



*Electronic Mail*  
October 20, 2018

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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*)