

BEFORE THE HEARING SUBCOMMITTEE
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE

In re: Representative Carl Trujillo.

CHARGING PARTY'S RESPONSE TO EMERGENCY MOTION
TO APPOINT AN INDEPENDENT HEARING OFFICER
AND REQUEST FOR EXPEDITED CONSIDERATION

As Special Legal Counsel duly authorized to assist the investigative subcommittee, the undersigned submits this response resisting Representative Carl Trujillo's ("Rep. Trujillo") Motion to Appoint an Independent Hearing Officer ("motion"). No hearing officer is required by the applicable rules and there is no basis for the idea that the Special Counsel will act as a legal advisor to the subcommittee. Because Rep. Trujillo's motion: (1) is premised on a mischaracterization of the Special Counsels' role at the upcoming Hearing; and (2) ignores the procedures for formal hearings initiated during the interim, the motion should be denied.

ARGUMENT

Ignoring the provisions of Legislative Council Policy No. 16, which applies to matters relating to ethical conduct arising during the interim, Rep. Trujillo objects to the Special Counsels' purported "dual" role as investigator and Charging Party and likens the Special Counsels' anticipated role at the Hearing as having "the head coach referee the game." *See* Motion at 1. This colorful analogy is a mischaracterization of the Special Counsels' role.

In accordance with Legislative Council Policy No. 16(E)(4), the investigative subcommittee, upon the recommendation of the Legislative Council Service, retained the Special Counsel to assist the investigative subcommittee in the investigation of the sexual harassment allegations against Rep. Trujillo. As Legislative Council Policy No. 16(J)(1) makes clear, either a member of the investigative subcommittee, or Special Counsel "*to the investigative*

subcommittee” must assume the role of the Charging Party at the hearing. *Id.* (“A member or members of the investigative subcommittee *or* special legal counsel to the investigative subcommittee *shall* become the charging party and present the case against the legislator being charged.”) (emphasis added).

Legislative Policy 16(J)(1) also states that when a member of the investigative subcommittee becomes the charging party, that member is to be recused from deciding the case. This same prohibition applies to a special counsel acting as the charging party, and nothing in Legislative Council Policy No. 16 suggests that the Special Counsel is to participate in judging the case. Indeed, Special Counsel would not assist, advise, or participate in the decision-making of the hearing subcommittee. Special Counsels’ role is to present the case against Rep. Trujillo in accordance with the Legislative Council Policy No. 16(J)(1), and the hearing subcommittee will “hear” the matter in accordance with Legislative Council Policy No. 16(J)(2). These separate roles, clearly delineated by the Policy itself, demonstrate why the motion must be denied.

Legislative Council Policy Nos. 16(K)-(O) describe the procedural requirements for the formal hearing and the determinations the hearing subcommittee may make at the close of the formal hearing. There is no reference to or authority for the Special Counsel to advise the subcommittee on evidentiary or procedural questions. Special Counsel will act as the charging party at the formal hearing, will not take part in the deliberative or fact-weighting process and is not acting as a legal advisor to the hearing subcommittee. Rep. Trujillo’s assertion that Special Counsel will “privately” advise the hearing subcommittee “*ex parte*” is incorrect. Special Counsel will present the case against Rep. Trujillo. The relief requested by Rep. Trujillo’s motion is a remedy based on a feigned injury.

Finally, there is no requirement that an independent hearing officer be appointed. The statutory provision cited by Rep. Trujillo merely provides that the interim ethics committee is authorized to hire an independent hearing officer *or* special counsel as necessary. The investigative subcommittee hired undersigned as special counsel to assist in the investigation, and special counsel is presenting the case against Rep. Trujillo as contemplated under Legislative Council Policy No. 16. The hearing subcommittee will make the ultimate determinations set forth in Legislative Council Policy No. 16(M-O). There is no legal basis to assert that the hearing subcommittee is required to hire an independent hearing officer and no factual basis to assert that the hearing subcommittee cannot objectively and transparently hear pre-hearing matters, resolve discovery disputes and determine what evidence should and should not be introduced during the hearing.

CONCLUSION

The determinations made after the formal hearing will be made by the hearing subcommittee, not the Special Counsel, in accordance with Legislative Council Policy No. 16. Accordingly, this motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2018, I caused a true and correct copy of ***Charging Party's Response to Emergency Motion to Appoint an Independent Hearing Officer and Request for Expedited Consideration*** to be served via electronic communication on the following:

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