

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

NERI HOLGUIN,

Complainant,

v.

Case No. BOE 01-2021

MANUEL GONZALES, III,

Respondent.

RESPONDENT’S BRIEF REGARDING PUBLIC INVESTIGATION

Respondent Manuel Gonzales opposes delaying the adjudication of the *Holguin I* case: the parties have both thoroughly investigated the case — witnesses contacted by the Gonzales campaign mentioned they were also contacted by the Keller campaign, which didn’t disclose them as witnesses in this action simply because their testimony isn’t favorable to its side¹ — which could literally not be more minimal in scope, affecting exactly *one* qualifying contribution (“QC”),² and which is already teed up and ready to go on Friday. Opening an “investigation” just to prolong allegations that a complainant can neither substantiate nor expand into *any* pattern whatsoever — they haven’t come forward with a single other allegation of this type, or involving the Sheriff, although it’s certainly understandable from a political-theater perspective why the

¹ The Respondent isn’t alleging that there’s any impropriety in that; this is an adversarial process, after all.

² Although the City Clerk continues to withhold, contrary to law, this Board’s prior decisions, *compare* IPRA-Portal Timeline & Exchanges Between Requester Gonzales Campaign & the City Clerk (dated June 17 to July 13, 2021) (Exhibit A to this Brief), *with* City Clerk’s OEEC Regulations § 4(E)(4)(e), at 8 (“Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. *Prior decisions are available at the City Clerk’s Office.* The City Clerk shall index all Board case decisions by subject and date.” (emphasis added)), *and id.* § 3(D)(3), at 3 (“Previous advisory opinions may be used by both Complainants and Respondents as precedent . . .”), it appears that investigations are rare, and it does not appear that this Board has ever ordered an investigation into an incident remotely as isolated as this one.

Keller campaign would want to turn the *Holguin I* proceeding into a circus — has too many features of a witch hunt to be credibly added to a set of processes that are already unfolding with a distinctively home-field-advantage feel for the Mayor.

Importantly, the *Holguin I* incident has no relationship whatsoever with the broader-in-scope allegations of the *Holguin II* case, as the *Holguin I* Complainant seems to recognize by not submitting any of that case’s evidence in support of this Complaint. The *Holguin I* and *Holguin II* allegations differ in basic nature of the alleged violation (allowing third-party funding in connection with a QC receipt filled out by the voter, versus forging QC receipts for either non-donors or donors who didn’t fill out a QC slip), the means of committing it (an out-loud and in-person statement at a meeting of white-collar professionals, versus a secret transposition of signatures from nominating petitions to QC receipts), the motive for committing it (Mr. Zantow himself will say that he was about to give \$5 before he heard what he thinks he heard from the Sheriff, so it’s not clear what the motive would be here, under the Complainant’s theory), and the personnel involved (the Sheriff personally, accompanied solely by his two Undersheriffs, versus two women working for the campaign who did not attend the Salvation Army meeting).

The Sheriff does, however, welcome an independent investigation into the *Holguin II* allegations. Unlike the *Holguin I* allegations, which are unsubstantiated, it does appear, upon the Gonzales campaign’s own investigation, that many of the qualifying-contribution (“QC”) receipts identified by the *Holguin II* complainant — while comprising a tiny fraction of the campaign’s total validated number — were signed by someone other than the voter. More to the point, there is some actual precedent for ordering an investigation into allegations of this type and scope. *See* Order to Investigate, *Padilla v. Benavidez*, BOE 02-2017 (dated Aug. 1, 2017). Such an investigation would not unfairly and unduly delay the imminent hearing in *Holguin I*, and could

potentially be conducted in a manner that might not leave the public convinced that the Mayor is simply ordering his own opposition research. It should also be noted that, while the Gonzales campaign has made significant investigative progress of its own into the *Holguin II* allegations, the campaign lacks the resources to conduct voter-by-voter interviews — which obviously must be done, as they were in *Benavidez* — now, after the City Clerk’s *ex parte* communications with his superior’s campaign led him to deny public financing without providing a scintilla of notice or opportunity to be heard to the campaign first.

The investigation should be conducted by the Inspector General, not the City Attorney. “The City Attorney [is] appointed by the Mayor,” was in fact an invitee-applicant of his in a much-criticized insider hiring process.³ City Ordinance § 2-7-2-3. The City Attorney is also, under the Rules of Professional Conduct, the Mayor’s personal attorney as to matters within the scope of his job.⁴ *See* City Ordinance § 2-7-2-2 (“[The City Attorney] shall also advise the Mayor and the Council as to legal matters.”). The Inspector General, on the other hand, is as close to an independent and trained investigator as the Sheriff — who, unfortunately, isn’t currently any of these people’s boss — is going to get. *See* City Ordinance §§ 2-17-4 & -5.

The Board must also include adequate safeguards in its order so that what happened with the City Clerk does not happen here: at a minimum, all findings, evidence, and communications with the other side must be disclosed to the Gonzales campaign *before* the Board makes its determination. The Gonzales campaign, and the QC-donating voters summarily disenfranchised

³ *See Editorial, Why Did Keller Sidestep the [Hiring] Process for City Attorney?*, Albuquerque J. (Mar. 12, 2018), <https://www.abqjournal.com/1144856/why-did-keller-sidestep-the-process-for-city-attorney.html> (last visited July 14, 2021).

⁴ Government lawyers tend to quibble with this characterization and say that they represent some abstract governmental entity, not the chief executive thereof. Only if the City Attorney disclaims, now and going forward, any attorney-client privilege over communications with the Mayor, should the Board accept that characterization.

by the City Clerk, are deeply concerned about whether this investigation will be fair, particularly after actions by the City Clerk that did not even *pretend* to be fair — a bad baseline to work from.

That said, the benefits of a properly conducted investigation outweigh the risks of a bad one, and the Gonzales campaign welcomes the opportunity — its *first* opportunity to date — to have both sides of the story heard and examined.

Respectfully submitted,

HARRISON & HART, LLC

By: 

Carter B. Harrison IV
924 Park Avenue SW, Suite E
Albuquerque, NM 87102
Tel: (505) 369-6599
Fax: (505) 341-9340
Email: carter@harrisonhartlaw.com

Attorneys for the Respondent

Exhibit List

Ex. A: IPRA-Portal Exchanges Between Gonzales Campaign & City Clerk (8 pages)

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July 2021, I submitted the foregoing Brief via email to the Albuquerque City Clerk (ewatson@cabq.com), the Board of Ethics and Campaign Practices (aschultz@rodey.com), and to the following counsel of record:

Lauren Keefe
Keefe Law Firm
P.O. Box 40693
Albuquerque, NM 87196
(505) 307-3447
keefelawoffice@gmail.com

Attorneys for the Plaintiff

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV
Carter B. Harrison IV

Request #21-4696

CLOSED

As of July 13, 2021, 8:50am

Request Visibility: Unpublished

Details

Hello,

I am writing to request the following 5 categories of records from the Clerk's Office and/or the Board of Ethics:

(1) All advisory opinions ever issued by the Board of Ethics and Campaign Practices under Art. XII, Section 3(h) of the City Charter, and whatever materials, information, or databases are used to "index the advisory opinions by subject matter and date." Rules & Regs of the Bd. of Ethics & Campaign Practices Section 3(B)(3).

(2) All rulings, decisions, and opinions ever issued by the Board of Ethics and Campaign Practices, including any dismissals under Rule 4(F) of the Rules & Regs of the Bd. of Ethics & Campaign Practices, along with whatever materials, information, or databases are used to "index all Board case decisions by subject and date." Rules & Regs of the Bd. of Ethics & Campaign Practices Section 4(E)(4)(e).

(3) All judicial filings (i.e., documents that were actually filed with the District Court or Court of Appeals) pertaining to all judicial appeals of final actions by the Board of Ethics and Campaign Practices that have ever been taken (see City Charter Article XII, Section 8(f)), and any list, spreadsheet, memo, or similar document compiling (whether comprehensively or not) the case names and/or numbers of judicial appeals taken from Board actions.

(4) From January 1, 2000 to present only: all settlement agreements approved and/or consent orders issued under Section 4(B) of the Rules & Regs of the Bd. of Ethics & Campaign Practices.

— [Read less](#)

Received

June 17, 2021 via web

Departments

City Clerk



Requester

Carter B. Harrison IV

✉ carter@harrisonhartlaw.com

📍 924 Park Avenue SW, Suite E, Albuquerque, NM 87102

📞 505-295-3261

🏢 Harrison & Hart, LLC

Documents

Public (pending) ⓘ

(none)

Requester

Invoice.pdf

Staff

Point of Contact

Yvette Gurule

Timeline

External Message

Requester + Staff

Then they are not "available." Make them available.

July 13, 2021, 8:46am by the requester

External Message

Requester + Staff

Mr. Harrison:

The campaign you represent has already booked today to inspect the qualifying contribution books for four hours. We do not have any additional inspection time available today. If you would like to schedule a time later this week, we can let you know our availability.

Best,

Ethan

July 13, 2021, 8:44am by Ethan D. Watson, City Clerk (Staff)

External Message

Requester + Staff

I will be sending someone by today to inspect and copy all paper files going back indefinitely (and not just to 2015, which is all you've said is available). There has been nothing remotely unclear about our request.

July 13, 2021, 8:37am by the requester

External Message

Requester + Staff

I will be sending someone by today to inspect and copy all paper files going back indefinitely (and not just to 2015, which is all you've said is available). There has been nothing remotely unclear about our request.

July 13, 2021, 8:37am by the requester

External Message

Requester + Staff

Hello,

I see that you paid for the flashdrive in this matter but we remain unclear if you still want to inspect the paper files. Please advise.

Sincerely,

Ethan Watson

City Clerk

July 12, 2021, 4:13pm by Ethan D. Watson, City Clerk (Staff)

Request Closed

Public

Hello,

All responsive documents have been made available for inspection. This request is now fulfilled and will be closed.

Sincerely,

Ethan Watson

City Clerk

July 9, 2021, 1:07pm

External Message

Requester + Staff

Hello,

All responsive documents are now available for inspection. This request is now fulfilled and will be closed. As we advised on June 29, we have made the major pleadings from the 2019, 2020, and 2021 BOE cases available online: <https://www.cabq.gov/clerk/ethics-1/board-of-ethics/board-of-ethics-complaints>. We have also created an electronic copy of the 2017 file as a courtesy. The copy has been available for purchase or inspection since July 6, 2021. All other paper and other BOE files are also now available for inspection in the City Clerk's Office. Please note that some responsive material is exempt under the attorney client privilege pursuant to NMSA 1978, Section 14-2-1(H)(as otherwise provided by law including NMRA Rule 11-503). To the extent you want copies of any particular records, please let us know and we can provide a quote for the specific copies and an invoice at that time. We do not have responsive records to your request for a database or spreadsheet.

The Second Judicial District may have other records responsive to your request for "[a]ll judicial filings (i.e., documents that were actually filed with the District Court or Court of Appeals) pertaining to all judicial appeals of final actions by the Board of Ethics and Campaign Practices that have ever been taken." Please contact them at the following address:

Custodian of Records
Court Administration
Second Judicial District Court
PO Box 488
Albuquerque, NM 87103

Sincerely,
Ethan Watson
City Clerk

July 9, 2021, 1:06pm by Ethan D. Watson, City Clerk (Staff)

Document(s) Released to Requester

Public

Invoice.pdf

July 6, 2021, 2:19pm

External Message

Requester + Staff

Hello Mr. Harrison,

This communication will acknowledge **partial** completion of your request dated June 17, 2021.

We have a CD of responsive 2017 records available for purchase, please see the invoice that was released to you for the price and mailing address. Once we receive payment, we will mail the CD to you.

As you were previously advised: The major pleadings and documents from the cases in 2019, 2020, and 2021 are available on the following website:

<https://www.cabq.gov/clerk/ethics-1/board-of-ethics/board-of-ethics-complaints>

If you are seeking to inspect the responsive records free of charge, the inspection will take place at the City Clerk's Office, located at 600 2nd Street NW, 7th Floor, Albuquerque, NM 87102, Monday- Friday from 8am- 4:30pm.

Please advise us if you are seeking any years prior to 2017.

Thank you for your patience.

Respectfully,
Yvette Gurule
IPRA Specialist

July 6, 2021, 2:19pm by Yvette Gurule (Staff)

External Message

Requester + Staff

Carter,

I see you left a message with our office but we are a bit unclear on what you are seeking. Do you want the major pleadings from 2017 to present on a flash drive or just 2017? The other years are up online at the link I sent.

Ethan

July 1, 2021, 10:30am by Ethan D. Watson, City Clerk (Staff)

External Message

Requester + Staff

Hi Carter,

We have the major pleadings from 2017 electronically. If you want to purchase them, it will be 6.75 for a disk or 8.79 for a flash drive. If you want to come and make copies of specific documents from the paper 2017 files, please let us know when you would like to come in.

We are working on scanning the major pleadings from 2015 BOE cases now but can also have the 2015 files ready for inspection shortly.

Best,

Ethan Watson
City Clerk

June 30, 2021, 2:04pm by Ethan D. Watson, City Clerk (Staff)

External Message

Requester + Staff

Hi Ethan,

We will pay for the electronic copies in order to get this moving, although, respectfully, I don't really think a fee is appropriate. Can we go in and make copies of all of the decisions (etc.) yet, or just the 2017 ones? I'd like to get this material ASAP.

Thanks,
Carter

June 29, 2021, 11:55pm by the requester

External Message

Requester + Staff

Carter,

We have managed to put the major pleadings and documents from the cases in 2019, 2020, and 2021 up online: <https://www.cabq.gov/clerk/ethics-1/board-of-ethics/board-of-ethics-complaints>

I have 2017 electronically but do not have it up online yet. If you want to purchase a copy of those files, I can burn them onto a disk or you can come and inspect the paper files. We are still reviewing the files from prior years.

Let us know how you would like to proceed.

Best,

Ethan Watson
City Clerk

June 29, 2021, 10:35am by Ethan D. Watson, City Clerk (Staff)

External Message

Requester + Staff

Hi Ethan,

If one mode of production is more convenient than another, then do that. Otherwise, I'll take the more-recent stuff first.

Thanks,
Carter

June 21, 2021, 3:08pm by the requester

External Message

Requester + Staff

Mr. Harrison,

The case files of the Board of Ethics dating apparently back to 1974 are stored in our records center. Because of the volume of material, we can make this material available in batches. Can you let us know which way you would like to view the files? We can make them available most recent first or the oldest file first.

Best,

Ethan

June 21, 2021, 1:04pm by Ethan D. Watson, City Clerk (Staff)

External Message

Requester + Staff

Greetings:

We have received your request for public records and will begin processing your request. This response is currently being sent to all individuals who submit requests to the City of Albuquerque to explain the effect that the COVID-19 pandemic has had on our processing of requests for public records.

Processing requests for public records during the COVID-19 pandemic has been challenging. At various times, City offices have been closed or functioning at limited capacity in an effort to address public health concerns and City employees have been teleworking to comply with the requirements of various public health orders. Moreover, during the pandemic, the City has also received more public records request than ever and in 2020 received over nine-thousand requests.

While we will remain in contact with you regarding your request, it is taking us longer than normal to process requests. The delays are as unique as each individual request, so we can't say for certain how they'll impact this request. We have noticed a few trends though. We are often able to process requests for copies of permits within the Planning Department, and requests for single Police and Traffic Accident reports within fifteen days.

The City Council and The Office of Neighborhood Coordination are also generally able to process their requests in fewer than fifteen days. Requests involving police lapel camera footage, combinations of different types of police records, human resource matters, and email searches, are all currently taking significantly longer, and may take 45-60 days or longer. While this information is intended to provide notice of how long a request may take, these time frames are not absolute.

Please note that if you are requesting a basic traffic accident or offense report, the Albuquerque Police Department Records window at 400 Roma NW, Albuquerque New Mexico 87102 is now open from 8:00AM – 4:00PM and can accept in person requests or requests by phone at 505-768-2020. If you elect to make your request to the Records Window, please let us know so that we can close your request in our system.

While we are working to fulfill requests where possible and as quickly as possible, the effect of the pandemic on our response time cannot be overstated. Due to the COVID-19 pandemic and this extremely unpredictable impact it is having on our work, the City requests an "additional reasonable period of time" to complete the request. NMSA 1978, § 14-2-10.

Please do not hesitate to contact us if you would like to know the status of your request.

Sincerely,

Ethan Watson

City Clerk

June 17, 2021, 2:08am

Department Assignment

Public

City Clerk

June 17, 2021, 2:08am

Request Opened

Public

Request received via web

June 17, 2021, 2:08am
