

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO  
SANTA FE DIVISION

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
04 MAY 10 PM 1:35  
CLERK-SANTA FE

UNITED STATES OF AMERICA,  
*Ex rel* ANTONIO GUTIERREZ,

Plaintiffs,

vs.

CIVIL CASE NO. 03-1320 MV LFG

PERSONS HOLDING LICENSE TO  
PRACTICE LAW, et al.,

Defendants.

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MEMORANDUM OF LAW EXPOSING AND OPPOSING  
THE STATE OF ANARCHY IN THE STATE OF NW MEXICO

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MERE ASSIGNMENT of a civil or criminal cause to a court is not sufficient to establish jurisdiction and does not automatically validate the court as duly constituted. To prove this fact, Rule 9, Fed. R. Civ. P. shall serve as a template to show the absence of several conditions precedent that must be satisfied before the Court can be declared duly constituted and able to render judgments.

1. Rule 9. Pleading special matters is stated in pertinent part as follows:

- a. Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, *except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of . . . or the capacity . . . or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.*
- c. Conditions precedent. *In pleading the performance . . . of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance . . . shall be made specifically and with particularity.*
- d. Official document or act. *In pleading . . . official act it is sufficient to aver that . . . the act done in compliance with law.*

e. Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. [Emphasis added]

**Challenge of the Jurisdiction of the Court by Exception pursuant to Rule 9a**

- a. New Mexico judges are included as elected or appointed persons required to covered by a faithful performance surety bond due to the definition of the word 'employee' found in NMSA 10-2-14C of the Surety Bond Act. See 10-2-13 to 18 NMSA 1978 generally and 14C specifically.
- b. All public officers, including magistrate and district court judges, are required to be covered by faithful performance bonds-surety bonds- See 10-2-15. Surety Bond Coverage (1986) and See the 1987 Op. Att'y Gen. 87-42.
- c. No public officer is authorized to discharge assigned duties until surety bond coverage is recorded. See 10-2-9 NMSA. Recording as Prerequisite to Discharging Duties of Office. (1893) and Note the requirement was established as an Act of Congress before the State of New Mexico came into existence and is now controlled by Section 4, Article XXII, Constitution of New Mexico.
- d. The record of the surety bond must be recorded in a book entitled, 'Record of Official Bonds', 10-2-6 NMSA. *Id.* Section 4, Article XXII, Constitution of the State of New Mexico; and See 10-2-6 NMSA. Record of official bonds of state and district officers, (1893).
- e. The Record of Official Bonds must be kept in the Office of the Secretary of State, (NMSA 10-2-7). *Id.* and See 10-2-7. Filing of bonds by officials of state and state agencies, (1905).
- f. The Secretary of State will verify that there exist no Record of Official Bonds in that office. See attached letter dated February 6 in response to query about the Book of Official Bonds.
- g. 10-2-9 NMSA. Recording as prerequisite to discharging duties of office, (1893) is quoted to verify for the Court's perusal that jurisdiction in cases within New Mexico does not lie therein and that all orders issued to date were null, void, and without legal effect at their inception pursuant to Rule 1-060B(4): judgments were void since the assigned judge could not discharge assigned

duties without a surety bond of record available for public scrutiny and therefore were powerless to tender any one of them. See *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 (10<sup>th</sup> Cir.1979) for being void under Rule 1-060B(4) NMRA and *Orner v. Shalala*, 30 F.3d 1307, 1310 (10<sup>th</sup> Cir. 1994) for not being subject to any time limitation.

### **Conditions Precedent**

a. Rule 9c states in part the following:

In pleading the performance . . . of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. *A denial of performance . . . shall be made specifically and with particularity.* [Emphasis added.]

b. Sections 10-2-6, 7, and 9, NMSA have been used to demonstrate that certain conditions precedent were required and essential before a state public officer could perform assigned duties, and thereby no duties of New Mexico public officer could be discharged until surety bond coverage was of record in the Book of Official Bonds among those records required to be kept in the Office of the New Mexico Secretary of State, and that no such book of official bonds is available for public scrutiny in that office at this time. *Supra*.

### **Official Acts were not done in Compliance with Law**

a. Rule 9d states in part the following:

Official document or act. In pleading . . . official act it is sufficient to aver that . . . the act done in compliance with law.

b. No public officer in the State of New Mexico – be they governor, state legislator, state or municipal judge, or state, county, and municipal police officer-required to be covered by faithful performance surety bonds pursuant to NMSA 3-10-2, 10-1-13, and 10-2-14C, the latter containing the definition of ‘employee’, who hold office within the State of New Mexico and took an oath required by Section 1, Article XX, Constitution of New Mexico in exchange, upon entering office, for the public trust is empowered to discharge any assigned duties until covered by surety bond

c. New Mexico Laws of Chapters 3, 4, 8, and 10 pertaining to surety bond coverage which were valid in years 1892, 1893, 1903, 1905, and 1909 were Acts of Congress which could not be altered by the State of New Mexico under a commitment agreed to by the People of the Territory of New Mexico and memorialized in Sections 9 and 10 of Article XXI, Constitution of the State of New Mexico, otherwise known as the Enabling Act. Such Acts of Congress could not be altered without the approval of the Congress of the United States. Alterations of those Acts of Congress in Years 1939, 1967, 1975, and 1986 pertaining to surety bond coverage without congressional approval were null, void, and without legal effect at their inception as being repugnant to both constitutions. See *Marbury v. Madison*, 5 U.S. 137.

d. All orders rendered by any court to date and all laws enacted by the Legislature within the State of New Mexico by public officers who were not permitted to discharge assigned duties without surety bond coverage of record until the conditions precedent established by the Acts of Congress prior to statehood were satisfied or Congress, since statehood, approved of the alterations before they were put into effect. *Supra*, and see §§ 9 and 10, article XXI, New Mexico Constitution.

2. Two specific laws apply to this matter which are as follows:

a. 18 U.S.C. § 2383 to wit: Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any Office under the United States.

b. NMSA § 35-14-3. Judges; qualifications; bond; salary. (1961)

The qualifications of municipal judges, *bond required* and salary received *shall* be provided by ordinance of the municipality. [Emphasis added.]

c. No ordinance has ever been published by municipalities to establish the amount of the faithful performance surety bond required for municipal judges and none exists at this date.

3. The full impact and seriousness of the foregoing is the work product of those serving in positions repugnant to Article III, Constitution of New Mexico as state officers possessing the public trust as members of the Legislative Department who simultaneously hold licenses to practice law under authority of the Judicial Department, the Supreme Court of New Mexico. Their number in the Legislature permits them to hold chairmanship and member positions in committees vital to controlling the effect of legislation. See Article III. Consider their dilemma.

a. The requirement for the licensed attorneys in the legislature to be bonded while repudiating Article III of the New Mexico Constitution would become a most formidable barrier for a validated faithful performance bonding company with integrity to surmount. How could such a company bond any person for the unfaithful performance of duties which repudiate a provision of the New Mexico Constitution and do so with a bond for faithful performance. That is an oxymoron.

b. The solution, then, would be to bury that bonding requirement in the 1986 Surety Bond Act concealed in the definition of the word "employee" safe from ordinary scrutiny but sufficient to secure passage in the 1986 State Legislature. See if you can discover a specific statute among state laws which requires legislators and judges to be covered by faithful performance surety bonds without resorting to the definition of the word "employee".

b. After pondering the foregoing, see if you can understand that no licensed attorney could serve in the New Mexico Legislature after becoming known as a person who could not be covered with a faithful performance bond.

c. Still further, you might ponder whether the justices of the Supreme Court of New Mexico could create, publish, promulgate, implement and enforce rules for the advantage those with special privileges which *involuntarily* excludes most New Mexicans from the practice of law simply because they did not attend educational facilities with curriculums approved by the American Bar

Association, a private organization not under the control of the People of New Mexico or their elected representatives lawfully serving in the New Mexico Legislature.

e. Still further, you might ponder why the term “learned in the law” was deceptively removed from the New Mexico Constitution and replaced by ‘licensed attorney’ or ‘practiced law for a specified period of time’ as a condition precedent to entering office in referendum votes where the yes vote for passage would be assured by at least 8 percent in the first position on the ballot.

(1) Compare Sections 8 and 14, Article VI, Constitution of New Mexico active in Year 1983 with the same sections of the Year 2003 constitution.

(2) The 1983 constitution simply required supreme court justices and district court judges to be “learned in the law” and open to New Mexicans without regard to schools approved by the American Bar Association, an organization not under control of New Mexicans.

(3) The current constitution requires the judicial officers to have engaged in the unlawful ‘practice of law’ under authority of the unconstitutional legislative delegation of authority addressed in NMSA 36-2-1. See Section 25, Article IV, Constitution of New Mexico.

(4) It is important to know that the votes in referendum votes on constitutional amendments is first on every ballot guaranteeing an 8 percent favorable bias for passage; and that is the very reason retention votes for judges require a 57% favorable vote for retention.

d. Finally, consider the number of licensed attorneys holding positions in either house of the State Legislature and whether that number constitutes a block of swing votes on crucial legislation or drafted constitutional amendments beneficial to attorneys such as NMSA 36-1-2; to wit:

NMSA 36-2-1. The supreme court of the state of New Mexico shall, by rules promulgated from time to time, define and regulate the practice of law within the state of New Mexico. The supreme court shall cause such rules to be printed and distributed to all members of the bar, to applicants for admission and to all courts within the state of New Mexico and the same shall not become effective until thirty (30) days after the same shall have been made ready for distribution and so distributed.

EXHIBIT 1 -- NM ex rel Gomez v. 11th Jud. Dist. Ct., 1:10-cv-594WDS/LFG



4. There remains the question concerning those holding federal office preconditioned upon holding a license to practice law under a system for the admission to practice law wherein those who created the system, both justices and legislators, could not perform any assigned duties of office without first being bonded with faithful performance bonds and evidence of that bond being a fact ascertainable by the public in the Book of Official Bonds located in the Office of the New Mexico Secretary of State during all times relevant.

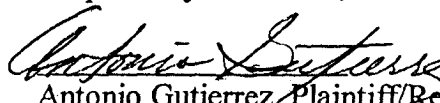
**Wherefore**, none of those involved in the case captioned holding public office in New Mexico have been bonded with faithful performance surety bond coverage-not liability insurance; all laws enacted, court orders, administrative or judicial, evolving thereby were and shall be unlawful; any arrest or confiscation of real and personal property in accord with such orders were and shall be unlawful, any jury indictments, no matter how serious, were and shall be unlawful for lack of authority to render them, and any incarceration in accord with such orders, law enforcement or judicial, were and shall be false imprisonment; the net effect of those actions shall entitle the People of New Mexico's public treasury to a sum equal to twenty-five percent from the offender for the value of the judgment rendered unlawfully since first entering office and to the injured parties for restitution authorized in the New Mexico Constitution for the resulting liabilities, whoever that might be. The unlawfulness is currently pervasive, injurious, and uncontrollable statewide in violation of the New Mexico Tort Claims Act in general and NMSA 41-4-12 in particular where no assigned duties *within* the scope of authorized duties could be discharged by any public officer who was not covered by faithful performance bonds.

**Furthermore**, those federal officers, who entered office on deceptively holding a license to practice law as a condition precedent under authority of New Mexico Supreme Court Rules, defrauded the United States; since, those serving as justices could not discharge assigned duties

without being covered by faithful performance bonds and that fact being of record, they could not create such rules, and they could not license any person to practice law lawfully.

**Finally**, the State of Anarchy previously reported to the Court remains currently active in the face of all orders issued to date.

Respectfully submitted,

  
Antonio Gutierrez, Plaintiff/Relator  
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#### CERTIFICATE OF SERVICE

I certify that this Memorandum of Law Exposing and Opposing the State of Anarchy in the State of New Mexico was sent by first class U.S. Mail, postage prepaid, to Jay D. Majors, DOJ Trial Attorney, Civil Division, P.O. Box 261, Ben Franklin Station, Washington, D.C. 20044, this 14<sup>th</sup> day of May, 2004.

  
Antonio Gutierrez