Perhaps more than any other document in human history, Magna Carta has come to embody a simple but enduring truth: No one, no matter how powerful, is above the law.

In the eight centuries that have elapsed since Magna Carta was sealed in 1215, it has taken root as an international symbol of the rule of law and as an inspiration for many basic rights Americans hold dear today, including due process, habeas corpus, trial by jury, and the right to travel.

As we mark the 800th anniversary of Magna Carta, join us on Law Day, May 1, 2015, to commemorate this “Great Charter of Liberties,” and rededicate ourselves to advancing the principle of rule of law here and abroad.

The Law Day theme is determined each year by the American Bar Association. For more information about Law Day programming and this year’s theme, visit www.lawday.org.

Courtesy of www.americanbar.org.
Volunteer attorneys who can answer questions about:

- Family Law
- Landlord/Tenant disputes
- Consumer Law
- Personal Injury
- Collections

during the YLD’s Law Day Call-in Program.

**Saturday, May 2, 9 a.m. to 1 p.m., State Bar Center**

*If you are bilingual (English and Spanish), that’s a plus*

Because there will be so many callers, you can only provide 5 minutes of guidance and then refer callers to legal service organizations for further assistance.

**Earn pro bono hours!**

If you can volunteer in Albuquerque, please contact Sonia Russo at soniarusso09@gmail.com or 505-269-0369. In Roswell, contact Anna Rains at acrains@sbcw-law.com or 575-622-5440.

Questions? dwolohan@nmbar.org
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Opinions

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Meetings

APRIL
30 Alternative Dispute Resolution Committee, Noon, State Bar Center

MAY
1 Elder Law Section BOD, Noon, State Bar Center
5 Bankruptcy Law Section BOD, Noon, U.S. Bankruptcy Court
5 Health Law Section BOD, 7 a.m., via teleconference
8 Criminal Law Section BOD, Noon, Law Office of Kelley & Boone
8 Prosecutors Section BOD, Noon, State Bar Center
13 Taxation Section BOD, 11 a.m., via teleconference
13 Children’s Law Section BOD, Noon, Juvenile Justice Center
13 Employment and Labor Law Section BOD, Noon, State Bar Center

State Bar Workshops

APRIL
29 Legal Resources for the Elderly Workshop 10–11 a.m., Presentation, No Clinics
Chama Senior Center, Chama
29 Legal Resources for the Elderly Workshop Noon–1 p.m., Presentation, No Clinics
Tierra Amarilla Senior Center, Tierra Amarilla

MAY
1 Civil Legal Fair 10 a.m.–1 p.m., First Judicial District Court, First Floor Jury Room, Santa Fe
5 Legal Resources for the Elderly Workshop 9:30–10:45 a.m., Presentation 12:30–3 p.m., Clinics
Mary Esther Gonzales Clinics Senior Center, Santa Fe
6 Divorce Options Workshop 6 p.m., State Bar Center
6 Civil Legal Fair 10 a.m.–1 p.m., Second Judicial District Court, Third Floor Conference Room, Albuquerque
Court News

U.S. District Court, District of New Mexico
Federal Bar Seminar

Join colleagues for a free one-day CLE program “The Second, Best Federal Bar Seminar Ever” (6.0 G) from 8:15 a.m.–4:45 p.m., May 1, at the Albuquerque Convention Center. Topics include “Evidence” and “Preservation of Issues for Appellate Review” in the morning and a choice of civil or criminal law programs in the afternoon. For more information or to register, visit www.nmd.uscourts.gov.

State Bar News

Attorney Support Groups

• May 4, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (The group meets the first Monday of the month.)

• May 11, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, Room 1119 (The group meets the second Monday of the month.)

• May 18, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (The group meets the third Monday of the month.)

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Alternative Dispute Resolution Committee

CLE Series: ‘Mediating in Courts’

Norm Gagne and Susan Barnes Anderson will present “Mediating in Courts of Limited Jurisdiction—Are You Part of the Solution or Part of the Problem?” (1.0 G) as part of the ADR Committee CLE Series from 12:30–1:30 p.m., April 30, at the State Bar Center (and by teleconference). To register, visit www.nmbar.org. Teleconference attendees must pre-register by calling 505-797-6020. The ADR Committee will meet prior to the CLE program at noon.

Indian Law Section

Celebrate Bar Preparation Scholarship Awards

The Indian Law Section invites its members to celebrate the presentation of its 9th Annual Bar Examination Preparation Scholarships, 6–10 p.m., on Thursday, April 30, at the Indian Pueblo Cultural Center, 2401 12th St. NW, in Albuquerque. Join the Board as they celebrate the section’s continued support of a growing community of Indian Law lawyers in New Mexico and one of the section’s most successful initiatives, the Bar Exam Preparation Scholarship. There will be food courtesy of the section, a cash bar, fabulous door prizes and the opportunity to meet and congratulate four outstanding UNM law students who will be receiving scholarships. This event is free for members and a guest of a member. R.S.V.P. to Evann Kleinenschmidt, ekleinenschmidt@nmbar.org, by April 27.

Public Law Section

Moya Named Public Lawyer of the Year

The Public Law Section will be honoring Joey D. Moya as its 2015 Public Lawyer of the Year at 4 p.m. on May 1 at the Capitol Rotunda in Santa Fe. Moya is the chief clerk of the Supreme Court and the Court’s chief counsel. In these roles, he oversees the operation of the Supreme Court’s committees, boards and commissions. Moya has dedicated his career to the judiciary and is committed to improving access to the courts, having served as a commissioner of the New Mexico Commission on Access to Justice since 2003. State Bar President Martha Chicoski, Chief Justice Barbara J. Vigil, Attorney General Hector Balderas and UNM School of Law Dean David Herring are scheduled to speak. The Othmer Summer Fellowship for a UNM law student to work in a public interest program also will be awarded during the ceremony. The public is invited to attend.

Young Lawyers Division

Statewide Volunteers Needed for Law Day Call-In Program

Volunteers are needed for the Young Lawyers Division Law Day Call-in from 9 a.m.–1 p.m. on Saturday, May 2, at the State Bar Center in Albuquerque. Volunteers are needed in all areas of law, but particularly family law. Breakfast will be provided. To volunteer or for more information, in Albuquerque, contact Sonia Russo at soniarusso09@gmail.com. In Roswell, contact Anna Rains, acrains@sbcw-law.com. In Las Cruces and Alamogordo, contact Erin Atkins, atkinser@gmail.com. In Gallup, contact Laura Horton, lhorton@da.state.nm.us.

UNM Law Library

Hours Through May 9

Building & Circulation

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

Reference

Monday–Friday  9 a.m.–6 p.m.
Librarian on call  3–6 p.m.
Saturday–Sunday  Closed

School of Law Alumni Association

Roswell Area Happy Hour

The New Mexico Hispanic Bar Association, New Mexico Women’s Bar Association, State Bar Young Lawyer’s Division and UNM School of Law Alumni Association are sponsoring a happy hour event from 5:30–7 p.m. on May 28 at The Liberty, 312 N. Virginia Ave, in Roswell. R.S.V.P. by May 22 at lawschool.unm.edu/roswell or contact Melissa Lobato at 505-277-1457 for more information.

Other Bars

Federal Bar Association

CLE Luncheon Event

Dean Erwin Chemerinsky will present “An Amazing Time in the Supreme Court” (1.0 G) at the CLE luncheon event sponsored by the New Mexico Chapter of the Federal Bar Association on April 30 from noon–1:30 p.m. at the La Fonda Hotel in Santa Fe. Chemerinsky is a distinguished professor of law and the Raymond Pryke Professor of First Amendment Law at the University of California, Irvine School of Law. Check-in will begin at 11:30 a.m. and a buffet luncheon begins at noon. The presentation follows at 12:30 p.m. Cost: $25 for judges, court staff and law students; $50 for Federal Bar Association members; non-lawyers, $75 for non-members. Credit cards, checks and cash will be accepted at the door. Checks can be

Professionalism Tip

With respect to the courts and other tribunals:

I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation.

Librarian on call 3–6 p.m.
sent to New Mexico Chapter of the Federal Bar Association, 112 Edith NE, Albuquerque, NM 87102. Space is limited; register to guarantee a spot. For more information or to register, contact Ron Holmes, ronholmes@ronholmes.com, or Naomi Barnes, naomi.barnes@kutakrock.com.

**New Mexico Criminal Defense Lawyers Association**  
**Indian Law Seminar in Durango**

The New Mexico Criminal Defense Lawyers Association is partnering with the Colorado Criminal Defense Bar to host a CLE seminar on May 1 in Durango, Colo., “Criminal Justice Issues In & Around Indian Country” (4.5 G, 1.0 EP). Topics to be covered include federal and state jurisdictional issues, representing pro bono clients in tribal court practically and ethically, and civil issues related to criminal charges on Native land. Visit www.nmcdla.org or call 505-992-0050 to register and to get information on how to reserve discounted hotel rooms early.

**New Mexico Women’s Bar Association**  
**Hon. Martha Vazquez to Receive Pettijohn Award**

The New Mexico Women’s Bar Association will host its 34th Annual Conference of New Mexico Bar Association of New Mexico at the Westin Riverwalk Hotel, visit www.rmmlf.org. Comprehensive course materials will be provided to all registrants.

**Workers’ Compensation**  
**Notice of Destruction of Records**

In accordance with NMAC 11.4.4.9 (P) - Forms, Filing and Hearing Procedures: Return of Records, the New Mexico Workers’ Compensation Administration will be destroying all exhibits and depositions filed in causes closed in 2008, excluding causes on appeal. The exhibits and depositions are stored at 2410 Centre Ave SE in Albuquerque. They can be picked up until May 22. For more information, contact the Workers’ Compensation Administration at 505-841-6810 or 1-800-255-7965 and ask for Dana Chavez, clerk of the court. Exhibits and depositions not claimed by registrants will be destroyed all exhibits and depositions filed in causes closed in 2008, excluding causes on appeal. The exhibits and depositions are stored at 2410 Centre Ave SE in Albuquerque. They can be picked up until May 22. For more information, contact the Workers’ Compensation Administration at 505-841-6810 or 1-800-255-7965 and ask for Dana Chavez, clerk of the court. Exhibits and depositions not claimed by registrants will be destroyed.

**34th Annual Conference**

The Workers’ Compensation Association of New Mexico will host its 34th Annual Conference “Finding the Hero in You: The Super Men and Wonder Women of Work Comp,” May 13–15 at Isleta Resort and Casino in Albuquerque. The super hero-themed conference will kick off with the annual fund-raising golf tournament on May 13 at Isleta Eagle. The two-day conference that follows features HR/safety, medical and legal tracks with continuing education credits available for a variety of professionals, including 9.5 general CLE credits. For more information and to register, visit www.wcaofnm.com.

**Other News**  
**New Mexico Foundation for Open Government**  
**Government Transparency CLE**

Registration is open for the New Mexico Foundation for Open Government’s May 1 seminar on public records and open meetings laws (5.0 G, 1.0 EP, pending MCLE approval). The program will be held at the Albuquerque Journal Building in Journal Center. For more information, visit http://myemail.constantcontact.com/New-Mexico-Foundation-for-Open-Government-CLE-May-1.html?oid=1103244704435&aid=SLB8YrkY_j0.
In the Supreme Court of the State of New Mexico

Law Day Recognition

Law Day 2015

Law Day began 57 years ago, with a proclamation from President Eisenhower. That first proclamation eloquently set forth the reasons why we, as a free people, celebrate our heritage of liberty under law.

President Eisenhower noted that it was “fitting that the people of this nation should remember with pride and vigilantly guard the great heritage of liberty, justice, and equality under law that our forefathers bequeathed to us.” Further, he said that it is “our moral and civic obligation as free [people] and as Americans to preserve and strengthen that great heritage.”

In celebrating Law Day this year, let us dedicate ourselves to the great values protected and preserved in our Constitution.

And, at the same time, let us recognize that democracy is not static, that we must always work to improve and perfect it. Let us seek to draw ever closer to the ideal hand carved into the woodwork above the bench of the Supreme Court of New Mexico: “Dedicated to the Administration of Equal Justice Under Law.”

Let us resolve that Law Day be an opportunity for all of us, in government and the private sector, to examine our efforts to make equal justice a reality, and to work together to reach that goal.

For more than 100 years, America’s charitable institutions and foundations, its lawyers and its courts, and countless others have worked to bring equal justice to as many people as possible.

Law Day 2015 is an opportune time to recognize the work of those who try to make courts accessible and justice equal:

Legal services organizations who provide legal services to those unable to afford them;

Pro Bono Publico programs under which private lawyers accept worthy cases at no fee;

Lawyer referral programs that help people find appropriate legal services;

Court programs designed to inform the public about laws and legal procedures, provide interpreters for those who need them, and generally make courts accessible.

We salute these efforts, but let us offer greater support to those who work daily to provide legal services to those who most need them. Let us dedicate ourselves to improving our courts and our justice system, so that we will truly have “justice for all.”

NOW, THEREFORE, I, Barbara J. Vigil, Chief Justice of the Supreme Court of New Mexico, do hereby recognize the week of April 27–May 1, 2015, as Juror Appreciation Week in New Mexico and encourage all state courts in New Mexico to support the celebration of this week.

DONE in Santa Fe, New Mexico, this 13th day of April, 2015.

Barbara J. Vigil, Chief Justice
Wills for Heroes

YLD volunteers prepared wills for 25 members of the Rio Rancho Fire and Rescue and their families on April 18. This successful Wills for Heroes program would not have been possible without the volunteer assistance from:

Spencer Edelman                      Deborah Moore
James Houghton                       Sonia Russo
Jordan Kessler                       Karen Summers
Gina Manfredi

Paralegal volunteers:

Christina Babcock                    Christine James
Tony Garcia                          Linda Murphy
Sandy Isbell
# Legal Education

## April

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
</table>
| 29   | Eminent Domain, Part 2 of 2 | 1.0 G  
National Teleseminar  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 29   | Mistakes We’ve Made and Hope you Can Avoid | 1.0 G  
Live Seminar  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 30   | ADR Series: Mediating in Courts of Limited Jurisdiction—Are You Part of the Solution or Part of the Problem? | 1.0 G  
Live Seminar and Telecast  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 30   | ID Theft Prevention and Remediation | 2.0 G  
Live Seminar and Webcast  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 30   | Ethicspalooza: Conflicts of Interest | 1.0 EP  
Video Replay  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 30   | Ethicspalooza: All Those Fees | 1.0 EP  
Video Replay  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 30   | An Amazing Time in the Supreme Court | 1.0 G  
Santa Fe  
New Mexico Chapter of the Federal Bar Association  
ronholmes@ronholmes.com |

## May

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
</table>
| 1    | 2015 Spring Elder Law Institute: Developments in Elder Law Rules and Regulations | 2.6 G  
Live Seminar and Webcast  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 1    | Criminal Justice Issues In & Around Indian Country | 4.5 G, 1.0 EP  
Durango, Colo.  
New Mexico Criminal Defense Lawyers Association  
6.0 G  
505-992-0050  
www.nmcdla.org |
| 4    | 2015 Fiduciary Litigation Update | 1.0 G  
National Teleseminar  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 5    | The Second, Best Federal Bar Seminar Ever | 6.0 G  
Albuquerque  
U.S. District Court, District of New Mexico  
505-348-2136  
www.nmd.uscourts.gov |
| 5    | Writing and Speaking to Win (2014) | 5.0 G, 1.0 EP  
Video Replay  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
Video Replay  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 5    | 2015 Ethicspalooza: Ethically Managing Your Practice | 1.0 EP  
Video Replay  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
| 5    | 2015 Ethicspalooza: Proper Trust Accounting | 1.0 EP  
Video Replay  
Center for Legal Education of NMSBF  
505-797-6020  
www.nmbar.org |
May

5 Law Practice Succession—A Little Thought Now, a Lot Less Panic Later (2014)
  2.0 EP
  Video Replay
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

5 Drafting Effective Employee Handbooks
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

7 Business Valuation in Transactional Documents: Formulas, Comps & the Market
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

8 2015 Health Law Legislative Update
  1.0 G
  Live Seminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

12 Letters of Intent in Transactions—Framing a Deal & Avoiding Liability
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

13 2015 Family Medical Leave Act Update
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

14 Essential Title Examination in Real Estate & Curing Defects
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

15 Ethics for Estate Planners
  1.0 EP
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

18–20 CLE and Sand
  9.0 G, 3.0 EP
  Punta Cana, Dominican Republic
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

19 From Workers’ Compensation to Social Security: Complementary Areas to Build Your Practice (2014)
  5.5 G
  Video Replay
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

19 2014 Business Law Institute
  5.0 G, 1.0 EP
  Video Replay
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

19 2015 Ethicspalooza: All Those Fees
  1.0 EP
  Video Replay
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

19 2015 Ethicspalooza: Conflicts of Interest
  1.0 EP
  Video Replay
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

19 Ethics and Professionalism: Advice from the Bench and Bar (2014)
  2.0 EP
  Video Replay
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

19 Drafting Confidentiality & Nondisclosure Agreements
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

20 Real Property Division
  Commercial Lease Series: Lease Operating Expenses/CAM Charges Selected Issues
  1.0 G
  Live Seminar and Telecast
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

20 Fiduciary Duties and Liability of Nonprofit/Exempt Organization Directors
  1.0 G
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

21 Attorney Ethics in Transactional and Litigation Negotiations
  1.0 EP
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org

26 Ethics and Client Money: Trusts, Funds, Expenses, Setoffs & More
  1.0 EP
  National Teleseminar
  Center for Legal Education of NMSBF
  505-797-6020
  www.nmbar.org
### Writs of Certiorari

As Updated by the Clerk of the New Mexico Supreme Court

**Joey D. Moya, Chief Clerk New Mexico Supreme Court**

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

**Effective April 17, 2015**

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Petition Filed</th>
<th>Date Petition Filed</th>
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<tbody>
<tr>
<td>No. 35,230</td>
<td>Turner v. First NM Bank</td>
<td>COA 33,303 04/16/15</td>
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<tr>
<td>No. 35,169</td>
<td>State v. Bouldin</td>
<td>COA 34,214 04/16/15</td>
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<td>No. 35,227</td>
<td>Romero v. Frawner</td>
<td>12-501 04/15/15</td>
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<tr>
<td>No. 35,158</td>
<td>State v. Barela</td>
<td>12-501 04/15/15</td>
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<tr>
<td>No. 35,229</td>
<td>State v. Primrose</td>
<td>COA 34,087 04/14/15</td>
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<td>No. 35,228</td>
<td>State v. Norberto</td>
<td>COA 32,353 04/14/15</td>
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<td>No. 35,226</td>
<td>State v. Charlie</td>
<td>COA 32,504 04/14/15</td>
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<tr>
<td>No. 35,223</td>
<td>State v. Trujillo</td>
<td>COA 33,581 04/14/15</td>
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<tr>
<td>No. 35,167</td>
<td>State v. Campbell</td>
<td>COA 33,128 04/13/15</td>
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<td>No. 35,110</td>
<td>State v. Tejero</td>
<td>COA 32,161 04/13/15</td>
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<td>No. 35,221</td>
<td>State v. Jones</td>
<td>COA 34,024 04/10/15</td>
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<td>No. 35,225</td>
<td>Baca v. State</td>
<td>12-501 04/09/15</td>
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<td>No. 35,222</td>
<td>State v. Rafael</td>
<td>COA 34,175 04/09/15</td>
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<tr>
<td>No. 35,221</td>
<td>State v. Jones</td>
<td>COA 34,024 04/10/15</td>
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<td>No. 35,213</td>
<td>Hilgendorf v. Chen</td>
<td>COA 33,056 04/06/15</td>
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<td>No. 35,212</td>
<td>Guerin v. State</td>
<td>12-501 04/06/15</td>
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<td>No. 35,217</td>
<td>Hernandez v. Horton</td>
<td>12-501 04/03/15</td>
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<td>No. 35,209</td>
<td>US Bank v. Martin</td>
<td>COA 34,160 04/03/15</td>
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<td>No. 35,207</td>
<td>Mayer v. Jones</td>
<td>COA 32,338 04/01/15</td>
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<td>No. 35,206</td>
<td>State v. Gonzales</td>
<td>COA 33,884 04/01/15</td>
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<td>No. 35,205</td>
<td>Sotelo v. State</td>
<td>12-501 04/01/15</td>
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<tr>
<td>No. 35,204</td>
<td>State v. Skaggs</td>
<td>COA 34,127 03/31/15</td>
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<td>No. 35,128</td>
<td>Tinsley v. Cepeda</td>
<td>COA 33,864 03/30/15</td>
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<td>No. 35,203</td>
<td>Graham v. Hatch</td>
<td>12-501 03/27/15</td>
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<td>No. 35,198</td>
<td>Noice v. BNSF</td>
<td>COA 31,935 03/27/15</td>
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**Petitions for Writ of Certiorari Filed and Pending:**

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<tr>
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<tr>
<td>No. 34,957</td>
<td>Pittman v. NM Corrections Dept.</td>
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<tr>
<td>No. 34,932</td>
<td>Garges v. Sanchez</td>
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<tr>
<td>No. 34,881</td>
<td>Paz v. Horton</td>
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<tr>
<td>No. 34,913</td>
<td>Fennell v. Horton</td>
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<tr>
<td>No. 34,907</td>
<td>Cantone v. Franco</td>
</tr>
<tr>
<td>No. 34,885</td>
<td>Savage v. State</td>
</tr>
<tr>
<td>No. 34,878</td>
<td>O’Neill v. Bravo</td>
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<tr>
<td>No. 34,777</td>
<td>State v. Dorais</td>
</tr>
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</table>

**Certiorari Granted but Not yet Submitted to the Court:**

<table>
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Mark Reynolds, Chief Clerk New Mexico Court of Appeals
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Effective April 17, 2015

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Recent Rule-Making Activity
As Updated by the Clerk of the New Mexico Supreme Court

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

Effective April 29, 2015

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Rule No.  Set/Title  Effective Date

Uniform Jury Instructions-Criminal

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov.
To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.
DeAngelo M. (Child) appeals his convictions for second-degree murder, burglary, larceny, and tampering with evidence. Child appeals the district court's denial of his motion to suppress statements he made during an interrogation by three investigating officers and contends that the State did not overcome the rebuttable statutory presumption that his statements were inadmissible against him because he was thirteen years of age. See NMSA 1978, § 32A-2-14(F) (2009).

We evaluate whether the State successfully rebutted the presumption of inadmissibility of statements made by a thirteen-year-old child under Section 32A-2-14(F). We conclude that the evidence presented by the State to the district court did not rebut the presumption of inadmissibility with clear and convincing evidence. State v. Adam J., 2003-NMCA-080, ¶¶ 10-11, 133 N.M. 815, 70 P.3d 805. Therefore, Child's statements were improperly admitted. We reverse the district court on its denial of the motion to suppress Child's statements. We affirm on the issues of denial of his motion to sever, request for a bill of particulars, and demand for a twelve-person jury. Accordingly, we remand this case for a new trial.

I. BACKGROUND

3 Child was eight days past turning age thirteen when he was interrogated by three investigators in connection with the murder of Angel Vale. The officers interviewed neighbors and witnesses, including Child's mother. On July 23, two retired police officers, who were acting as agents of the district attorney, and a uniformed police officer drove Child and his mother to the Roosevelt County Law Enforcement Complex where they questioned him. His mother was present throughout the interrogation. One officer read and explained Child's Miranda rights to him, which, according to the officer's testimony, Child appeared to understand. During the interrogation, Child made inculpatory statements to the officers regarding the burglary of Vale's home. Child was arrested.

4 Child filed a motion to suppress his statements. Two of the investigators and Child's teacher regarding his personal traits and his teacher at the Curry County Juvenile Detention Center testified at the suppression hearing. The district court found that Child had knowingly, intelligently, and voluntarily waived his rights and denied his motion to suppress his statements. Child also filed a motion to sever the murder, aggravated burglary, one count of tampering with evidence from larceny, and the second count of tampering, a motion for a bill of particulars, and a motion to compel the State to allow the case to be heard by twelve jurors instead of six. The district court denied each motion. Defendant timely filed this appeal.

II. DISCUSSION

A. Child's Motion to Suppress His Statements

5 Prior to trial, Child filed a motion to suppress his statements that were obtained during the interrogation by the two district attorney investigators and a police officer based on the State's failure to rebut the presumption of inadmissibility for a thirteen-year-old child's statements under Section 32A-2-14(F). The district court denied the motion. The denial of a motion to suppress is reviewed de novo. See State v. Gutierrez, 2011-NMSC-024, ¶ 7, 150 N.M. 232, 258 P.3d 1024; State v. Jade G., 2007-NMSC-010, ¶ 15, 141 N.M. 284, 154 P.3d 659.

6 Child argues that the standard created in Adam J. for the State to rebut the "presumptive inadmissibility" of statements by a child under the age of fifteen years is contrary to legislative intent because it requires comparison of the accused's ability to give a knowing, intelligent, and voluntary waiver of rights to an average of other protected young children, instead of requiring an individualized determination of whether the child has the ability to understand legal consequences and not to be unduly influenced by authority figures. Child further argues that, even if Adam J. was correct, the State did not sufficiently rebut the presumption that his statements to the police were inadmissible. 2003-NMCA-080, ¶ 7.

7 The State argues that the Adam J. standard is appropriate and that the State rebutted the presumption that Child's statements were inadmissible by presenting evidence from the two investigating officers and his teacher regarding his personal traits that supported the district court's finding that he had the ability to knowingly, intelligently, and voluntarily waive his rights.1

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1 Child does not challenge the adequacy of the advice of Miranda rights given to him by the officers in this case.
For the reasons that follow, we conclude that Adam J., while equating a particular age to a legislative line between children who do or do not have the developmental maturity to make a valid waiver, nevertheless significantly expands the range of inquiry to assess factors “particular to an individual child.” Id. ¶ 8. Viewing this case in light of the expansive evaluation of circumstance and personal characteristics that Adam J. and Subsection (F) require to be conducted by the district court with regard to thirteen-year-old children, we conclude that the State’s evidence was insufficient to rebut the presumption that Child was incapable of a valid waiver of his right under Section 32A-2-14(F).


[8] The capacity to waive Fifth Amendment rights is assumed for children over fifteen and for adults. See State v. Jonathan M., 1990-NMSC-046, ¶ 8, 109 N.M. 789, 791 P.2d 64; see also Gutierrez, 2011-NMSC-024, ¶ 7 (requiring the same assessment for adults and children when determining the legitimacy of a Miranda waiver); State v. Martinez, 1999-NMSC-018, ¶¶ 14-15, 127 N.M. 207, 979 P.2d 718 (determining that the factors used in evaluating a waiver of constitutional rights for juveniles over the age of fourteen are essentially the same as those used for an adult). This is because Section 32A-2-14 of the Children’s Code assumes that children fifteen years old and older are more similar in development and maturity to adults and, therefore, are better able to protect their rights. See Jonathan M., 1990-NMSC-046, ¶ 8 (explaining that children over fifteen and adults are unlikely to make involuntary statements after Miranda warnings due to their higher level of sophistication); see also Martinez, 1999-NMSC-018, ¶ 18 (stating that Section 32A-2-14 codifies that the adult rule for a successful waiver of rights applies to children fifteen years old and older). When a defendant fifteen years old and older raises his lack of capacity to waive Fifth Amendment rights, the state must prove that he waived his rights by a preponderance of the evidence. Gutierrez, 2011-NMSC-024, ¶ 7.

[9] However, the Children’s Code emphasizes the difficulty a child younger than fifteen experiences due to a lack of maturity and development when waiving Fifth Amendment rights. The Children’s Code protects children younger than fifteen years old by creating a rebuttable presumption that statements given by thirteen- or fourteen-year-old children are inadmissible. Section 32A-2-14(F); see In re Francesca L., 2000-NMCA-019, ¶ 7, 128 N.M. 673, 997 P.2d 147 (holding that the Children’s Code grants heightened protection only for the statements of those under fifteen years old), overruled on other grounds by Adam J., 2003-NMCA-080, ¶ 10. The rebuttable presumption of inadmissibility created by Subsection (F) “stresses age in its effort to draw the line between children who are too young to waive their rights and those who are not.” Adam J., 2003-NMCA-080, ¶ 8. The presumption is based on a legislative recognition that most children under fifteen are less capable of understanding and protecting their legal interests than are older children and adults. E.g., Jonathan M., 1990-NMSC-046, ¶ 8 (interpreting previous version of Section 32A-2-14 to reflect that young children do not have the capacity to understand or protect their constitutional rights). Subsection (F) creates a constitutional classification based on age that requires this level of protection. Francesca L., 2000-NMCA-019, ¶ 12. It is an age-based presumption that is intended to “draw the line between children who are too young to waive their rights and those who are not.” Adam J., 2003-NMCA-080, ¶ 8.

[10] The child’s “[a]ge is particularly pertinent because Subsection [(F)] creates a distinction based upon the age of a child.” Francesca L., 2000-NMCA-019, ¶ 12. A child’s proximity in age to thirteen is also relevant to this determination and can alone serve as an indication that the statement did not rebut the presumption. See Adam J., 2003-NMCA-080, ¶ 5 (stating that the district court could have determined that the state did not rebut the presumption based exclusively on the fact that the child had only recently turned thirteen). Without sufficient intellectual and emotional development, not only are young children unable to understand and protect their legal interests, they are also unable to understand the legal consequences of their statements. They may also be affected by the inherent intimidation of questioning by authority figures such as police. Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (stating that a fourteen-year-old child is unequal to police in knowledge and understanding of consequences of interrogation questions and is unable to protect his interests). For these reasons, our Legislature has required the state to rebut a presumption that a child of thirteen years is incapable of giving a valid waiver of his rights before his statement can be used against him. Section 32A-2-14(F); Adam J., 2003-NMCA-080, ¶ 6.

[11] Section 32A-2-14(F) specifically provides heightened protection to thirteen-year-old children beyond the specific requirements of Subsection (E). Adam J., 2003-NMCA-080, ¶¶ 3, 10. Thus, before ever deciding admissibility based on whether the waiver was knowing, intelligent, and voluntary, the district court must make an initial determination of whether a thirteen-year-old child who has made a statement is capable of such a waiver. Id. ¶ 10; Francesca L., 2000-NMCA-019, ¶ 10. The statutory expectation is simply that thirteen-year-old children are presumed incapable of a valid waiver absent a showing that the child had at least the same ability to give a knowing, voluntary, and intelligent waiver as an average fifteen-year-old child. See Adam J., 2003-NMCA-080, ¶¶ 9-11. The child’s personal traits, including “background, maturity, intelligence, ability to understand and react to new situations, and other relevant personal factors” are examined to determine whether the child is sufficiently above average as to rebut the presumption. Id. ¶ 8.

[12] Even while “an analysis of the circumstances may assist the child’s court in understanding the child’s personal traits, such analysis is secondary to, and does not substitute for, an analysis of the child’s personal traits” under Subsection (F). Adam J., 2003-NMCA-080, ¶ 10. Thus, under Section 32A-2-14, the determination of whether a thirteen-year-old child knowingly, intelligently, and voluntarily waived his rights first requires an analysis of the child’s “personal traits.” The focus in this case must be on the child’s maturity, intelligence, and development. In short, the state must affirmatively distinguish the particular child’s ability to waive rights from the presumptive inability to do so established.

2 Although Adam J. and Francesca L. speak of comparing the child-defendant to the average thirteen- or fourteen-year-old, Child here is only days past his thirteenth birthday. Even if he was advanced for his age to the developmental level of an average fourteen-year-old child, he would still presumptively have given an inadmissible statement.
by Subsection (F) of any child under the age of fifteen. Adam J., 2003-NMCA-080, ¶ 9-11. If the district court is not satisfied that the rebuttable presumption of incapacity has been overcome based on competent evidence of the personal traits of the child beyond age alone, then the court’s inquiry is complete at that point, and the statement is excluded. Id. ¶ 10 (holding that the child’s ability to waive is a threshold determination and must be decided before determining the statement’s admissibility as the product of a knowing, intelligent, and voluntary waiver).

{13} For the state to make such a distinction, the characteristics of an average fifteen-year-old child must be established by the evidence, as well as the individual characteristics of the child. We note that, upon the question of competency being raised by the adult defendant in a criminal case, evaluating his or her competency to stand trial “must be professionally evaluated by a qualified professional.” State v. Flores, 2005-NMCA-135, ¶ 17, 138 N.M. 636, 124 P.3d 1175. We do not regard competency being that a defendant “understands the nature and significance of the proceedings, has a factual understanding of the charges, and is able to assist his attorney in his defense” to be so far removed in concept or scope from determining a thirteen- or fourteen-year-old child’s developmental status with regard to having the ability to waive Fifth Amendment rights. Id. ¶ 16 (internal quotation marks and citation omitted). This consideration is particularly acute when the child, as here, has only recently turned thirteen. See Francesca L., 2000-NMCA-019, ¶ 12; see also Adam J., 2003-NMCA-080, ¶ 5 (acknowledging that “the children’s court’s finding that the child had only recently turned thirteen . . . was relevant to its conclusion that the child was entitled to a heightened protection because of her age” (internal quotation marks and citation omitted)). We regard as beyond the ability of lay witnesses, such as were presented by the State in this case, the task of rebutting a presumption that a thirteen-year-old does not possess the developmental attributes to render him capable of a waiver and distinguishing those characteristics head-to-head against the developmental level of an average fifteen-year-old child. We believe that a hearing that is equivalent to a competency hearing in the quality of its evidence is required. At that hearing, the state must present evidence as to both the benchmark to be reached and the qualities of the child that meet it and that the thirteen-year-old child possessed personal faculties equivalent to what is required to find an ability to waive rights that would satisfy an adult standard for waiver. Anything less is insufficient. In this case, the poorly presented evidence of two retired police officers and a teacher, who had no background with Child beyond being a half-day teacher to all of the children in the juvenile detention facility, is insufficient as we discuss below. Although competency to stand trial must meet only a preponderance standard, this situation is different. We next take this opportunity to establish the standard of proof required to rebut the presumption of inadmissibility of Child’s statements.

2. Clear and Convincing Evidence is Required to Rebut the Presumption

{14} The question of the proper standard of proof is generally a matter for judicial resolution. In re Valdez, 1975-NMSC-050, ¶ 12, 88 N.M. 338, 540 P.2d 818. Although the parties did not raise the issue of the level of evidence required to show that Child did not have the ability to waive his rights, we take this opportunity to clarify the law.

{15} For persons older than fifteen years where a valid waiver is presumed by law, waiver may be proved by a preponderance of the evidence. Gutierrez, 2011-NMSC-024, ¶ 7. For children thirteen or fourteen years old, there is a rebuttable presumption of inadmissibility, which, by providing “heightened protection” of constitutional proportions to those children, necessarily alters the level of proof required for the state to meet its burden. Our Supreme Court has held that where fundamental liberties are involved and matters involving psychological testimony are subject to some interpretation, the standard of proof must reflect the gravity of the interests at stake. Valdez, 1975-NMSC-050, ¶ 20. Specifically, our Supreme Court has held that the state must meet a “heavy burden” in order to overcome a statutory rebuttable presumption. State v. Gallegos, 2011-NMSC-027, ¶ 55, 149 N.M. 704, 254 P.3d 655. Other cases indicate that the gravity of the burden requires clear and convincing evidence. See Weeks v. Bailey, 1927-NMSC-048, ¶ 9, 33 N.M. 193, 263 P.29 (stating that “only clear and convincing evidence can overcome [a rebuttable presumption]” (internal quotation marks and citation omitted)); see also In re Adoption of J.J.B., 1995-NMSC-026, ¶ 59, 119 N.M. 638, 894 P.2d 994 (stating that “presumption favoring the natural parent can be rebutted by showing serious parental inadequacy with clear and convincing evidence”); Lucero v. Lucero, 1994-NMCA-128, ¶ 24, 118 N.M. 636, 884 P.2d 527 (holding that substantial evidence supported the district court’s finding that “presumption of a lack of testamentary capacity was overcome by clear and convincing evidence” (internal quotation marks and citation omitted)), superseded on other grounds by statute as stated in Clinsmith v. Temmerman, 2013-NMCA-024, 298 P.3d 458, cert. denied, 2013-NMCERT-001, 299 P.3d 863; Valdez, 1975-NMSC-050, ¶ 20 (“For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder’s mind is left with an abiding conviction that the evidence is true.” (internal quotation marks and citation omitted)).

{16} Thus, we hold that rebutting the presumption in Section 32A-2-14(F) requires the state to present clear and convincing evidence that, in the totality of the circumstances, the child’s personal traits give him an above-average ability to knowingly, intelligently, and voluntarily waive his rights in the way the statute presumes a fifteen-year-old child can. We now apply this standard to the proceedings in this case.

3. The District Court Erred in Denying Child’s Motion to Suppress His Statements to Police Officers

{17} Child’s statements cannot be properly admitted unless the State proves that, by clear and convincing evidence, he was capable of a knowing, intelligent, and voluntary waiver of his rights. 3 We need to go no farther in this case than examining the evidence presented concerning Child’s individual attributes to conclude that he was not capable of effectively waiving his rights in this instance. The State presented evidence from three persons during the suppression hearing: two of the three investigating officers who interrogated Child, Agents Dan Blair and Dan Aguilar; and Ron Allen, who had been Child’s teacher at the detention center.

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3 We note that, although the State claims that Child was party to a voluntary interview and not a custodial interrogation, he does not raise the issue.

4 Agents Blair and Aguilar were both investigators from the District Attorney’s Office. Both were retired police officers.
Agents Blair and Aguilar testified that, based on their experience interviewing children of similar age, Child was articulate, inquisitive, and aware of his constitutional rights, was more mature and intelligent than average and, in their opinion, had knowingly, intelligently, and voluntarily waived his rights. Agent Blair testified about Child based only upon the contact he had with Child during the interrogation. He did not review any school or other records concerning Child. Agent Blair stated that Child engaged in conversations with adults, seemed interested in learning, was aware of his surroundings, and asked questions about his rights and stated he understood. Agent Blair also testified initially that Child’s mother had stated that he was an “A” and “B” student, but mentioned, on cross-examination, that she had also stated that he had “C” and “D” grades in some classes and had not told Agent Blair about an “F” grade. No evidence of Child’s actual grades was presented. Agent Blair stated that Child was articulate and had checked out a young adult book of over four hundred pages from the library on the day before the interrogation. There was no evidence as to why he chose that book or that he had read any of it yet.\(^5\) From this, however, Agent Blair concluded that Child seemed mature and more intelligent than most children his age and, based solely on the interview, he believed Child’s waiver was knowing, intelligent, and voluntary. No comparison beyond “children his age” was ever provided. This is insufficient under the standard we have enunciated in* Francesca L.* and *Adam J.*.

Agent Aguilar testified that Child was more inquisitive about his rights as compared to other children he had interviewed, was more independent, understood the officers’ questions, and appeared to understand his rights. Any statement relating Child’s capacity specifically to the standard we employ was not provided to the district court. He testified that Child seemed more advanced than the average thirteen-year-old child with whom he had come into contact as a detective in crimes against children. Agent Aguilar felt that Child was actively involved in the explanation of his rights. This testimony was similarly inadequate.

Allen, Child’s teacher, testified that Child was well-read, inquisitive, and readily corrected the grammar and vocabulary of the other juveniles in the detention center and, in his opinion, Child was more intelligent than the average detainees in his age group. Allen testified that he had only taught half time between an alternative school and the juvenile detention center where Child was being held and, therefore, compared Child only to other children in the alternative school. He had no other contact with Child prior to his arrest or knowledge of the capabilities of children not in an alternative school. Allen stated that the reading levels of the students at alternative schools ranged from far below average to average or above, that the students were typically behind, and that Child’s intelligence was generally above the other alternative school students. Allen was unable to define “average” beyond the students at the school whose ages were not mentioned. Allen stated that Child seemed well-read and read more than the other children and was intelligent and inquisitive, though he was at an average math level.

However, Allen did not mention Child’s school records, nor was he asked to testify regarding Child’s grades or testing scores prior to being in custody, or otherwise asked to conclude that Child had the maturity and discernment of an average fifteen-year-old child. See* Moreno v. State,* 510 S.W.2d 116, 119 (Tex. App. 1974) (evaluating extensive records, including psychiatric diagnostic reports, to determine that the sixteen-year-old child had average intelligence and was more socially mature than average). Nor did Allen make any conclusion regarding Child’s ability to understand complex legal rights and having sufficient capacity to waive those rights. We conclude that the evidence presented by the three witnesses did not establish that Child had the maturity and intelligence of an average fifteen-year-old child to understand his situation and the rights he possessed.

Evaluating the evidence against *Adam J.* and the standards we have enunciated here, we note first that Child’s age is at the very lowest possible end of the age range at which his statements can be used at all. Particularly important is the proximity of his age to that which would render his statements conclusively inadmissible. *Adam J.*, 2003-NMCA-080, ¶ 5; *Francesca L.*, 2000-NMCA-019, ¶ 6 (holding proximity to age thirteen to be of possibly conclusive significance). Comparing him to other thirteen-year-old children, or other children whose ages and developmental levels are either not stated or irrelevant, does not provide evidence that he is as advanced as a fifteen-year-old child, leaving the presumption of Subsection (F) intact as to his own age of thirteen.

We conclude that the evidence presented by the State through answers to a significant number of leading questions did not amount to clear and convincing evidence of Child’s ability to waive his legal rights. The testimony of the investigating officers was based solely on their single interaction with Child during the interrogation. Each officer provided no more than the knowledge they had about Child based on the interaction during the interrogation and some statements from his mother. On this basis alone, they concluded that Child seemed more intelligent and mature than most children of unknown ages that they have worked with and was able to waive his rights. They did not compare Child’s abilities and maturity to the panoply of other average juveniles of any stated age level. The officers also did not testify in detail about the quality of the other children they had previously dealt with or the nature of those contacts. The investigators, given the likelihood of bias stemming from their role as Child’s accusers, can be assumed to have colored views of their own opinions and actions. See *State v. Gomez,* 1997-NMSC-006, ¶¶ 36, 38, 122 N.M. 777, 932 P.2d 1 (stating that law enforcement is a competitive enterprise); see also *State v. Bombay,* 2007-NMCA-081, ¶ 14, 141 N.M. 853, 161 P.3d 898 (stating that the competitive pressures of law enforcement may compromise judgment), rev’d on other grounds, 2008-NMSC-029, 144 N.M. 151, 184 P.3d 1045. Furthermore, Allen’s testimony, showing his lack of contact with Child prior to being held at the detention center, meant he could only compare Child to other children in the detention center and alternative school. He neither made reference to average thirteen-year-old children in general nor spoke to objective measures, such as Child’s school records or testing scores from his regular school.

\(^5\) Child was in the eighth grade at the time. The book has been designated at a fourth-grade reading level. http://www.scholastic.com/teachers/book/twilight#cart/cleanup.
The question in cases where the child benefits from the rebuttable presumption of inadmissibility is not simply whether the child seems to be intelligent or mature, which seems to have been the State's sole thrust in its case. Instead, the question for the district court is whether, under a clear and convincing standard of proof, the State presented evidence that Child has above-average intelligence, maturity, and other relevant personal traits compared to average thirteen-year-old children that show that he has the capacity to understand his rights and understand the consequences of waiving those rights in the way a fifteen-year-old child would. The State did not do so here. Whether Child reads books, converses with adults, corrects vocabulary and grammar, and "seems" more intelligent and mature than other children from the perspective of his arresting officers is not clear and convincing evidence that he had an above-average ability based on his personal traits and understanding of the situation to allow him to waive his rights. More evidence is needed to overcome the statutory presumption against admitting the statements of a thirteen-year-old child. As such, Child's statements were inadmissible, and we reverse the district court's denial of Child's motion to suppress and remand for a new trial. We now address Child's other arguments that may arise should this case be tried again.

B. Child's Motion to Sever the Charges

Child filed a motion to sever the murder, aggravated burglary, and one count of tampering with evidence charges from larceny and the second count of tampering. The district court denied the motion to sever on the grounds that the courses of conduct alleged in all five charges were based on a connected series of acts, the evidence would have been cross-admissible, and Child failed to show sufficient prejudice to warrant severance of the charges. The denial of a motion to sever is reviewed under an abuse of discretion standard. See State v. Lovett, 2012-NMSC-036, ¶ 10, 286 P.3d 265.

Child argues that the evidence of the larceny, primarily his confession, would not be cross-admissible because it was improper evidence under Rule 11-404(B) NMRA. Child further argues that, even if the evidence was cross-admissible, it should have been kept out because the probative value was substantially outweighed by the danger of unfair prejudice under Rule 11-403 NMRA. The State argues that the evidence would be cross-admissible because it is proper other act evidence because it shows intent, opportunity, knowledge, and absence of mistake. The State points out that Child did not fully argue his reasoning for the inadmissibility of the evidence under Rule 11-403, but the State argues that the probative value of the evidence is the other act evidence of intent, opportunity, knowledge, and absence of mistake and that the potential prejudice is diluted by the varying time frames between the alleged acts and the nature of the crimes charged.

Rule 5-203(A) NMRA requires the state to join certain charges if the offenses "are of the same or similar character, even if not part of a single scheme or plan[,] or are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan." State v. Gallegos, 2007-NMSC-007, ¶ 10, 141 N.M. 185, 152 P.3d 828. Even when offenses are properly joined, a district court may abuse its discretion in failing to sever charges if there is prejudice to the accused. Id. ¶¶ 9, 16.

The first step of this inquiry requires determination of whether the evidence pertaining to each charge would be cross-admissible in separate trials. Id. ¶ 19. The defendant may be prejudiced by admission of evidence that would be otherwise inadmissible. Id. "On the other hand, cross-admissibility of evidence dispels any inference of prejudice." Id. (alteration, internal quotation marks, and citation omitted).

Cross-admissibility is determined through an analysis of Rule 11-404(B). See Gallegos, 2007-NMSC-007, ¶¶ 20-21. Under Rule 11-404(B)(1), "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Nevertheless, evidence of a crime, wrong, or other act may permissibly be used for another purpose, "such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Rule 11-404(B)(2). "It remains within a district court's discretion to admit evidence of . . . prior acts . . . when the [s]tate shows that such evidence is relevant to a material issue other than conformity with character." Martinez, 1999-NMSC-018, ¶ 30 (alteration, internal quotation marks, and citation omitted). The state must "identify and articulate the consequential fact to which the evidence is directed." Gallegos, 2007-NMSC-007, ¶ 22.

The evidence in this case would have been cross-admissible because the evidence was proper other act evidence in accordance with Rule 11-404(B)(2). The evidence of the larceny, including Child's statement, was evidence of his knowledge and opportunity in relation to the eventual murder of Vale. From this evidence, the jury could infer that Child knew how to gain access to Vale's house and that he had the opportunity to do so previously and could have done so again. This does not require the inference that Child has the propensity or character to commit larceny and, therefore, murder, which would be improper character evidence under Rule 11-404(B)(1). Instead, it is permissible under Rule 11-404(B)(2). We conclude that the district court did not abuse its discretion by denying Child's motion to sever. We affirm the district court on this issue.

C. Child's Motion for Bill of Particulars/Statement of Facts

Child argues that the denial of his motion for a bill of particulars violated his due process rights because he required an understanding of the State's theory for connecting the crimes charged and the specific evidence that would be used in order to adequately prepare his defense. The State argues that Child was able to adequately prepare his defense because the delinquency petition described the offenses. He was given a witness list and had access to 1200 documents due to the State's open file policy. We review the district court's denial of a motion for a bill of particulars for an abuse of discretion. State v. Mankiller, 1986-NMCA-053, ¶ 18, 104 N.M. 461, 722 P.2d 1183.

As our precedent indicates, "[t]he object of a bill of particulars . . . is to enable [an accused] to properly prepare his defense." State v. Mosley, 1965-NMSC-081, ¶ 4, 75 N.M. 348, 404 P.2d 304; State v. Archuleta, 1970-NMCA-131, ¶ 32, 82 N.M. 378, 482 P.2d 242. The bill of particulars must "give [the accused] and the court reasonable information as to the nature and character of the crime charged." State v. Shroyer, 1945-NMSC-014, ¶ 70, 49 N.M. 196, 160 P.2d 444; see Mosley, 1965-NMSC-081, ¶ 4. However, these requirements do not require the state to "plead evidence[.]"
In determining whether the accused had enough information to adequately prepare his defense, the primary determination is whether the accused had enough information to adequately prepare his defense. The district court must consider the whole record. Archuleta, 1970-NMCA-131, ¶ 33. In order to satisfy due process, the district court must provide the defendant with the evidence on which the state would rely, the particular acts that were charged, and the manner in which the crimes charged were proved to the jury. The district court did not abuse its discretion by denying the defendant's motion to compel. An appellate court reviews issues of statutory interpretation de novo. Schuster v. State Dep't of Taxation & Revenue, 2012-NMSC-025, ¶ 21. Section 32A-2-16(A) is a specific circumstance in which the rights of the child are otherwise provided for in the Children's Code. A child is entitled to a six-member jury unless subject to an adult sentence. Child acknowledges this clear language of the statute. Thus, Child was not entitled to a twelve-member jury, and we affirm the district court's denial of his motion to compel.

III. CONCLUSION

[39] We hold that the State is required to present clear and convincing evidence that Child had an above-average ability based on his personal traits and understanding of the situation to waive his rights in order to rebut the presumption of inadmissibility under Section 32A-2-14(F). The State did not meet this burden, thus, Child's statements were inadmissible. We reverse the district court's order denying Child's motion to suppress his statements and affirm the district court's denial of his motion to sever, the motion for a bill of particulars, and the motion to compel a twelve-member jury.

[40] IT IS SO ORDERED.

RODERICK T. KENNEDY, Chief Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

M. MONICA ZAMORA, Judge
Advance Opinions

Certiorari Denied, January 14, 2015, No. 35,032

Opinion Number: 2015-NMCA-020

STATE OF NEW MEXICO,
    Plaintiff-Appellee,
v.
SIDNEY PATRICK ORTIZ,
    Defendant-Appellant
Docket No. 31,049 (filed November 13, 2014)

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
    JERRY H. RITTER, JR., District Judge

GARY K. KING
    Attorney General
Santa Fe, New Mexico
JACQUELINE R. MEDINA
    Assistant Attorney General
Santa Fe, New Mexico

Jorge A. Alvarado
    Chief Public Defender
Nina Lalevic
    Assistant Appellate Defender
Albuquerque, New Mexico
for Appellee

Opinion

J. Miles Hanisee, Judge

[1] This case comes to us a second time following a “limited remand” previously ordered by this Court to obtain discovery and information regarding the calculation of Defendant Sidney Patrick Ortiz’s earned meritorious deductions. Following an amended judgment and order, Defendant contends that the district court erred in determining that the Earned Meritorious Deductions Act (EMDA), NMSA 1978, Section 33-2-34 (1999, amended 2006), does not apply to a term of probation, even when the probation is served during a period of incarceration on another sentence. Defendant also challenges the imposition of parole, maintaining that New Mexico law does not require him to serve multiple periods of parole on consecutive counts. We affirm the rulings of the district court.

BACKGROUND

[2] In May 2001, pursuant to a plea agreement, Defendant pled no contest to five felony counts of third-degree forgery, contrary to NMSA 1978, Section 30-9-16-10 (1963, amended 2006), in CR-01-69 (Case 69). The district court sentenced Defendant to a fifteen-year period of imprisonment. However, it suspended twelve of those years and ordered that Defendant be incarcerated for three years, followed by two years of parole to run concurrent with five years of supervised probation.

[3] Several months later, in a separate case, CR-01-242 (Case 242), Defendant pled guilty to seven fourth-degree felonies and two misdemeanors. As a result of his previous conviction in Case 69, the district court classified Defendant as a habitual offender and sentenced him to eighteen months of incarceration on each felony count, enhanced by one year for Defendant’s habitual offender status. The district court ran Counts 1, 2, and 3 consecutive to each other and concurrent with Counts 4, 5, 6, and 7. Additionally, the district court sentenced Defendant to three hundred sixty-four days for each misdemeanor. The district court suspended all but the mandatory habitual offender time, resulting in a three-year sentence to run concurrent to the sentence imposed in Case 69. Upon completion of the sentence, the district court ordered one year of mandatory parole to run concurrent with five years supervised probation. Upon his release from prison in 2004, Defendant was serving his periods of probation in Cases 69 and 242. But by 2010, Defendant had been reincarcerated on previous probation violations, and ultimately, the State filed a petition for probation revocation on both cases, alleging that Defendant had again violated the conditions of his probation.

Defendant pled no contest to the violations, and the district court required him to serve the balance of his sentence, which it calculated to be eight and one-half years less seventy-eight days for the time he had already served on the prior probation violations. Following sentencing, Defendant sought reconsideration by written motion to the district court, which was denied.

[4] Defendant initially appealed imposition of his remaining suspended sentence to this Court, arguing that the district court abused its discretion in imposing the balance of Defendant’s sentence as it “unfairly interfered with his life’s goals and ambitions.” We initially proposed summary affirmance; however, after Defendant filed a memorandum in opposition to the proposed affirmance, we referred the matter to our Appellate Mediation Office. The parties agreed to a “limited remand,” during which we ordered that discovery be obtained and information gathered regarding calculation of Defendant’s good-time credit.

[5] On remand, Defendant filed a motion seeking recalculation of his sentence, arguing to the district court that it had improperly calculated his sentencing credits and failed to credit him with meritorious deductions he earned toward his probation on Case 69 while still incarcerated for Case 242. After a hearing, the district court found that “the time Defendant served was not properly credited[,”] and it ordered the Department of Corrections to calculate Defendant’s credits in accordance with the district court’s revised findings. However, the district court additionally found that the “Earned Meritorious Deduction Act does not apply to probation, even when the probation is served during a period of incarceration on another sentence.” Defendant appeals this ruling.

DISCUSSION

Earned Meritorious Deductions Do Not Apply to Reduce Probation Sentences

[6] Defendant argues that probation time served during a period of incarceration is eligible for earned meritorious deductions under the EMDA. Specifically, Defendant maintains that because the sentences for Case 69 and Case 242 were served consecutively, he served probation for Case 69 while incarcerated in Case 242, and the district court erred in refusing to apply meritorious deductions, earned while he was incarcerated on Case 242, to his probationary sentence in Case 69.

In support, Defendant relies on the EMDA itself, stating that it contains a list of
 Courses at the Bar Center include ...

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2015 Spring Elder Law Institute: Developments in Elder Law Rules and Regulations

Friday, May 1, 2015 • 1-4 p.m.
State Bar Center

Co-sponsor: Elder Law Section
Standard Fee: $125
Elder Law Section members, government and legal services attorneys, and Paralegal Division members $115
Webcast Fee: $135

12:30 p.m. Registration
1 p.m. VA Proposed Rules and Regulations - Changing the Face of Aid and Attendance
Lori L. Millet, J.D., LL.M (Elder Law), ABQ Elder Law, PC

2 p.m. Break
2:10 p.m. ABLE Act - New Tool for Saving for Individuals with Special Needs
Margaret “Peggy” Graham, J.D., Of Counsel, Pregenzer Baysinger Wideman & Sale PC

3:10 p.m. Break
3:20 p.m. Effects of the ACA’s MAGI Calculation
Sara R. Traub, J.D., CPA, Associate, Pregenzer Baysinger Wideman & Sale PC

4 p.m. Adjournment and Spring Fling Reception with the New Mexico Guardianship Association

2015 Health Law Legislative Update

Presented by Morris “Mo” Chavez and Ryan Harrigan, SaucedoChavez PC

Friday, May 8, 2015 • 9-10 a.m.
State Bar Center

Co-sponsor: Health Law Section
Standard Fee: $50
Health Law Section members: $30

New Mexico Court System
State Bar President Martha Chicoski, Glasheen Valles & Inderman LLP
1.0 G

How to Do Your First Personal Injury Case
James Ellis, James C Ellis Attorney at Law PC
2.0 G

Mindfulness and the Law
Clare Freeman, Esq.
1.0 EP

Re-envisioning Daubert
Clare Freeman, Esq.
1.0 G

Civility in the Courtroom
Tania Maestas, NM Regulation and Licensing Department
1.0 EP

Law Enforcement Interrogation Techniques and Tactics in Criminal Trials
Daniel Marquez, U.S. Marine Corps
2.0 G

Mediation: Building Relationships for Resolution
Craig Orraj, Farmers Insurance Exchange
1.0 G

Explosion of the Elder Population: Issues We All Have to Address
Melissa Reeves-Evins, Melissa J Reeves PC
1.0 G

Leasing: One Form Does Not Fit All
LeeAnn Werbelow, Lastrapes Spangler & Pacheco PA
2.0 G

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CLE and Sand

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All-Inclusive Resort • May 16-23, 2015

CLE Classes: 8 a.m.-12:15 p.m., May 18-20
Standard Fee: $325

Law Enforcement Interrogation Techniques and Tactics in Criminal Trials
Daniel Marquez, U.S. Marine Corps
2.0 G

Mediation: Building Relationships for Resolution
Craig Orraj, Farmers Insurance Exchange
1.0 G

Explosion of the Elder Population: Issues We All Have to Address
Melissa Reeves-Evins, Melissa J Reeves PC
1.0 G

Leasing: One Form Does Not Fit All
LeeAnn Werbelow, Lastrapes Spangler & Pacheco PA
2.0 G

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Real Property Division Commercial Lease Series: Lease Operating Expenses/CAM Charges Selected Issues

Presented by Charles Price, Myers Oliver and Price PC

Wednesday, May 20, 2015 • noon-1 p.m.
State Bar Center

To attend by phone, register by calling CLE at 505-797-6020 and provide the phone number from where you will be calling.

Co-sponsor: Real Property, Trust and Estate Section
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Real Property, Trust and Estate members: $30
No CLE credit: Free of charge, but call to reserve a space if attending onsite.

Attorneys whose practice includes a commercial property component are commonly asked to prepare or review office and retail leases, both for landlords and for tenants, in a wide variety of situations. The Real Property Division of the Real Property, Trust and Estate Section has selected several specific issues that are important to fully understand when reviewing a commercial lease; these issues will be presented in a “roundtable” discussion format in a series of sessions. The first session in May will address “Operating Costs” and “Common Area Charges.” Areas to be discussed will include (i) basic terminology (e.g., net lease, gross lease, modified gross lease, base year, expense cap, gross up), (ii) which of the landlord’s costs should be included, and which should be excluded, and (iii) issues of specific concern to large tenants vs. small tenants.

11:30 Lunch provided by the Real Property, Trust and Estate Section
Noon CLE
1 p.m. Adjournment

Reciprocity in New Mexico

Monday, June 1, 2015 • 8:30 a.m.-4:45 p.m.
State Bar Center, Albuquerque

Standard Fee: $275
Government, legal service attorneys, and Paralegal Division members $245
Reciprocal applicants: free of charge

8 a.m. Registration
8:30 a.m. Civility (2 EP)
The Hon. Edward L. Chavez, New Mexico Supreme Court
William Slease, Chief Disciplinary Counsel, Disciplinary Board of the New Mexico Supreme Court
10:30 a.m. Break
10:45 a.m. Introduction to the Courts
William Slease
11:15 a.m. Trust Accounting (.5 EP)
William Slease
11:45 p.m. Lunch (provided at the State Bar Center)

12:30 p.m. Indian Law
Kevin Washburn, Assistant Secretary, Indian Affairs, U.S. Department of the Interior
• History of Indian Country in New Mexico
• Indian Child Welfare Act
• Water Rights on Indian Land
• Indian Gaming
• Criminal and Civil Jurisdiction
2:30 p.m. Break
2:45 p.m. Community Property Law
Little Gilman-Tepper Batley & Leigh PA
4:45 p.m. Adjournment and Swearing-in Ceremony
(Reception Following)

Note: This version of the CLE Planner contains a schedule and credit revision.
## VIDEO REPLAYS • MAY-JUNE

### State Bar Center, Albuquerque

**MAY 5**  
**Writing and Speaking to Win**  
(2014)  
5.0 G, 1.0 EP  
9 a.m.-4 p.m.  
$249

**The Family Law Client in the Context of Immigration Law 2014: What Every Attorney Should Know to Maximize Results for Noncitizen Clients**  
6.2 G  
9 a.m.-3:45 p.m.  
$249

**The Family Law Client in the Context of Immigration Law 2014: What Every Attorney Should Know to Maximize Results for Noncitizen Clients**  
6.2 G  
9 a.m.-3:45 p.m.  
$249

**MAY 19**  
**From Workers’ Compensation to Social Security: Complementary Areas to Build Your Practice**  
(2014)  
5.5 G  
9 a.m.-3 p.m.  
$229

**2014 Business Law Institute**  
5.0 G, 1.0 EP  
9 a.m.-3:45 p.m.  
$249

**2015 Ethicspalooza: Ethically Managing Your Practice**  
1.0 EP  
9-10 a.m.  
$55

**2015 Ethicspalooza: Proper Trust Accounting**  
1.0 EP  
10:15-11:15 a.m.  
$55

**Law Practice Succession—A Little Thought Now, a Lot Less Panic Later (2014)**  
2.0 EP  
1-3 p.m.  
$99

**MAY 20**  
**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**2015 Ethicspalooza: All Those Fees**  
1.0 EP  
9-10 a.m.  
$55

**2015 Ethicspalooza: Conflicts of Interest**  
1.0 EP  
10:15-11:15 a.m.  
$55

**Ethics and Professionalism: Advice from the Bench and Bar**  
(2014)  
2.0 EP  
1-3 p.m.  
$99

**MAY 29**  
**Research on a Budget and Legal Tech Tips (2014)**  
6.0 G  
9 a.m.-3:30 p.m.  
$249

**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**2015 Ethicspalooza: Ethics of Social Media Use**  
1.0 EP  
1-2 p.m.  
$55

**2015 Ethicspalooza: Civility and Professionalism**  
1.0 EP  
1-2 p.m.  
$55

**JUNE 9**  
**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**JUNE 17**  
**25th Annual Real Property Institute**  
5.5 G, 1.0 EP  
9 a.m.-4:45 p.m.  
$265

**Technology in the Courts**  
5.2 G, 1.0 EP  
9 a.m.-4 p.m.  
$249

**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**JUNE 23**  
**25th Annual Real Property Institute**  
5.5 G, 1.0 EP  
9 a.m.-4:45 p.m.  
$265

**Technology in the Courts**  
5.2 G, 1.0 EP  
9 a.m.-4 p.m.  
$249

**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**JUNE 24**  
**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**JUNE 25**  
**Research on a Budget and Legal Tech Tips (2014)**  
6.0 G  
9 a.m.-3:30 p.m.  
$249

**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**JUNE 26**  
**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**JUNE 27**  
**Civil Procedure Update and Recent Developments in the U.S. Supreme Court**  
3.0 G  
9-noon  
$145

**2015 Ethicspalooza: All Those Fees**  
1.0 EP  
9-10 a.m.  
$55

**2015 Ethicspalooza: Conflicts of Interest**  
1.0 EP  
10:15-11:15 a.m.  
$55

Video Replays are held at the State Bar Center, 5121 Masthead NE, Albuquerque. They include course materials, CLE credit filing and fees for New Mexico, and count as live credit. Depending on the time of the replay, they include continental breakfast and buffet lunch.

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**NOTE:** Programs subject to change without notice.
circumstances under which inmates are ineligible for meritorious deductions, none of which exclude relief from a sentence of probation. See § 33-2-34(F), (G). He additionally maintains that because the "EMDA expressly applies to inmates who have been released from an incarceration sentence but are serving in-house parole," the intention of the Legislature was to apply the EMDA to non-incarcerative sentences, including probation.

[7] Because eligibility for and the award of earned meritorious deductions are governed by statute, we must analyze whether the Legislature intended meritorious deductions acquired under the EMDA to apply to a term of probation. Questions of statutory interpretation are questions of law, which we review de novo. State v. Tafoya, 2010-NMSC-019, ¶ 9, 148 N.M. 391, 237 P.3d 693. In interpreting a statute, our task is to "ascertain and give effect to the intent of the Legislature." Id. ¶ 10 (internal quotation marks and citation omitted). In order to accomplish this, we look to the plain meaning of the statute; however, when "the plain meaning of the statute fails to result in a reasonable or just conclusion," we look to the legislative history and the statute's structure and function within the "comprehensive legislative scheme." Id. (internal quotation marks and citation omitted).

[8] The EMDA governs prisoner eligibility for and award of good-time deductions in the state prison system. 1 Section 33-2-34; Tafoya, 2010-NMSC-019, ¶ 11; While incarcerated, an inmate may earn meritorious deductions through active participation in authorized prison programs and upon the recommendation of a supervisor and approval of the warden. Section 33-2-34(B). These deductions "decrease the maximum amount of time an inmate must serve in prison before being eligible for parole or release." Tafoya, 2010-NMSC-019, ¶ 11. While the EMDA does permit award of earned meritorious deductions for: (i) offenders who are incarcerated, (ii) those released from confinement to serve parole terms, and (iii) those confined following a revocation of parole, the act does not afford the same benefits to those serving probation while incarcerated or while released into the community. Section 33-2-34(A), (M). Thus, the plain language of the EMDA only directly manifests a legislative intent that meritorious deductions be earned by offenders who are currently incarcerated, incarcerated following parole revocation, or who have been released on parole. Id. Likewise, the EMDA's plain language indicates to us legislative intent that its credits and deductions apply only to periods of incarceration or parole. Id.; Garcia v. Dorsey, 2006-NMSC-052, ¶ 19, 140 N.M. 746, 149 P.3d 62.

[9] Defendant asserts that such a plain language interpretation—where earned meritorious deductions are applied to parole but not probation—creates an absurd result when both parole and probation "are served under the liberty restraints of incarceration." However, it is our Legislature that articulated a distinction between parole and probation. NMSA 1978, § 31-21-5(A), (B) (1991). "Probation" is defined as "the procedure under which an adult defendant, found guilty of a crime . . . is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions[,]" Section 31-21-5(A). "Parole," on the other hand, is "the release to the community of an inmate of an institution by decision of the board or by operation of law subject to conditions imposed by the board and to its supervision[,]" Section 31-21-5(B). The key distinction is that an individual on parole, although released into the community, remains in the legal custody of the institution from which that individual was released, NMSA 1978, § 31-21-10(E) (1997, amended 2009).

[10] Nonetheless, Defendant contends that legislative silence in the EMDA on the topic of probation was not intentional, but rather the result of the lack of contemplation by the Legislature due to the rarity of serving probation while incarcerated. Our Supreme Court's interpretation of the EMDA reveals otherwise. In Garcia, the Court determined that meritorious deductions are to be "deducted from the maximum unsuspended portion of a sentence for the purpose of determining a prisoner's release date and concomitant eligibility for parole." 2006-NMSC-052, ¶ 20 (emphasis added). First, we note that "probation" is defined as "a suspended or deferred sentence," and therefore, it is definitionally afield of the scope of the allowed deductions under EMDA. Section 31-21-5(A). Furthermore, we reiterate that probation is intended to be served "without imprisonment." Section 31-21-5(A). Thus, meritorious deductions applied to an inmate's probation would not serve to shorten the amount of time that individual served while imprisoned, as intended by EMDA, but rather to solely shorten an already suspended sentence. See § 31-21-5(A); Tafoya, 2010-NMSC-019, ¶ 19. We determine that this result was not intended by the Legislature.

[11] Although Defendant argues that New Mexico's dual credit system for probation and parole supports the argument that Defendant should receive good-time credits for the probation he served on Case 69 while incarcerated on Case 242, he failed to develop this argument. Defendant does not explain how New Mexico's allowance of crediting time served on parole as time served on probation warrants the application of meritorious deductions to a suspended portion of Defendant's sentence. Accordingly, we decline to review this portion of Defendant's argument. See Headley v. Morgan Mgmt. Corp., 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 ("We will not review unclear arguments, or guess at what [a party's] arguments might be.").

[12] Lastly, Defendant argues that under the rule of lenity, the district court is required to credit Defendant with earned meritorious deductions for his probationary sentence. "The rule of lenity counsels that criminal statutes should be interpreted in the defendant's favor when insurmountable ambiguity persists regarding the intended scope of a criminal statute." State v. O'gden, 1994-NMSC-029, ¶ 25, 118 N.M. 234, 880 P.2d 845. ".[L]enity is reserved for those situations in which a reasonable doubt persists about a statute's intended scope even after resort to the language and structure, legislative history, and motivating policies of the statute." Id. ¶ 26 (emphasis, internal quotation marks, and citations omitted). Because we conclude that the statute's meaning is plain and unambiguous under these circumstances, we need not consider Defendant's argument that the rule of lenity affords him relief.

1 We use the terms "meritorious deductions" and "good-time credits" interchangeably throughout our analysis in this Opinion.

2 The State argues, in part, that Defendant is not entitled to an award of meritorious deductions toward a term of probation unrelated to his incarcerated sentence as the statute "limits . . . eligibility based on the crime for which an inmate is confined for committing." Tafoya, 2010-NMSC-019, ¶ 12 (internal quotation marks and citation omitted). Because we determine that the EMDA does not apply to a probationary sentence, we need not address this argument.
Parole Must Be Served for Each Offense, Even in Cases of Consecutive Sentences

Defendant additionally argues, pursuant to State v. Franklin, 1967-NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and State v. Boyer, 1985-NMCA-029, ¶¶ 17-24, 103 N.M. 655, 712 P.2d 1, that he should not be required to again serve parole after he already served one period of parole. He maintains that the parole statutes do not provide for multiple parole periods to be served on consecutive counts. We note at the outset that Defendant’s argument is vague and appears to be incomplete. See Headley, 2005-NMCA-045, ¶ 15 (declining to entertain a cursory argument that relied on several factual assertions that were made without citation to the record). However, because the argument is presented to us pursuant to Franklin and Boyer, we address it to the extent we are able.

Our Legislature has provided that the period of parole that follows a sentence of imprisonment “shall be deemed to be part of the sentence of the convicted person.” NMSA 1978, § 31-18-15(C) (1999, amended 2007). Furthermore, our Supreme Court has already determined that “in the case of consecutive sentencing, the parole period of each offense commences immediately after the period of imprisonment for that offense, and such parole time will run concurrently with the running of any subsequent basic sentence then being served.” Brock v. Sullivan, 1987-NMSC-013, ¶ 13, 105 N.M. 412, 733 P.2d 860. Accordingly, we determine that Defendant must serve each period of parole to which he was separately sentenced by the district court.

CONCLUSION

For the foregoing reasons, we affirm the district court.

IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:
JONATHAN B. SUTIN, Judge
MICHAEL E. VIGIL, Judge
Opinion

Cynthia A. Fry, Judge

[1] The State appeals the district court's order granting Defendant's motion to suppress evidence gathered during Defendant's arrest for driving while intoxicated. Officer Cory Crayton detained Defendant after observing what he believed to be an unconscious female passenger in Defendant's vehicle, which was parked on the side of the road. The district court concluded that Officer Crayton did not have reasonable suspicion to perform an investigatory detention and that the community caretaker exception to the Fourth Amendment did not apply to Officer Crayton's actions. Because we conclude that the district court applied the wrong standard in analyzing Officer Crayton's actions, we reverse.

BACKGROUND

[2] The following facts are taken from Officer Crayton's testimony at the suppression hearing. Officer Crayton was patrolling state highway 48 in Lincoln County when he noticed a Jeep parked on the shoulder of the road. It was just after midnight. The driver's side door was open and the interior light was on. Inside the Jeep were two people; Defendant was in the driver's seat, and a woman was in the passenger seat. Officer Crayton testified that the woman was crouched to the side with her head tilted completely back, such that he could "see her esophagus." He stated that it did not look like a position one would choose to sleep in. Officer Crayton testified that Defendant was "leaning" over her.

[3] Believing that something might be wrong, Officer Crayton stopped beside the Jeep and asked whether they were okay. Defendant responded that they were and then, according to Officer Crayton, he anxiously began attempting to leave. At this point, Officer Crayton backed up, activated his lights, and pulled in behind the vehicle. He testified that he did not see any indication that something violent or criminal had taken place between Defendant and the female passenger. Instead, he was concerned for the woman because, although she may have been sleeping, she did not look like she was in a sleeping position, and he believed that she may have been unconscious. Officer Crayton testified that at that point, he intended to detain the vehicle in order to ensure the female passenger's safety.

[4] Officer Crayton approached the vehicle on the passenger side. At that point, the woman "came to" and said something to Officer Crayton. Officer Crayton testified that his concern for the female passenger was alleviated by her speaking. He testified, however, that he smelled an odor of alcohol coming from the Jeep. He therefore asked Defendant to exit the Jeep. As Officer Crayton spoke to Defendant, he smelled alcohol on Defendant's breath. Officer Crayton asked Defendant to perform a field sobriety test. Defendant was subsequently arrested and charged with driving while intoxicated.

[5] Defendant filed a motion to suppress, arguing that he was unconstitutionally seized the moment Officer Crayton turned on his emergency lights and pulled behind Defendant's car. The district court agreed with Defendant and concluded that there was no evidence that there was an emergency requiring the assistance of Officer Crayton nor was there reasonable suspicion that criminal activity was underway. Accordingly, the district court suppressed any evidence obtained by Officer Crayton after the stop. The State now appeals.

DISCUSSION

[6] The State argues that the district court relied on the wrong standard in granting Defendant's motion to suppress because it relied on the higher standard of the community caretaker exception that applies to warrantless entries into residences. We agree with the State that the district court applied the wrong test in determining that the stop violated Defendant's constitutional rights.

Standard of Review

[7] On appeal from a district court's ruling on a motion to suppress, we review findings of fact to determine if they are supported by substantial evidence and we review legal conclusions de novo. State v. Leyba, 1997-NMCA-023, ¶ 8, 123 N.M. 159, 935 P.2d 1171. In determining whether the law was correctly applied to the facts, we view the facts in the light most favorable to the prevailing party. State v. Cline, 1998-NMCA-154, ¶ 6, 126 N.M. 77, 966 P.2d 785. However, because the facts are largely undisputed in this case, we review only the legal conclusions of the district court in granting Defendant's motion to suppress. State v. Morales, 2005-NMCA-027, ¶ 8, 137 N.M. 73, 107 P.3d 513.

Officer Crayton Validly Stopped Defendant Pursuant to the Community Caretaker Exception

[8] There is no dispute that the initial encounter between Defendant and Officer Crayton was appropriate. As stated above, however, the district court concluded that a seizure occurred once Officer Crayton activated his lights and pulled behind Defendant. The district court concluded that Officer Crayton
did not have reasonable suspicion for such a stop. In turning to the community caretaker exception, the district court stated that the standard for analyzing this encounter was whether there were "reasonable grounds to believe that there is an emergency at hand and an immediate need for [police officer] assistance for the protection of life or property." The district court noted that despite repeated opportunities to do so, Officer Crayton never testified that he thought there was an emergency. The district court therefore concluded that the community caretaker exception did not apply. [9] We agree with the district court that Officer Crayton did not have the requisite reasonable suspicion to undertake an investigative detention of Defendant when he first activated his lights and pulled in behind him. State v. Walters, 1997-NMCA-013, ¶ 10, 123 N.M. 88, 934 P.2d 282 (stating that investigatory stops, which constitute a seizure for Fourth Amendment purposes, require reasonable suspicion). The issue then is whether Officer Crayton was acting pursuant to his role as a community caretaker when he detained Defendant. Id. (recognizing that "in some circumstances, without reasonable suspicion of criminal activity, police may intrude upon an individual’s privacy to carry out community caretaker functions that further public safety"). "An officer who is acting as a community caretaker does not violate the Fourth Amendment." Schuster v. State Dept of Taxation & Revenue, 2012-NMSC-025, ¶ 26, 283 P.3d 288. Therefore, "[w]hen police act as community caretakers...the existence of reasonable suspicion or grounds for probable cause are not appropriate inquiries." State v. Ryon, 2005-NMSC-005, ¶ 20, 137 N.M. 174, 108 P.3d 1032. "When determining whether 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." Id. ¶ 24 (internal quotation marks and citations omitted).

[10] Due to differing expectations of privacy, however, not all actions by police that invoke the community caretaking exception are analyzed under the same standard. Id. ¶ 25. In this case, the district court stated that the standard was whether there were "reasonable grounds to believe that there is an emergency at hand." This language comes from the first element of the "emergency aid doctrine." Id. ¶¶ 25, 29 ("First, the police must have reasonable grounds to believe that there is an emergency at hand...the protection of life or property."). The emergency aid doctrine is only one of three distinct doctrines within the broadly-termed "community caretaker exception," the other two being the automobile impoundment and inventory doctrine, and the redundantly-titled community caretaking doctrine, also known as the public servant doctrine. Id. ¶ 25. To avoid confusion, we will refer to the third doctrine as the public servant doctrine. While these doctrines share the "common characteristic" of applying to situations in which the police officer’s actions "are motivated by a desire to aid victims rather than investigate criminals," because each doctrine involves separate types of intrusions involving distinct expectations of privacy, the doctrines are analyzed by different standards. Id. (internal quotation marks and citations omitted).

[11] The emergency aid doctrine "applies specifically to warrantless intrusions into the home." Ryon, 2005-NMSC-005, ¶ 31. Our Supreme Court has stated that the inquiry under the emergency aid doctrine is "unique" because "a search within a home raises unique concerns." Id. ¶ 22. "[I]ntrusion into the privacy and sanctity of the home must be guarded with careful thought-through and clearly justifiable circumstances." Id. ¶ 19 (internal quotation marks and citation omitted). Therefore, the burden for justifying a warrantless entry into a private residence under the emergency aid doctrine is significantly higher than the standards under the other community caretaker doctrines. Id. ¶ 26 ("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 State v. Baca, 2007-NMCA-016, ¶ 31, 141 N.M. 65, 150 P.3d 1015 ("This standard is high because it reflects the bedrock constitutional principle that a warrantless entry into a home presents unique concerns."). The encounter in this case did not involve a warrantless entry into a home. Thus, because the district court applied the emergency aid doctrine to the encounter, it relied on the wrong standard in granting the motion to suppress.

[12] The proper standard to apply to the encounter in this case is the public servant doctrine. The "public servant doctrine deals primarily with warrantless searches and seizures of automobiles." Ryon, 2005-NMSC-005, ¶ 26 (internal quotation marks and citation omitted). Because "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[ than the emergency assistance doctrine]." Id. Under the public servant doctrine, "a police officer may stop a vehicle for a specific, articulable safety concern, even in the absence of reasonable suspicion that a violation of law has occurred or is occurring." Apodaca v. State, Taxation & Revenue Dept, 1994-NMCA-120, ¶ 5, 118 N.M. 624, 884 P.2d 515; see State v. Reynolds, 1993-NMCA-162, ¶ 8, 117 N.M. 23, 868 P.2d 668 ("Part of the function of police officers is to carry out community caretaking functions to enhance public safety. It is appropriate, then, for police officers to stop vehicles for a specific, articulable safety concern."); rev'd on other grounds, 1995-NMCA-008, 119 N.M. 383, 890 P.2d 1315. This is an "objective test to determine whether a vehicle stop is based on a reasonable concern for public safety." Ryon, 2005-NMSC-005, ¶ 30. "The scope of any intrusion following the stop must...
be limited to those actions necessary to carry out the purposes of the stop, unless . . . reasonable suspicion or probable cause arises.” Apodaca, 1994-NMCA-120, ¶ 5.

[13] We conclude that Officer Crayton sufficiently articulated a specific concern for the safety of the female passenger to permit him to detain the vehicle to alleviate that concern. Officer Crayton repeatedly emphasized during his testimony that he detained the vehicle due to his concern for her safety. These safety concerns were rooted in his observation of the female passenger's position in the vehicle, specifically his observation that she appeared unconscious and in an unnatural position, did not respond to his inquiry or even give any indication that she registered the question, and that Defendant was “leaning over her.” Because Officer Crayton's concern was for the passenger, it follows that his concerns for her would be alleviated by a response from her, not just from Defendant. The district court made no credibility determination regarding Officer Crayton's testimony indicating that the court found that Officer Crayton's motivation was something other than concern for the female passenger. Instead, the court concluded that Officer Crayton's concerns were not sufficient to meet the higher standard of the emergency assistance doctrine. Under the correct standard, however, Officer Crayton permissibly detained Defendant's vehicle until he could ascertain whether assistance was needed. See Schuster, 2012-NMSC-025, ¶ 27 (stating that “a continued investigation by an officer in his or her role as a community caretaker is reasonable as long as the officer is motivated by a desire to offer assistance and not investigate”).

[14] Finally, we note our agreement with the Montana Supreme Court that once “the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating . . . the protections provided by the Fourth Amendment.” State v. Lovegren, 2002 MT 153, ¶ 25, 310 Mont. 358, 51 P.3d 471. Here, Officer Crayton stated that once the female passenger roused herself, his concerns for her safety were alleviated but that he smelled alcohol coming from the vehicle. At this point, Officer Crayton was no longer acting in a community caretaker role, and the situation transitioned into a seizure under the Fourth Amendment. No argument was presented below or on appeal that this seizure violated the Fourth Amendment and accordingly we do not address it.

CONCLUSION

[15] For the foregoing reasons, we reverse the district court's grant of Defendant's motion to suppress.

[16] IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:
MICHAEL D. BUSTAMANTE, Judge
MICHAEL E. VIGIL, Judge
Opinion

M. Monica Zamora, Judge

Arlene Garnenez (Defendant) appeals from her convictions for two counts of vehicular homicide, contrary to NMSA 1978, §§ 66-8-105 to -112 (1978, as amended through 2007). We hold that it can. We also address Defendant's other contentions that (1) her blood alcohol content (BAC) results should have been suppressed as a result of false statements in the search warrant authorizing the blood draw; (2) comments made by the prosecutor during jury selection and an emotional reaction from a member of the courtroom audience prejudiced the jury; and (3) the district court improperly admitted the BAC results and expert testimony regarding Defendant's emotional reaction from a member of the courtroom audience prejudiced the jury. We affirm Defendant's convictions.

BACKGROUND

On July 23, 2011, between 8:00 a.m. and 8:30 a.m., Defendant was driving a pickup truck on I-40 in Gallup, New Mexico. The truck veered off the road, struck a light pole, and rolled over multiple times, resulting in the deaths of two passengers. Defendant was bleeding heavily from a head wound and her right arm was fractured. She was taken to the hospital for treatment. Officer Andy Yearley, of the Gallup Police Department, responded to the scene and first spoke with Defendant at the hospital. Even after Defendant had been transported to the hospital, Officer Yearley still detected a slight odor of alcohol and noted that Defendant had a flushed complexion and confused speech. Officer Yearley did not arrest Defendant or read her the Implied Consent Act. Although Defendant was able to speak with him, Officer Yearley questioned her ability to give consent because she appeared to be in pain from her injuries and he was not sure if the medications in her system affected her judgment. See generally Schmerber v. California, 384 U.S. 757, 767, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966) (stating that the “compulsory administration of a blood test . . . plainly involves the broadly conceived reach of the Fourth Amendment[.]”) and also explaining that because “[s]earch warrants are ordinarily required for searches of dwellings . . . absent an emergency, no less could be required where intrusions into the human body are concerned”). Consent and arrest are exceptions to the warrant requirement. State v. Weidner, 2007-NMCA-063, ¶ 6, 141 N.M. 582, 158 P.3d 1025 (listing the recognized exceptions to the warrant requirement as “exigent circumstances, searches incident to arrest, inventory searches, consent, hot pursuit, open field, and plain view”). The Implied Consent Act operates as one form of statutory consent, created by the Legislature, by allowing law enforcement officers to presume that all drivers, upon arrest for DWI, have agreed to take a chemical test. In re Suazo, 1994-NMSC-070, ¶ 7, 117 N.M. 785, 877 P.2d 1088 (“The essence of the [Implied Consent] Act is that any person who operates a motor vehicle in New Mexico, after being arrested for driving while intoxicated, ‘shall be deemed to have given consent’ to
a chemical test to determine the drug or alcoholic content of the motorist's blood.” (quoting § 66-8-107(A)).

[6] We acknowledge that our prior case law emphasized the importance of an arrest prior to the application of the Implied Consent Act and gave little effect to a search warrant. In State v. Steele, we held that where a driver refused to provide a blood sample under the Implied Consent Act, a law enforcement officer could not obtain the sample using a search warrant because the Implied Consent Act afforded the defendant greater protection than the Fourth Amendment. 1979-NMCA-113, ¶ 7-9, 93 N.M. 470, 601 P.2d 440; see also State v. Chavez, 1981-NMCA-060, ¶ 4, 96 N.M. 313, 629 P.2d 1242 (explaining that in Steele, “[t]his Court held that the Legislature gave the defendant more protection than was afforded by the Constitution and that, after his refusal, the result of the blood alcohol test taken by means of a valid search warrant was properly excluded”). However, the Legislature subsequently amended the Implied Consent Act to allow law enforcement officers to obtain a blood sample using a search warrant upon a defendant’s refusal. Chavez, 1981-NMCA-060, ¶ 4.

[7] Our subsequent case law indicates that we have construed the Legislature’s amendment broadly. In State v. House, we held that an affidavit for a search warrant authorizing a blood draw did not need to state that a defendant was arrested and only needed to show probable cause: “[W]e are unaware of any requirement that the affidavit for a search warrant authorizing a chemical test of a driver’s blood include a statement that the driver was arrested for DWI. NMSA 1978, Section 66-8-111(A) (Repl. Pamp. 1994) (search warrant authorizing chemical tests) only requires a finding, based on the affidavit for search warrant, that there is probable cause to believe that: the person has driven a motor vehicle while under the influence of alcohol, thereby causing the death or great bodily injury of another person; or the person has committed a felony while under the influence of alcohol and that chemical tests will produce material evidence in a felony prosecution. House, 1996-NMCA-052, ¶ 32, 121 N.M. 784, 918 P.2d 370.

[8] Additionally, we have held that where probable cause exists, refusal under the Implied Consent Act is not required before an officer may obtain a search warrant for a blood test. State v. Duquette, 2000-NMCA-006, ¶ 20, 128 N.M. 530, 994 P.2d 776 (“Based on our reading of the language in Section 66-8-111(A), we do not believe that a refusal is a condition precedent to issuance of a search warrant when, as here, there exists probable cause to believe [the defendant] committed a felony while under the influence of alcohol.”). We do not, therefore, read our Implied Consent Act to prohibit an officer from obtaining a blood sample using a search warrant supported by probable cause.

[9] The purpose of the Implied Consent Act is to assist law enforcement officers in finding and removing intoxicated drivers from the roadways. Duquette, 2000-NMCA-006, ¶ 20. Because Defendant had been removed from the highway, was hospitalized, and was receiving medication for her injuries, Officer Y earley decided not to arrest Defendant or presume consent pursuant to the Implied Consent Act. He instead sought and obtained a search warrant, which, for reasons set forth in the next section, established probable cause. In light of our preference for a search warrant under the Fourth Amendment and our case law interpreting the Implied Consent Act, we conclude that the valid search warrant was a permissible alternative to proceeding under the Implied Consent Act in order to perform a blood draw.

[10] In addition to arguing that the BAC results should have been excluded because the blood draw was not preceded by an arrest under the Implied Consent Act, Defendant also contends that “the State made no attempt to qualify Officer Y earley as a ‘responsible person’ who could ‘authenticate’ the samples[,]” as required by 7.33.2.15(A)(1) NMAC (“Blood samples shall be collected in the presence of the arresting officer or other responsible person who can authenticate the samples.”). However, Defendant conceded to the district court that Officer Y earley fit the definition of a “responsible person” who could authenticate the samples. We do not address Defendant’s unpreserved contentions, and Defendant does not point us to any exceptions to this rule. See State v. Jason F., 1998-NMSC-010, ¶ 10, 125 N.M. 111, 957 P.2d 1145 (declining to review a party’s unpreserved argument when counsel made no argument on appeal regarding the exceptions to the preservation requirement).

[11] Finally, Defendant argues that her BAC results should have been excluded because the test was not performed within three hours of arrest, as required by 7.33.2.15(A)(2) NMAC. We note that this regulation has been superseded by statute. Section 66-8-110(E) (“If the test performed pursuant to the Implied Consent Act is administered more than three hours after the person was driving a vehicle, the test result may be introduced as evidence of the alcohol concentration in the person’s blood or breath at the time of the test and the trier of fact shall determine what weight to give the test result.”). Any time lapse impacts the weight of the evidence, not admissibility. See State v. Bowden, 2010-NMCA-070, ¶ 8-12, 148 N.M. 850, 242 P.3d 417 (holding that where a statute and regulation conflict, the statute generally prevails, and also explaining that Section 66-8-110(E) permits test results taken more than three hours after the person was driving to be admitted into evidence and gives the fact finder the discretion to give appropriate weight to the results).

II. Validity of the Search Warrant

[12] Next, Defendant argues that the district court should have suppressed the BAC results because the affidavit in support of the search warrant contained a false statement that Defendant was under arrest. At the hearing on Defendant’s motion to suppress, Officer Y earley testified that contrary to what was stated in the affidavit, he did not arrest Defendant. He used a standard form affidavit and did not remove the stock language that Defendant was under arrest. He also testified that he did not intend to mislead the issuing judge by the mistaken inclusion of this language.

[13] "We review the district court’s ruling on a motion to suppress to determine whether the law was correctly applied to the facts, viewing the facts in the light most favorable to the prevailing party." State v. Cline, 1998-NMCA-154, ¶ 6, 126 N.M. 77, 966 P.2d 785. Findings of fact are reviewed to determine if they are supported by substantial evidence, a determination of whether the evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” State v. Salgado, 1999-NMSC-008, ¶ 25, 126 N.M. 691, 974 P.2d 661 (internal quotation marks and citation omitted). The application of law to fact is a legal determination, which we review de novo. See State v. Neal, 2007-NMSC-043, ¶ 15, 142 N.M. 176, 164 P.3d 57.
[14] “[T]o suppress evidence based on alleged falsehoods and omissions in a search warrant affidavit, the defendant must show either ‘deliberate falsehood,’ or ‘reckless disregard for the truth,’ as to a material fact. A merely material misrepresentation or omission is insufficient.” State v. Fernandez, 1999-NMCA-128, ¶ 34, 128 N.M. 111, 990 P.2d 224. The district court, in its written ruling on Defendant’s motion to suppress, found that Officer Yearley’s misstatement was negligent, but not deliberate or reckless. “[T]he district court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses.” State v. Urioste, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. Deferring to the district court’s assessment of the officer’s intent, we conclude that the district court properly upheld the search warrant.

[15] With the exception of Defendant’s arguments suggesting that the affidavit was tainted by the officer’s false statement, Defendant does not otherwise challenge the facial validity of the affidavit to establish probable cause. We will not address arguments on appeal that were not raised in the brief in chief and have not been properly developed for review. See State v. Garcia, 2013-NMCA-005, ¶ 9, 294 P.3d 1256 (stating that we do not review arguments not raised in the brief in chief); cf. Headley v. Morgan Mgmt. Corp., 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (explaining that we do not review undeveloped or unclear arguments on appeal).

[16] Finally, we note that Defendant cites to Article II, Section 10 of the New Mexico Constitution. We do not address this issue, however, because Defendant does not assert that Article II, Section 10 affords her greater protection in this context. See State v. Hubble, 2009-NMSC-014, ¶ 6, 146 N.M. 70, 206 P.3d 579 (addressing only the Fourth Amendment where the defendant failed to assert that the state Constitution afforded him greater protection).

A. Allegations of Juror Prejudice

[17] First, Defendant asserts that the prosecutor impermissibly tainted the venire by telling the potential jurors that “Defendant . . . and her National Guardsman friends were ‘sitting around drinking until the wee hours of the morning.’” Defendant argues that telling potential jurors, prior to trial, that Defendant “[w]as on trial for driving while intoxicated and has caused the death of members of that community” was sufficiently prejudicial to warrant a mistrial. The State counters, first, that the district court properly told the venire of the charges Defendant was facing, and second, that the prosecutor’s question was phrased as a hypothetical and fairly inquired as to potential prejudices against drinking.

[18] In denying Defendant’s motion for a mistrial, the district court ruled that the prejudice alleged by Defendant was purely speculative. Although some members of the venire indicated a bias against those charged with alcohol-related offenses, the district court concluded that the bias of a few potential jurors would not preclude its ability to empanel a jury comprised of members who could be fair and impartial. “We apply an abuse of discretion standard of review to the district court’s determination of how voir dire should be conducted, because assuring the selection of an impartial jury may require that counsel be allowed considerable latitude in questioning prospective jury members.” State v. Johnson, 2010-NMSC-016, ¶ 34, 148 N.M. 50, 229 P.3d 523 (alteration, internal quotation marks, and citation omitted). The district court is in the best position to evaluate counsel’s questions to the venire and determine to what extent any resulting prejudice would impact the defendant’s right to a fair and impartial jury. Id.

[19] Pursuant to UJI 14-120 NMRA, the district court properly told the venire about the crimes that Defendant was charged with: two counts of vehicular homicide, one count of great bodily harm by vehicle, and one count of driving while under the influence of intoxicating liquor or drugs. The fact that the charges against Defendant could, potentially, create bias in a juror’s mind did not give rise to the level of prejudice required for a mistrial. See State v. Gallegos, 2009-NMSC-017, ¶ 28, 146 N.M. 88, 206 P.3d 993 (stating that “[c]ourts rarely grant a motion for mistrial based on mere equivocal evidence of possible juror bias or prejudice, even with the potential to negatively impact a trial”).

[20] Additionally, we note that our review of the record comports with the State’s recitation of the facts and indicates that the prosecutor phrased the questions in hypothetical form. The prosecutor first asked the venire: “So, if the evidence were to show that some people were sitting around drinking for a few hours and that right after they left, they had an accident, or a crash, would that affect your ability to give us a fair verdict?” The prosecutor later inquired: “If the evidence in this case were to show that all of the principals in this case had been sitting around drinking into the wee hours of the morning, would that affect your ability to give us a fair and impartial verdict?”

[21] The State and Defendant were permitted to inquire about any potential prejudices from the jury pool against alcohol and DWI, both as a group and individually. See UJI 14-120, Use Note 4(c) (explaining that voir dire questioning is one source of information to be used by the district court when selecting a jury, such “questioning by the attorneys is generally used for inquiry concerning the jurors’ attitudes and opinions about case-related issues (for example, burden of proof, self defense, alcohol use, etc.”); Sutherlin v. Fenenga, 1991-NMCA-011, ¶ 36, 111 N.M. 767, 810 P.2d 353 (“The purpose of voir dire is to enable the parties to determine whether there is any bias or prejudice on the part of prospective jurors and to enable counsel to intelligently exercise challenges.”).

[22] Defendant specifically references potential jurors 7, 9, 20, 41, 43, 65, and 84 as those who expressed concerns about the facts of the case. None of these individuals were ultimately empaneled: five were excused for cause because they stated they could not be fair and impartial, one was stricken by the defense using a peremptory challenge, and one was not selected. See State v. Rackley, 2000-NMCA-027, ¶ 9, 128 N.M. 761, 998 P.2d 1212 (explaining that “[t]he jury selection process, including the excusal of jurors for cause, insures that a defendant is tried before an impartial jury”).

[23] Finally, Defendant had two remaining peremptory challenges at the conclusion of jury selection and has not offered an explanation as to why she did not exercise those challenges. See State v. Isaiah, 1989-NMSC-063, ¶ 29, 109 N.M. 21, 781 P.2d 293 (holding that where a defendant does not use all of his or her peremptory challenges, the defendant may not complain of “prejudice for failure to dismiss prospective jurors”), overruled on other grounds by State v. Lucero, 1993-NMSC-064, ¶ 13, 116 N.M. 450, 863 P.2d 1071.

[24] Because Defendant has not pointed us to any specific instances of prejudice in the empaneled jurors, we conclude that the prosecutor’s questioning during voir dire did not deprive Defendant of her right to a fair and impartial jury. See Johnson, 2010-NMSC-016, ¶ 36 (concluding that where
there was no showing that the prosecutor’s questions prejudiced the jury, and “[t]he district court did not abuse its discretion by permitting the use of hypotheticals during the voir dire in a way that resulted in prejudice to [the defendant”). The district court did not abuse its discretion in denying Defendant’s motion for mistrial. See Sutherlin, 1991-NMCA-011, ¶ 36 (stating that the district court “is invested with broad discretion over the scope of voir dire’’); Gallegos, 2009-NMCA-017, ¶ 22 (observing that “[a] mistrial generally should be granted only when bias is fixed in the minds of the jurors so as to preclude a fair and objective verdict” (internal quotation marks and citation omitted)).

B. Emotional Courtroom Outburst

(25) Second, Defendant asserts that the jury was inappropriately prejudiced when a member of the courtroom audience began crying during a witness’ testimony about one of the victim’s injuries. The district court asked the witness to pause her testimony and requested that the audience member be escorted out of the courtroom. Defendant moved for a mistrial on the grounds that the jury was precluded from rendering an impartial verdict following the outburst. The district court denied Defendant’s motion.

(26) Defendant has failed to provide authority for the proposition that reactions within the courtroom gallery to upsetping testimony during trial warrant a mistrial because these reactions prevent the jury from being fair and impartial. Cf. In re Adoption of Doe, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority.”). Nonetheless, the jury was instructed that “[n]either sympathy nor prejudice should influence your verdict.” See State v. Perry, 2009-NMCA-052, ¶ 45, 146 N.M. 208, 207 P.3d 1185 (explaining that “[t]here is a presumption that the jury follows the instructions they are given” (internal quotation marks and citation omitted)). Indulging our appellate “presumption of regularity” of the proceedings below, State v. Pacheco, 2007-NMSC-009, ¶ 26, 141 N.M. 340, 155 P.3d 745, we find no abuse of discretion in the district court’s denial of Defendant’s motion for a mistrial.

IV. Challenges to the Admission of
BAC Results and Expert Testimony

(27) We understand Defendant to make three arguments challenging the admission of her BAC results at trial: first, that the lab analyst, Hannah Nelson, testified about the BAC results before an adequate foundation was laid for the admission of the exhibits showing the results themselves; second, that Defendant was prejudiced by the fact that the jury heard the BAC results even though the district court permitted a jury instruction only on the theory of impairment to the slightest degree; and third, that expert testimony from Dr. Hwang about retrograde extrapolation improperly relied on the BAC results.

(28) At trial, the district court permitted a jury instruction only on the “impaired to the slightest degree” theory of DWI, due to the charging language in the criminal information. Based upon the theory of the DWI charge, Defendant argues that the State should not have been allowed to present the BAC results and expert testimony about retrograde extrapolation as evidence of impairment.

(29) We review the district court’s evidentiary rulings for an abuse of discretion. State v. McGhee, 1985-NMSC-047, ¶ 24, 103 N.M. 100, 703 P.2d 877. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case.” State v. Thompson, 2009-NMCA-076, ¶ 11, 146 N.M. 663, 213 P.3d 813 (internal quotation marks and citation omitted).

A. The District Court Did Not Abuse Its Discretion by Permitting Hannah Nelson to Testify Prior to Officer Yearley

(30) First, Defendant contends that she was prejudiced because Ms. Nelson, the laboratory analyst at the Scientific Laboratory Division (SLD), testified about the BAC results before the exhibits showing the results were admitted. We disagree.

(31) Due to logistical issues, the State called Ms. Nelson prior to calling Officer Yearley, who personally observed the blood draw. The State acknowledged that it would need to lay the proper foundation for admission of the exhibits through Officer Yearley’s forthcoming testimony. “[I]t is within the [district] court’s discretion to control the order of witnesses, mode of interrogating witnesses, and presentation of evidence.” State v. McDaniel, 2004-NMCA-022, ¶ 6, 135 N.M. 84, 84 P.3d 701. Additionally, Rule 11-104(B) NMRA permits evidence to be conditionally admitted at trial, contingent upon a subsequent showing of relevancy. See also Woolwine v. Furr’s, Inc., 1987-NMCA-133, ¶ 19, 106 N.M. 492, 745 P.2d 717 (“When an exhibit is admitted conditionally, it is the duty of the party seeking to exclude the exhibit to renew its objection and to move to strike if its relevancy is not thereafter established.”).

(32) After Ms. Nelson’s testimony, Officer Yearley testified that he personally observed two nurses perform each of the blood draws using the SLD-provided kit. This testimony provided an adequate foundation. See State v. Nez, 2010-NMCA-092, ¶ 29, 148 N.M. 914, 242 P.3d 481 (describing testimony from a law enforcement officer about his personal observation of a nurse performing a defendant’s blood draw as providing an adequate foundation for the admission of the blood draw report). As a result, no foundational error occurred by allowing the testimony of these two witnesses to be presented out of sequence.

B. The District Court Did Not Abuse Its Discretion in Admitting Evidence of BAC Results and Expert Testimony About Retrograde Extrapolation When the Jury Was Instructed Only on an Impaired to the Slightest Degree Theory

(33) We turn next to Defendant’s assertion that she was prejudiced by the admission of the BAC results because the jury was instructed only on an impaired to the slightest degree theory. The district court did not instruct the jury on the theory of per se DWI, due to the charging language in the criminal information, but permitted in evidence the BAC results and expert testimony about retrograde extrapolation.

Defendant contends that:

[the prejudicial effect and confusion created by the availability of the blood results to the jury throughout the trial after Ms. Nelson’s testimony makes it impossible to determine whether the jury based its guilty verdict on ‘impairment to the slightest degree’ or incorporated the blood results in its collective deliberations and verdict.

(34) Defendant cites no authority in support of her contention. See In re Adoption of Doe, 1984-NMSC-024, ¶ 2 (addressing the lack of relevant authority in appellate briefs to indicate the absence of supporting case law). We have previously held that BAC results are relevant under the implied to the slightest degree theory to show “that [a defendant had alcohol in his or her] system and, regardless of the numerical
BAC, tended to show that [the d]efendant's poor driving . . . was a result of drinking liquor." *State v. Pickett*, 2009-NMCA-077, ¶ 12, 146 N.M. 655, 213 P.3d 805 (internal quotation marks omitted); see also *State v. Montoya*, 2005-NMCA-078, ¶ 21, 137 N.M. 713, 114 P.3d 393 (explaining that, where the defendant was charged with vehicular homicide, evidence of alcohol in the defendant's system four hours after the accident was relevant). The jury "was entitled to consider the BAC results insofar as they were relevant as evidence of alcohol in [the d]efendant's system that would indicate that [the d]efendant's poor driving was due to his [or her] consumption of liquor." *Pickett*, 2009-NMCA-077, ¶ 14.

Additionally, the fact that scientific retrograde extrapolation evidence was presented diminished the risk that the jury considered the BAC results in an inappropriate and prejudicial manner. Cited id. ¶¶ 8-15 (holding that even though the state did not provide expert testimony about retrograde extrapolation, the district court in a bench trial was entitled to consider BAC results as evidence of the presence of alcohol in the defendant's system under an impaired to the slightest degree theory). Affording deference to the district court's evidentiary ruling, we hold that there was no abuse of discretion.

**C. The District Court Did Not Abuse Its Discretion in Admitting Expert Testimony About Retrograde Extrapolation**

Third, Defendant argues that Dr. Hwang's expert testimony about retrograde extrapolation should have been excluded. Defendant asserts that Dr. Hwang's testimony improperly relied on the BAC results, and having previously determined that the BAC results were properly admitted, we conclude that such reliance went to the weight of his testimony. See *State v. Gonzales*, 2001-NMCA-025, ¶ 40, 130 N.M. 341, 24 P.3d 776 ("We recognize that the fact[ ] finder is entitled to disregard evidence presented by either party, . . . and to disregard the testimony of experts[]") (overruled on other grounds by *State v. Rudy*, 2009-NMCA-104, 147 N.M. 45, 216 P.3d 810).

**D. The Confrontation Clause Did Not Require Live Testimony Concerning the Blood Draw**

To the extent Defendant contends that live testimony from the nurses who performed Defendant's blood draw was needed to satisfy the requirements of the Confrontation Clause, we disagree. See *Nez*, 2010-NMCA-092, ¶ 16 ("[T]he absence of the blood drawer from trial and opportunity for a defendant to cross-examine the blood drawer relating to chain of custody does not provide grounds for a confrontation objection to the admissibility of a blood[ ]alcohol report.").

**CONCLUSION**

For the foregoing reasons, we affirm Defendant's convictions for two counts of vehicular homicide, contrary to Section 66-8-101.

**IT IS SO ORDERED.**

M. MONICA ZAMORA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge
TIMOTHY L. GARCIA, Judge
The critical issue involves the grandfather status of the LMRB under the Public Employee Labor Relations Act (the PEBA). AFSCME asserted that the PELRB had jurisdiction under the PEBA to hear the prohibited practice complaints filed during the time period that the LMRB was not functioning. Alternatively, AFSCME asserts that the PELRB has jurisdiction to remand these specific prohibited practice complaints directly to the LMRB once it began to function again. Under the undisputed factual circumstances presented for review, we affirm.

BACKGROUND

The Complaints

AFSCME represents the City’s employees in their collective bargaining and labor disputes with the City. Between September 2010 and June 2011, AFSCME filed several prohibited practice complaints against the City. It did not file these complaints with the LMRB, but instead filed them directly with the PELRB. It alleged in these complaints that the PELRB had jurisdiction to hear them because the LMRB had been “non-functional since December, 2009.”

Opinion

Timothy L. Garcia, Judge

[1] We granted the American Federation of State, County, and Municipal Employees’ (AFSCME) petition for writ of certiorari. AFSCME seeks review of a district court order that affirmed in part and reversed in part the administrative decision made by the Public Employee Labor Relations Board (the PELRB). The district court determined that the PELRB properly dismissed AFSCME’s prohibited practice complaints against the City of Albuquerque (the City) because the PELRB did not have jurisdiction to hear those complaints. The district court also ruled that the PELRB had no authority to “remand” the dismissed prohibited practices complaints to the City’s Labor Management Relations Board (the LMRB).

[2] The critical issue involves the grandfather status of the LMRB under the Public Employee Bargaining Act (the PEBA). For approximately eighteen months, the LMRB was not functioning to resolve employee complaints because the board was missing one of its required three members. AFSCME asserted that the PELRB had jurisdiction under the PEBA to hear the prohibited practice complaints filed during the time period that the LMRB was not functioning. Alternatively, AFSCME asserts that the PELRB has jurisdiction to remand these specific prohibited practice complaints directly to the LMRB once it began to function again. Under the undisputed factual circumstances presented for review, we affirm.

DISCUSSION

The City’s Appeal to the District Court

The City appealed the PELRB’s decision to the district court. It argued that the PELRB had no jurisdiction to hear the complaints—even if LMRB was not hearing them at the time of the PELRB decision—and thus, it had no authority to remand the complaints to the LMRB. The district court agreed with the City that the PELRB did not have jurisdiction to hear the complaints and that it also lacked authority to remand the complaints to the LMRB. It effectively rejected the argument that the PELRB could exercise any type of jurisdiction over the complaints at the time the PELRB decision was rendered.

The PELRB’s Dismissal and Remand

[4] The City asked the PELRB to dismiss the subject complaints that were filed directly with the PELRB. It argued that the City was not subject to the PELRB’s jurisdiction because it has grandfather status under the PEBA and the LMRB has exclusive jurisdiction to hear those complaints against the City that AFSCME filed with the PELRB.

[5] The PELRB’s hearing officer recommended that the complaints be dismissed. He concluded that the PELRB did not have jurisdiction over the complaints because, at the time of his recommendation, the LMRB had resumed functioning to process employee complaints against the City. In reaching this conclusion, the PELRB hearing officer suggested that the PELRB would have jurisdiction over the complaints if the LMRB was not “productive” or “functioning” at the time of his recommendation. The hearing officer also recommended that the complaints be “remanded” to the LMRB. The PELRB then issued a final decision that adopted the hearing officer’s recommendations to dismiss the complaints and remand them to the LMRB.

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DISCUSSION

[7] In its brief in chief, AFSCME renews the arguments it made in front of the PELRB and the district court. It argues that the PELRB may assume jurisdiction over complaints involving a public employer entitled to grandfather status under the PEBA when that employer’s labor relations board is not operating at the time, and thus, that the PELRB also had the authority to remand the complaints to the LMRB once it returned to an operating status.

1. General Principles and Standard of Review

[8] “Administrative bodies are the creatures of statutes.” Pub. Serv. Co. of N.M.
v. N.M. Envtl. Improvement Bd., 1976-NMCA-039, ¶ 7, 89 N.M. 223, 549 P.2d 638. They can act only on matters that are within the scope of the authority that a statute has delegated to them “either expressly or by necessary implication.” Jones v. Holiday Inn Express, 2014-NMCA-082, ¶ 9, 331 P.3d 992 (internal quotation marks and citation omitted); see Pub. Serv. Co. of N.M., 1976-NMCA-039, ¶ 7.

[9] Whether an administrative body has acted beyond the scope of its authority is a question of statutory construction that we review de novo. See Jones, 2014-NMCA-082, ¶ 10; Leonard v. Payday Prof’l/Bio-Cal Comp., 2008-NMCA-034, ¶ 11, 143 N.M. 637, 179 P.3d 1245. When construing a statute, we “determine and give effect to the ordinary meaning of the statute’s words and reading its provisions “together to produce a harmonious whole.” Jones, 2014-NMCA-082, ¶ 10 (internal quotation marks and citations omitted). We begin by looking to the state and local labor laws involved in this case.

II. The City’s Labor-Management Relations Ordinance

[10] In the early 1970’s, Albuquerque’s city council adopted an ordinance governing the “[l]abor-[m]anagement [r]elations” between the City and its employees (the LMRO). See Albuquerque, N.M., Ordinances ch. 3, art. II, §§ 3-2-1 to -18 (1971, as amended through 2002). Among other things, the LMRO gives City employees the right to organize for the purpose of collectively bargaining with the City. Albuquerque, N.M., Ordinances ch. 3, art. II, §§ 3-2-2(A) and 3-2-3. And the LMRO prohibits the City and its employees from engaging in certain conduct, which it calls, “prohibited practices.” Albuquerque, N.M., Ordinance ch. 3, art. II § 3-2-9.

[11] The LMRO requires that a three-member board “be formed[.] to assist in the implementation and administration of the [ordinance].” Albuquerque, N.M., Ordinance § 3-2-15. When a City employee believes that the City has engaged in a “prohibited practice,” he or she must submit a complaint to the LMRB within thirty days from the date that the alleged prohibited practice occurred. Albuquerque, N.M., Ordinance § 3-2-9(D). The City has five days to answer this complaint and, within five days of the City’s answer, the LMRB must schedule a hearing. Id. Although the LMRB provides an avenue for the City or an employee to appeal the LMRB’s decision, Albuquerque, N.M., Ordinance § 3-2-10(D), it does not identify or provide a specific remedy where the LMRB fails to timely render a decision.

III. The PEBA

[12] About twenty years after the City adopted its LMRO, the Legislature first enacted a statewide labor-management relations law for public employees (the PEBA). See City of Albuquerque v. Montoya, 2012-NMSC-007, ¶ 9, 274 P.3d 108. The PEBA “guarantees public employees the right to organize and bargain collectively with their employers.” Id. (alteration, internal quotation marks, and citation omitted); see NMSA 1978, § 10-7E-2 (2003). And it created the statewide PELRB. NMSA 1978, § 10-7E-8 (A) (2003). The PELRB “has the power to enforce provisions of the [PEBA].” NMSA 1978, § 10-7E-9(A), (F) (2003).

[13] The PEBA includes a grandfather clause for public employers who, like the City, had adopted their own collective bargaining systems before the PEBA was enacted. NMSA 1978, § 10-7E-26(A) (2003); Montoya, 2012-NMSC-007, ¶ 9. This grandfather clause allows a public employer to “continue to operate under [its own] provisions and procedures” where two conditions are met. Section 10-7E-26(A). The first condition is that the public employer must have “adopted by ordinance, resolution[,] or charter amendment a system of provisions and procedures permitting employees to form, join[,] or assist a labor organization for the purpose of bargaining collectively.” Id.; see Montoya, 2012-NMSC-007, ¶ 10. The second condition is that this system must have been adopted before October 1, 1991. Section 10-7E-26(A); see Montoya, 2012-NMSC-007, ¶ 10. Additionally, if a grandfathered public employer’s pre-existing ordinance, resolution, or charter amendment “substantially[] change[s] after January 1, 2003[,]” the grandfathered public employer must comply with additional provisions enumerated in Section 10-7E-26(B) of the PEBA. Section 10-7E-26(A). Thus, as long as a public employer’s system of provisions and procedures meets the two conditions for grandfather status and the written policy adopting that system has not substantially changed after January 1, 2003, the employer does not have to comply with any other provisions of the PEBA. Id.; see Montoya, 2012-NMSC-007, ¶¶ 9, 11 (stating that Section 10-7E-26(A) is a “grandfather clause” that “remove[s] from the statute’s reach a class that would otherwise be encompassed by its language” (internal quotation marks and citation omitted)); see also City of Deming v. Deming Firefighters Local 4521, 2007-NMCA-069, ¶ 6, 141 N.M. 686, 160 P.3d 595 (recognizing that if the grandfather clause applies, “the PEBA does not apply”).

[14] The PEBA defines “collective bargaining” as “the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours[,] and other terms and conditions of employment[,]” NMSA 1978, § 10-7E-4 (F) (2003) (internal quotation marks and citation omitted). The PEBA does not require grandfathered public employers, whose collective bargaining systems have not substantially changed after January 1, 2003, to have local boards that are actively adjudicating employee grievances.

IV. Analysis

[15] AFSCME does not dispute that the City’s LMRO is entitled to grandfather status under the PEBA and that the LMRO has not substantially changed since January 1, 2003. Instead, AFSCME points to the PEBA’s language that allows grandfathered public employers to “continue to operate” under their pre-existing systems. See § 10-7E-26(A). It submits that this language implies that the PELRB could hear complaints involving grandfathered public employers if the local boards created under those systems were not in fact “operating” or “functioning” to hear complaints. We disagree.

[16] The PELRB was created by the PEBA and its authority is limited to those matters that the PEBA has delegated to it “either expressly or by necessary implication.” Jones, 2014-NMCA-082, ¶ 9 (internal quotation marks and citation omitted); see Pub. Serv. Co. of N.M., 1976-NMCA-039, ¶ 7; see also § 10-7E-8(A) (creating the PELRB). The PEBA does not expressly delegate any authority to the PELRB to hear complaints involving grandfathered public employers. But, by implication, the PELRB has the power to determine in the first place whether a public employer or aspects of its labor relations system meet the conditions for grandfather status. See Deming Firefighters Local 4521, 2007-NMCA-069, ¶ 14 (“[T]he PELRB has the initial ability to determine its jurisdiction[].”)

[17] Once the determination is made that a public employer and its labor relations system has grandfather status and that its collective bargaining system has not substantially changed after January 1, 2003, no other provision of the PEBA
applies to that employer. Id. ¶ 6 (explaining that if the grandfather clause applies, “the PEBA does not apply”). And, if the public employer is not subject to the terms of the PEBA, then the PELRB has no jurisdiction to hear its complaints because the PEBA can only enforce the PEBA— it cannot enforce the LMRO. See § 10-7E-9(F) (noting that the PELRB “has the power to enforce provisions of the [PEBA]”); Regents of Univ. of N.M. v. N.M. Fed’n of Teachers, 1998-NMSC-020, ¶ 4, 125 N.M. 401, 962 P.2d 1236 (recognizing that the “PEBA created the PELRB, whose function is the administration of [the] PEBA”); Deming Firefighters Local 4521, 2007-NMCA-069, ¶ 6 (“[B]ecause the PEBA does not apply, the [PELRB] does not have jurisdiction.”).

{18} We therefore agree with the district court's conclusion that the PELRB did not have jurisdiction to hear AFSCME's complaints and that it did not act “in accordance with law” when it remanded the complaints to the LMRB. See Regents, 1998-NMSC-020, ¶ 16 (recognizing that a court may reverse the PELRB's actions where those actions are “arbitrary, capricious[,] or an abuse of discretion; . . . not supported by substantial evidence on the record taken as a whole; or . . . otherwise not in accordance with law”). Complaints cannot be “remanded” to a tribunal if they did not originate there. See Black’s Law Dictionary 1102 (abridged 9th ed. 2010) (defining “remand” as meaning “[t]o send (a case or claim) back to the court or tribunal from which it came for some further action”); see also Mid-Ohio Liquid Fertilizers, Inc. v. Lowe, 469 N.E.2d 1019, 1021 (Ohio Ct. App. 1984) (“To remand is to send back. Further, the term implies that what is being sent back is returned from where it came. ‘Remand’ is subject to no other construction.”); Los Alamos Cnty. v. Beery, 1984-NMSC-050, ¶ 3, 101 N.M. 157, 679 P.2d 825 (stating that an “order of remand simply returns the jurisdiction of the cause to the lower court in which it originated”). And the PEBA does not grant the PELRB the authority, either expressly or by necessary implication, to transfer complaints against a public employer to other tribunals. See §10-7E-9 (“Board; powers and duties.”).

{19} We note that this decision is limited to the narrow issue of jurisdiction under the PEBA. AFSCME has not challenged whether the City's LMRO continued to be entitled to grandfather status because the LMRB was not “operating” for over eighteen months. It also did not raise any arguments involving due process, equity, or other legal principles. Thus, we do not address these issues. See State v. Bell, 2014-NMCA-___, ¶ 19, ___ P.3d ___ (No. 31,890, Sept. 9, 2014) (“We do not address issues or questions unraised by litigants.”). AFSCME has not asked this Court to review the decision of the PELRB under a legal principle that might allow us to employ the right-for-any-reason doctrine. Under the circumstances, we will not consider any other legal principle under the theory that the PELRB decision was right for any reason. See Meiboom v. Watson, 2000-NMSC-004, ¶ 20,128 N.M. 536, 994 P.2d 1154 (stating that appellate courts, will not assume the role of the fact finder and delve into fact-dependent inquiries for purposes of a “right for any reason” analysis).

V. AFSCME’s Lack of Any Remedy Argument

{20} We disagree with AFSCME’s final argument that the district court’s decision will result in “an impossible legal vacuum” and create a “right without a remedy.” NMSA 1978, Section 44-2-4 (1984) provides an example of at least one action that a union may take when a local board is not functioning: When “any inferior tribunal, corporation, board[,] or person” fails to perform its duties, the affected parties may apply to the district court for a writ of mandamus to compel that public body to act. Id. (emphasis added) (providing that the “[p]urpose of a mandamus writ is "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station" and that it "may require an inferior tribunal to . . . proceed to the discharge of any of its functions"). AFSCME does not discuss or argue the availability of this or any other potential remedy.

CONCLUSION

{21} The order entered by the district court is affirmed.

{22} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

MICHAEL E. VIGIL, Judge
Kyle Harwood is a New Mexico Board Certified Specialist in Natural Resources – Water Law and is the former chair of the New Mexico Bar Natural Resources, Environment and Energy Law (NREEL) section. Mr. Harwood is a frequent speaker at conferences and classes concerning land and water issues, and has published numerous articles and book chapters on water resource issues. A graduate of University of New Mexico School of Law, he holds a B.S. in Natural Resources from Cornell University, and a Masters in Water Resources from UNM.
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BAR ASSOCIATION
for its Generous Support of the Civil Legal Clinic!

The Second Judicial District Pro Bono Committee and the Volunteer Attorney Program would like to thank the attorneys of the New Mexico Hispanic Bar Association for volunteering their time and expertise at the April 1st Civil Legal Clinic. The Clinic is held on the first Wednesday of every month at the Second Judicial District Courthouse in the 3rd floor conference room from 10 a.m. until 1 p.m. Twenty-nine individuals received assistance at the April clinic thanks to the dedication of seven attorneys from the New Mexico Hispanic Bar Association and three attorneys who assist with the clinic on a regular basis. Thank you:

New Mexico Hispanic Bar Association:
Denise M. Chanez
Alicia Santos
Brian Gaddy
Tim Atler
Cristina Chávez
Susan Page
Kenneth Owens
Darren Cordova
Billy Burgett
Craig Acorn

If you or your firm is interested in volunteering to host a clinic, please contact Aja Brooks at abrooks@nmbar.org or 505-797-6040.

A Civilized Approach to Civil Mediation…

• Creating a safe and respectful environment for parties
• Facilitating communication and promoting understanding
• Focusing parties on prioritizing their interests and options
• Helping parties assess the strengths and weaknesses of their positions
• Assisting parties evaluate likely outcomes in Court if they cannot reach settlement
• Vigorous reality testing
• Creativity

Karen S. Mendenhall
The Mendenhall Firm, P.C.
(505) 243-3357
KarenM@Mendenhallfirm.com
**Positions**

**Contractor Attorneys**
The Administrative Office of the Courts (AOC) is soliciting proposals for contractor attorneys for abuse/neglect cases in the following Judicial Districts: Second, Seventh, and Tenth. The Request for Proposal is posted at nmcourts.gov/home. Proposals must be received at the Administrative Office of the Courts no later than May 18, 2015 at 4:00pm. To receive the RFP packet by mail, contact Hilari Lipton at (505) 827-4887 at the AOC, 327 Don Gaspar, Room 25, Santa Fe, NM 87501. RFP packets will not be faxed. The Procurement Code, NMSA 1978, ‘13-1-28 to -199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**Lawyer Position**
Guebert Bruckner P.C. seeks an attorney with up to five years experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

**Senior Trial Prosecutor/Assistant District Attorney**
The 12th Judicial District Attorney is seeking a prosecutor for the Alamogordo and the Carizozo office. Experienced preferred, but will train the right candidate. Salary DOE. Position may be HIDTA funded. Please send resume and cover letter via email to 12thDA@state.nm.us or jwhiteley@da.state.nm.us. We are an EOEE.

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**Associate Attorney**
Busy law firm practicing in the areas of Family Law, Worker’s Compensation and Personal Injury seeking Associate Attorney to immediately join our growing firm. Attorney will primarily practice in the area of Family Law and will be responsible for legal analysis, representation, document preparation, mediations and litigation. Salary will be consistent with experience. Please submit cover letter and resume to tamara@couturelaw.com. No phone calls.

**Associate Attorney**
Moody & Warner, P.C. seeks a mid- to senior-level associate attorney. The firm represents plaintiffs and defendants in employment matters (including class actions, trials, arbitrations, and appeals). Litigation experience (plaintiff or defense) is a must. Knowledge of labor or employment law is preferred. Benefits, competitive pay, and bonus eligibility. Please mail or email resume to Moody & Warner, P.C., 4169 Montgomery Blvd, NE, Albuquerque, NM 87109, attention Connie Roybal or email Roybal@nmlaborlaw.com. All inquiries will be kept confidential.

**Victim Advocate Position - 1st Judicial District Attorney**
The First Judicial District Attorney’s Office has an immediate opening available for a Victim Advocate to provide services to victims and witnesses of crime. This is a mid-level Victim Advocate position, 2 to 5 years experience required. Applicant must be fluent in Spanish. Salary is based on the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: “Victim Advocate Employment”, co; PSchwartz, PO Box 2041, Santa Fe, NM 87504, or via e-mail to pschwartz@da.state.nm.us.

**Summer Law Clerk Position**
Busy litigation Firm looking for Summer Law Clerk with a desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

**Santa Fe Paralegal / Legal Assistant**
Gerber & Bateman, P.A. has an immediate position available for a full time paralegal/legal assistant/secretary. The practice is primarily in Domestic Relations. Must have at least three years’ experience in the field, excellent client relations ability, solid computer skills and litigation experience. Healthcare benefits plus Salary DOE. Please email resume with recommendations to pgerber@gblawsantafe.com or fax to 505-989-7335. Please title your e-mail “Resume.”
Sixth Judicial District Court
Request for Proposals

The Sixth Judicial District Court is requesting proposals for a one-year contract that, pursuant to NMSA 1978, §§1-150, may be extended up to four (4) years. The term of the initial contract will be from July 1, 2015 through June 30, 2016. Only attorneys licensed to practice law in New Mexico will be considered for the following contract: Pro-Se Officer, Luna County. The Contractor shall provide guidance (not legal advice) to Self-Represented Litigants for cases filed in Luna County of the Sixth Judicial District Court in which at least one party is not represented by counsel, as directed by the Court. The Contractor will be paid a fixed rate each month for services provided. Each applicant will be evaluated on his or her experience as a trial attorney with a focus on family law and domestic violence. Applicants must be available to spend at least eighteen (18) hours each month, in addition to two (2) hours each month for administrative matters, subject to change, meeting with and assisting pro se litigants. The Contractor shall offer to conduct a lecture of not longer than one (1) hour twice each month for persons who plan, but have not yet filed, a domestic case in Luna County. The participants should be encouraged to purchase from the District Court Clerk and bring the appropriate form package to the lecture. The purpose of the lecture is to inform prospective litigants in a domestic case how to complete the form package properly. The time spent conducting this lecture is time that is part of the twenty (20) hour maximum. The Sixth Judicial District Court is requesting proposals for a one-year contract that, pursuant to NMSA 1978, §§1-150, may be extended up to four (4) years. The term of the initial contract will be from July 1, 2015 through June 30, 2016. Only attorneys licensed to practice law in New Mexico will be considered for the following contract: Pro-Se Officer, Hidalgo County; The Contractor shall provide guidance (not legal advice) to Self-Represented Litigants for cases filed in Hidalgo County of the Sixth Judicial District Court in which at least one party is not represented by counsel, as directed by the Court. The Contractor will be paid a fixed rate each month for services provided. Each applicant will be evaluated on his or her experience as a trial attorney with a focus on family law and domestic violence. Applicants must be available to spend at least eighteen (18) hours each month, in addition to two (2) hours each month for administrative matters, subject to change, meeting with and assisting pro se litigants. The Contractor shall offer to conduct a lecture of not longer than one (1) hour twice each month for persons who plan, but have not yet filed, a domestic case in Luna County. The participants should be encouraged to purchase from the District Court Clerk and bring the appropriate form package to the lecture. The purpose of the lecture is to inform prospective litigants in a domestic case how to complete the form package properly. The time spent conducting this lecture is time that is part of the twenty (20) hour maximum. The Sixth Judicial District Court is requesting proposals for a one-year contract that, pursuant to NMSA 1978, §§1-150, may be extended up to four (4) years. The term of the initial contract will be from July 1, 2015 through June 30, 2016. Only attorneys licensed to practice law in New Mexico will be considered for the following contract: Pro-Se Officer, Hidalgo County; The Contractor shall provide guidance (not legal advice) to Self-Represented Litigants for cases filed in Hidalgo County of the Sixth Judicial District Court in which at least one party is not represented by counsel, as directed by the Court. The Contractor will be paid a fixed rate each month for services provided. Each applicant will be evaluated on his or her experience as a trial attorney with a focus on family law and domestic violence. Applicants must be available to spend at least eighteen (18) hours each month, in addition to two (2) hours each month for administrative matters, subject to change, meeting with and assisting pro se litigants. The Contractor shall offer to conduct a lecture of not longer than one (1) hour twice each month for persons who plan, but have not yet filed, a domestic case in Luna County. The participants should be encouraged to purchase from the District Court Clerk and bring the appropriate form package to the lecture. The purpose of the lecture is to inform prospective litigants in a domestic case how to complete the form package properly. The time spent conducting this lecture is time that is part of the twenty (20) hour maximum.

Associate Attorney

Bleus & Associates, LLC is presently seeking to fill (2) Associate Attorney Positions for its growing Uptown Albuquerque Office. Applicants should possess a minimum of (3) years civil litigation experience. Trial experience preferred. Areas of practice will include all aspects of civil litigation with an emphasis on Personal Injury; Insurance Bad Faith; and Tort Matters. Salary O.D.E. Please forward CV to Hiring Partner, 2633 Dakota, NE; Albuquerque NM 87110. Bleuslaw@hotmail.com. All inquiries will remain confidential.

Deputy District Attorney

Deputy District Attorney wanted for immediate employment with the Seventh Judicial District Attorney’s Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Sierra County (Truth or Consequences). Must have a minimum of 6 years criminal law experience, including 2 years of supervision/administration experience, and must be willing to relocate within 6 months of hire. Salary will be based on the NM District Attorneys’ Personnel & Compensation Plan and commensurate with experience and budget availability. Send resume to: Seventh District Attorney’s Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801.

Dir, Real Estate

NMSU is seeking an attorney to prepare and negotiate contracts, leases, deeds, real estate purchase and sale agreements, easements, mortgages, and other legal documents on behalf of the university. To apply for this job (1500215S) and for a complete job description please visit the NMSU website at http://jobs. nmsu.edu/postings/21780.

PELRB Board Member

The PELRB is seeking interested parties to submit names for consideration for appointment by the other two appointees as the Board’s third member. Board members shall serve for a period of three years with terms commencing on July 1, 2015. Any interested parties should submit a CV to the PELRB Office at 2929 Coors Blvd. NE, Ste. 303, Albuquerque, NM 87120 by May 22, 2015. The Public Employee Bargaining Act (§§ 10-7E-1 through 10-7E-26) and the PELRB rules can be accessed on our website at www.state.nm.us/pelrb.

Request for Proposals for to Provide Legal Services for Housing Development and Multi-Family Mortgage Servicing

The New Mexico Mortgage Finance Authority (MFA) is seeking proposals from qualified law firms to provide legal services for MFA’s housing development programs and its multifamily mortgage servicing programs. MFA invites all qualified parties to submit proposals to this competitive bidding process. The Request for Proposals (RFP) can be accessed on MFA’s website, at http://www.housingnm.org/rfp. Once on the MFA website’s RFP page, select “Housing Development Legal Services RFP” from the “Current RFP’s” list. Responses must be received by 4:00 pm Mountain Time, Thursday, May 7, 2015.

Request for Proposals for Legal Services as General Counsel for the New Mexico Mortgage Finance Authority

The New Mexico Mortgage Finance Authority (MFA) is seeking proposals from qualified law firms to provide MFA legal services as General Counsel. General Counsel represents the MFA Board of Directors and provides legal services to the MFA. MFA invites all qualified parties to submit proposals to this competitive bidding process. The Request for Proposals (RFP) can be accessed on MFA’s website, at http://www.housingnm.org/rfp. Once on the MFA website’s RFP page, select “General Counsel Legal Services RFP” from the “Current RFP’s” list. Responses must be received by 4:00 pm Mountain Time, Thursday, May 7, 2015.

Part Time Associate

Guglielmo & Associates, PLLC, a well-established multi-state law firm focusing on creditor rights, is currently seeking an associate attorney in its Albuquerque office for short term temporary position (June thru August). Candidates must hold NM license to practice law in good standing. Must pass drug and credit check. Candidate must be available to prepare legal briefs, pleadings, appeals, and trial preparation. Candidate must be available for pre-trial, motion hearings, and trial. Please email resume and writing sample to elizabethf@guglielmolaw.com.

Paralegal/Nurse Paralegal:

Personal injury law firm with office in Santa Fe is seeking a paralegal for its litigation practice. Candidates should have a strong background in the use of Microsoft Excel and Word as well as experience reviewing medical records. A nursing background is also a plus, and prior litigation experience is not necessary. Position will be full-time and will begin in May. All inquiries will be kept confidential. Please email resume to santafelawfirms05@gmail.com.
Legal Nurse Consultant/Paralegal (Albuquerque)

Full time position. Applicant should have RN or similar training. With at least 3-5 years work background in medical malpractice litigation (Plaintiff or Defense). Applicant should be reliable, have excellent verbal and written communication skills, and the ability to coordinate and handle a large caseload. Experience with medical records, litigation discovery and report writing skills are a must. A full job description will be provided at the initial interview. Compensation and benefits will be based on experience and qualifications. Please submit resume, contact information and salary requirements to the following email address: lawfirm9201@gmail.com

New Mexico Association of Counties Paralegal

Non-profit local governmental association is seeking a full-time paralegal to join a new litigation team in our Albuquerque office. Successful candidates will be proficient in both state and federal court practice. Duties will include review and organization of documents, preparation of pleadings and subpoenas, file management, exhibit organization, calendaring, and research. Experience with Microsoft Word, Outlook, Excel and timekeeping software preferred. Excellent benefits package and working environment. Email resume and references by e-mail to mvelasquez@rsk-law.com Osuna Rd., NE, Albuquerque, NM 87109 or 6721 or gbischof@dcbf.net

Law Firm Accounting Assistant

Yenson, Allen & Wosick, P.C., a mid-sized law firm, is looking for a full-time accounting assistant. Knowledge of TABS3 billing software preferred. Responsibilities include set-up of cases for billing; invoice preparation; light bookkeeping, scanning and data entry; oral and written communications with clients; knowledge of MS Word and Excel. Excellent work environment and benefits. Please send cover letter with salary requirements to Louis Marquez, at 4908 Alameda Blvd NW, Albuquerque, NM 87113 or at lmarquez@ylawfirm.com.

Legal Secretary

Busy insurance and civil defense firm seeks full-time legal secretary with five plus years’ experience in insurance defense and civil litigation. Position requires a team player with strong word processing skill including proficiency with Word, Perfect, knowledge of court systems and superior clerical and organizational skills. Should be skilled transcriptionist, attentive to detail and accurate with a Minimum typing speed of 75 wpm. Excellent work environment, salary and benefits. Send resume and references to Riley, Shane & Keller, P.A., Office Mgr, 3880 Osuna Rd., NE, Albuquerque, NM 87109 or e-mail to mvelasquez@rsk-law.com

Paralegal

O’Brien & Padilla, P.C., an AV rated firm, seeks full-time energetic paralegal with strong writing and organization skills. Our law practice is focused primarily in the area of personal injury defense. We will offer competitive salary and benefits to the right candidate. Please send a cover letter and your resume to rpadilla@obrienlawoffice.com.

Request for Applications City of Albuquerque Paralegal Positions

A Paralegal position is available within the Litigation Division of the Legal Department of the City of Albuquerque. Position Summary: Paralegal with a civil litigation background who has the skills, knowledge, and ability to assist attorneys in civil litigation practice, including from the inception of a civil lawsuit through trial. Minimum education and experience requirements: Associates Degree in Paralegal Studies, plus three (3) years’ experience as a paralegal, or a Certificate in Paralegal Studies, plus five (5) years’ experience as a Legal Secretary/Assistant. To Apply: All applicants must submit, by May 1, 2015, a City Application. Resumes will not be accepted in lieu of the application. An On-Line Application Process can be accessed at web site www.cabq.gov/jobs. Applications are also available at the City of Albuquerque Human Resources Department 400 Marquette NW 7th Floor Suite 703. Albuquerque NM 87103. Copies of required certifications, registrations, and/or licenses, if not attached on-line, must be provided at the time of interview.

Paralegal

Litigation paralegal with background in large volume document control/management, trial experience, and familiar with use of computerized databases. This is an opportunity for a highly motivated, task & detail-oriented professional to work for an established, well-respected downtown law firm. Competitive benefits. Email resume to: Kay@OnSiteHiring.com

Services

Legal Asst/Paralegal Avail for Contract Assignment

Court E-File, Scan, E-mail, Court Procedures, Discovery. Reliable & Professional HLleaglee@msn.com

Briefs, Research, Appeals—

Leave the writing to me. Experienced, effective, reasonable. cindi.pearlmani@gmail.com (505) 281 6797

Office Space

620 Roma N.W.

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

Office Available for Rent

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

What’s included in your office rent?

Plaza500 at 201 3rd Street NW offers ready to go offices that include covered parking space, VoIP phone and internet, free Wi-Fi, meeting room hours, 100 B&W copies per month included, coffee and water service, professional reception service, 24-hour secure access, utilities and janitorial services. Drop by or contact Sandee at 505-999-1726/sgalletti@allegiancesw.com to make an appointment to tour the suite in downtown’s premier class-A building.

Miscellaneous

Last Will and Testament of Emily J. Shepherd

Looking for a Last Will and Testament of Emily J. Shepherd. If you have the original or a copy of her Will, or know of who may have it, please contact Gerald E. Bischoff at 2040 4th Street NW, Albuquerque, NM 87102, 505-243-6721, immediately. Emily died on February 2, 2013.

For Sale

Large Office Desk

Large office desk, solid walnut, 74x37x30, beautiful, $1,200. 505 699-1352, alanbrad@aol.com
Amber Macias-Mayo wasn’t always destined to be a Family Lawyer:

She earned it.

After Amber’s almost 19 years of Family Law experience as legal assistant, paralegal, law clerk, UNM School of Law student, and now, newly minted member of the NM Bar,

David Walther Law is very proud to finally welcome Amber to the practice.

200 W DeVargas, Suite 3  •  505 795 7117  •  davidw@davidwaltherlaw.com
We’re ready to print your business package!

Quality, full-color printing. Local service with fast turnaround.

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Ask about your member discount.