

FILED IN
4th JUDICIAL DISTRICT COURT
9/18/2012 10:48:25 AM

SMG

IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF SAN MIGUEL
STATE OF NEW MEXICO

VANGIE ARELLANO,
Appellant/Petitioner,

vs.

No. D-412-CV-2012-238

THE PERSONNEL BOARD, STATE OF NEW
MEXICO, AND THE NEW MEXICO
DEPARTMENT OF HEALTH,
Appellees/Respondent.

**RESPONSE TO MOTION TO DISMISS THE STATE PERSONNEL BOARD AS A
PARTY**

COMES NOW, Vangie Arellano the Appellant/Petitioner herein, by and through her attorney, Samuel M. Herrera of The Herrera Firm PC and for her response states:

1. This action involves an appeal of the termination of Vangie Arellano (Count I) *and* a declaratory judgment count (Count II) requesting that the court declare that the State Personnel Board (“SPB”) had waived, denied, or defaulted on Appellant’s appeal by not timely scheduling Arellano’s appeal for hearing and a Count III requesting that the issue of the waiver, denial or default by the SPB be certified to the Court of Appeals. See Complaint filed herein.

2. The State Personnel Board is in default in that they have not responded to Counts II and III of the Complaint. They are nonetheless a necessary party because Counts II and III involve their actions or inactions.

3. The *Montoya* case cited by the SPB applies strictly to personnel appeals and is therefore distinguishable. *Montoya* does not address the issues raised in Appellant’s Counts II and III and there is no other reasons why the SPB should be dismissed from this action. Finally, *Montoya* does not require the dismissal of the SPB, it merely states that the SPB in *not*

indispensable when the only issue is the appeal of the SPB decision.

WHEREFORE, Appellant prays that the Court deny the SPB's motion, award Appellant her attorney's fees incurred herein, and provide any such other and further relief as the Court deems just and proper in the premises.

 /s/
SAMUEL M. HERRERA
THE HERRERA FIRM, P.C.
Attorney for Appellant/Petitioner
P.O. Box 2345
Taos, N.M. 87571
(575) 751-0417

CERTIFICATION

I hereby certify that a true and correct copy of the foregoing pleading was mailed to opposing counsel of record this 5th day of September, 2012, by:

 /s/
SAMUEL M. HERRERA