

STATE OF NEW MEXICO
COUNTY OF LUNA
SIXTH JUDICIAL DISTRICT

FILED
DISTRICT COURT OF
COUNTY OF LUNA

2011 JUN -8 PM 3:00

LARRY CALDWELL, Plaintiff,

v.

No. CV 2011- 00179
JUDGE Daniel Viramontes

CITY OF DEMING, Defendant.

**PETITION FOR DECLARATORY JUDGMENT AND
ENFORCEMENT OF THE OPEN MEETINGS ACT**

COMES NOW the Plaintiff, LARRY CALDWELL, by and through his attorneys KRETEK LAW OFFICE, LLC (Charles C. Kretek), and files this action petition pursuant to the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978, and the Declaratory Judgment Act, Section 44-6-1, *et seq.*, NMSA 1978, for a judgment declaring violations of the Open Meetings Act by the City of Deming on numerous occasions and in support thereof, states **THAT**:

- A. The Plaintiff is a resident of Luna County, New Mexico.
- B. The Defendant is an incorporated municipality in the State of New Mexico.
- C. The Court has subject matter jurisdiction pursuant to Section 10-15-3, NMSA 1978, and 44-6-2, NMSA 1978.
- D. The Petitioner sent a letter, as required by Section 10-15-3B, NMSA 1978, attached hereto as Exhibit A, and no action was taken by the City of Deming as required, thereby conferring standing upon the Plaintiff to bring this action.
- E. The City of Deming is a proper party to this action.
- F. Since the Plaintiff sent notice in April, 2003, the City of Deming has on numerous occasion called for closed sessions in public meetings without the required specificity of Section 10-15-11(1), NMSA 1978, to be proven at trial.

G. Pursuant to Section 10-15-4, NMSA 1978, the City of Deming should be found guilty of violating the Open Meetings Act and fined \$500.00 for each violation since April, 2003.

H. Further, pursuant to Section 10-15-3B, NMSA 1978, the Plaintiff, shall be awarded costs and reasonable attorney's.

I. Pursuant to Section 44-6-4, NMSA 1978, the Court should construe to appropriate form of notice required by the Open Meetings Act and to issue an appropriate order requiring the Defendant to comply with said requirements and for such supplemental relief, pursuant to Section 44-6-9, NMSA 1978, as deemed necessary to ensure future compliance.

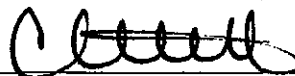
J. Pursuant to Section 44-6-11, NMSA 1978, the Plaintiff asks the Court for an award of costs, including attorney's fees.

WHEREFORE, the Plaintiff, LARRY CALDWELL, asks the Court for a judgment:

1. Declaring the City of Deming in violation of the Open Meeting Act;
2. Imposing a fine of \$500.00 for each violation since April, 2003;
3. Awarding the Plaintiff court costs and reasonable attorney's fees;
4. Entering an order construing the appropriate form of notice required by the Open Meeting Act to enter into closed sessions at City Council meetings; and
5. For such other relief, both at law and in equity, as the Court deems just and proper.

Respectfully submitted,

KRETEK LAW OFFICE, LLC

By 

Charles C. Kretek,
Attorneys for the Plaintiff
P.O. Box 2641
Deming, NM 88031-2641
(575) 546-4131

March 5, 2003
711 N. Zinc Street
Deming, NM 88030
Phone: 505.546.9316

Deming City Council
City of Deming
P.O. Box 706
309 S. Gold Street
Deming, NM 88031

Subject: New Mexico's Open () 1978 NMSA Sections 10-15-1
Public Meetings Act) to 10-15-4

City Council:

Pursuant to the above subject, the City Council, on
February 10, 2003, did violate Section 10-15-1I(1) and,
subsequently, Section 10-15-1J of the Act.

I am,
Sincerely,



Larry Caldwell

lb/LLC

cc: file (1)
letterbook (1)