

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

DAVE ESDALE,

Complainant,

vs.

Case No. BOE 03-2023

BROOK BASSAN,

Respondent.

MOTION TO QUASH SUBPOENA

COMES NOW Abby Foster, representing herself pro se, and for her Motion to Quash Subpoena states as follows:

INTRODUCTION

Abby Foster ran for the Albuquerque City Council seat in District 4 against Brook Bassan in 2023. Bassan won the election by 152 votes. Abby Foster is a private citizen and not a party in this Board of Ethics matter.

The subpoena at issue was served on January 4, 2024 and seeks to have Ms. Foster appear in person at the Board of Ethics hearing on this matter scheduled for January 12, 2024 at 9:00 a.m. As stated below, the subpoena is legally deficient, any questioning of Ms. Foster would not produce information reasonably calculated to lead to the discovery of admissible evidence, and subjects Ms. Foster to undue burden and harassment.

LAW

Discovery is not boundless and is limited only to information that is reasonably calculated to lead to the discovery of admissible evidence. NMRA, 1-026. Subpoenas may be used to obtain discoverable information from third parties, however, the court shall quash or modify a subpoena if it: (1) fails to allow reasonable time for compliance; (2) requires a person who is not a party to travel more than 100 miles from the place where that person resides...; (3) requires disclosure of privileged or other protected matter and non-exception or waiver applies; or (4) subjects a person to undue burden. NMRA, 1-045(C). The party and/or attorney issuing the subpoena has a duty to “take reasonable steps to avoid undue burden or expense on a person subject to the subpoena. *Id.*

Additionally, when a person is commanded to attend a hearing, one full day’s per diem, as well as mileage, must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. NMSA, 38-6-4; NMSA 10-8-4. See also, INFORMATION FOR PERSONS RECEIVING SUBPOENA (3), Foster subpoena, attached as Exhibit A.

ARGUMENT

1. Defendant’s subpoena is legally defective.

When a person’s attendance is commanded, one full day’s per diem, as well as mileage, must be tendered with the subpoena. This did not occur. No compensation was provided to Ms. Foster either with the subpoena, as required by its own terms, or in the intervening days. The subpoena itself uses the word “must.” The statutory witness fee and mileage is not optional or conditional, and thus the issuing party, respondent’s counsel, Carter B. Harrison IV, cannot command Ms. Foster’s presence without a valid and properly served subpoena. The return of service, attached as Exhibit B, is not notarized, and also falsely states that the statutory witness fee and mileage were provided to Ms. Foster. This did not happen. Ms. Foster was provided with

no reasonable compensation for her time and inconvenience, and so cannot be expected to appear. The subpoena is not issued on behalf of a government entity, but rather by Mr. Harrison, and so the statutory witness fee is required. Serving subpoenas without the required per diem and mileage *as stated in the subpoena itself*, is a vexatious and frivolous waste of the Board's time and resources in approving the issuance of subpoenas, as well as Ms. Foster's time and resources in responding thereto.

CONCLUSION

The subpoena served on Ms. Foster in this matter is legally defective because Ms. Foster was not provided with the statutory witness fee and mileage, despite the fact that the return of service attests to the provision of same. The lack of this per diem and mileage compensation renders the subpoena insufficient on its face, and thus Ms. Foster cannot be commanded to appear at the hearing in this matter.

WHEREFORE, Abby Foster, having filed her Motion to Quash Subpoena, prays that the same be GRANTED.

/s/ Abby Foster

Abby Foster

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