

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

RICHARD L. WHITE,

08 APR 11 AM 11:23

CIV - 08 - 0381 WJ ACT

Petitioner,

Federal Court No. _____
District Court Numbers
DM 2001-2753, Related to
DV 01-907 and DV 02-074

vs.

TERRI WHITE,

Respondent/Movant,

**NOTICE OF REMOVAL OF ACTION BY RESPONDENT PURSUANT TO 28 U.S.C.
SECTION 1331, FOR THE PRESENCE OF QUESTIONS PERTAINING TO
FUNDAMENTAL RIGHTS AND FEDERAL MANDATES VERSUS STATE PRACTICES**

COMES NOW, Movant, Terri White *Pro se*, remove the cause No. DM 2001-2753, related to DV 2001-907 and DV 2002-074 of the Second Judicial District Court, County of Bernalillo, State of New Mexico; Court of Appeals No. 28,046, 28,047 and 28,273, to remove this case in order to answer the following **FEDERAL QUESTIONS** which the state has ignored in the instant case.

1. **Is the judiciary of New Mexico obligated to support the Constitution of the United States of America as the supreme law of the land?**

For her petition, Terri White states that the Second Judicial District Court, New Mexico Court of Appeals and the Supreme Court have and are proceeding arbitrarily, capriciously, maliciously and so deficient in procedural and evidentiary policy that the process can hardly be

called "judicial." The courts' actions or lack thereof have destroyed her fundamental rights without Constitutional or statutory authority; by denying due process of law and equal protection of the law, they have acted against or ignored the interest of the parties' minor children. Further, the New Mexico Court of Appeals and Supreme Court did not offer a proper remedy or timely relief, in spite of existing precedent which they do not extend to the instant case, thereby making it necessary and proper for Movant to seek a removal to the Federal Court in the state of New Mexico.

As noted by Alexander Hamilton in **Federalist No. 78**, "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them . . ."

As has been observed by Chief Justice Burger, "when litigation processes are not tightly controlled - and often they are not - they can be and are used as mechanisms of extortion. Ultimate vindication on the merits does not repair the damage." **Nixon v. Fitzgerald**, 457 U.S. 731, 763 (1981).

2. Is Article Six of the aforesaid Constitution binding on the State executive, legislative and judicial departments of New Mexico?

The prohibitions of the Fourteenth Amendment extend to all action of a state denying equal protection of the laws, whatever the agency of the state taking the action or whatever the guise in which is taken. **Cooper v. Aaron**, 358 US 1, 78 S Ct 1401, 3 L Ed 2d 5. The command of the Fourteenth Amendment that no "State" shall deny to any person within its jurisdiction the equal protection of the laws means that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws; a state acts by its legislative, its executive, or its judicial authorities and is unable to act in any other way.

“Due process forbids any exercise of judicial power which, but for the constitutional infirmity, would substantially affect a person’s rights.” **Griffin v. Griffin**, 327 U. S. 220, 66 S. Ct. 556, 560, 90 L. Ed.2d 635 (1946).

3. If so, does federal law regarding the implementation of child support binding on the judicial, legislative and executive departments of New Mexico?

Movant is aware that the state has different practices throughout its districts which are not uniform. Movant alleges that this condition is a violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Because **42 U.S.C. 654** mandates that, “A State plan for child and spousal support must (1) provide that it shall be in effect in all political subdivisions of the State . . .” the state finds itself in a dilemma which appears as a fraud upon the United States citizenry who foot the bill for the child support program.

See **NMSA 40-4B-4**: “Child support hearing officers shall devote full time to their duties under the **Child Support Hearing Officer Act . . .**” And also **NMSA 40-4B-5**: “The presiding judge or his designee shall refer only matters concerning the establishment and enforcement of support obligations to a child support hearing officer . . .”

The legislative intent of the role played by the Child Support hearing is

limited by **NMSA 40-4B-6(C)**: “The child support hearing officer shall have the power to preserve and enforce order during hearings; administer oaths; issue subpoenas to compel the attendance and testimony of witnesses, the production of books, papers, documents and other evidence or the taking of depositions before a designated individual competent to administer oaths; examine witnesses; and do all things conformable to law which may be necessary to enable him to discharge the duties of his office effectively.”

Furthermore the role is limited by **NMSA 40-4A-5**: “Actions covered under the **Child Support Hearing Officer Act [40-4B-1 to 40-4B-10 NMSA 1978]** include but are not limited to petitions to establish support obligations, petitions to enforce court orders establishing support obligations, petitions to recover unpaid child support arrearages and post-judgment interest, actions pursuant to the Support Enforcement Act [40-4A-1 NMSA 1978], actions brought to modify existing support obligations, actions to establish parentage and actions under the **Revised Uniform Reciprocal Enforcement of Support Act [Uniform Interstate Family Support Act, Chapter 40, Article 6A NMSA 1978]**; provided the Child Support Hearing Officer Act does not apply to proceedings for the establishment of custody. The presiding judge or his designee shall refer only matters concerning the establishment and enforcement of support obligations to a child support hearing officer . . .”

Movant would further refer this court to **42 U.S.C. 652, et seq. and the**

Uniform Interstate Family Support Act 2001, to which the above cited Statutes refer and are adopted from.

If the statutes are controlling, the court did not have the authority to appoint a child support of hearing officer as a special master, not to mention a domestic relations hearing officer. "Under our Constitution, no court, state or federal, may serve as an accomplice in the willful transgression "the Laws of the United States," laws by which "the Judges in every State [are] bound. . . ." **U.S. v. Peltier**, 422 U.S. 531, 537, 95 S.Ct. 2313, 2317 (1975).

The creation of a rule by the judiciary which serves to circumvent the legislative intent is an event that has upended the separation of powers inherent in the Constitution of New Mexico. If this court maintains that the rule combing the roles of child support hearing officer with those of a special master, then this court is advocating that the statutes are meaningless, and the notion of popular sovereignty as mandated by the state constitution is undermined in favor of an elite ruling class which enjoys monarchical, if not authoritarian, power. See **New Mexico Constitution, Article II Section 2**: "All political power is vested in and derived from the people, all government of right originates with the people, is founded upon their will and is instituted solely for their good," and **Section 3**: "The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state." In addition, "The accumulation of all

powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.... In order to form correct ideas on this important subject it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.” *The Federalist Papers, No. 47*, James Madison.

The principle of popular sovereignty limits the prerogative of government to assume powers not granted by the people in order to preserve the best and most possible individual rights and liberties for each citizen spelled out in the Declaration of Independence, the signing of which is celebrated by government employees at taxpayer expense.

Where the state is not in compliance with the federal regulations because of judicial constructions that circumvent or undermine the legislative intentions of the act, a new question arises as to the legitimacy of the state’s participation in the federal program. Because federal regulations cannot infringe upon the Constitutional rights of United States citizens, it can be presumed that those rights are protected under the federal mandates. If the state is going to make rules or practice procedures, which deny those rights, then the state actions become void, and this issue prevails over any other under consideration. And where the Constitution of the state

Is subverted through similar means, the people have no duty to perform unless under threat or coercion by further illegitimate means in order to protect their very lives. "A judgment is void only if the court rendering it 'lacked jurisdiction of the subject matter, or of the parties, *or acted in a manner inconsistent with due process of law.*'" (Citations omitted). **Classen v. Classen**, 119 N. M. 582, 585 (App. 1995), 893 P.2d 478. See also **Nesbit v. City of Albuquerque**, 91 N. M. 455, 459 (1977), 575 P. 2d 1340: "The 1976 district court found as a matter of law that the failure to give the notice required by statute rendered all subsequent acts void...By failing to follow statutory procedures, due process of law was violated and no subsequent act could correct the defect."

On June 6, 2005, the United States Supreme Court ruled that "'The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. . .,'" in **Gonzales v. Raich**, No. 03-1454. See **United States v. Colorado Supreme Court**, No. 98-1081, 10th USCA, where the court upheld that "[T]he rule violated the Supremacy Clause by attempting to regulate an area federal law controlled. Dismissing the need to characterize the rule as either procedural or ethical, the court stated, 'For purposes of determining whether [the rule] violates the Supremacy clause, it matters not at all what the Board or Baylson choose to call it. What matters is whether the substance of [the rule] actually conflicts or is incompatible with

federal law.' The rule "does not suddenly become consistent with Fed. R. CIM. P. 17 as a state rule of professional conduct." The court held that the rule's judicial approval requirement violated the Supremacy Clause because it was incompatible with the federal rules of criminal procedure." In the same manner, NMRA 53.2 conflicts with the federal and state statutory plan. See also **Stoneking v. Bank of America**, 132 N.M. 79, 43 P.3d 1089, "Under Article VI of the Constitution, the laws of the United States "shall be the supreme Law of the Land . . . any Thing In the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. The Supremacy Clause prohibits the application of state laws which conflict with federal laws. **Home Mortgage Bank v. Ryan**, 986 F.2d 372, 375 (10th Cir. 1993)."

Unless it is the position of this court that the instant case possesses such unique qualities that the statutes have no purpose, it is clear that the court lacked the authority and jurisdiction to mix the roles of Child Support Hearing officer with any other activity, and that the rule creating the position of Domestic Relations Hearing Officer is beyond the scope of the authority of the state judiciary.

4. **Does the threat of incarceration for nonpayment of a debt violate the due process and equal protection clauses when the New Mexico Constitution expressly forbids such action?**

The New Mexico Constitution, specifically Article II, Section 21, states that "No person shall be imprisoned for debt in any civil action."

Yet in the January 4, 2007 and December 13, 2007 minute order issued by Judge Angela J.

Jewell, she orders the Movant to pay one hundred fifty dollars, (\$150.00) a month or a bench warrant will be issued.

5. Are fundamental family rights, as expressed in innumerable instances of federal and state precedents, protected in the state of New Mexico?

The United States Supreme Court has consistently held that state interference with fundamental rights is strictly limited by the elements of due process. “The Due Process Clause guarantees more than fair process, and the ‘liberty’ it protects includes more than the absence of physical restraint. **Collins v. Harker Heights**, 503 U.S. 115, 125, 112 S.Ct. 1061, 1068-1069, 117 L.Ed. 2d 261(1992)(Due Process Clause ‘protects individual liberty against “certain government actions regardless of the fairness of the procedures used to implement them”’(Citation omitted). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. **Reno v. Flores**, 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1446-1447, 123 L.Ed.2d 1 (1993); **Planned Parenthood of Southeastern Pa. v. Casey**, 505 U.S. 833, at 851, 112 S.Ct. 2791, at 2806-07. In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the ‘liberty’ specially protected by the Due Process Clause includes the right to marry, **Loving v. Virginia**, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967); to have children, **Skinner v. Oklahoma ex rel. Williamson**, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); to direct the education and upbringing of one’s children, **Meyer v. Nebraska**, 262 U.S. 390, 43 S. Ct. 625, 67 L.Ed. 1042 (1923); **Pierce v. Society of Sisters**, 268 U. S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); to marital privacy, **Griswold v. Connecticut**, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); to use contraception, *ibid*; **Eisenstadt v. Baird**, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed. 349 (1972); to bodily integrity, **Rochin v. California**, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952); and to abortion, **Casey, supra**.” **Washington v. Glucksberg**, 117 S.Ct. 2258, at 2267 (1997).

6. Is law or judicial discretion supreme in the state of New Mexico?

Barker v. Barker, 94 N. M. 162, 165, 608 P.2d 141 (1980): "[A] judgment wanting in due process of law, as enjoined by the Constitution of the United States, is not entitled to 'full faith and credit.' . . . Indeed, should the judgment be void, it is not entitled to standing even in the state it was rendered." Section One of the Fourteenth Amendment to the Constitution of the United States of America states: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Due process requires notice and a meaningful opportunity to be heard. (**Thomas v. Thomas**, 128 N.M. 177; 1999 NMCA 135; 991 P.2d 7)

Although precedent exists, it is not uniformly applied to all cases throughout the state. Retrospective review cannot preserve fundamental fairness when a class of proceedings is governed by constitutionally defective evidentiary standards and procedures. U.S.C.A. Const. Amend.V, XIV; **Santosky v. Kramer**, 455 U.S. 745 (1982).

- 6. Where there is a state legislated statute defeating the purpose of federal mandates, how should the state judiciary conduct its deliberations? The existence of similarly cited statutes which defy statutory construction and guarantees only that one statute stands to participate in the federal program while the other stands to ignore the federal mandate, demonstrate that is state policy to deny equal protection of the laws throughout the state. The statutes, which exist in tandem are cited below with emphasis added:**

"NMSA 40-4-11. Determination of award of child support; notice to withhold income. (see compiler's note)

In any proceeding before a court in which the court has the duty or authority to determine liability of a parent for the support of minor children or the amount of that support, the court:

1. Shall make a specific determination and finding of the amount of support to be paid by a parent in accordance with the provision of Section 40-4-11.1 NMSA 1978;

2. Shall not consider present or future welfare financial assistance payments to or on behalf of the children in making its determination under Subsection A of this section; and

3. for good cause may order the parent liable for support of a minor child to assign to the person or public office entitled to receive the child support that portion of the parent's periodic income or other periodic entitlements to money. The assignment of that portion of the parent's periodic income or other periodic entitlements to money may be ordered by this court by the issuance of a notice to withhold income against the income of the parent. The procedures for the issuance of the notice to withhold income, the content of the notice to withhold income, the duties of the parent liable for child support and the duties of the employer responsible for withholding income shall be the same as provided for in the Support Enforcement Act, except that delinquency in payment under an order for support need not be a pre-existing condition to effectuate the procedures of the Support Enforcement Act for purpose of withholding income under this section."

"NMSA 40-4-11. Determination of award of child support; disregard of welfare payments; notice to withhold income. (see Compiler's notes)

In any proceeding before a court in which the court has the duty or authority to determine liability of a parent for the support of minor children or the amount of that support, the court:

1. Shall make a specific determination and finding of the amount of support to be paid by a parent to provide properly for the care, maintenance and education of the minor children, considering the financial resources of the parent;

2. Shall not consider present or future welfare financial assistance payments to or on behalf of the children in making its determination under Subsection A of this section; and

3. for good cause may order the parent liable for support of a minor child to assign to the person or public office entitled to receive the child support that portion of the parent's periodic income or other periodic entitlements to money. The assignment of that portion of the parent's periodic income or other periodic entitlements to money may be ordered by this court by the issuance of a notice to withhold income against the income of the parent. The procedures for the issuance of the notice to withhold income, the content of the notice to withhold income, the duties of the parent liable for child support and the duties of the employer responsible for withholding income shall be the same as provided for in the Support Enforcement Act, except that delinquency in payment under an order for support need not be a pre-existing condition to effectuate the procedures of the Support Enforcement Act for purpose of withholding income under this section."

8. How can the state participate in federal program while at the same time pursuing a

separate program which defeats the intent of the federal program?

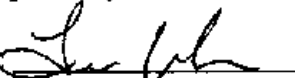
Movant has no other observation other than it appears to be accepted policy for the state to collect taxpayer monies under what appears to be a fraudulent claim.

9. Venue is proper in this case.

WHEREFORE, Movant petitions this court to clarify the above questions of federal rights and law.

Dated: April 11, 2008

Respectfully submitted,

By 

Terri White
Plaintiff, *Pro se*



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing will be served on the following parties on the 11 day of April 2008.

Second Judicial District Court Administrator
PO Box 488
Albuquerque, NM 87102

Second Judicial District Court Clerk
PO Box 488
Albuquerque, NM 87102

Joyce M. Gentry,
Attorney for Richard L. White
1100 Tijeras NW
Albuquerque, NM. 87102

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

FILED
SECOND JUDICIAL DISTRICT

01 AUG -6 AM 11:35

RICHARD WHITE,
Petitioner,

Theresa L. Jacquez

B. Amis

vs.

NO.

TERRI WHITE,
Respondent.

DM 2001-2753

PETITION FOR LEGAL SEPARATION

SUMMONS ISSUED

The Petitioner states:

1. The Petitioner is domiciled in New Mexico and has resided in Bernalillo County for at least six months prior to the filing to this Petition.
2. The Respondent is domiciled in New Mexico and has resided in Bernalillo County for at least six months prior to the filing to this.
3. Petitioner and Respondent were married on February 18, 1984, in San Lorenzo, California, and have been husband and wife since then.
4. The parties' physically separated on or about July 5, 2001.
5. Due to differences in temperament and outlook the parties have been unable to live together harmoniously. There is discord and conflict of personalities that have destroyed the marital relationship. A state of incompatibility exists between the parties at this time but there is a reasonable expectation of reconciliation.

■HP0001

6. Petitioner and Respondent have accumulated community property during their marriage which should be divided between them pursuant to law.
7. Petitioner and Respondent have accumulated community debts during their marriage which should be identified and divided between them pursuant to law.
8. Petitioner has separate property which should be identified and affirmed as such.
9. Upon information and belief, the parties have no separate debts.
10. Each party is self-supporting or is able to be self-supporting, and neither party should receive spousal support.
11. The parties have these minor children: [REDACTED] White, age [REDACTED], [REDACTED] White, age [REDACTED], and [REDACTED] White, age [REDACTED].
12. During the past three years, the minor children have lived with the following persons, at the following places, and for the following periods of time: with Petitioner and Respondent in Albuquerque, New Mexico from October 1997 until present.
13. There is a case pending before Special Commissioner, Stan Whittaker, in Bernalillo County, New Mexico, No.VD 2001-0907.
14. Petitioner knows of no persons other than the parties who have physical custody of the minor children or who claim to have custody or visitation rights to the minor children.
15. The Court has jurisdiction over the custody issues and should exercise its jurisdiction.

16. The parties should be awarded joint legal custody of the minor children, with periods of responsibility consistent with the best interests of the children.
17. Child support should be set according to the New Mexico Child Support Guidelines.
18. The requirement that child support be withheld from the paying parent's wages should be waived.
19. Health and dental insurance should be provided for the minor children in accordance with the Mandatory Medical Support Act.

WHEREFORE, Petitioner asks the Court to:

1. Grant a legal separation of the parties.
2. Divide and allocate the community property and debts pursuant to law.
3. Identify, affirm and set over to the parties their separate property and debts.
4. Award neither party spousal support.
5. Award the parties joint legal custody of the minor children and setting out a reasonable timesharing schedule.
6. Set child support in an amount commensurate with the New Mexico Child Support Guidelines.
7. The requirement that child support be withheld from the paying parent's wages should be waived.
8. Order to provide health insurance for the minor children.
9. Order that the parties pay medical expenses of the minor children not covered by insurance as follows: in proportion to

