation of error.” *Id.* ¶ 1.

{39} Here, the State did not request an instruction on attempted second degree murder. In charging and instructing only on attempted first degree murder, the State apparently “pursued an ‘all-or-nothing’ trial strategy,” a tactical decision we do not second-guess on appeal. *Id.* ¶ 14. Hence, direct remand for resentencing is not appropriate.

{40} Neither is a new trial. “Where a defendant successfully challenges his or her conviction on some basis other than insufficiency of the evidence, double jeopardy does not apply.” *State v. Gonzales (Gonzales I)*, 2011-NMCA-081, ¶ 34, 150 N.M. 494, 263 P.3d 271 (alteration, internal quotation marks, and citation omitted), *aff’d on other grounds*, 2013-NMSC-016, 301 P.3d 380; see U.S. Const. amend. V; N.M. Const. art. II, § 15. But because here we hold that the State’s evidence was insufficient to support a conviction for attempted first degree murder, double jeopardy applies. “The Double Jeopardy Clause protects against successive prosecutions for the same offense after acquittal or conviction and

against multiple criminal punishments for the same offense.” *State v. Gonzales (Gonzales II)*, 2013-NMSC-016, ¶ 15, 301 P.3d 380 (internal quotation marks and citation omitted). The prohibition includes “successive prosecutions for two offenses arising out of the same conduct if either one is a lesser[]included offense within the other.” *State v. Meadors*, 1995-NMSC-073, ¶ 5, 121 N.M. 38, 908 P.2d 731. In cases such as this one, “reversal of the greater offense . . . for insufficient evidence would also . . . ‘bar a subsequent indictment on the implicit lesser included offenses’ that were never presented to the jury.” *Gonzales II*, 2013-NMSC-016, ¶ 19 (alterations omitted) (quoting *United States v. Gooday*, 714 F.2d 80, 82 (9th Cir. 1983)).

{41} The State argues that dismissal of the charges against Defendant is improper be-

cause “the physical evidence presented at trial clearly established ‘Defendant knowingly created a strong probability of death or great bodily injury[,]’ the standard for establishing the offense of attempted second[]degree murder.” See § 30-2-1(B). It is possible that the evidence supports a conviction for attempted second degree murder. Nevertheless, the State pursued a trial strategy that did not include this charge. “As our courts have stated many times, the parties should be liable for the risks of their respective trial strategies. To do otherwise would be to violate the very essence of fairness at the core of the Double Jeopardy Clause.” *Gonzales I*, 2011-NMCA-081, ¶ 38 (internal quotation marks and citation omitted); see *Gonzales II*, 2013-NMSC-016, ¶ 33 (stating that “[tactical] decisions have consequences”).

We hold that since attempted second degree murder is a lesser included offense of attempted first degree murder and there was insufficient evidence of the greater offense, Defendant may not be retried for attempted second degree murder.

CONCLUSION

{42} For the foregoing reasons, we reverse Defendant’s conviction and remand to the district court to vacate his sentence.

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

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

JONATHAN B. SUTIN, Judge



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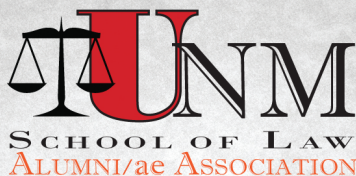
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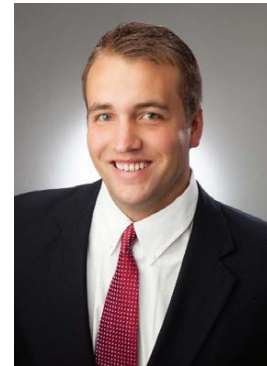


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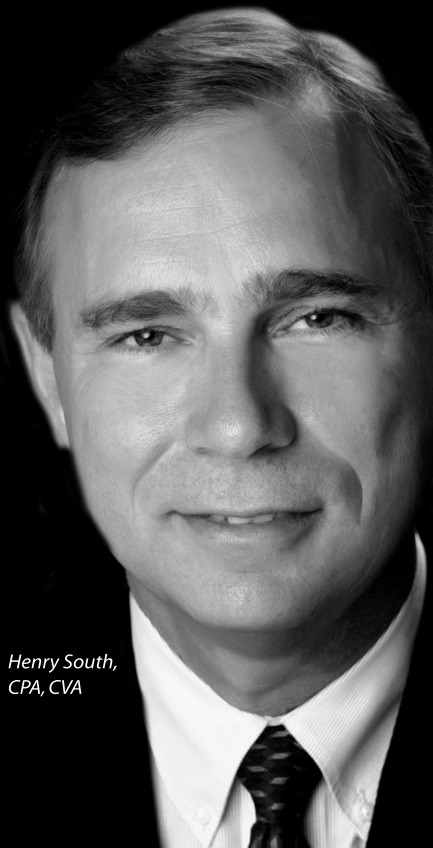
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Beall & Biehler is receiving applications for an attorney looking to practice in the area of civil litigation. Strong academic credentials, research and writing skills are required. A desire for success and professionalism is essential. Competitive compensation and collegial work environment provided. Attorneys with 3-8 years of experience are preferred. Send resume to managing attorney, 6715 Academy Road NE, Albuquerque, NM 87109 or egarcia@beall-biehler.com.

Assistant Attorney General

The Litigation Division of the Attorney General's Office, an EEO employer, is accepting resumes for an "exempt" (not classified) attorney for the position of Assistant Attorney General located in Santa Fe. The work will consist primarily of administrative prosecutions on behalf of various state licensing boards. A minimum of 5 years of civil litigation experience is required. NM bar admission is required. Salary is commensurate with experience. Resume, writing sample and minimum of three professional references must be received at the Office of the Attorney General by 5:00 p.m. on October 24, 2014. Send all information to: Roberta A Lujan, HR Administrator, PO Drawer 1508, Santa Fe, NM 87504-1508.

Council Policy Analyst II/ Legal Officer

The City of Albuquerque, Office of City Council Services, is seeking an attorney with a minimum of 2 years of legal experience as a judicial law clerk or in an area of administrative law representing or advising legislative bodies, boards, commissions, or government agencies; plus a minimum 2 years of experience (legal or non-legal) in policy analysis and policy development, government administration, or legislative analysis. This position will perform legal research, writing and analysis and provide general legal counsel and policy analysis on a variety of matters relating to municipal government and administrative processes at direction of the City Council's Chief Legal Officer and Director of Council Services. The starting salary range is from \$59,571.20 to the midpoint of \$75,587.20 per year depending on qualifications. For more information and to apply please visit www.cabq.gov/jobs prior to the closing date of October 20, 2014. Position requires background check. Contact the City of Albuquerque Human Resources Department with questions, 505-768-3700.

Associate Attorney

The Law Office of Jill V. Johnson Vigil LLC., a Las Cruces based family law practice, is seeking to expand and add an attorney to our team. Applicants should have 3-5 years experience in family law, be highly motivated, able to multi-task and manage a large case load. The Law Office of Jill V. Johnson Vigil LLC. offers a comfortable and friendly work environment with benefits and competitive salary commensurate with your qualifications and experience. Applicants must be in good standing with NM Bar and willing to relocate to Las Cruces. Spanish speaking is preferred, but not required. If you are ready for your corner office with a view please send your cover letter, resume and three references via email to careers@jvjvlaw.com before November 21, 2014. Check us out online at www.jvjvlaw.com and "like" us on Facebook Law Office of Jill V. Johnson Vigil.

Associate Attorney

Holt Mynatt Martínez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking an associate attorney with 0-3 years of experience to join our team. Duties would include providing legal analysis and advice, preparing and filing legal pleadings and documents, performing legal research, conducting pre-trial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and post-trial activities. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, contracts and municipal law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Excellent salary and benefits. Please send your cover letter, resume, writing sample and references to pw@hmm-law.com.

Office of the State Engineer/ Interstate Stream Commission (OSE/ ISC) State of New Mexico

The Litigation & Adjudication Program seeks two (2) New Mexico licensed attorneys: a Lawyer Advanced and a Lawyer Basic to work in the Administrative Litigation Unit to represent the Water Rights Division in administrative hearings and the State Engineer in appeals, enforcement actions, and other water rights matters. The positions are located in Santa Fe. Qualifications for Lawyer A: Juris Doctorate from an accredited law school and 5 years of relevant exp. Lawyer B: Juris Doctorate only. Job ID #: Lawyer - B #2014-05337 & Lawyer - A #2014-05341. Must apply on line at <http://www.spo.state.nm.us/> from 10/XX/2014 to 10/XX/2014.. The OSE/ISC is an Equal Opportunity Employer

Attorneys

Attorneys needed, 1 requires litigation exp. for court hearings &/or trials, mediations, discovery, mentoring newer attorneys...2nd attorney, 0-3 yrs exp. (exp. a plus). Must be able to multi-task in a high volume, fast-paced, reputable, rapidly growing law firm rep. numerous nationwide banking clients. Foreclosure & bankruptcy exp. a plus. Nice office in the Journal Center area & great training program - be a part of our new staff addition & building expansion! Join our successful & growing firm! Good benefits (hol, vac, sick, health, dent, retir. & more). Submit in conf. cover letter, resume, sal hist & req to resume@roselbrand.com

NM Judicial Branch Is Seeking an - AOC Magistrate Court Division Director

Oversee & manage the NM Magistrate Court Division (54 Magistrate Courts). Must be a law school graduate, licensed to practice law in NM or & have 5 yrs. exp. practicing law & 4 yrs. exp. in admin. &/or court mgmt., of which 3 yrs. must include contracts mgmt. & supervision. (Successful management with a large judicial system may substitute for the Attorney requirement). Salary pay range \$82K - \$128K plus extensive benefits packages including excellent retirement plan. For more information please go to the Judicial Branch web page at www.nmcourts.gov under Job Opportunities.

Office Manager/Paralegal

Santa Fe law firm seeks sharp, energetic full-time office manager/paralegal for the practice areas of environmental, water, natural resources, municipal and administrative law. Must be a self-starter, motivated, organized, detail-oriented and be able to work with minimal supervision. This position also includes receptionist, secretarial, word processing, filing, some accounting, and general all-around office duties necessary to maintain a successful practice. Must be proficient with court processes, filing and calendaring procedures. TimeSlips experience helpful. Santa Fe resident preferred. Salary commensurate with experience. Excellent benefits package. Please transmit cover letter and resume to santafelawfirm@gmail.com. All inquiries will be kept confidential.

Legal Secretary/Assistant

Do you have 3 or more years experience as a legal secretary? Are you familiar with civil litigation, court rules and filing procedures? Are your clerical, organization, computer and word processing skills exceptional? Then send your resume to this well respected, highly productive law firm at Kay@OnSiteHiring.com

Legal Secretary

Beall & Biehler, a law firm in NE Albuquerque, is seeking a legal secretary who is experienced in litigation matters, is dependable, efficient, organized and able to handle a busy caseload. Must be able to work independently. Salary DOE. Fax resume with references to 828-3900 or email to lcraig@beall-biehler.com.

NM Judicial Branch is Seeking an – AOC Public Information Officer / Legislative Liaison

Must have Bachelor's degree in English, journalism, mass media communications, public relations, advertising, marketing, public admin. or a related field & 7 yrs. exp. in public information, marketing, mass media, & public relations & 2 yrs. of exp. developing & coordinating legislative strategies. (Additional relevant education may sub for exp.) Salary pay range \$63K - \$98K plus extensive benefits packages including excellent retirement plan. For more information please go to the Judicial Branch web page at www.nmcourts.gov under Job Opportunities.

Legal Assistant

Legal Assistant needed for busy law firm to assist attorney in estate planning and transactional practice; Legal Assistant experience required, including preparing and organizing files, Probate filings and electronic filings, and preparation of initial drafts of estate planning and corporate documents. Candidate must be organized, detail-oriented and willing to work closely with clients, CPAs and other attorneys. 30 hrs week. Please send cover letter, references, resume and salary requirements and history to: Hurley Law Firm, c/o Office Manager, P.O. Box 31670, Albuquerque NM 87190 or email rejent@hurleyfirm.com.

Services

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Licensed attorney with 7 years appellate court experience is available for research and writing assignments, including motions, appellate briefs, issue research and memoranda of law. Contact Lorien House at 505-715-6566 or llhouselaw@gmail.com.

Contract Paralegal

Contract paralegal with variety of experience including litigation, discovery, and trial prep available for projects and long-term contracting. Extremely organized, reliable, and competent. References available upon request. Email me at reidindependentlegal@outlook.com for more information

Office Space

Office Space

2 spaces left, share space with 5 small law firms, collegial atmosphere, referrals possible, mentoring possible, perfect for new lawyer or lawyer starting a solo practice; plus dedicated workstation/file space; plus shared space: two conference rooms, restrooms, break room, waiting areas. Services include janitorial, reception, and all utilities, including phone and internet. Dedicated domain space available on server, copier available. Off street parking. \$550/mo. per office. Near UNM Law School, quick freeway access to downtown. Call Shelly at 265-6491.

620 Roma N.W.

620 ROMA N.W., located within two blocks of the three downtown courts. Rent includes utilities (except phones), fax, internet, janitorial service, copy machine, etc. All of this is included in the rent of \$550 per month. Up to three offices are available to choose from and you'll also have access to five conference rooms, a large waiting area, access to full library, receptionist to greet clients and take calls. Call 243-3751 for appointment to inspect.

Shared Office Space Available

Shared space with small law firm at Academy Office Park. Two furnished offices available. \$300/month includes janitorial service, internet, reception, and all utilities. Copier/scanner/fax available at cost. Shared areas include large reception area, two conference rooms, private bathrooms, break room and production area. Free parking and nice outdoor patio. Bookkeeping and/or billing services available at extra charge. Call Carrie at 821-5122.

Taos Conference and Office Space

Taos conference and office space available for depositions and mediations. Call Robyn 575-758-1225

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For Rent: Office Space

1 office, with or without secretarial station, at 500 Tijeras Ave. NW. Downtown, convenient to all courts, city and county offices. Offices are shared with 7-8 other lawyers. Office only rent is \$750/mo; Office and secretarial station rent is \$1000/mo. Includes reception, long distance telephone, use of two conference rooms, and on-site parking for staff and clients. Contact Reina at 505-842-1905

Office Space for Rent Available 1/1/15

Office including reception area, file storage space and 3 office rooms approximately 1300 square feet at 1801 Lomas Blvd, NW. Convenient to all courts, city and county offices and Old Town. Includes on site parking. Contact Bill Salmon 505-247-0328 or wcs@rspcnm.com.

Downtown Offices

One or two offices available for rent, including secretarial areas, at 2040 4th St. NW (I-40 & 4th St.), ABQ. Rent includes receptionist, use of conference rooms, high speed internet, phone system, free parking for staff and clients, use of copy machine, fax machine and employee lounge. Contact Jerry or George at 505-243-6721 or gbischof@dcbf.net.

For Lease in the Downtown Abq Historic Hudson House

One, Two, or Three attractive office spaces. The downstairs has separate kitchen and bathroom facilities. Rent includes utilities, telephone equipment, access to fax, copier, conference rooms, parking, library and reference materials. Referrals and co-counsel opportunities are possible. For more information, call Debra at the offices of Leonard DeLayo, Jr. PC at 505-243-3300.

Furnished Office Spaces Available:

Up-scale, full-service Executive offices available! All inclusive amenities: Furnished offices, Conference room, Receptionist, Internet, Phone, and Kitchen. Monthly rent, including support services ranging from \$800-\$1,200 a month. Convenient location with a five minute drive to the Courthouses. Contact Laurie at Albuquerque Business Law at (505) 246-2878 if interested!

Miscellaneous

Looking For Will

We are looking for the Will of Frank Lane, 83 of Albuquerque. It was prepared in Albuquerque in the 1990's most likely, but possibly 1980's. Please call Gayle Doty 505-259-6084 with ANY information



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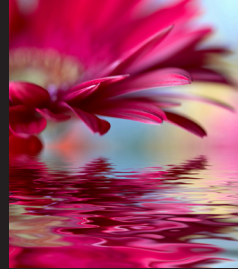


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