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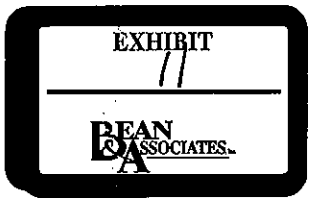
June 15, 2018



VIA EMAIL ONLY:

The Honorable Javier Martinez
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RE: Ethics Investigative Subcommittee/Representative Carl Trujillo Investigation

Dear Representatives of the Ethics Investigative Subcommittee:

We are in receipt of your correspondence from Mr. Burciaga, dated today, written in response to our correspondence of June 13, 2018, and we appreciate the communication. Unfortunately, Representative Trujillo still has some concerns, and accordingly, we are requesting a meeting with the Ethics Investigative Subcommittee. In the meantime, we have the following continuing concerns:

1. **The "open letter" against Representative Trujillo was not signed, under oath, by the complainant, and it does not state with reasonable specificity the facts upon which the complaint is based, as required by the applicable law and policy; thus, the investigation should have never been commenced, and the "open letter" should be dismissed.**

In order for this process to have integrity, we are simply requesting that the Anti-Harassment Policy, including the mandatory, incorporated laws and policies, be adhered to. The "Complaints against a member of the Legislature" section of the Anti-Harassment Policy is the only section of the Anti-Harassment Policy that incorporates provisions of law and policy that ***must*** be adhered to when a complaint is made against a legislator. As noted in our original correspondence, the "Complaints against a member of the Legislature" section of the Anti-Harassment Policy states that:

> Sections 2-15-7 through 2-15-12 NMSA 1978; Senate Rules 9-13-1 through 9-13-7; or Legislative Council Policy No. 16 ***shall*** apply to the process regarding complaints against legislators.

See Anti-Discrimination Policy, page 4 (emphasis added).

There are no exceptions regarding whether the complaint of harassment is filed during the interim or the session. Also, although the state statute regarding the interim legislative ethics committee contains permissive language, the House Rules provide mandatory language that a complaint by a member of the public:

> [*S*]***hall be*** in writing, ***under oath or affirmation*** and signed by the complainant. The complaint ***shall state with reasonable particularity*** the relevant facts upon which the charge is based.

See House Rules 9-13-2 (emphasis added).

Similarly, the Legislative Council Policy No. 16(F) also provides mandatory language:

> Any charge seeking the discipline of a member of the legislature during the interim ***shall be*** in writing, ***under oath of affirmation***, signed by a member of the legislature or a member of the public, addressed to the legislative council and filed with the legislative council service at the state capitol. The complaint shall state with ***reasonable particularity*** the relevant facts upon which the charge is based and the substantive ethics rule or law which the legislator is charged with violating.

Thus, the applicable House Rules and Legislative Council Policy require that a complaint be made under oath, with reasonable particularity; and, the state statute regarding the interim legislative ethics committee contemplates the same thing.

While the Anti-Harassment Policy does not specify how a complaint is reported in the general section that is applicable to all parties, as noted above, the more specific section regarding "Complaints against a member of the Legislature," requires that the House Rules, the Legislative Council Policy, and the statute be followed, including filing a complaint under oath, and with reasonable particularity. Representative Trujillo is merely requesting that the mandatory requirements contained in the House Rules, Legislative Council Policy, and statute be applied and followed, as surely any other legislator would request in the same situation.

Again, it is clear that Ms. Bonar's "open letter" does not meet the House Rule requirement, and the Legislative Council Policy requirement to qualify as a complaint against Representative Trujillo because: (1) it is not a sworn statement, or a complaint made under oath or affirmation; and, (2) it does not state with reasonable particularity or specificity the relevant facts upon which the charge is based. Thus, these proceedings should not have been initiated against him.

Finally, because no "anonymous complaints" were provided to us upon our request, we assume that none exist and that no such complaints are being included as part of this investigation. *See* NMSA 1978 §2-15-9(2) ("the identity of the complainant shall be released to respondent ***immediately*** upon request"); House Rules 9-13-2 ("A representative against whom a complaint is filed shall ***immediately*** be given a copy of the complaint.") (Emphasis added); and, Legislative Council Policy 16(I)(1) ("A legislator against whom a complaint is filed or with respect to whom a referral is made shall ***immediately*** be given a copy of the complaint or referral.")(Emphasis added). We object to the inclusion of any other complaints in this investigation, especially complaints that have not been immediately forwarded to us, as required by law.

2. **The investigation into Ms. Bonar's open letter has not been "prompt" as required by the Anti-Harassment Policy, and Ms. Bonar's reporting appears to be delayed to the point that Representative Trujillo is not receiving fair or due process.**

These issues were not addressed. Again, the issues surrounding the promptness of the investigation, and the significant delay in reporting, indicate that Representative Trujillo is not receiving fair or due process regarding this matter.

3. **The investigation process has not been maintained as confidential; thus, the "open letter" should be dismissed pursuant to the House Rules.**

Only part of the applicable state statute was referenced, the full language reads that the:

> ***[C]omplainant***, the committee, and its staff ***shall not publicly disclose*** any information ***relating to the filing or investigation of a complaint, including the identity of the complainant or respondent, until after a finding of probable cause***.

See § 2-15-9(E)(1) (emphasis added).

Also, as previously outlined, the Legislative Council Policy provides that the investigative subcommittee "shall conduct a confidential investigation." *See* Legislative Council Policy No. 16(I)(2). With regard to confidentiality, the House Rules provide that:

> The complaint process ***shall*** be held confidential through the initial investigation phase unless waived in writing by the representative being charged. ***Breach of confidentiality by a complainant may result in dismissal of the complaint or the assessment of costs***.

See House Rules 9-13-2 (emphasis added).

Just because Ms. Bonar published an "open letter" to the media ***prior*** to attempting to file a "complaint"[1] pursuant to the Anti-Harassment Policy, it does not follow that Ms. Bonar, the committee, or committee staff could be permitted to ignore the applicable state law and policies with regard to confidentiality, after a "complaint" was filed.

Due to these confidentiality breaches, in violation of state law and policy, pursuant to House Rules, 9-13-2, we respectfully request dismissal of the complaint and the assessment of the costs Representative Trujillo has had to expend to defend himself to this point.

Conclusion

We remain concerned that the delays in investigation and reporting in this matter evidence a lack of fair or due process, and so we respectfully request that the "open letter" be dismissed.

Also, there is no exception in state law or House Rules regarding confidentiality. In other words, the filing of the "complaint" and the investigation of the "complaint" should have been maintained as confidential by the complainant, the committee, and committee staff pursuant to applicable law and policy, despite Ms. Bonar's earlier decision to publish an "open letter." Ms. Bonar has failed to comply with state law and the House Rules regarding confidentiality; thus, pursuant to House Rules 9-13-2, we respectfully request that Ms. Bonar's "open letter" be dismissed, and that Representative Trujillo's costs to date be awarded.

Significantly, because Ms. Bonar failed to follow applicable, mandatory policy by submitting her allegations under oath and with reasonable particularity, it follows that Ms. Bonar's "open letter" should have been rejected at the outset, and this process should not have been initiated against Representative Trujillo. Thus, we respectfully request that this Ethics Investigative Subcommittee dismiss the "open letter" because it is not a legally valid complaint.

We would like to cooperate to resolve these issues, as soon as possible, and we request a meeting with the subcommittee. If you have any questions, or would like to discuss these issues further, please feel free to contact me.

Sincerely,

/s/ Randi N. Valverde
Randi N. Valverde

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[1] As outlined in Section 1, and Section 1 of Representative Trujillo's June 13, 2018, correspondence, we dispute a valid complaint has been filed.

cc: Raul Burciaga (raul.burciaga@nmlegis.gov)