

STATE OF NEW MEXICO
COUNTY OF SOCORRO
SEVENTH JUDICIAL DISTRICT COURT

/s/ Olga Needy 2/5/2014

CHARLES A. WAGNER,

Plaintiff,

v.

NO. D-725-CV-2014-00005

BRUCE E. WIGGINS,

Defendant.

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff, Charles A. Wagner ("Wagner"), a member of the Socorro Electric Cooperative, Inc.'s ("SEC") Board of Trustees, seeks a temporary restraining order (TRO) against SEC's outside counsel, Defendant Bruce E. Wiggins, Esq., without any allegation or showing of any threatening or abusive behavior toward Wagner. Specifically, Wagner alleges that at a November 2013 SEC board meeting, Wiggins "had me removed from the Board of Trustees meeting by an armed Sheriff's Deputy. . . ." Application at para. 4. Wagner also complains that Wiggins "should not sit at the board of trustees [sic] table" and that Wiggins "should not attempt to prevent video recording while the board is in open session." *Id.* at para. 6. As demonstrated below, there is no basis for a TRO, the application thus should be denied and Wiggins should be awarded his reasonable attorneys' fees and costs of defending this childish effort by Wagner.

FACTUAL BACKGROUND

During his tenure as SEC's 2013 Board Chair, Luis Aguilar determined that Wagner would not be permitted to attend closed executive sessions of SEC Board meetings because of Wagner's

admitted history of secretly tape recording closed sessions of the Board and disclosing those tapes to others. Affidavit of Bruce E. Wiggins, Esq. at para. 5. At its November 21, 2013 Board of Trustees meeting, after the Board voted to close the meeting so that Board members could discuss litigation and personnel matters, just as he had done throughout the year, Mr. Aguilar asked Wagner to leave the meeting. Id. at 7. Wagner and the individual videotaping the meeting failed to leave. Id. At that point, Mr. Aguilar consulted with SEC’s counsel, Lorna M. Wiggins. Defendant Wiggins spoke with the Sheriff’s Deputy in attendance. Id. at 8. After that consultation, Wiggins again informed Wagner that he was being asked to leave and that if he continued to refuse to leave, the Sheriff’s Deputy would be asked to escort him out of the board room. Id. When Wagner continued to refuse to leave, Wiggins asked the Socorro Sheriff’s Deputy to escort Wagner from the premises. The Sheriff’s Deputy did so. Id. Wiggins also informed the person videotaping the meeting that the Board had voted to go into executive session and he needed to leave the board room as well. Id.

At SEC’s January 29, 2014 Board meeting, Wagner informed Wiggins that he was not to sit next to the newly elected Board Chair, Anne Dorrough, because Wiggins was not an elected member of the Board. Id. at 9. Wiggins responded by stating that it was up to the Board Chair to decide where he was to be seated. Id. Ms. Dorrough decided, as was her prerogative as Board Chair, that SEC’s counsel would be seated next to her. At that point, Wiggins took his usual seat. Id. Wiggins’ actions were entirely appropriate and cannot serve as the basis for a TRO.

ARGUMENT

A. Wagner is Not Entitled to the Relief Sought.

“Injunctions are harsh and drastic remedies [that] should issue only in extreme cases of pressing necessity and only where there is no adequate . . . remedy at law.” Hill v. Community of Damien of Molokai, 1996-NMSC-8, ¶ 51, 121 N.M. 353, 911 P.2d 861 (quoting Padilla v.

Lawrence, 1984-NMCA-064, ¶ 22, 101 N.M. 556, 685 P.2d 964 (alteration in original)). A plaintiff is entitled to a preliminary injunction where it shows: (a) the injunction would not be adverse to the public interest; (b) the threatened injury to the plaintiff outweighs whatever damage the proposed injunction may cause the opposing party; (c) the plaintiff will suffer irreparable injury unless the injunction issues; and (d) there is a substantial likelihood that the plaintiff will eventually prevail. Koerpel v. Heckler, 797 F.2d 858, 866-67 (10th Cir. 1986).

B. Wagner Is Not Threatened By Immediate and Irreparable Harm.

The relief that Wagner seeks shows that he faces no immediate or irreparable harm. Wagner asks this Court to order Wiggins to “sit 5 yards away” from the “board table” and to “stand to deliver legal advice from his seat in the audience when such is requested.” He does not ask that Wiggins be order to sit 5 yards away because he is at risk of any type of harm. He simply does not like that Wiggins is sitting at the board table. It should be noted that Wagner first complained to the Board Chair that Wiggins should not sit next to her during Board meetings. The Board Chair decided, as was her prerogative, that SEC’s counsel would be seated next to her. That Wagner now seeks judicial review of her decision on seating arrangements is ludicrous. Through a motion for extraordinary relief, Wagner is requesting this Court act as a parliamentarian for SEC. This petulant request is a waste of judicial resources and inappropriately inserts the Court in the business of this private not for profit corporation. It offends the sensibility of a reasonable person.

Second, Wagner does not claim that he is unable to attend Board meetings because of the seating arrangements. He is fully able to attend Board meetings. In fact, Wagner has attended Board meetings for years sitting at the opposite end of the table from the Chair without complaint. Wiggins Aff. at para. 10. He simply objects to Wiggins sitting closer to the Board Chair than he gets to be. Such matters are within the discretion of the Board Chair and do not require judicial intervention.

Wagner also seeks an order of the Court that Wiggins “should not attempt to prevent video recording while the Board is in open session.” First, there is absolutely no evidence that Wiggins has taken any action contrary to SEC bylaws regarding meetings. As noted above, when the person videotaping the meeting failed to leave the board room after the vote to go into closed executive session, Wiggins informed him that he, too, had to leave. There is nothing to restrain.

C. A Preliminary Injunction Will Not Restore the Status Quo.

Should the Court enter the relief requested by Wagner, Wiggins will be precluded from engaging in the legitimate activity of having discrete, off line, discussions with the Board Chair during SEC Board meetings, the current status quo. Wagner’s TRO will disrupt this process and interfere with the attorney-client relationship. Wagner’s apparent purpose is to deprive SEC from using counsel of its choosing in the manner it finds most effective. He has actively campaigned against the SEC’s choice of counsel during his entire tenure as a trustee and cannot convenience the majority of the Board to support his vendetta. This TRO is just the latest petulant act in that campaign.

D. The Balance of the Hardships Does Not Tip in Wagner’s Favor.

The detriment of the requested injunctive relief to Wiggins far outweighs any possible benefit to Wagner. As noted above, Wiggins’ efforts to advise and counsel the Board Chair should not be impacted by Wagner’s efforts to hamper the Board.

WHEREFORE, Wiggins requests that the Court deny Wagner’s Application for a Temporary Restraining Order, order Wagner to pay Wiggins’ reasonable attorney fees and costs and order such other and further relief as is appropriate.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically filed

By /s/ Patricia G. Williams

Patricia G. Williams

Attorneys for Bruce E. Wiggins

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P. O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

We hereby certify that a copy of the
foregoing was mailed to plaintiff Charles A.
Wagner on this 5th day of February, 2014.

WIGGINS, WILLIAMS & WIGGINS, P.C.

Electronically filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

STATE OF NEW MEXICO
COUNTY OF SOCORRO
SEVENTH JUDICIAL DISTRICT COURT

CHARLES A. WAGNER,

Plaintiff,

v.

NO. D-725-CV-2014-00005

BRUCE E. WIGGINS,

Defendant.

**AFFIDAVIT OF BRUCE E. WIGGINS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND PERMANENT INJUNCTION**

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Bruce E. Wiggins, Esq., having been duly sworn, deposes and states:

1. I have personal knowledge of the facts stated in this affidavit, except where otherwise noted and if called as a witness, I would and could testify competently thereto.
2. I am a partner in the law firm of Wiggins, Williams & Wiggins, P.C. I have been a licensed attorney practicing in the State of New Mexico since 1973.
3. Wiggins, Williams & Wiggins, P.C. currently serves as general counsel to Socorro Electric Cooperative, Inc. ("SEC").
4. At no time have I engaged in any threatening or abusive behavior toward Plaintiff Charles A. Wagner.
5. During his tenure as SEC's 2013 Board Chair, Luis Aguilar determined that Mr. Wagner would not be permitted to attend closed executive sessions of SEC board meetings

because of Mr. Wagner's admitted history of secretly tape recording closed sessions of the board and the risk that he would again disclose those tapes to others.

6. At its November 21, 2013 Board of Trustees meeting, Mr. Wagner presented a letter that stated his opinion that he could not be removed from a board meeting. A copy of that letter is attached hereto as Exhibit A.

7. At the November meeting, after the board voted to close the meeting so that board members could discuss litigation and personnel matters, just as he had done throughout the year, Mr. Aguilar asked Mr. Wagner to leave the meeting. Wagner and the individual videotaping the meeting failed to leave.

8. At the behest of the Chair, I spoke with the Sheriff's Deputy in attendance and with Mr. Wagner. I informed Mr. Wagner again that he was being asked to leave and that if he continued to refuse to leave, the Sheriff's Deputy would have to escort him out of the board room. When he continued to refuse to leave, I conferred with and asked the Socorro Sheriff's Deputy to escort Mr. Wagner from the premises. The Sheriff's Deputy did so. I do not know whether the Sheriff's Deputy was armed. I also informed the person videotaping the meeting that the board had voted to go into executive session and he needed to leave the board room as well.

9. At SEC's January 29, 2014 board meeting, Mr. Wagner informed me that I was not to take my usual seat next to the newly elected Board Chair, Anne Dorough, because I was not an elected member of the Board. I told Mr. Wagner that it was up to the Board Chair to decide where I was to be seated. Ms. Dorough decided, as was her prerogative as Board Chair, that as SEC's counsel I would be seated next to her. At that point, I took my usual seat.

10. Since I became counsel to the SEC, Mr. Wagner always has attended Board meetings sitting at the opposite end of the table from the Chair without complaint.

Bruce E. Wiggins

Bruce E. Wiggins

SUBSCRIBED AND SWORN to before me this 5th day of February, 2014 by Bruce E. Wiggins.



Christie Griego
Notary Public

My Commission Expires:

4/7/2017

November 21, 2013

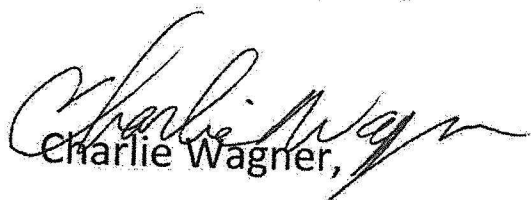
To whom it may concern:

I, Charlie Wagner am an elected member of the Board of Trustees of Socorro Electric Cooperative, Inc. As such I have the right to participate in every aspect of the meetings of this board, including executive sessions. Unless you have an order from a court of proper jurisdiction, a warrant for my arrest duly sworn or other legal citation showing authority as to why I cannot attend to my duties as a trustee please do not attempt to interfere with my presence in this meeting or my freedom to speak, be heard and participate in the proceedings.

Any attempt to remove me from this meeting shall be considered kidnapping, false arrest or obstruction of justice, for which you and your employer will be held liable.

If you have any doubt, please seek the advice of the District Attorney of Socorro County, NM or your department's chief officer before you take any action.

You are hereby respectfully notified,


Charlie Wagner,

Trustee, Socorro Electric Cooperative, Inc.

