

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION )  
OF NEW MEXICO, )  
 )  
Relators, ) No. \_\_\_\_\_  
 )  
vs. )  
 )  
JUDGE D. D. ARCHER, )  
JUDGE, FIFTH JUDICIAL DISTRICT )  
EDDY COUNTY, NEW MEXICO, )  
 )  
Respondent. )

PETITION FOR WRIT OF PROHIBITION

COME now the Relator, New Mexico Oil Conservation Commission, and in support of this petition, states:

1. That on August 18, 1972, Michael P. Grace II and Corinne Grace filed in the District Court of Eddy County, New Mexico, a Petition for Review of New Mexico Oil Conservation Commission Order No. R-1670-L.
2. That on or about August 21, 1972, Secretary-Director of the New Mexico Oil Conservation Commission was served with a copy of the Petition for Review and a copy of the Summons in Eddy County Cause No. 28181.
3. That on August 31, 1972, Michael P. Grace II and Corinne Grace filed in the District Court of Eddy County, New Mexico, Cause No. 28181, a motion for Stay of New Mexico Oil Conservation Commission Order No. R-1670-L.
4. That on August 31, 1972, the Honorable D. D. Archer, Judge of Division I of the Fifth Judicial District, issued an order staying New Mexico Oil Conservation Commission Order No. R-1670-L temporarily until further order of the Court.
5. That on September 7, 1972, the New Mexico Oil Conservation Commission filed in Eddy County Cause No. 28181, a Motion to Quash Return of Service and a Motion to Vacate Order, copies of which are attached as Exhibits "A" and "B", respectively.

6. That in each of said motions the New Mexico Oil Conservation Commission appeared specially to question the jurisdiction of the court upon the grounds that the Commission is a duly constituted agency of the State of New Mexico and that service had not been made on the Attorney General of the State and hence not made in accordance with the provisions of Sections 65-3-22 (b) and 5-6-22, N.M.S.A., 1953 Comp. and therefore the Court had no jurisdiction to stay the Commission order.

7. That on September 11, 1972, in Eddy County Cause No. 28181, an acceptance of Service was filed in Eddy County Cause No. 28181 wherein the Attorney General of the State of New Mexico accepted service of a copy of the Petition for Review, Motion for Stay of Order, and Order Granting Stay of Oil Conservation Commission Order. The Attorney General further stated that he had actual knowledge of the service upon the Oil Conservation Commission.

8. That on \_\_\_\_\_, 1972, the Honorable D. D. Archer issued an order

9. That on \_\_\_\_\_, 1972, a good and sufficient Affidavit of Disqualification pursuant to Section 21-5-8 N.M.S.A., 1953 Comp. was timely filed in Cause No. 28181 by the Relator and copies thereof mailed, postage prepaid, to Judge D. D. Archer and to opposing counsel of record, a copy of which instrument is attached hereto and made a part hereof as Relator's Exhibit "\_\_\_".

10. That respondent has refused to honor said Affidavit for Disqualification and has indicated by

that he intends to act further in Cause 28181.

11. That at no time has the Relator called upon Respondent to act judicially upon any material issue and neither has the Relator participated in any proceeding upon any material issue presented by the adverse party.

12. That at no time has the Relator called upon Respondent to perform any act wherein the exercise of judicial discretion was involved.

13. That this Relator has no speedy or adequate remedy by appeal or otherwise because

WHEREFORE, Relators pray that an alternative writ of prohibition be issued directing Respondent, Judge D. D. Archer, Judge of the Fifth Judicial District, County of Eddy, to be and appear in this Court at a time and place to be fixed by this Court, then and there to show cause why he should not desist and refrain from further, and all, proceedings In the Matter of Cause No. 28181, District Court of Eddy County and to show cause why he should not be absolutely restrained and prohibited from any further proceedings in such action or matter; and prays for such other and further relief as this Court may deem appropriate.

DAVID L. NORVELL  
ATTORNEY GENERAL FOR THE  
STATE OF NEW MEXICO

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GEORGE M. HATCH  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

V E R I F I C A T I O N

STATE OF NEW MEXICO     )  
                                  )   ss.  
COUNTY OF SANTA FE     )

A. L. PORTER, Jr., being first duly sworn, deposes and says:  
That he is the Secretary-Director of the Oil Conservation Commis-  
sion, Relator in the above-entitled cause; that he has read the  
above and foregoing Petition, by him subscribed on behalf of the  
Relator; that the same is true to the best of Affiant's knowledge,  
information and belief.

\_\_\_\_\_  
A. L. PORTER, JR.  
Secretary-Director

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 1972.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

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No. \_\_\_\_\_

ALTERNATIVE WRIT OF PROHIBITION

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

GREETINGS:

I

WHEREAS on August 18, 1972, Michael P. Grace II and Corinne Grace filed in the District Court of Eddy County, New Mexico, a Petition for Review of New Mexico Oil Conservation Commission Order No. R-1670-L, and

II

WHEREAS on or about August 21, 1972, Secretary-Director of the New Mexico Oil Conservation Commission was served with a copy of the Petition for Review and a copy of the Summons in Eddy County Cause No. 28181, and

III

WHEREAS on August 31, 1972, Michael P. Grace II and Corinne Grace filed in the District Court of Eddy County, New Mexico, Cause No. 28181, a motion for Stay of New Mexico Oil Conservation Commission Order No. R-1670-L, and

IV

WHEREAS on August 31, 1972, the Honorable D. D. Archer, Judge of Division I of the Fifth Judicial District, issued an order staying New Mexico Oil Conservation Commission Order No. R-1670-L temporarily until further order of the Court, and

V

WHEREAS on September 7, 1972, the New Mexico Oil Conservation Commission filed in Eddy County Cause No. 28181, a Motion to Quash Return of Service and a Motion to Vacate Order, copies of which are attached as Exhibits "A" and "B", respectively, and

VI

WHEREAS in each of said motions the New Mexico Oil Conservation Commission appeared specially to question the jurisdiction of the court upon the grounds that the Commission is a duly constituted agency of the State of New Mexico and that service had not been made on the Attorney General of the State and hence not made in accordance with the provisions of Sections 65-3-22 (b) and 5-6-22, N.M.S.A., 1953 Comp. and therefore the Court had no jurisdiction to stay the Commission order, and

VII

WHEREAS on September 11, 1972, in Eddy County Cause No. 28181, an acceptance of Service was filed in Eddy County Cause No. 28181 wherein the Attorney General of the State of New Mexico accepted service of a copy of the Petition for Review, Motion for Stay of Order, and Order Granting Stay of Oil Conservation Commission Order. The Attorney General further stated that he had actual knowledge of the service upon the Oil Conservation Commission, and

VIII

WHEREAS on \_\_\_\_\_, 1972, the Honorable D. D. Archer issued an order

IX

WHEREAS on \_\_\_\_\_, 1972, a good and sufficient Affidavit of Disqualification pursuant to Section 21-5-8 N.M.S.A., 1953 Comp. was timely filed in Cause No. 28181 by the Relator and copies thereof mailed, postage prepaid, to Judge D. D. Archer and to opposing counsel of record, a copy of which instrument is attached hereto and made a part hereof as Relator's Exhibit "\_\_\_", and

X

WHEREAS respondent has refused to honor said Affidavit for Disqualification and has indicated by

that he intends to act further in Cause 28181, and

XI

WHEREAS at no time has the Relator called upon Respondent to act judicially upon any material issue and neither has the Relator participated in any proceeding upon any material issue presented by the adverse party, and

XII

WHEREAS at no time has the Relator called upon Respondent to perform any act wherein the exercise of judicial discretion was involved, and

XIII

WHEREAS this Relator has no speedy or adequate remedy by appeal or otherwise because

XIV

WHEREAS the Writ should originally issue from this Court, NOW, THEREFORE, you are hereby commanded to desist and refrain from further, and all, proceedings in In the Matter of Eddy County Cause No. 28181, and to show cause before this Honorable Court on the \_\_\_\_\_ day of \_\_\_\_\_, 1972, at \_\_\_\_\_ o'clock of that day or soon thereafter as counsel can be heard why a Peremptory Writ of Prohibition should not issue as prayed for in the Petition; and have you then and there this Writ with you certified thereon as having done as you are commanded herein.

WITNESS The Honorable \_\_\_\_\_,  
Chief Justice of the Supreme Court of the State of New Mexico  
and the seal of this Court on this \_\_\_\_\_ day of \_\_\_\_\_,  
1972.

\_\_\_\_\_  
ROSE MARIE ALDERETE  
Clerk of the Supreme Court  
of the State of New Mexico

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O R D E R

The above cause having come on for rehearing, the Relators being represented by the Office of the Attorney General and the Court having considered the Petition for Writ of Prohibition and being fully advised in the premises and finding good grounds therefor,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Alternative Writ of Prohibition in this cause be issued; that the return date for response and hearing on this matter be set for \_\_\_\_\_, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties may file briefs by the \_\_\_\_\_, if they so desire.

\_\_\_\_\_  
Chief Justice