

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel KENNETH GOMEZ,

Plaintiffs,

vs.

1:10-cv-594 JAP/LFG

ELEVENTH JUDICIAL DISTRICT COURT,

Defendant.

**RESPONSE TO DEFENDANTS MOTION TO DISMISS NO. 1: DISMISSAL  
OF GOMEZ'S FOURTEENTH AMENDMENT EQUAL PROTECTION AND  
PROCEDURAL AND SUBSTANTIVE DUE PROCESS CLAIMS**

**I. FALLACIES OF THE PREMISES**

A. Defendant District Court's motion to dismiss Fourteenth Amendment claims is fatally flawed on grounds, in part, the **Statement of the Facts**, p.3, 11, contain a minimum of four deliberately false and misleading statements compared to those presented by Plaintiffs in Document No. 8-1. The incorrect and misleading statements were deliberate because Plaintiffs never submitted any documents to the Court stating:

1. Defendant District Court's first statement in their **Statement of the Facts** states: "Since 1963, judges of the Eleventh Judicial District have entered a series of judgments against Gomez; there were no judges. See [Docket No. 8-1, pp. 7 & 9 (Exhibit 1)]."

a. Plaintiffs never intimated any statement on either pp. 7 or 9 that would lead one to conclude Defendant District Court's first statement.

b. What Plaintiffs did state elsewhere in their Verified Complaint was that since 1963 there have been no persons holding office as district judges lawfully at any time, since 1963, for failure to give and file a valid penal bond, approved or otherwise, with the Office of the New Mexico Secretary of State under power of Article XXII, Section 19, Constitution of the

State of New Mexico in order to gain title to and enter the office of judge under authority of Section 10-2-5, 6, 7, and 9 NMSA 1978 and *Marbury*.

c. Since 1963, there have been no persons lawfully holding office as district judges within the Defendant District Court and no valid judgment could issue; all were null, void, and without legal effect subject, in time, to a NMRA Rule 11-060(b)(4), when the Court becomes competent with jurisdiction to act.

d. The Defendant District Court's first statement in its **Statement of the Facts** on p., 3, 11 is deliberately fallacious.

2. Defendant District Court's second statement in their **Statement of the Facts** states: "According to Gomez, the judges who entered the judgments against Gomez have done so without the corporate surety bond required by state law. See [Docket No. 8-1, p.3]."

a. Plaintiffs have only made reference to the phrase "corporate surety bond" by quoting a state law, Section 34-6-22, which amended, without benefit of the constitutional process, the power of Article XXII, Section 19, Constitution of the State of New Mexico, and the authority of Section 10-2-5, 6, 7, and 9. See Verified Complaint, ¶ 1b, 8-1, p. 3.

b. Paragraph 1b of the Verified Complaint actually challenged the power of the New Mexico Legislature to amend the New Mexico Constitution by enacting a state statute in conflict with Section 19, Article XXII, Constitution of the State of New Mexico, Article VI, Clause 3, Constitution for the United States of America, and the authority of Section 10-2-5, 6, 7, and 9 which prohibit corporate bond coverage for any individual.

c. The Defendant District Court's second statement in its **Statement of the Facts** on p., 3, 11 is deliberately fallacious.

3. Defendant District Court's third statement in their **Statement of the Facts** states: "For the deprivation of his constitutional rights, Gomez claims that he is entitled to damages in the amount of \$100,000.00. See [Docket No. 8-1, p. 7]."

a. What Plaintiffs stated in ¶ 2, of p. 7 in the Relief Demanded in the Verified Complaint was the following:

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

b. The Defendant District Court's third statement in its **Statement of the Facts** on p., 3, 11 is deliberately misleading.

4. Defendant District Court's fourth statement in their **Statement of the Facts** states: "Despite spanning nine pages, these are all the facts which Gomez alleged in his Complaint."

a. Plaintiffs quote the first paragraph, ¶1a, of their Verified Complaint, to refute and discredit the Defendant District Court's fourth statement.

"Whereas, not one of the persons holding positions as judges within the jurisdiction of the courts of law within the Defendant District Court, during times relevant, have personally given, filed, and recorded a prerequisite penal bond or recognizance to lawfully acquire title to the public offices held, (Section 10-2-9 NMSA 1978), since 1963, and which bound them to the promises in the oath of office contained in Article XX, Section 1, Constitution of the State of New Mexico and as mandated by Article XXII, Section 19, Constitution of the State of New Mexico as confirmed under 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. The Defendant District Court's fourth statement in its **Statement of the Facts** on p., 3, 11 is deliberately fallacious.

B. The deliberately fallacious submission of Defendant District Court's unverified Motion to Dismiss No. 1, by and through **ROBLES**, undermines the integrity of Plaintiffs verified Complaint and constitutes an intent to deceive a court, judge, or party.

C. For any person lawfully assigned duties with this honorable Court to accept Defendant District Court's 19 page unverified Motion to Dismiss No. 1 as credible, legally valid, or competent rather than deceptively attempting to put a fraud upon the Court as specified in *Bulloch*, Exhibit 5, would give rise to question the Court's own trustworthiness and competency as it simultaneously and equivalently acted to defraud the United States Government of with it is but a part.

## **II. FALLACIES OF THE DEFENDANT'S CAUSE OF ACTION STATEMENT**

A. Defendant's 'Cause of Action Statement Subject to Dismissal' states that Gomez' Complaint does not plead his claim with greater clarity.

a. The statement is incorrect in that ¶ 1a quoted in ¶ 4 above pleads Gomez' claim with the utmost clarity as does ¶¶ 1b to 1e, 8-1, pp. 2 - 4.

b. Intricately detailed factual allegations are not necessary nor need pleaders set out their legal theory. See *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 173 L.Ed2d 868 (2009); *Atlantic Corp. v. Twombly*, 500 U.S. 544, 555 and 555n.3 (2007) for verification.

B. Defendant's 'Cause of Action Statement' lacks standing under the rules of law stated in the United States Supreme Court cases cited. It was necessary for Defendant District Court,

by and through counsels, to read Plaintiffs' pleading and do the research to avoid such inaccuracies.

### **III. FALLACIES OF DEFENDANT'S FOUR ARGUMENTS**

A. There Argument I avers that Plaintiffs 42 U.S.C. § 1983 claim must show his civil rights were violated under color of law. The Defendant is a 'state actor' and an arm of the state. Said § 1983 is simply one of several authorities giving effect to the power of the Fourteenth Amendment.

a. Surely, New Mexico Statutes do not require Plaintiff Gomez to be subordinate to certified felons as specified with utmost clarity in ¶ 1d, 8-1, pp. 3-4, and then escape the pain and peril of the Fourteenth Amendment and the authorities giving that constitutional power effect.

b. Legal Argument I, p. 4, 11 is therefore fatally flawed.

B. There Argument II avers that the equal protection clause does not apply because Plaintiff Gomez did not show how he was treated differently.

a. Plaintiffs did show more than sufficient differences in ¶¶ 1 a - 1e, 8-1, pp. 2 - 4; however, those paragraphs needed to be read to reveal that Plaintiff Gomez was subjected to decisions and judgments of certified felons holding positions as state public officers in Defendant District Court. Additionally, they were unlawful for not possessing titles thereto.

b. Surely, New Mexico Statutes do not require Plaintiff Gomez to be subordinate to certified felons as specified with utmost clarity in ¶ 1d, 8-1, pp. 3-4 and then simultaneously provide Plaintiff Gomez with the equal protection under the laws, or simultaneously escape the pain and peril of the Fourteenth Amendment and authorities giving that constitutional power effect.

c. . Legal Argument II, p. 7, 8, & 9, 11 is therefore also fatally flawed.


C. Defendant District Court's averments in Arguments III and IV in favor of Dismissal of Plaintiff Gomez' Fourteenth Amendment claims have no standing for similar reasons and as provided above and deserve no special pleadings to waste the Court's time. Arguments III and IV, like Arguments I and II, are also flawed.

#### **IV. CONCLUSION**

The gravamen of Defendant District Court's arguments in favor of dismissal of Plaintiffs 14th Amendment claims have no standing under power of the Fourteenth Amendment, the authorities of 42 U.S.C. §§ 1983, 1985, and 1994 giving effect to that power, and the cited rules of law. Furthermore, Plaintiffs believe the Defendant District Court's Document 11 pleadings was a deliberate attempt to enlist a contaminated Court and those assigned positions therein, whether lawful or otherwise, to assist them, as represented and revealed in Documents 12 and 13 to put a fraud upon the Court, and as elucidated and specified in Exhibit "5" attached hereto for the record. Still further, said Defendant did so by undermining the integrity of a Verified Complaint.

**WHEREFORE**, Plaintiffs pray the Court, upon achieving competence with jurisdiction, will either provide summary remand or DENY the Defendant District Court's Motion to Dismiss No. 1: Dismissal of Gomez's Fourteenth Amendment Equal Protection and Procedural and Substantive Due Process Claims.

Respectfully submitted,



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I hereby certify that on this  
6th day of July 2010, the  
foregoing was electronically  
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