

BEFORE THE HEARING SUBCOMMITTEE
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE

In re: Representative Carl Trujillo,

Respondent.

**RESPONDENT’S RESPONSE IN OPPOSITION TO
LAURA BONAR’S LETTER OBJECTION TO
WRITTEN DISCOVERY**

On the eve of her deposition, Laura Bonar unilaterally declared that she would not appear to testify under oath about her allegations of sexual harassment against Representative Trujillo.¹ Ms. Bonar also broadly objected to producing records and information directly relevant to her claims of sexual harassment against Representative Trujillo.² Ms. Bonar did not make any specific objection to any particular discovery request, but instead made only a general, wholesale objection to all discovery requested by Respondent (the “Objection”).

The Subcommittee should overrule the Objection because (1) the discovery requests served on Ms. Bonar are already narrowly tailored to seek information directly relevant to her claims of sexual harassment against Representative Trujillo; (2) Ms. Bonar did not make any specific objection to any particular

¹ See 10/19/18 Letter from Monagle to Jackson re “Objections to Discovery Requests” (attached as Exhibit 1) (“I will not be producing my client for a deposition.”)

² *Id.* (“I object to the procedural validity of the interrogatories and requests for production that you sent to my client in this case.”)

request, as required; and (3) her Objection was untimely. Ms. Bonar is the primary witness in this case, and her refusal to be cross-examined under oath and to turn over records relevant to her claims of sexual harassment against Representative Trujillo deeply prejudice his ability to defend himself.

Ms. Bonar's failure to appear for her deposition and failure to respond to discovery requests also disqualifies her from testifying at the Formal Hearing. The Scheduling Order entered by the Subcommittee expressly provides that the failure of a party to appear for her deposition or to timely respond or cooperate with written discovery "shall be grounds to preclude the witness from testifying at the formal hearing" Scheduling Order at ¶¶ 4(a) and (b) (entered on September 26, 2018).³ The Subcommittee should enforce its own order.

Finally, Representative Trujillo has been given a very short time and very few tools to gather evidence to defend himself against Ms. Bonar's claims that he sexually harassed her nearly 5 years ago. Because she is the only witness who claims to have firsthand knowledge of sexual harassment, Representative Trujillo sought Ms. Bonar's deposition from the outset. Ms. Bonar's deposition had been scheduled for three weeks on a date that she and Special Counsel committed to have her appear. Ms. Bonar purposely delayed notifying Respondent that she would not appear for her deposition until the Friday afternoon before her Monday

³ Respondent will separately file a motion asking the Committee to enforce its own order and strike Ms. Bonar as a witness.

morning deposition. The delay was in bad faith, and intended to interfere with Representative Trujillo's defense. Ms. Bonar openly admits that her goal is to remove Representative Trujillo from office, and that motive must be considered when looking at her conduct here.

For these reasons, and those stated below, Respondent requests that Ms. Bonar's objection based on the "procedural invalidity" of the Scheduling Order be overruled.

Background and Procedural History

The Policy

In 2018, the New Mexico Legislative Council adopted a new Anti-Harassment Policy which admirably seeks to protect those in and around the Legislature from sexual harassment.⁴ Legislative Council Policy No. 16 creates procedures for filing a complaint outside of the session, and requires that: "Any charge seeking the discipline of a member of the legislature during the interim shall be in writing, under oath or affirmation, signed by a . . . member of the public, addressed to the legislative council and filed with the legislative council service at the state capitol." Legislative Policy No. 16(F) (emphasis added).

⁴ The Anti-Harassment Policy states that "Sections 2-15-7 through 2-15-12 NMSA 1978; Senate Rules 9-13-1 through 9-13-6; House Rules 9-13-1 through 9-13-7; or Legislative Council Policy No. 16 shall apply to the process regarding complaints against legislators." Where a complaint is received outside of the session, the Legislature delegated its power to investigate sexual harassment claims to the Interim Legislative Ethics Committee (the "Committee") N.M.S.A. § 2-15-7(B) ("All matters arising in the interim pertaining to legislative ethics shall be referred to

The Open Letter

On May 2, 2018, lobbyist Laura Bonar posted an open letter on the internet publicly accusing Representative Trujillo of sexually harassing her five years earlier. Ms. Bonar did not verify her claims by signing the letter under oath, as required, or follow any of the other requisite steps.⁵ During the subsequent investigation, Special Counsel conducted only an informal interview of Ms. Bonar, and Representative Trujillo had no opportunity to cross-examine her about her claims during the investigation. To date, Ms. Bonar's claims have never been tested under oath or through cross-examination.

The Investigation

On July 27, 2018, the Investigative Subcommittee entered its *Findings and Recommendations of the Investigative Subcommittee to the Hearing Subcommittee of the Interim Legislative Ethics Committee Regarding Representative Trujillo* (the "Findings and Recommendations"). The Investigative Subcommittee adopted the findings and recommendations of the Special Counsel, and found no probable cause to support multiple claims made by Ms. Bonar against Representative Trujillo. Those claims have now been dismissed.

this special interim legislative ethics committee.”). This same statute requires that “the New Mexico legislative council shall develop procedures to carry out the provisions of this section, in accordance with the existing procedures in the house and senate rules.” N.M.S.A. § 2-15-9(A).

⁵ Ms. Bonar's multiple violations of the applicable procedures is the subject of a pending Motion to Dismiss (filed October 4, 2018).

The only remaining allegations to be heard by the Subcommittee are Ms.

Bonar's claims that:

1. On January 28, 2014, Ms. Bonar asked to sit next to Respondent at a hearing before the House Consumer and Public Affairs Committee, and that he allegedly responded that: "you can sit next to me anytime, Laura. At dinner. By the fire. In the pool."⁶
2. On February 5, 2014, Respondent "pulled" her aside in the corridor outside of the House Chambers and asked her "When can we meet?"⁷

"The Special Counsels' role in recommending the existence or absence of probable cause is not equivalent to a finding that conduct prohibited by the Anti-Harassment Policy has occurred,"⁸ only that there appears to be sufficient evidence on the above claims to proceed to a Formal Hearing.

The Scheduling Order for a Formal Hearing

The applicable Legislative Council rules provide that "[a]t the time a formal hearing is scheduled, the hearing subcommittee shall establish and notify the parties of the preliminary schedule and the procedures to be followed."⁹ "[S]pecial legal counsel to the investigative subcommittee shall become the charging party and present the case against the legislator being charged."¹⁰ The only "parties" to the proceeding are the Charging Party and the Respondent (the legislator being

⁶ See Findings and Recommendations at 34-36.

⁷ *Id.* at 36-37.

⁸ *Id.* at 5.

⁹ Legislative Council Policy 16(L).

¹⁰ Legislative Council Policy 16(J)(1).

charged). Legislative Policy 16(K) provides that the “parties shall have an opportunity to be heard, to request the presence of witnesses and the production of relevant evidence and to cross-examine witnesses against them.”

On September 26, 2018, the Subcommittee formally entered a Scheduling Order submitted by the only parties to this proceeding (the Charging Party and Respondent).¹¹ In accordance with Legislative Policy 16(L), the Scheduling Order established the preliminary schedule and procedures to be followed. Over Respondent’s objection, the Scheduling Order did not permit Respondent to issue subpoenas to third parties for depositions and records. Instead, third party discovery was more narrowly limited to three tools: (1) deposition of *witnesses* identified by the opposing party; (2) requests for production of documents from witnesses; and (3) interrogatories (written questions) to witnesses.

Because the Scheduling Order did not grant Respondent subpoena power (i.e. no power to compel third parties to act), the parties instead agreed, and the Subcommittee ordered, that “[f]ailure of a witness to appear or cooperate shall be grounds to preclude the witness from testifying at the formal hearing” With respect to “written discovery,” the Subcommittee likewise ordered that “[f]ailure of

¹¹ Respondent noted that he did not agree to all of the proposed procedures in the Scheduling Order, and reserved the right challenge particular procedures by Motion. Scheduling Order at ¶ 8. On October 4, 2018, Respondent filed two emergency motions seeking expedited consideration: (1) Respondent’s Motion to Appoint an Independent Hearing Officer; and (2) Motion to Allow Respondent to Issue Subpoenas. Despite requests for an expedited hearing, neither motion has been scheduled for hearing as of the time of this filing.

a witness to timely respond or cooperate with written discovery shall be grounds to preclude the witness from testifying at the formal hearing” In other words, the Order already addresses what’s happened here: when one side’s witness fails to appear for a deposition or respond to written discovery, that side cannot call the witness at the Formal Hearing.

Importantly, the Scheduling Order also provides that “[a]ny objection to written discovery that cannot be resolved by the parties must be made by motion and filed with the Legislative Council Service” These are the ground rules established by Order of the Subcommittee. The Scheduling Order was promptly posted and publicly available on the website for Interim Legislative Ethics Committee.

The Scheduling of Ms. Bonar’s Deposition

Counsel for Respondent first requested dates to depose Ms. Bonar on September 7 – well before entry of the Scheduling Order. Respondent again asked to depose Ms. Bonar by emails dated September 17 (“I will want to depose at least the following witnesses . . . : 1. Laura Bonar”) and September 21 (“I’d like to start with Laura Bonar.”). Respondent followed up by email dated September 23 (“I’d like to depose Laura Bonar before Jennings, so please let me know where we stand with respect to Bonar.”). Special Counsel responded by email on September 25: “I

have sent a request to her attorney re: availability. Should know by tomorrow.”

The Subcommittee entered the Scheduling Order the next day.

On October 2, after conferring with Ms. Bonar’s personal counsel (who was copied by Special Counsel on the emails scheduling her deposition), Special Counsel offered two dates for Respondent to depose Ms. Bonar: “Ms. Bonar is available for a deposition on Oct. 22 or 23.”¹² During the discussions about scheduling and sequencing of depositions, Respondent’s counsel made clear why it was important to depose Ms. Bonar first: “I always seek to depose the plaintiff or claimant first in every case I defend . . . so that I get the unvarnished truth from the prime witness at the outset, as best I can.”

Respondent communicated to both Special Counsel and to personal counsel for Ms. Bonar (Levi Monagle) that her deposition would be scheduled for October 22: “Gentlemen, Let’s book Monday October 22 for Ms. Bonar’s deposition.” That same day, Respondent issued a Notice of Deposition formally notifying both Special Counsel and Ms. Bonar’s personal counsel that Respondent was scheduling her deposition to occur on October 22 (the earliest date she provided). Exhibit 3. Ms. Bonar’s personal counsel asked whether Respondent would attend the deposition, but never objected to proceeding with it.

¹² See email dated 10/2/18 discussing scheduling of Ms. Bonar’s deposition (Exhibit 2).

Written Discovery to Laura Bonar

On October 8, Respondent served written discovery on Ms. Bonar – sending copies to both Ms. Bonar’s personal counsel and to Special Counsel. A copy of Respondent’s written discovery responses are attached as Exhibit 4.¹³ The discovery requests alert Ms. Bonar that they are being issued “[p]ursuant to Paragraph 4(b) of the Scheduling Order” and request that she “please answer the below interrogatories and respond to the below requests for production within ten (10) days, or by October 18, 2018.” Under the Scheduling Order, Respondent was entitled to ask 25 interrogatories and serve 25 requests for production, but instead served only 13 interrogatories and 16 requests for production.

Ms. Bonar has not identified any specific objection to any particular request, and Respondent should not have to preemptively defend his discover requests where the objecting party has not made any specific objection to any request. Nevertheless, Ms. Bonar broadly claims that these discovery requests are irrelevant and simply a fishing expedition. Actual review of Respondent’s written discovery proves otherwise. For example:

- Respondent’s Interrogatory No. 2 asks that she “[p]lease identify all persons whom you believe may have knowledge or information . . . relevant to the allegations of sexual harassment made by you against Representative Carl Trujillo.” Respondent should be entitled to know who may have information about Mr. Bonar’s claims.

¹³ See Respondent’s First Set of Interrogatories and Requests for Production to Laura Bonar (Exhibit 4).

- Interrogatory No. 3 asks whether Ms. Bonar “has obtained a written statement relevant to the allegations of sexual harassment made by you against Representative Carl Trujillo,” and Request for Production No. 1 asks her to produce them. Respondent should be entitled to know whether Ms. Bonar obtained written statements from witnesses, and should be entitled to obtain them in discovery.
- Interrogatory No. 5 asks that Ms. Bonar identify every person with whom she has “communicated regarding the allegations of sexual harassment made by you against Representative Carl Trujillo.”
- Interrogatory No. 7 asks that Ms. Bonar identify social media postings that refer or relate to “Representative Carl Trujillo” or “the allegations of sexual harassment made by you against Representative Trujillo.” Request for Production No. 6 asks her to produce the same.
- Interrogatory No. 8 simply asks whether Ms. Bonar kept a journal, diary or calendar that could help refresh her recollection as to events in 2013, 2014, and 2015. The claims Ms. Bonar made against Respondent in May 2018 arise from conduct she alleges occurred nearly five years ago. Respondent denies that he sexually harassed Ms. Bonar, and he should be entitled to any calendars or journals that kept track of Ms. Bonar’s activities to see if they prove (or disprove) her factual claims.

Request for Production No. 3 asks that, for the period of January 1, 2018 forward, that she produce communications with: (a) Representative Brian Egolf, or anyone acting on his behalf; (b) Special Counsel Tom Hnasko; (c) Special Counsel Theresa Parish; (d) Raul Burciaga, Director of the Legislative Council Service; (e) Julianna Koob; and (f) Andrea Romero, or anyone acting on her behalf. As discussed at length in Respondent’s Motion to Dismiss, Ms. Bonar did not follow the requirements of the Anti-Harassment Policy when she publicly posted her Open Letter on the internet. In addition to denying that he sexually harassed Ms.

Bonar, Representative Trujillo contends that his confidentiality was violated and that Ms. Bonar and others ignored required procedures to his detriment. A legislator charged with misconduct under the Anti-Harassment Policy should be entitled to test whether proper procedures were followed to charge him in the first place.

For example, the Anti-Harassment Policy provides that “The respective legislative leaders shall consult with outside counsel who is experienced in employment law and in the investigation of claims of harassment and determine whether the complaint should be investigated further. If any one of the legislative leaders or outside counsel determines that the complaint should be investigated further, the complaint shall be forwarded to an investigative subcommittee.” Upon information and belief, Speaker Egolf is the legislative leader who determined that the complaint should be investigated further, thus prompting the investigation of Respondent. Respondent should be entitled to see any communications between Ms. Bonar and Speaker Egolf or Special Counsel so that there is transparency in a process. A handful of individuals should not be allowed to decide in secret which claims are investigated, and which are not. In a case where Ms. Bonar did not follow the rules to file a complaint, Respondent is entitled to know who authorized the investigation. Moreover, Special Counsel investigated the claims against

Respondent, and Respondent should be entitled to see what Ms. Bonar told Special Counsel.

The Anti-Harassment Policy requires that “[i]f the person making the complaint is anyone other than a legislative employee, the person making the complaint shall report it to the Director of the Legislative Council Service or the chief clerk. Mr. Burciaga is the Director of the Legislative Council Service, and Respondent should be entitled to see what, if anything, Ms. Bonar communicated to him.

Julianna Koob is another lobbyist who has also been identified as a potential witness by the Charging Party. Ms. Koob made her own separate claims against Respondent. Respondent should be entitled to see communications between Ms. Bonar and Ms. Koob because they may prove (or disprove) that the two acted in concert with political motives to remove Respondent from office. Respondent adamantly denies that he sexually harassed Ms. Bonar, and should be allowed to obtain discovery about other motives that Ms. Bonar may have had to accuse him of misconduct.

The ultimate question before the Subcommittee is whether Representative Trujillo engaged in sexual harassment that was sufficiently severe and pervasive to constitute a hostile work environment. “In order to prevail on a hostile work environment sexual harassment claim, [the Charging Party] is required to show

that the unwelcome, sexually-oriented conduct was sufficiently severe or pervasive as to alter the conditions of [Ms. Bonar's] employment and create an abusive working environment. *Sprague v. Thorn Americas, Inc.*, 129 F.3d 1355, 1365 (10th Cir. 1997). Courts consider “a variety of factors” in this holistic analysis, “including[] ‘the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.’” *Id.* (citations omitted). Moreover, courts assess whether the work environment “[is] both subjectively and objectively hostile or abusive.” *MacKenzie v. City & Cty. of Denver*, 414 F.3d 1266, 1280 (10th Cir.2005)

Respondent has therefore requested that Ms. Bonar sign a release so that Respondent can obtain her employment records to determine whether there is any evidence in her personnel file to suggest that the conditions of her employment changed or that he somehow interfered with her work performance. Respondent has similarly requested that Ms. Bonar identify any mental health providers from who she sought treatment between the time of the alleged sexual harassment forward to determine (1) whether she reported the alleged sexual harassment to her mental health providers (either at the time or later); (2) whether there is evidence that proves (or disproves) how she felt subjectively about the claimed sexual harassment. In her Open Letter posted to the internet, she claimed that she was

“sickened with frustration and guilt” and “sickened with a sense of hopelessness and injustice.” If true, her mental health records should reflect the same, and if they do not, that evidence would tend to support Respondent’s story that there was no sexual harassment.

Respondent committed in advance to keep any mental health records obtained confidential:

Respondent agrees that all mental health records obtained shall be kept confidential, and shall not be publicly disclosed to anyone other than Respondent and Respondent’s Counsel, except that Respondent may seek to admit such records at the Formal Hearing in this matter if Respondent determines they are relevant to allegations made by you against Representative Trujillo. If Respondent intends to use your mental health records at the Formal Hearing, Respondents’ counsel will alert Special Counsel and your counsel in advance, and request that such portion of the Formal Hearing be closed to protect your confidential mental health records from public disclosure.

Request for Production No. 10.

All of the discovery served on Ms. Bonar was limited to fact questions that are expected to be at issue at the Formal Hearing. Undersigned counsel has practiced employment law and defended sexual harassment claims for fifteen years. These types of interrogatories and requests for production are standard.

[D]iscovery is permitted as to matters that “are or may become relevant” or “might conceivably have a bearing” on the subject matter of the action, or where there is “any possibility” or “some possibility” that the matters inquired into will contain relevant information. Conversely, courts have said that discovery will be permitted unless the matters inquired into can have “no possible bearing upon,” or are “clearly irrelevant” to the subject matter of the action.

United Nuclear Corp. v. Gen. Atomic Co., 1980-NMSC-094, ¶ 70, 96 N.M. 155, 174, 629 P.2d 231, 250

Because Ms. Bonar delayed making these claims for years, there is no longer any video record and there are no witnesses who might recall what did or did not happen in a committee hearing room or corridor. Importantly, Special Counsel found “all witnesses to have been credible and that each [was] genuinely committed to his or her version of events.” In a he said/she said case like this where both parties are credible and the testimony of Ms. Bonar and Representative Trujillo will be the only first-hand evidence, it is critical that the person accused of misconduct have the right to obtain potentially relevant records and information that the complaining party did not readily volunteer when she complained of misconduct, and to depose and cross-examine the person who accused him of misconduct.

The Untimely Objection

On October 2, Special Counsel and Ms. Bonar’s personal counsel both agreed that Ms. Bonar could be deposed three weeks later, on Monday October 22. Respondent noticed the deposition that day, and served written discovery responses six days later (on October 8). Under the requirements of the Scheduling Order, Ms. Bonar’s written discovery responses were due on Thursday, October 18. In this already compressed timeframe, Ms. Bonar’s counsel stood silent during that

entire period. On October 18, Ms. Bonar's counsel asked: "Would you be amenable to granting an extension until tomorrow afternoon?" Because Ms. Bonar's deposition was scheduled to occur shortly thereafter, Respondent did not agree to the extension, but instead conditioned the extension on whether Ms. Bonar could produce her records electronically:

I think that's fine, but we would like to have these materials in hand so that they can be reviewed over the weekend/in advance of Ms. Bonar's deposition on Monday. Can you produce them electronically tomorrow so that we are able to accomplish that?

10/18/18 Email from Jackson to Monagle (Exhibit 5). Any agreement to an extension of the time to produce records was conditioned on Ms. Bonar actually producing records. Her lawyer never responded.

Instead of producing records, or providing specific responses and objections to Respondent's written discovery requests, as required, Ms. Bonar issued a letter broadly objecting to all written discovery and refusing to appear for her deposition at all. Ms. Bonar's general Objection to discovery violates the requirements of the Discovery Order, and Ms. Bonar purposely delayed making the Objection until the eve of her deposition.

Paragraph 4(b) of the Discovery Order provides that: "The requirements of Rules 1-033 and 1-034 NMRA shall apply, except that the responding party shall serve a written response and produce any responsive records and information within 10 days after service." Interrogatories are simply written questions to be

answered under oath. Rule 1-033 provides that: “Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.” NMRA, Rule 1-033(C)(1). “All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived” NMRA, Rule 1-033(C)(4).

Ms. Bonar did not answer a single interrogatory (in whole or part), nor state any objection to any particular interrogatory with the required specificity.

The law is well established that the failure to timely file objections to interrogatories operates as a waiver of any objections the party might have. This rule is generally applicable ‘(r)egardless of how outrageous or how embarrassing the questions may be.’ When a party fails to file timely objections, the only defense that it has remaining to it is that it gave a sufficient answer to the interrogatories.

United Nuclear Corp. v. Gen. Atomic Co., 1980-NMSC-094, ¶ 241, 96 N.M. 155, 210, 629 P.2d 231, 286.

With respect to requests for production, Rule 1-034 similarly provides that:

The party upon whom the request is served shall serve a written response [and that the] response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to If objection is made to part of an item or category, the part shall be specified.

NMRA, Rule 1-034. Ms. Bonar did not respond to a single request for production, nor did she state any objection to any particular request for production, nor did she

produce any records whatsoever. This is discovery abuse, and the Scheduling Order already provides the remedy.

Rather challenge any particular written discovery request, Ms. Bonar challenged the “procedural validity” of the Scheduling Order entirely. Ms. Bonar first claimed that her counsel should have included in the “negotiation” of the Scheduling Order. But Ms. Bonar is not a party. Under the rules that apply to this proceeding against Representative Trujillo, there are only two parties: the Charging Party and the Respondent. Pursuant to Legislative Council Policy No. 16(J)(1), the Special Counsel has already been “appointed to be the charging party and [to] present the case against the legislator being charged.” Special Counsel already acts as prosecutor and advocate for Ms. Bonar’s claims. It would be unfair and contrary to the applicable rules to force Representative Trujillo to defend himself on multiple fronts against multiple lawyers advocating the same position, as he has been forced to do here.

Special Counsel is now the sole advocate for Ms. Bonar against Representative Trujillo at the Formal Hearing. Ms. Bonar is simply a witness. If Special Counsel felt that Ms. Bonar’s personal counsel was entitled to provide input into the Scheduling Order, he could have asked for it before the Order was entered. Special Counsel controlled the submission of the Scheduling Order for approval by the Legislative Council Service (LCS), the Subcommittee and anyone

else whose approval was required. While Ms. Bonar had the right to timely object to discovery (now waived), she has no standing to challenge the validity of the Scheduling Order itself.

Ms. Bonar should not be allowed to challenge or change the rules established by the Subcommittee a month after-the-fact. It would be fundamentally unfair to change the rules in a way that further limits Representative Trujillo's ability to defend himself with only forty (40) days remaining before the Formal Hearing.

Third, Ms. Bonar's claim to have no knowledge about the formation and negotiation of the Scheduling Order is demonstrably false. The Objection states that: "As Ms. Bonar's attorney, I was never included in any phase of this negotiation- or even alerted to the fact that a negotiation was ongoing- and only became aware of this negotiation recently, after it had longsince concluded. Letter from Monagle to Jackson (Ex. 1). That's simply not true.

On October 2, at the same time her attorney committed to have Ms. Bonar sit for her deposition on October 22, Special Counsel copied Ms. Bonar's counsel on the extensive correspondence negotiating the Scheduling Order, which had only been entered days earlier. In fact, the email on which her lawyer is copied is titled "RE: Draft Scheduling Order." Exhibit 6.

By way of background, the original scheduling order drafted by Special Counsel provided that: “[t]he parties may engage in written and oral discovery, including the taking of depositions of witnesses designated by the other party.” In this extensive back and forth between Special Counsel and Respondent’s counsel – which is later copied to Ms. Bonar’s attorney – Respondent explains:

[I]n terms of discovery, we have amplified the procedures for taking depositions/serving written discovery, essentially to follow the rules of civil procedure but with expedited deadlines. We’ve also added the ability to issue subpoenas to third parties, but leaving enforcement to the committee itself. Subpoenas are needed because, if a respondent is unable to require the attendance of witnesses and production of records from parties outside the proceeding, then there are no real teeth these discovery provisions (and no real discovery). The various rules that are said to apply to this proceeding are not consistent, but the House Committee rules expressly provide for the issuance of subpoenas in these types of hearings.

Exhibit 6.

The revised Scheduling Order proposed by Respondent specifically addressed third party discovery, and stated:

a) Third Party Discovery. Either party may issue subpoena(s) requiring a person to (1) attend and give testimony; or (2) to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information or tangible things in the possession, custody or control of that person, at a time and place therein specified. The form of the subpoena shall be in substantially the same as that required for Rule 1-045 NMRA but modified for issuance by the Hearing Subcommittee. Rule 1-045’s requirements shall apply to the issuance and enforcement of such subpoenas, except that this Hearing Subcommittee shall have sole authority to adjudicate and enforce subpoenas. Given the short timeframe between this scheduling order and the formal hearing date, the Hearing Subcommittee directs that all

discovery shall be expedited, and thus any person responding to a subpoena must do so within seven (7) days of service. Any objection to a subpoena shall be made by motion and filed with the Hearing Subcommittee, and shall be decided following a preliminary hearing by either the Hearing Subcommittee or Hearing Officer sufficiently in advance of the formal hearing to allow the party seeking such information or testimony to obtain and consider use of it at the formal hearing.

Special Counsel objected to the inclusion of this language, and to the issuance of subpoenas generally, on grounds that the Interim Legislative Ethics Committee lacks the power to issue subpoenas.

On October 4, Respondent filed an emergency motion to authorize subpoena power to prevent exactly the tactics being used now - the evasion of discovery by attacking the legitimacy of the process. Respondent requested expedited consideration, but the Motion for Subpoena Power has not yet been scheduled to be heard.

In any event, on October 2, Ms. Bonar's personal counsel was copied on the "negotiation" of the Scheduling Order before she was served with written discovery, and Ms. Bonar never raised any objection at all until October 22, 2018. Ms. Bonar's counsel possessed the written "negotiations" on the same day he committed to have her appear for deposition. The protests about being excluded from negotiating the Scheduling Order are simply bad excuses for Ms. Bonar's failure to appear for her deposition and failure to timely respond to written discovery.

Legislative Council Service Invitation to Submit Specific Objections

The Discovery Order expressly requires that: “Any objection to written discovery that cannot be resolved by the parties must be made by motion and filed with the Legislative Council Service.” Discovery Order at ¶4(B). Rather than file a motion for protective order making specific objections to particular requests, or providing specific responses and objections, Ms. Bonar’s counsel instead wrote a letter on the eve of Ms. Bonar’s deposition making only a general objection. Ms. Bonar’s personal counsel copied the Legislative Council Service’s Senior Staff Attorney for the Subcommittee, Jon Boller.

In an attempt to help expedite and resolve the issue, Mr. Boller invited Ms. Bonar’s counsel by email to submit specific objections to particular discovery requests, and to submit proposed amendments to the scheduling order.

In the interests of getting a timely response from the Hearing Subcommittee concerning your objections to the validity of the interrogatories and requests for production your client received from Mr. Jackson, it would be helpful to know exactly what interrogatories and requests for production are being objected to. You are welcome to submit objections to the Subcommittee, along with your proposed amendments to the Scheduling Order regarding the scope of discovery. I would hope that the Co-Chairs of the Subcommittee may then give the parties a timely response so that depositions may proceed as scheduled.

10/20/18 Email from Boller to Monagle (Exhibit 7).

Respondent promptly objected to the suggestion that personal counsel for Ms. Bonar submit “proposed amendments to the Scheduling Order regarding the

scope of discovery,” because she’s not a party. Respondent also explained that there was no time to “fix” this problem.

While I genuinely appreciate your attempt to try to keep proceedings on track, Ms. Bonar’s deposition is scheduled to proceed this coming Monday morning (36 hours from now). In light of Ms. Bonar’s last minute refusal to appear for her deposition and complete refusal to respond to any written discovery, there is nothing that can be done to proceed with the deposition “as scheduled.”

See 10/20/18 Letter from Jackson to Boller (Exhibit 8).

Respondent also objected to the submission of a letter objecting to discovery, rather than a motion, as expressly required by the Scheduling Order.

[T]he Subcommittee should resist engaging in any decision-making based on letter-writing and email campaigns. At this point, Mr. Monagle has simply copied you on a letter to me generally objecting to providing any discovery. As you can see, Respondent has a number of substantive responses to Ms. Bonar’s decision to refuse to participate in discovery. In light of the seriousness of the claims made by Ms. Bonar and the consequences for Representative Trujillo, these questions should be decided by presentment of formal motion and hearing so that the opposing party has a fair opportunity to respond, and so that decisions are made with transparency and there is record for public review.

Exhibit 8 at 4 (“If Special Counsel or personal counsel for Ms. Bonar want to present questions to the Subcommittee that impact Representative Trujillo’s rights, I request that they be required to do so by formal motion . . .”).

Follow-Up Letter from Ms. Bonar

Despite Respondent’s objections, Ms. Bonar submitted a second letter on October 22, 2018 (Exhibit 9) (“Please find attached correspondence directed to Mr.

Boller, responding to his initial request for additional information relating to the substance of my discovery objections.”). This letter simply repeats the prior arguments and fails to provide any specific objection to any particular discovery request. The letter again refuses to produce any records beyond what Ms. Bonar has already voluntarily produced to assist her admitted effort to remove Respondent from office.

Without filing any Motion to support it, Ms. Bonar’s counsel requests an order *in limine* “tying the scope of relevance to the” Findings and Recommendations. That’s unnecessary because all of Respondents’ discovery requests are already limited to fact issues raised in the Findings and Recommendations. Ms. Bonar attempts to turn the rules upside down by arguing that “[R]espondent has given reason whatsoever for his discovery requests.” It is the party resisting discovery (Ms. Bonar) who is required to make specific objections to discovery. Under the Scheduling Order, Ms. Bonar was required to make specific objections in the first place, and having been offered a second chance to make specific objections by Mr. Boller, she again refused to do so.

Argument

Ms. Bonar’s eleventh hour Objection is far too late. The parties scheduled Mr. Bonar’s deposition three weeks earlier on October 2 – a date that both Special Counsel and Ms. Bonar’s personal attorney committed to have her appear. The

written discovery she generally objected to was served on both Special Counsel and Ms. Bonar's personal counsel on October 8. Ms. Bonar and her personal counsel had ample time to make this type of general objection well in advance so that the deposition could proceed as schedule. But Ms. Bonar purposely waited until the 2:35 pm on the Friday afternoon before her Monday morning deposition to raise any objection. It is outrageous that the person who made very serious allegations against Representative Trujillo is both refusing to testify under oath and refusing to produce relevant records.

A publicly elected official accused of misconduct should be fairly allowed to defend himself – especially where, as here, the allegations against him were not made under oath but rather through an internet posting. The Subcommittee selected December 3 and 4 for the Formal Hearing on this matter, and Representative Trujillo was given only two months to take discovery and prepare his defense. Because the Scheduling Order entered by the Subcommittee already provides only a short time and limited discovery tools, Representative Trujillo immediately began scheduling depositions and issuing written discovery requests in compliance with the Scheduling Order. Ms. Bonar's refusal to cooperate 40 days out cannot be cured and will have a ripple effect on all discovery sought by Respondent in this case.

Ms. Bonar is and has always been the primary witness in this case. Ms. Bonar's complete refusal to appear for her deposition and produce records, and her failure to object in a timely way, deeply prejudices Representative's Trujillo's ability to fairly defend himself against accusations made by her.

Furthermore, the discovery served on Ms. Bonar was narrowly tailored to claims made by her in this case. If Ms. Bonar had specific objections, it was incumbent on her to make timely and specific objections in formal responses to each specific discovery request. The Subcommittee has ordered that the requirements of Rule 1-033 and 1-034 apply to discovery requests in this proceeding, and only the Respondent has complied with those rules and limitations. Those rules require that the objecting party (Ms. Bonar) provide formal responses with specific objections to specific requests. *See, e.g.,* NMRA, Rule 1-033(C)(4) ("All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived . . .").

Ms. Bonar's discovery responses were due on Thursday, October 18, and she failed to timely respond at all. The letter sent by Ms. Bonar's lawyer the following day (October 19) fails to provide any response or make any specific objection, but rather vaguely complains about the entire process. Having already failed twice to provide any specific objections, Ms. Bonar should not now be invited to make more specific objections after-the-fact – whatever objections she

may have had have been waived. *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 241, 96 N.M. 155, 210, 629 P.2d 231, 286 (“The law is well established that the failure to timely file objections to interrogatories operates as a waiver of any objections the party might have.”).

Ms. Bonar has disqualified herself as a witness. The Scheduling Order approved by the Subcommittee, LCS, and Special Counsel expressly provides that:

1. “The failure of a witness to appear [for a deposition] or cooperate shall be grounds to preclude the witness from testifying at the formal hearing”; and
2. “Failure of a witness to timely respond or cooperate with written discovery shall be grounds to preclude the witness from testifying at the formal hearing.”

The Subcommittee should enforce its Order.

Respondent is not deflecting from the merits. Representative Trujillo adamantly denies that he sexually harassed Ms. Bonar. Respondent has been seeking to cross-examine Mr. Bonar about her claims against Representative Trujillo from the outset because they have never been tested under oath. She posted them on the internet. Ms. Bonar is interfering with Respondent’s ability to challenge her claims under oath.

Conclusion

This matter is the first time that the Legislature's anti-harassment policy is being applied. As such, the Subcommittee should be mindful that the procedures followed here will likely become a roadmap for future cases. If the Subcommittee allows Ms. Bonar to evade and ignore discovery here without consequence, it will set a precedent and encourage future parties to do the same. Ms. Bonar has openly refused to cooperate with discovery, and there should be consequences.

Respectfully submitted,

**JACKSON LOMAN STANFORD
& DOWNEY, P.C.**

/s/Travis G. Jackson
Travis Jackson
Eric Loman
Counsel for Representative Carl Trujillo
201 Third St. N.W., Ste. 1500
Albuquerque, NM 87102
(505) 767-0577
(505) 242-9944 (fax)
travis@jacksonlomanlaw.com
eric@jacksonlomanlaw.com

We hereby certify that a true and correct copy of the foregoing pleading was emailed this 25th day of October, 2018, to:

Thomas M. Hnasko
Hinkle Shanor LLP
PO Box 2068
Santa Fe, NM 87504
thnasko@hinklelawfirm.com

Hearing Subcommittee of the Interim
Legislative Ethics Committee
c/o Raul Burciaga, Director
Legislative Council Service
State Capitol Building, 4th Floor
Santa Fe, NM 87503
raul.burciaga@nmlegis.gov

Levi Monagle
Law Offices of Brad D. Hall, LLC
320 Gold Ave SW, Suite 1218
Albuquerque, NM 87102
levi@bhallfirm.com

JACKSON LOMAN STANFORD & DOWNEY, P.C.

By: /s/Travis G. Jackson
Travis G. Jackson

LAW OFFICES OF BRAD D. HALL, LLC

320 Gold Ave SW Suite 1218, Albuquerque, NM 87102

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BRAD D. HALL
brad@bhallfirm.com

LEVI A. MONAGLE
levi@bhallfirm.com

October 19, 2018

Travis G. Jackson
Jackson Loman Stanford & Downey PC
201 Third St. NW #1500
Albuquerque NM 87102-4382

Via Email Only

Re: Objections to Discovery Requests to Laura Bonar

Mr. Jackson,

I am writing to inform you that I object to the procedural validity of the interrogatories and requests for production that you sent to my client in this case.

The procedural validity of these interrogatories and requests for production relies entirely on the procedural validity of the Scheduling Order entered by the Subcommittee on September 26, 2018 – and the Scheduling Order appears to be the result of a negotiation between your office and the office of the Special Counsel, from which my client was entirely excluded. As Ms. Bonar's attorney, I was never included in any phase of this negotiation – or even alerted to the fact that a negotiation was ongoing – and only became aware of this negotiation recently, after it had long-since concluded.

Had I been included at any point in these negotiations regarding the substantive and procedural provisions of the Scheduling Order, I would have argued that the the scope of relevance in this case should be determined by reference to the Probable Cause Report, and I would have argued (in the unjustifiable and tremendously problematic absence of any rules of evidence) for significant preliminary limitations as to the scope of any contemplated discovery by either side. Unfortunately, I was not given the opportunity to make these arguments in the process of crafting the Scheduling Order, so I will likely be left to make these arguments to the co-chairs of the Subcommittee in the context of a ruling on these objections.

I also learned yesterday that your office has filed multiple procedural motions and motions to dismiss in this case. This was the first that I had heard of these motions. Your office never provided me with copies of these motions, or with the Special Counsel's responses to them, and I was therefore never given an opportunity to respond to any of these motions on my client's behalf. I only received copies of these motions this morning, after requesting them from the Legislative Counsel Service. This is completely improper. As an experienced and accomplished attorney, I am sure you know of the uniform expectation that copies of all motions are to be provided to all parties in interest, to allow them an opportunity to respond.

Until these procedural invalidities are addressed, my objections to your pending discovery requests will stand, and I will not be producing my client for a deposition. Once these procedural invalidities are addressed, I will be happy to revisit and attempt to negotiate a Scheduling Order with your office and the office of the Special Counsel. In the meantime, I would recommend that we bring these objections to the attention of the Subcommittee, so that they may be addressed in a timely manner.

In any event, the relevant documents and statements in this case have already been turned over to the Special Counsel's office, and can be obtained through that office. It nonetheless remains my duty to object to the manner in which this discovery process has been handled, and to request that these mistakes be remedied before we move forward.

If you would agree to re-open the Scheduling Order negotiations, so that all parties in interest may fairly participate in them, please let me know. If you intend to use these objections to discovery as an opportunity to file another motion to dismiss, please provide me with a copy this time, so that I may fairly respond.

Thank you.

Sincerely,



Levi A. Monagle

cc. Tom Hnasko
Raul Burciaga
Jon Boller

Travis G. Jackson

From: Travis G. Jackson
Sent: Tuesday, October 02, 2018 3:15 PM
To: 'Levi Monagle'; 'Tom Hnasko'
Cc: Eric Loman; Nancy Bourne
Subject: RE: draft scheduling order

Gentlemen,

Let's book Monday October 22 for Ms. Bonar's deposition. My office will send out a deposition notice shortly.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
Telephone (505) 767-0577
travis@jacksonlomanlaw.com

***Foster, Rieder & Jackson P.C. is now Jackson Loman Stanford & Downey, P.C.**

From: Travis G. Jackson
Sent: Tuesday, October 02, 2018 2:38 PM
To: 'Levi Monagle'
Cc: Tom Hnasko; Eric Loman; Nancy Bourne
Subject: RE: draft scheduling order

Mr. Monagle,

I expect that Mr. Trujillo will be present at most or all of the depositions, including Ms. Bonar's. I also expect that he (and all attendees) will behave respectfully. I have no reason to believe he wouldn't. But I will specifically ask that he not engage Ms. Bonar verbally or otherwise. We will take the deposition in the main conference room but also set up a separate conference room for you and Ms. Bonar so that she can take breaks as needed and have a private space.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
Telephone (505) 767-0577
travis@jacksonlomanlaw.com

***Foster, Rieder & Jackson P.C. is now Jackson Loman Stanford & Downey, P.C.**

From: Levi Monagle [<mailto:levi@bhallfirm.com>]
Sent: Tuesday, October 02, 2018 12:15 PM
To: Travis G. Jackson
Cc: Tom Hnasko; Eric Loman; Nancy Bourne
Subject: Re: draft scheduling order

Mr. Jackson,

I can't speak for Tom, obviously, but I don't have any problem with doing the deposition at your office. I would like to know whether Mr. Trujillo will be present at the deposition, though, so that I can inform my client.

Thanks,

Levi Monagle
Attorney at Law
Law Offices of Brad D. Hall, LLC
320 Gold Ave SW, Suite 1218
Albuquerque, NM 87102
(505) 255 6300

On Oct 2, 2018, at 11:25 AM, Travis G. Jackson <travis@jacksonlomanlaw.com> wrote:

Tom,

Thanks. Please hold both dates, and I will confirm one later today.

As for the location of the deposition, I expect to take her deposition at my office in Albuquerque, just as I would if this were a deposition taken in a court proceeding. I originally asked for dates to depose Ms. Bonar when we met in Santa Fe on September 7. I again asked for dates to depose her at my office on September 17 (email below). It has taken nearly a month to provide two dates, now with an unexplained condition that we depose her at her own attorney's office, which I don't agree to. Ms. Bonar is the key witness in this case. She has made serious accusations against my client, which have greatly damaged his reputation. We should be given every opportunity to fairly defend him. My understanding is that she resides in Albuquerque. All of the records and information that I may need to cross-examine Ms. Bonar are at my office in Albuquerque, and I see no good reason why she cannot be deposed here. I will issue the Notice of Deposition to be conducted in my office, just as I would normally do in any proceeding, unless you or her counsel promptly provide legitimate good cause to hold the deposition somewhere other than my office. If you have good cause, please tell me, and I'll consider it.

Where do we stand with respect to dates to depose Gene Grant? Also, in light of the dates now provided by Ms. Bonar, can you please ask for/provide some later dates to depose Lisa Jennings? As I indicated before, I'd like to first obtain testimony from Ms. Bonar to prevent her from later changing her story based on the testimony of others. I'm fine taking Ms. Jennings's deposition in early November if that is more convenient for her. I only need a half day.

Thank you.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
201 3rd St.
Suite 1500
P.O. Box 1607
Albuquerque, New Mexico 87103-1607
Telephone (505) 767-0577
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travis@jacksonlomanlaw.com
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On Oct 2, 2018, at 10:52 AM, Tom Hnasko <thnasko@hinklelawfirm.com> wrote:

Travis – Ms. Bonar is available for a deposition on Oct. 22 or 23 in Abq., at her counsel’s office. Please let me know if these dates work.

<image003.jpg> Thomas M. Hnasko
Partner
Hinkle Shanor LLP
P.O. Box 2068
Santa Fe, New Mexico 87504
505.982.4554 - office
505.930.5703 - direct
505.982.8623 - fax
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thnasko@hinklelawfirm.com

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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Tuesday, September 18, 2018 11:12 AM
To: Tom Hnasko <thnasko@hinklelawfirm.com>
Subject: RE: draft scheduling order

Tom,

Thanks for the call. Based on our discussion, attached please find a further revised scheduling order.

As for the hearing officer, because the Charging Party/Special Counsel does not agree to the appointment of an independent hearing officer, I’ve removed that language, but Respondent reserves his right to file an opposed motion to appoint one.

I’ve removed the language regarding subpoenas based on your representation that the subcommittee does not have authority to issue them, and included sanctions language as discussed.

I’ve bumped out all of the witness/exhibit disclosures by one week.

I’ve removed the previous paragraph 7 excluding testimony and evidence of claims dismissed, but Respondent reserves the right to file a motion in limine regarding the same.

I’ve identified the parties as “the Charging Party” and “Respondent” per Legislative Council Policy No. 16(J)(1).

I’ve added a signature line for Representative Armstrong (and added her name to the presiding officers).

Let me know if I've missed anything. Thanks.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
201 3rd St.
Suite 1500
P.O. Box 1607
Albuquerque, New Mexico 87103-1607
Telephone (505) 767-0577
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From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Tuesday, September 18, 2018 9:01 AM
To: Travis G. Jackson
Subject: RE: draft scheduling order

ok

<image002.jpg> Thomas M. Hnasko
Partner
Hinkle Shanor LLP
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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Tuesday, September 18, 2018 9:00 AM
To: Tom Hnasko <thnasko@hinklelawfirm.com>
Cc: Theresa Parrish <TParrish@rodey.com>; Eric Loman <eric@jacksonlomanlaw.com>
Subject: Re: draft scheduling order

That works.

On Sep 18, 2018, at 8:53 AM, Tom Hnasko <thnasko@hinklelawfirm.com> wrote:

Can I call you at 10:30 am? I have another call at 10:00 am.

<image002.jpg> Thomas M. Hnasko
Partner
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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Monday, September 17, 2018 6:52 PM
To: Tom Hnasko <thnasko@hinklelawfirm.com>
Cc: Theresa Parrish <TParrish@rodey.com>; Eric Loman <eric@jacksonlomanlaw.com>
Subject: RE: draft scheduling order

Tom,

I'm available at 10 am tomorrow. The proposed order you sent on September 7 does more than just set bare bones deadlines. It "establishes the following procedures for the hearing:" As the investigator/prosecutor, you have the advantage of already possessing the documentary evidence and having interviewed all of these witnesses. We do not possess the investigative file, and we'll have to conduct our discovery in a truncated time frame, which already puts my client at a disadvantage. We need to know the available procedures for discovery. When we discussed this on September 7, I understood we had agreed to essentially mimic the rules of civil procedure (depositions, RFPs). I'd like to issue discovery now so we can get going, but I still don't know the rules to this game.

As I already told you at our meeting, I will want to depose at least the following witnesses identified by you in Albuquerque at my office in mid to late October:

1. Laura Bonar
2. Gene Grant
3. Lisa Jennings
4. Jessica Johnson

My draft order proposes a procedure under which I would issue a Notice of Deposition to accomplish that. Do you see any problem with that?

I also want to request records and information from these witnesses in advance of their depositions so that the records are received with sufficient time for us to review and

analyze them before taking testimony. I have proposed using the same interrogatory/RFP procedures as Rules 33 and 34. Do you see any problem with that?

Please call in the am and we can talk through this. Thanks.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
Telephone (505) 767-0577
travis@jacksonlomanlaw.com

From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Monday, September 17, 2018 5:21 PM
To: Travis G. Jackson
Cc: Theresa Parrish; Eric Loman
Subject: Re: draft scheduling order

We need to talk. This is not what we envision. First, testimony is permissible on items for which no probable cause was found if it is preparatory or reasonably related to the charge. Second, we can't hire a hearing examiner. It is the legislature's constitutional function to preside over all aspects of the hearing. Third, no one has authority to issue a subpoena. We can discuss, but the main purpose is to set bare bones deadlines. You can bring a motion on everything else.

Sent from my iPhone

On Sep 17, 2018, at 5:00 PM, Travis G. Jackson <travis@jacksonlomanlaw.com> wrote:

Tom and Tad,

Attached are our proposed revisions. Hopefully these are not controversial. Here are the material changes:

First, we suggest that the subcommittee engage an independent Hearing Officer to address both any pre-hearing motions and any evidentiary issues at the Formal Hearing (act as the trial judge). I've not spoken with him, but my initial suggestion would be Judge Jim Hall (retired state court judge). Judge Hall acted as a hearing officer during a judicial standards commission hearing in which I represented a judge accused of misconduct. I think he is both very good and well-respected on all sides. I'm not sure about his availability, but will contact him asap if that's something we can agree to (there are probably other candidates, as well). I'm very concerned about any proceeding in which Tom is acting as both investigator, prosecutor, and advisor to the jury (the subcommittee), and advisor to the judge on penalties. That creates any number of actual and potential conflicts, which I will be obligated to raise on behalf of my client. I think appointing an independent hearing officer with judicial experience and experience adjudicating ethics complaints under very similar circumstances would greatly help to address/reduce that conflict. Please consider that proposal (outlined in paragraph 3). I've written this such that agreement on that point isn't needed in order to proceed with the scheduling order, but I know that if Tom continues to wear all of these hats, my client is going to want me

to file a formal motion objecting to it. This is my attempt to find a fair solution.

Second, I've added a pre-hearing motion deadline and hearing date. Having the hearing officer address any motions also probably relieves the committee from having to meet back to back in November and December.

Third, in terms of discovery, we have amplified the procedures for taking depositions/serving written discovery, essentially to follow the rules of civil procedure but with expedited deadlines. We've also added the ability to issue subpoenas to third parties, but leaving enforcement to the committee itself. Subpoenas are needed because, if a respondent is unable to require the attendance of witnesses and production of records from parties outside the proceeding, then there are no real teeth these discovery provisions (and no real discovery). The various rules that are said to apply to this proceeding are not consistent, but the House Committee rules expressly provide for the issuance of subpoenas in these types of hearings.

Fourth, we've bumped the witness and exhibit disclosures to allow Respondent to try to obtain some discovery before making those types of disclosures. We've also allowed for the supplementation of those disclosures as needed through later-obtained discovery.

Fifth, as I discussed with Tom, we've include language expressly excluding evidence and testimony regarding claims for which the committee determined there was no probable cause. It is essentially an order *in limine* that such evidence/testimony is irrelevant/prejudicial.

Sixth, as I also discussed with Tom, we've added a trial brief deadline shortly before the hearing to allow us to outline our position on the applicable law in advance of the hearing.

Please review, and let me know if these proposals are agreeable. I will be in the office most of tomorrow if you'd like to talk through these.

Travis G. Jackson
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From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Monday, September 17, 2018 1:35 PM
To: Travis G. Jackson; Eric Loman
Cc: Theresa Parrish
Subject: RE: draft scheduling order

Travis – the subcommittee would like to enter the scheduling order. Can you send me your changes today? Thanks.

<image002.jpg> Thomas M. Hnasko
Partner
Hinkle Shanor LLP
P.O. Box 2068
Santa Fe, New Mexico 87504
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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Friday, September 07, 2018 1:37 PM
To: Tom Hnasko <thnasko@hinklelawfirm.com>; Eric Loman <eric@jacksonlomanlaw.com>
Subject: RE: draft scheduling order

Thanks, Tom. Nice to meet you. We'll discuss with our client and be in touch shortly.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
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P.O. Box 1607
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***Foster, Rieder & Jackson P.C. is now Jackson Loman Stanford & Downey, P.C.**

From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Friday, September 07, 2018 11:20 AM
To: Travis G. Jackson; Eric Loman
Subject: draft scheduling order

Thanks for coming up this morning. Scheduling order attached. Tom.

<image003.jpg> Thomas M. Hnasko
Partner
Hinkle Shanor LLP
P.O. Box 2068
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<2018-09-17 Scheduling Order (tgj revisiions).docx>

Travis G. Jackson

From: Nancy Bourne
Sent: Tuesday, October 02, 2018 4:19 PM
To: thnasko@hinklelawfirm.com; levi@bhallfirm.com
Cc: Travis G. Jackson; Eric Loman
Subject: In re: Representative Carl Trujillo
Attachments: Notice of Depo - Laura Bonar.pdf

Dear Counsel,

Please find attached Notice of Deposition of Ms. Laura Bonar. Please let us know if you have any questions.

Nancy Bourne
Legal Assistant to Travis G. Jackson and
Eric Loman
Jackson Loman Stanford & Downey, P.C.
201 Third Street NW, Suite 1500
Albuquerque, NM 87102
(505) 767-0577

BEFORE THE HEARING SUBCOMMITTEE
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE

In re: Representative Carl Trujillo,

Respondent.

NOTICE OF DEPOSITION

Please take notice that the Respondent's Attorneys will take the deposition of Laura Bonar on October 22, 2018, beginning at 9:30 a.m. and continuing until finished, at the offices of Jackson Loman Stanford & Downey, PC, 201 Third Street NW, Suite 1500, Albuquerque, New Mexico, before a notary public and certified court reporter. You are invited to attend.

JACKSON LOMAN STANFORD & DOWNEY, P.C.

By: /s/Travis G. Jackson
Travis G. Jackson
Meghan D. Stanford
Attorneys for Respondent
201 Third Street NW, Suite 1500
Albuquerque, New Mexico 87102
Telephone: (505) 767-0577
travis@jacksonlomanlaw.com

We hereby certify that a true and correct copy of the foregoing pleading was emailed this 2nd day of October, 2018, to:

Thomas M. Hnasko
Hinkle Shanor LLP
PO Box 2068
Santa Fe, NM 87504
thnasko@hinklelawfirm.com

Levi Monagle
Law Offices of Brad D. Hall, LLC
320 Gold Ave S, W, Suite 1218
Albuquerque, NM 87102
levi@bhallfirm.com

JACKSON LOMAN STANFORD & DOWNEY, P.C.

By: /s/Travis G. Jackson
Travis G. Jackson

Travis G. Jackson

From: Travis G. Jackson
Sent: Monday, October 08, 2018 5:18 PM
To: Levi Monagle; Tom Hnasko
Cc: Eric Loman; Nancy Bourne
Subject: In re Representative Trujillo: Respondent's 1st of ROGs and RFPs to Laura Bonar
Attachments: Respondent's 1st ROGs and RFPs to Laura Bonar (served 2018.10.18).pdf

Counsel,

Attached please find Respondent's First Set of Interrogatories and Requests for Production to Laura Bonar. My office will file a certificate of service of the same with the Legislative Council Service later this week.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
201 3rd St.
Suite 1500
P.O. Box 1607
Albuquerque, New Mexico 87103-1607
Telephone (505) 767-0577
Facsimile (505) 242-9944
travis@jacksonlomanlaw.com
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***Foster, Rieder & Jackson P.C. is now Jackson Loman Stanford & Downey, P.C.**

**BEFORE THE HEARING SUBCOMMITTEE
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE**

In re: Representative Carl Trujillo,

Respondent.

**RESPONDENT'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO LAURA BONAR**

TO: Laura Bonar
c/o Levi Monagle
Attorney at Law
Law Offices of Brad D. Hall, LLC
320 Gold Ave SW, Suite 1218
Albuquerque, NM 87102
levi@bhallfirm.com

Thomas M. Hnasko
Hinkle Shanor LLP
P.O. Box 2068
Santa Fe, New Mexico 87504
thnasko@hinklelawfirm.com

Pursuant to Paragraph 4(b) of the Scheduling Order entered in the above captioned matter, please answer the below interrogatories and respond to the below requests for production within ten (10) days, or by October 18, 2018. In accordance with Rule 1-033(C), please provide a signed verification of your answers to these interrogatories under oath (attached as Exhibit 3). Please provide records and information in their native electronic format, if possible. If you have any question as to the meaning of word or phrase, please contact counsel for Respondent (Travis G. Jackson), whose contact information is provided below.

INTERROGATORY NO. 1: Please provide the name, title, address, and telephone number of each individual who provided information in answering these interrogatories.

ANSWER:

INTERROGATORY NO. 2: Please identify all persons whom you believe may have knowledge or information, or claim to have knowledge or information relevant to the allegations of sexual harassment made by you against Representative Carl Trujillo, and for each such person, please state their name, residential address, business address, telephone number(s), email address, occupation and current job title and place of employment, as well as a summary of their knowledge or information.

ANSWER:

INTERROGATORY NO. 3: Please identify each and every person from whom you, or someone on your behalf, has obtained a written statement relevant to the allegations of sexual harassment made by you against Representative Carl Trujillo.

ANSWER:

REQUEST FOR PRODUCTION NO. 1: Please produce any written statement obtained by you, or that is otherwise in your possession, custody, or control, that concerns, refers, or relates to the allegations of sexual harassment made by you against Representative Carl Trujillo.

RESPONSE:

INTERROGATORY NO. 4: Please identify each and every audio or video recording, transcription, or other memorandum or documentation in your possession that concerns, refers or relates to the allegations of sexual harassment made by you against Representative Carl Trujillo.

ANSWER:

REQUEST FOR PRODUCTION NO. 2: Please produce each and every audio or video recording, transcription, memorandum, or other documentation in your possession, custody, or control that concerns, refers or relates to the allegations of sexual harassment made by you against Representative Carl Trujillo.

RESPONSE:

INTERROGATORY NO. 5: For the period of January 1, 2013 through the date of your answer to this interrogatory, please identify each and every person with whom you, or someone on your behalf, has communicated regarding the allegations of sexual harassment made by you against Representative Carl Trujillo, and for each such person, please describe the approximate date of the communication, the method and substance of the communication, and any action taken by you as a result of the communication.

ANSWER:

REQUEST FOR PRODUCTION NO. 3: For the period of January 1, 2018 up to the date of your response to this request for production, please produce all communications

(including email and text messages) between you or and anyone on your behalf (including your attorney) and the following individuals:

- a. Representative Brian Egolf, or anyone acting on his behalf;
- b. Special Counsel Tom Hnasko;
- c. Special Counsel Theresa Parish;
- d. Raul Burciaga, Director of the Legislative Council Service, or anyone acting on his behalf;
- e. Julianna Koob;
- f. Andrea Romero, or anyone acting on her behalf.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: For the period of January 1, 2013 up to the date of your response to this request for production, please produce all communications (including email and text messages) between you and Gene Grant. This includes, but is not limited to, any email sent by Mr. Grant to you on May 8, 2018.

INTERROGATORY NO. 6: Please identify each and every email address that you have had and/or used for the period January 1, 2013 through the date of your answer to this interrogatory.

ANSWER:

REQUEST FOR PRODUCTION NO. 5: Please produce all communications (including email and text messages) in your possession, custody or control that concern, refer, or relate to:

- a. Representative Carl Trujillo;
- b. The allegations of sexual harassment made by you against Representative Carl Trujillo; or
- c. Andrea Romero.

RESPONSE:

INTERROGATORY NO. 7: Please identify each social media site, including but not limited to Facebook, Linked In, Twitter, Instagram, Pinterest, Reddit, YouTube, Google+ on which:

- a. You have a presence, profile, page, listing, or account.
- b. You have ever posted or communicated (on your page or on the page of any other individual or entity) any statement, status update, wall writing, tweet, or other information that in any way related or refers to:
 - i. Representative Carl Trujillo;
 - ii. The allegations of sexual harassment made by you against Representative Carl Trujillo; or
 - iii. your physical and/or emotional state from January 2013 to the present.
- c. For each site identified, provide
 - i. the date of the post
 - ii. a summary of the content of the post

ANSWER:

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of all social media posts responsive to Interrogatory No. 7

RESPONSE:

INTERROGATORY NO. 8: Please describe whether you kept a journal, wrote in a diary, used a calendar, or utilized any other form of daily, monthly, or yearly record of events in 2013, 2014, and/or 2018.

ANSWER:

REQUEST FOR PRODUCTION NO. 7: Please produce a copy of any journal, diary, calendar, or other form of daily, monthly, or yearly record of events in 2013, 2014, and/or 2018.

RESPONSE:

INTERROGATORY NO. 9: Please describe your employment history from the earlier of your first full-time position or your graduation from high school/high school equivalent up to the present, including any periods of self-employment or unemployment, identifying for each: the employer's name, address and telephone number; the dates of employment or unemployment; your position title and a full recounting of the types of duties you performed; the name of your supervisor or manager; and the reason for the termination of your employment.

ANSWER:

REQUEST FOR PRODUCTION NO. 8: For each employer identified above in Interrogatory No. 11 within the of January 1, 2013 through the date of your response to this request for production, please fill and sign a copy of the attached Employment Records Release (attached as Exhibit 2).

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of your current resume or curriculum vitae.

RESPONSE:

INTERROGATORY NO. 10: Please identify every legal and administrative proceeding, lawsuit, arbitration and mediation in which you have been involved with in any capacity from 2008 to the present time and list the court and cause number of each such proceeding.

ANSWER:

INTERROGATORY NO. 11: Identify, by name(s), address(es) and telephone number(s), each psychiatrists, psychologist, counselor, social worker, or other mental health practitioner from whom you have sought treatment, assistance or consultation from January 1, 2013 to the present. In so doing, please set forth the nature of services provided to you by each such person, the nature of the reason or malady for the treatment and the dates of such service.

ANSWER:

REQUEST FOR PRODUCTION NO. 10: For each psychiatrist, psychologist, counselor, social worker, or other mental health practitioner identified above in Interrogatory No. 11, please fill and sign a copy the attached Mental Health Records Release (attached as **Exhibit 1**). *Respondent agrees that all mental health records obtained shall be kept confidential, and shall not be publicly disclosed to anyone other than Respondent and Respondent's Counsel, except that Respondent may seek to admit such records at the Formal Hearing in this matter if Respondent determines they are relevant to allegations made by you against Representative Trujillo. If Respondent intends to use your mental health records at the Formal Hearing, Respondents' counsel will alert Special Counsel and your counsel in advance, and request that such portion of the Formal Hearing be closed to protect your confidential mental health records from public disclosure.*

RESPONSE:

INTERROGATORY NO. 12: If you have ever been arrested, charged with, or convicted of any crime, please identify: the date of the arrest, charge, or conviction; the nature and circumstances of the arrest, charge, or conviction; and the jurisdiction of the arrest, charge, or conviction.

ANSWER:

INTERROGATORY NO. 13: Please identify each and every cellular phone number that you have had and/or used for the period January 1, 2013 through the date of your answer to this interrogatory.

ANSWER:

REQUEST FOR PRODUCTION NO. 11: For the period of January 1, 2013 through the present, please produce each monthly billing statement for each cellular phone used by you, and/or any other similar such document from your cell phone provider which identifies all phone numbers with whom you communicated (by phone or text) during the billing period.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Please produce the original electronic file, including all metadata, of your memo to Danial Abrams and Lisa Jennings dated March 19, 2018.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: To the extent not already produced, please produce all communications between you and any other person that concern, refer or relate to the allegations of sexual harassment made by you against Representative Carl Trujillo, except you need no produce communications between you and your attorney Levi Monagle.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: To the extent not already produced, please produce the originals of any handwritten notes, diaries, calendars, Daytimers, or similar documents or records, whether recorded on paper, computer files, or other media, reflecting your activities in 2013, 2014, and 2018, or that you could use to refresh your recollection of any dates, events, or facts related the allegations of sexual harassment made by you against Representative Carl Trujillo.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: To the extent not already requested, any and all documents relating to the allegations of sexual harassment made by you against Representative Carl Trujillo.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: For any document that is responsive to Respondent's First Requests for the Production of Documents, but is being withheld under some claim of privilege, state the name, address, and telephone number of the individual or entity having custody or control of the document, the participants in the communications, set forth a general description of the document, and specify the factual basis on which you claim the document is privileged.

RESPONSE:

HIPAA
AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION
MENTAL HEALTH RECORDS

Patient name: Laura Bonar **D.O.B.:** ___/___/___ **S.S.N.:** _____

Dates of Treatment: beginning 1/1/2013 **through** present
[relevant time period must be inserted]

AUTHORIZATION:

I, Laura Bonar, authorize the disclosure of my protected health information as described herein.

1. I authorize the following person(s) and/or organization(s) to disclose the protected health information described in paragraph 3.

[individual medical provider name must be inserted]

2. I authorize the following person(s) and/or organization(s) to receive the protected health information described in paragraph 3.

Jackson Loman Stanford & Downey, P.C.
c/o Travis G. Jackson
201 Third St. NW
Suite 1500
Albuquerque, NM 87102
(505) 767-0577
travis@jacksonlomanlaw.com

[individual firm or lawyer must be inserted]

3. The records authorized to be released include:

complete copy of medical records

test results

other

4. I expressly waive any laws, regulations and rules of ethics which might prevent any health care provider who has examined or treated me from disclosing my records pursuant to this Authorization.
5. The purpose of this Authorization relates to a legal action now pending before
The Hearing Subcommittee of the Interim Legislative Ethics Committee.
6. I understand that I may revoke this Authorization at any time by sending a letter to the person or organization listed in paragraph one (1), except to the extent that such person(s) and/or organization(s) may have already taken action in reliance on this Authorization. If I do not sign, or if I later revoke, this Authorization, the services provided to me by such person or organization will not be affected in any way.
7. This Authorization expires one year from its date of execution.
8. THIS AUTHORIZATION DOES NOT PERMIT THE PERSON OR ORGANIZATION LISTED IN PARAGRAPH TWO (2) TO OBTAIN OR REQUEST FROM THE MEDICAL PROVIDER IDENTIFIED IN PARAGRAPH ONE (1) ORAL STATEMENTS, OPINIONS, INTERVIEWS OR REPORTS THAT ARE NOT ALREADY IN EXISTENCE.
9. Copying costs will be borne by the person or organization named in paragraph two (2).
10. A photocopy or facsimile of this Authorization is as valid as an original.
11. I understand that I have a right to examine the information to be disclosed, unless deemed that such disclosure is not in my best interest.
12. I understand that a potential exists for information that is disclosed pursuant to this Authorization to be subject to re-disclosure by the recipient and therefore be no longer protected by federal confidentiality rules.

SIGNATURE OF PATIENT OR
AUTHORIZED REPRESENTATIVE:

CAPACITY OF REPRESENTATIVE,
IF APPLICABLE:

DATE OF SIGNATURE:

AUTHORIZATION TO RELEASE EMPLOYMENT INFORMATION

Employer Name:

Employer Address:

Employee Name: Laura Bonar

Date of Birth:

S.S. #:

I, the undersigned hereby authorize the above named facility, its directors or agents, to disclose information and records of the person identified above, which includes information that may be stored in a paper and/or electronic format. I authorize my information to be released to:

Jackson Loman Stanford & Downey, P.C.
201 3rd St. NW, Suite 1500
Albuquerque, NM 87102
(505) 767-0577
travis@jacksonlomanlaw.com

For the purpose of legal discovery, reproduction and distribution in the course of litigation. This authorization shall permit the listed recipient to examine, photocopy, and/or receive any records or information pertaining to the above named individual.

Specific records to be disclosed are those records in your possession pertaining to the above mentioned person, this includes, but is not limited to, payroll or other earning records, records regarding rates of pay, W-2 tax forms, attendance sheets, employment resumes and applications, personnel file, physical examination testing data and reports, drug testing, medical files, compensation records, workers compensation records, accident reports, insurance records, all correspondence, and any other information in your possession pertaining to the employment of the above named.

I understand that the information used or disclosed pursuant to this authorization may be disclosed and reproduced by the recipient through the course of the pending litigation and may no longer be protected by the Federal Privacy Rules or other such applicable laws.

The forgoing authorization shall continue in force for 120 days from date of signature, or until revoked by me in writing. I understand that I may revoke this consent at any time, in writing to the facility and recipient identified above, except to the extent that action has already been taken to comply with it.

This authorization is voluntary. I understand that the facility will not base treatment, payment, enrollment, or eligibility for benefits on my signing this document.

A copy of this authorization shall be as valid as the original.

Date: _____

Signature: _____

Personal Representative/Parent/Legal Guardian: _____

Subscribed and sworn to before me this ____ day of _____, 20____

Notary Public: _____

VERIFICATION

I, Laura Bonar, being first duly sworn, state that I have read the foregoing Answers to Interrogatories and that I know the content thereof, and that the statements contained therein are true to the best of her knowledge and belief.

Laura Bonar

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

SUBSCRIBED AND SWORN to before me this _____ day of October, 2018, by
_____.

(Seal)

Notary Public

My commission expires:_____

Travis G. Jackson

From: Travis G. Jackson
Sent: Thursday, October 18, 2018 3:28 PM
To: 'Levi Monagle'
Cc: Tom Hnasko; Eric Loman; Nancy Bourne
Subject: RE: In re Representative Trujillo: Respondent's 1st of ROGs and RFPs to Laura Bonar

I think that's fine, but we would like to have these materials in hand so that they can be reviewed over the weekend/in advance of Ms. Bonar's deposition on Monday. Can you produce them electronically tomorrow so that we are able to accomplish that? Thanks.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
Telephone (505) 767-0577
travis@jacksonlomanlaw.com

***Foster, Rieder & Jackson P.C. is now Jackson Loman Stanford & Downey, P.C.**

From: Levi Monagle [<mailto:levi@bhallfirm.com>]
Sent: Thursday, October 18, 2018 3:18 PM
To: Travis G. Jackson
Cc: Tom Hnasko; Eric Loman; Nancy Bourne
Subject: Re: In re Representative Trujillo: Respondent's 1st of ROGs and RFPs to Laura Bonar

Mr. Jackson,

Would you be amenable to granting an extension until tomorrow afternoon?

Thanks,

Levi Monagle
Attorney at Law
Law Offices of Brad D. Hall, LLC
320 Gold Ave SW, Suite 1218
Albuquerque, NM 87102
(505) 255 6300

On Oct 8, 2018, at 5:18 PM, Travis G. Jackson <travis@jacksonlomanlaw.com> wrote:

Counsel,

Attached please find Respondent's First Set of Interrogatories and Requests for Production to Laura Bonar. My office will file a certificate of service of the same with the Legislative Council Service later this week.

Travis G. Jackson
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<Respondent's 1st ROGs and RFPs to Laura Bonar (served 2018.10.18).pdf>

Travis G. Jackson

From: Tom Hnasko <thnasko@hinklelawfirm.com>
Sent: Tuesday, October 02, 2018 10:52 AM
To: Travis G. Jackson
Cc: Levi Monagle
Subject: RE: draft scheduling order

Travis – Ms. Bonar is available for a deposition on Oct. 22 or 23 in Abq., at her counsel’s office. Please let me know if these dates work.



Thomas M. Hnasko
 Partner
 Hinkle Shanor LLP
 P.O. Box 2068
 Santa Fe, New Mexico 87504
 505.982.4554 - office
 505.930.5703 - direct
 505.982.8623 - fax
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thnasko@hinklelawfirm.com

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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Tuesday, September 18, 2018 11:12 AM
To: Tom Hnasko <thnasko@hinklelawfirm.com>
Subject: RE: draft scheduling order

Tom,

Thanks for the call. Based on our discussion, attached please find a further revised scheduling order.

As for the hearing officer, because the Charging Party/Special Counsel does not agree to the appointment of an independent hearing officer, I’ve removed that language, but Respondent reserves his right to file an opposed motion to appoint one.

I’ve removed the language regarding subpoenas based on your representation that the subcommittee does not have authority to issue them, and included sanctions language as discussed.

I’ve bumped out all of the witness/exhibit disclosures by one week.

I’ve removed the previous paragraph 7 excluding testimony and evidence of claims dismissed, but Respondent reserves the right to file a motion in limine regarding the same.

I’ve identified the parties as “the Charging Party” and “Respondent” per Legislative Council Policy No. 16(J)(1).

I've added a signature line for Representative Armstrong (and added her name to the presiding officers).

Let me know if I've missed anything. Thanks.

Travis G. Jackson
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www.jacksonlomanlaw.com

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From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Tuesday, September 18, 2018 9:01 AM
To: Travis G. Jackson
Subject: RE: draft scheduling order

ok



Thomas M. Hnasko
Partner
Hinkle Shanor LLP
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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Tuesday, September 18, 2018 9:00 AM
To: Tom Hnasko <thnasko@hinklelawfirm.com>
Cc: Theresa Parrish <TParrish@rodey.com>; Eric Loman <eric@jacksonlomanlaw.com>
Subject: Re: draft scheduling order

That works.

On Sep 18, 2018, at 8:53 AM, Tom Hnasko <thnasko@hinklelawfirm.com> wrote:

Can I call you at 10:30 am? I have another call at 10:00 am.

<image002.jpg> Thomas M. Hnasko
Partner
Hinkle Shanor LLP
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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Monday, September 17, 2018 6:52 PM
To: Tom Hnasko <thnasko@hinklelawfirm.com>
Cc: Theresa Parrish <TParrish@rodey.com>; Eric Loman <eric@jacksonlomanlaw.com>
Subject: RE: draft scheduling order

Tom,

I'm available at 10 am tomorrow. The proposed order you sent on September 7 does more than just set bare bones deadlines. It "establishes the following procedures for the hearing:" As the investigator/prosecutor, you have the advantage of already possessing the documentary evidence and having interviewed all of these witnesses. We do not possess the investigative file, and we'll have to conduct our discovery in a truncated time frame, which already puts my client at a disadvantage. We need to know the available procedures for discovery. When we discussed this on September 7, I understood we had agreed to essentially mimic the rules of civil procedure (depositions, RFPs). I'd like to issue discovery now so we can get going, but I still don't know the rules to this game.

As I already told you at our meeting, I will want to depose at least the following witnesses identified by you in Albuquerque at my office in mid to late October:

1. Laura Bonar
2. Gene Grant
3. Lisa Jennings
4. Jessica Johnson

My draft order proposes a procedure under which I would issue a Notice of Deposition to accomplish that. Do you see any problem with that?

I also want to request records and information from these witnesses in advance of their depositions so that the records are received with sufficient time for us to review and analyze them before taking testimony. I have proposed using the same interrogatory/RFP procedures as Rules 33 and 34. Do you see any problem with that?

Please call in the am and we can talk through this. Thanks.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
Telephone (505) 767-0577
travis@jacksonlomanlaw.com

From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Monday, September 17, 2018 5:21 PM
To: Travis G. Jackson
Cc: Theresa Parrish; Eric Loman
Subject: Re: draft scheduling order

We need to talk. This is not what we envision. First, testimony is permissible on items for which no probable cause was found if it is preparatory or reasonably related to the charge. Second, we can't hire a hearing examiner. It is the legislature's constitutional function to preside over all aspects of the hearing. Third, no one has authority to issue a subpoena. We can discuss, but the main purpose is to set bare bones deadlines. You can bring a motion on everything else.

Sent from my iPhone

On Sep 17, 2018, at 5:00 PM, Travis G. Jackson <travis@jacksonlomanlaw.com> wrote:

Tom and Tad,

Attached are our proposed revisions. Hopefully these are not controversial. Here are the material changes:

First, we suggest that the subcommittee engage an independent Hearing Officer to address both any pre-hearing motions and any evidentiary issues at the Formal Hearing (act as the trial judge). I've not spoken with him, but my initial suggestion would be Judge Jim Hall (retired state court judge). Judge Hall acted as a hearing officer during a judicial standards commission hearing in which I represented a judge accused of misconduct. I think he is both very good and well-respected on all sides. I'm not sure about his availability, but will contact him asap if that's something we can agree to (there are probably other candidates, as well). I'm very concerned about any proceeding in which Tom is acting as both investigator, prosecutor, and advisor to the jury (the subcommittee), and advisor to the judge on penalties. That creates any number of actual and potential conflicts, which I will be obligated to raise on behalf of my client. I think appointing an independent hearing officer with judicial experience and experience adjudicating ethics complaints under very similar circumstances would greatly help to address/reduce that conflict. Please consider that proposal (outlined in paragraph 3). I've written this such that agreement on that point isn't needed in order to proceed with the scheduling order, but I know that if Tom continues to wear all of these hats, my client is going to want me to file a formal motion objecting to it. This is my attempt to find a fair solution.

Second, I've added a pre-hearing motion deadline and hearing date. Having the hearing officer address any motions also probably relieves the committee from having to meet back to back in November and December.

Third, in terms of discovery, we have amplified the procedures for taking depositions/serving written discovery, essentially to follow the rules of civil procedure but with expedited deadlines. We've also added the ability to issue subpoenas to third parties, but leaving enforcement to the committee itself. Subpoenas are needed because, if a respondent is unable to require the attendance of witnesses and production of records from parties outside the proceeding, then there are no real teeth these discovery provisions (and no real discovery). The various rules that are said to apply to this proceeding are not consistent, but the House Committee rules expressly provide for the issuance of subpoenas in these types of hearings.

Fourth, we've bumped the witness and exhibit disclosures to allow Respondent to try to obtain some discovery before making those types of disclosures. We've also allowed for the supplementation of those disclosures as needed through later-obtained discovery.

Fifth, as I discussed with Tom, we've include language expressly excluding evidence and testimony regarding claims for which the committee determined there was no probable cause. It is essentially an order *in limine* that such evidence/testimony is irrelevant/prejudicial.

Sixth, as I also discussed with Tom, we've added a trial brief deadline shortly before the hearing to allow us to outline our position on the applicable law in advance of the hearing.

Please review, and let me know if these proposals are agreeable. I will be in the office most of tomorrow if you'd like to talk through these.

Travis G. Jackson
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From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Monday, September 17, 2018 1:35 PM
To: Travis G. Jackson; Eric Loman
Cc: Theresa Parrish
Subject: RE: draft scheduling order

Travis – the subcommittee would like to enter the scheduling order. Can you send me your changes today? Thanks.

<image002.jpg> Thomas M. Hnasko

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From: Travis G. Jackson <travis@jacksonlomanlaw.com>
Sent: Friday, September 07, 2018 1:37 PM
To: Tom Hnasko <thnasko@hinklelawfirm.com>; Eric Loman <eric@jacksonlomanlaw.com>
Subject: RE: draft scheduling order

Thanks, Tom. Nice to meet you. We'll discuss with our client and be in touch shortly.

Travis G. Jackson
Jackson Loman Stanford Downey, P.C.
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Suite 1500
P.O. Box 1607
Albuquerque, New Mexico 87103-1607
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***Foster, Rieder & Jackson P.C. is now Jackson Loman Stanford & Downey, P.C.**

From: Tom Hnasko [<mailto:thnasko@hinklelawfirm.com>]
Sent: Friday, September 07, 2018 11:20 AM
To: Travis G. Jackson; Eric Loman
Subject: draft scheduling order

Thanks for coming up this morning. Scheduling order attached. Tom.

<image003.jpg> Thomas M. Hnasko
Partner
Hinkle Shanor LLP

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<2018-09-17 Scheduling Order (tgj revisiions).docx>

Travis G. Jackson

From: Boller, Jon <Jon.Boller@nmlegis.gov>
Sent: Saturday, October 20, 2018 12:28 PM
To: 'levi@bhallfirm.com'
Cc: Burciaga, Raul; Travis G. Jackson; 'Tom Hnasko'
Subject: Correspondence Regarding Objections to Discovery Requests



Mr. Monagle:

In the interests of getting a timely response from the Hearing Subcommittee concerning your objections to the validity of the interrogatories and requests for production your client received from Mr. Jackson, it would be helpful to know exactly what interrogatories and requests for production are being objected to. You are welcome to submit objections to the Subcommittee, along with your proposed amendments to the Scheduling Order regarding the scope of discovery. I would hope that the Co-Chairs of the Subcommittee may then give the parties a timely response so that depositions may proceed as scheduled.

In the alternative, if Respondent's attorney and Special Counsel agree to your suggested amendments to the Scheduling Order, that would likely be approved by the Co-Chairs in short order.

Please let me know how you would like to proceed, and don't hesitate to give me a call if you have any questions.

Sincerely

Jon Boller
Senior Staff Attorney
Legislative Council Service
Room 411, State Capitol
Santa Fe, NM 87501
Phone: (505) 986-4618
Email: jon.boller@nmlegis.gov





Travis G. Jackson

travis@jacksonlomanlaw.com

Electronic Mail
October 20, 2018

Jon Boller
Senior Staff Attorney
Legislative Council Service
Room 411, State Capitol
Santa Fe, NM 87501
Phone: (505) 986-4618
Email: jon.boller@nmlegis.gov

In re Representative Trujillo

Dear Mr. Boller,

Respondent respectfully objects to your email earlier today inviting personal counsel for Laura Bonar to suggest “proposed amendments to the Scheduling Order regarding the scope of discovery.” Ms. Bonar is not a party. Under the rules that apply to this proceeding against Representative Trujillo, there are only two parties: the Charging Party and the Respondent. Pursuant to Legislative Council Policy No. 16(J)(1), the Special Counsel has already been “appointed to be the charging party and [to] present the case against the legislator being charged.” It is unfair and contrary to the rules to force Representative Trujillo to defend himself on multiple fronts against multiple lawyers.

Special Counsel is now the advocate for Ms. Bonar against Representative Trujillo at the Formal Hearing. Ms. Bonar is simply a witness. If Special Counsel felt that Ms. Bonar’s personal counsel was entitled to provide input into the Scheduling Order, he could have asked for it before the Order was entered. Special Counsel primarily drafted the Scheduling Order, agreed to its final form without reservation, and controlled the submission of it for approval by the Legislative Council Service (LCS), the Subcommittee and anyone else whose approval was required. Ms. Bonar – whose interests are now represented by Special Counsel – has no standing to separately challenge the established rules agreed to by Special Counsel a month after-the-fact. Moreover, it would be fundamentally unfair to change the rules in a way that further limits Representative Trujillo’s ability to

defend himself with only forty-four (44) days remaining before the Formal Hearing.

It is important to highlight that the Scheduling Order was entered over objections from the Respondent. For example, Respondent sought to appoint an Independent Hearing Officer to handle discovery disputes just like this on an expedited basis, and Special Counsel opposed it. Had an independent hearing officer been appointed, she could have promptly resolved this issue. Respondent also requested that the Scheduling Order allow Respondent to exercise subpoena power to prevent exactly what is happening right now – a witness refusing to appear for their deposition and refusing to produce relevant records. Special Counsel opposed Respondent’s exercise of subpoena power. Respondent was thus required to file opposed emergency motions seeking appointment of an independent hearing officer and subpoena power – motions that have not yet even been scheduled for hearing, despite my written requests to expedite them.

While I genuinely appreciate your attempt to try to keep proceedings on track, Ms. Bonar’s deposition is scheduled to proceed this coming Monday morning (36 hours from now). In light of Ms. Bonar’s last minute refusal to appear for her deposition and complete refusal to respond to any written discovery, there is nothing that can be done to proceed with the deposition “as scheduled.”

Ms. Bonar’s eleventh hour objections are far too late. We scheduled Mr. Bonar’s deposition three weeks ago on October 2 – a date provided by both Mr. Hnasko and Mr. Monagle. The written discovery she now objects to was served on both Special Counsel and Mr. Monagle on October 8 (two weeks ago). Ms. Bonar and her personal counsel had ample time to make this type of general objection, but her personal attorney purposely waited until the 2:35 pm on the Friday afternoon before her Monday morning deposition to raise any objection. It is outrageous that the person who made very serious allegations against Representative Trujillo is both refusing to testify under oath and refusing to produce relevant records.

There is no time to “fix” this problem. A publicly elected official accused of misconduct should be fairly allowed to defend himself – especially where, as here, the allegations against him were not made under oath but rather through an internet posting. The Subcommittee selected December 3 and 4 for the Formal Hearing on this matter, and Representative Trujillo was given only two months to take discovery and prepare his defense. Because the Scheduling Order entered by the

Subcommittee already provides only a short time and limited discovery tools, Representative Trujillo immediately began scheduling depositions and issuing written discovery requests in compliance with the Scheduling Order. Ms. Bonar's refusal to cooperate 44 days out cannot be cured and will have a ripple effect on all discovery sought by Respondent in this case.

Ms. Bonar is and has always been the primary witness in this case. I asked to depose Ms. Bonar first so that she would not have the opportunity to change her story after she heard the testimony of others. Ms. Bonar's complete refusal to appear for her deposition and produce records, and her failure to object in a timely way, deeply prejudices Representative's Trujillo's ability to fairly defend himself against accusations made by her.

Furthermore, the discovery served on Ms. Bonar was narrowly tailored to claims made by her in this case. If Ms. Bonar had the type of specific objections your email now invites her to make directly to the Subcommittee, it was incumbent on her to make timely and specific objections in formal responses to the specific discovery requests. The Subcommittee has ordered that the requirements of Rule 1-033 and 1-034 apply to discovery requests in this proceeding, and the Respondent has complied with those rules and limitations. Those rules require that the objecting party (Ms. Bonar) provide formal responses with specific objections to specific requests. *See, e.g.,* NMRA, Rule 1-033(C)(4) ("All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived . . .").

Ms. Bonar's discovery responses were due on Thursday, October 18, and she failed to timely respond at all. The letter sent by Ms. Bonar's lawyer the following day (October 19) fails to provide any response or make any specific objection, but rather vaguely complains about the entire process. Ms. Bonar should not now be invited to make more specific objections after-the-fact – whatever objections she may have had have been waived. *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 241, 96 N.M. 155, 210, 629 P.2d 231, 286 ("The law is well established that the failure to timely file objections to interrogatories operates as a waiver of any objections the party might have.").

Ms. Bonar has disqualified herself as a witness. The Scheduling Order approved by the Subcommittee, LCS, and Special Counsel expressly provides that:

1. The failure of a witness to appear [for a deposition] or cooperate shall be grounds to preclude the witness from testifying at the formal hearing; and
2. Failure of a witness to timely respond or cooperate with written discovery shall be grounds to preclude the witness from testifying at the formal hearing.

Because Ms. Bonar has refused to appear for her deposition and refused to timely respond to written discovery, Respondent will move to exclude Ms. Bonar as a witness at the Formal Hearing. Ms. Bonar should not be allowed to level serious accusations like this and then evade being cross-examined under oath about them.

Finally, the Subcommittee should resist engaging in any decision-making based on letter-writing and email campaigns. At this point, Mr. Monagle has simply copied you on a letter to me generally objecting to providing any discovery. As you can see, Respondent has a number of substantive responses to Ms. Bonar's decision to refuse to participate in discovery. In light of the seriousness of the claims made by Ms. Bonar and the consequences for Representative Trujillo, these questions should be decided by presentment of formal motion and hearing so that the opposing party has a fair opportunity to respond, and so that decisions are made with transparency and there is record for public review.

Respondent will file with the Legislative Council Service a formal motion to strike Laura Bonar as a witness shortly. If Special Counsel or personal counsel for Ms. Bonar want to present questions to the Subcommittee that impact Representative Trujillo's rights, I request that they be required to do so by formal motion as well.

Respectfully,

/s/Travis G. Jackson/s/

Travis G. Jackson

Letter to Jon Boller, Legislative Council Service
In re Representative Trujillo

Saturday, October 20, 2018

cc: Thomas Hnasko (*via email*), Levi Monagle (*via email*)

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October 22, 2018

Jon Boller
Senior Staff Attorney
Legislative Council Service
Room 411, State Capitol
Santa Fe, NM 87501

Via Email Only

Re: Correspondence Regarding Objections to Discovery Requests

Mr. Boller,

I am writing to respond to your email dated October 20, 2018, and to respond to the arguments raised in Mr. Jackson's letter dated October 20, 2018.

I am not interested in attacking the respondent in this case, and therefore respondent need not be concerned with "defend[ing] himself on multiple fronts against multiple lawyers." I am not proposing to send written discovery to respondent, digging into his private life and relationships, or other allegations of harassment against him – or anything else that may concern him. I am solely interested in defending my client.

The findings of the Probable Cause Report speak for themselves. My client's account of the harassment to which she was subjected by the respondent has already been publicly vindicated by multiple credible witnesses, who had nothing to gain and a great deal to lose by speaking out against the respondent. To the extent that the Legislature wishes to further examine these incidents of harassment, my client has cooperated and intends to further cooperate – but as her attorney, I will not allow her to be subjected to the mutilation of her privacy that the respondent's attorneys propose.

Respondent's counsel proposes to force my client to disclose her private conversations with friends, family, colleagues, and romantic partners over the course of a five-year period. The burden should rest with the respondent's attorneys to show that discovery of such breadth is even remotely

necessary to contest the findings of the Probable Cause Report, which relate only to the occurrence or non-occurrence of specific incidents of harassment. The Report itself should logically provide the scope of relevance in this case: what is material and probative in this proceeding is information that tends to either prove or disprove the probable cause findings of the Probable Cause Report. Were the Subcommittee to issue an order *in limine* tying the scope of relevance to the findings of the Probable Cause Report, I believe that discovery could proceed in an expedited manner.

Without a relevance limitation of this nature, respondent will be left to engage in an offensive, invasive, and entirely unwarranted intrusion into the private life of my client. Respondent's counsel has given no explanation as to why he needs to access to any of my client's private communications with her friends, family, colleagues, and romantic partners, beyond those relied upon by the Special Counsel in reaching particular findings of probable cause. "Fishing expeditions" of this nature are prohibited in New Mexico's civil courts. *See, e.g., Blake v. Blake*, 1985-NMCA-009, ¶15, 102 N.M. 354, 359. There are sound reasons for this prohibition, as discussed by the Court in *Koch v. Koch Indus.*, 203 F.3d 1202, 1238 (10th Cir. 2000):

*When a [party] first pleads its allegations in entirely indefinite terms, without in fact knowing of any specific wrongdoing... and then bases massive discovery requests upon those nebulous allegations, in the hope of finding particular evidence of wrongdoing, that [party] abuses the judicial process. That is what occurred here. The limits which Rule 26(b)(2)(iii) place upon discovery are aimed at just such a tactic. Utilizing its discretionary power under this rule, the district court appropriately recognized that the likely benefit of **this attempted fishing expedition was speculative at best**. Furthermore, the district court understood that to require... [production of] the massive amount of documents requested, first weeding out privileged and confidential records, would impose a serious burden and expense upon these non-parties. The district court thus properly determined that the burden and expense of these discovery requests far outweighed their likely benefit.*

The archetypal "fishing expedition" described above is exactly what respondent has attempted here, except that respondent has given no reason whatsoever for his discovery requests – much less an "entirely indefinite" one. To the extent that respondent's counsel wishes to find some means of demonstrating that my client acted from a desire to see respondent removed from office, we would do well to discuss a stipulation – my client made her desire for that outcome perfectly clear on May 2, 2018.

Contrary to the assertions of respondent's counsel, my client has not refused to respond to discovery in this case, or refused to appear for a deposition. As my letter of October 19, 2018, plainly states, I have objected to the procedural validity of the respondent's interrogatories and requests for production on my client's behalf. My letter also plainly states my belief that "the scope of relevance in this case should be determined by reference to the Probable Cause Report," and that in the absence of rules of evidence there should be "significant preliminary limitations as to the scope of any contemplated discovery by either side." These are objections to discovery, which can be ruled on by the Subcommittee.

To characterize these objections as “eleventh hour” is unfair. The rules that respondent and Special Counsel invoked in their proposed Scheduling Order – Rules 33 and 34 – typically provide for a thirty-day response window. The Scheduling Order significantly compresses that window. Again, I had no opportunity to participate in the negotiation of that Order on my client’s behalf – and, importantly, there is no rule that I am aware of that would have prohibited my participation in that negotiation.

If my client is only a witness, and not a party (as respondent’s counsel’s letter emphasizes), then it makes little sense that rules of civil procedure like Rule 33 and Rule 34 – which by their explicit terms **only** extend to parties – should somehow be applied to her. If my client is a party, on the other hand – such that the provisions of Rule 33 and Rule 34 might logically be extended to her – then she should have been included in the negotiation of this Scheduling Order. Trying to selectively map the Rules of Civil Procedure for the District Courts over to an administrative/legislative hearing outside of the District Courts is, in my opinion, a recipe for this sort of dissonance – particularly where only one side is allowed to negotiate its interests. Had I been included from the outset of the negotiations surrounding the Scheduling Order, as equity, efficiency, and professional courtesy would dictate, then I would have been in a position to make all of these objections at that juncture.

In any case, respondent’s counsel granted a requested extension in this instance (whereby I proposed to respond to his written discovery on October 19, rather than October 18), so any claim that my objections were untimely is inaccurate.

I hope that this letter can be directed to the Subcommittee, and can be of assistance to that body in ruling on the objections I have made on my client’s behalf.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Monagle", with a long horizontal flourish extending to the right.

Levi A. Monagle

cc. Travis Jackson
Tom Hnasko
Raul Burciaga