

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CIVIL  
PROPOSAL 2026-024**

**March 6, 2026**

The Uniform Jury Instructions-Civil Committee has recommended amendments to Uniform Jury Instruction 13-2322 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
rules.supremecourt@nmcourts.gov  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 5, 2026**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

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**13-2322. Whistleblower Protection Act; protected activity.**

To establish that \_\_\_\_\_ (*name of plaintiff*) engaged in an activity that is protected under the Whistleblower Protection Act, \_\_\_\_\_ (*name of plaintiff*) has the burden of proving that \_\_\_\_\_ (*name of plaintiff*):

[communicated information to the public employer or a third party about an action or failure to act that the public employee believed in good faith constituted an unlawful or improper act.

Good faith means that a reasonable basis existed for the belief as evidenced by the facts available to the public employee[;].

The communicated information must relate, at least in part, to a matter of public concern. The communicated information may also relate to a matter of private concern.]

[or]

[provided information to, or testified before, a public body as part of an investigation, hearing, or inquiry into an unlawful or improper act[;].]

[or]

[objected to or refused to participate in an activity, policy, or practice that constitutes an unlawful or improper act.]

“Unlawful or improper act” means a practice, procedure, action, or failure to act on the part of a public employer that:

[violates a federal law, a federal regulation, a state law, a state administrative rule, or a law, ordinance, or rule of any political subdivision of the state;]

[or]

[constitutes malfeasance in public office;]

[or]

[constitutes gross mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to the public.]

#### USE NOTES

This instruction should be given in a case alleging violation of the Whistleblower Protection Act (“WPA”), NMSA 1978, §§ 10-16C-1 to -6 (2010), if protected activity is in dispute. The instruction consists of two parts. The first part sets out three kinds of conduct—communicating information, providing information or testimony, or objecting to or refusing to participate in certain activities—that an employee might engage in and claim protection under the WPA. The drafter should choose one or more of these activities as applicable to the case. The second part defines the term “unlawful or improper act,” which is a term appearing in the descriptions of protected activity. The definition includes three bracketed phrases. The drafter should choose one or more of these phrases as applicable to the case.

[Adopted by Supreme Court Order No. 22-8300-030, effective for all cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — To qualify for the protections of the Whistleblower Protection Act, the information communicated by an employee must pertain to a matter of public concern. *Lerma v. State*, No. S-1-SC-40126, 2025 WL 1340713, ¶ 35 (N.M. May 8, 2025) (“[C]ommunications that do not pertain to a matter of public concern are not protected whistleblowing activity.” (internal quotations and brackets omitted)); *see also Wills v. Bd. of Regents of Univ. of New Mexico*, 2015-NMCA-105, ¶¶ 18, 21, 357 P.3d 453 (same). The information may also benefit the employee personally. *Lerma*, 2025 WL 1340713, ¶ 36 (“[T]here is nothing inherently contradictory about disclosing serious misconduct that bears directly on a matter of significant public concern, while also defending one’s own professional reputation . . . .” (internal quotations and brackets omitted)). If the information pertains to both public and private concerns, there is no primacy requirement; either the public or personal concern may predominate. *Id.* (“[A] public employee’s disclosure of illegality or wrongdoing qualifies for protected whistleblower status, if otherwise eligible, so long as the disclosure confers a benefit on the public, irrespective of which benefit—public or personal—may be said to predominate.” (internal quotations and brackets omitted)).

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]



New Mexico  
Courts

Alyssa Segura <supams@nmcourts.gov>

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## [rules.supremecourt-grp] WPA UJI amendment

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'Tim White' via Supreme Court Rules <rules.supremecourt-grp@nmcourts.gov>

Fri, Mar 6, 2026 at 1:27 PM

Reply-To: tim@dbuchananlaw.com

To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Cc: Deena Buchanan <deena@dbuchananlaw.com>

For the Court,

I think that to truly capture the rule set forth in Lerma that the proposed amendment needs to add the Court's statement that "**The information may also benefit the employee personally**" and/or "**If the information pertains to both public and private concerns, there is no primacy requirement; either the public or personal concern may predominate.**" Setting these out only in the committee comments diminishes the Court's holding in a manner that may lead to jury confusion when that would be wholly unnecessary if the rest of the Court's holding is included. My opinion on this is informed by my having been one of the drafters of the original WPA UJIs, as counsel for Manuel Lerma, and from trying or litigating many WPA cases for client's since the statute's passage.

Respectfully

Tim White

*"Everyone counts or no one counts"*

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## [rules.supremecourt-grp] Public Comment on Proposal 2026-024 — Whistleblower Protection Act; Protected Activity

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Scott Rapalee <qsgadgets@gmail.com>

Tue, Mar 10, 2026 at 8:34 AM

Reply-To: qsgadgets@gmail.com

To: rules.supremecourt@nmcourts.gov

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P.O. Box 848  
Santa Fe, New Mexico 87504-0848

RE: Public Comment on Proposal 2026-024 — Whistleblower Protection Act; Protected Activity (UJI 13-2322 NMRA)

Dear Chief Clerk Garcia,

I write regarding Proposal 2026-024 and respectfully submit this comment for the Court's consideration before the April 5, 2026 deadline.

The proposed amendments to UJI 13-2322 clarify that whistleblower disclosures need not relate exclusively to matters of public concern and may also serve personal interests. I support this clarification. However, I write to bring to the Court's attention two failures of the existing whistleblower framework that the jury instruction alone cannot remedy.

### FAILURE ONE: A STATE PROGRAM OFFICIAL WITNESSED JUDICIAL VIOLATIONS AND NEVER REPORTED THEM

On June 17, 2022, Samuel Taub, Deputy Director of the NM Eviction Prevention and Diversion Program created by Chief Justice Shannon Bacon, was present via Google Meet during a magistrate hearing before Judge Mickey L. Vega in Otero County. During that hearing, my family — which includes a brain tumor patient and a legally blind child — was denied all opportunity to present evidence and given seven days to vacate our home. The plaintiff had no standing, no ownership, and no broker license.

Taub witnessed these due process violations in real time and called me immediately after the hearing. He never reported the judicial misconduct to any authority. On January 4, 2023, he emailed me: "I'm sorry we haven't been able to help you in the past." On January 5, 2023, he wrote: "The Eviction Prevention and Diversion Program has offered you all of the help that it has to offer."

His assigned navigator, Teresa Schaub, collected my ERAP dashboard login credentials, changed my passwords, never filed a single application despite telling me she had, then threatened that if I refused hotel vouchers in Ruidoso — 48 miles away, at 3,000 feet higher elevation, impossible for a person with my disabilities — I would receive "ZERO" assistance. DFA later confirmed that no ERAP applications were ever filed in my name despite confirmed eligibility since April 4, 2022.

These individuals are public employees or contractors administering federally funded programs. The Whistleblower Protection Act should protect those who report such conduct — but there is no corresponding obligation requiring them to report what they witness.

### FAILURE TWO: RETALIATION AGAINST THOSE WHO EXPOSE GOVERNMENT MISCONDUCT

Former PRC Chief Financial Officer Jim Williamson filed a whistleblower lawsuit (Williamson v. Propst) after reporting fraud and was subjected to retaliation by Wayne Propst, who was then PRC Chief of Staff and is now DFA Cabinet Secretary controlling all state agency budgets. The pattern is documented: those who report misconduct within the New Mexico government apparatus face retaliation, and those who witness misconduct from outside have no protection at all.

In my case, when I reported the failures of the EPDP, the ERAP program, and the court system to every available authority, I was not protected — I was tagged. Event Code 8735, "SUPPLEMENTAL INFORMATION (HABITUAL)," was placed on my court records without notice, hearing, or legal authority, functioning as a permanent blacklist. The AOC admitted on February 18, 2026 that no legal authority exists for this restriction.

## RECOMMENDATION

The jury instruction amendments properly clarify the scope of protected activity. I respectfully recommend the Court also consider:

(a) Whether court-affiliated program staff — such as EPDP navigators and deputy directors — should have mandatory reporting obligations when they witness judicial violations during the performance of their duties.

(b) Whether citizens who report government misconduct through official channels and subsequently suffer administrative retaliation (such as unauthorized database restrictions) should have explicit standing under the Whistleblower Protection Act framework.

(c) Whether the instruction should address situations where the "unlawful or improper act" involves malfeasance by the judicial branch itself, given that existing complaint mechanisms (JSC, AOC) have proven ineffective when the subject of the complaint has institutional authority over the reviewing body.

This comment is submitted for the public record.

Respectfully,

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Referenced: D-1215-CV-2022-00303; S-1-SC-41200/41216; Williamson v. Propst; PRC Docket 26-00004-UT

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The overall problem of corruption continues to grow.