IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MIMI STEWART,

Petitioner/Senator,

v.

Case No. S-1-SC-40573
District Court Case No.
D-202-CV-2022-01805

THE HONORABLE DANIEL J. RAMCZYK,

Respondent/District Court Judge,

and

JACOB CANDELARIA,

Real Party in Interest ("RPI").

THE HONORABLE DANIEL J. RAMCZYK'S RESPONSE TO PETITION FOR WRIT OF SUPERINTENDING CONTROL AND REQUEST FOR STAY

Submitted by,

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Respondent, the Honorable Daniel J. Ramczyk, by and through his attorneys, JONES, SNEAD, WERTHEIM & CLIFFORD, P.A., pursuant to Rule 12-504(C)(1) NMRA and the Orders of this Court of September 24, 2024 and October 8, 2024, respectfully submits this Response to the Petition for Writ of Superintending Control and Request for Stay.

I.

INTRODUCTION

This Court has, under exceptional circumstances, invoked its power of superintending control to direct the course of litigation in the lower courts. This case does not present one of those exceptional circumstances. In the underlying case before Respondent in the Second Judicial District Court, Petitioner unsuccessfully sought dismissal of and a judgment on the Complaint against her through three separate motions. All three motions were denied by Respondent, but only the third order, Respondent's September 10, 2024, *Order Denying Defendant's Second Motion for Judgment on the Pleadings and Certifying Question to the Court of Appeal for Interlocutory Appeals,* is the subject of the Petition. **[Pet. Ex. A]**

In the September 10 Order, Respondent denied Petitioner's second motion for judgment on the pleadings. **[Pet. Ex. B]** Petitioner's Motion sought judgment on the pleadings on the ground that the alleged retaliatory acts "are actions that are within the scope of Senator Stewart's legislative activities and as such, are protected by Legislative Immunity." **[Pet. Ex. B 2]** The actions referred to in the pleadings and Order include reassignment of Plaintiff's seat on the Senate floor and reassignment of his Senate office in the State Capitol. **[Pet. Ex. A 1]**

In his Order, Respondent made three findings pertinent to the Petition. First, Respondent held that the District Court "must examine the Defendant's motive behind" asserted retaliatory actions before deciding whether those actions are "legislative action for which Defendant would be entitled to absolute legislative immunity[.]" **[Pet. Ex. A 2]** Second, Respondent held that "to examine the intent behind the Asserted Retaliatory Actions, the parties should conduct discovery, including depositions of the parties, and develop facts regarding the Defendant's motive/intent behind the Asserted Retaliatory Actions." **[Pet. Ex. A 2]** Third, the District Court held that the Order was

interlocutory, that it "does not practically dispose of the merits of the action and involves a controlling question of law and first impression in New Mexico to which there is substantial ground for difference of opinion and that an immediate appeal from this Order may materially advance the ultimate termination of the litigation[,]" *citing* NMSA 1978, § 39-3-4 (1971, as amended through 1999). Respondent denied the motion for judgment on the pleadings but granted the Petitioner leave to file an application for interlocutory appeal under Rule 12-203 NMRA. Within the time permitted by Section 39-3-4 and Rule 12-203 for filing of an interlocutory appeal, Petitioner instead filed her Petition initiating this matter.

This Court should deny the Petition for three related reasons. First, Respondent's September 10, 2024 Order, granted Petitioner leave to file an application for interlocutory appeal of the Order with the New Mexico Court of Appeals pursuant to Rule 12-203. **[Pet. Ex. A 3]** Second, Petitioner also had the option to file a petition for writ of error under Rule 12-503 NMRA, but did not do so. Third, barring the preceding options for review, the Petitioner has the right to a direct

appeal to the Court of Appeals upon entry of a final order by the District Court.

II.

THE PETITION DOES NOT PRESENT AN EXCEPTIONAL CIRCUMSTANCE APPROPRIATE FOR INVOKING THIS COURT'S POWER OF SUPERINTENDING CONTROL.

Before addressing Petitioner's other options for appellate review of the September 10 Order, the Petition should be placed in the context of this Court's previous decisions interpreting its power to grant extraordinary writs of superintending control. Under Article VI, Section 3, this Court has power of superintending control to control the course of ordinary litigation in inferior courts. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 9, 539 P.3d 272. This authority, while discretionary, has been long-established as an extraordinary authority reserved for exceptional circumstances. *See State ex rel. Schiff v. Murdoch*, 1986-NMSC-040, ¶ 4, 104 N.M. 344. Accordingly, this Court's superintending power "will be exercised only where the remedy by appeal is wholly or substantially inadequate, or where it is necessary to prevent irreparable mischief, great, extraordinary or exceptional

hardship, costly delays or unusual burdens of expense." *Id.* (citations omitted). The power may also be used "when it is in the public interest to settle the question involved at the earliest moment." *State ex rel. Torrez v. Whitaker,* 2018-NMSC-005, ¶ 30, 410 P.3d 201 (citation omitted). It may not, however, be used as a substitute for appeal. *Murdoch*, 1986-NMSC-040, ¶ 4.

For the first decades of statehood, this Court deployed the writ of superintending control sparingly. *See Montoya v. McManus,* 1961-NMSC-060, ¶ 53, 68 N.M. 381 (noting that as of the date of the opinion, this Court had employed the power of superintending control only twice since statehood). In more recent decades, and continuing to the present, this Court has invoked its superintending power over inferior courts more frequently, but the writ still maintains its extraordinary character. *See, e.g., Grisham v. Van Soelen,* 2023-NMSC-027, ¶ 10 (superintending control appropriate to decide matter of first impression that implicates the constitutional right to vote and the legislature's constitutional responsibility for redistricting finding "clear and substantial public interest" in resolving legal issues presented);

Grisham v. Romero, 2021-NMSC-009, ¶ 15, 483 P.3d 545 (exercise of superintending control appropriate on issue of first impression concerning constitutional issues and public safety; upholding temporary closure of indoor dining during pandemic); *Pacheco v. Hudson*, 2018-NMSC-022, ¶¶ 69-70, 415 P.3d 505 (writ issued to determine district court's constitutional jurisdiction to adjudicate an IPRA enforcement action); *Whitaker*, 2018-NMSC-005, ¶¶ 30-32 (writ issued to provide guidance in interpreting a new constitutional provision granting district courts the authority to detain criminal defendants without bail); and *Kerr v. Parsons*, 2016-NMSC-028, ¶ 17, 378 P.3d 1 (writ issued to vacate district court orders requiring the Law Offices of the Public Defender to fund contract counsel services in a way that would "threaten its ability to perform its duties" and "jeopardiz[e] the administration of criminal justice in New Mexico").

These cases share matters—constitutional, jurisdictional, procedural—unique to them and distinct from the merits of a district court decision. Such unique and separate matters tend to justify the immediate guidance of the New Mexico Supreme Court through the

power of superintending control. The current case does not present such a matter.

At the center of New Mexico's careful use of the extraordinary writs of prohibition and superintending control lies a concern over interference with the orderly proceeding of cases in both the district and appellate courts. "To hold that a writ of prohibition proceeding is appropriate in any case where the trial court may have erroneously ruled on a statute of limitations issue—or, for that matter, any other dispositive issue that might obviate the need for trial—is contrary to the purposes underlying the use of extraordinary writs and our general policy disfavoring the use of piecemeal appeals." *State v. Valerio*, 2012-NMCA-022, ¶ 26, 273 P.3d 12. "[N]either the writ of prohibition nor the writ of superintending control should be used as a substitute for a decision on direct or interlocutory appeal." *Id.* (citing *Chappell v. Cosgrove*, 1996–NMSC–020, ¶ 6, 121 N.M. 636).

New Mexico appellate courts' reluctance to use extraordinary writs reflects an apprehension that extraordinary writs could be used so frequently that their use would imperil the policies that limit the right

of appeal, particularly the final judgment rule. *State v. Valerio*, 2012-NMCA-022, ¶ 26, 273 P.3d 12. This Court enforces these rules by insisting that for the petitioners to prevail on an extraordinary writ, they must demonstrate an appeal is wholly or substantially inadequate to vindicate them. *See, e.g., Murdoch*, 1986-NMSC-040, ¶ 4; *see also Kerr*, 2016-NMSC-028, ¶ 16 ("We may exercise our power of superintending control to control the course of ordinary litigation 'if the remedy by appeal seems wholly inadequate.'") (quoting *Dist. Court of Second Judicial Dist. v. McKenna,* 1994-NMSC-102, ¶ 4, 118 N.M. 402). Petitioner has not met this heavy burden as she had or has alternative remedies through interlocutory appeal, writ of error, and direct appeal from a final order of the District Court.

"[A] writ of superintending control issues only when the remedy by appeal seems wholly inadequate or when otherwise necessary to prevent irreparable mischief; great, extraordinary, or exceptional hardship; costly delays, or unusual burdens of expense." *Carrillo v. Rostro*, 1992-NMSC-054, ¶ 31, 114 N.M. 607 (internal quotes and citations omitted). Other criteria for issuance of a writ of

superintending control evoke the gravity of the issues raised: adjudicating fundamental rights, deciding issues in the public interest, or halting "erroneous, arbitrary and tyrannical" decisions from lower courts. *Id.* (citations omitted)

As shown below, the Petitioner's rights to seek review of the September 10 Order, and a future, final order in the case below, weigh against granting the Petition and imposing superintending control over the District Court. The issuance of a writ would undermine substantial jurisprudence reserving the exercise of this power and preserving the orderly process of appeals being directed to the Court of Appeals.

III.

THE PETITIONER COULD HAVE TAKEN AN INTERLOCUTORY APPEAL FROM THE ORDER DENYING JUDGMENT ON THE PLEADINGS.

This Court should not entertain the Petition for Writ of Superintending Control because to do so would permit Petitioner to invoke this Court's rarely used power of superintending control when she had adequate appellate remedies by way of interlocutory appeal,

writ of error, or direct appeal upon entry of a final order disposing of the Case. **[Pet. Ex. A]**

The September 10 Order granted Petitioner leave to file an application for interlocutory appeal to the New Mexico Court of Appeals. **[Pet. Ex. A 3]** Respondent held that the Order was interlocutory, and "does not practically dispose of the merits of the action and involves a controlling question of law and first impression in New Mexico to which there is substantial ground for difference of opinion and that an immediate appeal from this Order may materially advance the ultimate termination of litigation." **[Pet. Ex. A 3]** With these holdings, Respondent established the predicate for an interlocutory appeal under Rule 12-203(A) and Section 39-3-4(A). Petitioner, however, chose not to file an interlocutory appeal and filed her Petition to this Court. Interlocutory appeal to the New Mexico Court of Appeals would have maintained the logical order of consideration of orders of the district courts by the Court of Appeals embodied in Section 39-3-4 and Rule 12-203.

IV.

THE PETITIONER COULD HAVE FILED A PETITION FOR WRIT OF ERROR WITH THE COURT OF APPEALS.

The Petitioner had another option to seek review of the September 10 Order, the filing of a petition for writ of error with the Court of Appeals under Rule 12-503. The time for filing such a petition had not expired when Petitioner filed her Petition with this Court. The collateral order doctrine, which is effectuated through Rule 12-503 and writs of error, provides a remedy where an order is "effectively unreviewable on appeal from a final judgment because the remedy by way of appeal would be inadequate." Rule 12-503(E)(2)(c). In *Carrillo,* this Court adopted the collateral order doctrine and held that it had jurisdiction to review the denial of summary judgment on defendants' qualified immunity defense. *Carrillo,* 1992-NMSC-054, ¶ 22.

The predicate for issuance of a writ of error has not been addressed by the Petition, however, this remedy was available to the Petitioner and is another factor weighing against the issuance of a writ of superintending control. The application of the collateral order doctrine in *Carrillo* may have relevance to the Petition. The Court in

that appeal held that the denial of summary judgment "finally and conclusively" determined that the defendant had to stand trial and was not immune, and that the denial of summary judgment was reviewable by applicable of the collateral order doctrine. *Id.* ¶ 22.

Pertinent to this Petition, in *Carrillo* the Court observed that the Court does not exercise its power of superintending control as of means of implementing the collateral order doctrine. *Id.* ¶ 31. The Court remarked that issuance of a writ of superintending control should be reserved to categories of cases such as those implicating "fundamental rights," "the public interest," and "an erroneous, arbitrary, and tyrannical order by the lower court." *Id.* (citations omitted) The Court deemed the writ of error "the appropriate means for invoking the collateral order doctrine[.]" *Id.* ¶ 32. Much like *Carrillo*, the case below presents a question of immunity from suit. A petition for writ of error was another available remedy for Petitioner.

V.

THE PETITIONER HAS THE RIGHT TO TAKE AN APPEAL AFTER ENTRY OF A FINAL ORDER BY THE DISTRICT COURT.

The Petition attempts to do that which this Court has long prohibited: invoke this Court's original jurisdiction to control inferior courts as a substitute for direct appeal where the remedy by direct appeal is wholly adequate *See, e.g., Chappell,* 1996-NMSC-020, ¶ 6 (extraordinary writs should not be used as a substitute for direct or interlocutory appeal); *see also State v. Bent,* 2012-NMSC-038, ¶ 31, 289 P.3d 1225 (narrow exception to rule that extraordinary writ should not substitute for direct appeal exists where the remedy by appeal is not wholly adequate) (citing *Chappell*). Upon entry of a final order, Petitioner may avail herself of a direct appeal to the Court of Appeals. Such an appeal would be an adequate means of addressing the issues presented by the Petition.

"Within thirty days from the entry of . . . any final order after entry of judgment which affects substantial rights, in any civil action in the district court, any party aggrieved may appeal therefrom to the

supreme court or to the court of appeals, as appellate jurisdiction may be vested by law in these courts." NMSA 1978, § 39-3-2 (1917, as amended through 1966); *accord* Rule 12-201(A)(1)(b) NMRA (party may begin direct appeal by filing a notice of appeal 30 days after filing of final order in the district court clerk's office). Petitioner has not demonstrated that an appeal from a final order would be wholly or substantially inadequate. *See, e.g., Murdoch*, 1986-NMSC-040, ¶ 4. Petitioner has an adequate appeal to the Court of Appeals upon entry of a final order.

VI.

CONCLUSION

Petitioner has adequate remedies by petition for writ of error, interlocutory appeal, and appeal from a final order, and has stated no reason for extraordinary writ relief from this Court. By these means, the Court of Appeals has appellate jurisdiction over the matters raised by the Petition. This Court should deny the Petition.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2024, the foregoing was filed through the Court's electronic file system which caused all counsel of record to be electronically served.

/s/Jerry Todd Wertheim
JERRY TODD WERTHEIM

STATEMENT OF COMPLIANCE

Pursuant to Rule 12-504(C)(1) and (G)(3) NMRA, Respondent The Honorable Daniel J. Ramczyk states that the body of the foregoing Response contains 2,443 words in Century Schoolbook 14-point font, a proportionally-spaced typeface, as calculated by Microsoft Word Version 2019.

/s/ Jerry Todd Wertheim
JERRY TODD WERTHEIM