

BEFORE THE DISCIPLINARY BOARD OF  
THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of

**Emilio J. Chavez, Esq.**

Disciplinary No. **10-2014-704**

An Attorney Licensed to  
Practice Law Before the Courts  
of the State of New Mexico

**SPECIFICATION OF CHARGES**

1. Rule 17-105(B)(3)(d) NMRA 2014 of the Rules Governing Discipline empowers counsel for the Disciplinary Board to file a Specification of Charges against an attorney with the Disciplinary Board.
2. Emilio J. Chavez, Esq., (“Respondent”) is an attorney currently licensed to practice law before the courts of the State of New Mexico having been admitted in 2004.
3. The factual allegations set forth in the Specification of Charges state acts of professional misconduct in violation of Rules 16-101, 16-304(A), 16-304(C), 16-305(C), 16-404(A), and/or 16-804(D) NMRA 2014 of the Rules of Professional Conduct.
4. Pursuant to Rule 17-309(A) NMRA 2014 of the Rules Governing Discipline, cause exists to conduct a hearing on the following charges so

that the Disciplinary Board and the Supreme Court can determine whether further action is appropriate.

### COUNT I

5. On or about April 10, 2013, the Kit Carson Electric Cooperative, Inc. in Taos, New Mexico was robbed.
6. Immediately after the crime was reported the Taos Police Department began an investigation.
7. Isaac Martinez (hereinafter "Mr. Martinez") was arrested on or about August 1, 2013.
8. Mr. Martinez was indicted by the grand jury on August 8, 2013 along with one co-defendant. A two additional co-defendants were indicted September 12, 2013.
9. No criminal case had commenced, nor was Respondent representing the State as a party until Mr. Martinez and his co-defendants were indicted.
10. The case against Mr. Martinez resulting from the Kit Carson Electric Cooperative, Inc. robbery was assigned a cause number, D-820-CR-201300129 on August 8, 2013.
11. Before any indictment, on or about April 12, 2013, Deputy District Attorney Emilio J. Chavez, hereinafter "Respondent" issued and filed two (2) Subpoenas *Duces Tecum* under the caption, State of New

- Mexico v. John Doe, using a “cause number” of CS 2013-1 or more fully, D-820-CS-2013-000001.
12. Before any indictment, on or about April 22, 2013, Respondent issued and filed three (3) Subpoenas *Duces Tecum* under the caption, State of New Mexico v. John Doe, using a “cause number” of CS 2013-1 or more fully, D-820-CS-2013-000001.
  13. Before any indictment, on or about May 28, 2013, Respondent issued and filed six (6) Subpoenas *Duces Tecum* under the caption, State of New Mexico v. John Doe, using a “cause number” of CS 2013-1 or more fully, D-820-CS-2013-000001.
  14. All eleven (11) subpoenas issued were to out-of-state cellular telephone providers to obtain “subscriber/billing information” and in three (3) instances also “Call detail Records, and Text Message Detail”.
  15. On or about October 8, 2013, Mr. Martinez’ counsel filed an *Expedited Motion to Quash Indictment Due to Gross Prosecutorial Misconduct or in the Alternative to Suppress All Evidence Obtained Through the Prosecution’s Unjustifiable Use of Fraudulent Subpoenas* (Hereinafter “*Motion to Quash*”).
  16. On or about October 23, 2013, Respondent filed a *Response to Defendant’s Motion to Quash Indictment*.

17. On or about November 7, 2013, Mr. Martinez' counsel filed a *Reply to Response to Defendant's Motion to Quash Indictment*.
18. The Court heard oral argument on the *Motion to Quash* on January 8, 2014 and entered its *Decision of the Court on Defendant's "Expedited Motion to Quash Indictment Due to Gross Prosecutorial Misconduct..."* (hereinafter "*Decision*") on April 8, 2014.
19. The *Decision* found that the indictment against Mr. Martinez should be quashed and stated in pertinent part that
  - a. the subpoenas in question were "not in the form approved by the Supreme court",
  - b. that Respondent did "not represent a party, as no criminal case had been commenced",
  - c. that the subpoenas were not issued by the grand jury, that the issuance of the subpoenas was not an isolated instance as there were approximately 49 other such subpoenas issued in 2013, mostly by Respondent,
  - d. that the Federal Stored Communications Act "does not grant a New Mexico prosecutor authority to issue stand-alone subpoenas" nor does it preempt or supersede "New Mexico

- state constitutional provisions, statutes and rules of procedure, nor provides an exclusive remedy for violation of state law”,
- e. that, “A stand-alone subpoena, in improper form, issue and signed by a prosecutor in aid of a police investigation, before a criminal cause is properly commenced, as in the instant facts is simply without precedent, analogy or lawful authority in New Mexico law”,
  - f. that Respondent had no reasonable basis for his actions and his subjective belief that he was acting “lawfully and properly” is irrelevant,
  - g. and that, “It is objectively unreasonable for the prosecutor to believe that his conduct was lawful.”

20. Respondent filed a *Notice of Appeal* on April 21, 2014 and a *Docketing Statement* on May 20, 2014.

21. As of the date of this pleading the *Notice of Appeal* is still pending.

22. The eleven (11) subpoenas were not issued by the grand jury.

23. When the eleven (11) subpoenas were issued neither Mr. Martinez nor any of his co-defendants were parties, targets, accused or defendants in relation to the Kit Carson Electric Cooperative, Inc. robbery.

24. The eleven (11) subpoenas did not conform to Rule 5-511 NMSA of the Rules of Criminal Procedure for the District Courts.
25. The eleven (11) subpoenas did not conform to NMRA, Form 9-217.
26. The eleven (11) subpoenas did not conform to the Federal Stored Communications Act, 18 USCA §§2701 through 2712 (“FSCA”).
27. The eleven (11) subpoenas did not conform to any New Mexico state law or federal law.
28. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:
  - a. Rule 16-101 by failing to provide competent representation to a client;
  - b. Rule 16-304(A) by unlawfully obstructing another party’s access to evidence;
  - c. Rule 16-304(C) by failing to obey the rules of a tribunal;
  - d. Rule 16-305(C) by engaging in conduct disruptive to the tribunal;
  - e. Rule 16-404(A) by using methods to obtain evidence that violates the legal rights of a third person; and/or
  - f. Rule 16-804(D) by engaging in conduct prejudicial to the administration of justice.

## COUNT II

29. The facts as stated in Count I are restated and reincorporated by reference herein.
30. On or about August 2, 2013, a criminal complaint was filed against Mr. Martinez captioned State of New Mexico v. Isaac Martinez, D-820-CS-2013-00126.
31. Despite a criminal complaint being filed on August 2, 2013 and a cause number being assigned, on that same date Respondent issued and filed five (5) Subpoenas *Duces Tecum* under the caption, State of New Mexico v. Isaac Martinez, using a “cause number” D-820-CS-2013-000001.
32. All five (5) August 2, 2013, subpoenas issued were to out-of-state cellular telephone providers to obtain,

Subscriber information regarding phone number XXX-XXX-XXXX<sup>1</sup> and all phone calls and/or text messages made from the above listed number from April 4 2013 to April 14, 2013. This information includes the name of the subscriber at that time and the name(s) of people called that are Verizon subscribers.

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<sup>1</sup> The telephone numbers were different for each subpoena and have been redacted for privacy.

33. The five (5) August 2, 2013, subpoenas were not served on Mr. Martinez or his counsel and were not uploaded to the Case Management System until August 12, 2013.
34. On or about August 13, 2013, State of New Mexico v. Isaac Martinez, D-820-CS-2013-00126 was dismissed with prejudice on the grounds that Mr. Martinez was indicted on August 8, 2013, on the same charges in D-820-CR-201300129.
35. On or about August 7, 2013, Respondent issued and filed two (2) Subpoenas *Duces Tecum* under the caption, State of New Mexico v. Issac Martinez, using a cause number D-820-CS-2013-00126.
36. Both August 7, 2013 subpoenas issued were to out-of-state cellular telephone providers to obtain, "Subscriber/billing/Account information for the time period of 04/09/13 thru 04/11/13" for several telephone numbers.
37. Respondent did not provide a copy of either August 7, 2013 subpoena to Mr. Martinez or his counsel.
38. The August 7, 2013 subpoenas were not uploaded to the Case Management System until almost a month later on September 4, 2013.
39. None of the subpoenas issued either August 2, 2013 or August 7, 2013 (hereinafter collectively "August subpoenas") conformed to Rule 5-



103(A) NMSA of the Rules of Criminal Procedure for the District Courts.

40. None of the August subpoenas conformed to NMRA, Form 9-217.
41. None of the August subpoenas conformed to the Federal Stored Communications Act, 18 USCA §§2701 through 2712 (“FSCA”).
42. None of the August subpoenas conformed to any New Mexico state law or federal law.
43. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. Rule 16-101 by failing to provide competent representation to a client;
- b. Rule 16-304(A) by unlawfully obstructing another party’s access to evidence;
- c. Rule 16-304(C) by failing to obey the rules of a tribunal;
- d. Rule 16-305(C) by engaging in conduct disruptive to the tribunal;
- e. Rule 16-404(A) by using methods to obtain evidence that violates the legal rights of a third person; and/or
- f. Rule 16-804(D) by engaging in conduct prejudicial to the administration of justice.

### COUNT III

44. The facts as stated in Counts I and II are restated and reincorporated by reference herein.
45. One of Mr. Martinez' co-defendants, Carla Casias, who was also indicted on August 8, 2013, was assigned cause number, D-820-CR-2013-00130.
46. On or about August 9, 2013, Respondent filed a *Statement of Joinder* and Mr. Martinez' case was consolidated with Ms. Casias' case pursuant to Rule 5-203 NMRA (hereinafter "joint criminal case").
47. On or about December 17, 2013, Respondent had served three (3) subpoenas issued by the Court compelling three individuals, Taro Brown, Steven Hammer, and Jessica Machado, to give statements in the joint criminal case at the Eighth Judicial District Attorney's Office on January 6, 2014.
48. All three subpoenas were captioned State of New Mexico v. Casias, D-820-CR-2013-00130 and did not include any reference to the consolidated case of State of New Mexico v. Martinez, D-820-CR-2013-00129, despite the consolidation.
49. The only notification of the issuance of the three subpoenas was on the Case Management System when an update was noticed on December 19,

2013, to Ms. Casias' counsel, Justin Lea, that the subpoenas had been filed December 17, 2013.

50. The three subpoenas were not in compliance with Rule 5-503(A) NMRA which specifically states, "If a subpoena is served to secure a witness ..., a copy of the subpoenas shall be served on each party."
51. The subpoenas were not in compliance with Rule 5-503(D) NMRA which specifically states, "[c]ounsel must make reasonable efforts to confer in good faith regarding scheduling of a deposition or statement before serving notice of deposition or notice of statement."
52. The three subpoenas did not conform to Rule 5-511 NMSA of the Rules of Criminal Procedure for the District Courts.
53. The three subpoenas did not conform to NMRA, Form 9-217.
54. On or about January 6, 2014, Mr. Coberly filed an *Emergency Motion for Sanctions due to State's Continued Abuse of This Court's Subpoena Power in State of New Mexico v. Isaac Martinez and Carla Casias*, Nos. D-820-CR-2013-00129 and D-820-CR-2013-00130.
55. On or about January 22, 2014, Respondent filed a *Response to Defendant's Emergency Motion for Sanctions*.
56. On or about February 7, 2014, Mr. Coberly filed a *Reply to Response to Defendant's Emergency Motion for Sanctions*.

57. As of the date of this pleading there has been no ruling on the *Emergency Motion for Sanctions due to State's Continued Abuse of This Court's Subpoena Power.*

58. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. Rule 16-101 by failing to provide competent representation to a client;
- b. Rule 16-304(A) by unlawfully obstructing another party's access to evidence;
- c. Rule 16-304(C) by failing to obey the rules of a tribunal;
- d. Rule 16-305(C) by engaging in conduct disruptive to the tribunal;
- e. Rule 16-404(A) by using methods to obtain evidence that violates the legal rights of a third person; and/or
- f. Rule 16-804(D) by engaging in conduct prejudicial to the administration of justice.

#### COUNT IV

59. In 2013, Respondent issued and filed forty-six (46) Subpoenas *Duces Tecum* under the caption, State of New Mexico v. John Doe, using a "cause number" of CS 2013-1 or more fully, D-820-CS-2013-000001 for

cell records, (excluding those issued and filed in relation to the Kit Carson Electric Cooperative, Inc. robbery):

- a. January 3, 2013 – one (1) John Doe subpoena
- b. January 16, 2013 – ten (10) John Doe subpoenas
- c. January 18, 2013 – one (1) John Doe subpoena
- d. January 30, 2013 – seven (7) John Doe subpoenas
- e. March 22, 2013 – one (1) John Doe subpoena
- f. March 28, 2013 – three (3) John Doe subpoenas
- g. April 4, 2013 – one (1) John Doe subpoena
- h. April 26, 2013 – eight (8) John Doe subpoenas
- i. May 21, 2013 – two (2) John Doe subpoenas
- j. July 3, 2013 – seven (7) John Doe subpoenas
- k. August 7, 2013 – one (1) John Doe subpoena
- l. August 15, 2013 – one (1) John Doe subpoena
- m. August 22, 2013 (filed 8/26/13) – one (1) John Doe subpoena
- n. September 13, 2013 – one (1) John Doe subpoena
- o. September 18, 2013 – one (1) John Doe subpoena

60. On April 4, 2013, Respondent issued and filed a Subpoena *Duces Tecum* under the caption, State of New Mexico v. Martinez, Edward Sr., using a

“cause number” of CS 2013-1 or more fully, D-820-CS-2013-000001 for Children, Youth and Family records.

61. On June 18, 2013, Respondent issued and filed a Subpoena *Duces Tecum* under the caption, State of New Mexico v. Pete J. Mondragon, using a “cause number” of CS 2013-1 or more fully, D-820-CS-2013-000001 for medical records.
62. No criminal case had commenced, nor was any attorney in the Office of the District Attorney representing the State as a party in relation to the issuance of the subpoenas.
63. The subpoenas were not issued by the grand jury.
64. The subpoenas did not conform to Rule 5-511 NMSA of the Rules of Criminal Procedure for the District Courts.
65. The subpoenas did not conform to NMRA, Form 9-217.
66. The subpoenas did not conform to the Federal Stored Communications Act, 18 USCA §§2701 through 2712 (“FSCA”).
67. The subpoenas did not conform to any New Mexico state law or federal law.
68. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. Rule 16-101 by failing to provide competent representation to a client;
- b. Rule 16-304(A) by unlawfully obstructing another party's access to evidence;
- c. Rule 16-304(C) by failing to obey the rules of a tribunal;
- d. Rule 16-305(C) by engaging in conduct disruptive to the tribunal;
- e. Rule 16-404(A) by using methods to obtain evidence that violates the legal rights of a third person; and/or
- f. Rule 16-804(D) by engaging in conduct prejudicial to the administration of justice.

## COUNT V

69. In 2012, Respondent issued and filed thirty-four (34) Subpoenas *Duces Tecum* under the caption, State of New Mexico v. John Doe, using a

“cause number” of CS 2012-1 or more fully, D-820-CS-2012-000001 for cell records:

- a. August 23, 2012 – one (1) John Doe subpoena
- b. August 27, 2012 – one (1) John Doe subpoena
- c. August 31, 2012 – four (4) John Doe subpoenas
- d. September 4, 2012 – one (1) John Doe subpoena
- e. September 17, 2012 – four (4) John Doe subpoenas
- f. October 4, 2012 – seven (7) John Doe subpoenas
- g. October 9, 2012 – one (1) John Doe subpoena
- h. October 15, 2012 – five (5) John Doe subpoenas
- i. December 17, 2012 – ten (10) John Doe subpoenas

70. On October 31, 2012, Respondent issued and filed a Subpoena *Duces Tecum* under the caption, State of New Mexico RE: INVESTIGATION OF: AREA TAOS BURGLARY INVESTIGATIONS, using a “cause number” of CS 2012-1 or more fully, D-820-CS-2012-000001 for records from Kit Carson Electric Cooperative (KCEG), Luis Reyes, CEO.

71. No criminal case had commenced, nor was any attorney in the Office of the District Attorney representing the State as a party in relation to the issuance of the subpoenas.



72. The subpoenas were not issued by the grand jury.
73. The subpoenas did not conform to Rule 5-511 NMSA of the Rules of Criminal Procedure for the District Courts.
74. The subpoenas did not conform to NMRA, Form 9-217.
75. The subpoenas did not conform to the Federal Stored Communications Act, 18 USCA §§2701 through 2712 (“FSCA”).
76. The subpoenas did not conform to any New Mexico state law or federal law.
77. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:
  - a. Rule 16-101 by failing to provide competent representation to a client;
  - b. Rule 16-304(A) by unlawfully obstructing another party’s access to evidence;
  - c. Rule 16-304(C) by failing to obey the rules of a tribunal;
  - d. Rule 16-305(C) by engaging in conduct disruptive to the tribunal;
  - e. Rule 16-404(A) by using methods to obtain evidence that violates the legal rights of a third person; and/or

- f. Rule 16-804(D) by engaging in conduct prejudicial to the administration of justice.

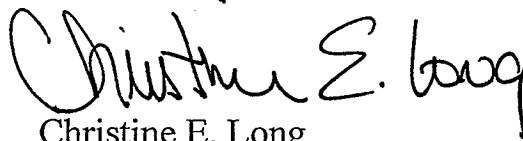
### FACTORS IN AGGRAVATION

78. Respondent has displayed a pattern of misconduct. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(c);
79. Respondent has engaged in multiple offenses. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(d);
80. Respondent has substantial experience in the practice of law (2004/10 years). *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(i); and/or
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81. The names and addresses of potential witnesses presently known to disciplinary counsel are:
- |                              |                                  |
|------------------------------|----------------------------------|
| Emilio J. Chavez             | Rachel Berenson                  |
| Donald Gallegos              | 415 6 <sup>th</sup> Street, N.W. |
| Robyn A. Simms               | Albuquerque, NM 87102            |
| 105 Albright Street, Suite 2 |                                  |
| Taos, NM 87571               |                                  |
| <br>                         |                                  |
| Todd Coberly                 |                                  |
| 1322 Paseo de Peralta        |                                  |
| Santa Fé, NM 87501           |                                  |
82. It is anticipated that this matter will be prosecuted by Assistant Disciplinary Counsel, Christine E. Long.

Wherefore, by reasons of the foregoing, it is respectfully requested pursuant to Rule 17-309(C) NMRA 2014, that a hearing committee be designated to hear evidence and make findings of fact, conclusions of law, and recommendations to the Disciplinary Board and, if any of the charges are sustained, be disciplined and assessed the costs of this proceeding.

DATE: October 1, 2014

Respectfully Submitted,

A handwritten signature in black ink that reads "Christine E. Long". The signature is written in a cursive, flowing style.

Christine E. Long

Assistant Disciplinary Counsel