

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D-101-CR-202400013

ALEXANDER RAE BALDWIN,

Defendant.

MOTION TO QUASH SUBPOENA

Jason Bowles of Bowles Law Firm, hereby files a motion to quash a Subpoena Duces Tecum served upon him by the State of New Mexico, and in support of his motion states as follows:

1. The First Judicial District Attorney's Office emailed a Subpoena Duces Tecum to undersigned on April 24, 2024.

2. The Subpoena is requesting:

All documentation regarding communications between any employee or contract employee or agent of the Bowles Law Firm and Alexander Rae Baldwin, any attorneys or other employees of the Quinn, Emanuel, Urquhart & Sullivan Law Firm, any attorneys acting on behalf of Mr. Baldwin, and any representatives of Mr. Baldwin or Mr. Baldwin's counsel. This documentation includes but is not limited to any notes, messages, emails, text messages, recordings, and any other forms of correspondence.

3. Communications between Hannah's defense counsel and team and Baldwin's defense counsel and team have all been pursuant to joint defense and a common interest privilege. Communications have been in furtherance of both defendants' pretrial and trial strategy.

4. Any emails by and between undersigned as counsel for Ms. Gutierrez Reed have also been in furtherance of defense strategy and are attorney client and work product privileged.

LAW:

Rule 11-503(B) provides that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." The elements of attorney-client privilege, as reflected in Rule 11-503(B), are (1) a communication (2) made in confidence (3) between privileged persons (4) for the purpose of facilitating the attorney's rendition of professional legal services to the client. See 1 Rice, supra, § 2:1, at 8-10 (discussing the proposed Federal Rule of Evidence 503(b), which is almost identical to New Mexico's Rule 11-503(B)). This privilege is defined in pertinent part as follows in Rule 11-503:

A. Definitions. For purposes of this rule,

(1) a "client" is a person, public officer, corporation, association, or other entity who consults with, seeks advice from, or retains the professional services of a lawyer or a lawyer's representative;

(2) a "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation;

(3) a "representative of a lawyer" is one employed to assist the lawyer in providing professional legal services; and

(4) a communication is "confidential" if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication and includes the act of contacting or retaining a lawyer for the purpose of seeking professional legal services if not intended to be disclosed to third persons.

B. Scope of the privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made for the purpose of facilitating or providing professional legal services to that client,

(1) between the client and the client's lawyer or representative;

- (2) between the client's lawyer and the lawyer's representative;
- (3) between the client or client's lawyer and another lawyer representing another in a matter of common interest;
- (4) between representatives of the client or between the client and a representative of the client; or
- (5) between lawyers representing the client.

C. Who may claim the privilege. The privilege may be claimed by

- (1) the client;
- (2) the client's guardian or conservator;
- (3) the personal representative of a deceased client; or
- (4) the successor, trustee, or similar representative of a corporation, association, or other entity, whether or not in existence.

The lawyer of the client at the time of the communication may claim the privilege only on behalf of the client. Authority to claim the privilege is presumed absent evidence to the contrary.

...

N.M. R. Evid. 11-503.

As further stated by our Court of Appeals in *S.F. PACIFIC GOLD CORP. V. UNITED NUCLEAR CORP.*, 2007-NMCA-133, 143 N.M. 215, 175 P.3d 309:

{13} A client may claim attorney-client privilege to refuse to disclose confidential communications between certain persons if the communications were made for the purpose of acquiring legal advice for the client. Rule 11-503(B); see *State ex rel. State Highway Comm'n v. Steinkraus*, 76 N.M. 617, 620, 417 P.2d 431, 432 (1966) (stating that the attorney-client privilege protects communications, not facts). Attorney-client privilege is an exception to the "established principle that the public has a right to every man's evidence." 1 Paul R. Rice, *Attorney-Client Privilege in the United States* § 2:3, at 14 (2ded. 1999) (internal quotation marks and citation omitted); see also *Hartman v. Texaco Inc.*, 1997-NMCA-032, ¶18, 123 N.M. 220, 937 P.2d 979 (stating that discovery is ordinarily presumed permissible); *Carter v. Burn Constr. Co.*, 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973) (stating that the discovery rules are liberally construed to enable parties to easily obtain the relevant facts before

trial). The party claiming privilege has the burden of establishing that a communication is protected as an exception to the ordinary rule. See Piña, 2001-NMCA-055, ¶ 24.

...

a. Common Interest Doctrine

{15} Rule 11-503(B)(3) recognizes that the attorney-client privilege may apply to a communication made by a client or the client's lawyer "to a lawyer representing another in a matter of common interest."

...

{16} Also known as the joint defense privilege, the common interest rule protects the "confidentiality of communications passing from one party to the attorney for another party where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel." *United States v. Schwimmer*, 892 F.2d 237, 243 (2dCir. 1989). Under the common interest doctrine, documents disclosed to a third party may be protected by the privilege if the party resisting discovery demonstrates that the documents were created during the course of a joint defense effort between the resisting party and the third party and that the documents were designed in furtherance of that effort. See *Grand Jury Proceedings v. United States*, 156 F.3d 1038, 1042-43 (10th Cir. 1998).

...

{18} The common interest rule does not require that actual litigation be in progress; rather, the rule applies whenever more than one client share a common interest about a legal matter. *Schwimmer*, 892 F.2d at 243-44 (holding that the protection provided by the privilege extends to communications made in confidence to an accountant assisting lawyers who were conducting a joint defense on behalf of the communicating clients in regard to the government's initial investigation of the clients). In this manner, the common interest doctrine serves the purpose of the privilege, which is to encourage the free flow of information between attorney and client. *Id.* " ...

APPLICATION:

Applying this law, the state seeks to invade the attorney client, joint defense, and common interest privilege by the issuance of these subpoenas. Any communications by and between the Bowles Law Firm and Baldwin defense team and any internal communications within the Bowles Law Firm pertinent to this case meet the elements in the law: (1) communication (2) made in

confidence (3) between privileged persons (4) for the purpose of facilitating the attorney's rendition of professional legal services to the client. Allowing the state to invade this core constitutional privilege and obtain protected internal communications would create a very dangerous precedent and have a chilling effect on the joint defense of clients in New Mexico in cases where the state chooses to prosecute multiple defendants. Prejudice need not be shown when a core constitutional privilege is at stake. The subpoena duces tecum should be quashed.

WHEREFORE, undersigned respectfully requests this Court to enter an order to quash the subpoena served upon undersigned by the First Judicial District Attorney's Office, through the special prosecutor.

Respectfully submitted,

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 2nd day of May, 2024, to the parties listed in the filing system.

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm