

STATE OF NEW MEXICO  
FIRST JUDICIAL DISTRICT  
COUNTY OF BERNALILLO SANTA FE [MJW]

JAMES ELLISON,

Plaintiff,

Case No. D-101-CV-2026-00464

v.

MAGGIE TOULOUSE OLIVER in  
her official capacity as SECRETARY  
OF STATE,

Defendant,

and,

DUKE RODRIGUEZ, real party  
in interest.

**ORDER GRANTING REAL PARTY IN INTEREST DUKE  
RODRIGUEZ'S MOTION TO DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION**

THIS MATTER comes before the Court upon a Rule 1-012(B)(1) *Motion to Dismiss* for lack of subject matter jurisdiction by Real Party in Interest Duke Rodriguez. The Court has considered the written submissions by the parties, and the argument of counsel at a February 27, 2026 hearing conducted on this *Motion*.

The Court now being otherwise fully advised in the premises finds:

1. The parties agree that the New Mexico Primary Election Law, NMSA 1978, Section 1-8-1 *et seq.*, and Rule 1-096 govern this action.

2. Actions like this one which seek to remove the name of a candidate from the primary election ballot are disfavored in favor of the right of voters to elect the candidates of their choice for public office.
3. Section 1-8-18 (B) NMSA of the Primary Election Law states in relevant part that:

“A voter may challenge the candidacy of a person seeking nomination by a political party for the reason that the person does not meet the requirements of Subsection A of this section by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy or a statement of candidacy for convention designation. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.”

4. Rule 1-096(A) mandates that a:

“Court action challenging a nominating petition provided for in the Primary Election Law, Sections 1-8-10 through 1-8-52 NMSA 1978, shall be initiated by filing a complaint and request for expedited hearing no later than ten (10) days after the last day for filing the declaration of candidacy with which the nominating petition was filed. The plaintiff shall immediately deliver a copy of the complaint and request for expedited hearing to the assigned judge and to any subsequent judges appointed pursuant to Rule 1-088 NMRA or Paragraph G of this rule.”

The Use Notes to Rule 1-096 state that “The time periods in this rule are to be computed under NMSA 1978, Section 1-1-22.” Section 1-1-22 reads as follows:

“For the purpose of the Election Code, time periods of less than eleven days shall be computed as calendar days; provided, however, that if an actual

deadline falls on a weekend or state-recognized holiday, the next business day shall be the deadline, unless the deadline is expressed as a day of the week, in which case that day remains the actual deadline.” [MJW]

5. In *Charley v. Johnson*, our Supreme Court explained that the procedural requirements of the Primary Election Law and Rule 1-096 are mandatory and not merely aspirational:

“Anyone contemplating a challenge to the nominating petitions of a future candidate for office would be well advised to carefully follow the requirements of Rule 1-096. In the absence of strict adherence to the rule’s requirements, courts should not look favorably upon attempts to remove a candidate from the ballot. See Rule 1-096(F) (providing that objections to nominating petition signatures are conclusively waived if not pleaded in accordance with the rule). Courts should continue to act in furtherance of the right of our citizens to nominate and vote for the candidates of their choice.”  
*Charley v. Johnson*, 2010-NMSC-024, ¶27, 148 N.M. 246, 233 P.3d 775.

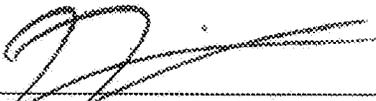
6. The deadline for filing a ballot access challenge under Section 1-8-18(B) NMSA and Rule 1-096 was met when Plaintiff James Ellison filed his *Complaint* on February 13, 2026—the last possible day.
7. Plaintiff Ellison, however, did not file an expedited request for setting with his *Complaint* in violation of Section 1-8-18(B) NMSA and Rule 1-096.
8. Plaintiff Ellison thereafter failed to immediately deliver a copy of the *Complaint* or an expedited request for setting to the assigned judge or to any subsequent judge appointed to this case.
9. Section 1-8-18(B) and Rule 1-096 require strict compliance.

10. The Court's subject matter jurisdiction to decide this action expired on February 23, 2026, four (4) days before the hearing held on February 27, 2026.
11. The untimeliness of the February 27, 2026 hearing was the result of Plaintiff Ellison's failure to comply with the mandatory procedural requirements of Section 1-8-18(B) NMSA and Rule 1-096.
12. The Court cannot grant the requested relief—the removal of Real Party in Interest Duke Rodriguez's name from the 2026 primary election ballot—because the deadline for the Court to order the removal of any candidate's name from the primary election ballot elapsed on February 23, 2026 (ten days after the filing of the *Complaint* pursuant to Section 8-1-18 NMSA and Rule 1-096).
13. Real Party in Interest Rodriguez's *Motion to Dismiss* for lack of subject matter jurisdiction is therefore well taken and is hereby granted.

**THE COURT THEREFORE ORDERS THAT:**

1. Real Party in Interest Rodriguez's Rule 1-012(B)(1) *Motion to Dismiss* for lack of subject matter jurisdiction is granted;
2. This matter is dismissed with prejudice; and,
3. Because the Court has fully disposed of this case by entering this *Order*, Real Party in Interest Rodriguez's *Motion to Dismiss* for failure to state a claim pursuant to Rule 1-012(B)(6) NMRA is hereby denied as moot.

IT IS SO ORDERED.

  
3/3/26  
Hon. Matthew Justin Wilson  
District Court Judge, Div. IX  
DDDM

APPROVED:

CANDELARIA LAW LLC

*/s/ Jacob R. Candelaria*

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Approved as to form only via email to the Court on March 2, 2026. [MJW]

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*Approved by email on March 2, 2026*

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