

State of New Mexico  
County of Sandoval  
Thirteenth Judicial District

Kenneth and Kathleen DeHoff,  
Appellants

vs.

No. D-1329-CV-2023-1382

Linda Gallegos in her role as Sandoval County Assessor  
Appellee

### **Appellant Opposition to granting the Petition of Writ of Certiorari to Appellees**

On October 3 Appellee served Appellants with a notice of petition of writ of certiorari. Appellants summarize their position: The petition is substantively defective for several reasons Appellants highlight and propose the petition be denied.

As the first matter, Appellants point out the obvious: Appellants are not an agency. 1-075(A) Scope of Rule provides *“This rule governs writs of certiorari to administrative officers and agencies pursuant to the New Mexico Constitution when there is no statutory right to an appeal or other statutory right of review. For purposes of this rule, an “agency” means any state or local government administrative or quasi-judicial entity.”* We note that the text of the petition refers to the “Sandoval County Valuation Protests Board”, however that agency is not a party in this proceeding. So while the constitutional path to a writ of certiorari is open to Appellees, it does not pass through our Appeal where Appellee is the only party that is an agency.

Further, The Appellee has not provided for any substance whatsoever within the petition. Appellants note the Prima Facie evidentiary requirement for establishing a basis for granting the writ requires an argument sufficiently complete to proceed to judgement. Appellee fails to provide this.

The specific failures against 1-075 NMRA include:

G.1 The petitioner has not complied with paragraph C hence has not complied per G.1

A description of the proceedings of the agency relating to the petition is missing;

A concise statement showing that the petitioner is entitled to relief is missing;

G.2 The petitioner has not made any attempt to establish a prima facie showing that the petitioner is entitled to relief

Finally, the Prayer for Relief to hear the Appellee’s Appeal Appellants read as a request by Appellees to establish a right to Appeal that is statutorily unavailable per NMSA 7-38-28 and NMSA 39-3-1.1 hence not within the jurisdiction of the courts to provide.

WAKELAND V. NEW MEXICO DEP'T OF WORKFORCE SOLUTIONS, 2012-NMCA-021, 274 P.3d 766 establishes that non-conforming petitions for a writ of certiorari are acceptable and provides a descriptive summary of the expectations for the content of a petition, conforming or non-conforming "The Supreme Court held that the petitioner's notice of appeal could not substitute for a petition for writ of certiorari. Id. It stated that it was "amply clear" that "the notice of appeal [was] not sufficient" because "a formal application showing a prima facie case for relief is a prerequisite to issuance of certiorari" and a notice of appeal does not meet these requirements. Id. at 300, 430 P.2d at 871 (internal quotation marks and citation omitted). While the Court stated that it was not holding that "any particular nicety of pleading or precision of drafting is required," it would not construe the notice as a petition because "the record here discloses a total absence of any pleading which remotely approximates a petition or which contains any of the elements required as a minimum to merit such a description in a proceeding wherein certiorari is sought.

Kenneth and Kathleen DeHoff

[ksdehoff@netwks.com](mailto:ksdehoff@netwks.com)

505-301-5629

66 Bad Coyote Place, Corrales NM 87048

