

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

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAR 06 2008

WILLIAM H. PAYNE and
ARTHUR R. MORALES,

Plaintiffs,

v.

MATTHEW J. DYKMAN
CLERK

CIVIL NO. 97-266 MCA/LFG

NATIONAL SECURITY AGENCY,

Defendant,

UNITED STATES OF AMERICA,

Garnishor,
and,

SANDIA LABORATORY FEDERAL CREDIT UNION
AND ITS SUCCESSORS OR ASSIGNS
ATTENTION: LOSS PREVENTION,

Garnishee.

MANDATORY JUDICIAL NOTICE 1

1 US District Court did not send plaintiffs copies of documents 103 - through 135 entered on the docket, either by electronic transmission or by mail, in NSA lawsuit CIVIL NO. 97-266 MCA/LFG as required by LOCAL CIVIL RULES UNITED STATES DISTRICT COURT DISTRICT OF NEW MEXICO.

5.6 Service by Electronic Transmission.

(a) By the Court. The Court or Clerk may serve and give notice by electronic transmission, in lieu of service and notice by mail, to any person who has a written request, on file with the Clerk, to receive service and notice by electronic transmission.

As the court may know

Violation of procedural rules.

A judgment is irregular where its rendition is contrary to the course and practice of the courts; ²² 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.²³ Directory rules of procedure are limited to what is required to be done, and simply regulate the orderly manner in which the court exercises its jurisdiction. Mandatory rules, however, prescribe, in addition to specific required actions, the result that will follow if those requirements are not met, and failure to comply with a mandatory rule renders a judgment void. ²⁴

Rules relating to service of process are mandatory, and the failure to comply with them, if a judgment is rendered against a party who was not served in accordance with those rules (and who did not waive service of citation or appear voluntarily) renders the judgment void.²⁵

¹⁷ See 46 Am.Jur.2d Judgments § 17.

¹⁸ As to the opportunity to be heard as a requisite of due process, see 16A Am.Jur.2d, Constitutional Law §§ 839 et seq.

¹⁹ See State ex rel. Anderson-Madison County Hospital Development Corp. v. Superior Court of Madison County, 245 Ind 371, 199 N.E.2d 88; Morley v. Morley, 131 Wash 540, 230 P. 645.

²⁰ See State ex rel. Anderson-Madison County Hospital Development Corp. v. Superior Court of Madison County, 245 Ind 371, 199 N.E.2d 88; Morley v. Morley, 131 Wash 540, 230 P. 645; Trough v. Trough, 59 W Va 464, 53 SE 630.

²¹ See State ex rel. Anderson-Madison County Hospital Development Corp. v. Superior Court of Madison County, 245 Ind 371, 199 N.E.2d 88; Moore v. Smith, 177 Va 621, 15 S.E.2d 48; Morley v. Morley, 131 Wash 540, 230 P. 645; Trough v. Trough, 59 W Va 464, 53 SE 630.

²² See Pruitt v. Taylor, 247 NC 380, 100 S.E.2d 841.

²³ See Sache v. Gillette, 101 Minn 169, 112 NW 386.

²⁴ See Autry v. Autry (Tex App Houston (14th Dist)) 830 S.W.2d 140, in which the trial court's failure to formally comply with a rule of the judicial District Courts of Harris County regarding the regulation of the docket did not make the judgment void.

²⁵ See Fuller v. Hurley (WD Va) 559 F Supp 313; Blume v. United States (DC SD) 40 BR 551; Ex parte Wilson Lumber Co. (Ala) 410 So.2d 407, appeal after remand (Ala App) 440 So.2d 1093; Beam v. Adams (Alaska) 749 P.2d 366; Barragan v. Banco BCH (4th Dist) 188 Cal.App.3d 283, 232 Cal.Rptr. 758; Henry v. Hiwassee Land Co., 246

As a court may know

"Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is

"...without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) ""

Therefore all judgments in CIVIL NO. 97-266 MCA/LFG are void.

2 Plaintiffs were not properly served garnish write documents by assistant US attorney John Zavitz.

See Payne first affidavit entered as docket entries 76 and 77 in case 01-634 and second affidavit 2 correctly entered as docket entry 136 in case 1:97-cv-00266-MCA-LFG.

Morales affidavit of improper service is posted by PACER and at docket entry 137 1:97-cv-00266-MCA-LFG.

This is a Violation of procedural rules: see above.

Therefore all judgments in CIVIL NO. 97-266 MCA/LFG are void.

3 Zavitz "UNITED STATES' OBJECTION TO EXEMPTION AND REQUEST FOR HEARING" is apparently a motion; however, Zavitz did not contact plaintiffs as required by

LOCAL CIVIL RULES

UNITED STATES DISTRICT COURT DISTRICT OF NEW MEXICO.

4 Opposed Motions Where Any Party Appears Pro Se.

(a) Movant must request concurrence of each party, at least three (3) working days before filing a motion. Movant must recite that concurrence was refused or explain why concurrence could not be obtained. A motion that omits recitation of a good-faith request for concurrence may be summarily denied.

This is a Violation of procedural rules: see above.

Therefore all judgments in CIVIL NO. 97-266 MCA/LFG are void.

4 Letters written by magistrate judge Lorenzo Garcia on February 25, 2008 to Assistant US attorney Jan Elizabeth Mitchell and plaintiffs

UNITED STATES DISTRICT COURT

Pete V. Dumerici United States Courthouse
333 Lomas Blvd., N.W. - Suite 680
Albuquerque, New Mexico 87102

LORENZO F. GARCIA
Chief Magistrate Judge

505-348-2320
FAX: 348-2334

February 25, 2008

William H. Payne
13015 Calle de Sandias, N.E.
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Jan Mitchell, Esq.
Chief, Civil Division
John W. Zavitz, Esq.
United States Attorney Office
P. O. Box 607
Albuquerque, NM 87103

Arthur R. Morales
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Albuquerque, NM 87108

Re: **Garnishment Proceedings**
Payne & Morales v. National Security Agency (Minihan et al.)
USDC No. CIV 97-266 MCA/LFG

Gentlemen and Ms. Mitchell:

This is to acknowledge receipt of the United States' request for a hearing on the writs of garnishment. In many districts, garnishment proceedings are conducted by a magistrate judge. However, in this circuit, a magistrate judge is not authorized by the Federal Magistrates Act to preside over post-judgment disputes unless the parties consent. See, e.g., Colorado Bldg. & Const. Trades Council v. B.B. Andersen Const. Co., Inc., 879 F.2d 809 (10th Cir. 1989).

Alternatively, the trial judge may designate a magistrate judge to conduct a hearing and issue a report and recommendation. See Hurst/ABC-Viacom Entertainment Services v. Goodway Marketing, Inc., 815 F. Supp. 145 (E.D. Pa. 1992).

The parties have not consented to my conducting post-judgment proceedings. Thus, unless the trial judge designates me to conduct a hearing and issue a report and recommendation, your request for a hearing should be presented to the Honorable M. Christina Armijo.

Very truly yours,



Lorenzo F. Garcia
Chief United States Magistrate Judge

LFG:clm

and Acting US attorney Gregory Fouratt on February 29, 2008 to Judge M Christina Armijo