Administrative Office of the Courts

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STATE SUPREME COURT PROVIDES GUIDANCE FOR ENFORCING PUBLIC ACCESS TO JUDICIAL RECORDS

SANTA FE – The New Mexico Supreme Court issued a precedential opinion on Monday providing guidance for enforcing provisions of New Mexico's Inspection of Public Records Act (IPRA) in cases involving access to district court records.

Clarification had been sought by the Attorney General's Office in a case in which counsel for Valley Meat Company had sought judicial records relating to a separate lawsuit in the First Judicial District Court in Santa Fe brought by the Attorney General to stop the Roswell company from commercially slaughtering horses. After the First Judicial District Court provided records, Valley Meat filed an IPRA enforcement against that court in the Fifth Judicial District Court in Roswell, seeking additional records.

The Attorney General brought the matter to the Supreme Court on a petition for writ of superintending control to resolve disputed questions concerning IPRA enforcement. In a unanimous opinion, the Court held:

- Because of a state constitutional prohibition denying a district court any jurisdiction to issue orders to a different district court, IPRA enforcement actions for district records can be filed only in the district maintaining the records;

- As specified in the IPRA statute, enforcement actions may be filed only against the lawfully designated custodians of the records;

- To avoid the appearance of bias in presiding over cases against a records custodian who is employed by a district court, a judge from outside the district must be assigned, as is routinely done by Supreme Court order in all cases in which a judge or employee of a district court is a party;

- Because IPRA governs only public records maintained by public bodies, including courts, a public official's personal election Facebook page that is not used to conduct public business is not a public record required to be maintained or produced by the candidate's public employer.

- Following an earlier precedent recognizing that executive privilege protects from disclosure confidential communications between the Governor and close advisors, the court agreed with courts in other states in recognizing a judicial deliberation privilege that protects confidentiality of judicial decision-making processes, including unissued draft decisions that are discussed with others assisting a judge, before finalization and issuance.

The Court ruled that the judicial deliberation privilege applied to an email exchange between a First Judicial District Court judge and a Supreme Court law librarian for assistance in proofreading an order by the judge in the Valley Meat case.

"We believe it would be an unreasonable and unprincipled limitation on the full exercise of a judge's research, drafting and decision-making processes to hold that the confidentiality of that process is forfeited when a judge seeks assistance from judicial branch employees and entities beyond the staff who work directly under the judge or who are named in their individual court organizational charts," the Court said in an opinion written by Justice Charles W. Daniels.

The Court ordered the Fifth Judicial District lawsuit to be dismissed and determined that no further litigation would be necessary in this case because all documents subject to IPRA have now been produced.

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To read the opinion in *Pacheco v. Hudson*, No. S-1-SC-35445 slip op. (N.M. S. Ct. March 5, 2018), please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,445.pdf