

**District Court, Archuleta County, Colorado
449 San Juan St., Pagosa Springs, Colorado 81147**

Dave Brackhahn, Wayne Bryant, Greg Giehl,
Cole Graham, Dean Greenamyre, Bill Gottschalk,
Sue Gottschalk, Stephen Keno, Tom Kramer,
Jeffrey Maehr, Sharon Parker, Dennis Spencer,
John and Jane Does, 1-600, representing most
signatories on ballot initiatives;

Plaintiffs

v.

Archuleta County Board of County
Commissioner Clifford Lucero,
Commissioner Steve Wadley,
Commissioner Michael Whiting,
County Attorney Todd Starr;

Defendants

▲ COURT USE ONLY

Case No. 16-CV-4

MOTION TO VACATE VOID JUDGMENTS

Plaintiffs come before this court with this Motion to Vacate a Void Judge by the court dated October 17th, 2017, for cause. Unrefuted evidence was presented by plaintiffs throughout this case, which has now risen to the Federal Court level due to civil right and due process violations under 18 and 42 U.S.C., as well as collusion, subversion of the Colorado constitution and statutes, Grand Jury tampering, and other to-be-named charges.

1. Plaintiffs provided evidence of fraud on the court in the above captioned case, which was set for an evidentiary hearing, but was then dismissed outright with no hearing and no due process of law. It is well settled law that a violation of due process is a *fraud on the court* which vitiates the entire proceeding and judgment in any court in America;

“It is also clear and well-settled Illinois law that any attempt to commit ‘fraud upon the

court' vitiates the entire proceeding." *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229. (1934). ("The maxim that fraud vitiates every transaction into which it enters applies to judgments..."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929). ("...fraud vitiates every transaction into which it enters ..."); In re *Village of Willowbrook*, 37 Ill.App.2d 393 (1962). "It is axiomatic that fraud vitiates everything." *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896). 37 Am Jur 2d, Section 8, states, "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."

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated;

"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted." (Emphasis added.)

"*Fraud upon the court*" has been defined by the 7th Circuit Court of Appeals to...

"embrace that species of fraud which does, or attempts to, defile the court itself, or is a **fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.**" *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. (Emphasis added.)

The 7th Circuit further stated... "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

No time limit applies to a motion under the Rule 60(b)(4) because a void judgment can never acquire validity through *laches*. See *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911,83 S.Ct. 1300, 10 L.Ed.2d 412 (1963) where the court vacated a judgment as void 30 years after entry. See also *Marquette Corp. v. Priester*, 234 F.Supp. 799

(E.D.S.C.1964) where the court expressly held that clause Rule 60(b)(4) carries no real time limit.

Judge Wilson failed to address plaintiff's Rule 60 Motion, and thereby failed to apply statutes to court proceedings, and the October 17th, 2017 ruling was void from its inception.

2. Plaintiffs have been deprived of *due process of law*⁽¹⁾ through not having their evidence responded to by the defendants, and the failure of Judge Wilson to address the evidence, or provide proper *Findings of Fact and Conclusions of Law*⁽²⁾ on the record is clearly a fraud upon the court's lawful functions, and proves a bias by Judge Wilson against pro se plaintiffs and the rule of law.

¹ The following elements are indispensable by law and evidence for due process of law:

1. When challenged, standing, venue and all elements of subject matter jurisdiction, including compliance with substantive and **procedural due process requirements**, must be established in record; 2. Facts of the case must be established in record; 3. Unless stipulated by agreement, facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination); 4. The law of the case must affirmatively appear in record... (See *United States of America v. Menk*, 260 F. Supp. 784 at 787 and *United States of America v. Community TV, Inc.*, 327 F.2d 79 (10th Cir., 1964)); 5. The advocate of a position must prove application of law to stipulated or otherwise provable facts; and 6. The trial court or decision-maker, whether administrative or judicial, **must render a written decision that includes findings of fact and conclusions of law**. The exception to this requirement is the decision of juries in common law courts. (Emphasis added).

"Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting, by proof every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law and in fact is a VIOLATION of due process.**" [Black's Law Dictionary, Sixth Edition.] (Emphasis added).

See also *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v. Goldblatt Bros.*, 363 Ill.2d 25 (1936);

² FRCPA Rule 52. Findings and Conclusions by the Court; (a) Findings and Conclusions. (1) In General. In an action tried on the facts without a jury or with an advisory jury, **the court must find the facts specially and state its conclusions of law** separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58. "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission V. South Carolina State Ports Authority et al.* certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). See also *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

The Supreme Court has ruled and has reaffirmed the principle that “justice must satisfy the appearance of justice;” *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11,13 (1954).

Fraud includes the suppression of the truth, as well as the presentation of false information (In re *Witt* (1191) 145 Ill.2d 380, 583 N.E. 2d 526, 531, 164 Ill. Dec. 610). See also In re *Frederick Edward Strufe*, *Disciplinary case no. 93 SH 100*, where the Court stated that fraud has been broadly defined as anything calculated to deceive. It should be noted that the definition of fraud applies to everything an attorney may be engaged in, whether in court, or in his office.

It is well established in law that any attempt by an attorney, to deceive is considered fraud, and when the attempt to deceive occurs in a judicial proceeding, it is “fraud upon the Court.” Please see Rules of Professional Conduct, Rule 8.4.

3. Judge Wilson failed to recuse himself when fraud and bias, and denial of due process were evident and pointed out, depriving him of jurisdiction on the issues, and rendering his rulings void. Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality.

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Balistreri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

The *Balistreri* Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989). In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that... "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of

the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggests that he is then engaging in criminal acts of treason.

“Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances.” *Taylor v. O’Grady*, 888 F.2d 1189 (7th Cir. 1989).

Federal law and Supreme Court cases apply to state court cases.”]- [*Howlett v. Rose*, 496 U.S. 356 (1990)]. State courts applying federal law are bound by decisions of the U.S. Supreme Court. [*Elliott v. Albright*, 209 Cal. App. 3d 1028, 1034 (1989).] [“The United States Supreme Court has also noted the inherent power of courts to vacate judgments on basis of fraud upon the court”]. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).]

Thus, a “fraud on the court” is a fraud designed not simply to cheat an opposing litigant, but to “corrupt the judicial process” or “subvert the integrity of the court.” *Oxford Clothes XX, Inc. v. Expeditors Int’l, Inc.*, 127 F.3d 574, 578 (7th Cir. 1997); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995) (citation omitted); *Transaero, Inc. v. La Fuerza Area Boliviana*, 24 F.3d 457, 460 (2d Cir. 1994).

Fraud on the court is marked by an “unconscionable plan or scheme which is designed to improperly influence the court in its decisions,” *Dixon v. Commissioner, No. 00-70858*, 2003 U.S. App. LEXIS 4831, at *11–12 (9th Cir. Mar. 18, 2003), amending 316 F.3d 1041 (9th Cir. 2003), or by “egregious misconduct directed to the court itself.” *Greiner v. City of Champlin*, 152 F.3d 787, 789 (8th Cir. 1998) (citation omitted).

4. It has come to plaintiff’s attention that Judge Wilson, in Order awarding attorney fees dated October 17, 2017, first, to a nonexistent party to this case, namely “Archuleta County,” is prima facie evidence of felony fraud upon the court, and, second, doing so outside lawful due process

and jurisdiction, has presented evidence of engaging in extortion against plaintiffs, and possibly the interference with interstate commerce, and is showing a clear contempt of court throughout this case.

Wherefore, plaintiffs move Judge Wilson to vacate all orders against pro se plaintiffs from the date of the Summary Judgment dated March 14, 2017, up to and including the October 17th, 2017 Order regarding attorney fees, as a matter of law and due process under Rule 60(b)(4).

Submitted,

Greg Giehl, for all Plaintiffs

CERTIFICATE OF SERVICE

I, Greg Giehl, hereby certify that on _____, I served a copy of the Plaintiffs Motion to Vacate a Void Judgment to the below named Counsel and Defendant by United States Postal Mail.

Todd Starr, P.O. Box 1507, Pagosa Springs, CO 81147

Date

Signature