

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO, SANTA FE

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

William H. Payne
Arthur R. Morales
Plaintiffs

07 SEP 19 PM 1:26

v

CIV NO 97 0266 SC/DJS

CLERK-ALBUQUERQUE

Lieutenant General Kenneth A. Minihan, USAF
Director, National Security Agency
National Security Agency
Defendant

Federal Rule of Civ. P. 60(b)(3), (4)

MOTION FOR RELIEF FROM ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, STRIKING PLEADINGS, AND IMPOSING SANCTIONS FOR REASONS
OF MISREPRESENTATION AND OTHER MISCONDUCT AND VOIDABLE JUDGMENTS

1 COMES NOW plaintiffs Arthur R Morales and William H Payne with
Federal Rule of Civ. P. 60(b)(3), (4) motion for relief from judge
Armijo's ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
STRIKING PLEADINGS, AND IMPOSING SANCTIONS file stamped August 27,
2007.

2 Judge Armijo writes

THIS MATTER comes before the Court on the Report and
Recommendation for Sanctions and Striking of Documents
[Doc. 95], filed herein on July 31, 2007. Plaintiffs filed
their Objections [Doc. 97] to the Report and Recommendation
on August 17, 2007. The Court conducted a de novo review of
the Report and Recommendation and finds that it should be
adopted.¹ In their objections, Plaintiffs argue that the
undersigned United States District Judge lacked
jurisdiction to refer this matter to a Magistrate Judge for
recommended disposition, because it is not a "pretrial"
matter. 28 U.S.C. § 636(b)(1) does refer to "pretrial
matters." However, "[c]ourts considering the meaning of the
term 'pretrial' in § 636(b) have not interpreted the term
literally with

¹Subsequent to Judge Garcia's filing of the Report and
Recommendation for Sanctions and Striking of Documents
[Doc. 95], Plaintiffs filed, on August 22, 2007, two
pleadings: Motion to Correct Response to Report and
Recommendation for Sanctions and Striking of Documents
[Doc. 98] and Motion for Extension of Time [Doc. 99].

This Court has reviewed these pleadings and determines that
their substance in no way alters the Court's analysis and
consideration of the Report and Recommendation for
Sanctions and Striking of Documents [Doc. 95]. The relief

sought therein is denied and the pleadings are stricken from the record.

respect to the time of trial, but rather have interpreted the term to refer generally to matters unconnected to the issues litigated at trial." Robinson v. Eng, 148 F.R.D. 635, 641 (D. Neb. 1993). See also, Bergeson v. Dilworth, 749 F. Supp. 1555 (D. Kan. 1990) (Magistrate Judge has authority under § 636 to impose postjudgment Rule 11 sanctions because, broadly construed, the term "pretrial matter" means any matter unrelated to the claims litigated at trial).

Robinson v Eng and Bergeson v. Dilworth are summarized

11 motions are also not listed in the statute's list of exceptions to pretrial matters that magistrate judges can permissibly determine. In Grimes v. City & County of San Francisco, 951 F.2d 236, 240-241 (9th Cir. 1991), the Ninth Circuit similarly held that discovery sanctions under Rule 37 are also appropriate for determination by magistrate judges. Accord Robinson v. Eng, 148 F.R.D. 635, 641 (D. Neb. 1993) (magistrate judge has authority to issue orders resolving Rule 11 motions; restriction to "pretrial matters" does not preclude magistrate judge from resolving post-judgment, procedural matters that arose earlier in the case); Bergeson v. Dilworth, 749 F. Supp. 1555, 1563 (D. Kan. 1990) (if a motion for sanctions can be characterized as nondispositive, the magistrate judge has authority to dispose of the matter, subject to review under "clearly erroneous" standard); San Shiah Enter. Co. v. Pride Shipping Corp., No. 88-0944, 1991 U.S. Dist. LEXIS 16046, at *14 n.1 (S.D. Ala. Oct. 23, 1991) (same), aff'd in part, rev'd in part on other grounds, 783 F. Supp. 1334 (S.D. Ala. 1992). On the other hand, a magistrate judge presiding over a Rule 11 motion that is dispositive of a claim or defense may only make recommendations, which are subject to de novo review by the district judge.

Rule 11 states

(b) Representations to Court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

"Magistrate Judge has authority under § 636 to impose postjudgment Rule 11 sanctions because, broadly construed, the term "pretrial matter" means any matter unrelated to the claims litigated at trial" appears to be voidable for reason of lack of jurisdiction.

A court may not render a judgment which transcends the limits of its authority.

Plaintiffs assert that they are in full compliance with Rule 11(b) and any claim by either magistrate judge Garcia or judge Armijo is a misrepresentation cognizable under Rule 60(6)(3).

CIV NO 97 0266 SC/DJS is a jury trial lawsuit which should either settled or heard by a jury to try to resolve these unfortunate matters.

3 Judge Armijo writes

In addition, the Court has authority under 28 U.S.C. § 636(b)(3), the "additional duties" provision, to refer any matter to a Magistrate Judge so long as the Article III judge "retains the 'ultimate responsibility for decision making in every instance.'" *Colorado Bldg. & Constr. Trades Council v. B.B. Andersen Constr. Co.*, 879 F.2d 809, 811 (10th Cir. 1989). In this case, the District Judge has conducted the requisite de novo review and made the independent determination that sanctions are warranted. The Court notes as well that Plaintiffs are seeking relief which, if granted, would result in this case being sent back for trial; thus, the pending motions fall within the meaning of Section 636, as it is broadly interpreted by the Tenth Circuit. Thus, the Court rejects the contention that its Order of Reference [Doc. 89] was improper.

This court was tasked to rule on motion to void judgment, not to attack plaintiffs using false charges. Plaintiffs assert that they are in full compliance with Rule 11(b).

A court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void.

3 Judge Armijo writes

Plaintiffs also contend that two pleadings filed after the deadline for responding to the Court's Order to Show Cause - their "Motion to Void Order of Reference for Lack of Jurisdiction" [Doc. 93], and their "Mandatory Judicial Notice and Authorities to Void Order of Reference for Lack of Jurisdiction" [Doc. 94] - "obviated any response to Garcia's Order to Show Cause," and that "Judge Armijo's failure to rule on Motion to Void Order of Reference for Lack of Jurisdiction before allowing Garcia to issue REPORT AND RECOMMENDATION violated due process." [Doc. 97, at 6].

The Court rejects this contention. The pro se pleadings [Docs. 93 and 94] do not serve to excuse the Plaintiffs' obligations to comply with the Court's explicit directive and order of July 6, 3 2007 [Doc. 92]. Plaintiffs were required to show cause, and they failed to respond to the Court's Order to Show Cause within the time allotted. They argue that their response was not late because the pleadings were mailed on July 25, 2007, even though they were not filed until July 26. However, the Order to Show Cause reads: "Payne and Morales are directed to file their written responses and supporting affidavits no later than July 25, 2007." [Doc. 92, at 3]. The deadline was for filing a response; the date of service is irrelevant. In any event, the two pleadings filed on July 26 were not responsive to the Order to Show Cause. Plaintiffs' action in filing a motion, one day after the deadline for responding to the Order to Show Cause, is a legal nullity. In addition, the Motion to Void Order of Reference for Lack of Jurisdiction is substantively without merit. The Magistrate Judge recommended that the two pleadings filed on July 26, 2007 [Docs. 93 and 94] be among the documents to be stricken from the record, and this Court adopts that recommendation.

Judge Armijo's statement, "They argue that their response was not late because the pleadings were mailed on July 25, 2007, even though they were not filed until July 26." is a misrepresentation cognizable under Rule 60(6)(3) because by Rule 5(b) "Service by mail is complete on mailing."

Judge Armijo's conduct was improper because "Motion to Void Order of Reference for Lack of Jurisdiction," [Docs. 93] was not ruled upon before to determine if plaintiffs were required to answer judge Garcia.

This is an Order which violated due process and is null and void, and can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court.

4 Judge Armijo writes

Plaintiffs also object to the amount of the recommended sanction, arguing that it is unprecedented. It is not. In

affirming a sanction award of over \$56,000 in attorney fees against a plaintiffs counsel for pursuing a case after the statute of limitations had clearly expired, the court in *Merriman v. Security Ins. Co. of Hartford*, 100 F.3d 1187, 1194 (5th Cir. 1996), noted that the district court must exercise its discretion "in crafting a sanction award reasonably calculated to deter litigation abuse." While the \$10,000 recommended in this case is a substantial amount, lesser sanctions imposed against these Plaintiffs in the past have not deterred their abusive conduct. Indeed, Plaintiffs continued with their campaign of filing baseless and frivolous pleadings and lawsuits unmoved by the Court's earlier efforts to curb those filing abuses. The lesser sanctions previously imposed (see Doc. 95, pg. 11, n. 9) were insufficient to accomplish their intended purpose.

Armijo's statement "Indeed, Plaintiffs continued with their campaign of filing baseless and frivolous pleadings and lawsuits unmoved by the Court's earlier efforts to curb those filing abuses." shows violation of her oath of office because all lawsuits are paid for trial by jury lawsuits where evidence of guilt of defendants is *in writing*.

Judge Armijo was required to sign 5 USC 3331.

Oath of office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

Our prima facie case lawsuits were dismissed in violation of our right to trial by jury guaranteed inviolate by 7th Amendment to US Constitution and 28 USC Rule 38 which judges were sworn to uphold.

A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. A judgment may not be rendered in violation of those constitutional limitations and guaranties.

5 Judge Armijo writes

The amount recommended is not "unprecedented," as Plaintiffs contend. See, e.g., *Merriman v. Security Ins.*

Co. of Hartford, *supra*; *White v. General Motors Corp.*, 977 F.2d 499 (10th Cir. 1992) (affirming a sanction award of \$50,000 against plaintiffs attorney); *Doyle v. United States*, 817 F.2d 1235 (5th Cir. 1987) (affirming a total award of \$38,872, representing \$1,554.88 against each of 25 plaintiffs who filed a frivolous class-action lawsuit); *Jennings v. Joshua Indep. Sch. Dist.*, 948 F.2d 194 (5th Cir. 1991) (reducing to \$21,539.95 a sanction award against plaintiff and plaintiffs counsel for filing a clearly meritless case); *Lapin v. United*

States, 118 F.R.D. 632 (D. Haw. 1987) (awarding \$28,400 to be paid to the Clerk of Court as a sanction for frivolous filings).²

Plaintiffs were warned that sanctions could be awarded, and they were given an opportunity to respond to the Order to Show Cause. They did not do so, preferring to file yet another frivolous motion, challenging the Court's authority to refer this matter to the Magistrate Judge. In their objections, they do not claim an inability to pay the amount recommended. Indeed, Plaintiffs have been able to pay filing fees and to maintain the costs of pursuing numerous lawsuits through the years. As the Court has not been presented with any evidence of lack of ability to pay, that factor does not enter into the Court's consideration.

"Plaintiffs were warned that sanctions could be awarded, and they were given an opportunity to respond to the Order to Show Cause. They did not do so, preferring to file yet another frivolous motion, challenging the Court's authority to refer this matter to the Magistrate Judge." is a false statement.

Plaintiffs did respond with "Motion to Void Order of Reference for Lack of Jurisdiction," [Docs. 93] was not ruled upon by judge Armijo before to determine if plaintiffs were required to answer judge Garcia.

This violated due process and is null and void, and can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court.

Plaintiffs previously addressed our reasons for multiple lawsuits were that our rights were denied because the judges did not comply with their oath of office to uphold the US Constitution.

6 Judge Armijo writes

Finally, Plaintiffs appear to argue that "new information" allegedly related to this lawsuit, which "recently surfaced on Wikipedia," justifies their filing new motions six and a half years after the case was terminated. The information concerns former National Security Advisor Zbigniew

² The judge in Lapin v. United States referred to a study showing that "a single hour spent by a federal judge on a case costs the taxpayers approximately six hundred dollars." He determined the amount of judge time spent dealing with plaintiffs frivolous filings, assigning \$600 to in-court time and \$200 to out-of court time, and came to the total sanction of over \$28,000. If that method were used in this case, Plaintiffs' sanction would likely amount to well over \$100,000.

Brzeninski.³ 5 Brzezinski.³ In addition, Plaintiffs complain that among the documents which the Magistrate Judge recommended stricken was a "criminal complaint affidavit against former secretary of state Brzezinski." Plaintiffs quote someone named "Col. Feehan," as follows: "Failure to bring Brzezinski to justice casts a dark shadow of corruption on judicial and government branches. Further, a failure to bring Brzezinski, and others, to justice may be an invitation for retaliation by those aggrieved by what Brzezinski and others have done." [Doc. 97, at 22-23].

Motion to void judgment does not require that "new information" be introduced.

Motion to void judgment is appropriate and necessary when Constitution, due process rules, and other factors renders a judgment void. Plaintiffs have taken this appropriate action.

Read MANDATORY JUDICIAL NOTICE AND AUTHORITIES FOR VOID JUDGMENT submitted to the Tenth Circuit Court of Appeals on September 11, 2007 to edify The Court at <http://www.prosefights.org/nmlegal/moralesvoid/moralesvoid.htm#350voidnotice>.

Assistant US attorney Michell bought up the subject of new material so we obliged Mitchell with the information on Wikipedia on how the 1980 Iraq/Iran started.

⁷ Judge Armijo writes

This statement is typical of the veiled and indirect threats these Plaintiffs have made against judges, U.S. Attorneys and Assistant U.S. Attorneys, court officers, federal officials and employees, and a host of others who have had the misfortune of being named in the many complaints which the Plaintiffs have filed. As noted in the Report and Recommendation, these pro se litigants do little more more than heap abuse and invective on the defendants and court officers. They have accused judicial officers of being felons, of being corrupt and incompetent. For example, in this very case Payne and Morales state, "Judge Armijo over-stepped her bounds and thus demonstrated her bias or incompetence." [Doc. 97, at 3].⁴ They continue to harass judicial officers by filing criminal complaints.

(See, e.g., Doc. 97, "Criminal Complaint Affidavit" attached to Response as Appendix "A:").⁵ While Plaintiffs are free to maintain and express their beliefs, they are not free to burden

³ Mr. Brzezinski was National Security Advisor under President Jimmy Carter. As yet another example of frivolous pleading, Plaintiffs are seeking to have "criminal complaints" issued against Mr. Brzezinski for alleged misinformation given concerning national security matters.

⁴ To the extent that Plaintiffs' claim of bias with respect to Judge Armijo constitutes a veiled request that she recuse from this case, such request is denied. Plaintiffs have failed to demonstrate or establish by affidavit, or otherwise, with particularity that the undersigned judge has a bias or prejudice.

⁵ As noted in the Order to Show Cause, Doc. 92, Appendix "C," Payne and Morales filed criminal complaints and sought to have "arrest warrants" issued for Senior Judge James A. Parker, Chief Judge William Downes and several Assistant United States Attorneys. The State District Attorney promptly intervened and dismissed those prosecutions.

defendants or the Court with their prolixity and frivolousness. As stated in the Report and Recommendation, "a party's right of access to the courts is neither absolute nor unconditional. *Tripoti v. Beaman*, 878 F.2d 351 (10th Cir. 1989). There exists no constitutional right of access to courts to prosecute frivolous or malicious actions. *Id.*; *Phillips v. Carot*, 38 F.2d 207, 208 (10th Cir. 1981)."

Statement " They have accused judicial officers of being felons, of being corrupt and incompetent." is correct.

And plaintiffs have taken appropriate legal steps under federal law to try to bring these felons to justice.

See

1 <http://www.prosefights.org/nmlegal/dcvoid/dcvoid.htm#feehan1>

2 <http://www.prosefights.org/nmlegal/dcvoid/dcvoid.htm#feehan2>

3 <http://www.prosefights.org/nmlegal/dcvoid/dcvoid.htm#feehan3>

Plaintiffs state and federal prima facia case [all evidence of guilt of defendants is writing] federal lawsuit clear demonstrate a corrupt, arrogant, and incompetent collection of lawyers trying to avoid settlement or right to trial by jury guaranteed inviolate by 7th

Amendment to US Constitution and 28 USC Rule 38 thus costing the taxpayers much money and grief.

Armijo's statement, "The State District Attorney promptly intervened and dismissed those prosecutions." is true but all were dismissed improperly and are voidable.

9 Judge Arnijo writes

From the outset, this Court has afforded Plaintiffs Payne and Morales ample opportunity to bring their claims. Those claims have been found, repeatedly, to be without merit and often filed for improper purposes, including simply to harass or burden defendants and the courts. This Court will not tolerate further abuse of the judicial system from these Plaintiffs.

Plaintiffs Morales and Payne jury trial lawsuit guaranteed inviolate by 7th Amendment to US Constitution and 28 USC Rule 38 have been repeated dismissed by judges who violated their oath of office.

Plaintiffs will not tolerate further abuse by the judicial system and therefore a moving to void judgments at the Tenth Circuit and others courts.

10 Judge Arnijo writes

Payne and Morales argue that Judge Santiago E. Campos' dismissal of their lawsuits was "without jurisdiction" because Plaintiffs sought a jury trial and the Court's granting of summary judgment denied them their Seventh Amendment right to a jury trial. They contend that the Court was without jurisdiction to dismiss their complaint in the face of a jury demand.

The problem with this argument is that it was previously presented by these same litigants to trial courts and to the Tenth Circuit, and the argument was soundly rejected. In *Payne v. National Security Agency*, 232 F.3d 902 (table, text in Westlaw), 2000 WL 1570547, at *1 (10th Cir. Oct. 19, 2000), the Tenth Circuit stated:

Plaintiff-appellant William H. Payne appeals from the district court's order granting summary judgment on his complaint pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to defendant-appellee National Security Agency (NSA). Payne offers no substantive argument in opposition to the conclusions reached by the district court on the FOIA issues. He contends only that the district court should not have entered summary judgment because it denied him a jury trial to which he was entitled under the Seventh Amendment to the United States Constitution and Fed. R. Civ. P. 38. We affirm.

As explained by the magistrate judge in dismissing plaintiff's claims against the private corporations and individuals, the Privacy Act authorizes suit only against an "agency" of the United States Government. 5 U.S.C. § 552a(a)(1)(g)(1); Parks v. IRS, 618 F.2d 677, 684 (10th Cir. 1980). In general, the United States is immune from being sued unless it consents. United States v. Sherwood, 312 U.S. 584, 586 (1941). Even when it consents, the general rule is that the Seventh Amendment

dismissal of his lawsuit violated Rule 38. argument that the grant of summary judgment deprived him of his Seventh Amendment right to a jury trial, or that Privacy Act claim. The Tenth Circuit rejected Payne's the Tenth Circuit affirmed the summary dismissal of Payne's Westlaw), 2000 WL 1862659, at *2 (10th Cir. Dec. 20, 2000), and, on appeal, Payne v. EEOC, 242 F.3d 390 (Table, text in Fed. R. Civ. P. 38. The trial court rejected the argument violated his Seventh Amendment right to a jury trial or judgment against him because the grant of summary judgment Act claim, it was improper for the court to grant summary a1, CIV 99-270, Payne again contended that, in a Privacy issue. However, that did not occur. In Payne v. EEOC et expect that Payne and Morales would not again raise the with this decisive ruling by the Tenth Circuit, one would

11 Judge Armijo writes

settled and this motion granted. judgment motion and will be used if these unfortunate matters are not And, of course, the appeal Case Number: 00-2019 is valid for void the Tenth Circuit also issued a voidable judgment. Problem with Armijo's statement "The problem with this argument is that it was previously presented by these same litigants to trial courts and to the Tenth Circuit, and the argument was soundly rejected." is that

Assuming without deciding that the Seventh Amendment entitled 7 Payne to a jury trial on his FOIA claim, the district court did not deny him that right by entering summary judgment against him. It is wellsettled that the Seventh Amendment is not violated by proper entry of summary judgment, because such a ruling means that no triable issue exists to be submitted to a jury. See City of Chanute v. Williams Natural Gas Co., 955 F.2d 641, 657 (10th Cir. 1992) (citing Fidelity & Deposit Co. v. United States, 187 U.S. 315, 319-20 (1902)), overruled on other grounds by Systemcare, Inc. v. Wang Lab Corp., 117 F.3d 1137-1145 (10th Cir. 1997). See also In re TMI Litig, 193 F.3d 613, 725 (3d Cir. 1999), cert. denied, 120 S. Ct. 2238 (2000).

does not grant a plaintiff the right to a trial by jury. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). Thus, when the government does consent to being sued, the plaintiff has a right

⁶While the Tenth Circuit assumed without deciding that there was a right to a jury trial, subsequent rulings demonstrate that "[n]either the Privacy Act nor the Freedom of Information Act (FOIA) provide a plaintiff with the right to a jury trial." *Buckles v. Indian Health Service/Belcourt Service Unit*, 268 F. Supp. 2d 1101 (D.N.D. 2003).

to a jury trial only when the right has been "unequivocally expressed" by Congress. *Id.* at 160-61. The Privacy Act is silent as to any right to a jury trial. Consequently, plaintiff had no right to a jury trial under the Privacy Act. Plaintiff also includes an allegation that he was entitled to a jury trial under Fed. R. Civ. P. 38. Rule 38, however, simply states that the Seventh Amendment or statutory rights to a jury trial shall be preserved in the federal courts. The Rule does not provide an independent entitlement to a jury trial. Moreover, the proper dismissal of a complaint under Fed. R. Civ. P. 12(b)(6) does not violate the Seventh Amendment. *Christensen v. Ward*, 916 F.2d 1462, 1466 (10th Cir. 1990). It is clear from our de novo review that the magistrate judge correctly dismissed plaintiff's complaint against all defendants.

" In *Payne v. EEOC et al.*, CIV 99-270, Payne again contended that, in a Privacy Act claim, it was improper for the court to grant summary judgment against him because the grant of summary judgment violated his Seventh Amendment right to a jury trial or Fed. R. Civ. P. 38." is voidable and action to vacate this case was stated on September 11, 2007 at the Tenth Circuit.

Plan of attack to void judgment started with this void judgment action in New Mexico court to see how the court was going to react. Now that plaintiffs have discovered response by courts we move to the next steps in our legal project.

Here are htm hotlink versions which link to copies of PACER dockets

<http://www.prosefights.org/nmlegal/moralesvoid/moralesvoid.htm#350voidmotion>
<http://www.prosefights.org/nmlegal/moralesvoid/moralesvoid.htm#350voidnotice>

and

<http://www.prosefights.org/nmlegal/tenthvoid/tenthvoid#270voidmotion>
<http://www.prosefights.org/nmlegal/tenthvoid/tenthvoid#270voidnotice>

12 Judge Armijo writes

Given the history of these pro se litigants of ignoring orders and directives of the court, it not surprising that they have ignored the Tenth Circuit's prior rulings in Plaintiffs' own cases which soundly rejected arguments that a trial court is without jurisdiction to grant summary judgment because it violates the Seventh Amendment and Rule 38, or that a court is without jurisdiction to dismiss a lawsuit when a plaintiff has filed a jury demand.

Remedy for failing to get what we paid for and guaranteed inviolate by 7th Amendment to US Constitution and 28 USC Rule 38 is hidden by the legal profession until recently.

Some judges in the Tenth Circuit violated in writing in court "[a] judgment may not be rendered in violation of those constitutional limitations and guaranties." and managed to violate their oath of office in writing.

Plaintiffs, of course, seek settlement of these unfortunate matters and do not wish to pursue removal of offending judges for violation of oath of office.

13 Judge Armijo writes

Finally, the Court rejects the argument that Chief Magistrate Judge Lorenzo F. Garcia should not have participated in this case due to bias. Payne advanced the same argument in Payne v. EEOC et al., CIV 99-270, a case tried by Judge Garcia. The Magistrate Judge denied Payne's request that he recuse and, on appeal, 2000 WL 1862659, the Tenth Circuit affirmed the dismissal of Payne's case and rejected Payne's contention that Magistrate Judge Garcia was bound to recuse himself from the litigation.

Judge Lorenzo Garcia who is defendant in CV 2000-10278 and was presiding judge in voidable 99 cv 270.

Garcia flaunts disregard for 28 USC

§ 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. ...

So Garcia should not have been selected by magistrate by judge Armijo and Garcia should have disqualified himself under 28 USC § 455.

An opportunity for a hearing before a competent and impartial tribunal on proper notice is one of the essential elements of due process of law.

A judgment is irregular where its rendition is contrary to the course and practice of the courts; that is, where proper rules of practice have not been followed, or where some necessary act has been omitted or has been done in an improper manner.

Garcia was not disqualified; therefore, ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, STRIKING PLEADINGS, AND IMPOSING SANCTIONS is voidable.

14 Judge Armijo writes

Conclusion

This Court, after careful consideration of Plaintiffs' objections, finds that the Magistrate Judge's analysis is sound. The Court concludes that it has power to impose sanctions on these Plaintiffs. The pleadings which Plaintiffs filed in this case were frivolous, unsupported in fact or law, and constitute a continuation of Plaintiffs' campaign to file frivolous pleadings intended solely to harass and burden defendants and the Court. The Court adopts the Ehrenhaus analysis set out in the Report and Recommendation. Ehrenhaus v. Reynolds, 965 F.2d 916 (10th Cir. 1992). The Court further finds that the sanctions suggested are appropriate. The entirety of the Report and Recommendation is adopted. Plaintiffs' objections are overruled.

"The pleadings which Plaintiffs filed in this case were frivolous, unsupported in fact or law, and constitute a continuation of Plaintiffs' campaign to file frivolous pleadings intended solely to harass and burden defendants and the Court." is a false claim.

Motion to void judgment is to void judgment when constitution, due process rules, and other factors renders a judgment void.

"The Court concludes that it has power to impose sanctions on these Plaintiffs." is also false since plaintiffs followed the law.

To the contrary judge Armijo does not follow court rules which requires ruling

05/16/2007 81 STRICKEN from the record pursuant to 100 Order - MOTION to Set Aside Judgment by William H Payne, Arthur R Morales. (pz) Modified docket text on 8/28/2007 (ln). (Entered: 05/18/2007)

but instead, with biased magistrate judge Lorenzo Garcia unwarranted attacks plaintiffs, violates her oath of office to support the US Constitution, strikes motion and commits Title 18 felony violation of law all in writing in court records.

A judgment is irregular where its rendition is contrary to the course and practice of the courts; that is, where proper rules of practice have not been followed, or where some necessary act has been omitted or has been done in an improper manner.

A court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void.

A judgment is void when the court lacks jurisdiction of the parties or of the subject matter, lacks the inherent power to make or enter the particular order involved, or acts in a manner inconsistent with due process of law.

So Armijo's statement. "The Court further finds that the sanctions suggested are appropriate." is not supported by the facts and is therefore void.

15 Judge Armijo writes

Order

IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation [Doc. 95], filed herein on July 31, 2007, is hereby adopted.

IT IS FURTHER ORDERED that Plaintiffs' pleadings 81, 82, 84, 85, 91, 93, 94, 98, and 99 are stricken from the record.

IT IS FURTHER ORDERED that Plaintiff William H. Payne is personally sanctioned for abusive litigation practices in the amount of \$10,000. Mr. Payne shall pay this amount to the Clerk of the Court within 30 days of the date of this Order.

IT IS FURTHER ORDERED that Plaintiff Arthur R. Morales is personally sanctioned for abusive litigation practices in the amount of \$10,000. Mr. Morales shall pay this amount to the Clerk of the Court within 30 days of the date of this Order.

IT IS FURTHER ORDERED that if payment is not made from either Plaintiff as ordered above, the United States Attorney is directed to take all reasonable and necessary steps to exact payment and to collect these sanctions from the offending Plaintiff or Plaintiffs and to deposit the amounts collected with the Clerk of Court.