

BEFORE THE HEARING SUBCOMMITTEE
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE

In re: Representative Carl Trujillo.

**CHARGING PARTY'S RESPONSE TO RESPONDENT'S
MOTION TO COMPEL PRODUCTION OF TRANSCRIPT OF
LAURA BONAR'S JUNE 7, 2018 INTERVIEW WITH SPECIAL COUNSEL**

Because Charging Party is not authorized to disclose confidential information under the applicable statutes and rules governing an ethics investigation conducted by the Interim Ethics Hearing Subcommittee, Charging Party takes no position on Respondent's Motion to Compel Production of Transcript of Laura Bonar's June 7, 2018 Interview with Special Counsel ("Respondent's Motion to Compel"). Only the Hearing Subcommittee itself can waive the confidentiality requirements of the applicable statutes and rules and authorize the production of the redacted portions of Ms. Bonar's interview, which deal exclusively with issues on which the Investigative Subcommittee found no probable cause.

Relevant Background

On June 7, 2018, Charging Party, acting then as Special Counsel to the Investigative Subcommittee, interviewed Laura Bonar regarding her allegations of sexual harassment by Respondent, Representative Carl Trujillo ("Rep. Trujillo"). A court reporter was present for the convenience of the parties, and a verbatim transcript was made. In response to Rep. Trujillo's discovery requests to Charging Party, Charging Party produced a copy of that transcript.

In accordance with its duty to observe the confidentiality requirements imposed on interim ethics investigations under New Mexico law and Legislative Council policy, Charging Party redacted portions of the transcript which are not relevant to the charges that are the subject of the

formal hearing to be conducted by the Hearing Subcommittee in this matter – i.e., the charges for which probable cause has been found. Charging Party did not redact transcript testimony regarding matters related to no probable cause findings where those matters had independent relevance to the findings of probable cause that Rep. Trujillo violated the Legislature’s Anti-Harassment Policy.

Charging Party is Not Authorized to Produce Confidential Information

Under NMSA 1978, Section 2-15-9(E)(1), the interim legislative ethics committee, including Special Counsel appointed by that committee, shall maintain confidentiality of information related to an investigation of an ethics matter arising during the interim until after a finding of probable cause has been made that a violation occurred. Under the plain language of the statute, information regarding an investigation is subject to public disclosure only if, and after, a finding of probable cause is made. This statutory confidentiality requirement is plain: any information related to an investigation where there is no finding of probable cause remains confidential because it cannot be subject to disclosure under the statute. Any other reading of this statutory provision is illogical. *See Baker v. Hedtrom*, 2012-NMCA-073, ¶ 12, 284 P.3d 400 (“It is fundamental that statutes will be construed so that their application will be neither absurd nor unreasonable.”) (quoted and cited authority omitted). Accordingly, Charging Party, as the representative of the Interim Ethics Investigative Subcommittee, is statutorily prohibited from disclosing confidential information that is not relevant to the probable cause findings that a violation of the Anti-Harassment Policy has occurred.

Moreover, Legislative Council Policy No. 16 requires confidentiality of an investigation until written findings of probable cause are issued by the Investigative Subcommittee and a formal hearing related to the written findings of probable cause is initiated. *See* Legislative Council Policy

Nos. 16(I)(2) and 16(J). These provisions prevent Charging Party from disclosing information that is relevant only to matters which are not at issue in the formal hearing – i.e., the charge of retaliation for which there was a finding of no probable cause. Information exclusively relating to this no probable cause finding remains confidential and cannot be disclosed by Charging Party.

Only the Hearing Subcommittee May Authorize Disclosure of the Redacted Portions

For these reasons, Respondent’s Motion to Compel is misdirected at Charging Party. Charging Party has neither the authority nor the ability to produce information that remains confidential under New Mexico law and Legislative Council policy. Charging Party serves at the pleasure of the Hearing Subcommittee and will withhold or produce the redacted portions of the transcript unrelated to a probable cause finding in accordance with the Hearing Subcommittee’s determination regarding any request for such information. *See* NMSA 1978, § 2-15-9(E)(3) (“[n]o member of the committee or its staff may knowingly disclose any confidential information except as authorized by the committee.”).

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 12, 2018, I caused a true and correct copy of the foregoing ***Charging Party's Response to Respondent's Motion to Compel*** 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

/s/ Thomas M. Hnasko
Thomas M. Hnasko