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# UNITED STATES DISTRICT COURT
# FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

James W Burbank

*Plaintiff*

Vs.

Uintah County Defendants'

*Non-Jointed Defendants'*

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Uintah County Defendants, *et al.*

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*Common Law Recognized* Tribe of Wampanoag Nation, Tribe of Grayhead, Wolf Band, a Non-*Federally Recognized* Indian Tribe, *et al.*

*Counter Defendants Pro se*

VOID JUDGEMENTS
DOCKETS 162 & 163

Case No. 2:04-CV-00742 JEC

Magistrate Judge Robert H. Scott, ***Standing non-recuse.***
Magistrate Judge Karen B. Molzen, ***Standing non-recuse.***

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Sr. Judge John E Conway, ***Entry / Recusal.***
Magistrate Judge Richard L. Puglisi, ***Entry / Recusal.***

**NOTICE :**

Federal Rule of Civil Procedure, Rule 60 provides that relief from void judgment is **not discretionary but is mandatory.** See *Orner v. Shalala,* c.a.10 (Colo.) 1994, 30 F.2d 1307,. as a referencing to *Case Law* proved as a further enforceable reasons for *Void Judgements* of *Dockets'* 162, 163 and 164, ***Id.*** Pursuant to, Rule 28A(i) expands the judicial power beyond the limits set by article III by allowing us complete discretion to determine which judicial decisions will bind us and which will not. Insofar as it limits the precedential effect of our prior decisions, the Rule(Rule 28A(i)) is therefore **unconstitutional**. *Anastasoff*
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*v. United States of America* 223 F.3d 898 (8th Cir. 2000)."

**ARGUMENT :**

*Docket* 162 judgement in connection with Docket 82 Curtis Richmond. This ruling is not proper subject matter, it contains points from matters that pertain to Mr. Burbank's portion of the case, and not with anything that Mr Richmond should be involved with. For he, Mr Curtis Richmond is not a member of the Indian Tribe.

*Docket* 162 : The State of Utah is not relevant to any thing here within let alone as [a] litigant, it is not the State of Utah that is being encompassed in this Case No. 2:04-CV-00742 JEC, the parties under suit are the ***Employees'*** under 42 U.S.C. Sec. 1983, that authorizes suits against state officials only.

Therefore, under prior & past *Case Law*, with respect to 1938, and presented here, and still standing not over turned. " Most of the time State officials are immune from suit, how ever there is a most significant exception to this rule. *In re, Ex parte Young,* 209 U.S. 123 (1908), the Supreme Court held that the Eleventh Amendment does not prevent a federal court from issuing injunctive relief against a state official to halt a continuing violation of federal law. The reason why the Eleventh Amendment does not bar such relief, the Court said, "is that federal law is supreme, and no state can ever authorize its employees to violate federal law. Thereby a lawsuit alleging that a state employee is violating federal law cannot possibly be a suit against a state, because a state could never have authorized that conduct." *Ex parte Young,* 209 U.S. 123, 160 (1908) ; see also see also *Pennhurst State School Hosp. vs Halderman,* 465 U.S. 89, 102-3 (1984) ; *Agua Caliente Band of Cahuilla Indians vs. Harding,* 223 F. 3d 1014, 1045 (9th Cir. 2000), *cert. Denied* , 121 S.Ct. 1485 (2001); *ANR Pipeline Co. vs. LaFever,* 150 F.3d 1178, 1188 (10th Cir. 1998).

Therefore, a wide range of federal violations can be remedied in federal court by suing the state official(s) engaging in these activities. *Idaho vs. Couer d'Alene,* 521 U.S. 261 at 281 & note 95 (1997) ; *Washington vs. Washington State Commercial Passenge Fishing Vessel Ass'n,* 443 U.S. 658, 695-96 (1997). See also *Rond Du Lac Band of Chippewa Indians vs, Carlson,* 68 F.3d 253 (8th Cir. 1995), under federal law a state official(s) can be sued 42 U.S.C. Sec.1983, *E. F. W. vs St. Stehen's Mission Indian School,*264 F.3d 1297 (10th Cir. 2001); *Williams vs Board of County Comm'rs.,*963 P.2d 522, 526 (N.M. Ct. App. 1998); *McKinney vs State of Oklahoma,* 925 F.2d 363, 365 (10th Cir. 1991); *Jicarilla Apache Tribe vs Andrus,* 687 F.2d 1324 (10th Cir. 1982).

Therefore, the State of Utah's objection is problematically, it does not pertain

to, or address any party, or parties, or other party(s) that are on the record under suit, **again the State of Utah is not under suit**. This is with respect to Utah's concerns over and with *Dockets* 162 & 163.

Therefore, *Docket* 51 sited as Utah's dismissal, is without any *Legal Grounds* to obtain a ruling on or from, ***Id.*** This with other *Case Law* is why *Docket* 162 is considered as a ***Void Judgement*** it has no grounds and address nothing, and again is not backed with any *Legal Evidence* of a non-Attorney substance to gain a ruling on, and/or from under Corp. U.S. *Law*, ***Id.***

Now, and because the State of Utah, and the *Uintah County non-jointed Defendants* are not parties to this action, only the ***Employees*** have been listed as parties, and this is on the record before the Courts', as such, [a] ruling can not be given to a *non-party ever*, ***Id.*** The old saying "see no evil, hear no evil, and speak no evil" is the problem with the *non-pro se's* of this Case No. 2:04-CV-00742 JEC, its being said on the record but no one is seeing, hearing, and saying, what's being presented on the record. Therefore, *Docket Entries styled as Dockets 146 and 147*,with its over laying matters to *Docket* 162, are still a matter of record, being still as a ***Standing Docket(s) Entire's, Id.,*** and *Docket* 162 & 162 are by *Law* a **Void, *Id.,*** or this will be an added Trespass of *Law* and failure of *Proper Procedure*.

*Docket* 162 is **Void** as a judgment on grounds it was entered with false information, *just that simple*. See Document 2,

*Docket* 163 is a false finding by the Courts', the State of Utah is not the party of complaint, the State of Utah was never the proper subject of suit. Thereby, these Courts' have not made [the] improper ruling in this *Docket* 163, failure has occurred to list the true parties under suit. Federal Rule of Civil Procedure, Rule 60 provides that relief from void judgment is **not discretionary but is mandatory**. See *Omer v. Shalala, c.a.10 (Colo.) 1994, 30 F.2d 1307.* January 11, 2002, Timely motion to disqualify a United States District Court Judge is non-discretionary when supported by affidavit – See 28 USC § 144.

1. Party NOT UNDER SUIT IS THE STATE OF UTAH, and never was.

2. Parties under suit are the Employees' under 42 U.S.C. Sec. 1983 that authorizes suits against state officials in *E.F.W. vs. St. Stephen's Mission Indian School,* 264 F.3d 1297 (10th Cir. 2001) ; *Williams vs. Board of County Comm'rs.* 963 P.2d 522 (N.M.Ct. App. 1998) ; *McKinney vs. State of Oklahoma,* 925 F.2d 363, 365 (10th Cir. 1991) ;*Jicarilla Apache Tribe vs. Andrus,* 687 F.2d 1324 (10th Cir. 1982).

3. The parties are in their person only, that is the true and total intent that has been voiced and voiced repentantly through out this Case No. 2:04-CV-00742 JEC, it is a matter of record in the transcripts, and thereby can not be denied by any of the actors', and/or the Courts'.

4.*** As a matter of and on the record, the Courts' allowed the firm of SUITTER AXLAND to fill an *"Amended Filling"* without asking the Courts' permission in the beginning of this Case No. 2:04-CV-00742 JEC, see *Docket* 12 of 12 / 3 / 2004 as "*Uintah County Defendants' First Amended Counterclaim."* Thereby, this is a matter of showing favoritism to one party, and thereby restricting the same *RIGHT* to another party in the same Case, right !, *See Docket 1 styled as Amended Docket 146, and Docket 36 styled as Amended Docket 147 that were rejected.* The Evidence suggests that this is an example of Discrimination being demonstrated here in this Ruling of *Docket* 163, that of total *Discrimination*. Therefore, *Docket Entries styled as Dockets 146 and 147* are very much a live as *Legal Entries*.

5. Therefore, Docket 163 Ruling is by *Legal Law* **void on it face,** with no power of *Enforcement* at all, *see* Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties, *Wahl v. Round Valley Bank* 38 Ariz. 411, 300 P. 955 (1931); *Tube City Mining & Milling Co. v. Otterson,* 16 Ariz. 305, 146 P. 203 (1914); and *Milliken v. Meyer,* 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940), the key here is the Courts' have not used the facts on the record to properly make identification of the intended party(s) of suit, the Courts' have only made identification of a non-party not under suit, *see* A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court, *Long v. Shorebank Development Corp.,* 182 F.3d 548 ( C.A. 7 Ill. 1999), therefore, as being properly before the Courts' now, and within the past of this Case No. 2:04-CV-00742 JEC, this Ruling as *Docket* 163 is *Legally lacking jurisdiction*, and is a order *procured by fraud*, and is being *attacked directly and collaterally* over its failure to give *Equal Standing* to all parties to present *"Amended Filling"* same as other party(s).

6. Support for *Dockets* 162 & 163 forward, *U.S. Corp. Case Laws.* A void judgment is one which, from its inception, was a complete nullity and without legal effect, *Lubben v. Selevtive Service System Local Bd. No. 27,* 453 F.2d 645, 14

A.L.R. Fed. 298 (C.A. 1 Mass. 1972). A void judgment is one which from the beginning was complete nullity and without any legal effect, *Hobbs v. U.S. Office of Personnel Management,* 485 F.Supp. 456 (M.D. Fla. 1980). Void judgment is one that, from its inception, is complete nullity and without legal effect, *Holstein v. City of Chicago,* 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill 1992), Case No. 2:04-CV-00742 JEC, this Ruling as *Docket* 163 is *without anyLegal Effect* because of it's failures to use the proper subject matter, and *Equal Rights* for all parties.

7. Therefore, there was a total loss of personal subject matter jurisdiction. Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process, U.S.C.A. Const. Amend. 5 – ***Triad Energy Corp. v. McNell*** 110 F.R.D. 382 (S.D.N.Y.1986). U.S.C.A. Const. Amend. 5 – *Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 – *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). A void judgment is one which, from its inception, was, was a complete nullity and without legal effect, *Rubin v. Johns,* 109 F.R.D. 174 (D. Virgin Islands 1985), the matters in the above Case Law is the subject these Courts' have transgressed, and withheld from the other parties of this Case No. 2:04-CV-00742 JEC, whereby, notice was given of *pro se's* U.S.C.A. Constitutional Right are not being observed by the Courts'. *See also* Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 – *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). A void judgment is one which, from its inception, was, was a complete nullity and without legal effect. *Rubin v. Johns,* 109 F.R.D. 174 (D. Virgin Islands 1985).

**CONCLUSION .**

The clear face of the Law shows that the Rulings made by Sr. Judge John E Conway known as Docket 162 & 163 of Case No. 2:04-CV-00742 JEC is totally **Void on Face,** over Legal Defects, and showing of Discrimination towards pro se party(s). Further, this same shows in all other rulings towards pro se's in this case. Whereby, Magistrate Judge Richard L. Puglisi, Magistrate Judge Robert H. Scott, and Magistrate Judge Karen B. Molzen have made no notice to the

contrary over these *Legal Defects*, thereby these Courts' are party to the *Defects*.
However, this can be repaired by, **"DISMISSAL FOR FAILURE TO PROSECUTE IN A TIMELY MANNER and JUDGEMENT IN OUR FAVOR ENTERED AND WITH PREJUDICE"** to all terms and conditions set forth in these Motions / Memorandums / Documents, to the members of the Wampanoag Nation, Mr James W. Burbank, I, Martin T Campbell / Officer Spirit Walker. *Being* all parties are *One Year Nine Months over due presenting* ***Discovery.***

James W. Burbank Dated 11-28, 2007
Mr James W Burbank

Date 11/28, 2007.
Martin T. Campbell / Officer Spirit Walker of the Non-federally Recognized Indian Tribe, however under *law*, a *Common Law Recognized Indian Tribe*. *See* ***MONTOYA VS United States*** (1901), 180 U.S. 261, 266, 21 S.Ct. 358, 359, 45 L.Ed. 521; No. 01-883, Supreme Court of The State of Montana, 2003 MT 121, CDV- 10-132 [*Common Law* Authorities ]; 25 U S C Secs. 450, 461, 1301-1302. I. R. A. (Indian Recognition Act) & Tribal Self-Determination Act (2002).