ELEVENTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SAN JUAN
COUNTY OF MCKINLEY

STATE OF NEW MEXICO ex rel KENNETH GOMEZ,

Plaintiff,

vs. Case Number: CV 2010-00941

ELEVENTH JUDICIAL DISTRICT COURT,

Defendant.

FIRST AMENDED COMPLAINT TO VOID JUDGMENTS, AND FOR WRIT OF QUO WARRANTO

COMES NOW Plaintiff Kenneth Gomez under authority of Section 44-3-4 NMSA 1978 since there are no public officers required by said law who would or could grant permission to Gomez; under provisions of Rule 1-060B(4) claiming the judgments and decisions involving him, during times relevant, from the year 1963 to the present issued by any and all the Courts within the jurisdiction of the Defendant Eleventh Judicial District Court, " hereinafter, Defendant District Court"; and have severely injured him by denying him constitutional rights under Sections 1, and 3, Fourteenth Amendment and all civil rights laws giving the said constitutional power effect, and, in addition, have damaged his personal character without recourse, since there are no persons who have acquired title to positions as judges in any New Mexico court of law; there are no courts of law to which he could appeal judgments rendered and not competent to be issued, see Orosco v. Cox, 75 N.M. 431, 405 P.2d 668 (1965) for definition of competent court. Said judgments and decisions have all been null, void, and without legal effect at their inception as repugnant to both constitutions. Marbury v. Madison, 5 U.S. 137, 178, 180; to wit, respectively:

> So if the law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must decide that the case conformably to the law, disregarding the constitution; or conformably to the constitution disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. [At 178.]
>
> and,
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> Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law, repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument. [At 180.]

I. COMPLAINT

a. Whereas, not one of the persons holding positions as judges within the jurisdiction of the courts of law in the Defendant District Court, during times relevant, have personally given, filed, and recorded a prerequisite penal bond to lawfully acquire title to the public office being entered, (Section 10-2-9 NMSA 1978), since 1963 binding them to the promises of the oath of office contained in Article XX, Section 1, Constitution of the State of New Mexico as mandated by Article XXII, Section 19, Constitution of the State of New Mexico and the provisions of Article VI, Clauses 2 and 3, Constitution for the United States of America; to wit, respectively:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [Clause 2, Article VI, Constitution for the United States of America.]
>
> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. [Clause 3, Article VI, Constitution for the United States of America.]

b. Whereas, the New Mexico Legislature has no power or authority to unilaterally and without constitutional processes enact laws amending either the Constitution for the United

States of America or the Constitution of the State of New Mexico as it did when, contrary to Marbury, it enacted Section 34-6-22 (Personnel; oaths and bonds, (1968)) NMSA 1978 altering, revising, or amending Article XXII Section 19 Constitution of the State of New Mexico and Article VI, Clauses 2 and 3, Constitution for the United States of America; to wit said § 34-6-22:

> Before entering upon their duties, all district court personnel who receive or disburse money or have custody of property shall take the oath prescribed by the constitution for state officers and file with the secretary of state a corporate surety bond in an amount fixed by the director of the administrative office of the courts. Each bond shall be approved in writing on its face by the director of the administrative office of the courts and conditions upon faithful performance of duties and payment of all money received to the person entitled to receive it. In lieu of individual bond coverage, the director of the administrative office of the courts may prescribe schedule or blanket bond coverage in any judicial district. Bond premiums shall be paid from funds appropriated to the district courts.
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> History: 1953 Comp., § 16-3-9, enacted by Laws 1968, ch. 69, § 23.

c. Whereas, the several constitutional powers cited in the preceding paragraph are given effect in Sections 10-2-5, 6, 7, and 9 NMSA 1978.

d. Whereas, those persons, during times relevant, who previously held and those who currently hold positions as judges within the Defendant District Court from Year 1963 and thereafter either did so, or now do so under false pretenses as indicated below:

(1) Whereas, any signed and notarized Declaration of Candidacy submitted for the record and filed among the Records in the Office of the New Mexico Secretary of State or the Clerks, San Juan and McKinley Counties, by any of those persons referenced above as lawfully holding positions as judges from Year 1963 to the present filed a falsified Declaration of Candidacy for retention or election in that while holding a position as a judge they, each and every one of them, did so unlawfully and thereby perjured the oath taken while only posing as an active judge by failing to support the above cited provisions of both constitutions which became a fourth degree felony when filed. See Section 1-8-40 NMSA 1978. Had there been a penal bond for those

unlawfully holding public office, it could have been called by any citizen and the office immediately vacated; a constitutional power reserved to the New Mexico citizen. Section 23, Article 2, Constitution of the State of New Mexico.

(2) Whereas, no judicial action to hear and determine this matter is authorized for the instant complaint until at least one district judge acquires a penal bond from a State authorized penal bonding agency for an amount equal to an amount approved by the authorizing authority which is thereafter approved by a judge of a superior court competent to act, Orosco v. Cox, 75 N.M. 431, 435; Lopez v. LeMaster, 133 N.M. 59, 66; Johnson v. Cox, 72 N.M. 55, cert. denied, 375 U.S. 855 (1963)), and which is filed for the record, prior to entry to office and acquiring title to the office sought, and recorded among the Records in the New Mexico Office of the Secretary of State in accord with 10-2-9 NMSA 1978.

e. Now Therefore, neither the Defendant District Court nor a surrogate acting therefor possesses jurisdiction and thus competence to act for hearing and determining the instant case.

II. JURISDICTION

a. Constitutional claims. – Without question, the district court has the authority to consider constitutional claims in the first instance. Maso v. State Taxation & Revenue Dep't, 2004-NMCA-025, 135 N.M. 152, 85 P.3d 276, aff'd 2004-NMSC-028, 136 N.M. 161, 96 P.3d 286.

b. Jurisdiction is acquired in criminal case by filing of information. State v. Vaughn, 74 N.M. 365, 393 P.2d 711 (1964).

c. Jurisdiction over state officers, boards and commissions. — Under this section and N.M. Const., art. VI, § 3, supreme and district courts each have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions in all cases, whether

the proceeding was instituted by the attorney general ex officio, in behalf of the state for some prerogative purpose, or brought by some private person for the assertion of some private right; the supreme court will decline jurisdiction in absence of some controlling necessity therefor, and will do so in all cases brought at instance of a private suitor. State ex rel. Owen v. Van Stone, 17 N.M. 41, 121 P. 611 (1912).

d. Section 44-3-4 NMSA 978, to wit:

44-3-4. [Who may bring action; private relators; when action lies.] (1919)

An action may be brought by the attorney general or district attorney in the name of the state, upon his information or upon the complaint of any private person, against the parties offending in the following cases:
A. when any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by authority of this state; or,
B. when any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of his office; or,
C. when any association or number of persons shall act, within this state, as a corporation without being duly incorporated, or in case of a foreign corporation, without being duly authorized, to do business within this state.
The district attorneys in their respective judicial districts shall exercise the same power and right given by this section to the attorney general in cases which may be limited in their operation to the said district.
When the attorney general or district attorney refuses to act, or when the office usurped pertains to a county, incorporated village, town or city, or school district, such action may be brought in the name of the state by a private person on his own complaint.

`History: Laws 1919, ch. 28, § 4; C.S. 1929, § 115-104; 1941 Comp., § 26-204; 1953 Comp., § 22-15-4.

e. Those persons holding public office as judges within the Defendant District Court have engaged in a course of *liable* and *unfaithful* conduct, at all times relevant, in the clear absence of competent jurisdiction, Sections, (10-2-5, 6, 7, and 9, and said Art. XXII, Sec. 19), without judicial immunity, absolute or otherwise. Bradley v. Fisher, 13 Wall. 335, 351, cited in Stump v. Sparkman, 435 U.S. 349 which is cited in Ysais v NM Judicial Standards Com'n, 516 F.

Supp 2d 1176 (D.N.M. 2009); and see State ex rel Evans v. Field, Com'r of Public Lands, et al., 27 N.M. 384, 390 for class of Plaintiff's complaint; to wit:

> The other class is where a suit is brought against defendants who, claiming to act as officers of the state, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the state. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the state, or for compensation in damages, or, in a proper case where the remedy at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain, legal duty, purely ministerial -- is not, within the meaning of the Eleventh Amendment, an action against the state. [Citing cases.]

III. PARTIES

a. Plaintiff Kenneth Gomez is a free citizen resident of San Juan County, New Mexico.

b. Defendant is the Eleventh Judicial District Court, in and for the Counties of San Juan and McKinley.

IV. RELIEF DEMANDED UNDER 42 U.S.C. §§ 1983, 1985, 1980, AND 1994

1. All Defendant Court judgments and decisions rendered since 1963 are to be voided:

a. Against Kenneth Gomez by the Defendant District Court and all subordinate courts of law within its jurisdiction. See attached list of cases.

b. In favor of F. Douglas Moeller from 1986 onward on grounds he became an accessory after-the-fact in murder when he sat as a juror while an attorney authorized to practice law in Defendant Court by the New Mexico Supreme Court in violation of Article IV, Section 26, Constitution of the State of New Mexico, and in violation of Section 38-1-1 NMSA 1978; and while an agent of the New Mexico Supreme Court by acquitting a recent and known former client, a defendant on trial for murder.

c. Against pro se litigants who are forbidden to practice law under state law while opposed by a party who is authorized to practice law; a practice denied the pro se litigant a

substantive right to acquire legal prowess; such judgments cannot guarantee a fair and objective determination of the matter before the Defendant District Court because the practicing attorney gains legal prowess through practice under special privileges contrary to Article IV, Section 26, Constitution of the State of New Mexico and Section 38-1-1 NMSA 1978, a special and substantive privilege unavailable to pro se litigants.

2. The Court award the sum of one hundred thousand dollars in cash money for each judgment and decision rendered against Kenneth Gomez in attached cases since year 1997.

3. That persons holding office as judge in courts of law within the jurisdiction of the Defendant District Court who have not acquired lawful title to the office held show what cause, if any they may have, under what authority they hold and possess title to the office, (§10-2-9), without previously personally giving, filing, and recording a personal penal bond binding them to the promises contained in their contract oath of office as mandated by Article VI, Clauses 2 and 3, Constitution for the United States of America and Article XXII, Section 19, Constitution of the State of New Mexico.

Kenneth Gomez
4 CR 5095
Bloomfield, New Mexico 87413

VERIFICATION

STATE OF NEW MEXICO)
) **ss.**
COUNTY OF SAN JUAN)

SUBSCRIBED AND SWORN TO before me by Kenneth Gomez, 4 CR 5095, Bloomfield, New Mexico under penalty of perjury this 7th day of June, 2010.

My Commission expires: 6-12-2011
DATE

NOTARY PUBLIC

ARIANNE MOORE NOTARY PUBLIC STATE OF NEW MEXICO

COURT CASES INVOLVING KENNETH A. GOMEZ

D-1116-CV-200400569 GOMEZ KENNETH A 06/17/2047 DEFENDANT 1 HOUSEHOLD BANK V GOMEZ KEN
THOMAS J HYNES AZTEC/FARMINGTON DISTRICT 05/21/2004

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
05/21/2004	1	OPN: COMPLAINT CVB:	DISMISS JUDGE/NOT LOP	09/15/2004

D-1116-CV-200600779 GOMEZ KENNETH A 06/17/2047 COUNTER PL 1 MOELLER V GOMEZ
LOUIS E DEPAULI AZTEC/FARMINGTON DISTRICT 06/23/2006

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
04/17/2007	1	COUNTERCLAIM CVN:	DECISION FOR PLAINTIFF	05/23/2008

D-1116-CV-9900067 GOMEZ KENNETH ALAN DEFENDANT 1 GOMEZ ET AL V GOMEZ
BYRON CATON AZTEC/FARMINGTON DISTRICT 01/25/1999

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
01/25/1999	1	OPN: COMPLAINT	NON-JURY TRIAL	05/02/2000

M-147-CV-885 GOMEZ KENNETH DEFENDANT 1 KAREN L MARTINEZ VS. KENNETH G
CARLA E VESCOVI AZTEC MAGISTRATE 02/26/1997

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
02/26/1997	1	OPN:GC COMPLAINT FILED	NON-JURY TRIAL	06/09/1997

D-101-CV-200802027 GOMEZ KENNETH PLAINTIFF 1 GOMEZ VS ALL PERSONS UNLAWFULL
RAYMOND Z ORTIZ SANTA FE DISTRICT 07/24/2008

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
07/24/2008	1	OPN: COMPLAINT	Pending	

D-1116-CV-200400386 GOMEZ KENNETH DEFENDANT 1 TOTAH CREDIT UNION V GOMEZ K
SANDRA A PRICE AZTEC/FARMINGTON DISTRICT 04/07/2004

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
04/07/2004	1	OPN: COMPLAINT CVB:	DISPOSITIVE MTN PLAINTIFF	11/29/2004

D-1116-CV-200600779 GOMEZ KENNETH DEFENDANT 1 MOELLER V GOMEZ
LOUIS E DEPAULI AZTEC/FARMINGTON DISTRICT 06/23/2006

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
04/17/2007	1	COUNTERCLAIM CVN:	DECISION FOR PLAINTIFF	05/23/2008

D-1116-CV-200801805 GOMEZ KENNETH DEFENDANT 1 MOELLER V GOMEZ
ROBERT A ARAGON AZTEC/FARMINGTON DISTRICT 11/21/2008

Complaint Date	Complaint Seq #	Complaint	Description Disposition	Disposition Date
11/21/2008	1	OPN: COMPLAINT CVN:	DECISION FOR PLAINTIFF	05/24/2010

Exhibit "1"