

**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.

**MEMORANDUM BRIEF IN SUPPORT OF
MOTION TO VACATE ATTORNEY-CLIENT PRIVILEGE**

I. GENERAL BACKGROUND

(a) Plaintiffs must presume that Defendant District Court engaged **ROBLES, RAEL & ANAYA, P.C.** and Mr. Luis Robles to remove the state case from state district court to federal district court under provisions of the existing federal law. Who engaged **ROBLES, RAEL & ANAYA, P.C.** and Mr. Luis Robles for the Defendant Court is an open question to be determined by the Court.

(b) It is enough to overcome privilege that there is a reasonable basis to believe that the attorney's services were sought and used by the Defendant District Court to foster a crime or fraud as addressed by *Bulloch, Exhibit 5*, and to improvidently remove the case to federal district court under 28 U.S.C. § 1441 *et seq.*, when the Defendant District Court or the Supreme Court of the United States were the only courts that could overturn the decisions and judgments of a state district court. See Rooker-Feldman Doctrine, Exhibit 3, Document No. 10. Also see *In re Grand Jury Proceedings*, 417 F.3d 18 (1st Cir. 2005).

II. FACTS, POINTS OF LAW, AND AUTHORITIES

(c) NMRA 11-503D, A(1) defines the Defendant District Court, a public entity, to be a person;

to wit:

A. Definitions. As used in this rule:

- (1) a "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer or a representative of a lawyer with a view to obtaining professional legal services;
- (d) The administration of justice is not improved by protecting communications designed to further a crime or a fraud; such communications consequently fall outside the scope of the attorney-client privilege. *Wachtel v. Health Net, Inc.*, 482 F.3d 225 (3d Cir. 2007); *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007); *Abbott Labs. v. Andrx Pharms., Inc.*, 241 F.R.D. 480 (N.D. Ill. 2007); *In re Grand Jury Subpoena*, 419 F.3d 329 (5th Cir. 2005); *United States v. Neal*, 27 F.3d 1035 (5th Cir. 1994).
- (e) A party seeking to vitiate the attorney-client privilege under the crime-fraud exception must satisfy a two-part test. First, the party must show that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme. Second, it must demonstrate that the attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality. *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007).
- (f) Co-partners of partner found liable for fraud were liable to plaintiff jointly and severally for the award of compensatory damages, attorney fees, and costs; however, only partner committing fraudulent acts was liable to plaintiff for the award of punitive damages. *Duncan v. Henington*, 114 N.M. 100, 835 P.2d 816 (1992).
- (g) NMRA 503D Exceptions. There is no privilege under the Rule; to wit:
- (1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

- (2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or
- (3) Breach of duty by lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to the lawyer's client or by the client to the client's lawyer; or
- (4) Document attested by lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or
- (5) Joint clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

History

[As amended, effective December 1, 1993; January 1, 1995.]

(h) A private person may not bring proceedings by quo warranto to contest a state office; they must be brought in the name of the state. *State ex rel. Hamnett v. District Court*, 30 N.M. 300, 233 P. 1002 (1925).

III. ARGUMENT

Plaintiffs are entitled to vitiate any attorney-client privilege that may exist between the Defendant District Court, **ROBLES, RAEL & ANAYA, P.C.**, Mr. Luis Robles, and the Risk Management Division of the New Mexico Department of General Services, a statutory political body, the group being possible joint clients; a matter the Court must determine when it acquires competent jurisdiction by no longer participating in a criminal enterprise defrauding the United States and by no longer participating in a conspiracy against Plaintiffs thereby, 18 U.S.C. §§ 241 and 371. The original cause of action was brought by Plaintiffs in state district court in the name of the State, *State ex rel. Hamnett v. District Court*, 30 N.M. 300, 233 P. 1002 (1925). The administration of justice is not improved by protecting privileged communications designed to further a crime or a fraud, *Bulloch*, *Exhibit 5*, Document No. 15, and **Rooker-Feldman Doctrine**, *Exhibit 3*, Document No. 10.

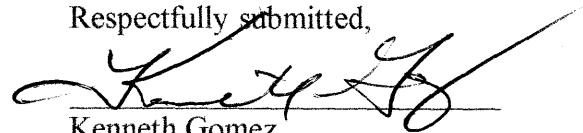
Plaintiffs have satisfied the two prong test. They first showed that the client, Defendant District Court or a surrogate, engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme to improvidently submit a Notice of Removal to the Court when it had no jurisdiction to act to overturn a state district court decision; let alone other defects such as the criminal enterprise, *Exhibit 4*, Document no. 10. Secondly, they demonstrated that the attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality. *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007).

Finally, NMRA 11-503D(1) to (5) denies privilege to the client under such circumstances.

IV. CONCLUSION

The Court has a duty to vitiate the attorney-client privilege when activities between co-partners of partner found liable for fraud were liable to plaintiff jointly and severally for the award of compensatory damages, and costs; however, only the partner committing fraudulent acts - pleadings - was liable to plaintiff for the award of punitive damages. *Duncan v. Henington*, 114 N.M. 100, 835 P.2d 816 (1992).

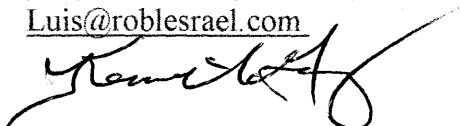
Respectfully submitted,



Kenneth Gomez
4 CR 5095
Bloomfield, New Mexico 87413
klpope2003@yahoo.com
(505)330-1239

I hereby certify that on this
27th day of July 2010, the
foregoing was electronically
served through the CM/ECF
system to the following:

Luis Robles
Attorneys for Defendant
500 Marquette Ave., NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
(505) 242-1106 (facsimile)
Luis@roblesrael.com

A handwritten signature in black ink, appearing to read "Luis Robles", is written over the printed name and contact information.