

SANDOVAL COUNTY ATTORNEY'S OFFICE



MICHAEL ESHLEMAN
County Attorney

JOHN M. BUTRICK
Deputy County Attorney

ERIC J. LOCHER
Assistant County Attorney

November 29th, 2023

Kenneth & Kathleen DeHoff
66 Bad Coyote Place
Corrales, New Mexico 87048

Re: *DeHoff v. Gallegos*, D-1329-CV-2023-01382

Dear Mr. & Mrs. DeHoff:

Please find enclosed your service copies of two filings that I submitted to the District Court clerk today, namely (1) Sandoval County Assessor's Request for a Hearing and (2) Sandoval County Assessor's Opposition to the DeHoffs' "Motion to Dismiss Appellee Objection and Completion of Briefings of November 17 Due to Improper Service."

With warm regards, I am,

Yours very truly,

A handwritten signature in purple ink, appearing to read "Michael Eshleman".

Michael Eshleman,
Sandoval County Attorney

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.

**SANDOVAL COUNTY ASSESSOR'S
OPPOSITION TO THE DeHOFFS'
"MOTION TO DISMISS APPELLEE OBJECTION AND
COMPLETION OF BRIEFINGS OF NOVEMBER 17
DUE TO IMPROPER SERVICE"**

Appellee/cross-appellant/petitioner Linda P. Gallegos, the Sandoval County Assessor, opposes the "Motion to Dismiss Appellee Objection and Completion of Briefings of November 17 Due to Improper Service" filed by appellants/cross-appellees/respondents Kenneth and Kathleen DeHoff on November 22nd, 2023.

The DeHoffs object that they were sent service copies of eleven filings in this case via e-mail. They state this was in violation of Rule 1-005.2, NMRA, because they did not agree to such service. The DeHoffs have not denied that they received the e-mailed service copies of filings. They are aware of them as evidenced by the list of documents in the motion and by having filed responses with the Court to several of them.

The first document filed in this case contained with the signature block an e-mail address. So have subsequent filings by the DeHoffs. And the DeHoffs have served Gallegos's counsel with their filings using e-mail without seeking his consent to that service. The DeHoffs by their conduct impliedly agreed to e-mail service and are now estopped from objecting.

Agreements can be shown to exist by the "course of conduct between the parties." *Sanchez v. Martinez*, 1982-NMCA-168, ¶ 15, 99 N.M. 66, 653 P.2d 897. "Implied in fact" contracts are "true contracts, based on parties' mutual assent as manifested by their conduct." *Hydro Conduit Corp. v. Kemble*, 1990-NMSC-061, ¶ 23, 110 N.M. 173, 793 P.2d 855. The DeHoffs invited use of their e-mail address by placing it on their filings and in communicating with Gallegos's counsel by e-mail from that e-mail address. They established an agreement to use e-mail by their conduct.

The DeHoffs are estopped from claiming they did not agree to the use of e-mail. Cf. *Waters-Haskins v. New Mexico Human Services Department*, 2009-NMSC-031, ¶ 15, 146 N.M. 391, 210 P.3d 817 ("[E]stoppel is the preclusion, by acts or conduct, from asserting a right which might otherwise have existed, to the detriment and prejudice of another, who, in reliance on such acts and conduct, has acted thereon."). Having invited the receipt of e-mails and having used that form of communication themselves, the DeHoffs now claim injury from their own acts. Cf. *Brown v. Taylor*, 1995-NMSC-050, ¶ 10, 120 N.M. 302, 901 P.2d 720 ("Waiver implied from a course of conduct may be termed a waiver by estoppel.") Parties can be estopped by their acquiescence to a course of conduct. *Scott v. Jordan*, 1983-NMCA-022, ¶ 20, 99 N.M. 567, 661 P.2d 59. And silence can lead to estoppel. *Mosley v. Magnolia Petroleum Co.*, 1941-NMSC-028, ¶ 39, 45 N.M. 230, 114 P.2d 740. He who seeks equity must do equity. *Wyrsh v. Miike*,

1978-NMCA-085, ¶ 32, 92 N.M. 217, 585 P.2d 1098. It would be unjust for the DeHoffs to now claim a violation of the rules when their silence acquiesced to an agreement to use e-mail.

The DeHoffs ask for indulgence in their motion. Because they are filing *pro se* they state they are uninformed as to the rules of procedure. But our Supreme Court has said of such arguments by *pro se* litigants in *Newsome v. Farer*, 1985-NMSC-096, ¶ 18, 103 N.M. 415, 708 P.2d 327:

We view this argument as a disingenuous attempt to invoke special privilege because of his *pro se* status . . . [and t]he assertion here conveniently overlooks the rule that a *pro se* litigant must comply with the rules and orders of the court, enjoying no greater rights than those who employ counsel. Although *pro se* pleadings are viewed with tolerance, a *pro se* litigant, having chosen to represent himself, is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar.

The DeHoffs having decided to proceed without counsel cannot use that decision as a shield in conducting this litigation.

The DeHoffs' motion should be denied.

(Signature Page Follows)

Respectfully submitted:

MICHAEL ESHLEMAN,
SANDOVAL COUNTY ATTORNEY

/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney
John M. Butrick,
Deputy County Attorney
Eric J. Locher,
Assistant County Attorney
Post Office Box 40
Bernalillo, New Mexico 87004
505-404-5812 (Eshleman)
505-867-7536 (Butrick)
505-404-5920 (Locher)
505-771-7194 (fax)
meshleman@sandovalcountynm.gov
jbutrick@sandovalcountynm.gov
elocher@sandovalcountynm.gov

Certificate of Service

I certify that on November 29th, 2023, I sent a copy of this document to the petitioners via first-class United States mail, postage prepaid:

Kenneth & Kathleen DeHoff
66 Bad Coyote Place
Corrales, New Mexico 87048

/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney

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.

**SANDOVAL COUNTY ASSESSOR'S
REQUEST FOR A HEARING**

1. Assigned Judge: Allison Martinez
2. Matters to Be Heard:
 - a. Sandoval County Assessor's Motion to Strike Appellants/Cross-Appellees' Notice of Appeal and Certificate of Service, filed September 26th, 2023.
 - b. DeHoffs' Motion to Dismiss Cross-Appeal for Lack of Standing, filed October 2nd, 2023.
 - c. Sandoval County Assessor's Petition for a Writ of Certiorari to the Sandoval County Valuation Protests Board, filed October 3rd, 2023.

- d. Sandoval County Assessor's Opposed Motion for More Time to File the Statement of Appellate Issues and Respond to the DeHoff's Statement of Appellate Issues, filed October 26th, 2023.
- e. Sandoval County Assessor's Motion to Strike Appellants/Cross-Appellees/Respondents' Statement of Appellate Issues, filed October 26th, 2023.

- 3. Hearings Presently Set: None
- 4. Time Requested: One hour
- 5. Parties to Be Notified: Kenneth & Kathleen DeHoff
66 Bad Coyote Place
Corrales, New Mexico 87048

(Signature Page Follows)

Respectfully submitted:

MICHAEL ESHLEMAN,
SANDOVAL COUNTY ATTORNEY

/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney
John M. Butrick,
Deputy County Attorney
Eric J. Locher,
Assistant County Attorney
Post Office Box 40
Bernalillo, New Mexico 87004
505-404-5812 (Eshleman)
505-867-7536 (Butrick)
505-404-5920 (Locher)
505-771-7194 (fax)
meshleman@sandovalcountynm.gov
jbutrick@sandovalcountynm.gov
elocher@sandovalcountynm.gov

Certificate of Service

I certify that on November 29th, 2023, I sent a copy of this document to the petitioners via first-class United States mail, postage prepaid:

Kenneth & Kathleen DeHoff
66 Bad Coyote Place
Corrales, New Mexico 87048

/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney