

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
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2 **JUSTIN BURKE,**



Mark Reynolds

3 Petitioner-Appellant,

4 v.

No. A-1-CA-42314

5 **NEW MEXICO LAW**

6 **ENFORCEMENT**

7 **CERTIFICATION BOARD,**

8 Respondent-Appellee.

9 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

10 **Bryan Biedscheid, District Court Judge**

11 Grover Law, LLC

12 Thomas R. Gover

13 Albuquerque, NM

14 for Appellant

15 New Mexico Government Law, LLC

16 Deborah D. Wells

17 Albuquerque, NM

18 for Appellee

19 **MEMORANDUM OPINION**

20 **HENDERSON, Judge.**

21 {1} Petitioner Justin Burke appeals from a district court order partially granting

22 his motion for summary judgment against Respondent New Mexico Law

1 Enforcement Certification Board (the Board).¹ On appeal, Petitioner argues that the
2 district court erred by not granting him two remedies he sought. Specifically, the
3 district court declined to nullify the Board’s final order revoking Petitioner’s law
4 enforcement certification, and the court summarily denied Petitioner’s claim for
5 actual damages pursuant to the New Mexico Civil Rights Act (CRA), NMSA 1978,
6 § 41-4A-3(B) (2021), despite concluding that the Board was subject to liability under
7 the CRA for failing to include requisite language regarding the appeals process in
8 the final revocation order. We affirm.

9 **BACKGROUND**

10 {2} This case arises from administrative proceedings brought after the Board
11 conducted an internal investigation into a misconduct report submitted by the New
12 Mexico State Police alleging various acts of misconduct by Petitioner. After
13 investigation, the Board voted to revoke Petitioner’s law enforcement certification
14 because it determined that Petitioner committed acts which indicated a lack of good
15 moral character or constituted dishonesty or fraud in violation of NMSA 1978,
16 Section 29-7-6(A)(7) (1993, amended 2025); NMSA 1978, Section 29-7-13(A)(2)
17 (1993); and 10.29.1.11(C)(4), (5) NMAC. Petitioner appealed the revocation by

¹While this case was ongoing, the New Mexico Law Enforcement Academy Board (LEAB) was bifurcated into the Law Enforcement Standards and Training Council, and the Law Enforcement Certification Board. *See* 2023 N.M. Laws, ch. 86, § 15; NMSA 1978, § 9-19-8 (2023). Because of this restructuring, some of the record proper documents refer to LEAB instead of the Board.

1 filing a petition for writ of certiorari pursuant to Rule 1-075 NMRA and complaint
2 for damages pursuant to the CRA with the district court. Petitioner alleged that
3 NMSA 1978, Section 39-3-1.1(B)(3) (1999) requires, “[u]pon issuing a final
4 decision, an agency shall promptly . . . serve a document that includes . . . the
5 requirements for filing an appeal of the final decision,” on parties. It is uncontested
6 that the Board’s final revocation order did not include language on how to appeal
7 the Board’s decision. Petitioner asserted that his revocation should be nullified and
8 the Board be subject to liability and damages under the CRA because the Board’s
9 final revocation order violated his constitutional right to due process, as guaranteed
10 by the N.M. Const. art. II, §§ 1, 4, 18, and was not in accordance with the law. The
11 district court granted certiorari.

12 {3} Petitioner then filed a motion for summary judgment arguing that because the
13 Board’s order was not in accordance with the law and violated his due process rights,
14 its final decision revoking Petitioner’s law enforcement certification is null and void.
15 The motion also requested a hearing to determine damages. The Board filed a
16 response and its own motion for summary judgment arguing that the Board’s
17 revocation should not be reversed and that Petitioner’s CRA claim is barred by
18 Section 41-4A-3(D), because “[i]ndividuals employed by a public body shall be
19 prohibited from using the [CRA] to pursue a claim arising from the individual’s
20 employment by the public body.” After a hearing on the parties’ motions for

1 summary judgment, the district court partially granted Petitioner’s motion, finding
2 that the Board failed to provide the requisite statutory language regarding the appeals
3 process in its order, but because the failure did not relate to the merits of the decision,
4 the court declined to nullify the revocation. The district court also found that the
5 failure subjected the Board to liability under the CRA and limited Petitioner’s
6 damages to legal fees and costs while denying Petitioner’s claims for actual
7 damages. Petitioner now appeals from the district court’s order declining to nullify
8 his revocation and denying his claim for actual damages.

9 **DISCUSSION**

10 {4} On appeal, Petitioner argues that: (1) the district court erred in not nullifying
11 the revocation of Petitioner’s law enforcement certification because the Board’s
12 order failed to include the statutorily required appeals process language; and (2) the
13 district court erred in summarily denying Petitioner’s claim for actual damages under
14 the CRA despite finding that the Board was liable. We address each issue in turn.

15 {5} Petitioner first contends that although the district court correctly found that
16 the Board’s order failed to include language on the process to appeal a revocation,
17 its decision not to nullify the revocation of Petitioner’s law enforcement
18 certification, “runs afoul of established law regarding the consequences when an
19 administrative agency fails to comply with its statutory and regulatory authority.”

20 However, we previously issued an order denying consideration of this issue for filing

1 a nonconforming petition for writ of certiorari. *See* Order Denying Non-Conforming
2 Petition for Writ of Certiorari, *Burke v. N.M. Law Enf't Certification Bd.*, A-1-CA-
3 42314 (N.M. Ct. App. Apr. 8, 2025). Petitioner did not address our order in his brief
4 in chief, but responds in his reply brief to the Board's argument that the issue cannot
5 be considered by stating that the order is not applicable here as it addresses an issue
6 not brought in the docketing statement and Petitioner's appeal was based on a Rule
7 1-056 NMRA summary judgment action instead of a Rule 1-075 action. Petitioner's
8 argument that he is appealing under Rule 1-056 and not from a Rule 1-075(V), or a
9 Rule 12-505 NMRA decision fails because Petitioner initially brought this action
10 through a writ of certiorari pursuant to Rule 1-075(V). Rule 1-075(V) itself states
11 that "[a]n aggrieved party may seek further review of an order or judgment of the
12 district court in accordance with Rule 12-505." Rule 12-505 provides that review of
13 a district court's decision in a Rule 1-075(V) proceeding is by way of a petition for
14 writ of certiorari rather than direct appeal, filed within thirty days. In this case,
15 Petitioner is appealing from the district court's order entered in Petitioner's Rule
16 1-075(V) proceedings. Thus, Rule 12-505 applies and this Court properly denied
17 Petitioner's nonconforming writ of certiorari. *See* Rule 1-075(V). Therefore, in
18 accordance with our prior order in this case, we do not address this argument as it is
19 not properly before this Court.

1 {6} Next, we do address Petitioner’s argument that the district court erred by
2 summarily denying his claim for actual damages for financial losses and emotional
3 damage caused by being unable to be employed as a police officer after his
4 certification was revoked, despite the court’s finding that the Board was liable under
5 the CRA for violating Petitioner’s procedural due process rights.² The district court
6 concluded—and the Board does not dispute—that a due process violation occurred
7 when the Board did not include language concerning “the requirements for filing an
8 appeal of the final decision,” as required by Section 39-3-1.1(B)(3), in its final
9 revocation order. The Board argues that Petitioner did not preserve this argument for
10 appeal, and even if preserved, the district court adequately explained its ruling that
11 actual damages arising out of the revocation are not proper. The Board observes that
12 the district court concluded that the CRA violation did not pertain to any substantive
13 flaw in the Board’s decision regarding Petitioner’s certification, but only concerned
14 the procedural failure to include requisite appeals process language in its revocation

² Unlike Petitioner’s nullification argument, this Court determined that Petitioner’s appeal of the actual damages issue is proper as it is a constitutional question arising from the district court’s exercise of original jurisdiction. *See* Order, ¶ 7, *Burke*, A-1-CA-42314. Petitioner timely filed his notice of appeal on November 6, 2024, and a docketing statement on December 3, 2024, in response to the district court’s order issued on October 9, 2024. *See* Rule 12-201(A)(1)(b) NMRA (requiring a notice of appeal be filed within thirty days of the district court order being entered); *see also El Castillo Ret. Residences v. Martinez*, 2015-NMCA-041, ¶ 7, 346 P.3d 1164 (“An appeal to this Court from a judgment of the district court in its original jurisdiction is perfected by filing a notice of appeal and a docketing statement.”). Accordingly, this issue is properly before us on appeal.

1 order, and that Petitioner had “the expertise to bring an appeal in a timely fashion”
2 regardless. Neither party challenges the award for legal fees and costs.

3 {7} Initially, we conclude that Petitioner’s argument was preserved. “In order to
4 preserve an issue for appeal, [the petitioner] must have made a timely and specific
5 objection that apprised the district court of the nature of the claimed error and that
6 allows the district court to make an intelligent ruling thereon.” *Sandoval v. Baker*
7 *Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d
8 791. In Petitioner’s initial petition for writ of certiorari and complaint for damages
9 to the district court, he requested actual damages in addition to attorney fees.
10 Petitioner then requested a hearing for the purposes of determining damages in his
11 motion for summary judgment and again in his response opposing the Board’s
12 motion for summary judgment. Petitioner argued for damages at the summary
13 judgment hearing, and the district court ultimately denied Petitioner’s claim for
14 actual damages. Because Petitioner repeatedly raised his request for actual damages
15 and the district court ruled on his request, the issue is preserved. *See Crutchfield v.*
16 *N.M. Dep’t of Tax’n & Revenue*, 2005-NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d
17 1273 (“To preserve error for review, a party must fairly invoke a ruling of the district
18 court on the same grounds argued in this Court.”).

19 {8} Next, neither party challenges the district court’s finding that the Board failed
20 to include the requisite appeals process language in its revocation order and that the

1 Board is therefore subject to liability under the CRA for violating Petitioner’s
2 procedural due process rights. *See id.* ¶ 17 (providing that because an appellant did
3 not attack a court’s findings of fact or argue they were not supported by substantial
4 evidence, the court’s findings were binding on appeal); *see also* Rule 12-318(A)(4)
5 NMRA (stating that a brief in chief’s “argument shall set forth a specific attack on
6 any finding, or the finding shall be deemed conclusive”). Accordingly, the only
7 question before us is whether the district court erred when it denied Petitioner’s
8 claim for actual damages under the CRA.

9 {9} We review appeals from summary judgment decisions de novo. *See Headley*
10 *v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 5, 137 N.M. 339, 110 P.3d 1076.
11 Similarly, “[i]nterpretation of the language of a statute is a question of law that we
12 review de novo.” *Faber v. King*, 2015-NMSC-015, ¶ 8, 348 P.3d 173.

13 {10} The CRA provides:

14 A person who claims to have suffered a deprivation of any rights,
15 privileges or immunities pursuant to the bill of rights of the constitution
16 of New Mexico due to acts or omissions of a public body or person
17 acting on behalf of, under color of or within the course and scope of the
18 authority of a public body may maintain an action to establish liability
19 and recover actual damages and equitable or injunctive relief in any
20 New Mexico district court.

21 Section 41-4A-3(B). In this case, the district court concluded that Petitioner made a
22 successful claim under the CRA that the Board violated his procedural due process
23 rights when depriving Petitioner of his right to practice his chosen profession without

1 informing him of how to appeal. However, Petitioner’s request for actual damages
2 from the violation was denied. Actual damages are those “designed to remedy an
3 injury, i.e., compensatory,” and “are awarded to place the plaintiff in a position that
4 [they] would have been in had [they] not suffered the wrong complained of.” *Faber*,
5 2015-NMSC-015, ¶¶ 19-20. Even though the CRA provides that Petitioner, “may
6 maintain an action to . . . recover actual damages,” in Section 41-4A-3(B), it does
7 not mandate that courts award actual damages in cases of a violation. *Compare*
8 NMSA 1978, § 14-2-12(D) (1993) (stating that IPRA requires that “[t]he court shall
9 award damages costs and reasonable attorney[] fees to any person whose written
10 request has been denied and is successful in a court action to enforce the
11 provisions”), *with* § 41-4A-3(B) (stating that the CRA provides that a person
12 “may . . . recover actual damages”); *see* NMSA 1978, § 12-2A-4 (1997) (stating that
13 “[s]hall’ is used to “express a duty, obligation, requirement or condition precedent,”
14 while “[m]ay’ confers a power, authority, privilege or right”).³ In fact, “the CRA
15 draws no distinction between the remedies available based on the capacity of the
16 suit, but instead provides that a court *may* award damages, injunctive, and equitable
17 relief exclusively against a public body due to its conduct or the conduct of

³We note that this statute only applies to statutes enacted after 1997. *See* NMSA 1978, § 12-2A-1(B) (1997) (“The Uniform Statute and Rule Construction Act applies to a statute enacted or rule adopted on or after the effective date of that act unless the statute or rule expressly provides otherwise.”). However, the CRA Section 41-4A-3 was enacted in 2021 such that it applies here.

1 individuals acting on its behalf.” *Bolen v. N.M. Racing Comm’n*, 2025-NMSC-034,
2 ¶ 29, 578 P.3d 1121 (emphasis added).

3 {11} As alleged in the petition, Petitioner’s claim for actual damages to account for
4 loss of income and emotional distress stems from his inability to find employment
5 as a police officer because the Board revoked his law enforcement certification.
6 Accordingly, the alleged damages were the result of the revocation and not caused
7 by the Board’s failure to include the requisite appeals process language in its final
8 order. The district court explained as much in its oral findings:

9 The Court understands the issue here to not be derived from
10 [Petitioner]’s employment, but rather the failure to alert him, as due
11 process requires and statute requires, of the information he would need
12 in order to appeal the matter. Because [Petitioner’s counsel] had the
13 wherewithal and expertise to bring an appeal in a timely fashion . . . I
14 don’t find there’s a defect in the underlying decision, damages in this
15 matter I think are pretty specifically identifiable and limited to
16 [counsel’s] attorney fees incurred in this action.

17 While district court judges’ statements are not binding, we “may look to the remarks
18 or opinions of the trial judge for clarification . . . so long as such remarks or opinions
19 are not made the basis for error on appeal.” *Ledbetter v. Webb*, 1985-NMSC-112,
20 ¶ 28, 103 N.M. 597, 711 P.2d 874 (citation omitted).

21 {12} Often, the remedy for procedural due process violations is to provide an
22 opportunity for the party to be heard. *See Mills v. N.M. State Bd. of Psych. Exam’rs*,
23 1997-NMSC-028, ¶ 21, 123 N.M. 421, 941 P.2d 502 (remanding a case to the board
24 to hold a hearing after a license reinstatement proceeding violated the petitioner’s

1 due process rights by denying the petitioner’s request for a hearing); *Reid v. N.M.*
2 *Bd. of Exam’rs of Optometry*, 1979-NMSC-005, ¶¶ 10-11, 92 N.M. 414, 589 P.2d
3 198 (remanding a case for the board to hold an impartial hearing before revoking a
4 license to practice optometry, which was denied). However, Petitioner was not
5 denied the opportunity to appeal despite the Board’s failure to include the appeals
6 process language in its order such that he suffered actual damages because his
7 counsel nonetheless timely filed a petition for writ of certiorari and damages
8 challenging the Board’s decision. *See Faber*, 2015-NMSC-015, ¶ 20 (explaining that
9 actual damages “are awarded to place the plaintiff in a position that [they] would
10 have been in had [they] not suffered the wrong complained of”). Petitioner timely
11 challenged the Board’s revocation order in district court, satisfying the purpose of
12 the notice requirement violated by the Board. *See Reid*, 1979-NMSC-005, ¶ 6
13 (“[The] state cannot deprive any individual of personal or property rights except after
14 a hearing before a fair and impartial tribunal.”); *N.M. Dep’t of Workforce Sols. v.*
15 *Garduno*, 2016-NMSC-002, ¶ 24, 363 P.3d 1176 (“Notice is important to due
16 process because the right to be heard has little reality or worth unless one is informed
17 that the matter is pending and can choose for [themselves] whether to appear or default,
18 acquiesce or contest.” (internal quotation marks and citation omitted)).
19 Consequently, there are no actual damages owed as Petitioner was in the same

1 position he would have been in had the Board included the requisite appeals process
2 language in its revocation order. *See Faber*, 2015-NMSC-015, ¶ 20.

3 {13} Therefore, the district court did not err when denying Petitioner’s request for
4 actual damages.

5 **CONCLUSION**

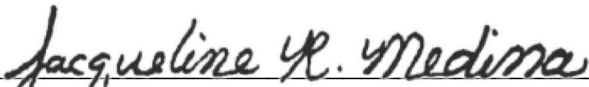
6 {14} For the foregoing reasons, we affirm the district court.

7 {15} **IT IS SO ORDERED.**



8
9 **SHAMMARA M. HENDERSON, Judge**

10 **WE CONCUR:**



11
12 **JACQUELINE R. MEDINA, Chief Judge**



13
14 **ZACHARY A. IVES, Judge**