

ASUNM STUDENT COURT

APR 22 RECD  
11:58  
*Alice Mason*

Date of Submission of Complaint: 4/15/98  
Plaintiff(s): Ben Tucker  
  
Address: SRC 118, UNM  
  
Phone # (Day and Night): 925-1055

Defendant(s):

Date of Alleged Infraction:

Summary of Answer:

*See attached.*

List of Witness List (with phone numbers and addresses, please attach another sheet if needed):

*See attached*

Signature: *Branden Lee Young* \_\_\_\_\_ Date: *4/21*

On a separate sheet of paper, attached to this Form, please explain in detail the actions related to this alleged infraction.

ACUNK COURT  
RECORD FILE

NO. 98-003

UNIVERSITY OF NEW MEXICO  
IN THE STUDENT COURT OF THE  
ASSOCIATED STUDENTS OF THE  
UNIVERSITY OF NEW MEXICO  
235-A STUDENT UNION BUILDING

Ben Tucker

PLAINTIFF:

Ben Tucker

ADDRESS:

Soc 118, UNM

Albuquerque, NM 87131

PHONE#:

925-1055

VS.

ASUNM

DEFENDANT:

ASUNM

ADDRESS:

Student Union Building

Albuquerque, NM 87131

PHONE#:

277-5528

ANSWER:

1. RESPONSE TO COMPLAINT:

See attached

2. DEFENSES:

See attached

3. RELEVANT FACTS:

*see attached*

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4. SUMMARY OF EVIDENCE:

*see attached*

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ADDITIONAL INFORMATION:

- A) ALL INFORMATION MUST BE TYPED OR PRINTED NEATLY.
- B) DEFENDANT MUST SUBMIT ORIGINAL AND FIVE COPIES.
- C) THE DEFENDANT(S) HEREBY ACKNOWLEDGE THE COURT'S JURISDICTION AS PER THE ASUNM LAWBOOK, JUDICIAL CODE, ARTICLE V, SECTION 10.

*Brandon Lee Young*  
DEFENDANT'S SIGNATURE

*4/21*  
DATE

## Answer Form

In response to Ben Tuckers allegations, ASUNM Student Government submits the following motions and answers.

In the ASUNM Student Government Law Book Article 1 of the Judicial Code Section 1: Oath of Office states in regards to each justice: " I ... do solemnly swear that I will uphold the laws of the Associated students of the University of New Mexico, the State of New Mexico, and the United States of America". Therefore, law provided by the defendants encompasses more than just the ASUNM Law Book and ASUNM Constitution.

### Motions:

#### 1.A.

ASUNM moves that the court grant summary judgment dismissing the election contest on the grounds that the contester (Tucker) has failed to meet his prima facie burden of proving by clear and convincing evidence that the results of the election would be changed by a shift in or invalidation of the questioned votes. In fact, Tucker has failed to provide specific evidence of votes that are in question, but rather relies on mere generalities regarding votes cast. In other words, the contester has the burden of showing a connection between the irregularities alleged and the outcome of each contested position from that of the President to the Ten Senators. In Mr. Tucker's own words, "...the ASUNM election was not conducted in a way inconsistent with the ASUNM Law Book."( Summary of complaint. Paragraph 1, sentence 1. Filed 4/15/98) Therefore, he agrees that the election was held in a manner consistent with existing ASUNM election laws.

In the case of *Quinn v. City of Tulsa*, 777 P.2d 1331,1338(1989 Sup.Ct. Okla.) The court stated: " No court should be permitted to declare an election void nor to enjoin the results mandated by that election unless contestant can prove conclusively, by clear and convincing evidence, that results of the election would have been substantially different but for the unlawful acts of public officials which burden is met by showing that a significant number of voters would cast their vote differently if they had not been subject to influence of improper and unlawful campaign tactics by government officials."

#### B.

Additionally, Tucker's complaint should be barred as it is patently unfair for Tucker to attempt to invalidate the entire election especially for those positions for which he was not even a candidate. It should be noted that no candidate for the position of President or Senator has contested the election indicating their recognition of the fairness of the election process. Given New Mexico law, since no unsuccessful candidate has sought legal entitlement by way of election contest to the position of Senator or President this portion of Tucker's complaint should be immediately dismissed.

Second, Tucker must prove that his election was so tainted that without said tainting he would have been legally elected to the office of Vice President. In *Heth v. Armijo* 83 N.M. 498, (1972) at page 499, the New Mexico Supreme Court explained, “ The court gave the statutes a ... Construction, succinctly stating that they created a remedy... which go to show that he [ Contestant] was legally elected to the office or showing he is legally entitled to the office. Those statements... pinpoint the gist of a successful election contest, viz., that the contestant ‘ is legally entitled to the office’ “ This ingredient is clearly missing in the Tucker complaint.

C.

Tucker’s desire to invalidate the election and therefore necessitate a new election is a mere attempt to negate the voice of the students who took part in the democratic process on April , 1998 by casting their vote. The intent of the election law is to see that student’s voices are in fact heard. Tucker by arguing technicalities that do not affect the election’s outcome is attempting to pervert the process in his favor and thwart the election results after the votes have been cast and counted. The Defense asks the court to look on this contest in the same Unsympathetic manner as the New Mexico Supreme Court did when it state, in *Valdez v. Herrera* 48 N.M. 45, at page 53” We will examine most carefully and rather unsympathetically any challenge to the right of so large a number of voters to participate in an election before denying that right...”

D.

Additional grounds for dismissal are based on the fact that below it will be shown in the Defendant’s Answer that 4 of Tucker’s allegations are groundless.

2.

The witness list submitted by Tucker should be held inadmissible as it is an unreasonable list submitted without any real intent to provide knowledge, credible witnesses who posses evidence regarding his complaints. Submitting a phone book as a list of witnesses is vague, ambiguous, overly broad, and makes preparing a defense an unduly burdensome task. Tucker had adequate time to prepare a legitimate list witnesses, but choose not to do so. All witness not specifically identified should be prohibited from testifying.

### Answers:

✓ **Allegation 1.** “Secret Ballot: Not enough privacy was provided. Voters were intimidated by Poll workers watching them vote.”

**Response:** The allegation does not reference any violation in the ASUNM election code or Constitution. On matters of elections, neither document mentions “secret ballot” or “privacy”. It is the contention of ASUNM that if poll workers were

watching voters it was to ensure the ballots did not leave the voting area. Further more, poll workers observed voters at a distance not close enough to see who an individual voted for but rather only close enough to see that the ballots did not leave the area. Please reference Evidence item(E), Poll workers Instructions#11.

✓ **Allegation 2.** Printed instructions were not provided. This alleges a violation of Article IV, Section 1,H.

**Response:** Printed instructions were provided. Please reference ballots submitted as evidence (A,B,C).

✓ **Allegation 3.** Attorney General and Debbie Morris were used as poll workers. Alleges violation of Article VI, section 1,B, "Poll workers must meet the same qualifications as Election commissioners." Election commissioners qualifications are outlined in Article II, section 1, A,B,C.

**Response:** Attorney General, Branden Young meets all three criteria outlined in said section. Debbie Morris serves as ASUNM's advisor. She observed proceedings related to poll workers and polling locations. Ms. Morris is not a member of ASUNM and subsequently is not under jurisdiction of this court.

✓ **Allegation 4.** Identification Badges were not worn.

**Response:** Identification badges were issued to poll workers in the packet that they received.(Evidence D.) Written instructions failed to instruct poll workers that they were required to wear the badges. ASUNM admits to the court that this was inconsistent with Article VI, Section 1,D, of the election code. However, we feel that this is a harmless error insufficient in scope to implement a new election. This is consistent with precedent found in the a fore mentioned cases from New Mexico and Oklahoma. Furthermore, ASUNM agrees to rewrite the poll worker instructions for subsequent elections to ensure poll worker badges are worn properly.

✓ **Allegation 5.** Poll worker positions were not advertised.

**Response:** ASUNM admits that poll workers were not advertised in the required 14 days prior to the election. However, the law requiring this advertisement was created to ensure that the election commission would have sufficient poll workers available on the day of the election. The spirit of this law was followed. Prior to the 14 day deadline, the election commission had already recruited all required poll workers. We contend that this is a harmless error incapable of having any effect on the outcome of the election.

**Allegation 6.** The attorney general, not an election official tabulated results.

Response: The attorney general did participate in the tabulation of results. This was not a violation of the election code. He was classified as a "designated assistant" by the election commission. Article XVI, section 1.

Evidence.

- A. Scantron ballot issued to eligible voters on election day.
- B. Paper Ballot issued to eligible voters at voting stations not equipped with computers.
- C. Enlarged Ballot that was hanging at polling locations on day of election. Voters could read this prior to voting.
- D. Name tags issued to poll workers
- E. Instructions issued to poll workers

Witness List

1. Ryan Lundquist, Election Commission Chair  
1855 Sigma Chi Road, NE 87106 #242-0009
2. Yevonne Penna, Election Commission Vice-Chair  
1025 Valencia Dr. 87108 # 254-1801
3. Heather Calloway  
6101 Sequia Apt. 1-16 Albq, 87120 #833-3708
4. Matt Silva  
1855 Sigma Chi Rd. NE 87106
5. Lance Hicks  
1705 Mesa Vista NE, Albq NM 87106 #247-4299
6. Eli Senna  
SUB ASUNM suite 242, 87131, 277-5528
7. Jennifer Johnson  
1635 Mesa Vista NE 87106 #247-1522
8. Aaron Lindquist  
1855 Sigma Chi Road, NE #242-0009
9. Josh Crawford  
P.O.Box 53133, albq NM 87153
10. Mike Dellow  
NA
11. Luis Romero  
Student Activities, SUB 277-4706
12. Robert Ward  
SRC 897 87131 # 5- 0511
13. Pat Sell  
SRC 228 87131 #NA
14. Chris Morrisfield *Manfield*  
SRC 244 87131 #NA
15. Ryan Turnello

SRC 359 87131 #NA  
16. Hellen Dorado-Gray  
ASUNM Suite 242, SUB # 277-5528