# Administrative Office of the Courts

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**SUPREME COURT SUGGESTS SANCTIONS FOR DEFICIENT LEGAL BRIEFS IN APPEALS**

SANTA FE – The New Mexico Supreme Court today advised state courts to impose appropriate sanctions on attorneys who submit deficient legal briefs in cases.

"No appellate court or district court should ever hesitate to return briefing or order rebriefing with a short deadline when briefing is unclear or lacks citations or is otherwise unprofessional," the state's highest court wrote in an opinion written by Justice Gary L. Clingman.

The court's admonishment came in a unanimous ruling that affirmed a district court's denial of a petition for a writ of habeas corpus by an Albuquerque man, David Lukens Jr., who was convicted of negligently causing child abuse resulting in great bodily injury of his infant son in 2005.

Lukens argued that he received ineffective assistance from the attorney who handled the direct appeal of his conviction. He asked for a new appeal or reversal of his conviction.

The state Court of Appeals affirmed his conviction in a 2013 decision. Lukens' appellate attorney missed a deadline for asking the Supreme Court to consider reviewing his appeal. Lukens served as his own attorney in filing a petition for a writ of habeas corpus and the Second Judicial District Court later appointed a lawyer to represent him in the proceeding.

"Although the performance of Petitioner's appellate counsel on direct appeal (Appellate Counsel) was clearly deficient in certain instances, we hold that prejudice may not be presumed because the performance of the Appellate Counsel did not deprive Petitioner of his constitutional right to a direct appeal of his conviction," the Supreme Court said. "We further hold that Petitioner has failed to establish actual prejudice in his direct appeal."

The Supreme Court said written legal briefs with deficiencies were “too often submitted to this court and to other courts throughout New Mexico.”

“Courts are not required to try and make sense of work product so flawed that its meaning cannot be discerned. We remind our courts and the New Mexico bar that the New Mexico Rules of Appellate Procedure and Rules of Professional Conduct empower courts to sanction lawyers, including by return of briefs and reassignment of counsel for ‘failing to comply with an obligation or prohibition imposed by a rule,’|” the Supreme Court wrote.

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To read the opinion in *Lukens v. Franco*, No. S-1-SC-3549, please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,491.pdf