

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

WILLIAM H. PAYNE and
ARTHUR R. MORALES,

Plaintiffs,

08 MAR 21 PM 3:29

CLERK-ALBUQUERQUE

v.

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 2

1 Docket of CIVIL NO. 97-266 MCA/LFG entry 143, section 2, contains an
DECLARATION OF GARNISHMENT DOCUMENTS SENT TO DEBTOR which incorrectly
states

I, LOIS A. AGNES, declare the following to be true and
correct:

2 Agnes' statement

3. Debtor, William H. Payne, asserts in a letter filed by
him in another case, Morales et al v. Baca. CIV 01-634 WFD
(Docket No. 76), that the package he received did not
actually include the Notice of Garnishment and Instructions
for Objecting to the Answer. Consequently, the Debtor,
William H. Payne, was re-served by certified mail, return
receipt requested, on February 13, 2008, with the complete
garnishment package which included a copy of the Notice Of
Garnishment and Instructions For Objecting To The Answer.
Copies of the letters and return receipts signed by Mr.
Payne are affixed hereto as Attachments 1 and 2.

is incorrect that for reason that claimed document was sent to
plaintiff Morales instead of plaintiff Payne.

4

AFFIDAVIT OF ARTHUR R MORALES

1 I have read the unsworn [not notarized] DECLARATION OF GARNISHMENT DOCUMENTS SENT TO DEBTOR signed by Lois A. Agnes dated February 26, 2008.

2 Ms Agnes states

3. Debtor, William H. Payne, asserts in a letter filed by him in another case, Morales et al v. Baca. CIV 01-634 WFD (Docket No. 76), that the package he received did not actually include the Notice of Garnishment and Instructions for Objecting to the Answer. Consequently, the Debtor, William H. Payne, was re-served by certified mail, return receipt requested, on February 13, 2008, with the complete garnishment package which included a copy of the Notice Of Garnishment and Instructions For Objecting To The Answer. Copies of the letters and return receipts signed by Mr. Payne are affixed hereto as Attachments 1 and 2.

3 I believe Ms Agnes' above statement concerning mailing Notice of Garnishment and Instructions for Objecting to the Answer to Mr Payne is INCORRECT for the reason that Ms Agnes mistakenly mailed them to me in this envelope.

9/24/08

AFFIDAVIT OF ARTHUR R MORALES

I was not served properly or legally with writs of garnishment as noted below.

I have no funds in either Bank of America or Wells Fargo Bank; therefore, I will only address the issues with ELFCO.

1 The NOTICE OF GARNISHMENT AND INSTRUCTIONS TO CREDITORS TO ARTHUR was addressed to William R Payne, not to Arthur R Morales.

I received no NOTICE OF GARNISHMENT AND INSTRUCTIONS TO CREDITORS TO ARTHUR addressed to me.

2 The REQUEST FOR PAYMENT was the wrong form since it was for funds from the Bank of America, not ELFCO.

3 Furthermore, all of the enclosed forms were address Arthur Morales, 13105 Calle de SanDiego NE, Albuquerque, NM 87111 which is not my address.

Yet the Department of Justice was aware of my address because the certified envelope in which these writs of garnishment were enclosed had my proper current address of 1408 Camino Augusto NE, Albuquerque, NM 87107.

4 NOTE: Because of the error committed by Forrant/Lovitz the deadlines and schedules must be restarted only after proper service.

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me this day of

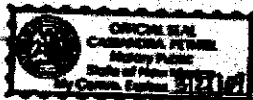
2/18/08

Arthur R Morales
Arthur R Morales

Verification

Under penalty of perjury as provided by law, the undersigned certifies pursuant to 20 USC § 1746 that material factual statements set forth in this enumeration of facts are true and correct, except as to any matters therein stated to be information and belief of such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true. Notary Public

Carolina Gethel



SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me this day of

3/11/08

Arthur R Morales
Arthur R Morales

State of New Mexico
County of Bernalillo

Signed and sworn before me on the
11 day of *March* 2008

Denise B Romero
Denise B Romero
Notary Public's Signature
My Commission Expires *2/28/09*



OFFICIAL SEAL
DENISE B. ROMERO
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires *2/28/09*

Verification

Under penalty of perjury as provided by law, the undersigned certifies pursuant to 28 USC § 1746 that material factual statements set forth in this enumeration of facts are true and correct, except as to any matters therein stated to be information and belief of such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true. Notary Public

Arthur Morales

State of New Mexico
County of Bernalillo

Signed and referred before me on this
11 day of March, 2008

Arthur Morales
Denise B. Romero
Notary Public's Signature
My Commission Expires: 2/26/10



OFFICIAL SEAL
DENISE B. ROMERO
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 2/26/10


5 Plaintiffs submit MANDATORY JUDICIAL NOTICE 1 to New Mexico federal court clerk Matthew Dykman on March 5, 2008.

7006 0150 0000 5736 0114

RECEIVED AIR MAIL

ALLEGHENY COUNTY

OFFICIAL USE

Postage	\$0.75	0112 
Certified Fee	\$2.65	
Return Receipt Fee (Enclosure Required)	\$2.15	
Restricted Delivery Fee (Enclosure Required)	\$0.00	
Total Postage & Fees	\$5.55	

Recd. No. Clerk
 Street, Apt. No. or PO Box No. 333 Comas
 City, State, ZIP+4 APQ, PA 15105

6 MANDATORY JUDICIAL NOTICE 1 is received in the clerk's office on March 7, 2008.

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the envelope, or on the front if space permits.

1. Article Addressed to:

Clerk
333 Comas
APQ, PA 15105

2. Service Type

Certified Mail Express Mail
 Registered Mail Return Receipt for Merchandise
 Insured Mail COD

3. Restricted Delivery Yes No

4. Signature Yes No

5. Date of Delivery Yes No

6. If YES, enter delivery address below: Yes No

7006 0150 0000 5736 0114

PS Form 3811, February 2004 Domestic Return Receipt 10000-0240-1000

7 MANDATORY JUDICIAL NOTICE 1 for CIVIL NO. 97-266 MCA/LFG has not been docketed as of Tuesday March 18, 2008.

This is a violation of by LOCAL CIVIL RULES, Rule 10.3(a)

10.3 Filing of Non-Conforming Papers.

(a) Acceptance of Papers. The Clerk will not refuse to file any paper because it is not in proper form.

(b) Signature. Any paper filed without signature will be stricken unless it is signed within fourteen (14) calendar days after the omission is called to the party's attention.

(c) Non-Conforming Papers. The Clerk will give to the submitting party written notice of a deficiency and deadline for correcting the deficiency. The Clerk will also provide any applicable forms and instruction sheets. Failure to remedy a deficiency or to show good cause for non-compliance within forty-five (45) calendar days from the date of notice may result in dismissal of the action without prejudice in accordance with D.N.M.LR-Civ. 41.2.

8 Thursday March 20, 2008 PACER shows

03/06/2008 144 NOTICE by William H Payne, Arthur R Morales
re service of documents 103- 135 (sl) (Entered: 03/19/2008)

with FILE STAMP March 6, 2008 which is one day before United States Post Office green card indicates MANDATORY JUDICIAL NOTICE 1 was received.

Thursday March 20, 2008 PACER transaction receipt Notice transaction receipt 03/20/2008 12:12:09 shows that MANDATORY JUDICIAL NOTICE 1 was not properly docketed with posting on PACER until March 20, 2008.

These data are evidence of violation of Rule 60(b)(3)

Relief from Judgment or Order

...

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

which voids all judgments and order in CIVIL NO. 97-266 MCA/LFG.

9 Plaintiff Morales wrote Ms Marsha Urioste, SLFCU, Chair of the Board of Directors, Wednesday March 19, 2008

My social security # in the writ, it is not mine. The court has made critical legal errors and the writ is void.

Wednesday March 19, 2008 10:00

Certified return receipt requested and email

Ms Marsha Urioste
SLFCU Chair of the Board of Directors
P.O. Box 23040
Albuquerque, NM 87192-1040

Re: Writ of Garnishment against Arthur R. Morales

This is to inform the SLFCU Board of a legal situation that may have dire consequences to your credit union.

On January 29, 2007 an SLFCU representative (Beverly Gerard) called me on my cell phone to inform me that SLFCU had frozen \$11,018 of funds from my 90-02 account where I had just transferred \$20,000 the day before on the 28th from my Fidelity Retirement Account (This can all be verified on SLFCU Account Activity.) This action was taken in a response to a writ of garnishment under court case 97-266 MCA/LPG. I asked if I could speak to someone in upper management, but she said that I needed to speak to SLFCU attorney Kevin Hammer 9266-8787. I immediately called Mr. Hammer; his secretary took my message about the writ and said he would call me back soon. To this day Mr. Hammer has not called.

Then I personally went SLFCU on Juan Tabo to get more information since I had not received my writ. I asked for Mr. Jillson but instead his assistant came to talk to me. I informed her that the funds that were held in garnishment were from my retirement account. I also informed her that my wife had tried to put some gas in her car and the ATM card did not work. She said the ATM cards were cancelled so that we could not draw down on our accounts. Most of us have been programmed with the convenience of our ATM cards. This was not right to cancel the card without advance notice. My wife could have been in jeopardy by not being able to get home and be stranded alone. She could not get groceries or her medication. She could not GET cash out of the ATM and all the SLFCU offices are far from where we now live. Needless to say my wife was shocked and outraged. I asked how we could get our cards active again. She said we would have to put the frozen funds into a completely separate account. I finally made arrangements the next day to separate the frozen funds and be able to pay as many bills and still have money for essentials.

Mr. Jillson CEO of SLFCU called me at home to offer me an overdraft protection at no charge until the issue was clarified. I thank him, but told him this would not solve the problem (I was right).

After reading the writ of garnishment instructions (SLFCU & I had copies of instructions to both of us) which reads "Under the law, there is property which is exempt from this writ of Garnishment. Property which is exempt and which is not subject to this order is listed on the attached Claim for Exemption form which is attached to the Clerk's Notice of Post-Judgment Garnishment and instruction to Debtor."

On 02/05/08, in hopes of clarifying that my declaration of exemption could be expedited, I submitted to SLFCU an affidavit swearing that the frozen funds were from my retirement account. (According to the writ the exemption instructions, that we both received, show that Statute NMSA 22-11-42 provides exemption status for retirement accounts.) Since SLFCU had the proof in their Account Activity that these indeed are from my Fidelity retirement, we could have together as a united front, presented the exempt status evidence to the courts for the decision. Hopefully they should have agreed and this mess would have been over.

Unfortunately attorney Hammer never called to talk about it, and Jillson was advised that SLFCU could not make the decision of exempt status. This would not have been making the decision but merely presenting the evidence that each one of us could and should properly present. Instead Hammer decides to submit my affidavit (without my permission) as is to the courts. The court has rejected my declaration for exemption. I am not sure why it was rejected but certainly it would have more difficult to refuse had we had made the filing to the court with a united front and the appropriate evidence.

This is not the end, for this has caused my inability to pay my commitments on time. This is ruining my wife's and my reputation, which I hold high, and dear. This has caused my family relationship to hit an all time low. This has had a serious and detrimental impact on the health and sanity of my whole family and me. We purchased a home just a few months ago and that now maybe in jeopardy.


SLFCU has now created a loan (\$ 11,454) in my name, without my permission, to keep abreast of my overdrafts. This is not helping like I suggested above. I am now getting demanded debt payments from "SLFCU SIGNATURE - LINE OF CREDIT - ADVANCE NOTICE". A new notice comes about every 3 days.

It started: 2/29/08 w/ a new loan balance of \$2,100- your payment is \$26.00 due 3/06/08

Latest: 3/06/08 w/ a new loan balance of \$4,200-your payment is \$51.00 due 3/20/08

Needless to say, I can not pay the debts that I have, never mind the additional SLFCU charges. SLFCU could have shortened this garnishment process and should have tried.

I want your help to bring this to prompt and proper conclusion. SLFCU can stop this writ now just check my social security # in the writ, it is not mine. The court has made critical legal errors and the writ is void. I demand you immediately release my \$11,018 into my account and remove all new loan commitments and charges. Your attorney should have caught this error and been more cooperative, therefore this should not be without consequences for the SLFCU actions, so consider a remedy for all the pain & suffering listed above.

Sincerely

Arthur R. Morales, NMPE
1400 Camino Amparo NW
Albuquerque NM 87107
505-32-7277

10 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

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 also 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 orders and judgments in CIVIL NO. 97-266 MCA/LFG are void as dictated by Rule 60(b)(3)(4)

Relief from Judgment or Order

...

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

11 Docket entry 142 shows magistrate judge Lorenzo Garcia scheduling a hearing on March 25, 2008, 09:00.

We did not request a hearing.

There is no need or justification for a hearing since we have enumerated and submitted errors within the writ of garnishment that voids the writ.

Therefore no hearing is needed for the following reasons:

Copied with notice of this hearing is Assistant US attorney John Zaviz and Sandia National Laboratory Credit Union lawyer Kevin Hammar.

Judge Garcia is a defendant in New Mexico 12 person jury trial lawsuit CV 2001 10278 which was fraudulently removed to federal court.

The federal case, 00 CV 1677, is void for lack subject matter jurisdiction. DEFAMATION AND HARASSMENT are not federal questions.

Assistant US attorney John Zavitz is a defendant in New Mexico 12 person jury trial lawsuit CV 2001 6293 which was fraudulently removed to federal court.

The federal case, 01 CV 1198, is void for lack subject matter jurisdiction. HARASSMENT AND PERJURY are not federal questions.

SLFCU lawyer Kevin Hammar never returned our calls which would have corroborated our funds exempt status and thereby advised FLCU not to freeze our savings accounts and notifying the court of the determined exempt status.

Hammar did not follow garnishment proceeding rules by ascertaining that our attests were exempt before freezing our savings accounts for a total of \$22,036.00.

12 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

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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. ...

13 An opportunity for a hearing before a competent and impartial tribunal on proper notice ¹⁴ is one of the essential elements of due process of law. ¹⁵

¹⁴ See 46 Am.Jur.2d Judgments § 17.

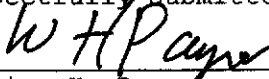
¹⁵ As to the opportunity to be heard as a requisite of due process, see 16A Am.Jur.2d, Constitutional Law §§ 839 et seq.

14 When rule providing relief from void judgments is applicable, relief is mandatory and is not discretionary. ⁴

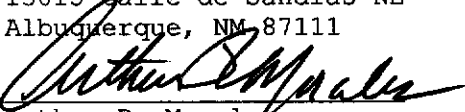
⁴ Orner v. Shalala, 30 F.3d 1307 (Colo.1994).

15 11, 12, and 13 above suggests Tuesday March 25, 2008 hearing will be a kangaroo court hearing designed to harass us and extort money from plaintiffs in violation of New Mexico criminal laws 30-16-9. Extortion and 30-3A-2. Harassment.

Respectfully submitted,



William H. Payne
13015 Galle de Sandias NE
Albuquerque, NM 87111



Arthur R. Morales
1400 Camino Amparo NW,
Albuquerque, New Mexico 87107-2608

Date: 3/20/08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing MANDATORY JUDICIAL NOTICE
2 was mailed

JOHN ZAVITZ
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103-0607
E-mail: john.zavitz@usdoj.gov