

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

WILLIAM H. PAYNE,

Plaintiff - Appellant,

V.

No. 99-2021

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION;
GILBERT CASELLAS; CHARLES BURTNER;
LARRY J. TRUJILLO; RICHARD TRUJILLO;
THOMAS J. SCHLAGETER; NICHOLAS M. INZEO;
A. JACY THURMOND; ALETHA L. BROWN;
THOMAS SPELLMAN, all individually;

DEPARTMENT OF ENERGY; WILLIAM B. RICHARDSON;
SANDRA SCHNEIDER; STEVE DILLINGHAM;
GEORGE BREZNAY; WILLIAM JAMES LEWIS, all individually;

SANDIA NATIONAL LABORATORIES; C. PAUL ROBINSON;
MICHAEL G. ROBLES; LINDA VIGIL LOPEZ; G.H. LIBMAN;
D. B. DAVIS; W.R. GEER; J.D. GIACHINO; A.M. TORNEYBY;
C.W. CHILDERS; D.S. MIYOSHI; R.A. POLONCASZ;
M.B. COURTNEY; C.A. SEARLS; R.L. EWING; R.B. CRANER;
E. DUNCKEL; J.J. MCAULIFFE; J.D. MARTIN; R. C. BONNER, all
individually;

AMERICAN TELEPHONE AND TELEGRAPH CORPORATION; LOCKHEED MARTIN
CORPORATION,

Defendants-
Appellees.

Federal

Rule of Civ. P. 60(b)(4)

MANDATORY JUDICIAL NOTICE AND AUTHORITIES TO VACATE JUDGMENTS FOR LACK
OF JURISDICTION

1 COMES NOW, Plaintiff - Appellant Payne to place this court on
mandatory judicial notice of authorities of motion to vacate judgments.

2 To be valid and enforceable, a judgment must be supported by three
elements:

- (1) the court must have jurisdiction of the parties;
 - (2) the court must have jurisdiction of the subject matter;
- and
- (3) the court or tribunal must have the power of authority
to render the particular judgment.

If the requirements for validity are not met, a judgment may be subject to avoidance.¹

3 Any judgment rendered by a court which lacks jurisdiction, either of the subject matter of the parties, or lacks inherent power to enter the particular judgment, or entered an Order which violated due process or was procured through extrinsic or collateral fraud, 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.²

4 Such a judgment is void from its inception, incapable of confirmation or ratification, and can never have any legal effect.³

5 A void judgment must be dismissed, regardless of timeliness if jurisdiction is deficient.⁵

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

7 The passage of time, however great, does not affect the validity of a judgment⁶ and cannot render a void judgment valid.⁷

8 The limitations inherent in the requirements of due process of law extend to judicial, as well as political, branches of the government,⁸ so that a judgment may not be rendered in violation of those constitutional limitations and guaranties.⁹

9 A court may not render a judgment which transcends the limits of its authority,¹⁰ 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.¹¹

10 A void judgment may be cured Mandamus.¹²

11 Res judicata does not apply to a void judgment motion.¹³

12 An opportunity for a hearing before a competent and impartial tribunal on proper notice¹⁴ is one of the essential elements of due process of law.¹⁵

13 A judgment is irregular where its rendition is contrary to the course and practice of the courts;¹⁶ 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.¹⁷

14 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.¹⁸

15 A judgment is void when the court lacks jurisdiction of the parties or of the subject matter,¹⁹ lacks the inherent power to make or enter the particular order involved,²⁰ or acts in a manner inconsistent with due process of law.²¹

16 The judgment of a court without hearing or giving a party an opportunity to be heard is not a judicial determination of its rights,²² and is not entitled to respect in any other tribunal.²³

1 See *Peduto v. North Wildwood* (DC NJ) 696 F Supp 1004, *aff'd* (CA3 NJ) 878 F.2d 725; *In re Doe* (NM App) 99 NM 517, 660 P.2d 607; *Tice v. Nationwide Life Ins. Co.*, 284 Pa Super 220, 425 A.2d 782.

2 See U.S.Const.Amdt. V; F.R.Civ.P. 60(b)(4); CR 60(b)(5); Federal cases: *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985); *Rubin v. Johns*, 109 F.R.D. 174 (D.Virg.Is.1985); *Triad Energy Corp. v. McNell*, 110 F.R.D. 382 (S.D.N.Y. 1986); *Millikan v. Meyer*, 311 US 457, 61 S.Ct. 339, 85 L.Ed.2d 278 (1940); *Long v. Shorebank Development Corp.*, 182 F.3d 548 (CA7 1999).

3 See *Stidham v. Whelchel*, 698 NE2d 1152 (Ind.1998); *Thompson v. Thompson*, 238 SW2d 218 (Tex.Civ.App. 1951); *Lucas v. Estate of Stavos*, 609 NE2d 1114, *reh'g.den.*, *trans.den.* (Ind.App.Dist.1 1993); *Loyd v. Director, Dept. of Public Safety*, 480 So2d 577 (Ala.Civ.App.1985); *In re Marriage of Parks*, 630 NE2d 509 (Ill.App.Dist.4 1991); *Lubben v. Selective Service System Local Bd. No.27*, 453 F.2d 645, 14 A.L.R.Fed. 298 (CA1 1972); *Hobbs v. U.S. Office of Personnel Mgmt.*, 485 F.Supp. 456 (M.D.Fla.1980); *Holstein v. City of Chicago*, 803 F.Supp. 205, *recon.den.*, 149 F.R.D. 147, *aff'd*, 29 F.3d 1145 (N.D.Ill.1992); *City of Los Angeles v. Morgan*, 234 P2d 319 (Cal.App.Dist.2 1951).

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

5 See *Asher v. Van Brunt*, 158 F.R.D. 278 (S.D.N.Y.1994).

6 See *State ex rel. Smith v. Sixth Judicial Dist. Court*, 63 Nev 249, 167 P.2d 648 (*ovrld* in part on other grounds by *Poirier v. Board of Dental Examiners*, 81 Nev 384, 404 P.2d 1); *Monroe v. Niven*, 221 NC 362, 20 S.E.2d 311.

7 See *State ex rel. Smith v. Sixth Judicial Dist. Court*, 63 Nev 249, 167 P.2d 648 (*ovrld* in part on other grounds by *Poirier v. Board of Dental Examiners*, 81 Nev 384, 404 P.2d 1); *Columbus County v. Thompson*, 249 NC 607, 107 S.E.2d 302.

8 As to persons and agencies bound by due process, see 16A Am.Jur.2d, Constitutional Law §§ 742, 821-824.

9 See *Hanson v. Denckla*, 357 US 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228, *reh den* 358 US 858, 3 L.Ed.2d 92, 79 S.Ct. 10; *Ladner v. Siegel*, 298 Pa 487, 148 A 699, 68 ALR 1172.

10 See *Royal Indem. Co. v. Mayor, etc., of Savannah*, 209 Ga 383, 73 S.E.2d 205; *Spencer v. Franks*, 173 Md 73, 195 A 306, 114 ALR 263; *Road Material & Equipment Co. v. McGowan*, 229 Miss 611, 91 So.2d 554, *motion dismd* 229 Miss 630, 92 So.2d 245; *Howle v. Twin States Express, Inc.*, 237 NC 667, 75 S.E.2d 732; *Fitzsimmons v. Oklahoma City*, 192 Okla 248, 135 P.2d 340; *Robertson v. Commonwealth*, 181 Va 520, 25 S.E.2d 352, 146 ALR 966; *Reburg v. Lang*, 239 Wis 381, 1 N.W.2d 759. The courts of a state may render only such judgments as they are authorized to do under the laws of the state. *Mosely v. Empire Gas & Fuel Co.*, 313 Mo 225, 281 SW 762, 45 ALR 1223.

11 See People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo 486, 212 P. 837, 30 ALR 1085; People v. Wade, 116 Ill 2d 1, 107 Ill Dec 63, 506 N.E.2d 954; Gray v. Clement, 296 Mo 497, 246 SW 940; Ex parte Solberg, 52 ND 518, 203 NW 898; Russell v. Fourth Nat'l Bank (Ohio) 102 Ohio St 248, 131 NE 726; Hough v. Hough (Okla) 772 P.2d 920; Farmers' Nat'l Bank v. Daggett (Tex Com App) 2 S.W.2d 834; State v. Turner, 98 Wash.2d 731, 658 P.2d 658; Shopper Advertiser, Inc. v. Wisconsin Dep't of Revenue, 117 Wis 2d 223, 344 N.W.2d 115.

12 See Sanchez v. Hester, 911 SW2d 173 (Tex.App.1995).

13 See Allcock v. Allcock, 437 NE2d 392 (Ill.App.Dist.3 1982).

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.

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

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

18 See McLellan v. Automobile Ins. Co. (CA9 Ariz) 80 F.2d 344; State ex rel. Yohe v. District Court, 33 Wyo 281, 238 P. 545.

19 See 46 Am.Jur.2d Judgments §§ 26, 27.

20 See 46 Am.Jur.2d Judgments § 25.

21 See 46 Am.Jur.2d Judgments §§ 17, 18.

22 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.

23 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.

Respectfully submitted,

W H Payne

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing MOTION TO VACATE JUDGMENTS FOR LACK OF JURISDICTION was mailed certified return receipt requested to:

Joan M. Hart
NM Public Defender's Office
200 Third St, NW #740
Albuquerque, NM 87102
(505) 841-6989

Phyllis A. Dow
United States Attorney's Office Civil
P.O. Box 607
Albuquerque, NM 87103
(505) 346-7274
Email: phyllis.dow@usdoj.gov

Susan E Murphy
EEOC Legal Counsel Office
1801 L Street, NW
Washington, DC 20507
(202) 663-4669

Jake J. Chavez
US Department of Energy
National Nuclear Security Admin
PO Box 5400
Albuquerque, NM 87185-5400
(505) 845-5216

Carol Lisa Smith
Bannerman & Williams, P.A.
2201 San Pedro NE Building 2, Suite 207
Albuquerque, NM 87110
505-837-1900
Email: cls@nmcounsel.com

John A. Bannerman
2201 San Pedro, N.E. Bldg. 2 Suite 207
Albuquerque, NM 87110
(505) 837-1900
Email: jab@nmcounsel.com

W H Payne
Signed
9/11/07
Date