

January 6, 2014

CHARLES WAGNER

V.

BRUCE E. WIGGINS

No: D- 725-CV-2014-0005

This is a brief summary presented to the Seventh District Court, the Honorable Mathew G. Reynolds, Judge District II, presiding, to: I am asking for this restraining order to restrain Mr. Bruce Wiggins and the Wiggins, Williams & Wiggins Law Firm because I have been persecuted and harassed by Mr. Wiggins and members of his firm.

They have encouraged the board to act against me in an illegal and improper manner by restricting my execution of trustee duties in regard to attendance at training sessions, conferences, meetings and other activities presented to the other trustees on the SEC Board of Trustees. This so called "censuring" is not allowed under our bylaws or any other law, to my knowledge. No authority for their actions has been provided despite my requests.

They have used Socorro Sherriff's deputies to remove me from the board room during executive sessions and actually laid hands on the gentleman videotaping the board meeting and his camera.

They recommended to the SEC Board of Trustees that I be investigated for improper behavior, etc. This investigation was a type of kangaroo endeavor with "witnesses" decided by unknown means and without my being allowed to call witnesses. The investigation was the brain child of the law firm. The report of the investigator was presented in two sections; the first in an open meeting of the SEC Board of Trustees; The second in an executive session that I was not allowed to attend. I still do not know what is in that report.

They have overstepped the normal boundaries and behaviors of a law firm by joining the table where the SEC Board of Trustees sits and offering opinions and suggestions over and above requests for rulings on legal matters. They take over

the running of the meetings and become personally involved. No other SEC attorney has ever acted in such an aggressive manner.

I request the court to restrain Mr. Wiggins and his firm from the following:

1.) removing me, Charles Wagner, Trustee, from the Board of Trustee meetings of the Socorro Electric Cooperative, Inc. (SEC),

2.) Blocking my access to other trustees during board meetings,

A.) by his presence at the boards' table,

B.) by placing himself between elected trustees, impairing direct communication between trustees,

C.) by his engaging in, one on one private discussions and coaching with selected trustees, out of hearing of other trustees and co-op members in attendance during open (public) board deliberations and

D.) by his otherwise interfering with the deliberations and debates which may take place between the elected officials (Trustees) of the SEC board of trustees.

#### Background Information

These actions by Mr. Wiggins and his firm are the continuation of a campaign of harassment and persecution started by disgruntled, soon to become former trustees, which began in October of 2009. The Districts Three and Five Members Meetings produced proposed reform bylaw amendments that were overwhelmingly ratified by the 700+ members in attendance at the Annual Members' Meeting on April 17, 2010. The reform measures were so effective in cutting excessive trustee benefits and demanding transparency that the board filed suit against the members. They blamed me for the changes, thus began their campaign of character assassination. The Wiggins lawyers have encouraged this and enhanced the effort with the aforementioned Bolnick Report. [ ] Amendments approved in 2010 proved that the membership was finally engaged. That began the dismantling process of the controlling faction's efforts to operate in secrecy and to dilute member democratic control for their personal benefit.

Only two trustees of that faction remain on the board today. Starting 1/1/2014 the board is down to five.

### History

History of events leading to the present controversy: SEC is an Income Tax exempt “nonprofit” cooperative which must operate in compliance with all laws including the Internal Revenue Code (26U.S.C. Section 501( c )(12), (“IRC”) and its related regulations, along with the New Mexico Corporation Laws. The “Democratic Principles” of the IRC require “democratic member control”, demanding fair elections based on the “one person-one vote rule” and the assurance of equitable (equal) representation of voting districts. SEC’s bylaws Article V Section 8, make it a **duty of the board of directors** to **assure** this cooperative’s members’ right to equal representation and to assure that as member populations within the districts change, the board shall continue to assure equitable representation of the voting districts before trustee elections using the process stated in the bylaw.[1] The failure of the board to obey this bylaw over 4 decades is the origin of this continuing controversy. The Wiggins law firm failed to recognize this bylaw and failed advising the board to obey it before redrawing the lines of voting districts in the SEC service area before the 2012 Annual Members Meeting.

In their conduct of that meeting, the chairman and attorney violated several bylaws which I called to their attention during the meeting and again by letter to the Chairman after the meeting. That letter, pointing out which bylaws were violated resulted in a denial letter by the chairman. Neither he nor the attorney wanted to be held accountable for their violations. Both of them resented my calling their attention to the violations and, in my opinion it resulted in more retaliation, such as the “Bolnick Investigation” and other intimidating dirty political tricks by the attorneys against me.

Although, they have a duty to be unbiased and apolitical, regarding relations with board members, the attorneys seem to have made me a target of their animosity, joining the efforts of two present trustees and the several former trustees, whose retaliatory false allegations since the 2010 Annual Members Meeting, make up the false justification for imposing arbitrary censure (a verbal reprimand) with

personal penalties which violate my rights as an elected trustee and my personal civil rights.

By performing my duties in good faith and in what I believe to be in the best interest of the cooperative, not being opposed to its best interest, I have incurred the wrath of fellow trustees and the board's attorneys. By pointing out to them the actions they have taken which violate laws, bylaws and rights of the members of the cooperative regarding meetings, elections, amending bylaws and other actions of these attorneys, that I believe are opposed to the best interest of the cooperative I have angered them. Their impromptu, seemingly unreasonable decisions absent the necessary legal references and the inconsistent interpretations are an example of which will be presented below, with the permission of the Court. In my opinion, the attorneys have encouraged needless litigation which is costly and ill advised.

The June 2010 suit of all the members to prevent transparency was an unnecessary pursuit that a less than competent, board approved without having adequate information provided to them by the attorneys seemingly intent on profiting by the suit win or lose. It is my opinion that the probable judgment against the plaintiff SEC, was predictable by anyone knowledgeable of cooperative's "member-consumer owned and operated for their mutual benefit, at cost-nonprofit" philosophy and IRC 501( c )(12)'s Principles, including that of "democratic member control".

Based on my years of experience on this board and based on past experience working with other co-ops, as an employee of the National Rural Electric Cooperative Association ("NRECA"), I have formed the opinion that SEC's attorneys make inconsistent interpretations of laws and bylaws to satisfy the wishes of the board majority at the expense of the corporation's interest.

If the Court permits, I would like to provide an example based on two recent decisions made by cooperative attorneys that prove my point.

Example: The 2010 Bylaw amendments reduced the number of trustees from 11 to 5. There is nothing in the NMREC Act. That speaks to how this reduction is

achieved. The bylaws are also silent on this issue. Law always trumps Robert's Rules so the attorney referred to the NMNPC Act's Statute:

53-8-18. Number and election of directors.

"... No decrease in number shall have the effect of shortening the term of any incumbent director..." In this case it seems logical and correct that incumbent trustees be allowed to remain on the board until the expiration of their current terms. [3]

Next Case: In this case a member makes a request under the co-op's inspection of records bylaw for the names and addresses of the membership. Management refuses based on fictitious "privacy concerns" for which neither bylaws nor the NMREC Act address. So the member, by suing the cooperative, eventually wins the right to the list. Her attorney and the co-op's attorney bill for their hours and are paid. In this case the SEC's attorney chose not to refer to the NMNPC Act which would have solved the problem saving the co-op the cost of attorney's fees with reference to Statute: 53-8-27. Books and records. "... Each corporation shall keep at its registered office or principal office in New Mexico a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time." (Example End)

It seems to me that picking and choosing legal references inconsistently to either, favor the trustee majority or encourage litigation, over the legal rights of members would be at the least, dishonest. For an attorney to do something like that would seem to be a violation of the extremely high standard of professional conduct expected of practitioners of this elite profession.

Actions taken by the board majority based on unfounded allegations, and accusations, none of which are delivered under oath, are the basis for censuring me and inflicting punitive measures against me on an arbitrary and malicious basis for which I have been provided no authority in law, the bylaws or reasonable policies of the cooperative. I have not been provided an opportunity to face my accusers or provided due process, hearing or trial. I know of no other authority extant that allows the board to punish me or to impose limitations on my prerogatives as a trustee. Only those members who elected me have the exclusive right to remove me from office, through by law Article V Trustees, Section 5. Removal of Trustees. "Any member may bring charges against a trustee of his/her district and, by filing with the Secretary such charges in writing together with a petition signed by at