

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

**STATE OF NEW MEXICO ex rel KENNETH GOMEZ,**

Plaintiff,

vs.

**No. CIV 10-00594 JP/LFG**

**ELEVENTH JUDICIAL DISTRICT COURT,**

Defendant.

**DEFENDANT'S REPLY TO RESPONSE TO  
MOTION FOR PARTIAL SUMMARY JUDGMENT No. I:  
DISMISSAL OF PLAINTIFF'S QUO WARRANTO ACTION  
AND CLAIMS BROUGHT UNDER 42 U.S.C. §§ 1983, 1985, and 1986**

Defendant, Eleventh Judicial District Court, through its attorneys Robles, Rael & Anaya, P.C. (Luis Robles, Esq.) and pursuant to Fed.R.Civ.P. 56 and D.N.M.LR-Civ. 56, states the following for its Reply to Response to Motion for Partial Summary Judgment No. I: Dismissal of Plaintiff's Quo Warranto Action and Claims Brought under 42 U.S.C. §§ 1983, 1985, and 1986:

**I. BASED ON THE CLEARLY ESTABLISHED LAW AND GOMEZ' IMPLIED CONCESSION, DEFENDANT IS ENTITLED TO THE DISMISSAL OF GOMEZ' QUO WARRANTO ACTION AND CLAIMS BROUGHT UNDER 42 U.S.C. §§ 1983, 1985, AND 1986.**

In his Complaint, Gomez brought an action for Quo Warranto. *See [Docket No. 8-1, pp. 1-9]*. Gomez also alleged the violation of his federal constitutional rights and the following federal statutes, 42 U.S.C. §§ 1983, 1985, 1980, and 1994. *See [Docket No. 8-1, pp. 1 & 6]*. In its motion, Defendant argued that this Court should dismiss Gomez' Quo Warranto action and claims brought under 42 U.S.C. §§ 1983, 1985, and 1986 as a matter of law. In his response, Gomez did not submit

disputed facts or a legal argument which opposed Defendant's motion. See [Docket No. 16, pp. 1-2].

Under the Local Rules, Gomez' failure to respond to Defendant's motion "constitutes consent to grant the motion." See, D.N.M.LR-Civ. 7.1(b) ("[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."); see also D.N.M.LR-Civ. 56.1(b) ("[a]ll material facts set forth in the statement of the movant will be deemed admitted unless specifically controverted."). Based on the clearly established law and Gomez' concessions, this Court should dismiss Gomez' Quo Warranto action and claims brought under 42 U.S.C. §§ 1983, 1985, and 1986 with prejudice. See Kampa v. City of Albuquerque, CIV. No. 96-1572 LFG/DJS, slip op. at 1 (D.N.M. filed February 2, 1997) (citing D.N.M.LR-Civ. 7(b)).

**WHEREFORE**, Defendant respectfully requests that this Court grant Defendant's Motion for Partial Summary Judgment No. I, dismiss Gomez' Quo Warranto action and claims brought under 42 U.S.C. §§ 1983, 1985, and 1986, award Defendant its attorney's fees and costs, and for all other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Luis Robles  
Luis Robles  
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I hereby certify that on this  
19<sup>th</sup> day of July 2010, the  
foregoing was electronically  
served through the CM/ECF  
system to the following:

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/s/ Luis Robles  
Luis Robles