

1 **VANZI, Judge.**

2 {1} Plaintiff, a self-represented inmate, seeks to appeal from the district court's
3 order denying his motion for rehearing, entered on May 13, 2014. Because Plaintiff
4 filed what we understand to be a notice of appeal and docketing statement in district
5 court on September 12, 2014—three months late—we issued a notice of proposed
6 summary disposition, proposing to dismiss for an untimely appeal. Plaintiff has filed
7 a response to our notice. Plaintiff does not provide a sound basis upon which we may
8 excuse the improper invocation of our jurisdiction and entertain his appeal.
9 Accordingly, we must dismiss.

10 {2} In response to our notice proposing to dismiss, Plaintiff states that it is his
11 understanding that it is not common practice to serve a lower tribunal with a notice
12 of appeal; that this practice is unique to New Mexico. [MIO 1-2] Plaintiff seeks to
13 appeal in New Mexico, however, and must follow the rules in New Mexico to perfect
14 his appeal. Plaintiff further states that upon notification of the deficient notice by this
15 Court, Plaintiff immediately rectified the situation. [MIO 2] Plaintiff is confusing the
16 requirement prescribed by Rule 12-201(A)(2) NMRA to file a **notice of appeal** with
17 the district court in a timely manner with the letter this Court sent to Plaintiff
18 reminding him to serve a copy of the **docketing statement** on the district court to

1 trigger preparation of the record proper. [Ct. App. File] These are separate documents
2 that serve very different purposes. *See, e.g., Wakeland v. N.M. Dep't of Workforce*
3 *Solutions*, 2012-NMCA-021, ¶¶ 7, 16, 18-20, 274 P.3d 766 (explaining the time
4 requirements for a notice of appeal and a docketing statement, the purposes they serve,
5 and when we may accept non-conforming documents that were *timely filed in the*
6 *correct tribunal* as serving the purposes that would accommodate hearing an appeal
7 on its merits). As we stated in our notice, it is the timely filing of the notice of appeal
8 in the proper tribunal that is a mandatory precondition to our exercise of jurisdiction
9 to hear an appeal. *See Trujillo v. Serrano*, 1994-NMSC-024, ¶ 14, 117 N.M. 273, 871
10 P.2d 369; *Govich v. North Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814
11 P.2d 94.

12 {3} Although we must dismiss for an untimely notice of appeal, we emphasize to
13 Plaintiff that we have received Defendants' response to his docketing statement,
14 which amounts to a concession that they led the district court into error by filing an
15 affidavit that incorrectly stated that Plaintiff failed to submit a department-level appeal
16 for his current grievance before filing his complaint in district court. [Ct. App. File]
17 Based on this concession and the decision from the corrections department on
18 Plaintiff's grievance appeal that Plaintiff presented to this Court, we again encourage
19 Plaintiff to seek relief from the district court by Rule 1-060(B) NMRA motion.

1 {4} For the reasons stated in this opinion and in our notice, we dismiss for an
2 untimely appeal.

3 {5} **IT IS SO ORDERED.**

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LINDA M. VANZI, Judge

6 **WE CONCUR:**

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MICHAEL D. BUSTAMANTE, Judge

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CYNTHIA A. FRY, Judge