



Administrative Office of the Courts

FOR IMMEDIATE RELEASE

May 28, 2026

Supreme Court rules on subpoena power before the filing of wrongful death actions

SANTA FE – A personal representative appointed under New Mexico’s wrongful death statute cannot issue subpoenas before filing a lawsuit on behalf of the estate of the deceased individual, the state Supreme Court ruled today.

The Court’s decision addressed for the first time whether the Wrongful Death Act (WDA) granted pre-lawsuit subpoena power to the representative empowered to bring civil claims for damages to compensate surviving family members for a death caused by someone’s wrongful actions.

A subpoena can be used to gather evidence. Once a civil lawsuit is filed, the parties in the case have the power under court procedural rules to subpoena documents, witness testimony and other information. Under the WDA, only the deceased individual’s personal representative (PR) can file a lawsuit.

In a unanimous opinion written by Justice C. Shannon Bacon, the Court held that “issuance of an appointment order concludes an appointment proceeding under the WDA and subpoena power is not available to a PR pursuant to that proceeding.”

The Court explained that the “purely ministerial purpose of a WDA appointment proceeding does not involve a grant of subpoena power to a PR appointed independent of filing an actual wrongful death claim.”

The justices noted that “we have no occasion here to consider under what circumstances subpoena-related discovery might be proper pursuant to an appointment proceeding *prior* to issuance of an appointment order, and our holding should not be read otherwise.”

The Court’s decision came in an appeal in a wrongful death case stemming from a fatal car crash in 2020. Erika Chavez died after her car was hit in an Albuquerque intersection by a vehicle driven by Jose Ortiz-Muñoz, who worked at an O’Reilly Auto Parts store.

The justices ordered the case back to a district court in Santa Fe for further proceedings to determine the appropriate action to take in response to the wrongful use of subpoena power by the personal representative of Chavez’s estate. Ortiz-Muñoz, O’Reilly Automotive Stores, Inc.,

and an insurance company were sued on behalf of the estate, Chavez's husband and her children. The lawsuit alleged that Ortiz-Muñoz negligently caused the fatal crash and that O'Reilly knew his car was malfunctioning because of mechanical problems.

O'Reilly asked the district court to dismiss the lawsuit, alleging the personal representative's attorney improperly used subpoenas to question and gather information from Ortiz-Muñoz and two store managers months before filing the wrongful death action in June 2023. The district court denied the dismissal motion and O'Reilly appealed.

In January 2021, Chavez's husband petitioned the court to name attorney Dennis Murphy as personal representative of her estate, and the district court entered an appointment order a day later. Subpoenas were later issued under the case number for the appointment petition for "examinations under oath" of Ortiz-Muñoz as well as the manager and assistant manager of the store where he worked in Albuquerque.

###

To read the decision in *Murphy v. O'Reilly Auto. Stores, Inc.*, No. S-1-SC-40703, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538245/index.do>