

BEFORE THE HEARING SUBCOMMITTEE
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE

In re: Representative Carl Trujillo.

CHARGING PARTY'S NOTICE OF INTENT TO LIMIT TESTIMONY

In accordance with the Special Master's Decision on Laura Bonar's Objection to Discovery and Respondent's Opposition to Objections, Charging Party provides this Notice of Intent regarding evidence related to the emotional and psychological effect of the alleged harassment as follows:

1. On Tuesday, October 30, 2018, Special Master, the Honorable Wendy E. York, issued the Decision on Laura Bonar's Objection to Discovery and Respondent's Opposition to Objections ("Decision"). Paragraph 19 of the Decision states that the Special Master would conduct an *in camera* review of Ms. Bonar's mental health records to "determine if they are discoverable *unless* Mr. Hnasko advises me that he does not intend to introduce any evidence regarding the emotional and psychological effect of the alleged harassment." By this Notice, Charging Party advises the Special Master and Respondent that Charging Party will not elicit evidence regarding the emotional and psychological effect on Ms. Bonar of the alleged harassment.

2. Under the Anti-Harassment Policy, certain enumerated activities violate the policy if that conduct has the purpose or effect of interfering with a person's work. *See* Anti-Harassment Policy, p. 2. Charging Party will ask Ms. Bonar whether the prohibited conduct interfered with her work and, if so, how and to what extent. That is not, strictly speaking, asking about her emotional reaction to the conduct, but instead asks for a description of the objective effects caused by that conduct. While there may be an emotional component to the answer, the question is not designed to elicit testimony about emotional damages or harm, neither of which is determinative

or even relevant to finding a violation of the policy. Under these circumstances – where damages are not at issue and the emotional state of Ms. Bonar has only a tangential relationship to the objective effects of the conduct on her work – a wholesale review of her private medical records appears inappropriate.

3. This is a disciplinary formal hearing convened by the Interim Legislative Ethics Hearing Subcommittee under Legislative Council Policy No. 16(J) regarding the conduct of a Legislator; this is not a civil lawsuit asserting claims for emotional distress damages. Accordingly, Charging Party’s case-in-chief is focused on that Legislator’s conduct and the resulting effects that conduct had on Ms. Bonar’s work at the Legislature – i.e., did the conduct interfere with her work in violation of the Anti-Harassment Policy. Ms. Bonar’s mental health records are not relevant under these circumstances. Moreover, even if this were a civil lawsuit asserting claims under Title VII, Ms. Bonar’s mental health records would nevertheless be protected from discovery unless emotional distress damages were at issue. *See Finley v. Johnson Oil Co.*, 199 F.R.D. 301, 304 (S.D. Ind. 2001) (“[T]he basis for defendant’s need for the [mental health] records is irrelevant, at least under these circumstances where the plaintiff does not seek to recover damages for emotional distress.”).

Respectfully Submitted,

HINKLE SHANOR LLP

By: /s/ Thomas M. Hnasko
Thomas M. Hnasko
Post Office Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
thnasko@hinklelawfirm.com

RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.

Theresa W. Parrish
Post Office Box 1888
Albuquerque, NM 87102
(505) 765-5900
tparrish@rodey.com

Special Counsel and Charging Party

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018, I caused a true and correct copy of the foregoing ***Charging Party's Notice of Intent to Limit Testimony*** to be served via electronic communication on the following:

Travis G. Jackson
Eric Loman
Jackson Loman Stanford & Downey, P.C.
201 3rd Street, Suite 1500
Post Office Box 1607
Albuquerque, NM 87103-1607
travis@jacksonlomanlaw.com
eric@jacksonlomanlaw.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

Staff to the Hearing Subcommittee of the
Interim Legislative Ethics Committee
c/o Jon Boller
Amy Chavez-Romero
Legislative Council Service
State Capitol Building, 4th Floor
Santa Fe, NM 87503
jon.boller@nmlegis.gov
amy.chavez-romero@nmlegis.gov

Honorable Wendy E. York
Sheehan & Sheehan PA
P.O. Box 271
Albuquerque, NM 87103
wey@sheehansheehan.com

Levi Monagle
Law Office of Brad D. Hall LLC
320 Gold Avenue SW #1218
Albuquerque, NM 87102
levi@bhallfirm.com
Counsel for Laura Bonar

/s/ Thomas M. Hnasko
Thomas M. Hnasko