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2005-NMSC-006: Jerry Archuleta v. Santa Fe Police Department, ex rel., City of Santa Fe, Joanne Vigil Quintana, John Whitback, Danielle Wilson, and the Grievance Review Board

Special Insert:
CLE AT-A-GLANCE
Collaborative Divorce Training
The Albuquerque Convention Center
401 Second Street NW, Albuquerque, NM 87102
May 6 and 7, 2005 - 8:30 am to 5:00 pm
13.8 General and 1.2 Ethics MCLE Credits

A Special Two-Day Beginning and Intermediate Collaborative Divorce Training

Collaborative Divorce is a creative and rewarding practice that utilizes cooperative strategies rather than adversarial techniques and litigation to resolve family disputes. The application of a multi-disciplinary team of professionals to include attorneys, child specialists, divorce coaches, and financial consultants increases the quality and integrity of the results. The multi-disciplinary team model is geared toward the use of analysis and reasoning to solve problems, generate options, and create a positive context for settlement. The course is tailored for beginning and intermediate level collaborative practitioners. Even professionals seeking advanced collaborative skill development will benefit from this training.

This course focuses on utilizing a team of professionals to transform family law disputes into a collaborative process. Participants will be given an overview of the development of collaborative law and the requisite paradigm shifts necessary to ensure successful resolution of family conflict. Because the underpinning of a multi-disciplinary model is “team building,” everyone will be trained together. The focus will be on the clients and how they navigate through the process with the assistance of team members. This is a “how to” course which concentrates on the process and the application of the process. Lectures focus on understanding how each professional employs his or her knowledge and skill to support the client’s participation in the process. Demonstrations illustrate step by step progress through the process based on real case examples.

Training Team:
Robert R. Bordett, Nora Kalb Bushfield, and Susan Boyan
Collaborative Law Training Associates, Inc., Atlanta, Georgia

REGISTRATION FEES:
☐ $239 Members of NM Collaborative Practice Group
☐ $259 Regular Fee
☐ $299 After Tuesday, May 3, 2005 ☐ $259 for both days
☐ Attorneys Only—Please add $15 if you wish to have your MCLE credits filed with the New Mexico MCLE Board

Name_______________________________________________________________________
Firm/Organization _____________________________________________________________
Address _____________________________________________________________________
City/State/Zip ________________________________________________________________
Phone _________________    Fax ________________ E-mail _________________________

Payment Options: ☐ Check ☐ Cash ☐ Purchase Order # ______________________ (Copy attached)

Make Checks Payable to: “Institute of Public Law—CLE”  Sorry—No Credit Cards Accepted for this Program

Send registration form with payment to:
UNM School of Law, IPL-JEC, 1117 Stanford, NE • Albuquerque, NM 87131
Or Call (505) 277-1051 or Fax (505) 277-7064
For questions about the program content, please call Gretchen Walther, Esq. at (505) 889-8240

MCLE Credit Information - This course has been approved by the New Mexico MCLE Board for 13.8 General and 1.2 Ethics MCLE credits for each day of the program, based on a 50 minute hour. Attorneys will be provided with necessary forms to file for MCLE Credits in other states. A separate filing fee may be required.

Register Early! - Advance registration is recommended as space is limited for this seminar. If space and materials are available, paid registrations will be accepted at the door for a late fee of $20 in addition to the tuition amount above.

Cancellations & Refunds: We understand that your schedule may change at the last minute and prevent you from attending this seminar. A substitute may not attend for you, but if you find that you must cancel your registration, send us written cancellation by 5:00 pm, Tuesday, May 3, 2004, and we will issue you a refund, less $35 processing charge. Registrants failing to cancel and not attending the program will receive a set of course materials following the program.
Now Available

Public Information Brochures

Members can now order Public Information Brochures from the State Bar.

- Label or stamp with name or law firm to increase visibility.
- Hand to clients.

Order Public Information Brochures online at www.nmbar.org or photocopy, complete and return this form to: State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; or fax to: (505) 797-6019, Attn: Veronica Cordova.

Please order in quantities of 50 • Brochures may be mixed and matched in quantities of 10 • $10 per 50 brochures

☐ Adopting a Child Qty: ______
☐ Divorce and Separation in New Mexico Qty: ______
☐ How to Save on Attorney’s Fees Qty: ______
☐ Landlord/Tenant Relations Qty: ______
☐ Rights of Children in Juvenile Court Qty: ______
☐ Social Security and SSI Qty: ______
☐ What You Should Know About Lawyers and Their Fees Qty: ______

Subtotal

Please add $2.50 per 50 for mailing
(Orders may be picked up to avoid mailing charge)

Total Enclosed:

☐ Check (Make checks payable to the State Bar of New Mexico)

Please charge to: ☐ VISA ☐ MasterCard ☐ Discover ☐ American Express
Acct. #: ___________________________ Exp. Date: ______________

Mailing Address: ___________________________
Name: ___________________________
Contact Person/Telephone: ___________________________
Street Address: ___________________________
City/State/Zip: ___________________________

Please allow 2-4 weeks for delivery. For more information contact Veronica at (505) 797-6039.
Technology, e-Commerce and the Practice of Law: A 2005 Update

Friday, April 8, 2005 • 9 a.m. - 4:30 p.m. • Lunch Provided
State Bar Center, Albuquerque

6.1 General and 1.1 Ethics CLE Credits

Co-Sponsors: Real Property, Probate & Trust Section and the Business Law Section.

Presenters: Professor Raymond T. Nimner, University of Houston Law Center; Holly K. Towlie, Preston Gates & Ellis LLP, Seattle, Washington; Professor Michael J. Norwood, UNM School of Law; Colin Adams, Esq., PNMs; Dale Alverson, M.D., Medical Director, UNM HCI Center for TeleHealth; Terry Boulanger, President, New Mexico Technet; Leonard Sanchez, Miller Stratvert PA; and James Widland, Esq., Miller Stratvert PA.

This special seminar features two leading international authorities in the area of technology and e-commerce law, Raymond T. Nimner, Professor of Law at the University of Houston Law Center and Holly K. Towlie of Preston Gates & Ellis LLP in Seattle. Nimner is the author of a national award winning book, The Law of Computer Technology, as well as numerous other books and articles. He is a frequent speaker internationally in the areas of intellectual property, business and technology law. He is listed in both the International Who’s Who of Internet Lawyers and the International Who’s Who of Business Lawyers and was instrumental in the drafting of UCC Article 2 and the Uniform Computer Information Transactions Act (UCITA). Towlie, leading author of The Law of Electronic Commercial Transactions (with co-author Nimner), a treatise that explains the legal landscape of commercial law when electronics or electronic settings are involved is listed in the International Who’s Who of e-Commerce Lawyers. Towlie also speaks and is published nationally and internationally on e-commerce, licensing and online services having commented on behalf of trade organizations and other clients for more than a decade and federal legislation regarding computer information transactions, e-commerce, software licensing and proposed revisions to UCC Article 2 and consumer protection rules. Also included in this seminar are exciting sessions on security issues and ethical responsibilities, as well as updates on joint ventures, drafting, telemedicine and technology trends in New Mexico.

☑ Standard and Non-Attorney $199 ☐ Government & Paralegal $189
☐ Real Property, Probate & Trust Section Member $179
☐ Business Law Section Member $179

Workplace Dynamics and the Practice Of Law

Friday, April 8, 2005 • 9 a.m. - 4 p.m. • Lunch Provided
State Bar Center, Albuquerque • 3.2 General, 2.0 Professionalism and 1.2 Ethics Credits

Co-Sponsors: SBNM Committee on Women and the Legal Profession and the Northern New Mexico Women’s Bar Association (NNMWBA)

Presenters: Hon. Pamela B. Minzer, New Mexico Supreme Court; Hon. Celia Foy Castillo, New Mexico Court of Appeals; Dawn Bergen, Esq., Lewis and Roca, Jantz Dawe, Janet Clow, Esq., Rubin Katz Law Firm, PC; Hope Eckert, Esq.; Tracy Hughes, Esq., New Mexico Environmental Department; Anita Miller, Esq.; Senator H. Diane Snyder; Vincent M. Cramer, Winchester Consulting Group, Winchester, Massachusetts

This full-day seminar will begin by examining ways in which attendees can potentially enrich their practice by focusing upon the law practice management principles of two successful solo practitioners. Also offered will be an Oxford Round Table presentation by New Mexico Senator H. Diane Snyder, a panel discussion on discrimination and the law as moderated by New Mexico Supreme Court Justice Pamela B. Minzer, and sessions by featured speaker Vince M. Cramer, author of Cramer’s Cube and the founder of Winchester Consulting Group. Cramer will discuss how “being diverse” versus “practicing diversity” potentially impacts legal organizations (professionalism) and the potential ramifications of insights over ideas in the practice of law (ethics). His work has received increasing attention by a variety of prominent international publications for its unique look at this controversial subject.

☐ Standard and Non-Attorney $159 ☐ Government & Paralegal $149
☐ Committee on Women and NNMWBA Members $139

FOUR WAYS TO REGISTER

PHONE: (505) 797-6020, Monday - Friday, 9 a.m. - 4 p.m. (Please have credit card information ready)
FAX: (505) 797-6071, Open 24 hours
INTERNET: www.nmbar.org, click CLE, then Educational Programs
MAIL: CLE, PO Box 92860, Albuquerque, NM 87199

Name _____________________________
NM Bar # __________________________
Street _____________________________
City/State/Zip _______________________
Phone _____________________________
Fax _____________________________
Email _____________________________
Program Title _______________________
Program Date _______________________
Program Location ___________________
Program Cost
☐ Purchase Order (Must be attached to be registered)
☐ Check enclosed _________________
Make check payable to: CLE of the NM State Bar Foundation
☐ VISA ☐ MC ☐ American Express ☐ Discover
Credit Card # _______________________
Exp. Date _________________________
Authorized Signature _______________
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• Professionalism Tip •

With respect to opposing parties and their counsel:
I will not serve motions and pleadings that will unfairly limit the other
party’s opportunity to respond.

Meetings

State Bar Workshops

April

11

Lawyer Referral for the Elderly
Workshop, 10 a.m., Laguna Rainbow,
Laguna Pueblo

12

Lawyer Referral for the Elderly
Workshop, 10:15 a.m., Bonnie Dallas Senior
Center, Farmington

13

Lawyer Referral for the Elderly
Workshop, 10:30 a.m., Aztec Senior Center,
Aztec

14

Estate Planning & Probate Workshop,
6 p.m., Raton Convention Center, Raton

18

Consumer Debt/Bankruptcy* & Family
Law Workshop, 6 p.m., Roswell Chamber
of Commerce, Roswell

20

Living Wills Workshop, 6 p.m., State Bar
Center

*Consumer Debt/Bankruptcy workshops include a
one-on-one consultation with an attorney. For more
information, call Marilyn Kelley at (505) 797-6048 or
1-800-876-6227; or visit the SBNM Web site, www.
nmbar.org.

April

Public Legal Education Committee,
11 a.m., State Bar Center

Attorneys Support Group, 5:30 p.m.,
First Methodist Church

Employment and Labor Law Section
Board of Directors, noon, State Bar
Center

Quality of Life Committee, noon,
State Bar Center

Trial Practice Section Board of
Directors, 4:30 p.m., State Bar Center

Board of Bar Commissioners, noon,
State Bar Center

Legal Services and Programs Pro Bono
Subcommittee, 1:30, Metro Court

International and Immigration Law
Section Board of Directors, 1:30 p.m.,
State Bar Center
NOTICES

COURT NEWS
NM Supreme Court
Notice on Address Changes

All New Mexico attorneys must notify the Supreme Court and the State Bar of any changes in address or telephone number. Information may be e-mailed to the Supreme Court, Suprvm@nmcourts.com; faxed to (505) 827-4837; or mailed to PO Box 848, Santa Fe, NM 87504-0848.

Information may be e-mailed to the State Bar, at address@nmbar.org; faxed to (505) 828-3755; or mailed to the State Bar, PO Box 92860, Albuquerque, NM 87199-2860. The State Bar keeps both mailing and directory addresses. Contact the State Bar for more information.

Judicial Performance Evaluation Commission
Upcoming Meeting

The Judicial Performance Evaluation Commission was created by the New Mexico Supreme Court for the purpose of providing voters with fair, responsible and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers. The commission’s next meeting will be from 8 a.m. to 5 p.m., April 21 and 22 at the Third Judicial District Court, 201 W. Picacho, Suite A, Las Cruces. For more information on the commission or with regard to the next scheduled meeting, call (505) 827-4960.

NM Board of Legal Specialization
Comments Solicited

The following attorney is applying for certification as a specialist in the area of law identified. Application is made under the New Mexico Board of Legal Specialization, Rules 19-101 through 19-312 NMRA. The Rules of the New Mexico Board of Legal Specialization provide that the names of those seeking to qualify shall be released for publication. Further, any person may comment upon the applicant’s qualifications within 30 days after the independent inquiry and review process carried on by the board and appropriate specialty committee. The board and specialty committee encourage attorneys and others to comment upon any applicant. Address comments to New Mexico Board of Legal Specialization, PO Box 92860, Albuquerque, NM 87199.

Local Government Law
Harry S. Connelly, Jr.

NM Court of Appeals
Notice Regarding Appointment of Counsel in Indigent Criminal Cases

The Appellate Division of the Public Defender Department is currently experiencing a serious backlog of work. The backlog has resulted in increasingly slow production and a concomitant increase in requests for continuances. The backlog is adversely affecting the work of the Court of Appeals. Therefore, upon the application of a party or upon the Court’s own motion, the New Mexico Court of Appeals will order appointment of private attorneys to represent indigent criminal defendants on appeal in cases before the Court of Appeals. The assignment of counsel may be made from a panel of attorneys maintained by the Court. The appointment will remain effective throughout all states of a proceeding in the Court, including the filing of a petition for writ of certiorari to the New Mexico Supreme Court, if requested to do so by the client. No reimbursement of compensation will be paid to the appointed attorney. Such representation may fulfill an attorney’s aspiration for pro bono publico legal services set forth in Rule 16-601 of the Rules of Professional Conduct. Attorneys interested in being on the Court’s panel should send a letter to Patricia C. Rivera Wallace, Chief Appellate Court Clerk, New Mexico Court of Appeals, PO Box 2004, Santa Fe, NM 87502.

First Judicial District Court

Destruction of Exhibits

Pursuant to the Supreme Court Retention and Disposition Schedule, the First Judicial District Court will destroy exhibits filed with the court, in criminal, civil, children’s court, domestic, incompetency/mental health and probate cases for years 1970 to 1987. Counsel for parties are advised that exhibits can be retrieved through April 9. Attorneys who may have cases with exhibits may verify exhibit information with the Special Services Division, (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by order of the court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by order of the court.

Second Judicial District Court
Children’s Court Monthly Judges’ and Managers’ Meeting

The Second Judicial District Children’s Court will hold its monthly judges’ and managers’ meeting at noon, April 5 in the court room, John E. Brown Juvenile Justice Center, 5100 Second St. NW, Albuquerque. Children’s Court judges and managers of court-related agencies will meet to discuss ongoing concerns and projects. For a copy of the meeting agenda, call (505) 841-7644.

Family Court Open Meetings

Second Judicial District Family Court judges will hold open meetings to discuss ongoing concerns and projects at noon on the first business Monday of each month in the Conference Center located on the third floor of the Bernalillo County Courthouse. The next regular meeting will be held on April 4. Contact Sandra Partida, (505) 841-7531, for more information or to have an item placed on the agenda.

Mailing Procedures

The Second Judicial District Court receives a large volume of mail every day simply addressed to Clerk of the Court, Juanita M. Duran, or Second Judicial District Court. This mail has to be opened and sorted before it can be routed to the proper clerk’s division. In order to expedite processing of paperwork and insure it is delivered to the correct division, follow one of these sample addresses when mailing in paperwork or requests:

ATTN: Civil (or whatever case category)
Second Judicial District Court
PO Box 488
Albuquerque, NM 87103

or

ATTN: Civil (or whatever case category)
Second Judicial District Court
400 Lomas Blvd. NW
Albuquerque, NM 87102

Children’s Court cases should be mailed to:
Children’s Court
5100 2nd St. NW
Albuquerque, NM 87107

Case Categories:
Civil (CV, PB, PQ, SL, MS)
Foreclosure, student loans, name changes,
license restoration, probate, personal injury, property damage, malpractice, civil restraining orders
Criminal (CR, ER, LR, CS, SW)
Criminal, extraditions, lower court appeals, search warrants
Domestic Relations (DR, DV)
Divorce, custody, paternity, child support, domestic violence restraining orders
Children's Court (JR, YR, JV, JQ, SA, SQ, SI, JS)
Juvenile delinquent, youthful offender, emancipation, kinship, guardianship, abuse and neglect, termination of parental rights, adoptions (minors and adults), mental health

Fifth Judicial District Court
Announcement of Vacancy
A vacancy on the Fifth Judicial District Court exists as of April 1 upon the swearing in of The Honorable William P. Lynch to the Federal Magistrate Court. The chair of the Fifth Judicial District Nominating Commission solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site: http://lawschool.unm.edu/judsel/index.htm, or e-mailed/faxed/mailed to you by calling Reva Chapman, (505) 277-4700. The deadline for applications has been set for 5 p.m., April 13. Applications received after that date are not considered.

Bernalillo County Metropolitan Court
Judges’ Meeting
The Bernalillo County Metropolitan Court judges will conduct their monthly judges’ meeting at noon, April 12 in the Courtroom 960 of the Metropolitan Court Building, 401 Lomas NW, Albuquerque. The meeting is open to the public. Contact the Court Administrator’s Office, (505) 841-8105 for more information or if accommodations for individuals with disabilities are needed.

STATE BAR NEWS
Attorney Support Group
Monthly Meeting
The next Attorney Support Group meeting will be held at 5:30 p.m., April 4 at the First United Methodist Church at Fourth and Lead SW in Albuquerque. The group meets regularly on the first Monday of the month.
For more information, contact Bill Stratvert, (505) 242-6845.

Bankruptcy Law Section
Sixth Annual Golf Outing
The State Bar Bankruptcy Law Section will host the sixth annual golf outing at 12:30 p.m., May 6 at Four Hills Country Club, Albuquerque. The cost of $65 includes: a round of golf and cart and hors d’oeuvres. A cash bar will also be available.

Non-golfing section members are encouraged to attend the reception following the tournament at 5 p.m., also at the Four Hills Country Club, 911 Four Hills Rd. SE, Albuquerque. For more information or to register, contact Gerald Velarde, (505) 248-1828 or jerryvelarde@hotmail.com. Reservations must be made by May 2. Participants must provide their own golf clubs.

Board of Bar Commissioners
Meeting Agenda
The State Bar Board of Bar Commissioners will meet at noon, April 7 at the State Bar Center in Albuquerque. The meeting agenda follows:
1. Approval of Jan. 28, 2005 meeting minutes
2. Finance committee report
3. Acceptance of financials
4. Executive session
5. Executive session report
6. Personnel Committee report
7. Bylaws/Policy Committee report
8. Board of Editors meeting report and request for survey
9. Approval of new Alliance Program participant
10. Approval of Client Protection Fund recommendation
11. Update on Unauthorized Practice of Law Statute amendments
12. Compensation survey
13. Committee reports
A. Lawyers Assistance Committee
B. Committee on Women and the Legal Profession
14. Update on malpractice insurance reporting/certification to Supreme Court
15. President’s report
A. NCBP Midyear Meeting and Western States Bar Conference
B. 2005 Professionalism Program
C. Legal Specialization Board letter to Supreme Court
D. Update on Common Cause request regarding support of judicial public financing bill
E. Equal Access to Justice meeting
F. National Client Protection Organization April 1 workshop
G. May BBC meeting
H. Update on licensing for building I. Other
16. Executive Director’s report
17. Report on Twelfth Judicial District Bar Association meeting
18. Division Reports
A. Young Lawyers Division
B. Senior Lawyers Division
C. Paralegal Division
19. New business

Employment and Labor Law Section
Board Meetings Open to Section Members
The Employment and Labor Law Section Board of Directors welcomes section members to attend its meetings. The board meets at noon on the first Wednesday of each month at the State Bar Center. The next meeting will be April 6. (Lunch is not provided.) For information about the section, visit the State Bar Web site, www.nmbar.org, or call Cindy Lovato-Farmer, section chair, (505) 667-3766.

Paralegal Division
Brownbag CLE
Bring a lunch and join the Paralegal Division for their monthly CLE from noon to 1 p.m., April 13 at the State Bar Center. Registration begins at 11:30 a.m. and the cost is $16 for attorneys and $15 for paralegals, legal assistants and secretaries. The topic for this month’s CLE is “Internet Legal Research: Find it Fast in 2005,” presented by Ronald Wheeler, the UNM Law School librarian. For more information, contact Debi Shoemaker-Scott, (505) 243-1443.

Pro Hac Vice
The New Mexico Supreme Court has established a new rule for practice by non-admitted Lawyers before state courts (Pro Hac Vice). The new Rule 24-106 NMRA, is effective for cases filed on or after Jan. 20, 2005. Attorneys authorized to practice law before the highest court of record in any state or territory wishing to enter an appearance, either in person or on court papers, in a New Mexico civil case should consult the new rule. This rule requires non-admitted lawyers to file a registration certificate with
the State Bar of New Mexico, file an affidavit with the court and pay a nonrefundable fee of $250. Fees collected under this rule will be used to support legal services for the poor. For more information on the rule, a copy of the registration certificate and sample affidavit, please go to www.nmbar.org. For questions about compliance with the rule, please contact Richard Spinello, Esq., Director of Public and Legal Services, State Bar of New Mexico, (505) 797-6059, (800) 876-6227, or rspinello@nmbar.org.

Public Law Section Board Meeting

The next Public Law Section board meeting will be held at noon, April 14 in the Risk Management Division Legal Bureau Conference Room on the first floor of the Montoya Building, 1100 St. Frances Dr., Santa Fe. Contact Deborah Moll, (505) 827-2000, for more information.

Public Lawyer Award

The State Bar Public Law Section will present its annual Public Lawyer of the Year Award to Paul Biderman at 4 p.m., May 2 at the State Capitol Rotunda in Santa Fe. A reception will follow.

The Public Lawyer of the Year Award is given to recognize the accomplishments of an attorney in the public sector, including significant length of service in government, excellence as an attorney, acting as a role model for other public lawyers and serving charitable institutions or non-profit entities connected with the practice of law. Additionally, a recipient’s character and dedication to public law and public service further the integrity and repute of the legal profession.

Since coming to New Mexico in 1970, immediately after his graduation from NYU Law School, Biderman has devoted almost his entire career to public interest work in behalf of many causes, including the interests of consumers, ethnic minorities, the developmentally disabled, victims of domestic violence, and the environment. He has worked diligently on these problems not only through litigation, but also through the building of strong and lasting institutions of government, through teaching, and through service on non-profit organization boards.

Biderman has worked as a DNA Legal Services attorney, in private practice representing many consumer clients, in the Attorney General’s Consumer Division, as Northern New Mexico Legal Services’ litigation director, as the secretary of the Energy and Minerals Department, and is currently an associate director for the UNM School of Law’s Institute of Public Law.

New Mexico Supreme Court Chief Justice Richard C. Bosson and State Bar President Charles J. Vigil will speak at the event along with a representative from the state Attorney General’s Office.

Technology Utilization Committee

WORD Up! Workshop

Increase your Microsoft Word skill with a free, one-hour workshop, “WORD Up!” from 5 to 6 p.m., April 21 at the State Bar Center, Albuquerque. Learn about organizing files, improving documents, using format, mail merge, symbols and shortcut keys. Paralegals, attorneys and support staff are all invited to attend this free event presented by the State Bar Technology Utilization Committee. The class is limited to 20 attendees. Reservations should be made to Mary Patrick, CLE Program Coordinator, (505) 797-6059. CLE credit will not be provided.

Other Bars

Albuquerque Bar Association Bench and Bar Reception

The Albuquerque Bar Association will host a Bench and Bar Reception to honor newly appointed judges from 5 to 7:30 p.m., April 20 at the Albuquerque Museum. This free event includes admittance to the El Alma de España (The Soul of Spain) exhibit. El Alma de España is a tribute to the 300th anniversary of the founding of the City of Albuquerque by the Spanish. Paintings from The Prado in Madrid and the Bellas Artes in Valencia will join other works lent by prestigious American institutions. This exhibition is devoted solely to Spanish Masters and consists of nearly 100 works, both paintings and sculpture, and highlights the range of art produced in Spain during the late 16th to early 19th centuries. This will be a wonderful venue to honor this year’s new judges.

Law Day Luncheon

The Law Day luncheon will be held on May 2 at the Hyatt Regency Hotel. Delano Lewis, former ambassador to South Africa and head of National Public Radio (NPR) will be the featured speaker. Visit Albuquerque Bar Association’s Web site at abqbar.com for information or to register for Law Day. If your firm or organization is interested in being a co-sponsor, please contact Jeanne Adams, (505) 842-1151 or jadams@abqbar.com.

Monthly Membership Luncheon

The Albuquerque Bar Association will be holding its monthly membership luncheon at noon, April 5 at the Albuquerque Petroleum Club. This month’s topic is a legislative summary with members of New Mexico legislature. There is 1.0 general CLE credit that is optional. Lunch Cost is $20 members/$25 non-members; Lunch and CLE $40 members/$55 non-members. Register online at www.abqbar.com; by e-mail, abqbar@abqbar.com or by phone, (505) 243-2615.

First Judicial District Bar Association Monthly Lunch

The First Judicial District Bar Association will host a panel of First Judicial District Judges at its monthly lunch meeting April 18 at the Hotel St. Francis in Santa Fe. For more information about membership or the lunch event, contact Dana Hardy, (505) 466-2548 or dhardy@simonsfirm.com.

Tonali Legal Alliance of Women

The Tonali Legal Alliance of Women will hold its next meeting at noon, April 7 at the Casa Luna Restaurant, 1340 East Lohman Avenue, Las Cruces. Tonali is an association of women involved with the legal profession, including judges, lawyers, court staff, legal assistants, interpreters and educators. For more information, call Shari Allison, (505) 527-6930.

Other News

UNM Law Library

Spring Semester Hours

Hours through May 15:

Mon. – Thurs.  8 a.m. to 11 p.m.
Fri.  8 a.m. to 6 p.m.
Sat.  9 a.m. to 6 p.m.
Sun.  noon to 11 p.m.

Reference:

Mon. – Thurs.  9 a.m. to 9 p.m.
Fri.  9 a.m. to 5 p.m.
Sat.  noon to 4 p.m.
Sun.  noon to 4 p.m.

Extended Exam Hours:

May 1  9 a.m. to 10 p.m.
May 7  8 a.m. to 10 p.m.
May 8  9 a.m. to 10 p.m.
May 14  8 a.m. to 10 p.m.
4 DaVinci Code of Scientific Evidence
Teleconference
TRT, Inc.
2.4 G
(800) 672-6253
www.trtle.com

5 Affirmative Action: Developments for Employment and Business Practitioners
Teleseminar
Center for Legal Education of NMSBF
1.2 G
(505) 797-6020
www.nmbar.org

5 Justice in the Jury Room
Teleconference
TRT, Inc.
2.4 E
(800) 672-6253
www.trtle.com

6 Sanctions and the Goldilocks Test - Too Soft, Too Hard, or Just Right?
Teleconference
TRT, Inc.
2.4 E
(800) 672-6253
www.trtle.com

7 Annual Spring Employee Benefits Law and Practice Update
ALN - Satellite Broadcast
State Bar Center, Albuquerque
Center for Legal Education of NMSBF
4.4 G
(505) 797-6020

7 Managing Absent Employees So It Doesn’t Make You Absent-minded
Teleconference
TRT, Inc.
2.4 G
(800) 672-6253
www.trtle.com

7 Student Athletic Programs and the Law
Albuquerque
Lorman Education Services
7.2 G
(715) 833-3940
www.lorman.com

8 Technology, e-Commerce and the Practice of Law
State Bar Center, Albuquerque
Real Property, Probate & Trust Section, Business Law Section and Center for Legal Education of NMSBF
6.1 G, 1.1 E
(505) 797-6020
www.nmbar.org

8 What Puts Government Lawyers in a Class by Themselve
Teleconference
TRT, Inc.
2.4 E
(800) 672-6253
www.trtle.com

8 Workplace Dynamics and the Practice of Law
State Bar Center, Albuquerque
Committee on Women and the Legal Profession, NNMWBA and Center for Legal Education of NMSBF
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### WRITS OF CERTIORARI

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT

Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court

PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

**Effective March 31, 2005**

#### Petitions for Writ of Certiorari Filed and Pending:

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**AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT**

Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court  
PO Box 848  •  Santa Fé, NM 87504-0848  •  (505) 827-4860

**Effective March 31, 2005**

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(Submission = date of oral argument or briefs-only submission)  

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Clerk Certificates
From the New Mexico Supreme Court

Clerk’s Certificate
of Name, Address,
and/or Telephone
Changes

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OPINION

PAMELA B. MINZNER, JUSTICE

{1} The State has appealed from a decision of the district court granting Defendant’s motion to suppress evidence discovered in his home during a warrantless, non-consensual search by police. The State appealed pursuant to NMSA 1978, Section 39-3-3(B)(2) (1972). The district court suppressed the evidence on the ground that the community caretaker exception to the warrant requirement was not applicable. The Court of Appeals affirmed the district court in a Memorandum Opinion. See State v. Ryon, No. 23,318 (N.M. Ct. App. Jan. 6, 2004). Both courts relied on State v. Nemeth, 2001-NMCA-029, 130 N.M. 261, 23 P.3d 936. We granted certiorari to determine whether the community caretaker exception permits police to enter a dwelling without a warrant or consent during a criminal investigation. We hold that in narrowly limited circumstances police may enter a home without a warrant or consent during a criminal investigation under the emergency assistance doctrine. To the extent that it may be read to preclude an emergency entry during a criminal investigation, we overrule Nemeth. We also clarify the scope of the community caretaker exception. We affirm the district court’s decision to suppress evidence, because the police lacked the objective reasonableness required to enter and search Defendant’s home.

I.

{2} The facts are taken from testimony at the suppression hearing and are mostly undisputed. At approximately 8:20 p.m. on January 18, 2002, Deputy Sanchez and Deputy Benavidez of the Bernalillo County Sheriff’s Department responded to a dispatch to 128 Alameda N.W. in Albuquerque, New Mexico for a “911 call welfare check” with a “possible stabbing victim.” When she arrived, Sanchez saw a man and a woman outside the home. The man, Isaac Atencio, was bleeding heavily from the head, and the woman, Barbara Hoover, was crying and yelling. Sanchez noticed that there was blood all over, but that Atencio was conscious and walking. As she was checking his stab wounds, both Atencio and Hoover told the deputy that Defendant, Hoover’s boyfriend, was responsible for the stabbing and that he lived down the street at 9047 Fourth Street. Sergeant Sanchez and a field investigator arrived at the scene within minutes to assist the deputies. While the deputy was helping Atencio and trying to calm Hoover, the sergeant and Benavidez checked the home to ensure that there were no other victims inside and that Defendant was no longer present. Rescue personnel arrived within about five minutes and transported Atencio to the hospital.

{3} As Deputy Sanchez approached the field investigator, a man who was covered in blood approached, identified himself as Defendant, and stated that he wanted to tell her what happened. He was immediately handcuffed, frisked, and Mirandized. He told her that he and Hoover were fighting, and when Atencio tried to intervene, he withdrew his knife and stabbed Atencio. No weapons were found on Defendant. It was about 8:45-8:50 p.m. when Defendant returned to the crime scene.1

{4} Shortly after deputies arrived at the crime scene on Alameda, Deputies Pepin, Neel, and Hampsten, who were in separate patrol cars and heard the first dispatch, responded to a second dispatch to locate the suspect whom they were told might be en route to his

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1 Defendant’s mother testified that she and her husband saw Defendant walking away from his home at about 8:30 p.m. when they were returning to their home, which is on the same property as Defendant’s home. At about 9:00 p.m., she saw police at her son’s home. Defendant agreed that it takes about 15 minutes to walk from his house to Hoover’s house on Alameda where he was arrested.
home at 9047 Fourth Street. As they were driving to that location, a third dispatcher informed them that the suspect might have a head or face injury, although the source of this information was not given.\(^2\) The State estimates that deputies arrived at Defendant’s home, which was one of two residences on the property, between 8:25 and 8:30 p.m. Hampsten was to watch the side and back of the home, while Pepin and Neel tried to contact Defendant inside. Both Pepin and Neel testified that the front door was ajar, and the lights were on. Pepin recalled that the door was open “six, seven inches to a foot,” while Neel said it was just barely cracked open, about “an inch to an inch and a half.” The deputies knocked and announced, called inside, but received no response. Both deputies testified that they went to the home looking for the suspect. Thinking it was odd for the door to be open with no one answering, and knowing that he “may have sustained a head wound of some sort,” Pepin testified that they decided to enter the home to see if anybody was injured inside, and that it was “pretty cold outside.” On cross examination, he admitted that he went into the home looking for the suspect, but then clarified on redirect, that he entered the home looking for a person with a “possible head injury.” Neel testified that they entered the home to look for the suspect and to see if he needed medical attention: “My job there was to make sure that no one else in that house needed aid fast. . . . My job was to locate the suspect.”

\(^5\) According to the deputies, the home was small; to the left of the front door was a hall that led to a bathroom and bedroom, and to the right was a living room with a kitchen in it. After walking down the hall, from room to room, and finding no one inside, they returned to the front of the house. On the way out, they noticed in the kitchen sink a “folding-type knife” that appeared to be stained with blood. Without touching anything, the deputies secured the home and obtained a search warrant.

\(^6\) Defendant filed two motions to suppress evidence “seized or observed” by deputies during the warrantless search of his home and from a search warrant that was executed later that night. Both motions alleged that the evidence was obtained in violation of the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution.\(^3\) In response to the first motion, the State argued that the warrantless search of the home was reasonable under the community caretaker exception. It did not argue that the officers had probable cause together with exigent circumstances to enter Defendant’s home without a warrant. Deputies Sanchez, Pepin, and Neel testified at the suppression hearing, and an offer of proof was made on behalf of Defendant and his mother to establish the relevant time frames.

\(^7\) After the hearing, the district court applied the community caretaker exception articulated in Nemeth and found the search was unlawful. 2001-NMCA-029, ¶¶ 37-38. The court noted that under Nemeth, the exception “can be invoked only ‘when the police are not engaged in crime-solving activities.’” See id. ¶ 38 (quoting People v. Davis, 497 N.W. 2d 910, 920 (Mich. 1993)). Applying the law to the facts, the court concluded:

> The Officers were clearly responding to the Defendant’s home to locate a criminal suspect. At least in substantial part they were engaged in crime-solving activities. The facts within their knowledge were lacking any indication about source of the information, the likelihood that an injury occurred, the nature or severity of the injury, if any, how it occurred and when it might have occurred in relation to their response. Much of this information (known to fellow officers a short distance away) would have been important to formation of a reasonable belief that the Defendant was in need of immediate medical attention. In summary, the facts within the entering officers’ knowledge were not sufficient to elevate their primary role to that of community caretaking.

\(^8\) In affirming the district court decision to suppress the evidence, the Court of Appeals concluded that entry into a private home without a warrant is reasonable only if the State establishes that entry was necessitated by exigent circumstances, an emergency situation, or articulable public safety reasons, and that the officer was acting without reasonable suspicion of criminal activity as a community caretaker. Ryon, No. 23,318, slip. op. at 5. The Court of Appeals concluded that the community caretaker exception was not applicable because the deputies in this case were investigating a crime in which Defendant was a suspect. Id. at 6-7. Applying a deferential standard of review, the court held that there was substantial evidence to support the district court finding that the entering deputies did not have enough information to form a reasonable belief that Defendant was in immediate need of medical attention. Id. We granted the State’s petition for certiorari. See Rule 12-502 NMRA 2004.

\(^9\) On appeal to this Court the State argues that the Court of Appeals should have reviewed the reasonableness issue de novo and that both courts misstated the law by relying on Nemeth and applying a “strict, no investigative purpose test.” The State contends that the community caretaker exception applies to this case. The State acknowledges that some courts distinguish the exception from a principle sometimes described as the emergency assistance doctrine but contends that the entry was lawful under either the exception or the doctrine. In his answer brief, Defendant argues that the State did not show facts sufficient to satisfy the community caretaker exception. At oral argument, however, he argued that a warrantless entry into the home is lawful only in an emergency. We believe that both parties agree that the proper test for this case was established in People v. Mitchell, 347 N.E.2d 607 (N.Y. 1976). The parties disagree on the application of that test.

\(^10\) The State advocates the Nemeth “good faith” standard, i.e. that the entry must not have been a pretext to find evidence or arrest a

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\(^2\) Sanchez testified that the sergeant most likely relayed any information to dispatch.

\(^3\) While Defendant indicated that the New Mexico constitution was violated by these searches, he did not argue that our state constitution offered more protection than the federal constitution. We limit our discussion to a Fourth Amendment analysis. State v. Gomez, 1997-NMSC-006, ¶¶ 22-23, 122 N.M. 777, 932 P.2d 1.
suspect. The State notes the district court found that the deputies were acting in good faith. Defendant advocates the Mitchell “primary motivation” standard and notes the district court found that the deputies were primarily engaged in crime-solving activities. The State contends that the facts and circumstances in this case require a conclusion that an emergency entry was objectively reasonable. Defendant contends, on the other hand, that the State failed to show an objectively reasonable entry, because it was unclear to the officers whether Defendant was injured. We address the community caretaker exception, the emergency assistance doctrine, the relationship of one to the other, and clarify the test to be applied. We then apply that test.

II.

{11} Appellate courts review a district court’s decision to suppress evidence based on the legality of a search as a mixed question of fact and law. State v. Vandenberg, 2003-NMSC-030, ¶ 17, 134 N.M. 566, 81 P.3d 19. We view the facts in the light most favorable to the prevailing party and defer to the district court’s findings of historical facts and witness credibility when supported by substantial evidence. State v. Urioste, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964; State v. Jason L., 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856. The legality of a search, however, ultimately turns on the question of reasonableness. Vandenberg, 2003-NMSC-030, ¶ 19. Although our inquiry is necessarily fact-based it compels a careful balancing of constitutional values, which extends beyond fact-finding, “to shape the parameters of police conduct by placing the constitutional requirement of reasonableness in factual context . . . .” Vandenberg, 2003-NMSC-030, ¶ 19 (quoting State v. Attaway, 117 N.M. 141, 145, 870 P.2d 103, 107 (1994)). We thus review the determination of reasonableness de novo. Id. In light of the arguments and decisions below, we take this opportunity to clarify the scope of the community caretaker exception. Our analysis necessarily begins with a review of the development of that exception.

A.

{12} The community caretaker exception was first recognized by the United States Supreme Court in Cady v. Dombrowski, 413 U.S. 433 (1973). The defendant, a police officer from Chicago, was involved in a one-car accident in his rental car near a small Wisconsin town, and later was arrested for DWI. Id. at 435-36. The car was towed to a yard several miles away where it was left unguarded. Id. at 436. The next day, an officer searched the car and its trunk to retrieve the defendant’s service revolver based on his belief that Chicago police were required to carry their revolvers at all times and a public safety concern that the unattended vehicle might be vandalized and the gun stolen. Id. at 437. He discovered several blood-stained articles; that discovery led to the discovery of more incriminating evidence and ultimately to the defendant’s murder conviction. Id. at 434, 437-39. The United States Supreme Court held that the initial warrantless search of the trunk was lawful under the Fourth Amendment. “[T]he justification [for the warrantless search] . . . was [an] immediate and constitutionally reasonable . . . concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle.” Id. at 447.

{13} In Cady the Court announced two important principles. It recognized that police have dual roles as criminal investigators and community caretakers. They function as community caretakers, for example, in assisting those whose vehicles are disabled. This function is “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” Id. at 441. The Court also recognized that there is a “constitutional difference between searches of and seizures from houses . . . and from vehicles [that] stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in ‘plain view’ of evidence . . . of a crime . . . .” Id. at 442.

{14} The United States Supreme Court has never applied the community caretaker exception to a police-citizen encounter in the home, but it has approved in dicta an emergency assistance doctrine that would permit officers to search a home without a warrant, even if they were engaged in crime-solving activities. Mincey v. Arizona, 437 U.S. 385, 392 (1978); see Thompson v. Louisiana, 469 U.S. 17, 21 (1984) (per curiam); McDonald v. United States, 335 U.S. 451, 454 (1948) (“This is not a case where the officers, passing on the street, hear a shot and a cry for help and demand entrance in the name of the law.”). In Mincey, an officer was shot while undercover agents were executing a narcotics raid at the defendant’s apartment. Id. at 387. The agents conducted a quick sweep of the apartment for additional victims, locating two wounded victims and the defendant. Id. After summoning medical help and securing the residence, they waited, without searching any further, for additional officers to take over the investigation. Id. at 388. Homicide detectives, who arrived shortly after, embarked on a four-day “exhaustive and intrusive” search of the home without a warrant, which led to the defendant’s murder conviction. Id. at 388-89.

{15} The United States Supreme Court addressed the issue of whether a warrant is required when police confront an emergency situation presented by a possible homicide. Id. at 392. Although it declined to find that there were any exigent circumstances present to justify the four-day search, the Court recognized an emergency assistance doctrine and described the circumstances that would make a warrantless entry and search of a home reasonable under the Fourth Amendment. Id. at 392-94.

We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. . . . “The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.” Wayne v. United States, 115 U.S. App. D.C. 234, 241, 318 F.2d 205, 212, [1963] (opinion of Burger, J.). And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities.

But a warrantless search must be “strictly circumscribed by the exigencies which justify its initiation.” Terry v. Ohio, 392 U.S. [11,] 25-26 [1968].

Id. at 392-93 (footnotes and citations other than quoted authorities omitted). The Court cautioned that “warrants are generally required to search a person’s home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” Id. at 393-94 (quoting McDonald, 335 U.S. at 456)
permitted “only in carefully thought-through and clearly justi-
(emphasis added).

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[{16} In New Mexico we have recognized that officers may stop a vehicle on a public road without probable cause or reasonable suspicion on the basis of a “specific, articulable safety concern” in their capacity as community caretakers. State v. Reynolds, 117 N.M. 23, 868 P.2d 668, 670 (Ct. App. 1993), rev’d on other grounds, 119 N.M. 383, 890 P.2d 1315 (1995). On appeal, this Court noted that “[i]n a community caretaker case, reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree of and nature of the intrusion upon the privacy of the citizen.” Reynolds, 119 N.M. at 388, 890 P.2d at 1320 (alteration in original) (quoting State v. Ellenbecker, 464 N.W.2d 427, 429 (Wis. Ct. App. 1990)). We had no occasion in Reynolds, however, to examine the parameters of this doctrine, since the lawfulness of the stop was uncontroversed. Id. at 384, 890 P.3d at 1316.

[{17} Until recently, use of the community caretaker exception in New Mexico has been limited to the “public servant” function of police, under Cady, in their encounters with citizens and vehicles on public roads. See generally State v. Walters, 1997-NMCA-013, 123 N.M. 88, 934 P.2d 282; Apodaca v. State Taxation and Revenue Dep’t, 118 N.M. 624, 884 P.2d 515 (Ct. App. 1994); see also Reynolds, 117 N.M. at 25, 868 P.2d at 670. We have viewed community caretaking as a principle outside the scope of the Fourth Amendment, reasoning that the initial police-citizen encounter was consensual and motivated by a concern for public safety, rather than a criminal investigation. Jason L., 2000-NMSC-018, ¶ 14 (“Community caretaking encounters are consensual, beyond the scope of the Fourth Amendment.”) Thus, “police do not need any justification to approach a person and ask that individual questions . . . .”)

B.

(18) Nemeth was a departure from our earlier application of the community caretaker exception. In Nemeth, the Court of Appeals broadly extended the exception to justify a forceful entry into the home by police without a warrant, provided they enter solely out of concern for the person’s welfare. 2001-NMCA-029, ¶¶ 21, 38. In Nemeth, police were investigating a possible suicide attempt and were told by dispatch that defendant had threatened to hurt herself during an argument over the telephone with her boyfriend. Id. ¶ 3. When they arrived the home was dark, there were no signs of activity, and there were keys on the front porch with a note that they belonged to “Mike Wells.” Id. ¶ 5. When the officers knocked at the front door, and when she did not respond, they walked around the home knocking on windows and doors. Id. ¶¶ 5-6. When she finally opened the door, the defendant was crying and appeared to be very distraught and emotional. Id. ¶ 6. Her agitation level escalated as she twice demanded they leave, assured them that she was not a danger to herself or anyone, and attempted to close the door. Id. ¶¶ 6-7. Concerned for her welfare, the officers forced their way into her home. Id. ¶¶ 7-8. Once inside, she grew more agitated, and finally shoved her identification cards into one officer’s mouth. Id. ¶ 13.

(19) In Nemeth, the Court of Appeals made two important observations with which we agree. First, the Court recognized that in some cases the community caretaker exception might apply to a nonconsensual police-citizen encounter implicating the Fourth Amendment. Id. ¶¶ 26-27. Next, it emphasized an intrusion into the privacy and sanctity of the home must be guarded with “careful vigilance” and permitted “only in carefully thought-through and clearly justifiable circumstances.” Id. ¶ 30. We agree with both observations.

(20) In Jason L., we cited State v. Walters, 1997-NMCA-013, for the basic premise that, “community caretaking encounters are consensual, beyond the scope of the Fourth Amendment,” although we did not decide that case under the community caretaker exception. 2000-NMSC-018, ¶ 14, 22. We acknowledge that our description of community caretaking encounters was wrong. Walters involved a voluntary road-side encounter between an officer and defendant that led to reasonable suspicion for defendant’s arrest for driving while intoxicated; the court upheld the encounter as lawful under the community caretaker exception. Id. ¶¶ 25-26. Relying on State v. Lopez, 109 N.M. 169, 171, 783 P.2d 479, 481 (Ct. App. 1989), the court characterized the community caretaker exception as a voluntary police-citizen encounter that fell outside the Fourth Amendment. Id. ¶ 10. Characterization of the exception as a voluntary or consensual encounter was wrong. Lopez was not a community caretaker encounter case; the three types of police-citizen encounters it described (consensual encounters, investigatory detentions, and arrests) occur when police are investigating a crime or a suspected crime. Consent is an exception to the Fourth Amendment probable cause and reasonable suspicion requirements that police often rely on to investigate suspected criminal activity. See, e.g., State v. Gutierrez, 2004-NMSC-081, ¶ 6, 136 NM. 18, 94 P.3d 18 (recognizing consensual searches and seizures are one exception to the warrant requirement). When police act as community caretakers, however, the existence of reasonable suspicion or grounds for probable cause are not appropriate inquiries. Davis, 497 N.W.2d at 919 (citing Cady, 413 U.S. at 441). The reasonableness of such conduct depends on whether the legal standards that justify the community caretaker exception are satisfied, which as the Court of Appeals has observed, depends on particular facts, which may or may not involve a consensual encounter. Nemeth, 2000-NMCA-029, ¶ 26. Jason L. and Walters ought not be viewed as limiting the community caretaker exception to voluntary or consensual police-citizen encounters. Nemeth was correct to question our characterization of the exception.

(21) Nemeth was also correct to emphasize the constitutional significance of a warrantless intrusion into a home. Id. ¶ 30. Yet we are concerned Nemeth does not convey the urgency required to make a warrantless intrusion into a home, even to provide emergency assistance, reasonable. In its analysis, the court concluded that the terms “community caretaker,” “emergency aid or assistance,” and “exigent circumstances” doctrines are basically different descriptions of the same community caretaker function. Id. ¶¶ 32-36. Although the court seemed to analyze the case under the emergency assistance doctrine, it ultimately held that when police enter a home in response to a suicide, they are performing a more generic community caretaker function, the primary characteristic of which is the absence of concern by police about violations of the law. Id. ¶¶ 34-40. No warrant was required, because the entry was a welfare check or a “public service” that fit squarely within the community caretaker doctrine, since the officers reasonably believed defendant was suicidal, in need of immediate assistance, and they limited the intrusion by only trying to ascertain whether they could assist her. Id. ¶ 40.

(22) We agree with Nemeth to the extent it holds that police are constitutionally permitted to enter a home without a warrant or consent in some situations. We disagree with Nemeth that all three terms are simply different descriptions of a general community caretaker function. Although there are similarities, there are also differences. Each term is unique; each term reflects a particular search or seizure;
each term has become associated with a different test, one that enables a court to assess its applicability to a particular search and seizure. The decision in *Nemeth* to conflate the emergency assistance doctrine with the broader community caretaker exception and hold that officers were merely performing a welfare check or “public service” is understandable, but we are not persuaded the decision is appropriate. Cf. *Laney*, 117 S.W.3d at 860 (observing that the existence of various titles for “the different doctrines setting forth exceptions to the warrant requirements of the Fourth Amendment” result “in confusion over the proper application of the correct doctrine”). We conclude the relevant test for the emergency assistance doctrine is unique; a search within a home raises unique concerns. The facts of this case require analysis under the test appropriate to the emergency assistance doctrine.

C.

The touchstone of search and seizure analysis is whether a person has a constitutionally recognized expectation of privacy. See *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J. concurring). Where a constitutional expectation of privacy is established in the home, a warrantless search or seizure is reasonable on the basis of the community caretaker exception, we must measure “the public need and interest furthered by the police conduct against the degree of and nature of the intrusion upon the privacy of the citizen.” *Reynolds*, 119 N.M. at 388, 890 P.2d at 1320 (quoting Ellenbecker, 464 N.W.2d at 429).

In balancing these interests, three distinct doctrines under the community caretaker exception have emerged: “1) the emergency aid doctrine, established in *Mincey*; 2) the automobile impoundment and inventory doctrine, first conceived in *Cady*, and later expanded upon in [*South Dakota v. Opperman*, 428 U.S. 364, 366 (1976)]; and, 3) the community caretaking doctrine, or public servant doctrine, established in *Cady* . . .” *Laney v. State*, 117 S.W.3d 854, 860 (Tex. Crim. App. 2003). See generally Mary E. Naumann, Note, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 Am. J. Crim. L. 325, 330-31 (1999) (defining the community caretaker exception as “broad” and encompassing three versions, each requiring a different test). The common characteristic of these doctrines is that the intrusion upon privacy occurs while police are acting as community caretakers; their actions are motivated by “a desire to aid victims rather than investigate criminals.” *State v. Mountford*, 769 A.2d 639, 645 (Vt. 2000); *Laney*, 117 S.W.3d at 860-61. Although each of these doctrines has evolved in recognition of the important “community caretaker function” law enforcement officers provide, “it does not follow that all searches resulting from such activities should be judged by the same standard.” *Davis*, 487 N.W.2d at 920. As the privacy expectation increases, the caretaker functions that justify an intrusion by police must be judged by a different standard. *Id.* at 921.

[While both the community caretaker or public servant doctrine and the emergency aid doctrine] are based on an officer’s reasonable belief in the need to act pursuant to his or her “community caretaking functions,” the emergency doctrine is limited to the functions of protecting or preserving life or avoiding serious injury.

*Laney*, 117 S.W.3d at 861. The emergency doctrine applies to, but is not limited to, warrantless intrusions into “personal residences.” *Id.* The *Cady* community caretaker or public servant doctrine “deals primarily with warrantless searches and seizures of automobiles,” *id.*, and “the officer might or might not believe there is a difficulty requiring his general assistance.” *Id.* (quoting Naumann, *supra* at 333-34). Since there is a lesser privacy expectation in a vehicle on a public highway, an involuntary search or seizure there is judged by a lower standard of reasonableness: a specific and articulable concern for public safety requiring the officer’s general assistance. See *Apostaca*, 118 N.M. at 626, 884 P.2d at 517; *Reynolds*, 117 N.M. at 25, 868 P.2d at 670. The emergency assistance doctrine, which may justify more intrusive searches of the home or person, must be assessed separately by a distinct test. 3 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 6.6(a) n.5, at 390 (3d ed. 1996); see also *Davis*, 497 N.W.2d at 920-21 (noting the need for standards specific to emergency entries). Since the privacy expectation is strongest in the home only a genuine emergency will justify entering and searching a home without a warrant and without consent or knowledge. See *Mincey*,
We conclude that police officers may enter a home without a warrant or consent under the emergency assistance doctrine. We recognize that the district court and the Court of Appeals based their decisions on the statement in Nemeth that “[t]he Fourth Amendment exception permitting warrantless entry into a home in the performance of community caretaking functions can be invoked only ‘when the police are not engaged in crime-solving activities.’” 2001-NMCA-029, ¶ 38 (quoting Davis, 497 N.W.2d at 920). We do not construe Nemeth to mean that officers may never respond to an emergency when they are investigating a crime or attempting to arrest a suspect. See Mincey, 437 U.S. 385 (addressing an emergency that arose during a drug raid). Rather, we conclude that the motivation for the entry without a warrant or probable cause must be a strong sense of an emergency. See Mitchell, 347 N.E.2d at 610 (stating police may not enter with an accompanying intent to arrest or gather evidence); Walters, 1997-NMCA-013, ¶ 25 (agreeing the initial encounter was as a caretaker rather than as an investigator).

Our reading is consistent with the dual policies of encouraging police to perform caretaking functions and to obtain warrants to arrest or search. Compare Gomez, 1997-NMSC-006, ¶ 36 (stressing the importance of obtaining a warrant), with Walters, 1997-NMCA-013, ¶ 22 (refusing to discourage police officers from performing community caretaker stops). It is clear that individual privacy expectations must at times yield to a paramount interest in protecting and preserving life. Mitchell, 347 N.E.2d at 611; see also Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (“The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.”). Police need not ignore an emergency simply because they are conducting a criminal investigation. We overrule Nemeth to the extent that it might be construed otherwise.

Having determined that police may enter a home without a warrant to respond to a strong sense of an emergency, we now address the standards that confine the emergency assistance doctrine. The Court in Mincey indicated that a warrantless entry and search of the home would pass constitutional muster under an objective test: whether police reasonably believed that a person within was in need of immediate aid to protect or preserve life or avoid serious injury, and the scope of the search was strictly limited to that purpose. 437 U.S. at 392-93. Since then, some courts have adopted a purely objective test. See, e.g., State v. Blades, 626 A.2d 273, 280 & n.7 (Conn. 1993); State v. Carlson, 548 N.W.2d 138, 141-42 (Iowa 1996). Most courts, however, have accepted the requirements laid out in Mitchell or some variation of it. Mountford, 769 A.2d at 644; see generally LaFave, supra § 6.6(a), at 392-93. For the emergency assistance doctrine to apply under Mitchell, the state has the burden to establish three elements. First, “[t]he police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.” Mitchell, 347 N.E.2d at 609. Second, “[t]he search must not be primarily motivated by intent to arrest and seize evidence.” Id. Third, “[t]here must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.” Id. The test stated in Nemeth is similar to Mitchell. The officer must have “a reasonable and articulable belief, tested objectively, that a person is in need of immediate aid or assistance or protection from serious harm.” Nemeth, 2001-NMCA-029, ¶ 37. The officer’s actions must be in good faith; the entry must be made for a purpose consistent with community caretaking, rather than as a pretext for investigating criminal activity or searching for incriminating evidence. Id. ¶ 38. “[T]he entry must be limited to the justification therefor, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance.” 2001-NMCA-029 ¶ 38 (quoting Davis, 497 N.W.2d at 921). We address each part of this three-part inquiry and adopt the Mitchell test.

The objective test is familiar to our search and seizure analysis. The constitutional requirement of reasonableness is tested objectively under the totality of the circumstances. Vandenberg, 2003-NMSC-030, ¶ 19. “This rule of law is best served by the application of certain objective criteria” based on the facts and circumstances of each case. Attaway, 117 N.M. at 149, 870 P.2d at 111. Our community caretaker cases also employ an objective test to determine whether a vehicle stop is based on a reasonable concern for public safety. Apodaca, 118 N.M. at 626, 884 P.2d at 517.

The objective standard for a warrantless and non-consensual entry into a home, however, requires a higher degree of urgency than the Nemeth decision may have conveyed. The emergency assistance doctrine applies specifically to warrantless intrusions into the home. The emergency assistance doctrine requires an emergency, a strong perception that action is required to protect against imminent danger to life or limb, an emergency that is sufficiently compelling to make a warrantless entry into the home objectively reasonable under the Fourth Amendment. Compare Mincey, 437 U.S. at 394, with Gomez, 1997-NMSC-006, ¶ 39 (“[E]xigent circumstances [includes] ‘an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property . . . .’”) (quoting State v. Copeland, 105 N.M. 27, 31, 727 P.2d 1342 (Ct. App. 1986)).

Some of the factors that the court should consider are the purpose and nature of the dispatch, the exigency of the situation based

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4 We note a distinction between the emergency assistance doctrine and the exception for exigent circumstances that also excuses a warrant. Davis, 497 N.W.2d at 920. Both require a compelling and immediate need for police to take swift action to prevent imminent danger to life or serious injury which exceeds an individual’s privacy expectation in the home. Compare Ray, 981 P.2d at 934, with Gomez, 1997-NMSC-006 ¶ 39. Nonetheless, they are separate doctrines. The exception for exigent circumstances applies when police are engaged in crime-solving activities, searching for evidence or suspects. Davis, 497 N.W.2d at 920. For entry into the home to be lawful, officers must have probable cause in addition to exigent circumstances. State v. Aragon, 1997-NMCA-087, ¶ 17, 123 N.M. 803, 945 P.2d 1021. The emergency assistance doctrine applies when police are acting not as crime-solvers, but rather acting in their capacity as community caretakers. Ray, 981 P.2d at 933. Police may enter a home without probable cause to respond to an emergency situation. Id.
on the known facts, and “the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.” State v. Ferguson, 629 N.W.2d 788, 792 (Wis. Ct. App. 2001) (quoted authority omitted); cf. State v. Alexander, 721 A.2d 275, 279 (Md. Ct. Spec. App. 1998) (noting that reasonableness is a function of context). The fact that a different course of action would have been reasonable does not necessarily mean the officer’s actions are unreasonable. Gomez, 1997-NMSC-006, ¶ 43. However, “their failure to take additional [or an alternative] action must be viewed in the totality of the circumstances to determine the ultimate reasonableness of their intrusion.” Ray, 981 P.2d at 938; see, e.g., Davis, 497 N.W.2d at 921-22 (suggesting that further investigation would have been necessary to justify the warrantless entry of the motel room when the only information officers had was a radio report with little detail that came from a questionable source). But see, Alexander, 721 A.2d at 287 (seeing no need for additional investigation when officers personally verified an anonymous tip by their own observations).

33 The second part of the three-part Mitchell test is more controversial. Federal and state courts, including New Mexico, usually do not consider the subjective intent of an officer in a search and seizure analysis. See Whren v. United States, 517 U.S. 806, 812 (1996) (stating that it has repeatedly held and asserted that an officer’s motive does not invalidate objectively reasonable conduct under the Fourth Amendment); United States v. Cervantes, 219 F.3d 882, 889-90 (9th Cir. 2000); Mountford, 769 A.2d at 644; Gomez, 1997-NMSC-006, ¶ 40 (stating that an objective, not subjective, test determines whether exigent circumstances made a warrantless search of a vehicle lawful); Attaway, 117 N.M. at 148-49, 870 P.2d at 110-111 (indicating that objective criteria, rather than the subjective belief of an officer, determines whether noncompliance with the warrant requirement was lawful). While many courts have adopted the Mitchell test in its entirety, only a few have offered a rationale for permitting an inquiry into subjective motives.

34 The primary rationale arises from the absence of a probable cause requirement in the emergency assistance doctrine. Some courts believe that subjective motives are still relevant when police do not have to show probable cause in order to ensure that such searches are not a pretext for criminal investigation. Cervantes, 219 F.3d at 890; Mountford, 769 A.2d at 645; see 1 LaFave, supra § 1.4 (commenting that pretext claims may still be viable when police action does not require probable cause). These courts cite Whren in support of this rationale. In declining to determine that an officer’s ulterior motives would invalidate a lawful traffic stop, the Supreme Court distinguished between criminal investigations where probable cause and exigent circumstances are required to search from inventory and administrative searches where the probable cause requirement is exception:

[O]nly an undiscerning reader would regard these [inventory and administrative search] cases as endorsing the principle that ulterior motives can invalidate police conduct that is justifiable on the basis of probable cause to believe that a violation of law has occurred. In each case we were addressing the validity of a search conducted in the absence of probable cause. Our quoted statements simply explain that the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administrative regulation, is not accorded to searches that are not made for those purposes.

Whren, 517 U.S. at 811-12. Drawing from this statement, courts conclude that a pretext claim is viable when police justify a warrantless search under the community caretaker exception, as well as the emergency assistance doctrine. Cervantes, 219 F.3d at 889-90; Mountford, 769 A.2d at 644-45. A subjective test addresses the chief concern raised by a warrantless search purportedly justified by the community caretaker exception or emergency assistance doctrine: the possibility that the police will use the doctrine as a subterfuge or pretext when the real purpose of the search is to arrest a suspect or gather evidence without probable cause. Ray, 981 P.2d at 937-38.

35 Nevertheless, we recognize that emergency situations can occur during a criminal investigation. See Davis, 497 N.W.2d at 918; Mitchell, 347 N.E.2d at 610. We also recognize that community caretaking encounters save lives and prevent serious injury; the police provide an important public service during such encounters. “Constitutional guarantees of privacy and sanctions against their transgression do not exist in a vacuum but must yield to paramount concerns for human life and the legitimate need of society to protect and preserve life.” Mitchell, 347 N.E.2d at 611. The emergency assistance doctrine is not applicable, however, unless the entry is motivated by the perceived need to act immediately in order to save a life. State v. Prober, 297 N.W.2d 1, 10-11 (Wis. 1980), overruled on other grounds, State v. Weide, 455 N.W.2d 899 (1990).

36 While we do not believe it is realistic for officers to completely abandon their investigative function, we adopt the “primary motivation” standard set out in Mitchell. “[T]he protection of human life or property in imminent danger must be the motivation for the [initial decision to enter the home] rather than the desire to apprehend a suspect or gather evidence for use in a criminal proceeding.” Mitchell, 347 N.E.2d at 610 (emphasis added). While the question of pretext or subterfuge is one factor that must be considered, it is not the end of the inquiry. The ultimate issue is whether officers had a reasonable concern that an individual’s health would be endangered by a delay, and in fact were motivated by a need to address that concern. Id. The primary motivation must not be criminal investigation.

37 “[C]onditioning the availability of the emergency doctrine exception on the searching officer’s motivation is mandated by the doctrine’s rationale that the preservation of human life is paramount to the right of privacy protected by the Fourth Amendment.” Prober, 297 N.W.2d at 11. But see Carlson, 548 N.W.2d at 141 (rejecting a subjective test, because it is not satisfactorily subject to proof or disproof and sheds little light on the reasonableness inquiry). By adopting a primary motivation standard, we acknowledge the strong interest in protecting or preserving human life or avoiding serious injury exists even when police are investigating a crime. Nevertheless, we permit the trial court to examine motivation because, in the absence of a warrant, a neutral magistrate has not provided a preliminary review. “[T]he emergency assistance exception is a narrow one, [and] courts must closely scrutinize the actions and motives of the police in order to determine whether the exception applies. This test is a means of subjecting police actions to that scrutiny.” Davis, 497 N.W.2d at 918.

38 The third part of the three-part test stated in Mitchell also is a common aspect of an objective analysis in search and seizure and community caretaker cases. See Apodaca, 118 N.M. at 626, 884 P.2d at 517 (“The scope of any intrusion following the stop must be
limited to those actions necessary to carry out the purposes of the stop. . . .”). Officers do not have “carte blanche to rummage for evidence if they believe a crime has been committed. There must be a direct relationship between the area to be searched and the emergency.” Mitchell, 347 N.E.2d at 610. The search must be “strictly circumscribed by the exigencies which justify its initiation.” Mincey, 437 U.S. at 393 (quoting Terry v. Ohio, 392 U.S. at 25-26). Police “may do no more than is reasonably necessary to ascertain whether someone is in need of assistance . . . and to provide that assistance . . . .” Ray, 981 P.2d at 937 (quoting LaFave, supra 6.6(a), at 401). Once they are lawfully inside, officers may expand the scope of the intrusion, if probable cause or reasonable suspicion arises. Apodaca, 118 N.M. at 626, 884 P.2d at 517. Officers may also seize evidence of a crime that is in plain view or arrest a suspect if there is probable cause. Mincey, 437 U.S. at 393; Apodaca, 118 N.M. at 626, 884 P.2d at 517. Otherwise, the scope of the search is limited by its purpose. Officers may not conduct a general exploratory search, unless otherwise warranted. Blades, 626 A.2d at 278.

{39} We adopt the Mitchell three-part inquiry as the relevant analysis in determining whether the emergency assistance doctrine applies to a warrantless, nonconsensual entry into the home. Police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; the search must not be primarily motivated by an intent to arrest a suspect or to seize evidence. Although the police need not be totally unconcerned with the apprehension of suspects or the collection of evidence, the motivation for the intrusion must be a strong sense of an emergency; and there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. We now apply this analysis.

E.

{40} The facts known to the entering officers in this case are as follows. The deputies knew that the suspect in a stabbing incident might be headed to his home from the crime scene only a short distance away, and they were directed to his home to locate him. A second dispatcher told them that he might have sustained a wound to his head or his face. When they arrived, the door was slightly ajar, a light was on inside, it was a cold January night, and no one answered their knocks or calls. In summary, there was substantial evidence to support the trial court’s finding that, “the Officers entered the Defendant’s residence based on dispatch information that the Defendant might have been injured (possibly a head injury), their own observations that his door was slightly ajar in the wintertime, and there was no response to their knocks.”

{41} These facts do not compel a conclusion that swift action was necessary to protect life or avoid serious injury. While these circumstances might suggest something is amiss, they do not add very much to the relevant inquiry. Many people purposely leave on a light even when they are away. An open door ought not be viewed as a general invitation to enter. See Ray, 981 P.2d at 937. Moreover, unlike the facts in several of the cases relied on by the State, the residence entered was not the scene of a reported incident of violence, burglary, or other crime; the incident reported had occurred at another location. See, e.g., Mincey, 437 U.S. 385 (searching home for additional victims after deadly confrontation between officers and occupant); Alexander, 721 A.2d 275 (responding to breaking and entering); State v. Johnson, 16 P.3d 680 (Wash. Ct. App. 2001) (searching home for victims in response to domestic violence in progress); State v. Menz, 880 P.2d 48 (Wash Ct. App. 1994) (investigating domestic violence in progress); Ferguson, 629 N.W.2d 788 (responding to 911 call regarding a fight). A reasonable explanation was that Defendant, as a fugitive, had fled or was inside hiding.

{42} To justify the warrantless intrusion into a private residence under the emergency assistance doctrine, officers must have credible and specific information that a victim is very likely to be located at a particular place and in need of immediate aid to avoid great bodily harm or death. In Mitchell, for example, the police were called to a hotel to investigate a possible kidnapping. 347 N.E.2d at 610. Hotel residents searched but were unable to locate the hotel maid who had been missing for several hours. Id. at 608. Under the facts and circumstances known to the officers, it was highly probable that she was somewhere in the hotel and that she had met some grave misfortune, either due to an illness, an accident, or a crime: the maid was last seen leaving an elevator on the sixth floor where she had been assigned to clean rooms, and her partially eaten lunch and street clothes were observed on the sixth floor. Id. at 610. After searching the entire hotel, alleyways, and adjoining restaurant, the police conducted a room-by-room search, eventually locating her body inside a closet in the defendant’s room on the sixth floor. Id. at 609-10. The court concluded that the officers had valid reasons, grounded in empirical facts, to believe that an emergency existed. Id. at 610.

{43} Unlike Mitchell, the officers in this case had only generalized, nonspecific information that Defendant might be inside and that he might have sustained a head or face injury. They did not know the nature or extent of the injury. They did not even know whether he was injured. There was no evidence that Defendant was at home. In light of what little the deputies actually knew, it would have been more reasonable to conduct some minimal investigation to corroborate their suspicions, rather than immediately entering the home. To better evaluate the situation, the officers easily could have contacted deputies at the scene only a short distance away. They also could have walked around the home, looked in windows, or contacted the occupants of the home on the same property. Cf. Nemeth, 2001-NMCA-029, ¶¶ 5-6.

{44} Neither do we think it too much of a burden for the police to corroborate generalized information before they risk intruding into a home. In the absence of an obvious life-threatening emergency, corroboration will either confirm the need for immediate emergency action, or dispel it altogether. Accordingly, considering all the circumstances known and otherwise knowable to the officers in this case, we conclude that the emergency assistance doctrine does not support their entrance into Defendant’s home without a warrant.

{45} We further conclude that even if the deputies had a good-faith generalized concern for Defendant’s welfare, there was substantial evidence to support the trial court’s finding that, “the facts within the entering officers’ knowledge were not sufficient to elevate their primary role to that of community caretaking.” Both deputies testified that they went to the home to locate a suspect. Although they thought the circumstances that they observed at the home were odd, at least one officer testified that he entered Defendant’s home
to look for the suspect and to check on his welfare. They lacked sufficient information to compel their actions. “[T]he protection of human life or property in imminent danger must be the motivation for the search rather than the desire to apprehend a suspect or gather evidence for use in a criminal proceeding.” *Mitchell*, 347 N.E.2d at 610. For these reasons, we conclude that the officers in substantial part were engaged in crime-solving activities rather than responding to an emergency.

III.

{46} We hold that a police officer or officers may enter a home without a warrant or consent pursuant to the emergency assistance doctrine as articulated in *Mitchell*. Applying *Mitchell*, we conclude that the information available to the officers did not justify the warrantless intrusion into Defendant’s home. We affirm the Court of Appeals and the trial court. The decision to suppress the evidence was appropriate under *Mitchell*.

{47} IT IS SO ORDERED.

PAMELA B. MINZNER, Justice

WE CONCUR:
RICHARD C. BOSSON, Chief Justice
PATRICIO M. SERNA, Justice
PETRA JIMENEZ MAES, Justice
EDWARD L. CHÁVEZ, Justice
OPINION

PAMELA B. MINZNER, JUSTICE

{1} The City of Santa Fe, on behalf of the Santa Fe Police Department (SFPD), appeals from a memorandum opinion issued by the Court of Appeals in which the court reversed the demotion of Jerry Archuleta, a Department employee, on grounds that he was denied due process in the administrative proceedings, Archuleta v. Santa Fe Police Dept., No. 23,445 (N.M. Ct. App. Apr. 5, 2004). The sole issue on appeal is whether it was error to deny Archuleta access to the disciplinary records of fellow police officers in his post-demotion hearing before the City’s Grievance Review Board. We conclude that the denial of discovery was reasonable and did not deny Archuleta due process. We reverse the Court of Appeals and affirm the Board’s decision.

I.

{2} Archuleta was hired by the SFPD in 1991 and promoted to lieutenant in October, 1999. On June 7, 2000, he was the highest ranking officer in charge of the “graveyard” shift at the North Side Division. One of his officers who was on duty that night was Issac Valerio. At 11:03 p.m. Valerio was flagged down by Evelyn Romero who reported that her seven year-old son, Robbie Romero, had been missing since 5:00 p.m.1 Valerio entered the child’s information into a national registry but never issued a bulletin or advisory notice; he then searched for the child throughout most of the night without success until his shift ended at 6:30 a.m. Although Valerio searched for the child for nearly seven hours, Archuleta never asked him about the case, provided additional resources, or notified an on-call detective as required by the SFPD’s regulations. Archuleta claimed he was not aware that the case involved a missing seven year-old until 4:30 a.m. on June 8, although there was evidence that this information was available to him at least twice during the night. Once he was aware of the situation, he did not take any action, even though a seven year-old had been missing for nearly twelve hours. Robbie was never found.

A.

{3} Two supervisors, Captains Leroy Lucero and Andrew Leyba, requested that Internal Affairs investigate whether Archuleta and Valero had complied with SFPD regulations. On September 20, 2000, after conducting a taped interview with Valerio and Archuleta and reviewing dispatch tapes, one of the investigators issued a report, in which he found that Archuleta violated two SFPD regulations: Patrol Investigative Procedure 13.G -- failing to notify a CID commander of the missing seven year-old child upon being made aware of the case; and Administrative Order A-25.1 -- failing to “adequately supervise and direct the activities of personnel assigned

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1 Officer Valerio wrote in the incident report that the child was reported missing since 7:00 p.m. but testified that Mrs. Romero actually told him her son had been missing since 5:00 p.m.
to him and properly inspect their work for effectiveness, efficiency and adherence to established policies and procedure.” Valerio was not faulted for failing to issue a bulletin or notice, because he was never given a copy of SFPD directives and Archuleta did not have a copy available for his team office. Valerio was exonerated on the charge that he failed to notify Archuleta about the missing child; dispatch tapes verified that at 11:03 he advised dispatch that he was flagged down about a missing person, at 11:39 he told dispatch that he was searching for the “seven year-old,” and at 1:52 a.m. he asked Archuleta permission to travel outside the jurisdiction to La Cienega to search for the “seven year-old.”

Captains Lucero and Leyba then recommended that Archuleta be demoted to the rank of sergeant and attend “first line supervisor training” as an appropriate disciplinary action. Archuleta received notice of his predetermination hearing, which was held and recorded on September 28. Archuleta, who was represented by counsel, testified and questioned witnesses at this hearing. The next day, Chief Denko notified Archuleta that he was approving the disciplinary action and of his right to appeal that decision. Archuleta provided a written response to the Personnel Director and the City Manager indicating that the action was excessive and unfair in light of SFPD’s progressive discipline policy, and he described three cases in which he alleged other officers received lesser or equal punishment for more serious infractions. Both officials notified Archuleta that, after reviewing his information, they concurred with the recommendation that he be demoted, effective November 25, 2000.

Archuleta appealed the action to the Board. A hearing officer was assigned to preside at the appeal hearing and issue recommendations to the Board. The hearing officer issued a letter setting forth the procedures for the hearing. Both parties would exchange witness and exhibit lists, submit position statements, and, as agreed by the parties, make witnesses available for brief, informal interviews and two depositions per side. The City bore the burden to prove, by a preponderance of the evidence, the basis for its discipline and the appropriateness of the discipline. Each side would be allowed to make opening and closing statements, call and cross-examine witnesses, introduce evidence, and invoke the rule allowing for the exclusion of witnesses from the hearing. Although the rules of evidence would not apply, the hearing officer reserved the right to exclude any evidence that was irrelevant, unduly burdensome, repetitive, harassing, or involving multiple hearsay.

On May 17, 2001, five days before the hearing was initially set to begin, Archuleta moved for a continuance and to compel discovery from the City for “all prior cases involving the suspension, demotion or termination of an SFPD officer (of any rank) in the last five years, e.g. from 1996 to present.” The City opposed the motion on the basis that the information was confidential, that the probative value was de minimis, and that it was irrelevant, overly broad, and unduly burdensome. A telephonic hearing was held off the record, after which the hearing officer denied the motion without explanation. The parties submitted their position statements and objections to proposed exhibits.

A hearing on the record was held on July 11, 12 and 13, 2001, during which the following evidence was elicited. As commander, Archuleta was required to direct and supervise all of the officers under his command, monitor their activity on the radio, allocate resources, review reports, and gather more information on pending cases, if necessary. Although Valerio had experience as a police officer, he was a recent-hire at SFPD and had been on his own for only three weeks. After responding to the Romero call on June 7, 2000, at 11:03 p.m., Valerio called in a “missing person” report to dispatch, reported that he would be searching for a “seven year-old,” and entered the information into the national registry. Valerio searched for Robbie for about an hour-and-a-half until he took another call. He resumed his search for Robbie at 1:21 a.m.; by that time dispatch had changed the code for his report so that it indicated a runaway or a child in need of supervision, which had a lower priority. At 1:52 a.m., Valerio contacted Archuleta for permission to travel outside the jurisdiction to search for Robbie. The radio transmission indicates that Archuleta was told that Valerio was working on a case involving a runaway or a child in need of supervision and the “seven year old . . . may be in La Cienega . . . with a suspect in a case [involving the Romero’s daughter].” Archuleta told Valerio to take another officer with him; he did not inquire into the circumstances, apparently, because he did not hear the information about the seven year-old or that a possible suspect was involved in the disappearance. Valerio’s search in La Cienega was unsuccessful, and he returned to Santa Fe at 3:06 a.m. for a meal break. He turned in his report to Archuleta at 4:27 a.m. Although Valerio was with Archuleta for twenty minutes, Archuleta made only a few minor spelling corrections to the report; he did not discuss the report, which clearly indicated that Valerio had been searching throughout the night for a seven year-old, or address several deficiencies in it. Valerio resumed his search from 4:49 to 6:30 a.m. Archuleta rejected Valerio’s offer to continue his search until he was due in court at 9:00 a.m. and told him he would have another officer take over the investigation.

For five and a half hours, from the time Robbie’s disappearance was reported until Valerio turned in his report, Archuleta never asked Valerio about the incident or why he was spending so much time on it. Archuleta explained that he thought he was dealing with a runaway, which he considered a low priority. He testified that he first realized that Valerio had been searching for a missing seven year-old child at about 4:30 a.m., although he admitted that this information was relayed to him earlier -- once by dispatch, which he was supposed to be monitoring, and once directly. After he discovered this information, he dismissed Valerio’s requests to contact the media and search and rescue or canvass the neighborhood; his explanation was that he did not want to risk officer safety knocking on doors at 4:30 a.m. to look for a missing child, a circumstance he did not consider a “major case.” He was unaware that SFPD regulations required him to notify an on-duty commander about any missing person or runaway report. At the end of his shift at 6:00 a.m., he left a “hot sheet” for the relieving shift lieutenant relaying information about several cases, including this case, rather than advising him about it when he spoke to the lieutenant by radio earlier in the morning or waiting to discuss it personally with him since the lieutenant was late for work. Archuleta testified that this was the way shift changes were handled and how lieutenants were notified of missing persons or runaways. He anticipated turning the report over for investigation later that morning when he returned to the station at 7:30 a.m. He simply did not see it as an urgent matter at 4:30 a.m.

Archuleta testified that the shift that night was busy, although he admitted that he and other officers were available for large periods of time. He also testified about the manner in which other missing persons and runaway cases had been handled by SFPD and compared
the handling of those cases with how the Romero case had been handled. He cross-examined witnesses about how two runaway cases were handled, one of which took place that same night. He expressed his opinion that other officers received lesser discipline for more egregious conduct, and he submitted a detailed description of three such instances. He explained in detail other disciplinary actions against him by SFPD, as well as retaliatory actions that Captain Leyba allegedly had taken against him in the past. He testified that he was being unfairly blamed by SFPD for a possible murder, even though he felt nothing he could have done would have changed the outcome. On the other hand, he testified that if he had known that a seven-year-old was missing at 2:00 a.m. or if he had asked Valerio about his investigation he would have done things differently. Archuleta admitted that he was to blame for the two-and-one-half-hour delay in handling this matter once he became aware of it.

10 The hearing officer submitted his findings and recommendation to the Board on July 25, 2001, indicating that just cause existed for Archuleta’s demotion and additional training. Shortly after, Archuleta submitted a detailed letter to the Board expressing his intent to “fully present his case and . . . be available for questions” at the Board hearing and detailing his position that the demotion was not supported by just cause and violated SFPD’s progressive discipline policy; he also contended it was error to exclude evidence of discipline levied against other SFPD officers. In a letter issued November 5, the Board stated that after meeting twice to review the exhibits and transcripts of the hearing, it found that the demotion and additional training were justified.

C.

11 Archuleta sought certiorari review of the Board’s decision in the district court, arguing for the first time that the denial of discovery and exclusion of evidence pertaining to the discipline of other officers deprived him of due process and violated the Peace Officer’s Employer-Employee Relations Act, NMSA 1978, § 29-14-6 (1991) (Peace Officer’s Act). He further argued that the denial was excessive, arbitrary, and capricious in that the City failed to follow its progressive discipline policy and the discipline was without just cause. The district court affirmed the Board’s decision, holding that the demotion was based on substantial evidence. The court also held that ample due process was afforded Archuleta as he was allowed to call and cross examine witnesses at the hearing; the hearing officer did not violate due process in ruling that the discipline records of other officers were irrelevant and thus inadmissible. The court found that other issues were not supported by the facts or law.

12 Archuleta raised the same issues in petitioning the Court of Appeals for certiorari review. The Court of Appeals held that Archuleta did not preserve the issue of whether the Peace Officer’s Act was violated, and it did not reach the issue of whether his demotion was improper in light of the progressive discipline policy. Archuleta, No. 23,445, slip op. at 4, 10. Instead, the Court of Appeals reversed the district court and remanded the matter for further proceedings. Applying the constitutional due process balancing test, see Mathews v. Eldridge, 424 U.S. 319, 335 (1976), the court held that Archuleta’s due process rights were violated when the board denied him “access to information concerning the discipline of other officers who had committed similar infractions of departmental policies and procedures.” Archuleta, No. 23,445, slip. op. at 10. Consequently, “Archuleta was not afforded a fair opportunity to invoke the discretion of the Board on the appropriateness or the necessity of his demotion.” Id. at 8-9.

13 Judge Pickard dissented, pointing out that the request “sought masses of information,” most of which was irrelevant to the extent that Archuleta sought to compare dissimilar violations for a wide-ranging proportionality review. Id. at 12-13. In her view, the narrower issue was whether the hearing officer abused his discretion in refusing this request. Id. at 13. She concluded that the denial was reasonable, suggesting that the hearing officer properly balanced the need and relevance against the oppressiveness, breadth, and confidentiality of the request. Id. As for progressive discipline, she found that an employer ought to have a right to discipline by demotion employees who are charged with violating their supervisory duties. Id. at 14. The City petitioned this Court for certiorari, asking us to review whether the Court of Appeals erred in rewriting the discovery request, applying the Mathews test sua sponte, and holding that the denial of discovery violated Archuleta’s due process rights. We address the City’s request in two parts. We first consider whether the denial of discovery was arbitrary and capricious. We next consider whether Archuleta was denied due process. We conclude the district court correctly determined the Board’s decision was neither arbitrary and capricious nor a violation of due process. We initially address, however, the appropriate standard of review.

15 In limiting its analysis to Archuleta’s due process rights, the Court of Appeals granted certiorari to correct a misapplication of the law. We granted certiorari to review that determination. The determination raises an issue of substantial public interest with respect to our review of administrative decisions. Rule 12-502(C)(4)(d) NMRA 2005. In determining whether the district court erred in the first appeal, we apply the same administrative standard of review as the district court sitting in its appellate capacity. Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm’n, 2003-NMSC-005, ¶ 16, 133 N.M. 97, 61 P.3d 806. “[W]e thus review the [Board’s] order to determine if it is arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or, otherwise not in accordance with law.” Id. ¶ 17; see NSMA 1978, § 39-3-1.1(D) (1999); Rule 1-075(Q) NMRA 2005.

16 The standard of review of an administrative order denying discovery seems to be a matter of first impression. There is a sound basis to afford substantial deference to an agency’s ruling on such an order and reverse the ruling only for an abuse of discretion that is arbitrary or capricious or contrary to law. In judicial proceedings, we review discovery orders by a district court for an abuse of discretion. Hartman v. Texaco Inc., 1997-NMCA-032, ¶ 20, 123 N.M. 220, 937 P.2d 979. Since administrative agency hearings are less formal than court proceedings, and agencies are ordinarily entrusted with judging the conduct and extent of discovery in the first place, courts generally review such determinations with extreme deference. See Hi-Tech Furnace Sys., Inc. v. FCC, 224 F.3d 781, 789

2 The record indicates that the hearing officer did not admit the summary of these three incidents into evidence, although it remained part of the record as exhibit 14. As mentioned elsewhere, Archuleta also submitted the summary in a letter to the Board after the hearing to support his argument that his discipline was excessive and in his Statement of the Case that was submitted to the hearing officer before the hearing. A redacted version was in his letter to the City Personnel Director.
A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. 

The hearing officer did not explain his decision denying the discovery Archuleta requested. The hearing was not recorded. Both the district court order and Archuleta’s arguments, however, indicate that the decision was based on relevancy. We believe we can discern a reasonable basis for the ruling.

Archuleta sought the discovery of “all prior cases involving the suspension, demotion or termination of any SFPD officer (of any rank) in the last five years.” Thus, he was required to show how any discipline of any other employee under any other circumstances was relevant to his defense. See 


We review de novo whether a ruling by an administrative agency is in accordance with the law. Clark v. N.M. Children, Youth & Families Dep’t, 1999-NMCA-114, ¶ 7, 128 N.M. 18, 988 P.2d 888. Although the Court is not bound by the agency’s ruling on a matter of law, we nevertheless may take into account the nature of the agency and the scope of its power to determine fundamental policy. See Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n, 120 N.M. 579, 583, 904 P.2d 28, 32 (1995). We should reverse the ruling if the agency unreasonably or unlawfully misinterprets or misapplies the law, but we may recognize agency expertise. Id. 

A.

{20} The Santa Fe Municipal Code and the SFPD Rules and Regulations are silent on whether employees are entitled to discovery in an administrative disciplinary proceeding. Section 29-14-6 of the Police Officers Act simply provides that “any peace officer . . . under investigation for an administrative matter . . . shall be permitted to produce any relevant documents, witnesses or other evidence to support his case.” Therefore, in initially determining whether the denial of discovery was proper, we must determine whether the ruling was reasonable.

{21} The technical rules of evidence and procedure often do not apply in an administrative hearing. See, e.g., Gallagher v. Nat’l Transp. Safety Bd., 953 F.2d 1214, 1218 (10th Cir. 1992) (citing the Administrative Procedures Act, 5 U.S.C. § 556(d) (2000)); see also NMSA 1978, § 10-9-18(A), (C) (1999) (providing that the rules of evidence do not apply to the termination, demotion, or suspension of state employees under the Personnel Act); NMSA 1978, § 12-8-11(A) (1969) (relaxing the rules of evidence under the New Mexico APA). The broad discretion accorded to an agency in conducting its hearings, however, “must be exercised judiciously and not arbitrarily.” Daniels, 789 N.E.2d at 433. Although the federal and New Mexico Administrative Procedures Acts are not applicable, these acts are instructive on the issue of whether the denial of discovery in this case was reasonable. The rules of evidence are inapplicable or relaxed under both acts and certain otherwise objectionable evidence may be admitted, but both acts require the exclusion of irrelevant and immaterial evidence. See Gallagher, 953 F.2d at 1218; see also § 12-8-11(A). The rules of evidence are inapplicable in order to facilitate rather than hinder discovery and to allow a full opportunity to prepare. Redman v. Bd. of Regents of the N.M. Sch. for the Visually Handicapped, 102 N.M. 234, 238, 693 P.2d 1266, 1270 (Ct. App. 1984). The exclusion of irrelevant and immaterial evidence is not inconsistent with relaxation of the rules of evidence.

{22} The hearing officer did not explain his decision denying the discovery Archuleta requested. The hearing was not recorded. Both the district court order and Archuleta’s arguments, however, indicate that the decision was based on relevancy. We believe we can discern a reasonable basis for the ruling.

{17} “A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record.” Rio Grande Chapter of the Sierra Club, 2003-NMSC-005, ¶ 17. In viewing the whole record, and in evaluating the reasonableness of an action, we may take into account an agency’s expertise. See Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers, 1998-NMSC-020, ¶ 17, 125 N.M. 401, 962 P.2d 1236. We must be careful not to substitute our own judgment for that of the agency, when we are reviewing and applying and capricious action. Rio Grande Chapter of the Sierra Club, 2003-NMSC-005, ¶ 17. Generally, courts “should not attempt to ‘supply a reasoned basis’” for an agency’s decision, but “may ‘uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.’” Id. ¶¶ 12-13 (quoting Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)) (quotation marks and additional quoted authority omitted).

{18} We review de novo whether a ruling by an administrative agency is in accordance with the law. See, e.g., Gallagher v. Nat’l Transp. Safety Bd., 953 F.2d 1214, 1218 (10th Cir. 1992) (citing the Administrative Procedures Act, 5 U.S.C. § 556(d) (2000)); see also NMSA 1978, § 10-9-18(A), (C) (1999) (providing that the rules of evidence do not apply to the termination, demotion, or suspension of state employees under the Personnel Act); NMSA 1978, § 12-8-11(A) (1969) (relaxing the rules of evidence under the New Mexico APA). The broad discretion accorded to an agency in conducting its hearings, however, “must be exercised judiciously and not arbitrarily.” Daniels, 789 N.E.2d at 433. Although the federal and New Mexico Administrative Procedures Acts are not applicable, these acts are instructive on the issue of whether the denial of discovery in this case was reasonable. The rules of evidence are inapplicable or relaxed under both acts and certain otherwise objectionable evidence may be admitted, but both acts require the exclusion of irrelevant and immaterial evidence. See Gallagher, 953 F.2d at 1218; see also § 12-8-11(A). The rules of evidence are inapplicable in order to facilitate rather than hinder discovery and to allow a full opportunity to prepare. Redman v. Bd. of Regents of the N.M. Sch. for the Visually Handicapped, 102 N.M. 234, 238, 693 P.2d 1266, 1270 (Ct. App. 1984). The exclusion of irrelevant and immaterial evidence is not inconsistent with relaxation of the rules of evidence.

{19} In this case, we first determine whether the denial of discovery was an abuse of discretion. Our inquiry is whether the decision was reasonable. In analyzing the Board’s action, we recognize the City was legally authorized to determine and enforce disciplinary actions against its employees. Santa Fe, N.M., City Code § 19-3-4 (1998) (“It is the responsibility and exclusive prerogative of the city to direct its employees to take disciplinary action for proper cause . . . and to determine the methods, means and personnel by which the city’s operations are to be conducted.”). We next review de novo whether due process required a different result.

\[3\] To the extent that Archuleta claims there is a statutory right to discovery, the Court of Appeals held that he failed to preserve this argument below. A review of the record supports that determination. Any reference to the Peace Officer’s Act in this Opinion is not intended to be inconsistent.
officer knew what Archuleta actually sought to prove, the officer was not required to redraft the request. See Sempier v. Johnson & Higgins, 45 F.3d 724, 735-36 (3d Cir. 1995) (stating that the district court can refuse to compel answers where the interrogatories are unsatisfactorily drafted or suggest the proper manner in which they should be asked, but it may not rewrite the discovery request).

Further, the request gave the hearing officer no guidance in determining which cases were similar or more egregious. As Judge Pickard noted in her dissent, the City should not be subjected to a wholesale proportionality review of its disciplinary actions.

Because the request was overly broad, it would have been reasonable for the hearing officer to conclude that the requested material had minimal if any probative value. This is a case of rather unique and serious circumstances involving a high ranking officer. Only truly analogous conditions with respect to performance, qualifications, and conduct would have been more than marginally relevant to the defense. See Snipes v. Ill. Dep’t of Corr., 291 F.3d 460, 463 (7th Cir. 2002) (discussing a claim of retaliatory discharge and upholding the exclusion of evidence of disciplinary action against differently situated employees); Archuleta, slip op. at 6. For example, officers of “any rank” are not similarly situated to Archuleta, who was the sole commanding lieutenant in charge of an entire division of the SFPD graveyard shift. See Kennedy v. Marion Corr. Inst., 630 N.E.2d 324, 328 (Ohio 1994) (holding evidence of disparate treatment was inadmissible where officers under the disciplined supervisor’s command were clearly not similarly situated). The reasons for “any suspension, demotion, or termination” would not necessarily be analogous to the circumstances in this case. Cf. State v. Pohl, 89 N.M. 523, 524, 554 P.2d 984, 985 (Ct. App. 1976) (compelling discovery of “all records of internal affairs investigations concerning allegations of police brutality or excessive use of force which have been filed against the arresting officer” where defendant’s guilt or innocence hinged on whether the jury believed the arresting officer was the aggressor). Even similarly situated employees may be disciplined differently depending on the severity of the conduct and the consequences, the disciplinary history of the employee, and aggravating or mitigating factors. Further, a progressive discipline policy relates to the progression of discipline as it applies to the individual officer. A comparison of how other officers were disciplined does not appear to be more than marginally relevant.

The hearing officer could reasonably find that the requested material had no relevance in this matter. The record indicates the City was entitled to deviate from its progressive discipline policy if the misconduct justified more than the minimum applicable sanction. See generally N.M. Regulation & Licensing Dep’t v. Lujan, 1999-NMCA-059, ¶ 19, 127 N.M. 233, 979 P.2d 744 (agreeing “that the State Personnel Board Rules require progressive discipline prior to dismissing an employee unless the employee is dismissed for just cause”). “[T]he State Personnel Board Rules acknowledge that there are instances where dismissal is appropriate prior to progressive discipline.” Id. ¶ 15. SFPD’s rules specify that just cause exists for “suspension or demotion or termination” when an officer demonstrates an inability to perform job requirements or whose actions reflect poorly on the integrity of the City. The rules also contemplate “individualized imposition of disciplinary action” and allow for the consideration of the “seriousness of the act or omission” in addition to the minimum applicable sanction. Thus, as in Lujan, the rules themselves appear to allow for deviation from progressive discipline depending on the surrounding circumstances of the misconduct. Based on our whole record review, we agree that there was sufficient evidence to support a deviation from the progressive discipline policy and thus to support demotion and additional training. Regents of the Univ. of N.M., 1998-NMSC-020, ¶ 17 (stating that when the court reviews an agency’s findings, we look at evidence that is favorable to the decision and also unfavorable evidence when it would be unreasonable to ignore it; however, we must affirm the decision if it is supported by substantial evidence). On this basis we also conclude the hearing officer could have determined the requested material had no relevance.

Archuleta was demoted because he failed to adequately supervise or respond in any way to a case involving a missing seven-year-old who was never found and because he failed to notify an on-duty detective commander about it. The hearing officer found that Archuleta never issued a bulletin; never personally looked for Robbie during the entire graveyard shift, even though he was available; never called for assistance or utilized the officers under his command in searching for the child; and never notified anyone in his chain of command about the missing child, so that his supervisors learned about it only from a “Hot Sheet,” even though he was adequately informed by his subordinates and was responsible for knowing the significant and material facts. The hearing officer further found that, as the commander in charge, Archuleta failed to give sufficient attention to the case. He failed to react decisively, quickly, and appropriately in supervising and employing the resources available to him to conduct an investigation and search, in calling in additional resources if necessary, and in following Department policy, while exercising sound judgment and common sense. The evidence supports these findings.

These facts demonstrated to the City that Archuleta lacked the experience, skill, and knowledge to be a watch commander and that he demonstrated poor judgment in handling a missing child report during the first critical hours of the case. The City considered alternative disciplines available under the rules. The City concluded that demotion and training were more appropriate than suspension because of the seriousness of the case, the manner in which it was handled, and the liability of the City if Archuleta remained in his position. The City chose not to terminate him, because there were no aggravating circumstances, and his employment record justified retention. The City’s action was neither arbitrary nor capricious; it was not contrary to law. The evidence supports the hearing officer’s conclusion that demotion and additional training were appropriate under SFPD rules.

Administrative agencies have considerable latitude to shape their penalties within the scope of their statutory authority, especially where a statute expressly authorizes the agency to require that such action be taken as will effectuate the purposes of the act being administered.” 2 Am. Jur. 2d Admin. Law § 453, at 388 (2004); see Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203, 216 (1964). “The relation of penalty to policy is peculiarly one for the administrative agency and its special competence . . . .” Am. Jur. 2d, supra, § 453, at 388; accord Gen. Protective Comm. for Holders of Option Warrants of United Corp. v. Sec. & Exch. Comm’n, 346 U.S. 521, 534 (1954). “The propriety of a disciplinary measure meted out by [an agency] is a matter of internal administration with which a court should not interfere absent a clear abuse of authority.” Long v. City of Wichita Falls, 749 S.W.2d 268, 270 (Tex. App. 1988).

For these reasons, we conclude the hearing officer did not abuse its discretion in denying the discovery request. The request was overly broad and it sought material that had little or no relevance. We now turn to the due process analysis of the Court of Appeals.
B.

{30} The City argues that there is no constitutional right to discovery under federal or New Mexico law, and that the unduly burdensome and costly result of such a rule would defeat even the most simple disciplinary proceeding. It also contends that it was unfair to apply Mathews; Mathews had not been raised earlier, and there was no record of the probable administrative burden and cost of such a broad, open-ended discovery order. Under these circumstances, the City contends the Court of Appeals did not give its interest in resisting discovery adequate weight. Archuleta claims that the City did not present its argument that there is no constitutional or other right to discovery in an administrative hearing. He also contends that the City has waived the issue since it agreed to allow some discovery below. 4 Nevertheless, he agrees with the Court of Appeals’ due process analysis and argues that the City adequately raised the alleged problems regarding administrative burden and costs.

{31} Neither party’s preservation arguments have merit. Since the due process question is an issue of law, appellate courts review the issue de novo. Cordova v. LeMaster, 2004-NMSC-026, ¶ 10, 136 N.M. 217, 96 P.3d 778. This means that appellate courts can and must apply the appropriate law. The Mathews test is the appropriate analytical framework for a due process issue. City of Albuquerque v. Chavez, 1998-NMSC-033, ¶ 13, 125 N.M. 809, 965 P.2d 928. Additionally, the City has suffered no harm; it has argued the administrative burden and costs issue in this appeal. We agree with the City that there is no constitutional right to pre-trial discovery in administrative hearings. Lopez v. United States, 129 F. Supp. 2d 1284, 1289 (D.N.M. 2000), aff’d mem., No. 01-2090 (10th Cir. Nov. 15, 2001); accord Dente v. State Taxation and Revenue Dep’t, 1997-NMCA-099, ¶ 6, 124 N.M. 93, 946 P.2d 1104, overruled on other grounds by State Taxation & Revenue Dep’t v. Bargas, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 358. This general rule, however, is not dispositive. See Dente, 1997-NMCA-099, ¶ 8 (“[I]n some cases, due process might require that depositions be allowed in order to afford a party a meaningful opportunity to prepare.”). Administrative hearings that affect a property or liberty interest must comply with due process. The Mathews test determines what process is due in a particular hearing. Chavez, 1998-NMSC-033, ¶ 13. “Due process is flexible and calls for such procedural protections as the particular situation demands.” Mathews, 424 U.S. at 334 (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)) (alteration omitted).

{32} “[C]onstitutional due process does not require an agency to afford a petitioner all elements of a traditional judicial proceeding.” Miller v. County of Santa Cruz, 796 F. Supp. 1316, 1319 (N.D. Cal. 1992), aff’d, 39 F.3d 1030 (9th Cir. 1994). “In general, the right to due process in administrative proceedings contemplates only notice of the opposing party’s claims and a reasonable opportunity to meet them.” Dente, 1997-NMCA-099, ¶ 4 (emphasis added). The importance of the individual’s and administrative body’s interests, together with “the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,” dictates what additional process, if any, is due in an administrative proceeding. Chavez, 1998-NMSC-033, ¶ 14 (quoting Mathews, 424 U.S. at 335) (emphasis omitted).

{33} SFPD rules expressly create a “property right” that entitles the employee to an appeal and a hearing in any disciplinary action. The Court of Appeals concluded that Archuleta had a “weighty interest” in his “expectation of continued employment with [SFPD], in good standing and in the capacity of a lieutenant.” Archuleta, No. 23,445, slip op. at 5. Other jurisdictions, however, do not attribute as much weight to the individual’s interest with respect to a demotion as compared to a termination. DelSignore v. DiCenzo, 767 F. Supp. 423, 427 (D.R.I. 1991); Williams v. City of Seattle, 607 F. Supp. 714, 720 (W.D. Wash. 1985). From a property standpoint, an employee who has been demoted suffers a loss in pay or benefits. Williams, 607 F. Supp. at 720. Although a decrease in pay or benefits is of significance, it may be relatively insubstantial and is a less compelling deprivation than a termination. DelSignore, 767 F. Supp. at 427. We conclude that Archuleta’s interest was less compelling than the Court of Appeals indicated.

{34} The Court of Appeals also concluded that the risk of an erroneous deprivation was great because the materials were critical to his defense, and the probable value of compelling discovery was high. Archuleta, No. 23,445, slip op. at 5-7. The court relied on several cases in which our courts have considered evidence of disparate discipline in their review for substantial evidence. These cases are distinguishable. For example, in one case there was no evidence to support a finding of just cause for termination, and evidence of disparate treatment in directly analogous cases simply supported that determination. See Kibbe v. Elida Sch. Dist. (In re Termination of Kibbe), 2000-NMSC-006, ¶¶ 14-17, 128 N.M. 629, 996 P.2d 419. In another, there was no meaningful standard by which to review the just cause determination, and similarly situated employees had not been terminated. N.M. State Bd. of Educ. v. Stoudt, 91 N.M. 183, 186-87, 571 P.2d 1186, 1189-90 (1977) (per curiam). The evidence was relevant but not “critical” in these cases. 5 The relevancy of “all prior cases involving the suspension, demotion or termination of any SFPD officer (of any rank) in the last five years” is not so apparent. We have noted in the past that a “board’s decision not to impose disciplinary action against an employee for certain conduct does not foreclose disciplinary action against a different employee in the future for similar conduct.” In re Termination of Kibbe, 2000-NMSC-006, ¶ 17.

{35} The Court of Appeals opinion also gives too little weight to the extent of the City’s efforts to determine the facts of the incident in question, as well as the extent to which Archuleta availed himself of the procedures that were in place to prevent bias or pretext from entering into the decision-making process. See Chavez, 1998-NMSC-033, ¶ 14 ("[A]ssessing the risk of such error requires us to consider the pre- and post-termination proceedings as a whole."). Two supervisors requested Internal Affairs to investigate Archuleta’s conduct; the investigation was completed, and both supervisors recommended demotion and training. A predetermination hearing was held in which Archuleta was represented by counsel, allowed to testify, introduce evidence, and cross examine witnesses. The recom-

4 We reject this argument. The agreement for discovery was limited to informal witness interviews and two depositions per side. This does not constitute a waiver of a right to resist other discovery.

5 In one other case, the court evaluated disparate treatment for the same misconduct arising out of the same incident where there was no evidence to support such treatment. Gallegos v. N.M. State Corr. Dep’t, 115 N.M. 797, 802, 858 P.2d 1276, 1281 (Ct. App. 1992). Here, Officer Valerio was exonerated.
mendation was approved by the Chief, the Personnel Director, and the City Manager only after they reviewed all of that evidence. Archuleta appealed their decision to the Grievance Board and an impartial hearing officer was assigned to the case. Archuleta was afforded a full post-determination hearing on the record, with counsel, and he had a reasonable opportunity to present his case. He was given all the materials that were used against him and he was allowed to conduct informal interviews, as well as two depositions. Archuleta vigorously argued his position at both hearings, including his personal history with Captain Leyba and the disparate treatment he perceived, including three cases that he brought to the Board’s attention. The Board carefully reviewed all of this material and affirmed the demotion and training. Archuleta then obtained judicial review in district court, which affirmed the decision. In light of the foregoing, the probable value of the requested materials was minimal, and Archuleta cannot claim any specific prejudice from the denial of discovery in this case. See Dente, 1997-NMCA-099, ¶ 8 (finding plaintiff had ample opportunity to cross-examine and alleged no specific prejudice from the lack of an opportunity to take depositions prior to his administrative hearing).

Finally, the Court of Appeals held that the City’s interest in confidentiality was not sufficiently substantial, because the files could have been reviewed in camera and private information redacted. Archuleta, No. 23,445, slip op. at 7-8. Nevertheless, the City has a substantial and compelling interest in managing the internal affairs of its police department “to maintain the discipline, morale, and effectiveness of the department.” Williams, 607 F. Supp. at 720. That interest is illustrated by the facts of this case. The City had an interest in removing a police officer from a supervisory position to prevent him from engaging in future negligent conduct and dereliction of duty where public safety and the City’s liability would be at risk. This interest is sufficiently compelling to shield the City from an overly broad discovery request that would be of little or no probative value. We note, as well, the City’s interest in “the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” Mathews, 424 U.S. at 335.

For these reasons, we reverse the Court of Appeals decision that Archuleta was entitled to discovery in this case. The deprivation was not so compelling and the risk of error so grave or the probable value of the material so substantial that it outweighed the City’s very substantial interests in effectively and efficiently disciplining its employees. The hearing officer acted reasonably in denying the request for discovery, and the district court did not err in concluding the Board had not acted arbitrarily or capriciously. We do not remand Archuleta’s remaining claim that the City violated its progressive discipline policy because that issue has been necessarily decided in our resolution of the questions presented on certiorari. Cf. State v. Javier M., 2001-NMSC-030, ¶ 10, 131 N.M. 1, 33 P.2d 1. We affirm the order of the district court upholding the Board’s decision.

IT IS SO ORDERED.

PAMELA B. MINZNER, Justice

WE CONCUR:
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