IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 04-RB-2455 (BNB)

CHARLES H. CLEMENTS

Plaintiff,

v.

1. JANIS E. CHAPMAN
2. THOMAS C. 'DOC' MILLER, and
3. KATHERINE GRIER,
Defendants

PLAINTIFF'S ANSWER TO DEFENDANT CHAPMAN'S MOTION TO DISMISS

Comes now Charles H. Clements, Plaintiff in pro se by doctrine of necessity and makes PLAINTIFF'S ANSWER TO DEFENDANT CHAPMAN'S MOTION TO DISMISS, and prays the Honorable Court to DENY Defendant's Motion and in support states as follows:

INTRODUCTION

1. Defendant Grier introduced Plaintiff to Defendant Chapman asserting an in REM 'Marriage' as opposed to a in REM 'Custody'. The initial pleading is a FRAUD and Plaintiff's response asserts fraud from the inception of the controversy and objected to all assertions of subject matter jurisdiction, imposition of arbitration by a Magistrate, all proceedings going forward until both the alleged common law contract and determinations under any Expedited Process be made.

2. Plaintiff's claims arise out of Defendant Chapman's denial of First Amendment rights to petition the government for redress of grievance by requiring a Literacy Test for the exercise of the right. Plaintiff's 'Non-Statutory Abatement' questions jurisdiction, however naively. Plaintiff's Non-Statutory Abatement, to which Abatement Defendant Grier stands in Final Default, questions an assertion of a Common Law Contract with a Common Law Response and it's validity under the Colorado State Constitution requirement for 'Common Law Marriage'.

> "Abatement is ordinarily a matter of right" Simmons v. Superior Court (1943), 96 C.A. 2d 119, 214 P. 2d 844.

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> "Abatement at law is the overthrow or destruction of a pending action apart from the cause of action; in equity the suspension of the proceedings. The term 'abatement' is used, with reference to pending actions or suits, to designate the result upon a suit or action, of defects which vitiate the propriety of the suit as brought, in contradistinction to the existence or the statement of a cause of action; it looks to their effect; and consequently it is ordinarily defined descriptively in terms of the effect produced, so that the extending equitable doctrines to all suits or actions is spoken of." 1 C.J.S. Abatement, 1a, p. 27, quoted in Burnand v. Irigoyen (1943), 56 C.A. 2d 624, 629.
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> Marriage is favored over less formalized relationships. The state of Colorado has an interest in marriage, and marriage is favored over less formalized relationships which exist without the benefit of marriage. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982)
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> Plaintiff's pro se pleadings must be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520-21, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972). This means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal theories or unfamiliarity with pleading requirements. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

3. Plaintiff was not notified of any right to an Evidentiary Hearing, nor the consequences of a failure to ask for such a hearing.

> In Pedlow v. Stamp, supra, our supreme court held that a party is entitled to an evidentiary hearing before sanctions may be imposed under § 13-17-101, et seq.,

C.R.S. (1987 Repl. Vol. 6A), which authorizes an award of attorney fees whenever a claim or defense is found to be substantially frivolous, groundless, or vexatious. This does not mean, however, that a trial court is required to set a hearing sua sponte. Instead, the right to a hearing may be waived when a party fails to make a timely request in the trial court for that purpose. Schmidt Construction Co. v. Becker-Johnson Corp., 817 P.2d 625 (Colo. App. 1991).

In determining if an award of attorney fees is warranted and in assessing the amount of such fees under Colo. Rev. Stat. § 13-17-102, the trial court is required to make findings based on the relevant factors set out in Colo. Rev. Stat. § 13-17-103(1), to permit meaningful appellate review of its disposition. Also, conclusory statements that a claim is frivolous, groundless, or vexatious are insufficient for purposes of appellate review and inadequate to satisfy the statutory requirement of specificity. Board of Commissioners, County of Boulder v. Robert Eason, 976 P.2d 271; 1998 Colo. App. LEXIS 139; 1998 Colo. J. C.A.R. 2709

To prevail on a claim for attorney fees pursuant to 13-17-102, C.R.S. 1997, defendant has the burden of proving by a preponderance of evidence that the Board's claims lacked "substantial justification." Section 13-17-102(2), C.R.S., 1997; Board of County Commissioners v. Auslaender, 745 P.2d 999 (Colo. 1987). "Substantial justification" is defined by the [**6] statute as "substantially frivolous, substantially groundless, or substantially vexatious." Section 13-17-102(4), C.R.S. 1997.

Also, conclusory statements that a claim is frivolous, groundless, or vexatious are insufficient for purposes of appellate review and inadequate to satisfy the statutory requirement of specificity. See In re Marriage of Aldrich, 945 P.2d 1370 (Colo. 1997).

This statutory requirement is qualified by § 13-17-102(6). It provides that attorney fees may not be assessed against a party appearing without an attorney unless the court finds that the party "clearly knew or reasonably should have known that the action or defense, or any part thereof, lacked substantial justification."

4. Plaintiff is the dependent full time homemaker and Primary Caretaker for the children. Defendant Grier’s client, Victoria Lawler is the Head of Household and Breadwinner. Any award of Attorneys Fees is improper. (PLAINTIFFS EXHIBIT 1; Victoria Lawlers Affidavit to JeffCo Public Defender)

Where a husband, plaintiff in a divorce suit, is unable to make reasonable provision for his wife during the pendency of the suit, *the suit should be abated until he is able to do so*. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902) (Emphasis added).

Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as

lawyers. Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233

5. Plaintiff's claims against Defendant Chapman arise from the denial of due process in determining subject matter jurisdiction. Plaintiff was given no notice of such a Trial, no opportunity to present evidence already filed in the Record, no opportunity to read the affidavits into the Record, no opportunity to prepare or subpoena witnesses, prepare to present evidence available had Plaintiff been given notice.

> Illegality in the service of process by which jurisdictions to be obtained is not waived by the special appearance of the defendant to move that the service be set aside; nor after such motion is denied, by his answering to the merits; such illegality is waived only when, without having insisted upon it, he pleads in the first instance to the merits. Harkness v. Hyde, 98 U.S. 476.

> Subject matter jurisdiction involves the court's authority to resolve the case in which it renders judgement. Board of County Commissioners v. Collard, 827 P.2d 546 (Colo. 1992). The determination of subject matter jurisdiction in a given case generally depends upon the nature of the claim and the relief sought. In re Marriage of Stroud, 631 P.2d 168 (Colo. 1981).

> An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

> Abuse of discretion. Where the wife not only earned more than husband, but had assets worth substantially more than husband's, and, moreover, initiated the proceedings making attorney fees necessary, the trial court abused its discretion in awarding attorney's fees to wife. In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

> The United States Constitution guarantees that no state shall deprive any person of life, liberty, or property, without due process of law. U.S. Const., amend. XIV, §1. The United States Supreme Court has interpreted this provision to guarantee more than fair process. Indeed, the Court has interpreted this provision to govern substantive process as well, barring certain government actions regardless of the procedures used to implement them. The touchstone of due process is protection of the individual against arbitrary action of government. The Due Process Clause was intended to prevent government officials from abusing their power or

employing it as an instrument of oppression. The Supreme Court has recognized as actionable executive abuse of power that "shocks the conscience" or interferes with rights implicit in the concept of ordered liberty. Official conduct that "shocks the conscience" and violates the "decencies of civilized conduct" offend the Court's notions of due process. The Constitution does not guarantee due care on the part of officials; liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process. Conversely, conduct intended to injure in some way is unjustifiable by any government interest and is the sort of official action most likely to rise to the conscience-shocking level.

"Constitutional 'rights' would be of little value if they could be indirectly denied." Gomillion v. Lightfoot, 364 U.S. 155 (1966), cited also in Smith v. Allwright, 321 U.S. 649.644

6. Plaintiff was served with a previously unknown and unpublished common law contract asserting an in rem ‘Marriage’.

"At common law and in those jurisdictions where the common law effect of a seal is still recognized, it is well settled that authority to execute a sealed instrument [i.e., a Non-Statutory Plea in Abatement] can be conferred only by an instrument of equal dignity or solemnity; i.e., by a contract under seal. Van Ostrand v. Reed, 1 Wend. (N.Y.) 424, 19 Am. Dec. 529; Story on Agency, 9th Ed., secs. 49, 242, and 252." Rotwein, Law of Agency (1949), p. 21.

Jurisdiction must be raised before making any plea to the merits, if at all, when it arises from formal defects in the process, or when the want of jurisdiction over the person. Smith v. Curtis, 7 Cal 584; Bohn v. Devlin, 28 Mo. 319; Brown v. Weber, 6 Cush. (Mass) 560; Whyte v. Gibbes, 20 How 541.14.81-87

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost.

Legal encyclopedia 46 AmJur2d Judgments, section 27, informs us "in the absence of jurisdiction over the person, any judgment or order the court might enter against defendant is void." Section 31 continues with "a void judgment is a complete nullity and without legal effect...and is open to attack or impeachment in any proceeding, direct or collateral...where the invalidity appears upon the face of the record."

7. Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of

citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law", this renders judicial immunity unconstitutional.

> "Subsequent interpretations of the Civil Rights Act by this Court acknowledge Congress' intent to reach unconstitutional actions by all state and federal actors, including judges... The Fourteenth Amendment prohibits a state [federal] from denying any person [citizen] within its jurisdiction the equal protection under the laws. Since a State [or federal] acts only by its legislative, executive or judicial authorities, the constitutional provisions must be addressed to those authorities, including state and federal judges..."
> "We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity."

8. Plaintiff's claims arise out of Defendant Chapman's denial of due process rights by awards of legal fees to Defendant Grier without notification of Plaintiff, opportunity to call for an evidentiary hearing, nor to give good reason for awarding Defendant Grier fees for simply reading a Common Law pleading to a purported Common Law Contract.

> "Where, as here, a party places in issue a claim for attorney fees pursuant to § 13-17-101 . . . that party has the right to, and the trial court has a duty to conduct, a hearing upon that claim. [This section] . . . requires that the trial court then enter findings of fact and conclusions of law as to whether the claim or defense is "frivolous" or "groundless." And, if a claim or defense is deemed to be frivolous or groundless, the trial court must make findings of fact sufficient to justify the amount of attorney fees awarded, if any.'" Pedlow v. Stamp, 776 P.2d 382 (Colo. 1989), and Board of County Commissioners v. Auslaender, 745 P.2d 999 (Colo. 1987)
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> In Pedlow v. Stamp, supra, the supreme court reversed an award of attorney fees under § 13-17-101 on the grounds that the trial court had failed to hold an evidentiary hearing on the issue of whether attorney fees were warranted. In so doing, it quoted Zarlengo v. Farrer, 683 P.2d 1208 (Colo. App. 1984), as follows:
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> As Pedlow makes clear, therefore, if the trial court orders an award of attorney fees, it is required to make detailed evidentiary findings pursuant to statute. However, even if the trial court makes no award of attorney fees, it may still be required to provide an evidentiary hearing and make findings of fact regarding the statutory criteria for awarding attorney fees, at least if such a hearing has been timely demanded by either party. See Board of County Commissioners v. Auslaender, supra.
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> Section 13-17-102(6), 6A C.R.S. (1987), provides in pertinent part:

No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous**,** substantially groundless, or substantially vexatious .

9. Plaintiff's claims arise from the denial by Defendant Chapman of an equal status to Defendant Grier's client, the breadwinner and head of household.

Intent to equalize status**.** The provision in the dissolution of marriage statute which sanctions the assessment of attorney fees was intended to equalize the status of the parties to the dissolution proceeding. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Once jurisdiction is challenged, it must be proven. Hagens v. Lavine, 415 U.S. 533, note 3.5.29-32

No sanction can be imposed absent proof of jurisdiction. Standard v. Olsen, 74 S.Ct. 768.
8.42-48

Plaintiff asserted a 'Special Appearance' to question jurisdiction.

Jurisdiction must be raised before making any plea to the merits, if at all, when it arises from formal defects in the process, or when the want of jurisdiction over the person. Smith v. Curtis, 7 Cal 584; Bohn v. Devlin, 28 Mo. 319; Brown v. Weber, 6 Cush. (Mass) 560; Whyte v. Gibbes, 20 How 541.14.81-87

10. Plaintiff objected to the 'Expedited Dissolution of Marriage'.

11. Plaintiff objected to the arbitration by a Magistrate and requested transfer to a District Court.

12. Plaintiff asserted Fraud. (PLAINTIFF'S EXHIBIT 2; Affidavit of Fraud)

Illegality in the service of process by which jurisdictions to be obtained is not waived by the special appearance of the defendant to move that the service be set aside; nor after such motion is denied, by his answering to the merits; such illegality is waived only when, without having insisted upon it, he pleads in the first instance to the merits. Harkness v. Hyde, 98 U.S. 476.15.89-93

"Where a party desires to rescind upon the grounds of mistake or fraud he must upon the discovery of the facts, at once announce his purpose, and adhere to it. "Grymes v. Saunders, 93 US 55, 62.

13. Plaintiff's claims arise out of due process denial by ex parte meeting and modification of Temporary Restraining Orders for Protection of Plaintiff and Plaintiff's Family in 03C5606 on or about 1 May 03 with no notice to Plaintiff, no opportunity to present evidence.

> This court has many times held that notice is essential to due process. Great West Min. Co. v. Woodmas of Alston Min. Co., et al., 12 Colo. 46, 55, 20 P. 771; People v. Max, 70 Colo. 100, 198 P. 150; Weber v. Williams, 137 Colo. 269, 324 P. (2d) 365.
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> Ex parte adjudication without notice is not due process. Dalton v. People ex rel. Moors, 146 Colo.15, 360 P.2d 113 (1961).
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> "Moreover, not only the actuality of fairness must concern us, but the appearance of fairness as well." People v. District Court, 192 Colo. 503, 508, 560 P.2d 828, 831 (1977) (quoting Berger v. United States, 255 U.S. 22, 41, 65 L. Ed. 481, 41 S. Ct. 230 (1921)); accord Rodriguez v. District Court, 719 P.2d 699, 703 (Colo. 1986); People v. Botham, 629 P.2d 589, 595 (Colo. 1981); cf. §16-6-201(1), 8A C.R.S. (1986); Crim P. 21(b) (substantially identical to § 16-6-201(1)). n1

14. Plaintiff's claims against Defendant Chapman arise out of modifications to Permanent Trial Orders in Case 03C5606; Permanent Restraining Orders and Custody Order modifications made ex parte, without notice to Plaintiff or opportunity to present evidence.

> An ex parte order of court changing the custody of children was void because a parent cannot be deprived of the custody of his or her children without the notice required by due process of law. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960)
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> An ex parte order changing custody of a child without notice to the custodial parent violates due process and is, therefore, void. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

15 Plaintiff's claims against Defendant Chapman arise out of the ex parte dismissal without hearing of three Show Cause Orders in Case 03C5606, without notice to Plaintiff or opportunity to present evidence.

16. Plaintiff's claims against Defendant Chapman arise from her failure to transfer the case to District Court upon Plaintiff's refusal to accept magisterial arbitration of the controversy.

> REF; DOMESTIC RELATIONS CASE MANAGEMENT ORDER-EFFECTIVE JULY 1, 2002, Harlan R. Bockman, Chief Judge, Adams County District Court; Sub 5, sub 26: 'Parties may opt of the this "court-facilitated procedure for domestic relations cases" only for good cause shown. A request to opt out may be made at or after the first conference, and shall be made in the presence of the parties. Counsel or unrepresented parties must establish that the case or party would not benefit from this program.

17. Defendant Chapman failed to notify Plaintiff of the purpose of the hearing, a Trial concerning the 'finding of 'marriage'', or grant Plaintiff an opportunity to prepare or subpoena witnesses not instantly present in the Court at the time, or discover evidence. (PLAINTIFFS EXHIBIT 1; Victoria Lawler's Affidavit for JeffCo Public Defender)

18. Defendant Chapman denied Plaintiff the right to present evidence by affidavit already filed in the Record of the Court and unrefuted by Defendant Grier. (PLAINTIFFS EXHIBIT 2: Affidavit of Fraud as exemplar)

19. Plaintiff's claims against Defendant Chapman arise from her denial of Plaintiff's due process rights in ex parte hearing, or the failure to correct the due process denial of Plaintiff's rights, which damaged Plaintiff and Plaintiff's sons. (EXHIBIT 3; minute order of ex parte with Victoria in case 2003C005606)

> The burden of showing a change of circumstances which affects the best interest and welfare of the children is upon the petitioner." Ponder v. Ponder, 50 Ala. App. 27, 30, 276 So. 2d 613, 615 (Civ. App. 1973)
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> Section limits scope of inquiry. For the sake of continuity and stability, this section limits the scope of inquiry to the change in circumstances of the child or the custodial parent, and dictates that "the court shall retain the custodian established by the prior decree" absent the showing required by subsection (2)(c). In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

The trial court abused its discretion by effectively reducing father's visitation rights where court limited the father to four days per four-week period where he previously had portions of eight days in any four week period and there was no evidence that the children would benefit by this reduction in visitation. This restriction was both contrary to the public policy of encouraging frequent visitation and to the evidence in the record. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

20. Plaintiff's claims arise out of Defendant Chapman ruling on custody matters without a McLendon hearing in the best interests of the minor children, notification to Plaintiff and denial of an opportunity to present evidence.

Where a prior custody judgment exists, a party seeking a change in custody must show that the change will materially promote the child's best interest and that the benefits of the requested change will more than offset the inherently disruptive effect caused by uprooting the child. Ex parte McLendon, 455 So. 2d 863 (Ala. 1984),

An order granting a temporary change of custody following an ex parte hearing with no notice to the mother denied her due process where no evidence was presented and no finding was made that irreparable injury would result if no order were issued until the time for responding had elapsed. Olson v. Priest, 193 Colo. 222, 564 P.2d 122 (1977).

An ex parte order of court changing the custody of children was void because a parent cannot be deprived of the custody of his or her children without the notice required by due process of law. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960)

An ex parte order changing custody of a child without notice to the custodial parent violates due process and is, therefore, void. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

STANDARD OF REVIEW

This court has many times held that notice is essential to due process. Great West Min. Co. v. Woodmas of Alston Min. Co., et al., 12 Colo. 46, 55, 20 P. 771; People v. Max, 70 Colo. 100, 198 P. 150; Weber v. Williams, 137 Colo. 269, 324 P. (2d) 365.
Ex parte adjudication without notice is not due process. Dalton v. People ex rel. Moors, 146 Colo.15, 360 P.2d 113 (1961).

Due process of law affords to everyone the right to have the complaint, in any proceeding affecting his property, made in a court of competent jurisdiction, to have due notice thereof, and opportunity to defend. Archuleta v. Archuleta, 52

Colo. 601, 123 P. 821 (1912). See Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884).

Due process of law is summarized constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of the people as to be ranked as fundamental, or are implicit in the concept of ordered liberty. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961)

Denial of "due process" includes denial of "equal protection of the law". The contention that a statute abridges the privileges and immunities of citizens and denies equal protection of the law is included within the objection that it denies "due process". They stand or fall together. People v. Max, 70 Colo.100, 198 P. 150 (1921).

Elements of procedural due process. The elements of the constitutional guaranty of due process in its procedural aspect are notice and an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case; also, to have the assistance of counsel, if desired, and a reasonable time for preparation for trial. Colorado State Bd. of Medical Exmrs. v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

Due process implies timely notice and reasonable opportunity to defend rights. Due process of law within the meaning of this section includes law in its regular course of administration through courts of justice; it also implies that any individual whose life, liberty or property may be affected by any judicial proceeding shall have timely notice thereof and reasonable opportunity to be heard in defense of his rights. In re Dolph, 17 Colo. 35, 28 P. 470 (1891). See Woodson v. Ingram, 173 Colo. 65, 477 P.2d 455 (1970).

Due process in having one's rights and duties judicially determined contemplates notice of the proceedings. Clemens v. District Court, 154 Colo. 176, 390 P.2d 83 (1964). See Michels v.Clemens, 140 Colo. 82, 342 P.2d 693 (1959).

Person must be apprised of object of hearing. Where the purpose of the proceeding is or may be equivocal from the vantage of the person to be affected, it is the duty of the court to apprise him of the object of the hearing. Austin v. City & County of Denver, 156 Colo. 180, 397 P.2d 743 (1964).

An open, overt hearing before a fair tribunal is basic to due process. Austin v. City & County of Denver, 156 Colo. 180, 397 P.2d 743 (1964).

This court has many times held that notice is essential to due process. Great West Min. Co. v. Woodmas of Alston Min. Co., et al., 12 Colo. 46, 55, 20 P. 771; People v. Max, 70 Colo. 100, 198 P. 150; Weber v. Williams, 137 Colo. 269, 324 P. (2d) 365.

> And there cannot be due process of law unless party affected has his day in court. Due process of law requires that those parties whose interests are at stake be before the court. Hidden Lake Dev. Co. v. District Court, 183 Colo. 168, 515 P.2d 632 (1973). See In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re Priority of Legislative Appropriations, 19 Colo. 58, 34 P. 277 (1893).
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> Ex parte adjudication without notice is not due process. Dalton v. People ex rel. Moors, 146 Colo. 15, 360 P.2d 113 (1961)
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> An order granting a temporary change of custody following an ex parte hearing with no notice to the mother denied her due process where no evidence was presented and no finding was made that irreparable injury would result if no order were issued until the time for responding had elapsed. Olson v. Priest, 193 Colo. 222, 564 P.2d 122 (1977).
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> An ex parte order of court changing the custody of children was void because a parent cannot be deprived of the custody of his or her children without the notice required by due process of law. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960)
>
> An ex parte order changing custody of a child without notice to the custodial parent violates due process and is, therefore, void. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

21. Plaintiff's claims against Defendant Chapman arise out of modifications to Permanent Trial Orders in Case 03C5606; Permanent Restraining Orders and Custody Order modifications made ex parte, without notice to Plaintiff or opportunity to present evidence.

> Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly; the only exception being for acts done in the clear absence of all jurisdiction. Hoffsomer v. Hayes, 92 Okla 32, 227 F. 417
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> "Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." Pulliam v. Allen, 466 U.S. 522 (1984); 104 S. Ct. 1781, 1980, 1981, and 1985
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> "We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity." Mireles v. Waco, 112 S. Ct. 286 at 288 (1991)

When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. U.S. v. Lee, 106 U.S. 196, 220 1 S. Ct. 240, 261, 27 L. Ed 171 (1882)

What should be determined is that if the record does not establish that the error was harmless, the non-attendant litigant is entitled to presume harmful error when the events and circumstances were not factually available to him for record review or response. Horton v. Driskell, 13 Wyo. 66, 77 P. 354 (1904); Sullivan, 720 F.2d 1266.

"But there cannot be due process of law unless the party to be affected has his day in court. Yet, a careless construction and application of this constitutional provision might lead to the ex parte adjudication of private rights by means of a legislative or executive question, without giving the party interested a day or voice in court. In re District Attorneys, 12 Colo. 466.

These code requirements are jurisdictional. Except upon proper notice, the court was without power to make the order; and, having been made ex parte, it is void. Mallan v. Higenbotham, 10 Colo. 264, 15 P. 352; Troth v. Crow, 1 Colo. App. 453.

Allegations of conspiratorial conduct between a state court judge and plaintiffs in a nonjury state court libel action stated a procedural due process violation which could be addressed in a § 1983 action; civil rights plaintiffs alleged covert ex parte meetings and telephone conversations during course of trial in which plaintiffs and judge conspired to produce a verdict based on extra-judicial considerations. Lipson v. Snyder, E.D.Pa.1988, 701 F.Supp. 541.

Judicial officers may not escape liability for commission of illegal acts merely by committing them in courthouse. Luttrell v Douglas (1963, ND Ill) 220 F Supp 278.

Judge's actions do not amount to "judicial acts" where it is beyond reasonable dispute that judge acts out of personal motivation and uses judicial office as offensive weapon to vindicate personal objectives and where it further appears certain that no party has invoked judicial machinery for any purpose at all; such nonjudicial acts are not cloaked with judicial immunity from suit under 42 USCS § 1983. Harper v Merckle (1981, CA5 Fla) 638 F2d 848, cert den (1981) 454 US 816, 70 L Ed 2d 85, 102 S Ct 93.

Failure to appeal, however, does not remedy a deficiency in subject [**25] matter jurisdiction. The rules of civil procedure allow a party to move for relief from a final judgment upon recognition of this basic failure. n11 The rule does not require that a party exhaust any avenue of direct appeal prior to moving for relief from a final judgment. The majority relies on Lubben v. Selective Serv. System Local Bd. No. 27, 453 F.2d 645 (1972) to support its contention that failure to appeal precludes attack of a judgment for want of subject matter jurisdiction.

Lubben, however, did not deal with a void judgment, but rather, addressed a motion for relief under Rule 60(b)(6), the residual clause of Federal Rule 60(b), which covers motions for relief from judgment for any reason other than those enumerated in Rule 60(b)(1) through (5). While a Rule 60(b) motion should not be used to circumvent proper appeal, we have explained the importance of subject matter jurisdiction permits the issue to be raised at any time. Sanchez v. State, 730 P.2d 328 (Colo. 1986); Greene v. Phares, 124 Colo. 433, 237 P.2d 1078 (1951). Thus, the passage of time is not dispositive because a [**26] judgment attacked as void for lack of subject matter jurisdiction is not subject to the time limitations set forth in Rule 60(b)(3). United Bank of Boulder, N.A. v. Buchanan, 836 P.2d 473 (Colo. App. 1992). n12
Generally, the judgment of a trial court based on ore tenus evidence is presumed correct, and the judgment will not be set aside absent a finding that its determination is so unsupported by the evidence as to be an abuse of discretion. Porter v. Porter, 477 So. 2d 433 (Ala. Civ. App. 1985). However, where a trial court bases its custody determination on an improper custody-modification standard, that judgment is due to be reversed. See Ex parte S.T.S., 806 So. 2d 336 (Ala. 2001); B.S.L. v. S.E., 826 So. 2d 890 (Ala. Civ. App. 2002); C.P. v. M.K., 667 So. 2d 1357 (Ala. Civ. App. 1994).

"Collusion" in judicial proceedings is "fraud." Walker v. New Amsterdam Casualty Co.,154 S.E. 221, 223, 157 S.C. 381.

"Fraud" may consist of positive representations, artifice, or concealment. Kelly v. Von Herberg,50 P.2d 23, 27 184 Wash. 165.

Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments. Fraud, as it is sometimes said, vitiates every act, which statement embodies a thoroughly sound doctrine when it is properly applied to the subject matter in controversy and to the parties thereto and in a proper forum. As a general rule, fraud will vitiate a contract notwithstanding that it contains a provision to the effect that no representations have been made as an inducement to enter into it, or that either party shall be bound by any representation not contained therein, or a similar provision attempting to nullify extraneous representations. Such provisions do not, in most jurisdictions, preclude a charge of fraud based on oral representations. 37 AmJur 2nd, "Fraud," § 8.

Plaintiff's pro se pleadings must be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520-21, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972). This means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal theories or unfamiliarity with pleading requirements. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

ARGUMENT

I. MAGISTRATE CHAPMAN HAS NO JUDICIAL IMMUNITY

22. Defendant Chapman acted as a 'Court Facilitator' as per instructions in Court Facilitated Procedure for Domestic Relations Cases: Access to the Courts p. 8, sec. 2, 'General Information on the role of the Court Facilitator"; "The Parties and their counsel should understand that the court facilitator is not a judicial officer.

> It is only in cases of a clear abuse of discretion that this court is justified in interfering. Searle v. Searle, 115 Colo. 266, 172 P. (2d) 837; Anderson v. Anderson, 124 Colo. 74, 234 P. (2d) 903; Harris v. Harris, 140 Colo. 591, 345 P. (2d) 1061; Coulter v. Coulter, 141 Colo. 237, 347 P. (2d) 492.

> Not interfere with the decision of the district court in child-custody questions unless there is a procedural error, or unless there is shown to be a clear abuse of discretion, and, further, that a court does not abuse its discretion unless it acts in a manner which exceeds the bounds of reason under the circumstances as is said to mean an error of law committed by the court under the circumstances. Ayling v. Ayling, supra [661 P.2d 1054 (Wyo. 1983)]; Bereman v. Bereman, Wyo., 645 P.2d 1155 (1982); Martinez v. State, Wyo., 611 P.2d 831 (1980)." Fanning v. Fanning, 717 P.2d 346, 349 (Wyo. 1986).

> The courts are not bound by mere forms, nor are they to be misled by mere pretence. They are at liberty---indeed, are under a solemn duty---to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. Mugler v. Kansas, 123 U.S. 623, 661

24. Plaintiff's claims of Magistrate Chapmans "judicial bias" are well founded in fact and law." [Amended Complaint, ¶ 14 and ¶118]. Plaintiff alleges that this judicial bias culminated in her commencing with the improper seizure of in rem jurisdiction without Respondent's acquiescence under C.R.C.P. 73 and subsequent to questioning jurisdiction,

the ex-parte modification of Permanent Trial Orders in Adams County Case 03C5603 without due notice to Parties to the detriment of the welfare of minor children, striking Respondent's responsive instrument of abatement responding to a claim of common law contract, award of attorney fees without advising Respondent of his right to an Evidentiary Hearing, an appeal or the consequences of the failure to appeal. (PLAINTIFFS EXHIBITS 3, 4, 5 and to be discovered when Plaintiff receives full transcripts and Record as ordered by Honorable District Judge Popovich on or about 17 SEP 04 and not yet delivered)

> "... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws." Elmore v. McCammon (1986) 640 F. Supp. 905
>
> Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233
> Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.
>
> Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals
> The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."
>
> United States v. Gutierrez, 839 F.2d 648, 651 (10th Cir. 1988) [**9] (citing Ohio v. Peterson, Lowry, Rall, Barber & Ross, 585 F.2d 454 (10th Cir. 1978), and Nichols v. United States, 796 F.2d 361, 364 (10th Cir. 1986)); cf., Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991)(magistrates must "inform a pro se litigant not only of the time period for filing objections [to magistrate's findings and recommendations], but also of the consequences of a failure to object").
>
> They argue that the trial court erred by failing to hold an evidentiary hearing to determine whether attorney fees should be awarded pursuant to statute, as required by the supreme court's decisions in Pedlow v. Stamp, 776 P.2d 382 (Colo. 1989), and Board of County Commissioners v. Auslaender, 745 P.2d 999 (Colo. 1987).

> In ruling on a motion to dismiss, the Court must assume the truth of all well-pleaded facts in plaintiffs' complaint and view them in a light most favorable to plaintiffs. Zinermon v. Burch, 494 U.S. 113, 118, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990); California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 515, 30 L. Ed. 2d 642, 92 S. Ct. 609 (1972); see also Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir. 1984)(all well-pleaded facts, as distinguished from conclusory allegations, must be taken as true). The Court must make all reasonable inferences in favor of plaintiffs, and the pleadings must be construed liberally. Id.; see also Fed. R. Civ. P. 8(a); Lafoy v. HMO Colorado, 988 F.2d 97, 98 (10th Cir. 1993).
>
> The issue in reviewing the sufficiency of plaintiffs' complaint is not whether they will prevail, but whether they are entitled to offer evidence to support their claims. Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974).
>
> The Court may not dismiss a cause of action for failure to state a claim unless it appears beyond a doubt that plaintiffs can prove no set of facts in support of their theory of recovery that would entitle them to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, 927 F.2d 1111, 1115 (10th Cir. 1991).
>
> Although plaintiffs need not precisely state each element of their claims, they must plead minimal factual allegations on those material elements that must be proved. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

25. Plaintiff alleges that Magistrate Chapman was guilty of what he describes as “a pervasive and invidious discriminating animus of judicial bias, denying Plaintiff equal protection of the law, equal application of the law, due process of the law and engendering fear in and damage to Plaintiff and Plaintiff’s Family.” In the improper and incomplete hearing on Child Custody.

26. Plaintiff further alleges that: The substance of the threats came to nexus in Adams County Case 2003DR1 773 and to incorporate Case 03C5605 on 31 August, 2004, upon removal to District Court venue, in the revelations of the meeting of minds by the Defendants resulting in abuse of discretion in custody orders, restraining orders, awards of attorney fees, improper collegiality and conspiracy between Defendants Grier, Miller and Chapman which is in the Record and will be borne out in Discovery.

EX PARTE

27. Plaintiffs claims against Magistrate Chapman all arise from acts that were allegedly committed while she was operating within her judicial capacity but sans jurisdiction and having failed to notify Plaintiff of the purpose of the hearing, and denied Plaintiff the opportunity to prepare a defense, subpoena witnesses, present evidence by affidavit unrefuted by Defendant Grier. Therefore, she forfeits immunity and the claims against her should be sustained.

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it."
>
> "It is the only supreme power in our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives."
> Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326
>
> Miranda v. Arizona, 384 U.S. 426, 491; 86 S. Ct. 1603
> "Where rights secured by the Constitution are involved, there can be no 'rule making' or legislation which would abrogate them."
>
> Jurisdiction is "The right to adjudicate concerning the subject-matter in the given case. To constitute this there are three essentials: First, the court must have cognizance of the class of cases to which the one to be adjudicated belongs; second, the proper parties must be present; and third, the point decided upon must be in substance and effect within the issue." Reynolds v. Stockton, 140 U.S. 254, 268.

We have considered the effect of a void judgment on numerous occasions and have consistently held that a judgement entered where a jurisdictional defects exist is a nullity. See, e.g., People v. Dillon, 655 P.2d 841 (Colo. 1982) ("It is axiomatic that any action taken by a court when it lacked jurisdiction is a nullity." (citations omitted)); Davidson Chevrolet, Inc. v. City and County of Denver, 138 Colo. 171, 330 P.2d 1116 (1958) [**24] (same), cert. denied 359 U.S. 926, 3 L. Ed. 2d 629, 79 S. Ct. 609 (1959); see also In re Marriage of Pierce, 720 P.2d 591 (Colo. App. 1985) (same). We were emphatic about the effect of a void judgment in Davidson:

A judge should avoid the appearance of impropriety in all activities. Code of Judicial Conduct Canon 2. See People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977); Wood Bros. Homes, Inc. v. City of Fort Collins, 670 P.2d 9 (Colo. App.

1983). Also, courts have the duty to eliminate every semblance of reasonable doubt or suspicion that a trial by a fair and impartial tribunal was denied. Johnson v. District Court, 674 P.2d 952 (Colo. 1984).

We do not decide whether there were in fact improprieties committed by the trial court or defense counsel, but as defense counsel readily admits, the appearance of partiality as a result of ex parte communications concerning the merits of the case cannot be disputed.

Moreover, it is exactly this type of communication, i.e., where only the parties involved know what was said, against which the above ethical considerations were directed. See In re Wisconsin Steel Co. v. International Harvester Co., 48 B.R. 753 (N.D. Ill. 1985).

The issue in reviewing the sufficiency of plaintiffs' complaint is not whether they will prevail, but whether they are entitled to offer evidence to support their claims. Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974). The Court may not dismiss a cause of action for failure to state a claim unless it appears beyond a doubt that plaintiffs can prove no set of facts in support [**4] of their theory of recovery that would entitle them to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, 927 F.2d 1111, 1115 (10th Cir. 1991). Although plaintiffs need not precisely state each element of their claims, they must plead minimal factual allegations on those material elements that must be proved. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

Many jurisdictions have voided default judgments obtained without proper notice on the grounds that such lack of notice constitutes a due process violation. See, e.g., Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 84, 99 L. Ed. 2d 75, 108 S. Ct. 896 (1988) ("Failure to give notice violates the most rudimentary demands of due process of law.") (internal quotation marks and citations omitted); Simer v. Rios, 661 F.2d 655, 667 (7th Cir. 1981) ("Notice and an opportunity to be heard are the touchstones of procedural due process."); V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979) [**17] (stating that a default judgment is void if the court "has acted in a manner inconsistent with due process"); Bass v. Hoagland, 172 F.2d 205, 209 (5th Cir. 1949) (holding that a default judgment rendered without notice violates due process and thus is void); Sonus Corp. v. Matsushita Elec. Indus. Co., Ltd., 61 F.R.D. 644, 649 (D. Mass. 1974) (holding that lack of notice "raises a question of due process"); Ken-Mar Airpark, Inc. v. Toth Aircraft & Accessories Co.; 12 F.R.D. 399, 400 (W.D. Mo. 1952) (holding that a failure to provide notice is "a failure of due process" rendering the default judgment a "nullity"); see also 51 A.L.R.2d at 839 ("Courts holding that default judgments entered without compliance with notice required by [Fed. R. Civ. P.] 55(b)(2) and its state counterparts are void have often based such holdings on the proposition that notice required by the Rule is necessary to afford due process" to the defaulting party.)

The rationale for finding a due process violation in a failure to provide adequate notice is rooted in the purpose behind the notice requirement of C.R.C.P. 55(b). As the Supreme Court [**18] observed in Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 14, 56 L. Ed. 2d 30, [*713] 98 S. Ct. 1554 (1978), "the purpose of

notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" See also Mullane v. Central Bank & Trust Co., 339 U.S. 306, 314, 94 L. Ed. 865, 70 S. Ct. 652 (1950) (stating that due process is fundamentally the right to be heard and that the right has little worth unless one is informed of the pending matter). This purpose is fully implicated in a default proceeding. As we noted in Doyle, 162 Colo. at 8, 424 P.2d at 372, "default judgments -particularly in those actions where the defendant has answered and the case is at issue -are serious and drastic." The notice provision of C.R.C.P. 55(b) functions, therefore, to "insure fairness . . . to a party who has expressed an interest in defending a lawsuit brought against him." R.F, 192 Colo. at 530, 560 P.2d at 838. Not surprisingly, we have required "fastidious" compliance with C.R.C.P. 55(b) before allowing a default judgment to stand. See Doyle, 162 Colo. at 8, 424 P.2d at 372. [**19]

[HN9] In our view, C.R.C.P. 60(b)(3) n4 is the proper basis in our rules of civil procedure for vacating a default judgment if the defaulting party's due process rights were violated by a failure to receive notice as called for under C.R.C.P. 55(b). n5 In so concluding, we adopt the position of most federal jurisdictions, which consistently have held that Fed. R. Civ. Pro. 60(b)(4) -upon which C.R.C.P. 60(b)(3) is based - renders a default judgment void if the defaulting party's due process rights were violated because of a lack of notice. See, e.g., Watts v. Pinckney, 752 F.2d 406, 409 (9th Cir. 1985); Williams v. New Orleans Pub. Serv. Co., 728 F.2d 730, 735 (5th Cir. 1984); Center Wholesale, Inc. v. Owens-Corning Fiberglass Corp., 759 F.2d 1440, 1448-49 (9th Cir. 1985); Simer, 661 F.2d at 663. See also 10A Wright, supra, § 2695, at 134-35 (stating that courts have interpreted Fed. R. Civ. Pro. 60(b)(4) to require vacating a default judgment when notice is not provided); 12 Moore's, supra, P 60.44, at 148 ("It has repeatedly been stated that a judgment is void for purposes of Rule 60(b)(4) . . . if the [**20] judgment was entered in violation of due process.") (internal quotation marks and footnote omitted; ellipsis in original).

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It should be the lesson of this present case and our decision here that any informational proceeding by ex parte communication with the trial court or deciding authority violates the fundamental right of presentation of witnesses by the litigant for defense (or prosecution). Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

The Due Process Clause "recognizes higher values than speed or efficiency." Fuentes v. Shevin, 407 U.S. 67, 90 n.22, 92 S.Ct. 1983, 32 L.Ed.2d 556, reh'g denied 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972). [**26] See also Wolff, 418 U.S. at 583, Marshall, J., concurring and dissenting. Emplaced in due process is the opportunity to respond. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105

S.Ct. 1487, 84 L.Ed.2d 494 (1985), cert. denied 488 U.S. 941, 109 S.Ct. 363, 102 L.Ed.2d 353, cert. denied 488 U.S. 946, 109 S.Ct. 377, 102 L.Ed.2d 365 (1988).

... in a "motion to dismiss, the material allegations of the complaint are taken as admitted". From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (see Conley v. Gibson, 355 U.S. 41 (1957)) Walter Process Equipment v. Food Machinery, 382 U.S. 172 (1965)

Conley v. Gibson, 355 U.S. 41 at 48 (1957)
"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The court also cited Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice.

Article III, Sec. 1, "The Judicial Power of the United States shall be vested in one supreme court, and in such inferior courts, shall hold their offices during good behavior."

Chandler v. Judicial Council of the 10th Circuit, 398 U.S. 74, 90 S. Ct. 1648, 26 L. Ed. 2d 100
Justice Douglas, in his dissenting opinion at page 140 said, "If (federal judges) break the law, they can be prosecuted." Justice Black, in his dissenting opinion at page 141) said, "Judges, like other people, can be tried, convicted and punished for crimes... The judicial power shall extend to all cases, in law and equity, arising under this Constitution".

Forrester v. White, 484 U.S. at 227-229, 108 S. Ct. at 544-545 (1987); Westfall v.Erwin, 108 S. Ct. 580 (1987); United States v. Lanier (March 1997)
Constitutionally and in fact of law and judicial rulings, state-federal "magistrates-judges" or any government actors, state or federal, may now be held liable, if they violate any Citizen's Constitutional rights, privileges, or immunities, or guarantees; including statutory civil right.

The Due Process Clause "recognizes higher values than speed or efficiency." Fuentes v. Shevin, 407 U.S. 67, 90 n.22, 92 S.Ct. 1983, 32 L.Ed.2d 556, reh'g denied 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972). [**26] See also Wolff, 418 U.S. at 583, Marshall, J., concurring and dissenting. Emplaced in due process is the opportunity to respond. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985), cert. denied 488 U.S. 941, 109 S.Ct. 363, 102 L.Ed.2d 353, cert. denied 488 U.S. 946, 109 S.Ct. 377, 102 L.Ed.2d 365 (1988).

This court has now adopted the 1990 American Bar Association's standard for judicial conduct and we each separately and jointly have the responsibility for compliance. In re Hill, 152 Vt. 548, 568 A.2d 361 (1989); State v. American TV and Appliance of Madison, Inc., 151 Wis.2d 175, 443 N.W.2d 662 (1989). In the

meantime, misapplication or intentional disregard should not leave the litigant without remedy, whether or not we enforce our code of ethics. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988); Note, Liljeberg v. Health Services Acquisition Corp.: The Supreme Court Encourages Disqualification of Federal Judges Under Section 455(a), 1989 Wis. L. Rev. 1033 (1989). [**29] This case, like Brooks v. Zebre, 792 P.2d 196 (Wyo. 1990), Urbigkit, J., dissenting, provides a result-oriented perspective which demeans and diminishes the state's justice delivery system. n4

Once facts have been set forth that create a reasonable inference of a "bent of mind" that will prevent the judge from dealing fairly with the party seeking recusal, it is incumbent upon the trial judge to recuse himself. See People v. Botham, 629 P.2d 589, 595 (Colo. 1981); C.J.C. Canon 3(C)(1).

A trial judge must accept the affidavits filed with the motion as true, even though the judge believes that the statements [**10] contained in the affidavits are false or that the meaning attributed to them by the party seeking recusal is erroneous. Johnson v. District Court, 674 P.2d 952 (Colo. 1984).

II. PLAINTIFF'S CLAIMS ARE NOT BARRED BY THE ROOKER-FELDMAN DOCTRINE.

29. Plaintiff alleges that the Rooker Feldman Doctrine doesn't apply

Constitutionally and in fact of law and judicial rulings, state-federal "magistrates-judges" or any government actors, state or federal, may now be held liable, if they violate any Citizen's Constitutional rights, privileges, or immunities, or guarantees; including statutory civil rights.
A judge is not immune for tortious acts committed in a purely Administrative, non-judicial capacity. Gregory v. Thompson, F.2d 59 (C.A. Ariz. 1974)

Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly; the only exception being for acts done in the clear absence of all jurisdiction. Hoffsomer v. Hayes, 92 Okla 32, 227 F. 417

"All law (rules and practices) which are repugnant to the Constitution are VOID". Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law", this renders judicial immunity unconstitutional. Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872)

"Our own experience is fully consistent with the common law's rejection of a rule of judicial immunity. We never have had a rule of absolute judicial immunity. At

least seven circuits have indicated affirmatively that there is no immunity... to prevent irreparable injury to a citizen's constitutional rights..."

"Subsequent interpretations of the Civil Rights Act by this Court acknowledge Congress' intent to reach unconstitutional actions by all state and federal actors, including judges... The Fourteenth Amendment prohibits a state [federal] from denying any person [citizen] within its jurisdiction the equal protection under the laws. Since a State [or federal] acts only by its legislative, executive or judicial authorities, the constitutional provisions must be addressed to those authorities, including state and federal judges..."

"We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity."
Mireles v. Waco, 112 S. Ct. 286 at 288 (1991)

III. PLAINTIFF ASSERTS STANDING TO BRING CLAIMS UNDER 18 U.S.C. § 241, § 242, § 842, § 872, § 1001 AND 42 U.S.C. § 1988.

30. Plaintiff alleges statutes infringed upon by Defendants as the basis for Plaintiffs Standing.

42 U.S.C.S. § 1988, as amended, states as follows: The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the state wherein the court having jurisdiction of such cause is held, so far as the same is consistent with the Constitution and laws of the United States, shall be extended to the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action to enforce 42 U.S.C.S. § § 1981, 1982, 1983, 1985, 1986; Title IX of Public Law 92-318, 20 U.S.C.S. § 1681 et seq.; or Title VI of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000d et seq., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

In Rheb v. Bar [*247] Ass'n of Baltimore, 186 Md. 200, 205, it was said: "The Maryland statute relating to the disbarment of lawyers [Code (1951), Art. 10, sec. 17], which contains not only the phrase 'crime involving moral turpitude' but also the phrase 'conduct prejudicial to the administration of justice,' delegates or confirms to the courts the power and duty to consider particular conduct of one who is an officer of the court, in relation to the privileges and duties of a public calling that specially invites complete trust and confidence. We decline to give to

the phrase last quoted a restricted meaning. In the last analysis the duty rests upon the courts, and the profession as a whole, to uphold the highest standards of professional conduct and to protect the public from imposition by the unfit or unscrupulous practitioner." See also In re Meyerson, 190 Md. 671, 676; Klupt v. Bar Ass'n of Balto. City, 197 Md. 659, 664; Braverman v. Bar Ass'n of Balto., 209 Md. 328, 343, 345.

Control of attorneys' conduct in litigation is within the supervisory power of the trial court, and its performance in this area is a matter of judicial discretion. EEOC v. Orson H. GYGI Co., Inc., 749 F.2d 620, 621 (10th Cir. 1984).

Indeed, district courts have an "obligation to take measures against unethical conduct occurring in any proceeding. . . ." FDIC v. Sierra Resources, Inc., 682 F. Supp. 1167, 1170 (D.Colo. 1987).

The action of a court in exercising its power to disbar or suspend an attorney is judicial in character, but the inquiry is in the nature of an investigation by the court into the conduct of one of its own officers, and is not the trial of an action at law, as the order which is entered is only an exercise of the disciplinary jurisdiction which a court has over its officers. It is recognized in this State and generally in America that in such an investigation, mere forms not affecting its merits should not stand in the way of protecting the court and the public by appropriate action after a full hearing. In re Williams, 180 Md. 689, 23 A. 2d 7, 11.

In Randall v. Brigham, 7 Wall. 523, 19 L. Ed. 285, 293, the Supreme Court of the United States, speaking through Justice Field, commented on this practice as follows:
"It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made, and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

The usual practice in proceedings to disbar attorneys in State courts is to make written charges or allegations of misconduct. The specific offense charged should be set out so that the attorney may be aware of the precise nature of the accusation he is to meet and may know how to defend. Ex parte Bradley, 7 Wall. 364, 19 L. Ed. 214; People v. Amos, 246 Ill. 299, 92 N. E. 857. However, no formal or technical allegations or descriptions of the alleged offense are necessary. Gould

> v. State, 99 Fla. 662, 127 So. 309, 69 A. L. R. 699; In re Keenan, 287 Mass. 577, 192 N. E. 65, 96 [***16] A. L. R. 679. A complaint against an attorney is sufficient if it is intelligible and informing enough to advise the court of the matters complained of, so that it can determine whether or not to institute an inquiry, and to inform the attorney of the accusations so as to enable him to prepare a defense. State v. Peck, 88 Conn. 447, 91 A. 274.

IV. PLAINTIFF'S CLAIMS UNDER 42 U.S.C § 1985 AND § 1986 SHOULD BE SUSTAINED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE PLAINTIFF ALLEGES RACE-BASED DISCRIMINATION.

31. Plaintiff asserts that the Jefferson County Case No. 00CR3372 was engendered by Plaintiffs longstanding activism on behalf of the Negro race and civil rights dating back to 1969 and well known to Defendants in the Attorney General's Office, Jefferson County Colorado and Adams County Colorado, and is the source of their animus and bias.

> The other "class-based [**14] animus" language of this requirement has been narrowly construed and does not, for example, reach conspiracies motivated by an economic or commercial bias. United Bhd. of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 837, 103 S. Ct. 3352, 77 L. Ed. 2d 1049 (1983). In fact, the Supreme Court has held that "it is a close question whether § 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who championed their cause." Id. at 836.

Predominate purpose of this section is to combat the prevalent animus against Negroes and their supporters, including Republicans, generally, as well as others, such as northerners who came south with sympathetic views towards the Negro, and to combat efforts of Ku Klux Klan and its allies to frustrate intended effects of U.S.C.A. Const.Amends. 13, 14, and 15. United Broth. of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott, Tex.1983, 103 S.Ct. 3352.463 U.S. 825, 77 L.Ed.2d 1049, on remand 715 F.2d

Defendants argue § 1981 does not apply to religious discrimination and the claim should be dismissed insofar as it is based on such discrimination. See Shapolia v. Los Alamos Nat'l Lab., 992 F.2d 1033, 1036 n.3 (10th Cir. 1993); Manzanares v. Safeway Stores, Inc., 593 F.2d 968, 971 (10th Cir. 1979) (holding § 1981 is directed to racial discrimination (although "not necessarily limited to the technical or restrictive meaning of 'race'") but "does not apply to sex or religious discrimination").

This section was intended to provide redress for victims of conspiracies impelled by commingling of racial and political motives. Hampton v. Hanrahan C.A. 7 (111) 1979, 600 F.2d 600, reversed in part on other grounds 100 S. Ct. 1987 446 U.S. 754, 64 L.Ed.2d 670, rehearing denied 101 S.Ct. 33, 448 U.S. 913, 65 L.Ed.2d 1176, 1177, on remand 499 F. Supp. 640, on remand 522 F.Supp.

33. Plaintiff alleges a violation of Section 1986 which involves an "Action for neglect to prevent [a] conspiracy." 42 U.S.C. § 1986. "A claim under Section 1986 exists for refusal to take positive action where the circumstances demand to prevent acts which give rise to a cause of action under Section 1985." Taylor v. Nichols, 561 F.2d 558, 568 (1 0~ Cir. 1977). Accordingly, there cannot be a valid claim under Section 1986 unless there is a valid claim under Section 1985. Id.

> This Circuit has long recognized a constitutional right under the Fourth Amendment "to be free from malicious prosecution." Kerr v. Lyford, 171 F.3d 330, 339 (5th Cir. 1999); see also Eugene v. Alief Ind. Sch. Dist., 65 F.3d 1299, 1303, 1305 (5th Cir. 1995)(holding that this right was clearly established as early as 1972). But "malicious prosecution may be a constitutional violation . . . only if all of its common law elements are established." Evans v. Ball, 168 F.3d 856, 862 n.9, 863 (5th Cir. 1999). To sustain a malicious prosecution claim, Texas law requires that a plaintiff show "(1) a criminal action was commenced against him; (2) the prosecution was caused by the defendant or with his aid; (3) the action terminated in the plaintiff's favor; (4) the plaintiff was innocent; (5) the defendant acted without probable cause; (6) the defendant acted with malice; and (7) the criminal proceeding damaged the plaintiff." Taylor v. Gregg, 36 F.3d 453, 455 (5th Cir. 1994).
>
> "proceedings terminate in favor of the accused only when they affirmatively indicate that [the accused] is not guilty." Evans, 168 F.3d at 859; see also Taylor, 36 F.3d at 456.
>
> The rule in this Circuit, however, is that a plaintiff alleging retaliatory prosecution must show that he was "prosecuted at least in part to retaliate for constitutionally protected conduct." Gates v. City of Dallas, 729 F.2d 343, 346 (5th Cir. 1984).

34. It can be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would itself be

violating of procedural due process as it would deprive a pro se litigant of equal protection of the law vis a vis a party who is represented by counsel.

To prove the existence of a conspiracy under Section 1985(3), plaintiffs must allege facts which show a mutual understanding or meeting of the minds amongst the conspirators. Abercrombie v. City of Catoosa, 896 F.2d 1228, 1230-31 (10th Cir. 1990)(civil conspiracy requires combination of two or more persons acting in concert); Green v. State Bar of Texas, 27 F.3d 1083, 1089 (5th Cir. 1994); Taliaferro v. Voth, 774 F. Supp. 1326, 1332 (D. Kan. 1991). Plaintiffs have alleged facts showing a meeting of the minds which, if proven, establishes the existence of a conspiracy.

Plaintiffs allege that defendants conspired to obstruct justice with intent to deny their equal protection rights, and seek to state a claim under that portion of Section 1985(2) which follows the semicolon. The same class-based discriminatory animus requirement applies. Lessman v. McCormick, 591 F.2d 605, 608 (10th Cir. 1979)(citing Smith v. Yellow Freight System, Inc., 536 F.2d 1320 (10th Cir. 1976)). Because plaintiffs have not alleged legally sufficient class-based animus, this aspect of their claim must also be dismissed.

Because the plaintiff appears pro se, the court must remain mindful of additional considerations. A pro se litigant's pleadings are construed liberally and judged against a less stringent standard than pleadings drawn by attorneys. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Thus, if the pro se plaintiff's complaint reasonably can be read "to state a valid claim on which the plaintiff could prevail, it [the court] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." Id. In short, the court's obligation to construe pro se pleadings liberally does not relieve the pro se plaintiff of "the burden of alleging sufficient facts on which a recognized legal claim could be based." Id. "It is not the proper function of the district court to assume the role of advocate for the pro se litigant." Id. For that reason, the court is not to "construct arguments or theories for the plaintiff in the absence of any discussion of those issues." Drake v. City of Fort Collins, 927 F.2d [*20] 1156, 1159 (10th Cir. 1991) (citation omitted).

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Forrester v. White, 484 U.S. at 227-229, 108 S. Ct. at 544-545 (1987); Westfall v.Erwin, 108 S. Ct. 580 (1987); United States v. Lanier (March 1997)

Court must conduct a hearing, on the reasonableness of an award of attorney fees if a party requests a hearing. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

35. Plaintiff has not been allowed to file an Amended Complaint detailing in more specificity and detail the claims under §§1985 and an opportunity to present recently discovered evidence, and the evidence in the Record.

CONCLUSION

36. Plaintiff's claims against Magistrate Chapman are well grounded in both fact and law, and Defendants actions have invalidated any purported immunity for the reasons cited above.

37. Plaintiffs claims are impertinent to the Rocker-Feldman doctrine as any rulings made by Defendant Chapman were made sans jurisdiction and are Void, a Constitutional nullity.

> We conclude, therefore, that, if a complaint is filed within the time required by any controlling statute or rule and contains substantive allegations sufficient to invoke the court's jurisdiction on some basis, the fact that the pleader mistakenly relies upon an inapplicable statute or rule is not fatal to his cause. If the court would otherwise have authority to adjudicate the claim, it is not deprived of its jurisdiction simply because the plaintiff designates an inapplicable statute or rule. See Hutchinson v. Hutchinson, 149 Colo. 38, 367 P.2d 594 (1961) (fact that complaint alleged that plaintiff was proceeding under a particular statute not controlling). See also People v. District Court, 200 Colo. 65, 612 P.2d 87 (1980).

> Pulliam v. Allen, 466 U.S. 522 (1984); 104 S. Ct. 1781, 1980, 1981, and 1985
> In 1996, Congress passed a law to overcome this ruling which stated that judicial immunity doesn't exist; citizens can sue judges for prospective injunctive relief.
> "Our own experience is fully consistent with the common law's rejection of a rule of judicial immunity. We never have had a rule of absolute judicial immunity. At least seven circuits have indicated affirmatively that there is no immunity... to prevent irreparable injury to a citizen's constitutional rights..."
> "Subsequent interpretations of the Civil Rights Act by this Court acknowledge Congress' intent to reach unconstitutional actions by all state and federal actors, including judges... The Fourteenth Amendment prohibits a state [federal] from denying any person [citizen] within its jurisdiction the equal protection under the laws. Since a State [or federal] acts only by its legislative, executive or judicial authorities, the constitutional provisions must be addressed to those authorities, including state and federal judges..."

"We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity." Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)
Note: By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person). When a judge acts as a trespasser of the law, when a judge does not follow the law, the Judge loses subject-matter jurisdiction and the judges' orders are not voidable, but VOID, and of no legal force or effect. The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." U.S. Fidelity & Guaranty Co. (State use of), 217 Miss. 576, 64 So. 2d 697

When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction.

We do not agree, however, with the district court's alternative dismissal of Plaintiff's claims as frivolous under §1915(d). Though Plaintiff's claims may eventually be determined to be clearly baseless or based on a meritless legal theory, see Neitzke v. Williams, 490 U.S. 319, 327-28, 104 L. Ed. 2d 338, 109 S. Ct. 1827 (1989),

Wherefore Charles H. Clements, Plaintiff in pro se by doctrine of necessity PRAYS the Honorable Court to DENY Defendant Chapman's MOTION TO DISMISS

Respectfully submitted this 22 day of February, 2005

_____

Charles H. Clements
1741 Dallas Street
Aurora, Colorado
80010-2018

CERTIFICATE OF SERVICE
Civil Action No. 04-RB-2455 (BNB)

I, Charles H. Clements, undersigned hereby certify that a true and correct copy of the foregoing PLAINTIFF'S ANSWER TO DEFENDANT CHAPMAN'S MOTION TO DISMISS dated ____ ____, 2005, was served by (*) delivery to or (**) depositing the same in the United States mail, first class postage prepaid, or subject to service of process (***), this _____ day of _____, 200__, to the following:

CLERK OF THE FEDERAL DISTRICT COURT *
ALFRED A. ARRAJ UNITED STATES COURTHOUSE
901 19TH STREET
DENVER, COLORADO 80294-3589

THE HONORABLE JANIS E. CHAPMAN **
1100 JUDICIAL CENTER DRIVE
BRIGHTON, COLORADO 80601

KEVIN C. MASSARO, ESQ **
COLORADO REGISTER NO. 24682
3780 SOUTH BROADWAY, SUITE 111
ENGLEWOOD, CO 80113

TRACI VAN PELT, ESQ **
MEGHAN E. POUND **
MCCONNELL, SIDERIUS, FLEISCHNER,
HOUGHTALING & CRAIGMILE, LLC.
DENVER CORPORATE CENTER, TOWER I
4700 S. SYRACUSE ST., STE 200
DENVER, CO 80237

_____

Charles H. Clements
1741 Dallas Street
Aurora, Colorado
usa 80010-2018
303-364-0403
chasclements@comcast.net

Financial Statement from Victoria Lawler
re Charles H. Clements
For the Public Defender's Office
Jefferson County, Colorado

To whom it may concern:

Charles H. Clements is my long time companion and with whom I have two children.

I am the breadwinner of the household, paying all the bills and have done so for many years.

He has been the primary care parent for both our children; aged 15 and 5. My five-year old son is learning disabled from deafness and requires attentive and nurturing care. Charles has homeschooled the children as well as being their full time homecare as I work outside the home.

Victoria Leslie Lawler — Date 3/9/01

1741 Dallas Street
Aurora, Colorado
80010
303-364-0403

Respond to: Charles Harry, Clements
Seventeen Forty-One Dallas Street
Aurora, Adams county Colorado state

PLAINTIFFS EXHIBIT 2

district court, county of Adams, Colorado

Charles Harry, Clements, Sui Juris, Demandant, against, Victoria Leslie, Lawler Katherine Grier 30948 Defendants.	))))))))))	alleged Case No. 03 DR 1773 Affidavit of Fraud

AFFIDAVIT OF FRAUD

Charles Harry Clements, a friend of the court, avers;
Charles Harry Clements, Affiant, is an adult who tells the truth, is aware of the penalties for lying and has first-hand knowledge of the information.

Affiant avers a long history of vexatious, malicious, abusive and extortionate activities by Defendant Victoria Leslie Lawler.

Affiant avers that Defendant Victoria Leslie Lawler's alleged nexus of jurisdiction of the Honorable Court with an alleged common law contract is made knowing full well there is no such contract.

Affiant avers that such an application as the purported Case No. 03 DR 1773 to the Court is materially false on its face for purposes of fraud and extortion and to vex and harass Affiant in an ongoing campaign.

Affiant avers that the purported claim to the court is a trick and an artifice employed by Defendant Victoria Leslie Lawler to induce Affiant Charles Harry Clements to fall into an error, or to detain Affiant in it, so that Affiant may make an agreement contrary to his interest.

Affiant avers that the fraud consists both of the misrepresentation and in the concealment of material facts concerning both Affiant and Defendant Victoria Leslie Lawler as regards some alleged, but unsubstantiated, common law contract and that no such contract is exists.

Affiant avers that fraud, force and vexation, are odious in law, and no justification whatsoever appears for the complaint by Defendant, nor by her representative, Katherine Grier 30948.

Affiant avers that they are pursuing a frivolous petition to the Honorable Court; a waste of time and services, heedless and reckless of the Court's dignity and the law, and which petition is counter to the Rules of Professional Conduct and the Ethical Canons pertinent to Attorneys at Law.

Affiant avers that Katherine Grier 30948 has failed to rise to minimal standards of professional performance of due diligence. Esquire Grier's attempts to petition for payment of legal fees unearned and undeserved is offered as the first example of being paid off for their fraud and sham, reflecting the intent inherent in the entire scheme.

Affiant avers that Katherine Grier 30948 is in Default to the Non-Statutory Abatement made interrogatory in the matter and failed to establish any jurisdictional nexus, or to present any petition for relief that the Honorable Court can grant.

Affiant avers that Katherine Grier 30948 has failed to respond to the interrogatory by any substantive answer or presentation of fact, or of evidence.

Affiant avers that there is no RES, no legal entity IN RE:, no contract, no question and no controversy suitable for adjudication by the Honorable Court.

Affiant avers that any boasting by Defendant Victoria Leslie Lawler that she has married Affiant, from which it may happen that they will acquire the reputation of being married to each other is defamatory, unfounded in fact or practice, unsupported by evidence, and stands insufficient for any useful purpose.

Further, Affiant sayeth naught

Location:
Charles Harry, Clements
Seventeen Forty-one Dallas Street
Aurora, Colorado

Dated this sixth day of the eleventh month of Two Thousand and three A.D.

_____
Private Citizen, First Class Charles Harry, Clements, Sui Juris

Respond to: Charles Harry, Clements, Sui Juris,
General Delivery,
Aurora, Colorado

district court, Adams county, Colorado

Charles Harry, Clements, Sui Juris,	)	Case No. ____
Demandant,	)	
	)	Part One.
against,	)	
	)	Verification.
VICTORIA LAWLER	)	
By rep; #30948	)	

In Witness, Whereof, knowing the law of bearing false witness before God and men, I solemnly affirm, that, I have read the annexed **Affidavit of Fraud** and know the contents thereof; that the same is true of my own knowledge, except as to the matters which are therein stated on my information or belief, and as to those matters, I believe them to be true.

Dated this sixth day of the eleventh month of Two Thousand and three A.D.

_____

Private Citizen, First-Class Charles Harry, Clements, a Christian name, Sui Juris

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Affidavit of Fraud was deposited in the U.S. Mail, certified postage prepaid, this sixth day of the eleventh month of Two Thousand and three A.D., addressed to:

DISTRICT COURT ADAMS COUNTY
1100 Judicial Center Drive
BRIGHTON, COLORADO 80601

KATHERINE GRIER (ATTORNEY for Petitioner)
REG. NO. 30948
2701 Alcott St. #482
Denver, CO 80211

I,_____ am of age, of sound mind, not associated with this case:
witness
date: sixth day of the eleventh month of Two Thousand and three A.D.

NOTARY

State of Colorado)
) ss.
County of _____)

Affirmed and Attested to before me by Charles Harry Clements on the____th day of _____, 2004.

_____
Notary Public

My commission expires:

Print Minute Orders 2/16/05 3:lO PM PLAINTIFFS EXHIBIT 3
Status: RSTD PRGG CLSD County Court, Adams County
Case #: 2003 C 005606 Div/Room: R Type: Restraining Order Domesti
CLEMmS, CHARLES HARRY vs. LAWLER, VICTORIA LESLIE
EVENT/FILING/PROCEEDING
Minute Order (print)
JUDDE: DRJ CLERK : RE PORTER :
ADD ON HRG MTN TO MODIFY -/- 5-1-03
THE DEFT VITORIA LAWLER IS PRESENT PRO SE AS ADD ON WITH MTN TO MODIFY TRO.
AFTER HRG TESTIMONY FROM DEFT THE COURT GRANTS MTN AND TRO IS MODIFIED TO
EXCLUDE MASON W. CLEMENTS 9-13-96. MATTER REMAINS SET FOR HPRO IN DIV R
ON MAY 16, 2003 AT 2:00 PM. MODIFIED ORDER IS ISSUED TO DEFT. DMM/LRB

Print Minute Orders2/16/05 3:lO PM PLAINTIFFS EXHIBIT 4
Status: RSTD PROG CLSD County Court, Adams County
Case #: 2003 C 005606 Div/Room : R Type: Restraining Order Domesti
CLEMENTS, CHARLES HARRY vs. LAWLER, VICTORIA LESLIE
FILE DATE EVENT/FILING/PROCEEDING
6/16/2003 Minute Order (-p rint)
JUDGE: DRJ CLERK : REPORTER :
~ MOTION 6-12-03
MATTER COMES BEFORE THE COURT ON MOTION FOR ISSUANCE OF CITATION OF CONTEMPT
AND ORDER FILED BY PTFS. COURT REVIEWS FILE AND MOTION AND DISPENSES WITH
FORMAL HEARING. COURT DENIES MOTION. LONG ORDER IN FILE.
LRB /LRB

Print Minute Orders 2/16/05 3:10 PM PLAINTIFFS EXHIBIT 5
Status: RSTD PROO CLSD County Court, Adams County
Case #: 2003 C 005606 Div/Room: R Type: Restraining Order Domesti
CLEMENTS, CHARLES HARRY vs. LAWLER, VICTORIA LESLIE

MATTER COMES ON FOR HEARING ON REQTJEST FOR PERMANENT RESTRAINING
ORDER. PARTIES APPEAR PRO SE. DEFT OBJECTS TO PERMANENT ORDER.
MATTER PROCEEDS TO HEARING. FOLLOWING TESTIMONY, COURT FINDS GOOD
CAUSE TO GRANT PERMANENT RESTRAINING ORDER. DEFT TO HAVE NO CONTACT
WITH PTF OF ANY KIND WITH THE EXCEPTION OF TELEPHONE CONTACT REGARDING
PARENTING ISSUES AND TO ADDRESS PARENTING TIME EXCHANGES. DEFT TO
REMAIN AT LEAST 25 YARDS FROM PTF. DEFT EXCLUDED FROM 1741 DALLAS ST.,
AURORA, CO. DEFT TO REMAIN AT LEAST 25 YARDS FROM ABOVE ADDRESS WITH
THE EXCEPTION OF DROPPING OFF OR PICKING UP MASON DURING PARENTING
TIME EXCHANGES. COURT GRANTS TEMPORARY CARE AND CONTROL OF MINOR
CHILD HUNTER TO PTF. COURT GRANTS TEMPORARY CARE AND CONTROL OF MINOR
CHILD MASON CLEMENTS TO DEFT. CARE AND CONTROL ORDERS EXPIRE 09-12-03.
COURT ORDERS PARENTING TIME AS FOLLOWS: DEFT SHALL HAVE NO PARENTING TIME
WITH MINOR CHILD, HUNTER. PTF SHALL HAVE 3 OVERNIGHT VISITS PER WEEK
WITH THE CHILD MASON EACH WEEK AS FiRRANGED BETWEEN PARTIES. IF AGREEMENT
CAN NOT BE REACHED THOSE DAYS ARE TO BE TUES, WED AND THURSDAY EACH
WEEK. DEFT SHALL HAVE NO CONTACT WITH MINOR CHILD CHARLES HUNTER CLEMENTS,
DOB 11-05-85. COURT FCTRTHER ORDERS ALL ORDERS RELATING TO CHILDREN
EXPIRE ON SEPTEMBER 12,03. THE RESTRAINING ORDER AGAINST DEFT IN FAVOR

OF PLTF CHARLES H. CLEMENTS DOB 05-01-44 CONTINUES AS PROVIDED BY LAW.
PERMANENT RESTRAINING ORDER IS EXECUTED AND COPIES TENDERED TO
BOTH PARTIES. CASE CLOSED. KT /m

PLAINTIFFS EXHIBIT 6

From: "Chas Clements" <chasclementsFLAME@comcast.net>
To: "Judith Phillips" <juphillips@comcast.net>; "steve gartin" <stevegartin@yahoo.com>; "Frank Pugliese" <f.pugliese@comcast.net>
Subject: Katherine Grier Conversation
Date: Friday, March 05, 2004 1:06 PM

Hi Doc: 5 MAR 04

I am very disturbed after our talk yesterday; agitated and sleepless over the idea that the court considers me to be a menace and plans to jail me. You know I'm terrified of jail, and of having my life and health threatened by another false and unjust arrest. I'm having heart palpitations and panting for breath- anxiety stuff; sitting in my front room, waiting to be hauled away.

What statutory or criminal acts did Attorney Grier accuse me of- or anyone else for that matter? I need to prepare a defense for that, particularly seeing as I have already filed legal processes, if that's what they're accusing me of. Is the Supreme Court mad at me for filing a Writ of Habeus Corpus- even though denied, I'd be prepared to defend that one at any time. It wasn't lightly done, Doc, and you know what it cost me to even do it.

How much jail time am I in hazard of?
Is there some sort of Warrant out?
Who is the complainant?

Would you please make an official note of your conversation with Attorney Grier, detailing the nuance and implications of her tone and inflexion. Your account of the conspiracy against me by the various judges is truly frightening- all the deputies in the court to guard against something undefined- quotes from Judge Chapman about 'knowing where this comes from' as regards my responses to an unsolicited overture about a contract of which I had no knowledge.

I'm considering filing for sanctions against Grier based on her ex parte applications to David Juarez (the restraining order judge), and to Magistrate Chapman (the custody order on Mason), and her lying about informing me- in court, on the record. That's fraudulent as hell- particularly if she found an easy ear from administrators that she's cozened with tales of Patriotism. I have never had any contact with 'Patriots' more extensive than using the same water fountain or something.

This attempt to associate me with people who menace a judge is unconscionable. I know no such people; I do no such thing. I have appeared in front of Harlan Bockman with my son Hunter- last year, right after Vicky and I split, so trying to link me with someone who threatened his wife is utterly improper and unethical and I deny any such thing unequivocally. I hold no view that even remotely includes such a thing.

We made a common law reply to charges (by Victoria against Hunter), and as soon as it was possible to retain counsel, Hunter did. We immediately accommodated the convenience of the Court in all things, including agreeing to an expedited judgment.

We/I have always proceeded with counsel when able, and the only legal process I've filed has been in response to material submitted to me, and for purposes of clarification and definition of the legal process under which I've encountered. Nothing has been frivolous, vexatious, harassing, malicious, or ill-founded.

I'm trying to make arrangements for bond, and to cover any needs of my children if I'm imprisoned, but I'd appreciate a little more detail about what it is they're trying to charge me with.

Thanks Doc