IN THE EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLAYTON
STATE OF NEW MEXICO

Cause No: CR 2008-25

State of New Mexico,
Plaintiff,

v.

Wayne Bent,
Defendant.

Motion for Order of Protection

Amianah Michael Travesser, through her attorneys Maestas & Boothby, PC, pursuant to NMRA Rule 5-507, asks the court for an order of protection prohibiting the State from taking a statement in the above captioned case. Ms. Travesser contends that the purported subpoena to appear for the taking of a statement is improper, serves no legitimate purpose and is designed only to annoy, harass, and embarrass her.

In support of this motion, Ms. Travesser states as follows:

1. She is not on a witness list for either the State or the Defendant.
2. Trial in this matter is scheduled for November 17, 2008.
3. She has not been properly served.
4. She has no information relevant to the accusations against Mr. Bent, the defendant in this case.
5. The undersigned attorney phoned Deputy District Attorney Tomas Benevidez on October 27, 2008 seeking to determine the basis for the purported subpoena. The undersigned left a message but to date has not heard from Mr. Benevidez.

Argument

NMRA Rule 5-503 provides that any person with information which is subject to discovery shall give a statement. In this case, it is impossible to tell what information the subject may have that is discoverable (reasonably calculated to lead to admissible evidence) because the Deputy District Attorney has not responded to the undersigned's phone call.

NMRA Rule 5-503 further provides that a "notice of statement" is to be served upon the person to be examined and that a subpoena may also be served. In this case, the State issued a "notice of statement" which reads like a subpoena. However, the "notice of statement" does not comport with the requirements for a subpoena as shown in either Rule 4-503 or 9-503. In particular, the purported subpoena does not include the notices of rights in responding to a subpoena.

Absent a showing of a legitimate need for the taking of an interview, a mere two weeks before trial, this notice can only be viewed as harassment designed to annoy and cause emotional and financial hardship on the defendant and the person being noticed.

Respectfully Submitted,

Maestas & Boothby, P.C.

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed to opposing counsel of record Tomas Benavidez, Office of the District Attorney, P.O. Box 642, 200 Court Street, Clayton New Mexico 88415 on the 29th day of October 2008.

ALAN MAESTAS