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Ethan Watson, City Clerk

November 2, 2023

SENT VIA EMAIL ONLY

Dave Esdale
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Albuquerque, NM 87109
Davidandteresa505@gmail.com

Councilor Brook Bassan
9000 Modesto Ave NE
Albuquerque, NM 87122
brookfordistrict4@gmail.com

Re: *BOE 03-2023 Esdale v. Bassan*

Dear Mr. Esdale and Councilor Bassan:

On October 30, 2023, Mr. David Esdale filed a complaint pursuant to the Code of Ethics regarding Councilor Brook Bassan, a candidate for City Council District 4. Pursuant to Part 14(2) of the 2023 City Clerk's Regulation for the Election Code and Open and Ethical Election Code, the complaint was promptly sent to Councilor Bassan. I am writing to provide you with the results of the City Clerk's review of the ethics complaint.

After review of the complaint for facial sufficiency, we have determined that part of the complaint requires further investigation, and consequently, it will be referred to the Board of Ethics. This letter discusses the complaint diversion process provided for in Part 14 of the City Clerk's 2023 Election Code Regulations ("EC Regulations") and Part 4(A) of the Board of Ethics Rules and Regulations ("BoE Rules"). The Rules and Regulations require that the complaint provide a reasonably detailed description of the alleged violations including the Sections of the Election Code, Code of Ethics, and Open and Ethical Elections Code or Rules and Regulations of the City Clerk allegedly violated and an explanation of how the complainant believes those rules, regulations, and ordinances were violated. *See* BoE Rules 4(A)(2)(a)(v) and EC Regs at Part 14(1)(g).

The complaint includes a variety of allegations regarding the City Election Code. The complaint alleges a violation of Article XXII, Section 7 (A) (which we believe to mean Article XII, Section 7 (A)) alleging Councilor Bassan used her position to influence City employees' support for or against any candidate. Additionally, there is an allegation of a violation of EC Regulations Part 8: Petitions Section C (which we believe to mean Part 9 "Revocation of Certification (c)(d)(f)) alleging that Councilor Bassan fraudulently submitted qualifying contributions ("QC"), misrepresented the purpose of the QC or obtaining the contributor's

signature, and knowingly made a false statement or material misrepresentation in any report or other document. There are also allegations about the State Election Code.

Following a comprehensive examination of the complaint for facial sufficiency, in accordance with Part 14(3) of the EC regulations, we have made the following determinations regarding the disposition of its various components.

The allegations pertaining to the alleged submission of a fraudulently presented QC and nominating petition are rejected on the grounds that they fall outside the 120-day limitation set forth in Part 14(1)(t) of the EC regulations, which requires that “[t]he complaint alleges a violation occurred within 120 days of the date the complaint is filed with the City Clerk.” The supporting documentation attached to the complaint indicates that both the QC and nominating petition signatures are dated June 6, 2023, which is 146 days prior to the October 30 filing of the complaint.

The allegations of potential violations of the New Mexico Election Code are outside the jurisdiction of the Board of Ethics and are also hereby rejected. The Board of Ethics jurisdiction is in the Albuquerque City Charter Article XII Section 3 (c) “is limited to acting within the scope of matters covered by the Code of Ethics, the Election Code, the Open and Ethical Elections Code, and rules promulgated by the Board and/or the City Clerk.”

The allegations that Councilor Bassan utilized her official position to influence City employees, however, are facially sufficient and may warrant further review. Unlike the limitation period in the EC regulations, the 120-day limitation period, set forth in Article XII, Section 3(i)(1) of the City Charter, for complaints regarding allegations of Article XII of the City Charter contains an exception for situations in which “the facts and documentation supporting the charges alleged in the complaint were not public knowledge or available for public inspection within that time frame.” It is not apparent from the face of the complaint that the allegations of violations of Article XII are time-barred. We are thus referring that specific claim to the Board of Ethics.

In accordance with EC Regs Part 14(6), if the complaint is rejected in part and referred in part, the complaint will be referred to the Board in accordance with subpart 1(g). The complainant may appeal the rejection or submit a new complaint; however, the referred complaint will be considered withdrawn.

Additionally, the Rules and Regulations of the Board of Ethics offers a Consent Order/Settlement Process that enables a Respondent to offer to settle a filed complaint through a conference with the City Clerk’s staff. Any proposed settlement agreement is then submitted to the Board, detailing contentions, corrective actions, and proposed remedies. Board acceptance, determined by a majority vote at a public hearing, results in the issuance of a final consent order, a public record. The Respondent’s attendance is required to confirm acceptance of the resolution. Rejection may lead to further legal proceedings. Please advise if this is of interest to the parties.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be the initials 'CCL' followed by a stylized flourish.

Ethan Watson
Albuquerque City Clerk

Cc: Cristobal Rocha, Program Admin
John Kelly, Board of Ethics and Campaign Practices