



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.*
RAÚL TORREZ, Attorney General,

Plaintiff-Applicant/Respondent
v.

No. S-1-SC-41418
Rel. A-1-CA-42633
A-1-CA-42508
D-202-CV-2024-04027

KATINA WATSON, in her Official
Capacity as Records Custodian for the
Second Judicial District Court,

Defendant-Respondent/Applicant

STATE OF NEW MEXICO'S BRIEF IN CHIEF

ORAL ARGUMENT REQUESTED

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SUMMARY OF PROCEEDINGS

I. INTRODUCTION

Plaintiff the State of New Mexico *ex rel.* Attorney General Raúl Torrez respectfully submits this Brief in Chief on its transferred Application for Interlocutory Appeal of the district court's February 10, 2025 Order Granting Defendant's Motion for Protective Order and to Stay Discovery (the Protective Order) [RP 334-36], which granted blanket relief on a Rule 1-026(C) NMRA motion for protective order [RP 128-38], erroneously staying *all* discovery in the district court matter after also denying Defendant's Motion for Judgment on the Pleadings (MJOP). [RP 71-86; 410-11] Both parties were given interlocutory language and two separate interlocutory appeals followed—here, Plaintiff appeals the granting of the Protective Order, and in the other Defendant appeals the denial of the MJOP.

During the pendency of an interlocutory appeal, this Court has jurisdiction over a stay of discovery. *See* NMSA 1978, § 39-3-4(C) (1999). “[O]rders granting or denying a motion for protective order, like orders requiring or denying discovery . . . generally do not constitute a final disposition of the proceedings. Therefore, they are not normally appealable, except upon the granting of an interlocutory appeal.” *Matter of Bartow*, 1984-NMCA-074, ¶ 9, 101 N.M. 532. Here, the district court granted interlocutory language and Plaintiff respectfully asks that its application for interlocutory appeal be granted and that this Court permit discovery to proceed.

II. NATURE OF THE CASE, RELEVANT FACTS, AND PROCEEDINGS

Plaintiff brought this enforcement action under the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1973, as amended through 2025), pursuant to his authority granted by NMSA 1978, Section 14-2-12(A)(1), and against Defendant in her official capacity as records custodian, as defined by Section 14-2-6(A), for Defendant's wrongful denial of one of two IPRA requests and for her wrongful *blanket* denial of the second IPRA request. Both requests were submitted to the Second Judicial District Court (SJDC), one in 2023 and one in 2024, in what Plaintiff alleges was an attempt by the SJDC to conceal its operation of the pretrial detention supervision of criminal defendants from public observation or accountability. [**See RP 1-19**]

Since that time, Defendant has not provided any records under IPRA or answered any discovery in the matter below. Even when Plaintiff granted Defendant's request for an extension by which to serve discovery responses, upon reaching that extended deadline Defendant served *zero* discovery responses or objections to Plaintiff and instead filed a motion for protective order and to stay discovery. [**See RP 128-38; see also RP 193-206**]. Plaintiff's motion to compel discovery is currently being held in abeyance by the district court pending the outcome of one, or both, interlocutory appeals. [**RP 209-55**]

The Denied IPRA Requests

The two IPRA requests at issue were served on the SJDC by two different local reporters who sought, in pertinent part, all alerts from GPS devices to Pretrial Services and all notifications to the court and the District Attorney from Pretrial Services. [**See RP 5-9**] In denying both requests, Defendant cited Section 14-2-1(N)¹ of IPRA—which identifies the IPRA exemption: “as otherwise provided by law”—and stated the records were exempt from inspection under: (1) NMSA 1978, Section 31-3-12 (2022) (“all global position system [(GPS)] data with respect to a defendant on pretrial release shall not be made part of any public record unless admitted as evidence at a criminal trial,”) and (2) New Mexico Supreme Court Order 22-8500-034, for the extended proposition that “all information contained in a defendant’s pretrial service file,” including GPS data, “shall not be made a part of any public record.”

However, aside from citing to these sources of law, Defendant otherwise failed to explain (1) how these legal sources provided her authority to unilaterally deny an IPRA request specifically seeking *anonymized* information, not information

¹ In 2025, the Legislature amended Section 14-2-1 and what was the former subsection (L) became subsection (N) without any changes to the text of the subsection. In 2023, that same subsection was changed from subsection (H) to subsection (L). The caselaw and the briefing then will have references to Section 14-2-1(H), (L), and (N), but all of these refer to the same subsection providing for an IPRA exception “as otherwise provided by law.” In this brief, Plaintiff will use Section 14-2-1(N) to refer to this section for clarity as this is an ongoing matter.

related to “a defendant” or from “a defendant’s . . . file,” or (2) why Defendant had no obligation to review potentially responsive documents and provide—at the very least—properly redacted documentation. The IPRA case in district court ensued with Plaintiff challenging Defendant’s wrongful interpretation of the controlling IPRA statutes, Section 31-3-12, and the NMSC Order, and with Defendant filing a MJOP to have the district court uphold her IPRA denials.

Defendant’s Failure to Answer or Respond to Discovery

On September 18, 2024, while the MJOP was pending before the district court, Plaintiff propounded written interrogatories, requests for production, and requests for admission to Defendant (Plaintiff’s Discovery Requests) pursuant to the parties’ agreement as to how to proceed with discovery. [RP 149-72] Defendant’s responses were originally due on October 21, 2024. On October 17, 2024, Defendant sought an extension by which to answer discovery. [See RP 195, 204] That extension was granted, but on October 25, 2024, instead of serving Plaintiff with discovery responses, Defendant filed a motion for protective order and to stay discovery (Defendant’s Motion). [See RP 195, 205-06] Rules 1-033(C)(1)-(3), 1-034(B), and 1-036(A) NMRA all require a party to respond with, at the very least, particularized objections, and if responsive documents are withheld, to furnish a privilege log stating the rationale for withholding. But aside from her motion, Defendant provided no responses, no objections, and no privilege log, alleging

instead that Defendant's Motion was sufficient to operate as a particularized objection to each discovery request. Because Defendant's position was unsupported by law, Plaintiff filed a motion to compel discovery.

The District Court's Protective Order

To reach a determination on a Rule 1-026(C) motion for protective order, the district court was required to find there was "good cause" for protection *and* that a protective order was necessary to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense." *Id.* Here, the district court could not have made these determinations properly because Defendant's Motion did not address these factors. Instead, Defendant's Motion presented the district court with a unilateral "construction of [her] discovery obligations . . . [as being] objectionable," which in itself "constitut[es] bad faith." *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 244, 96 N.M. 155. Defendant's Motion, demonstrating unfamiliarity with the responsive record, set forth the baldly inconsistent assertions that (1) many records do not exist, are unresponsive, or are irrelevant [**RP 132, 135-36**]; (2) there are responsive records, but *all* of them are subject to the NMSC Order and any production would violate the NMSC Order [**RP 129, 131, 133-34**]; and (3) to the extent that the NMSC Order prevents disclosure, it is only of *most* responsive records. [**RP 135**]

Notably, Defendant seemed to concede that she did not, in fact, review the

confidential pretrial services data either in reaching her IPRA determination or when served with discovery, arguing that to “answer[] [Plaintiff’s Discovery] Requests would impose an undue burden *by requiring an extensive review* of confidential pretrial services data, which is arguably not subject to IPRA in the first place[.]” **[RP 136 (emphasis added)]** There is no explanation for how Defendant might know what is subject or not subject to IPRA without having first done an “extensive review.” **[Id.]** Defendant’s Motion offered no explanation of why, if in her determination the NMSC Order only applies to “most” of the discovery requests, she chose to provide zero responses to discovery. **[RP 135]** Defendant perfunctorily asserted in the concluding page of her motion that “a protective order staying discovery should issue based on the overbreadth, irrelevance, undue burden, and confidentiality issues surrounding the information and material sought, which is outside the appropriate scope of discovery,” but she did so without expanding or articulating with specificity how this assertion applies to each discovery request. **[RP 137]**

Perhaps as a result of Defendant’s failure to sufficiently plead the necessary factors for a Rule 1-026(C) protective order, the district court’s Protective Order did not set forth the necessary findings and determinations required by the rule. There was no finding of good cause for issuance of a protective order and there was no finding as to Defendant suffering “annoyance, embarrassment, oppression, or undue

burden or expense” in having to respond to discovery. *See id.* Instead, the district court focused on the fact that it was permitting an interlocutory appeal on its denial of the MJOP, and its only findings were that an appellate court’s decision on Defendant’s interlocutory appeal “*could* impact both relevancy and the ability of the information requested to lead to discoverable evidence”; that this Court “*may* narrow or eliminate any discovery”; and that a stay would be “appropriate . . . to determine the extent and applicability of the [NMSC Order].” **[RP 334-36 (emphases added)]**

Despite Plaintiff’s request that the district court perform the balancing required under Rule 1-026(C), including in camera review of responsive documents, the court ultimately failed to balance disclosure with confidentiality concerns. The court did, however, grant Plaintiff interlocutory language to have this Court opine on the legality of issuing a blanket stay of discovery in lieu of performing the more nuanced analysis demanded by Rule 1-026(C). As there is a substantial ground for difference of opinion on this legal question, Plaintiff filed its interlocutory appeal, in the interest of materially advancing the ultimate termination of the litigation. *See* § 39-3-4(A).

III. ARGUMENT

The district court abused its discretion and otherwise erred: (1) when it failed to make the required findings for a protective order under Rule 1-026(C)—i.e., that Defendant brought the request for good cause shown or that requiring Defendant to

answer discovery not subject to the NMSC Order would cause Defendant “annoyance, embarrassment, oppression, or undue burden or expense,” and (2) where it issued a blanket stay rather than a narrowly tailored protective order as required by Rule 1-026(C).

A. Legal Standard

Under Rule 1-026(C), district courts have a variety of options to limit or prevent discovery upon motion by a party “for good cause” and where it is necessary to “protect a party . . . from annoyance, embarrassment, oppression or undue burden or expense[.]” *Id.* The “finding of good cause must be based on a factual determination of potential harm, not on conclusory statements.” *Krahling v. Executive Life Ins. Co.*, 1998-NMCA-071, ¶ 10, 125 N.M. 228 (internal quotation marks and citation omitted). Where a district court determines good cause exists and issues a discovery order, that decision is reviewed for abuse of discretion. *See Est. of Romero ex rel. Romero v. City of Santa Fe*, 2006-NMSC-028, ¶ 6, 139 N.M. 671 (“Discovery orders are generally reviewed for abuse of discretion.”).

Rule 1-026(B)(1) requires that “[a] party responding to discovery shall provide all non-privileged responsive information[.]” *Id.* Should a party decide to “withhold information otherwise discoverable under these rules,” the party “shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that . . . will enable

other parties to assess the applicability of the privilege or protection.” *Id.* In other words, the defending party must submit particularized objections to each respective discovery request and, if applicable, a privilege log. *Id.*; *see also* Rule 1-033(C)(1)-(3) (stating interrogatories “shall be answered . . . to the extent [they are] not objectionable” and objections “shall be stated with specificity”); Rule 1-034(B) (stating responses to production requests must state specific reasons for the objection and whether any responsive documents are being withheld); Rule 1-036(A) (stating objections shall be addressed to the matter).

To grant a protective order pursuant to Rule 1-026(C), a district court must first determine whether the motion was brought for good cause shown and, if it was, balance the alternatives contemplated by the rule. This affords protection while allowing discovery to proceed; indeed, in New Mexico “[o]ur case law and Rule 1-026 require courts to take an active role in determining the proper balance between the conflicting needs of discovery and confidentiality.” *Est. of Romero*, 2006-NMSC-028, ¶ 15. Before issuing a blanket stay of discovery, district courts are to consider the alternatives set forth in Rule 1-026(C). *Est. of Romero*, 2006-NMSC-028, ¶ 19 (noting that courts have the option of utilizing an “in camera examination of the materials and an evidentiary hearing to determine whether the requested material is immune”). Blanket protective orders are generally found to be improper and overbroad, and issuing such an order without making the necessary

determinations under Rule 1-026(C) and our caselaw is an abuse of discretion.

Krahling, 1998-NMCA-071, ¶ 17.

B. The District Court Erred in Granting a Blanket Stay of Discovery Where Not All Discovery Is Related to the Pending Appeal and Where Additional Information Would Help Not Only the Trier of Fact, but Also the Appellate Court.

As this Court recently observed, “[o]ur democratic system of government necessarily assumes the existence of an informed citizenry. Without some protection for the acquisition of information about the operation of public institutions the process of self-governance contemplated by the Framers would be stripped of its substance.” *Albuquerque J. v. Bd. of Educ. of Albuquerque Pub. Schs.*, ___-NMSC-___, ¶ 1 (S-1-SC-40671, May 28, 2026). The public may lawfully obtain information about the operation of public institutions through both the inspection of public records and litigation discovery. Here, discovery is necessary to understand the extent of the underlying IPRA controversy, but the district court did not make the proper determinations under Rule 1-026(C). The district court’s blanket Protective Order was overbroad and should be vacated with this matter remanded to the district court to make the correct findings under Rule 1-026(C), and if appropriate, to enter a more narrowly tailored protective order in accordance with Rule 1-026(C).

Under Rule 1-026(C) the district court had to determine first that Defendant’s Motion demonstrated good cause for the issuance of a protective order. In New Mexico, examples of good cause supporting a protective order include: (1) the

protection of trade secrets and confidential commercial information, *see Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, 144 N.M. 601; (2) limiting discovery to pending jurisdictional issues, *see Doe v. Roman Catholic Diocese of Boise, Inc.*, 1996-NMCA-057, 121 N.M. 738; (3) harassment and undue burden in depositions, *see Kerman v. Swafford*, 1984-NMCA-030, ¶ 21, 101 N.M. 241; (3) protecting deposition materials from public disclosure, *see Doe*, 1996-NMCA-057; or (4) protecting ongoing criminal investigations, *Est. of Romero*, 2006-NMSC-028, ¶ 2. This list is not exhaustive, but clearly demonstrates that in the instances in which good cause has been found, it has been narrowly tailored and grounded in the Constitution, the Rules of Evidence, or other rules of our Supreme Court.

Our courts have also articulated instances when good cause has not been demonstrated by the moving party. In *Krahling*, the New Mexico Court of Appeals determined that there was no good cause to support the district court’s confidentiality order where the protected party failed to demonstrate a legally cognizable or sufficient cause for the order, as it neither asserted that the documents were protected by a specific privilege, such as attorney-client privilege or trade secrets, nor demonstrated that there would be harm from the disclosure. 1998-NMCA-071, ¶ 17. The Court of Appeals determined that “[a]n order prohibiting the disclosure of information obtained during discovery proceedings must be supported by a finding of good cause,” noting that “[g]ood cause is established by showing that disclosure

will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity.” *Id.* ¶ 15 (internal quotation marks, brackets, and citation omitted). In determining “whether a party has made a showing of good cause for the issuance of a protective order, courts have generally applied a balancing process, [balancing a] party’s need for information against the injury that might result if uncontrolled disclosure is compelled.” *Id.* (internal quotation marks and citation omitted). In *Krahling*, there were 66,000 pages of documents uniformly designated as confidential without any specificity, leading the Court of Appeals to conclude that a blanket order of confidentiality was “improvidently granted.” *Id.* ¶ 17. The Court of Appeals further determined that blanket orders of confidentiality are generally found to be improper and overbroad. *Id.* That is the case here.

Defendant’s Motion does not demonstrate good cause because it was not filed until the day discovery was due and because it sought blanket discovery protection without pleading with particularity the basis for how responding to each discovery request would cause Defendant harm. *First*, Defendant waited until nearly the thirty-day discovery deadline to seek an extension and then, when that extension was granted, Defendant instead only filed her motion and served zero discovery responses to Plaintiff, claiming her motion was sufficient to protect her from having to respond to discovery. No discovery rule permits a party to wholly withhold all answers, and responses to discovery and motions for protective orders are not self-

effectuating. Our courts have long criticized “the filing of a motion for protective order on the very day” that discovery is due. *United Nuclear*, 1980-NMSC-094, ¶ 218.

Second, Defendant’s Motion failed to articulate proper support for relief under Rule 1-026(C). Defendant sought a blanket protective order without identifying with particularity any good cause or harm. Instead, Defendant attempted to play the roles of both litigant and judge. As “judge” she unilaterally determined this case is “without merit” [RP 112], and thus, discovery is “irrelevant,” “not necessary[,]” and “not at issue.” [RP 132, 135] Then, apparently acting on this self-endowed authority to not respond, as “litigant” Defendant provided Plaintiff with zero discovery answers or responses. *But see* Rules 1-033(C)(1), Rule 1-034(B), and Rule 1-036(A).

But a “finding of good cause must be based on a factual determination of potential harm, not conclusory statements.” *Krahling*, 1998-NMCA-071, ¶ 10. While Defendant’s Motion might be loosely construed as setting forth “potential harm” as to certain discovery questions, it cannot be understood under any reading to apply to every discovery request or responsive document. In *Krahling* the parties knew the world of documents at issue, the “66,000 pages of documents . . . uniformly designated as confidential.” *Id.* ¶ 17. Here, what is being allegedly designated as confidential or privileged is completely unknown because Defendant has not even conducted the necessary review to make that determination, or, if she has, she has

also not provided a specific explanation of why certain documents would be precluded and she has not provided the redacted documents themselves. **[RP 136** (“[T]o answer[] [Plaintiff’s Discovery] Requests would impose an undue burden by requiring an extensive review of confidential pretrial services data, which is arguably not subject to IPRA in the first place[.]”)]

Our discovery rules and our caselaw, particularly Rule 1-026(B)(1), require parties to provide “all non-privileged responsive” documents and information, unless that party makes an “express[]” claim as to why they cannot. Defendant’s Motion and her accompanying failure to provide discovery responses and objections cannot be reasonably viewed as demonstrations of “good cause” where they are in direct contradiction to the governing law. Where Defendant has not performed the “extensive review of confidential pretrial services data[]” to reach her decision to deny the IPRA requests or to answer discovery, Defendant’s Motion seeks not judicial protection, but rather judicial excusal from her discovery obligations. Defendant’s Motion failed to articulate good cause for a protective order and the district court’s subsequent determination reflects that it did not even make this required finding. As such, the district court abused its discretion in issuing a blanket protective order staying discovery.

Even if this Court determines that Defendant’s Motion demonstrated good cause for an order, the district court’s failure to balance the needs of discovery and

confidentiality still amounts to an abuse of discretion. *See Est. of Romero*, 2006-NMSC-028, ¶ 15 (“Our case law and Rule 1-026 require courts to take an active role in determining the proper balance between the conflicting needs of discovery and confidentiality.”). Had the district court begun with the proper Rule 1-026(C) analysis and determined that Defendant’s requested protective order was for good cause shown, the district court was nonetheless required to also review the alternatives set forth in Rule 1-026(C) before granting a blanket protective order.

For example, if there was an issue of confidentiality, the district court could have entered a protective order permitting discovery to proceed with confidentiality measures in place. *See Pincheira*, 2007-NMCA-094, ¶ 35 (stating that Rule 1-026(C)(7) provides that “a protective order may be entered to protect . . . confidential information [*and*] permit disclosure in a designated way”). Further, “in discovery, information is broadly subject to discovery, unless *a privilege* creates an exception.” *See Energy Pol’y Advocs. v. Balderas*, 2024-NMCA-081, ¶ 33, *abrogated on other grounds by Albuquerque J.*, ____-NMSC-____ (emphasis added). For a privilege to exist it must be grounded in the Constitution, the Rules of Evidence, or other rules of our Supreme Court. *Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-026, ¶ 13.

As there is no privilege here, the district court was required to make additional determinations to properly grant a Rule 1-026(C) protective order. Namely, that

Defendant would suffer “annoyance, embarrassment, oppression, or undue burden or expense.” Rule 1-026(C). The district court could not have made these determinations, however, because: (1) Defendant did not argue them in the first instance, other than with a minor conclusory statement on the final page of her motion otherwise bereft of specific grounds **[RP 137]**, and (2) in absence of an in camera review of the documents at issue, the district court had no way to know the extent to which the documents may or may not have been subject to Section 31-3-12 or the NMSC Order. Instead, the district court reached its determination based on Defendant’s argument that *she* determined the discovery was irrelevant or confidential and so she should not have to answer it.

Specifically, Defendant argued she was unable to answer *any* discovery because all the discovery was subject to the NMSC Order—granting her blanket absolution. **[RP 129-32]** However, in that same motion, Defendant argued that (1) many records do not exist, are unresponsive, or are irrelevant **[RP 132, 135, 136]**; (2) there are responsive records that do exist, but *all* are subject to the NMSC Order **[RP 129, 131, 133-34]**; but (3) to the extent that the NMSC Order prevents disclosure, it is only of *most* responsive records **[RP 135]**. This incongruent argument, later stamped with judicial approval, left Plaintiff only to guess (1) whether there are responsive records, (2) what any responsive records might be, and (3) whether any such records fall under the NMSC Order.

As Plaintiff argued to the district court, even interpreting the NMSC Order and Section 31-3-12 in Defendant's favor does not support the conclusion that "most" or "all" of the discovery sought is confidential. For illustrative purposes only, the following discovery would not be subject to the NMSC Order and could and should be responded to by Defendant:

- Requests for Admission Nos.: 1, 2, 3, 4, 5, 6, 11, 14, 15, 16, 17, 18, 19, 20, and 21;
- Interrogatories Nos.: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16; and
- Requests for Production Nos.: 1, 2, 3, 4, 5, and 6.

[RP 149-77]

These requests seek confirmation or documentation commonly sought in civil litigation, such as confirming that certain documents are true and accurate copies (for purposes of exhibit designations later), seeking to lock a party into their stated legal position, seeking understanding of why a request for admission may have been denied, and seeking operation or procedure manuals or the decision structure in the pretrial services context. In fact, no request for admission or interrogatory sought pretrial documents at all—by their very nature, these requests sought only admissions or information. To the extent that Section 31-3-12 or the NMSC Order would provide for a denial or a blanket denial of IPRA—which Plaintiff

categorically contends they do not—neither the statute nor the NMSC Order permits the SJDC to refrain from reviewing the world of responsive documents or from providing responses to requests for admission, interrogatories, or production. [RP 169-71]

This Court has recently underscored the importance of in camera review when determining whether an IPRA exception may apply or inspection must be required. *Albuquerque J.*, ___-NMSC-___, ¶ 17 (“In camera review has the most direct capacity to evaluate both the suitability of the sought record as a public record as well as the basis for a records custodian’s claim that the [public record] depicts something specifically exempted by IPRA.”). While *Albuquerque Journal* will have greater importance in the sister appeal in this matter, it also has application here where the very argument used to deny both IPRA requests is also being used to justify zero responses to discovery and where Rule 1-026(C) contemplates in camera review as a more nuanced balancing of the competing interests of production and confidentiality.

In sum, the district court never articulated that it believed Defendant had good cause to request a protective order. The district court also did not articulate how responding to discovery, even if only in part, would constitute an “annoyance, embarrassment, oppression, or undue burden or expense.” Rule 1-026(C). Rather, the district court created a new metric, unsupported by law and not briefed by the

parties, that a blanket protective order under Rule 1-026(C) is proper if an appellate court might narrow discovery on interlocutory appeal, after the *appellate court* conducts the balancing required by Rule 1-026(C). [RP 334]

Specifically, the district court determined that a decision from an appellate court on the interlocutory appeal arising from the MJOP “could impact both relevancy and the ability of information requested to lead to discoverable evidence” or it could “narrow or eliminate any discovery.” [*Id.*] The district court further stated the stay would allow “the appellate courts to determine the extent and applicability of the [NMSC Order].” [*Id.*] But the district court reached these conclusions without reviewing any documents to ascertain whether the NMSC Order might even possibly govern production and without itself conducting the required balancing. Because Defendant denied the IPRA requests and then failed to provide any discovery, the world of documents that potentially might be at issue here can only be known to Defendant—if even to Defendant. The district court abused its discretion in issuing a blanket Protective Order without meeting the requirements of Rule 1-026(C).

C. Interlocutory Relief Is Proper Where the District Court’s Abuse of Discretion Is Clear, There Is Substantial Ground for a Difference of Opinion, and Immediate Appeal May Materially Advance the Ultimate Termination of the Litigation.

In New Mexico, “[g]enerally, a person is required ‘to disclose any information which he may possess that is relevant to a case pending before a court of justice.’”

Est. of Romero, 2006-NMSC-028, ¶ 7. Plaintiff acknowledges there are exceptions

to this. *See id.* (“There are exceptions to this general rule, found in . . . the United States and New Mexico Constitutions as well as other evidentiary privileges.”). As such, this Court has constructed rules of procedure and evidence that set forth privileges, exceptions, and the processes parties must go through to receive a protective order against having to participate in discovery. *See id.* (stating that this Court has “adopted a comprehensive set of rules of evidence which govern proceedings before the courts . . . including evidentiary privileges.” (internal quotation marks omitted)). Where there is, as here, no governing privilege or exception under discovery, “[o]ur case law and Rule 1-026 *require* courts to take an active role in determining the proper balance between the conflicting needs of discovery and confidentiality.” *Est. of Romero*, 2006-NMSC-028, ¶ 15 (emphasis added).

Even if Defendant could be afforded some immunity from answering discovery, any such immunity would not be absolute. *Id.* ¶ 19. Courts are not to “impinge upon the right of litigants to have their disputes decided on relevant and material evidence.” *Id.* Courts are further “required to balance the interests at stake . . . [requiring] the party seeking to preclude disclosure [to prove] the information sought to be protected is confidential . . . which may make the information immune from discovery.” *Id.* Even in such circumstances, courts are to consider the alternatives set forth in Rule 1-026(C). *Est. of Romero*, 2006-NMSC-028, ¶ 19

(indicating that a court has the option of utilizing an “*in camera* examination of the materials and an evidentiary hearing to determine whether the requested material is immune”).

Here, the district court departed from these requirements, from what was briefed under Defendant’s motion for protective order, and from Rule 1-026(C), and instead created a new metric to grant a protective order not contemplated by rule or caselaw. The court did not decide that there was good cause for a protective order or that, even only in part, answering discovery would cause Defendant “annoyance, embarrassment, oppression, or undue burden or expense.” *But see* Rule 1-026(C); *Est. of Romero*, 2006-NMSC-028, ¶ 19. In other words, the district court did not “balance the interests at stake.” *See* Rule 1-026(C); *Est. of Romero*, 2006-NMSC-028.

As the district court acknowledged to the parties following argument, there are substantial grounds to disagree with the district court’s determination that a blanket stay of discovery was proper, as opposed to a more narrowly tailored discovery order under Rule 1-026 and as required by New Mexico caselaw. Therefore, the district court authorized immediate review of its decision to grant a blanket stay of discovery. Without this immediate review, the State will be hindered in its ability to develop the evidence, and this Court’s review on interlocutory appeal will promote efficiency and avoid protracted litigation—especially where discovery

has been paused for nearly two years due to the district court's erroneous ruling. An interlocutory appeal in this complex IPRA matter is appropriate because the parties and the district court are expending considerable State resources—particularly here, where all parties are members of State government—to bring this action to trial and this has, and will continue to be, a hard-fought case.

Here, Defendant has held all knowledge as to what responsive records exist or do not exist and which records are responsive or not responsive, and Defendant has been able to maintain her concealment of the Pretrial Services program, first in IPRA and then in discovery. Proceeding with discovery—even if limited—will allow Plaintiff to flesh out the extent of any IPRA violation. In fact, once permitted, discovery may cause the end of, or at the very least a narrowing of, this litigation. If responsive records do not exist or would require Defendant to make record(s), the underlying matter would be either drastically narrowed or even entirely moot. Barring discovery through a blanket stay is improper and overbroad and doing so without making the necessary determinations under Rule 1-026(C) and our caselaw is an abuse of discretion. *Krahling*, 1998-NMCA-071, ¶ 17.

CONCLUSION

The district court abused its discretion when it (1) failed to make the required findings for a protective order in New Mexico under Rule 1-026(C) and New Mexico caselaw, and (2) issued a blanket stay rather than a narrowly tailored stay, despite

the fact that the matters before the district court, and now this Court, are mixed questions of law and fact that require discovery in the interest of judicial economy, and because not *all* requested discovery is subject to controversy.

As such, Plaintiff respectfully requests this Court grant Plaintiff's Application, reverse the district court's granting of a protective order and a stay of discovery and remand this matter for additional discovery during the pendency of interlocutory appeal and for further relief as is deemed proper by this Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 12-318(F) NMRA, I certify that the body of this Brief in Chief complies with the type-volume requirement and is less than 35 pages. The body of this Brief in Chief contains 5,336 words as calculated by Microsoft Word.

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2026, a true and correct copy of the foregoing Brief in Chief was served on all counsel of record via electronic transmission through the Odyssey File & Serve System.

/s/ Serena R. Wheaton