

**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 OPINION AND ORDER

THIS MATTER is before the Court on Plaintiffs' motion under federal and state Rules of Evidence to vacate the Defendant Eleventh Judicial District Court's privileged relationship with **ROBLES, RAEL, & ANAYA, P.C.** and Luis Robles, their attorney. A "representative of the attorney"¹ is administratively recognized by the Court, and that relationship exists between the attorney, Luis Robles, **ROBLES, RAEL, & ANAYA, P.C.**, and the Risk Management Division, "RMD", of the General Services Department of the State of New Mexico. However, the Court does not recognize an attorney-client privilege between the Defendant District Court and the RMD. Plaintiffs sought, in their motion, to vacate any attorney-client privilege that might exist between the RMD - a RMD Claim Number for the instant case is 1001145-000 - and the Defendant District Court. Since no such privilege exist, the issue is moot; however, should an act by the Defendant District Court occur, by and through the attorney of record, under contract with RMD intentionally in furtherance of criminal activity, the act becomes an attempt to influence the judicial machinery of the Court in furtherance of a crime for benefit. Accordingly, the Court turns to other 500 series Rules of Evidence questions raised in Plaintiffs' motion.

¹ NMRA 11-503A(3) defines the phrase: "representative of the lawyer" is one employed to assist the lawyer in the rendition of professional legal services.

Another such question raised in the Plaintiffs motion concerns a legal issue as to whether the State of New Mexico in Defendant District Court's stead can oppose the State of New Mexico represented by Plaintiff Gomez in that the General Services Department's RMD, a subordinate of the State of New Mexico - can use public funds in the State Treasury opposing the Plaintiff State of New Mexico as represented by Plaintiff Gomez, without state funds, under the extended provisions of New Mexico Statute 44-3-4 and the power reserved for him to do so under Article II, Section 23, Constitution of the State of New Mexico.

(a) The foregoing occurs as a conflict of concepts² between Article XXII, Section 19, Constitution of the State of New Mexico and a conflation³ of the following state statutes. NMSA 10-2-14 to 16 authorizes the General Services Department to collect funds from each state agency, defined by NMSA 10-2-14E, to be deposited in the State Treasury in an account known as the "surety bond fund", NMSA 10-2-16, for each *employee* of the accommodating state agency, NMSA 10-2-14C; the term employee includes all persons elected or appointed to state public office. In addition, the funds placed in the State Treasury "surety bond fund" pay another account in the State Treasury, at the discretion of RMD for the errant public officer employees, NMSA 10-2-14F(1), an *employee* member of a public agency such as the Defendant District Court, NMSA 10-2-16D. The foregoing conflation of laws directly conflicts with said Article XXII, Section 19 in that the New Mexico Constitution required the individual oath taker to both take the oath and then give a bond binding him/her to the promises in the oath taken. The conflation of laws recognizes that a constitutional oath is taken by some state employees;

² A test frequently used to determine whether conflict in terms exists between an ordinance and a state statute is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict. Where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by the... Junction City v. Lee, 532 P.2d 1292, 216 Kan. 495 (Kan., 1975).

³ Conflation, that result acquired by a fusion of elemental concepts not available by the elements individually.

however, said conflation laws require a state agency to take money for the "surety bond fund" in the State Treasury and pay to another account, in lieu of the oath taker's constitutional bond, for the oath taker's errant conduct of abandoning the promises in the oath. The conflation process is therefore unconstitutional, deceptive, and offensive to the People of New Mexico.

(b) Thus, a conflict in concepts exists as to whether the state public officers give the constitutionally mandated bond binding them to the promises in the oath taken, or whether the "surety bond fund" can be required to transfers funds from one account within the State Treasury to another and thereby replace the mandated constitutional bond. Under the foregoing circumstances, a state public agency replaces the public officer "employees" constitutional bond binding him/her thereto and thereby moots the responsibility the state public officer has for keeping the promises made in the oath of office.

Accordingly, it is the Court's decision that a state public agency cannot replace either the constitutional bond required to be given by the individual state public officer employee or replace their responsibilities using state public funds in lieu of the mandated constitutional bond.

Three other questions posed by the Plaintiffs' motion are considered together. One concerns whether state public funds in the "surety bond fund" obligated only for public employees, NMSA 10-2-14C, can be used by a public agency, the RMD, to represent a state public agency, the Defendant District Court, which is not a public employee as provided for by the said conflation of laws, and then do so in furtherance of criminal activity for benefit without committing a deceptive act perpetrating a fraud upon the Court, *Bulloch*. Another concerns the funds being used by the Defendant District Court to employ and involve **ROBLES, RAEL, & ANAYA, P.C.** and Luis Robles in furtherance of criminal activity without being a deceptive act perpetrating a fraud upon the Court, *Bulloch*. And finally, a third question posed by the

Plaintiffs concerns whether the Defendant District Court can seek the assistance of an alleged criminal enterprise active within the Court in furtherance of its criminal activities.

(a) The primary focus of the type fraud being considered by Plaintiffs was directed at knowingly *attempting to corrupt the judicial machinery of the Court* in furtherance of criminal activity by the Defendant District Court. Plaintiffs contend that when a filing fee *is placed under the ownership, possession, and control of the Court and when that money is acquired:*

(1) from whatever source to be used for the defense of the Defendant District Court in furtherance of its criminal activity,

(2) for employing a law firm and at least one of its attorneys willing to further the Defendant District Court's criminal activity, or

(3) for seeking the aid of the alleged criminal enterprise active within the Court,

then the use of such funds⁴ becomes an overt attempt to perpetrate a fraud upon the Court by beneficially attempting to corrupt its judicial machinery in furtherance of Defendant District Court's criminal activity; the status of the Court otherwise, notwithstanding.

(b) Plaintiffs further contend that *when* money collected by one public agency of the State of New Mexico from among other public agencies of the state for the liability protection of their individual employees, and then placed in an account under the possession of yet another public agency of the state for later control by the collector of the such funds who may then transfer such funds at its discretion from one fund account to another such funds cannot be used lawfully for the protection of any funding public agency originally collected only for its employees protection. The collection process of such funds for later use in any court of law is a

⁴ *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007).

deceptive criminal scheme in support of constitutional offenses against the People of New Mexico to hide the source of such funds from detection by either the Court or Plaintiffs⁵, and is done in furtherance of criminal activity for benefits not available otherwise. Currently, no state public officer employees are defendants in the instant cause of action and funds from the "surety bond fund" cannot be used to defend the Defendant District Court without attempting to deceive the Court.

(c) Plaintiffs have submitted Exhibit 8 which reveals that the \$350.00 filing fee for the Defendant District Court was paid by **ROBLES, RAEL, & ANAYA, P.C.**, assume to be their employee, and placed under the *possession, control, and ownership of the Court*; a fund provided by the said law firm unlawfully, (NMSA 36-2-13), from an otherwise unauthorized obligating source. Plaintiffs contend that mailing and wire communications with the Court from the Defendant District Court, by and through their attorneys of record, and **ROBLES, RAEL, & ANAYA, P.C.** in furtherance of criminal activity become mail and wire fraud as addressed by 18 U.S.C. §§ 1341 and 1343. Plaintiffs also contend that the foregoing constitutes a deceptive practice in furtherance of criminal activity, offending the power of Article XXII, Section 19 New Mexico Constitution, and in defiance of the authority of NMSA 10-2-5, 6, 7, and 9 which gives that power effect. *There are no persons anywhere within the State of New Mexico lawfully holding state public office as employees thereby*; an incontrovertible legal fact. Therefore, Defendant District Court is actively engaged in intentional criminal activity against the Constitution of the State of New Mexico.

(d) Plaintiffs have demonstrated and satisfied the two-part test to vitiate any attorney-client relationship that Defendant District Court may have. First, they showed that the Defendant District Court was inescapably engaged in or planning a criminal or fraudulent

⁵ *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007).

scheme when it acquired, from whatever source, the advice of counsel to further the scheme. *Supra*. Second, they demonstrated that any attorney-client communications for which production was sought was sufficiently related to and was in furtherance of an intended, or present, continuing illegality. *Ibid*.

Plaintiffs contend that the course of conduct engaged in among the Defendant District Court, by and through their attorneys, **ROBLES, RAEL, & ANAYA, P.C.**, the alleged criminal enterprise active within the Court, and the General Services Department meet all the condition established in the Racketeering Act [NMSA 1978 §§ 30-42-1 to 30-42-6] in that (1) there was a common purpose among the Defendant District Court and their cohorts, (2), there was organization, and (3) there was continuity of actions. See ¶ [10], *State v. Rael*, 981 P.2d 280 (N.M. Ct. App. 1999). The Court does not address this contention of the Plaintiffs at this time.

The Court concludes that any privilege that currently exists between **ROBLES, RAEL, & ANAYA, P.C.**, Luis Robles, and the Defendant District Court in the instant cause of action is vacated effective immediately for attempting to put a fraud on the Court in furtherance of criminal activity for benefit, for engaging in mail and wire fraud with the Court Clerk to accomplish the criminal scheme, and for defrauding the United States.

NOW THEREFORE, the Court hereby orders the attorney-client privilege currently existing in the instant cause of action between the Defendant Eleventh Judicial District Court and any attorney, any law firm or association they may be affiliated with, using money from the RMD of the General Services Department within the State of New Mexico for which production was sought is vacated immediately.

FURTHERMORE, it is ordered that the New Mexico Legislature shall reserve the sum of one hundred thousand dollars cash within the general fund of the State Treasury for payment

to Plaintiff Kenneth Gomez for each of the pleadings submitted by the Defendant Eleventh Judicial District Court, by and through **ROBLES, RAEL, & ANAYA, P.C.** and any of its attorneys to the Court by means of the United State Postal Service or the commercial wire services for attempting to put a fraud upon the Court, and for conspiring to defraud the United States when the State of New Mexico acquires state public officers fully in compliance with the mandated provisions of Article XXII, Section 19, Constitution of the State of New Mexico.

FINALLY, the Court orders the Governor of New Mexico, when that office is in lawful compliance with the Constitution of the State of New Mexico, to formally notify the Court when the said payment to Plaintiff Gomez is completed.

It is so ordered.

DATE

DISTRICT JUDGE, UNITED STATES DISTRICT COURT