

DISTRICT COURT  
SAN JUAN COUNTY NM  
AS FILED  
2013 FEB 15 AM 7:21

STATE OF NEW MEXICO  
COUNTY OF SAN JUAN  
ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*  
State Engineer,

**Plaintiff,**

vs.

UNITED STATES OF AMERICA, *et al.*,

**Defendants.**

JICARILLA APACHE TRIBE and the  
NAVAJO NATION,  
**Defendant-Intervenor.**

D-1116- CV 75-184  
Hon. James J. Wechsler

AB-07-1  
Claims of the Navajo Nation

**ORDER DENYING B SQUARE RANCH, LLC ET AL.'S MOTION TO DISQUALIFY  
ATTORNEYS FOR THE UNITED STATES**

Relying on the New Mexico rules of civil procedure and an investigation into the status of admission to the State Bar of New Mexico of attorneys for the United States, Defendants B Square Ranch, LLC *et al.* (B Square Ranch) request an order disqualifying the attorneys for the United States of America from participating in this proceeding because they are not active members of the State Bar of New Mexico.<sup>1</sup> After a hearing on this matter held February 4, 2013 and consideration of the parties' pleadings, B Square Ranch's motion is denied.

B Square Ranch first requested that the Court disqualify the attorneys for the United States at a discovery conference held January 9, 2013. It subsequently filed a motion requesting disqualification of the attorneys for the United States, relying upon Rule 1-089.1(A) NMRA and Rule 24-106 NMRA. Rule 1-089.1 requires attorneys not admitted to practice in New Mexico to associate with an attorney licensed in New Mexico. Rule 24-106 states additional requirements for non-admitted lawyers to appear in a New Mexico court, including filing a registration certificate with the State Bar of New Mexico and paying a specified fee.

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<sup>1</sup>B Square Ranch's Motion to Disqualify Attorney for United States of America From Participation in the Subject Action, was filed January 10, 2013. The United States filed a response on January 24, 2013, and B Square Ranch filed a reply on February 1, 2013.

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28 U.S.C. § 517 (1993) authorizes the United States Attorney General or any other officer of the Department of Justice to represent the United States' interests in any court in the United States:

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

*See also In Re Howes*, 1997-NMSC-024, 123 N.M. 311, 940 P.2d 159 (citing 28 U.S.C. § 517 as the authority for an Assistant United States Attorney licensed in New Mexico to practice in the District of Columbia). Contrary to B Square Ranch's argument, 28 U.S.C. § 517 constitutes an exception to Rule 1-089.1 and Rule 24-106 requiring a nonadmitted attorney to associate with an attorney licensed in New Mexico prior to appearing in a state court. *See Hersh v. United States of Am.*, No. 85-C-1606, 1986 WL 31684 (E.D. Wis. Feb. 25, 1986) (denying attempt to strike pleadings of a Department of Justice attorney not licensed in that district court).

In its reply, B Square Ranch cited to 28 U.S.C. § 530(B) and associated regulations, NMSA 1978, § 36-2-27 (1999), Rule 16-505(D) NMRA, and Rule 16-804 NMRA to demonstrate that the attorneys for the United States must be disqualified from further participation in this proceeding. 28 U.S.C. § 530(B), entitled "Ethical Standards for Attorneys for the Government," and requires attorneys to comply with the ethical standards of the state in which they are practicing, is predicated upon the assumption that an attorney is authorized to represent the United States' interests in state court. As cited by the United States, 28 C.F.R. § 77.2(h)(3) states:

The phrase state laws and rules and local federal court rules governing attorneys means rules enacted or adopted by any State or Territory of the United States or the District of Columbia or by any federal court, that prescribe ethical conduct for attorneys and that would subject an attorney, whether or not a Department attorney, to professional discipline, such as a code of professional responsibility. The phrase does not include . . . a statute, rule, or regulation requiring licensure or membership in a particular state bar.

Similarly, the New Mexico statutory authority and court rules cited by B Square Ranch do not

defeat the exception to the rule for non-admitted attorneys created by 28 U.S.C. § 517.<sup>2</sup>

Finally, B Square Ranch argued at the February 4, 2013 hearing that Rule 16-505(F) prohibits the attorneys for the United States from appearing in this matter because they are not in compliance with the state registration requirements. Rule 16-505(F) states:

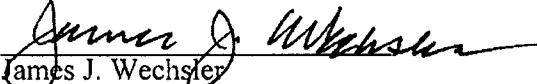
F. A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction and who is in compliance with applicable registration requirements, may provide legal services in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
- (2) are services that the lawyer is authorized by federal or other law to provide in this jurisdiction.

Contrary to B Square Ranch's interpretation, the reference to "applicable registration requirements" does not refer New Mexico to state licensing requirements. Section F specifically refers to attorneys who are not licensed in New Mexico. As stated in ABA comment 18, "Subparagraph (2) of Paragraph F recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed *when authorized to do so by federal or other law*, which includes statute, court rule, executive regulation or judicial precedent." (Emphasis added.)<sup>3</sup> As established above, 28 U.S.C. § 517 authorizes the participation of the attorneys for the United States in this proceeding to represent the United States' interests.

B Square Ranch's motion is hereby denied.

**IT IS SO ORDERED.**

  
James J. Wechsler  
Presiding Judge

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<sup>2</sup>B Square Ranch cites to the following authority: Section 36-2-27, requiring an attorney appearing in state court to be a member of the State Bar of New Mexico; Rule 16-505(D) prohibiting non-admitted attorneys lawyers from practicing in state court; Rule 16-804(A), stating that professional misconduct includes violating the Rules of Professional Conduct.

<sup>3</sup>Rule 16-505(F) tracks the ABA model rule.