

  
Joey D. Moya

**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

REBECCA DOW,

Petitioner,

v.

THE HONORABLE JAMES T.  
MARTIN,

Respondent,

and

THE NEW MEXICO STATE  
ETHICS COMMISSION,

Real Party in Interest,

No. S-1-SC-38928

**\*\*Conditionally under seal\*\***

Hon. James T. Martin  
Third Judicial District Court  
Doña Ana County

**REAL PARTY IN INTEREST STATE ETHICS COMMISSION'S  
CONSOLIDATED RESPONSE TO DOW'S VERIFIED PETITION  
FOR WRIT OF PROHIBITION OR WRIT OF SUPERINTENDING  
CONTROL AND DOW'S REQUEST FOR EMERGENCY STAY**

---

Jeremy Farris  
Walker Boyd  
Rebecca Branch  
800 Bradbury Dr. SE, Suite 215  
Albuquerque, NM 87106  
Tel:(505) 827-7800  
[jeremy.farris@state.nm.us](mailto:jeremy.farris@state.nm.us)

*Counsel for State Ethics  
Commission*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... iii

INTRODUCTION..... 1

BACKGROUND ..... 2

ARGUMENT ..... 5

    I.    Dow’s sealing arguments do not support a writ of  
          superintending control.. ..... 5

        A.    The underlying proceedings are sealed under Subsection 10-  
              16G-10(J). ..... 5

        B.    Under Rule 1-001(A), the statutory sealing provisions of  
              Subsection 10-16G-10(J) apply; Rule 1-079 does not. .... 7

        C.    The District Court’s compliance with the sealing procedures  
              of Subsection 10-16G-10(J) does not raise constitutional  
              concerns. .... 9

    II.   Dow’s notice of appeal of the District Court’s orders denying  
          her motions to quash and ordering her compliance with the  
          Commission’s subpoena does not support a writ of prohibition.  
          ..... 13

    III.  The Court should deny Dow’s request to stay the District  
          Court’s August 9, 2021 hearing..... 19

CONCLUSION .....20

**RULE 12-504(H) STATEMENT**

The body of this response contains 3893 words. The word count was obtained using Microsoft Word for Office 365 MSO (16.0.12527.21230) 32-bit.

## TABLE OF AUTHORITIES

### New Mexico Cases

<i>Albuquerque Gas &amp; Elec. Co. v. Curtis</i> , 1939-NMSC-024, 43 N.M. 234 .....	5
<i>Chavez v. Lovelace Sandia Health Sys., Inc.</i> , 2008-NMCA-104, 144 N.M. 578 .....	16
<i>Kelly Inn No. 102, Inc. v. Kapnison</i> , 1992-NMSC-005, 113 N.M. 231 .....	16-18
<i>Kerr v. Parsons</i> , 2016-NMSC-028, 378 P.3d 1 .....	5
<i>In re Forest</i> , 45 N.M. 204, 113 P.2d 582 (1941) .....	8
<i>State v. Roy</i> , 1936-NMSC-048, 40 N.M. 397 .....	11
<i>United Nuclear Corp. v. General Atomic Co.</i> , 1982-NMSC-105, 98 N.M. 633 .....	16
<i>VanderVossen v. City of Espanola</i> , 2001-NMCA-016, 130 N.M. 287 .....	8, 10
<i>Wilson Corp. v. State ex rel. Udall</i> , 1996-NMCA-049, 121 N.M. 677 .....	7-8, 20

### Federal Cases

<i>Maness v. Meyers</i> , 419 U.S. 449 (1975) .....	15
<i>Bridgeport Guardians, Inc. v. Delmonte</i> , 537 F.3d 214 (2d Cir. 2008) .....	14
<i>N.L.R.B. v. Cincinnati Bronze, Inc.</i> , 829 F.2d 585 (6th Cir. 1987) .....	15
<i>Sergeeva v. Tripleton Int’l Ltd.</i> , 834 F.3d 1194 (11th Cir. 2016) .....	15

### Constitutional Provisions

N.M. Const., art. V, § 17(C).....	2
N.M. Const., art. VI, § 3 .....	10-11
N.M. Const., art. VI, § 1 .....	10-11

Statutes

NMSA 1978, § 10-16G-10(I) ..... 2  
NMSA 1978, § 10-16G-10(J) ..... passim

Rules and Regulations

Rule 1-001 NMRA ..... passim  
Rule 1-004 NMRA ..... 12  
Rule 1-062 NMRA ..... 16  
Rule 1-071.1-5 NMRA ..... 12  
Rule 1-079 NMRA ..... passim  
Rule 1-087 NMRA ..... 12  
Rule 12-207 NMRA ..... 19

Other Authorities

Black’s Law Dictionary (11th ed. 2019).....6-7  
M. E. Occhialino, *Walden’s Civil Procedure in New Mexico* (2d. ed. 1996)  
..... 16

This matter arises from proceedings to enforce Respondent's order that Rebecca Dow comply with a subpoena that the State Ethics Commission issued. After Dow refused to produce documents responsive to the Commission's subpoena and to appear for a deposition, the Respondent ("District Court") noticed a hearing for August 9, 2021 to consider the Commission's motions for an order to show cause and to compel Dow's deposition. Dow asks this Court to prohibit the District Court from proceeding, arguing that (i) the district court proceedings have not been sealed pursuant to Rule 1-079 NMRA; and (ii) her notice of appeal of the District Court's order divests the District Court of jurisdiction for the Commission's show-cause motion.

The law does not support the Court's issuance of either writ. The Court need not exercise superintending control, because the District Court did not err in sealing the underlying proceedings pursuant to statutory procedures that are contrary to Rule 1-079. And the Court need not issue a writ of prohibition to correct a jurisdictional error; there is none. While Dow appealed the District Court's denial of her motion to quash, the District Court retains jurisdiction to enforce its order that she must comply with the Commission's subpoena.

Accordingly, there is no reason to stay the August 9, 2021 sealed hearing, in which the District Court will consider the Commission's motion for an order to show cause and to compel Dow's deposition.

## **BACKGROUND**

The Constitution vests the Commission with authority to “require the attendance of witnesses or the production of records and other evidence relevant to an investigation by subpoena as provided by law . . . .” N.M. Const., art. V, § 17(C). The State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended 2021), provides that the Commission may exercise its constitutional subpoena power only after “petition[ing] a district court” for leave to issue a subpoena. NMSA 1978, § 10-16G-10(I) (2019). Where a person neglects or refuses to comply with a subpoena, Subsection 10-16G-10(J) further grants “a district court” jurisdiction to issue “order[s] enforcing the subpoena and compelling compliance.” NMSA 1978, § 10-16G-10(J) (2019). The Commission's petition may not be submitted to any district court; instead, the Commission's petition and any proceedings related to the petition must be heard by an active or pro tempore district court judge appointed by the Chief Justice. *See id.*; *see also* Order Designating the

Honorable James T. Martin Under NMSA 1978, Section 10-16G-10(J),  
No. 20-8500-DS (Jan. 3, 2020).

After the Commission received an administrative complaint against Rebecca Dow, and after the Executive Director determined that the Commission had jurisdiction for some of the complaint's claims, the administrative complaint was assigned to the Commission's general counsel for investigation. The Commission authorized its attorney staff to petition the District Court for leave to issue subpoenas to Dow and to AppleTree Educational Center ("AppleTree"), a domestic nonprofit corporation that has contracts with state agencies and was founded by Dow, who until recently also served as its Chief Executive Officer. The District Court granted leave, and the Commission's attorneys issued the subpoenas and served Dow personally. The subpoena to Dow required her to sit for a deposition and produce for inspection AppleTree's April 2019 contract with Dow Technology, a sole proprietorship owned by her husband that Dow claims employed her as a "consultant" on her 2020 Financial Disclosure Statement.

Dow moved to quash the Commission's subpoenas to herself and to AppleTree. The District Court denied Dow's motions to quash and

ordered Dow “to comply with the subpoena served upon her” by the Commission. *See* Ex. E.1-2 to Verified Pet. Pursuant to that order, the Commission’s General Counsel noticed Dow’s deposition in Las Cruces nine days after the Court issued its order. *See* Ex. F.7 to Verified Pet. Dow did not produce the contract between AppleTree and Dow Technology, did not appear for her deposition, and refuses to confer on a deposition date until after the Court of Appeals issues a mandate on her appeal of the District Court’s order.

The Commission filed a motion for an order to show cause for Dow’s refusal to produce documents responsive to the Commission’s subpoena and to compel Dow’s deposition on a date certain. *See* Ex. F.1 to Verified Pet. After briefing completed, the District Court set a hearing on that motion for August 9, 2021. Dow then filed a motion to seal the District Court proceedings (which were already sealed) and a companion emergency motion to vacate the August 9, 2021 hearing. The District Court has denied both motions, and Dow now petitions this Court to issue writs and an emergency stay to prohibit the District Court from taking further action to enforce its order.

The Court should deny the petition.

## ARGUMENT

### I. **Dow’s sealing arguments do not support a writ of superintending control.**

Dow’s arguments concerning the sealing of the underlying District Court proceedings do not support a writ of superintending control.

“Where appropriate, the power of superintending control permits this Court's interposition to correct any *specie* of error” and not only jurisdictional errors. *Kerr v. Parsons*, 2016-NMSC-028, ¶ 16, 378 P.3d 1 (citing *Albuquerque Gas & Elec. Co. v. Curtis*, 1939-NMSC-024, ¶¶ 7, 12-14, 43 N.M. 234). But the District Court did not err, in any way.

The underlying District Court proceedings are sealed under the applicable statutory provision, Subsection 10-16G-10(J). Under Rule 1-001(A), Rule 1-079 does not apply. And the District Court’s decision to follow the sealing provisions of Subsection 10-16G-10(J) does not raise any constitutional concerns.

#### A. **The underlying proceedings are sealed under Subsection 10-16G-10(J).**

Subsection 10-16G-10(J) of the State Ethics Commission Act requires that district court proceedings regarding the issuance and enforcement of a Commission subpoena “prior to the [administrative]

complaint being made public . . . *shall be sealed.*” § 10-16G-10(J) (emphasis added). In compliance with this statute, the underlying proceedings have been sealed from the beginning. The Commission’s petition, which initiated these proceedings, was filed under seal. The District Court—which had established a specific case-docketing system for sealed statutory proceedings related to Commission subpoenas—assigned a special statutory case number for the underlying proceedings and instructed “[a]ny submissions in this proceeding must be filed under seal by email.” Ex. F. 15 to Verified Pet., Order Granting Commission Leave to Issue and Serve Subpoenas, at 1 (Feb. 9, 2021) (assigning the special statutory case number “D-307-ET-2021-01”) (emphasis added). Every subsequent filing, including the Court’s orders, was filed under seal. *E.g.*, Exs. E.1, F.1, F.15, G.1 to Verified Pet. Papers that Dow filed were also kept under seal, and those papers noted (until recently) that these proceedings are “\*\*\*SEALED\*\*\*.” There is no dispute that the public cannot access the District Court’s docket and no dispute that the public will not be allowed to attend the August 9, 2021 hearing. The proceedings are therefore sealed. *See*

*Seal, Black's Law Dictionary* (11th ed. 2019) (“To prevent access to a (document, record, etc.), esp. by court order.”).<sup>1</sup>

**B. Under Rule 1-001(A), the statutory sealing provisions of Subsection 10-16G-10(J) apply; Rule 1-079 does not.**

Even though the District Court sealed the underlying proceedings as Subsection 10-16G-10(J) requires, Dow contends that the proceedings are not lawfully sealed because the District Court never entertained a motion to seal under Rule 1-079, nor entered a sealing order under that rule. But Dow is mistaken. Rule 1-079 does not apply to the underlying proceedings.

Rule 1-001(A) NMRA provides: “[e]xcept where these rules explicitly provide otherwise, these rules do not apply where there are contrary statutory provisions concerning special statutory or summary proceedings.” The underlying proceedings concerning the issuance and enforcement of Commission subpoenas are “special statutory or summary proceedings.” *Id.*; see, e.g., *Wilson Corp. v. State ex rel. Udall*,

---

<sup>1</sup> Despite Dow’s insinuations, the leak of information about the District Court’s August 9, 2021 hearing to the press does not mean that the underlying District Court’s proceedings are not lawfully sealed. The leak simply means that someone violated the State Ethics Commission Act, the District Court’s sealing order and instructions, or both.

1996-NMCA-049, ¶ 13, 121 N.M. 677 (“A proceeding to enforce or quash compulsory process—whether denominated a subpoena, a summons, or a CID—on behalf of an administrative agency is not a trial. Such proceedings are summary in nature.”) (citations omitted); *see also generally VanderVossen v. City of Espanola*, 2001-NMCA-016, ¶¶ 13-15, 130 N.M. 287 (quoting *In re Forest*, 45 N.M. 204, 207, 113 P.2d 582, 583 (1941)) (“Special proceedings ‘are statutory proceedings to enforce rights and remedies created by statute and which were unknown to the common law and equity practice of England prior to 1776.’”); Rule 1-001 comm. cmt.

Subsection 10-16(G)-10(J) provides procedures for the sealing and unsealing of district court proceedings regarding the issuance and enforcement of Commission subpoenas. These procedures are “contrary” to the procedure that Rule 1-079 requires. Rule 1-001(A). Whereas Rule 1-079(G)(1) provides the bases on which “[t]he court *may* order that a court record be filed under sealed,” Subsection 10-16G-10(J) provides “[a]ll proceedings in the district court prior to the complaint being made public . . . *shall be sealed.*” 10-16G-10(J) (emphasis added). The District Court is required to seal proceedings

regarding Commission subpoenas irrespective of whether a party or member of the public files a motion to seal and whether the District Court enters an order granting or denying that motion. *See id.*<sup>2</sup> Accordingly, under Rule 1-001(A), the “contrary” sealing provisions of Subsection 10-16G-10(J) that concern the special statutory and summary proceedings relating to Commission subpoenas apply. Rule 1-079 does not.

**C. The District Court’s compliance with the sealing procedures of Subsection 10-16G-10(J) does not raise constitutional concerns.**

In her petition, Dow suggests that the Legislature’s enactment of statutory sealing procedures for district court proceedings regarding Commission subpoenas—and the Commission’s and the District Court’s

---

<sup>2</sup> The unsealing procedures are also contrary. Rule 1-079(I) provides that “[a] sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself,” and that a party or member of the public may move to unseal a sealed court record. *See* Rule 1-079(I) NMRA. In contrast, Subsection 10-16G-10(J) provides that “[a] case is *automatically* unsealed upon notice by the commission to the court that the commission has made the complaint public.” § 10-16G-10(J) (emphasis added). As with the sealing of district court proceedings relating to the Commission’s subpoenas, unsealing requires neither a motion nor a court order pursuant to Rule 1-079; rather, the special statutory provision controls.

decision to follow the statute and not Rule 1-079—creates constitutional concerns. In her view, abiding by the sealing provisions of Subsection 10-16G-10(J) instead of Rule 1-079 contravenes the separation of powers by encroaching upon “the essential, exclusive domain of the judiciary to prescribe the rules of practice and procedure.” Verified Pet. at 15 (citations omitted). Dow misapprehends the applicable constitutional law.

Two constitutional grants of power are relevant. First, for special statutory and summary proceedings, Article VI, Section 13 grants the Legislature authority to vest jurisdiction in the district courts and enact procedures regarding that jurisdiction. *See* N.M. Const., art. VI, § 13 (granting the district courts “original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings *as provided by law*”) (emphasis added); *VanderVossen*, 2001-NMCA-016, ¶ 14 (“It is clear from the phrasing of section 13 that its drafters did not equate the district court’s exercise of original jurisdiction, which is a constitutional grant of power, with the exercise of jurisdiction over ‘special cases and proceedings,’ which is determined by the legislature.”). Second, Article VI, Section 3 grants

this Court “superintending control over all inferior courts,” which implies the power to ultimately dictate rules of procedure for the district courts. N.M. Const., art. VI, § 3. The Court exercises its superintending control power by promulgating rules of procedure and, when appropriate, intervening in ongoing litigation to correct error. *See, e.g., State v. Roy*, 1936-NMSC-048, ¶ 90, 40 N.M. 397.

In Rule 1-001(A), this Court clarified how these two constitutional grants of power co-exist: “*Except where these rules explicitly provide otherwise*, these rules do not apply where there are contrary statutory provisions concerning special statutory or summary proceedings.” Rule 1-001(A) (emphasis added). Under its Article VI, Section 13 authority, the Legislature may enact procedures for special statutory and summary district court proceedings that “are contrary” to the procedures that control when district courts exercise original jurisdiction. *See* Rule 1-001(A). But, under its superintending control authority, this Court may issue procedures even for those special statutory and summary district court proceedings and, when it does, those procedures “supersede[] the statutory procedures” that the Legislature enacted. Rule 1-001 comm. cmt.

Rule 1-001(A) provides that when this Court issues rules that supersede statutory procedures, the Court does so “explicitly.” As the Committee Commentary for Rule 1-001 explains, “Rule 1-004(A)(1) (service of summons), Rule 1-087 (Contest of Election or Nomination) and Rules 1-071.1 to 1-071.5 (Stream Adjudications) are examples of procedural rules adopted by the New Mexico Supreme Court that supersede contrary statutory provisions dealing with special statutory cases or proceedings.” Rule 1-001 comm. cmt.

To be sure, if the Supreme Court adopted procedures that were explicitly applicable to district court proceedings to issue or to enforce a Commission subpoena, then those explicit procedures would supersede any procedure that Section 10-16G-10(J) provides. But unlike election contests and stream adjudications, the Supreme Court has not exercised the powers implied by its “superintending control over all inferior courts” by explicitly issuing procedures controlling district court proceedings to issue or to enforce Commission subpoenas. Under Rule 1-001(A), therefore, the provisions of Subsection 10-16G-10(J) control—without impinging on the powers conferred on the courts or violating the separation of powers.

**II. Dow's notice of appeal of the District Court's orders denying her motions to quash and ordering her compliance with the Commission's subpoena does not support a writ of prohibition.**

The District Court denied Dow's motion to quash the Commission's subpoena to AppleTree and Dow's motion to quash the Commission's subpoena to Dow and, further, ordered Dow to comply with the Commission's subpoena. Dow noticed her appeal of the District Court's order, but she did not seek or obtain a stay. Dow contends that her notice of appeal alone divests the District Court of jurisdiction to enforce its order and to rule on the Commission's subsequent motion for an order to show cause for Dow's refusal to produce documents and to compel her to appear for a deposition. *See Verified Pet. at 17.* Even though Dow has presented these same jurisdictional arguments to the District Court, she now asks this Court to issue a writ of prohibition to the District Court, prohibiting it from hearing the Commission's motion on August 9, 2021 and issuing a subsequent order. *See id. at 18.* This Court should not issue that writ, for two reasons.

First, the Court should not issue a writ of prohibition where the jurisdictional issue is pending in the Respondent's court. A court

always has jurisdiction to determine whether it has jurisdiction. *See Bridgeport Guardians, Inc. v. Delmonte*, 537 F.3d 214, 220 (2d Cir. 2008) (While the doctrine of jurisdiction to determine jurisdiction is often discussed in the context of Article III courts, no reason suggests it cannot apply in some form to other bodies as well[.]”) (citation omitted). Dow raised in the District Court the same jurisdictional arguments that she presents to this Court in her Verified Petition. *Compare* Dow’s Resp. to the Commission’s Mot. for Order to Show Cause, at 4-5 (filed Jun. 8, 2021) (“[B]ecause Rebecca Dow has a right to appeal the Court’s May 18, 2021 Order . . . the Commission’s Motion should be denied.”), *with* Verified Pet. at 17-18. The District Court will hear Dow’s jurisdictional arguments at the August 9, 2021 hearing. This Court should not issue a writ of prohibition to prohibit another court (named as a respondent) from determining whether it has jurisdiction when the same jurisdictional issues presented to this Court are pending before the respondent court.

Second, and more significantly, Dow’s argument that her notice of appeal divests the District Court of jurisdiction to enforce its order compelling compliance with a subpoena is without merit—so much so

that a panel of the Federal Court of Appeals for the Eleventh Circuit called the same jurisdictional argument “frivolous.” *See Sergeeva v. Tripleton Int’l Ltd.*, 834 F.3d 1194, 1201-02 (11th Cir. 2016). It is well established that, absent a stay, a district court order must be obeyed on penalty of contempt. As the United States Supreme Court observed:

We begin with the basic proposition that all orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, *but, absent a stay, he must comply promptly with the order pending appeal.* Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.

*Maness v. Meyers*, 419 U.S. 449, 458 (1975) (emphasis added); *see also Sergeeva*, 834 F.3d at 1201-02 (“Absent entry of a stay on appeal—which Trident Atlanta failed to obtain here—the District Court retained jurisdiction to enforce its orders.”); *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987) (concluding that, despite the general rule that “an effective notice of appeal divests the district court of jurisdiction over the matter forming the basis for the appeal,” the district court retains “jurisdiction to act to enforce its judgment so long as the judgment has not been stayed or superseded”) (citations omitted).

The law is no different in New Mexico. *See United Nuclear Corp. v. General Atomic Co.*, 1982-NMSC-105, ¶ 63, 98 N.M. 633 (“Pending appeal, a trial court retains jurisdiction to enforce an un-superseded judgment.”) (citations omitted).<sup>3</sup> And the very opinion that Dow cites for her jurisdictional argument, *Kelly Inn No. 102, Inc. v. Kapnison*, undermines it. *See Verified Pet.* at 17-18 (citing 1992-NMSC-005, ¶ 39, 113 N.M. 231). In *Kelly Inn*, this Court held that, despite the appeal of an attorney fee award, the trial court retained jurisdiction to determine the amount of the fee award. *See* 1992-NMSC-005, ¶ 30. The Court observed that, despite the frequent repetition of the so-called “rule that an appeal ‘completely divests’ the trial court of jurisdiction over ‘the case,’” *id.* ¶ 32, the actual law is that “a pending appeal does *not* divest

---

<sup>3</sup> *Cf. Chavez v. Lovelace Sandia Health Sys., Inc.*, 2008-NMCA-104, ¶ 42, 144 N.M. 578 (“No stay of the discovery order was obtained in any court, and nothing prevented the district court from immediately proceeding to hold Defendant in contempt for non-compliance with the discovery order.”); Rule 1-062(A), (D) NMRA (providing for immediate enforcement of judgments and other orders unless the district court enters a stay or the party appealing the judgment posts a supersedeas bond); M. E. Occhialino, *Walden’s Civil Procedure in New Mexico* 7:52 (2d. ed. 1996) (“Until the court grants the protective order or enters a stay of the deposition pending a determination of the motion for protective order, there must be compliance with the notice of deposition[.]”).

the divest the trial court of jurisdiction to take further action when the action *will not affect the judgment on appeal* and when, instead, the further action enables the trial court to carry out or *enforce the judgment,*” *id.* ¶ 33 (third emphasis added).<sup>4</sup>

Dow noticed an appeal of the District Court’s order denying her motions to quash the Commission’s subpoenas and compelling her compliance with the same. She did not, however, seek or obtain a stay. (Nor does she suggest otherwise or include a stay order in her exhibits.) Accordingly, the District Court retains jurisdiction for “[t]he necessity of further proceedings to carry the judgment into effect”—for example, further proceedings on a motion to show cause why Dow should not be

---

<sup>4</sup> In concluding its analysis on the issue, the *Kelly Inn* Court explained:

The trial court retains the same jurisdiction to deal with matters collateral to or separate from the issues resolved in the judgment as it has following the filing of the notice of appeal. The necessity for further proceedings to carry the judgment into effect or otherwise to dispose of a matter that does not entail alteration or revision of decisions embodied in the judgment does not prevent finality of the judgment; and the court does not lose jurisdiction, after thirty days have passed or an appeal has been taken, to dispose of such matters.

*Id.* ¶ 42.

held in contempt or otherwise sanctioned for refusing to obey the District Court's order to comply with the Commission's subpoena. *See Kelly Inn*, 1992-NMSC-005, ¶ 42. Show-cause proceedings and proceedings to compel Dow's deposition in compliance with the Commission's subpoena do not entail the "alteration or revision" of decisions the District Court made when denying Dow's motion to quash. In order to consider contempt or other sanctions to enforce compliance with its order, for example, the District Court need not revisit its rejection of Dow's dubious argument that the proceedings are misvenued despite Subsection 10-16G-10(J)'s text and Chief Justice's order appointing the Respondent.

Therefore, the District Court retains jurisdiction to decide the Commission's motion for an order to show cause and compel Dow's deposition. The exercise of that jurisdiction does not require the District Court to revisit issues raised on appeal and enables the District Court to enforce its judgment. The Court should deny Dow's petition for a writ of prohibition.

### **III. The Court should deny Dow’s request to stay the District Court’s August 9, 2021 hearing.**

The law does not support either a writ of superintending control, because the District Court did not err in following Subsection 10-16G-10(J)’s sealing provisions. The law does not support a writ of prohibition, because the District Court retains jurisdiction to enforce its order that Dow comply with the Commission’s subpoena. Accordingly, there is no reason to stay the District Court’s August 9, 2021 hearing, which is sealed, and in which the District Court will consider the Commission’s motion to show cause. Dow cannot meet her burden to demonstrate error that would support a stay. *See* Rule 12-207(D) NMRA.

Dow suggests in the alternative that even if the Court ultimately rejects her arguments, it should nonetheless issue a stay of the District Court proceedings to “provide[] clarity and guidance,” and because the Commission will not suffer any prejudice. *See* Verified Pet. at 19. But a stay would prejudice the Commission: any delay prejudices the Commission staff’s investigation and the Commission’s ability to obtain the evidence it needs to investigate and adjudicate administrative complaints. *See* NMSA 1978, § 10-16G-11(A) (2019) (requiring

Commission staff to obtain leave from the Commission to continue an investigation more than 90 days after a complaint is received); *see also Wilson Corp.*, 1996-NMCA-049, ¶ 15 (approving “summary proceedings” for enforcement of administrative subpoenas, reasoning that “an investigation can readily be thwarted and limitation periods may expire if prolonged litigation accompanies every attempt to obtain information.”).

The Court should deny Dow’s request for a stay.

### **CONCLUSION**

The Court should deny both Dow’s petition for a writ of prohibition or writ of superintending control and Dow’s request for an emergency stay.

AUGUST 6, 2021

Respectfully submitted,

By: /s/ Jeremy Farris

Jeremy Farris

Walker Boyd

Rebecca Branch

800 Bradbury Dr. SE, Suite 215

Albuquerque, NM 87106

Tel:(505) 827-7800

[jeremy.farris@state.nm.us](mailto:jeremy.farris@state.nm.us)

*Counsel for State Ethics Commission*

## CERTIFICATE OF SERVICE

I certify that on August 6, 2021, I filed the foregoing electronically, which caused the parties or counsel to be served by electronic means. I also served the following persons by the method reflected:

Lucas M. Williams  
Ann C. Tripp  
Hinkle Shanor LLP  
P.O. Box 10  
Roswell, NM 88202-0010  
(575) 622-6510  
[lwilliams@hinklelawfirm.com](mailto:lwilliams@hinklelawfirm.com)  
[atripp@hinklelawfirm.com](mailto:atripp@hinklelawfirm.com)

Via Email

*Counsel for Petitioner Rebecca Dow*

The Honorable James T. Martin  
District Court Judge  
Third Judicial District Court  
201 W. Picacho Ave.  
Las Cruces, NM 88005-1833  
(575) 523-8292  
[lcdkdb@nmcourts.gov](mailto:lcdkdb@nmcourts.gov)

Via Email & USPS

*Respondent*

- and -

Hector H. Balderas, Attorney General  
201 Third St., NW, Suite 300  
Albuquerque, NM 87102  
(505) 717-3523  
[hbalderas@nmag.gov](mailto:hbalderas@nmag.gov)  
[caortiz@nmag.gov](mailto:caortiz@nmag.gov)

Via Email

*Attorney General*

*/s/ Jeremy Farris*  
Jeremy Farris