

IN THE SUPREME COURT FOR THE STATE OF NEW MEXICO

NO. S-1-SC-40766

IN THE MATTER OF
THOMAS J. CLEAR III

An Attorney Licensed to Practice
Law in the Courts of the State of
New Mexico

RESPONSE TO ORDER TO SHOW CAUSE

Respondent, Thomas J. Clear III (Respondent), by and through his attorney, Thomas M. Clark, responds in writing to the Court's Order to Show Cause as follows:

The Court has directed that Respondent show cause in writing why he should not be subject to discipline, up to and including suspension, for the alleged conduct as set forth in the Order to Show Cause entered by the U.S. District Court for the District of New Mexico on January 29, 2025, in 1:25-mc-00017-KG. This Response is timely if filed by February 10, 2025.

The undersigned has filed, on Respondent's behalf, two pleadings in the federal court case: Mr. Clear's Notice to the Clerk of the Court Pursuant to D.N.M. LR-CIV-Civ 83.2 (f) and Mr. Clear's Response to Order to Show Cause. The Court's concerns herein are based on the U.S. District Court Order to Show Cause and in

response to this Order to Show Cause, the referenced pleadings are attached as Exhibits A (Notice with Exhibits) and B (Response to Order to Show Cause).

For the purpose of this Response, Mr. Clear would incorporate by reference the contents of Exhibit A and Exhibit B herein. Additionally, Mr. Clear has changed his status with the New Mexico Bar to inactive. Upon information and belief, the Respondent has not actively practiced law in this jurisdiction since approximately June of 2024. He no longer represents clients in either State or Federal Court. Likewise, Mr. Clear has no retained interest in any cases, either filed or not yet filed. Finally, for reasons set out in Respondent's Response to the U.S. District Court Order to Show Cause, Mr. Clear is unable to respond further, for fear of abandoning his right's secured by the Fifth Amendment of United States Constitution.

CONCLUSION

In his Federal Court Response, Respondent set out alternative requests to the U.S. District Court. Mr. Clear asserts that these alternatives address the concerns of this Court, while at the same time respecting the Respondent's current situation. Accordingly, Mr. Clear, by and through counsel, requests alternatives as follows:

1. The Court allow Mr. Clear to resign as a Member of the New Mexico Bar;
2. The Court hold this proceeding in abeyance until further order of this Court;

3. Suspend Mr. Clear for an indefinite period of time until further order of this case.

Respectfully Submitted,

CLARK & RUYLE, LLC.



Thomas M. Clark
432 Galisteo St.
Santa Fe, NM 87501
(505) 820-1825
(505) 986-0475 (fax)
Email: tmclark@cjrlawsf.com

CERTIFICATE OF SERVICE

I certify that on February 7, 2025, I filed the foregoing electronically through the Court's filing system causing service to be effected on the Clerk of the Court.



Thomas M. Clark

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE: THOMAS J. CLEAR III

No. 1:25-mc-00017-KG

NOTICE TO THE CLERK OF THE COURT
PURSUANT TO D.N.M. LR-CIV-Civ 83.2 (f)

To: The Clerk of the Court

Thomas J. Clear III, by and through his attorney, Thomas M. Clark, self-reports to the Clerk of the Court the following circumstances:

1. D.N.M. LR-CIV-Civ 83.2 (f)(1) Eligibility. On January 24, 2025, Thomas J. Clear III (Clear) changed his status with the New Mexico State Bar from *active* to *inactive* and Clear is no longer “on active status” as required by D.N.M. LR-CIV 83.2 (a). Mr. Clear has not actively practiced in the New Mexico courts since approximately June of 2024 and has not actively practiced in this Court since April 4, 2024 and he is not counsel of record in any case pending in this Court.

2. D.N.M. LR-CIV 83.2 (f)(3) Resignation Pending Investigation of Misconduct. Mr. Clear is seeking to resign as a member of this bar and advises the Clerk of the Court as to the pending investigations:

- a. Order to Show Cause filed in this Court on January 29, 2025. [Doc 1].
- b. On February 4, 2025, Mr. Clear received a Chief Disciplinary Counsel

Complaint dated January 31, 2025, a copy of which is attached as

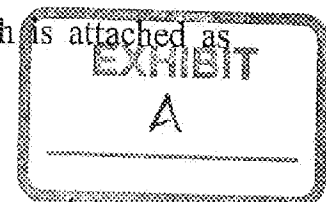


Exhibit 1. The complaint speaks for itself but is premised almost entirely on the issues raised in the Order to Show Cause file in this Court. **[Doc 1]**.

- c. On February 4, 2025, Mr. Clear received an Order to Show Cause from the New Mexico Supreme Court which is attached as **Exhibit 2.** Again, this pleading speaks for itself but is premised almost entirely on the issues raised in the Order to Show Cause filed in this Court. **[Doc 1]**.

Respectfully Submitted,

CLARK & RUYLE, LLC.



Thomas M. Clark
432 Galisteo St.
Santa Fe, NM 87501
(505) 820-1825
(505) 986-0475 (fax)
Email: tmclark@ejplawsf.com

CERTIFICATE OF SERVICE

I certify that on February 5th, 2025, I filed the foregoing electronically through the Court's filing system causing service to be effected on the Clerk of the Court.



Thomas M. Clark

CONFIDENTIAL
January 31, 2025

Thomas Clear, III, Esq.
7112 Aztec Rd NE
Albuquerque, NM 87110

Re: Chief Disciplinary Counsel Complaint

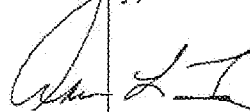
Dear Mr. Clear:

Pursuant to Rule 17-105(B)(2), NMRA, chief disciplinary counsel is authorized to initiate investigations into possible misconduct by an attorney by filing a "Chief Disciplinary Counsel Complaint." I have on this date filed such a complaint against you. A copy of the Chief Disciplinary Counsel Complaint is enclosed. Before proceeding further, we would like to hear from you concerning the Chief Disciplinary Counsel Complaint. You are, therefore, requested to respond to the allegations in the Chief Disciplinary Counsel Complaint **on or before February 14, 2025**. Feel free to include any information or documents that you deem relevant. Please respond directly to this office; the Board has asked that Board members not be contacted directly or by mail, as they may ultimately be called upon to determine the merits of a particular complaint if charges are filed. Additionally, if you are represented by counsel or intend to retain counsel, please provide this letter and the enclosed complaint to your counsel and have him or her respond on your behalf.

Because a complaint may result in formal charges being filed against an attorney, I hereby advise you that if that were to occur in this case, your reply to this letter might be offered into evidence as a written statement by a party.

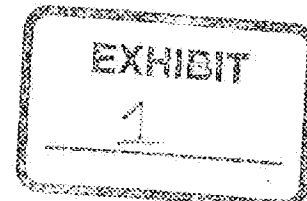
Thank you for your assistance and anticipated cooperation.

Sincerely,



Anne L. Taylor
Chief Disciplinary Counsel

Enclosure



RULES WHICH MAY BE INVOLVED: 16-804 NMRA

DATE: January 31, 2025

This complaint arises out of a Plea Agreement filed on January 24, 2025, in the matter styled *USA v. Mendez* No. 1:25-cr-000139-DHU (D.N.M.), United States District Court, District of New Mexico. A copy of the Plea Agreement is attached.

According to the admission of facts in the plea agreement, Mr. Mendez admitted the following:

In 2007, I began working for co-conspirator 1's law firm, which specialized in defending with persons charged with driving while intoxicated (DWI). (Plea Agreement, ¶9).

Since at least 2008, I admit that I conspired with conspirator 1, as well as sworn law enforcement officers and deputies with the Albuquerque Police Department (APD), New Mexico State Police (NMSP), and the Bernalillo County Sheriff's Office (BCSO) (collectively, the "Officer Members") to engage in a scheme that targeted persons arrested for DWI (DWI Offenders). Under this scheme co-conspirator 1, the officers, and I would arrange for the Officer Members to intentionally fail to appear at a required criminal and administrative settings associated with DWI-related arrests, allowing co-conspirator 1 to move to dismiss the proceedings. (Plea Agreement, ¶ 10).

As part of this scheme, DWI Offenders, both aware and unaware of the scheme,

Case 1:25-mj-00917-NG Document 20-1 Filed 03/05/25 Page 6 of 8
retainer fee be paid in cash. When the DWI Offender paid the cash retainer, co-conspirator 1 and I were paid in cash in addition to their law firm salary. In addition, the Officer Members were often paid in cash but, at times, also received other benefits and things of value, including but not limited to free legal services, gift cards, hotel rooms and other gifts. I typically handled communications with the officers to convey the payment amounts and to arrange meetings to exchange payments. However, on occasion, I admit that co-conspirator 1 paid the Officer Member directly. (Plea Agreement, ¶12).

I further admit that co-conspirator 1 would also provided free or significantly discounted legal services for the Officer Members and their family members in exchange for the officer not showing up for the required administrative and criminal settings and to develop goodwill between the Officer Members and the DWI Enterprise. (Plea Agreement, ¶13).

Upon information and belief, Mr. Mendez was employed by your law firm as a private investigator, and you engaged in the above-mentioned conduct with Mr. Mendez. See, e.g., Recording: Albuquerque DWI suspect says he was offered a 'guarantee' for \$8,500; A Guilty Plea Implicates 'Almost the Entire' Albuquerque DWI Unit in Longstanding Police Corruption (Articles attached).

The above cited conduct, if true, constitutes a violation of the following provisions of the Rules of Professional Conduct: 16-804(A), by violating or attempting to violate

1 law” in New Mexico. Rule Set 17 NMRA, Preface;

2 WHEREAS, the Court having considered the foregoing, being sufficiently
3 advised, and finding good cause to issue an order to show cause; Chief Justice
4 David K. Thomson, Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice
5 Julie J. Vargas, and Justice Briana H. Zamora concurring;

6 NOW, THEREFORE, YOU, THOMAS CLEAR III, ARE ORDERED
7 to show cause, in writing, if any you have, on or before February 10, 2025, why
8 you should not be subject to discipline, up to and including suspension, for the
9 alleged conduct as set forth in the order to show cause entered by the United States
10 District Court for the District of New Mexico on January 29, 2025, in 1:25-mc-
11 00017-KG.

12 IT IS SO ORDERED.



WITNESS, the Honorable David K. Thomson, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 3rd day of February, 2025.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Elizabeth A. Garcia
Chief Deputy Clerk of the Supreme Court
of the State of New Mexico

By *Elizabeth A. Garcia*
Chief Deputy Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE: THOMAS J. CLEAR III

No. 1:25-mc-00017-KG

**THOMAS J. CLEAR III'S RESPONSE TO COURT'S
ORDER TO SHOW CAUSE**

Thomas J. Clear III, by and through his attorney, Thomas M. Clark, hereby responds to the Court's Order to Show Cause [Doc 1] as follows:

1. Thomas J. Clear III (Clear) has filed simultaneously with this pleading his *Notice to the Clerk of the Court Pursuant to D.N.M. LR-CIV 83.2* giving the Clerk of the Court and this Court notice of circumstances relating to his admission to this bar and his continued eligibility to be a member of this bar. [Doc 2]. On January 24, 2025, Mr. Clear affirmatively changed his status as a member of the New Mexico State Bar from *active* to *inactive*. Upon information and belief, Mr. Clear had not been actively engaged in the practice of law in New Mexico since approximately June of 2024 and, similarly, had not been engaged in the practice of law in this Court since April 4, 2024, and is not counsel of record in any pending case in this Court. As required by D.N.M. LR-CIV 83.2 (a) and (c), an applicant and member to this bar must "be on active status in a state . . . and be a member of that bar in good standing in all courts and jurisdictions where the applicant has been admitted." Because Mr. Clear went on *inactive* status with the New Mexico State



Bar, he is required to provide the Clerk of the Court notice of that change in eligibility status.

2. Mr. Clear's notice to this Court of his change of status from *active* to *inactive* with the State Bar of New Mexico was timely and in compliance with D.N.M. LR-CIV 83.2 (f)(1) which requires notice within fourteen days.

3. The Court's rules regarding *self-reporting* also require that if a member intends to resign as a member of the bar of this Court, the member must self-report any pending investigation. D.N.M. LR-CIV 83.2 (f)(3). In his *Notice to the Clerk of the Court Pursuant to D.N.M. LR-CIV 83.2*, Mr. Clear acknowledged this Court's Order to Show Cause as well as his receipt on February 3, 2025, of a Chief Disciplinary Counsel Complaint from the New Mexico Supreme Court's Chief Disciplinary Counsel and service on that same date of an Order to Show Cause from the New Mexico Supreme Court. [Doc 2]

4. Mr. Clear is an *inactive* member of the New Mexico State Bar in good standing and a member of this bar in good standing, Mr. Clear is not counsel of record in any pending case in this Court, but he is the subject of a disciplinary proceeding¹, to wit: this Order to Show Cause.

¹ It is not clear to the undersigned if the Court's Order to Show Cause [Doc 1] is "disciplinary proceeding" or rather an investigation, but the undersigned does not dispute that any distinction does not change the intent of D.N.M. LR-CIV 83.2 (e).

5. Mr. Clear has not been formally charged with a crime and there are no pending charges that Mr. Clear must disclose, but because the Court's Order to Show Cause directs him to disclose if he is charged with a crime, he acknowledges his obligation under D.N.M. LR-CIV 83.2 (f)(4) and the Court's Order to Show Cause.

6. Mr. Clear understands and respects the Court's duties and obligations to "maintain and enforce high standards of conduct" of this Court and maintain the public confidence in the judiciary as set out in the Court's Order to Show Cause.

[Doc 1, p.2].

7. Mr. Clear appreciates the Court making clear that its Order to Show Cause is based on allegations made in a recently entered plea agreement and two news articles suggesting that he may have been involved in crimes and violated Rules of Professional Conduct governing lawyers. The Court has directed him to "show cause in writing why the Court should not discipline him due to the conduct described above [the plea agreement and two news articles]."

8. To respond to the Court's Order, Mr. Clear would have to abandon his rights and protections provided under the Fifth Amendment of the United States Constitution which he cannot do and he advises the Court that he is asserting the Fifth Amendment right against self-incrimination.

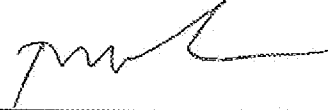
CONCLUSION AND REQUEST TO THE COURT

Mr. Clear is a member of this bar by virtue of his being an *active* member of the New Mexico State Bar and in good standing with that bar. On January 24, 2025, Mr. Clear relinquished his *active* status as a member of the New Mexico bar. D.N.M. LR-Civ 83.2 (a) thru (c). Mr. Clear has given timely notice to the Clerk of the Court of his change of status. [Dōc 2]. For these reasons, Mr. Clear no longer satisfies the requirements to be a member of this bar and requests below that the Court accept his resignation as a member of this bar based on the change of his status and eligibility.

“An attorney may resign from the bar only if the attorney is in good standing, is not counsel of record in a pending case, and is not the subject of any disciplinary proceeding before this court.” D.N.M. LR-Civ 83.2 (e). Mr. Clear acknowledges the Court’s Order to Show Cause is a disciplinary proceeding. But where a member of the bar (Clear) no longer satisfies the requirements for being a member of the bar and has timely notified the Court of his change of circumstances and where the basis for the Court’s Order to Show Cause (the disciplinary proceeding) are allegations in a Plea Agreement entered into by another person and two news reports which would require Mr. Clear to forgo or waive his Fifth Amendment right against self-incrimination to refute, should a request to resign as a member of the bar be denied?

Respectfully Submitted,

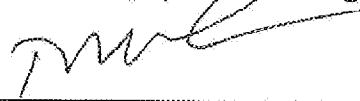
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Thomas M. Clark