

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, ex rel.,  
Marco White, Mark Mitchell,  
And Leslie Lakind,  
Plaintiffs,

Vs.

No. D-101-CV-2022-00473

Couy Griffin,  
Defendant.

DEFENDANT'S MOTION TO STRIKE "BRIEF OF AMICI CURIAE FLOYD ABRAMS,  
ERWIN CHEMERINSKY, MARTHA MINOW, LAURENCE H. TRIBE, MARYAM  
AHRANJANI, LYNNE HINTON, AND NATIONAL COUNCIL OF JEWISH WOMEN IN  
SUPPORT OF THE PLAINTIFFS' ACTION FOR QUO WARRANTO RELIEF" OR FILE A  
WRITTEN RESPONSE

Defendant Couy Griffin, not waiving his Standing/wrong statutes jurisdictional challenge moves the Court to either Strike "Brief of Amici Curiae" (BAC), or grant Defendant 45 days to file a written Response, as follows:

1. A BAC was filed in this statutory Quo Warranto action (being NMSA 1978 §44-3-1 through 44-3-16 inclusive), with no prior Notice to Defendant nor Opportunity to object. However, both §44-3-1 to 16, and the NMRA Civil Rules of Procedure for District Courts, are silent as to non-party Amici Briefs. NMRA Rules of Civil Procedure for District Court, presumably written pursuant to basic due process principles, set out at least preliminary guidelines/timelines allowing an opposing party sufficient time in which to file written responses to pleadings/documents filed in an action.
2. With no such Rule based written Amici Brief guidelines for a trial Court, this Court's impartiality and discretion should be used to, either grant Defendant's motion to have the

BAC struck from this action, or allow Defendant a meaningful period of time within which to file an opposition to the BAC already filed.

3. The BAC filed in this case contains a statement footnoted on page 1, “<sup>1</sup> *No party’s counsel authored this brief in whole or in part*”, which is a requirement of the Appellate Court Amicus Curiae Rule, NMRA Rule 12-320(C), however, under that Rule, there are other requirements, presumably to respect the Due Process Rights of litigants to file a meaningful response to such a Brief. Under that Amicus Rule, a party opposing an Amicus/Amici Brief has a reasonable time period to file a response to the Brief; see: Rule 12-320(D)(2)(b), “an opposing party shall file any response to an amicus brief supporting the appellant or petitioner within forty-five (45) days after the appellate court grants amicus curiae leave to participate”
4. Defendant will be prejudiced in his defense in this case, if the Court does not grant him sufficient time to research the material in the BAC, draft a meaningful response opposing Amici’s points and authorities, and then prepare for trial, however, Amici, as *non-parties*, will suffer no prejudice if this motion is granted. Since Plaintiffs’ have already claimed no injury in this case, Defendant fails to see how the granting of this Motion would prejudice Plaintiffs, because the BAC appears to advocate for Plaintiffs. If the Court denies his Motion to Strike the BAC, Defendant should be granted a reasonable time to find, research, and submit legal authorities supporting his defense in opposition to the legal authorities cited by the authors of the BAC.
5. To the best of Defendant’s knowledge, neither Plaintiffs nor Amici filed a motion in this Court for leave to file a BAC, although this appears to be common motion practice in district and appellate courts; see: NMRA Rule 12-320(C), *Cooper v. Albuquerque City Comm’n*, 1974-NMSC-006, ¶5, 85 N.M. 786, 518 P.2d 275 (allowing amicus curiae to

file in district court). Defendant understands that a judge may request, ex parte, for “written advice of a disinterested expert on the law” such as an Amici Brief, once again, Defendant had no prior notice of such an ex parte judicial request. See:

The Code of Judicial Conduct, NMRA Rule 21-209. **Ex parte communications.**

A. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

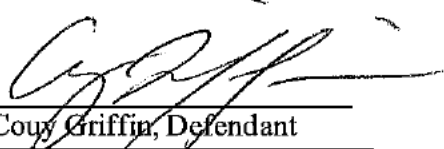
(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received. (emphasis added)

6. Due to the nature of this motion and the fact that Amici are advocating Plaintiffs’ position, opposing parties’ counsel of record are presumed to oppose this Motion.

WHEREFORE, in conclusion, Defendant requests this Honorable Court to; issue an Order Striking the BAC on the grounds listed herein, or; grant Defendant 45 days from the date the BAC was filed to file his Response and; grant Defendant all costs and fees he is entitled to, including attorney’s fees as appropriate and; grant any other or further relief deemed necessary by the Court.

Respectfully submitted by

  
Cory Griffin, Defendant

CERTIFICATE OF SERVICE

I, Couy Griffin, certify under penalty of law that I served a copy of this Motion to Strike on the following counsel of record by e-mail on the date of August 8 2022:

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Couy Griffin, Defendant

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