

STATE OF NEW MEXICO  
COUNTY OF SANDOVAL  
THIRTEENTH JUDICIAL DISTRICT COURT

KENNETH DeHOFF &  
KATHLEEN DeHOFF,

Appellants/Cross-Appellees/  
Respondents,

Case No. D-1329-CV-2023-01382

*versus*

LINDA P. GALLEGOS,  
*in her official capacity as*  
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/  
Petitioner.

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**APPELLEE/CROSS-APPELLANT/PETITIONER  
SANDOVAL COUNTY ASSESSOR'S MOTION TO STRIKE  
APPELLANTS/CROSS-APPELLEES/RESPONDENTS'  
STATEMENT OF APPELLATE ISSUES**

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Appellee/cross-appellant/petitioner Linda P. Gallegos, the Sandoval County Assessor, moves to strike the appellants/cross-appellees/respondents Kenneth and Kathleen DeHoff's "Statement of the Issues" filed on October 17th, 2023, as it (1) violates Rule 1-011(A), NMRA, by including scandalous and impertinent material and (2) does not comply with the formatting requirements of Rules 1-100 and 1-074.

*Background*

This is a case about property tax valuations. The DeHoffs filed a protest of the valuation placed on their property by Gallegos, the Sandoval County Assessor. A hearing on the protest was held before the Sandoval County Valuation Protests Board. The

DeHoffs presented arguments to the Protests Board. So did Gallegos and her staff. This case seeks the Court's review of the decision of the Protests Board.

### *The DeHoffs' Statement*

The DeHoffs make a number of statements in this filing that go beyond mere disagreements about the facts and the law. The Assessor's Office is said to have engaged in "egregious misconduct" and committed "multiple instances of perjury." Statement, p. 2. (The DeHoffs did not number the pages of the document; the citations herein begin with the first page of the "Statement.") The DeHoffs claim the Sandoval County Assessor's Office is "an unaccountable, unprofessional, and unethical government entity willing to work beyond the bounds of the law." *Id.* Gallegos and her staff are accused of "misrepresent[ing]" information to the Protests Board. *Id.* at 6. The DeHoffs say the Assessor's "employees committed perjury" and "altered evidence." *Id.* at 7. The DeHoffs make multiple accusations of "perjury." *Id.* at 8. They claim "government misconduct," "a pattern of deliberate misrepresentations and lies," "misrepresentations of facts, misrepresentations of law and . . . perjury." *Id.* at 11. Over a full page of the statement is spent on the DeHoff's claims of "perjury from altered evidence." *Id.* at 17-18.

### *The Civil Rules on Allegations in Filings*

Rule 1-011(A), NMRA, bars the filing of documents with the Court which contain "scandalous or indecent matter." Filings may not be made unless there "is good ground to support it." *Id.* Rule 1-012(F), NMRA, provides that the Court may strike "immaterial, impertinent or scandalous matter." "Scandalous matter" is "both grossly disgraceful (or defamatory) and irrelevant to the action or defense." *Scandalous matter*, Black's Law Dictionary (9th ed. 2009). Scandalous matter "improperly casts a derogatory light on someone, most typically on a party to the action." *Jenkins v. City of Las Vegas*, 333 F.R.D.

544, 548 (D.N.M. 2019) (interpreting Fed. R. Civ. P. 12(F)). “Impertinent” is a synonym of “irrelevant,” which is a statement “not tending to prove or disprove a matter in issue.” *Irrelevant*, Black’s Law Dictionary (9th ed. 2009). It is not necessary for a movant to show prejudice to have material stricken for scandalousness or immateriality. *Jenkins*, 333 F.R.D. at 548.

### *The Material Should Be Stricken*

The DeHoffs make accusations of perjury, which is a criminal offense under New Mexico law. See NMSA 1978, § 30-25-1 (2009). They also claim Gallegos and her staff of altering evidence, which is another criminal offense. See NMSA 1978, § 30-26-1 (1963) (crime of tampering with public records). Accusations of perjury and altering evidence are libelous *per se* because they allege criminal offenses involving moral turpitude. *Marchiondo v. New Mexico State Tribune Co.*, 1981-NMCA-156, ¶ 17, 98 N.M. 282, 648 P.2d 321. The same is true of the statements by the DeHoffs against Gallegos and her employees of malfeasance because they allege “unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment” and “falsity which prejudices [someone] in his profession or trade.” *Id.* In addition, these *ad hominem* attacks are irrelevant to the argument of the case as they do not help resolve either the legal or factual issues.

### *Improper Formatting*

“[A]ll pleadings and papers filed in the district court shall be: clearly legible . . . with consecutive page numbers at the bottom . . . printed using pica (10 pitch) type style or a twelve (12) point typeface . . . . The contents . . . shall be double spaced.” Rule 1-100, NMRA. Unless leave is requested, a statement of appellate issues may not exceed twenty-five pages. Rule 1-074(N), NMRA. The DeHoff’s statement of appellate issues—as

scanned by the Court—has portions that are illegible. The pages are not numbered. It appears to be set in smaller than twelve-point type. It is single-spaced. And because it is single-spaced and uses smaller type than allowed, the nineteen-page document exceeds the length that would be allowed if the DeHoffs had complied with the formatting requirements of Rule 1-100, NMRA.

Rule 1-074(K) requires the appellant's statement of appellate issues contain:

- (1) a statement of the issues;
- (2) a summary of the proceedings, briefly describing the nature of the case, the course of proceedings, and the disposition in the agency. The summary shall include a short recitation of all facts relevant to the issues presented for review, with specific references to the record on appeal showing how the issues were preserved in the proceedings before the agency. A contention that a decision or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing upon the proposition;
- (3) an argument, which shall contain the contentions of the appellant with respect to each issue presented in the statement of appellate issues, with citations to the authorities, statutes, and the record on appeal relied upon, and with a statement of the applicable standard of review. Applicable New Mexico decisions shall be cited. The argument shall set forth a specific attack on any finding, or such finding shall be deemed conclusive. A contention that a decision or finding of fact is not support by substantial evidence shall be deemed waived unless the argument identifies with particularity the fact or facts that are not supported by substantial evidence; and
- (4) a statement of the precise relief sought.

The document does not comply with this rule. The document is not organized along the lines required. It would be burdensome for Gallegos to attempt to respond to the document in its current form.

*Conclusion*

Gallegos requests that (1) the DeHoffs statement of appellate issues be stricken and (2) they be given leave to file a document that complies with the Rules of Civil Procedure for the District Courts.

Respectfully submitted:

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*Certificate of Service*

I certify that on October 26th, 2023, I e-mailed a copy of this document to:

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/s/Michael Eshleman  
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