

THE SUPREME COURT OF COLORADO STATE
IN AND FOR THE STATE OF COLORADO

STATE OF COLORADO,) Case No. 07SA077
PLAINTIFF,)
)
vs.) Offer of Proof; authorities regarding laws
) that are void for vagueness.
The Honorable Chief Kurt Riggin Esq.,)
Accused, pro per.)

I. INTRODUCTION.

COMES NOW, Accused above named Appearing Specially Not Generally, seeking to place this Court on mandatory judicial notice of the authorities contained herein and in each of the pleadings to vacate and related pleadings. Accused has provided these authorities in hopes that he be treated in like fashion, as due process requires.

II. AUTHORITIES.

Void judgments.

To be valid and enforceable, a law, or 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 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, intrinsic 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 Such a judgment is void from its inception, incapable of confirmation or ratification, and can never have any legal effect.³ A void judgment may be cured by Mandamus.⁴ *Res judicata* does not apply to such a judgment.⁵ A void judgment must be

¹ See *Peduto v. North Wildwood* (DC NJ) 696 F Supp 1004, affd (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); **State cases:** *Lindgren v. Lindgren*, 58 Wash.App. 588, 596, 794 P2d 526 (1990), rev.den., 116 Wash.2d 1009, 805 P2d 813 (1991); *Brenner v. Port of Bellingham*, 53 Wash.App. 182, 188, 765 P2d 1333 (1989) (motions to vacate under CR 60(b)(5) are not barred by the ‘reasonable time’ or the 1-year requirement of CR 60(b)’); *Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wash.App. 480, 486, 674 P2d 1271 (1984); *Matter of Marriage of Leslie*, 112 Wash.2d 612, 618-19, 772 P2d 1013 (1989)(doctrine of laches does not bar attack of void judgment)(citing *John Hancock Mut. Life. ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P2d 221 (1938)(additional cite omitted); *In re Marriage of Oritz*, 108 Wash2d 643, 649, 740 P2d 843 (1987); *Dike v. Dike*, 75 Wash.2d 1, 7, 448 P2d 490 (1968); *Bresolin v. Morris*, 86 Wash2d 24, 245, 543 P2d 325 (1975); *Cockerham v. Zikratch*, 619 P2d 739 (Ariz.1980); *State ex rel Turner v. Briggs*, 971 P2d 581 (Wash.App.1999); *Ward v. Terriere*, 386 P2d 352 (Colo. 1963); *Matter of Marriage of Hampshire*, 869 P2d 58 (Kan.1997); *Matter of Marriage of Welliver*, 869 P2d 653 (Kan.1994); *In re Estate of Wells*, 983 P2d 279 (Kan.App.1999); *B & C Investments, Inc. v. F & M Nat’l. Bank & Trust*, 903 P2d 339 (Okla.App.Div.3 1995); *Graff v. Kelly*, 814 P2d 489 (Okla.1991); *Capital Federal Savings Bank v. Bewly*, 795 P2d 1051 (Okla.1990); *Wahl v. Round Valley Bank*, 38 Ariz. 411, 300 P. 955 (1931); *Davidson Chevrolet, Inc. v. City and County of Denver*, 330 P2d 1116, cert.den., 79 S.Ct. 609, 359 US 926, 3 L.Ed.2d 629 (Colo.1958); *Tube City Mining & Milling Co. v. Otterson*, 16 Ariz. 305, 146 P. 203 (1914); *Lange v. Johnson*, 204 NW2d 205 (Minn.1973); *People v. Wade*, 506 N.W2d 954 (Ill.1987); *State v. Blankenship*, 675 NE2d 1303 (Oh.App.Dist.9 1996); *Hays v. Louisiana Dock Co.*, 452 NE2d 1383 (Ill.App.Dist.4 1983); *People v. Rolland*, 581 NE2d 907 (Ill.App.Dist.4 1991); *Eckles v. McNeal*, 628 NE2d 741 (Ill.App.1993); *People v. Sales*, 551 NE2d 1359 (Ill.App.Dist.2 1990); *In re Adoption of E.L.*, 733 NE2d 846 (Ill.App.Dist.1 2000); *Irving v. Rodriguez*, 179 NE2d 145 (Ill.App.Dist.2 1960); *People ex rel Brzica v. Village of lake Barrington*, 644 NE2d 66 (Ill.App.Dist.2 1994); *Steinfeld v. Haddock*, 513 US 809 (Ill.1994); *Dusenberry v. Dusenberry*, 625 NE2d 458 (Ind.App.Dist.1 1993); *Rook v. Rook*, 353 SE2d 756 (Va.1987); *Mills v. Richardson*, 81 SE2d 409 (N.C.1950); *Henderson v. Henderson*, 59 SE2d 227 (N.C.1950); *State v. Richie*, 20 SW3d 624 (Tenn.2000); *Crockett Oil Co. v. Effie*, 374 SW2d 154 (Mo.App.1964); *State ex rel Dawson v. Bomar*, 354 SW2d 763, cert.den., ___ US ___ (Tenn.1962); *Underwood v. Brown*, 244 SW2d 168 (Tenn.1951); *Richardson v. Mitchell*, 237 SW2d 577 (Tenn.App.1950); *City of Lufkin v. McVicker*, 510 SW2d 141 (Tex.Civ.App.1973); **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, rehng.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 See *Sanchez v. Hester*, 911 SW2d 173 (Tex.App.1995).

dismissed, regardless of timeliness if jurisdiction is deficient.⁶ When rule providing relief from void judgments is applicable, relief is mandatory and is not discretionary.⁷

The passage of time, however great, does not affect the validity of a judgment⁸ and cannot render a void judgment valid.⁹ It may, however, affect presumptions of validity applicable to a judgment.¹⁰

Denial of counsel, liberty; personam jurisdiction vitiated.

A wrongful denial of liberty need not occur for the Court to lose all jurisdiction, but merely the deprivation of a right attached to *protecting* the right to liberty. When life or liberty is at stake, just the denial of the right to counsel is enough to remove jurisdiction of a court over the person of a party defendant.

“Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court’s authority to deprive an accused of his life or liberty. When this right is properly waived, the assistance of counsel is no longer a necessary element of the court’s jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. A court’s jurisdiction at the beginning of trial may be lost “in the course of the proceedings” due to failure to complete the court -- as the Sixth Amendment requires -- by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. A judge of the United States -- to whom a petition for habeas corpus is

⁵ See *Allcock v. Allcock*, 437 NE2d 392 (Ill.App.Dist.3 1982).

⁶ See *Mitchell v. Kitsap County*, 59 Wash.App. 177, 180-81, 797 P2d 516 (1990)(collateral challenge to jurisdiction of pro tem judge granting summary judgment properly raised on appeal)(citing *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash.App. 783, 790, 790 P2d 206 (1990)); *Jaffe and Asher v. Van Brunt*, 158 F.R.D. 278 (S.D.N.Y.1994).

⁷ See *In re Marriage of Markowski*, 50 Wash.App. 633, 635, 749 P2d 745 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash.App. 517, 520, 731 P2d 533 (1987); *Orner v. Shalala*, 30 F.3d 1307 (Colo.1994).

⁸ 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.

⁹ 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.

¹⁰ See 46 Am.Jur.2d § 35.

addressed -- should be alert to examine “the facts for himself when if true as alleged they make the trial absolutely void.”

See *Johnson v. Zerbst*, 304 US 458, 467-68 (1938).

The standard for rights to counsel under the Sixth Amendment set forth in *Johnson v. Zerbst, Id.*, are the benchmark for determining claims of deprivations of such right.¹¹

Due process of law; notice.

The limitations inherent in the requirements of due process of law extend to judicial, as well as political, branches of the government,¹² so that a judgment may not be rendered in violation of those constitutional limitations and guaranties.¹³

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action,¹⁴ which is itself a corollary to another requisite of due process, the right to be heard.¹⁵ When the judgment roll fails to disclose that a party was brought into court by process that is constitutionally due, the judgment rendered in the case is void on the face of the record and is subject to direct or collateral attack at any time.¹⁶

¹¹ See *Patterson v. Illinois*, 487 US 285, 292 (1988); *Connecticut v. Barrett*, 479 US 523, 531 (1987); *Murray v. Carrier*, 477 US 478 (1986); *Kimmelman v. Morrison*, 477 US 365 (1986); *Michigan v. Jackson*, 475 US 625, 633 (1986); *Moran v. Burbine*, 475 US 412, 421 (1986); *Maine v. Moulton*, 474 US 159, 169 (1085); *Evitts v. Lucey*, 469 US 387, 394 (1985); *US v. Gouveia*, 467 US 180, 188-89 (1984); *Strickland v. Washington*, 466 US 668, 684-85 (1984); *Solem v. Stumes*, 465 US 638, 647 (1984); *Rushen v. Spain*, 464 US 114, 128, and fn.7 (1983); *Edwards v. Arizona*, 451 US 477-78 (1981); *US v. Morrison*, 449 US 361, 364 (1981); *Cuyler v. Sullivan*, 446 US 335, 343 (1980); *Davis v. United States*, 512 US 452, 469-70 (1994).

¹² As to persons and agencies bound by due process, see 16A Am.Jur.2d, Constitutional Law §§ 742, 821-824.

¹³ 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.

¹⁴ As to notice as a requisite of due process of law, generally, see 16 Am.Jur.2d, Constitutional Law §§ 827-839.

¹⁵ As to opportunity to be heard, see 46 Am.Jur.2d § 18.

¹⁶ See *Parsons Steel, Inc. v. Beasley* (Ala) 600 So.2d 248; *Cooper v. Smith*, 70 Hawaii 449, 776 P.2d 1178, reconsideration den (Hawaii) 796 P.2d 1005 and reconsideration den (Hawaii) 796 P.2d 1005; *Thiel v. Stradley*, 118 Idaho 86, 794 P.2d 1142; *Producers Equipment Sales, Inc. v. Thomason*, 15 Kan App 2d 393, 808 P.2d 881; *Eastern Sav. Bank v. Salem*, 33 Mass App 140, 597 N.E.2d 55, review den 413 Mass 1106, 600 N.E.2d 1000; *Bailey v. Campbell* (Okla) 862 P.2d 461; *Parra v. Parra*, 1 Va App 118, 336 S.E.2d 157. If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against him. *Tryon Fed. Sav. & Loan Ass'n v. Phelps*, 307 SC 361, 415 S.E.2d 397.

Opportunity to be heard.

An opportunity for a hearing before a competent and impartial tribunal on proper notice¹⁷ is one of the essential elements of due process of law.¹⁸ Thus, all persons are entitled to an opportunity to be heard in a court of law upon every question involving their rights or interests, before they are affected by any judicial decision on the question.¹⁹

The judgment of a court without hearing or giving a party an opportunity to be heard is not a judicial determination of its rights,²⁰ and is not entitled to respect in any other tribunal.²¹

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 The

¹⁷ See 46 Am.Jur.2d Judgments § 17.

¹⁸ As to the opportunity to be heard as a requisite of due process, see 16A Am.Jur.2d, Constitutional Law §§ 839 et seq.

¹⁹ 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.

²⁰ 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.

²¹ 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.

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

judgment is void because the trial court is without jurisdiction, and is subject to direct or collateral attack.²⁶ For example, in jurisdictions which prohibit an interested person from making personal service on a party, personal service by a party renders any judgment or order arising from the preceding void, despite the defendant's actual notice.²⁷ And, where local law authorizes substituted or constructive service in certain situations in the place of personal service when the latter is inconvenient or impossible, a strict and literal compliance with the provisions of the law must be shown in order to support the judgment based on such substituted or constructive service.²⁸ A claim of insufficiency of process, however, unsupported by facts and documentation, is not enough to upset a judgment.²⁹

An error in notice does not always render a judgment void. A substantial defect renders an original notice fatally defective, and any judgment based on it is void. A mere irregularity has no such effect on the original notice, and a judgment based on it is not void, but may be voidable.³⁰

366; *Barragan v. Banco BCH* (4th Dist) 188 Cal.App.3d 283, 232 Cal.Rptr. 758; *Henry v. Hiwassee Land Co.*, 246 Ga 87, 269 S.E.2d 2; *Norton v. Adair County* (Iowa) 441 N.W.2d 347; *Dogan v. Michigan Basic Property Ins. Assn.*, 130 Mich App 313, 343 N.W.2d 532; *Williams v. Kilgore* (Miss) 618 So.2d 51, reh den (Miss) 1993 Miss LEXIS 235 (in order to enter a default, the parties against whom judgment is sought, must have been effectively served with process); *Skalecki v. Small* (Mo App) 832 S.W.2d 954; *State ex rel. Medlock v. Love Shop, Ltd.* (App) 286 SC 486, 334 S.E.2d 528; *Strawder v. Thomas* (Tex App Corpus Christi) 846 S.W.2d 51; *Harmon Truck Lines, Inc. v. Steele* (Tex App Texarkana) 836 S.W.2d 262, writ dism (Oct 28, 1992); *Lindgren v. Lindgren*, 58 Wash App 588, 794 P.2d 526, reconsideration den (Wash App) 1990 Wash App LEXIS 391 and review den 116 Wash.2d 1009, 805 P.2d 813 and review den (Wash) 805 P.2d 813.

²⁶ See *Crotteau v. Irvine* (Wyo) 656 P.2d 1166; *Longview Fibre Co. v. Stokes*, 52 Wash App 241, 758 P.2d 1006 (judgment may be vacated when the want of jurisdiction is established by evidence); *Lawson v. Edmondson*, 302 Ark 46, 786 S.W.2d 823. If service of the complaint was improper, the court did not have jurisdiction over the persons of the defendants, and its judgment should have been stricken as void. *Continental Bank v. Rapp*, 336 Pa Super 160, 485 A.2d 480.

²⁷ See *Caldwell v. Coppola* (4th Dist) 219 Cal.App.3d 859, 268 Cal.Rptr. 453.

²⁸ See *Hassell v. Wilson*, 301 NC 307, 272 S.E.2d 77. See also *Trichilo v. Trichilo*, 190 Conn 774, 462 A.2d 1048, stating that in order that a valid judgment may be rendered against a nonresident upon whom constructive service is made, the statute authorizing constructive service must be strictly observed and the facts showing compliance with it must appear of record.

²⁹ See *Farm Credit Bank v. Stedman* (ND) 449 N.W.2d 562, later proceeding (ND) 453 N.W.2d 830, reported in full (ND) 1990 ND LEXIS 33 and cert den 498 US 836, 112 L.Ed.2d 77, 111 S.Ct. 107.

³⁰ See *Oelwein v. Dvorsky* (Iowa App) 380 N.W.2d 739. Where service of all pleadings and papers subsequent to the original complaint must be made on the attorney unless service on the party is ordered by the court, service of a motion on a party rather than on a party's attorney does not render a resulting judgment void; the judgment is subject to possible reversal based on the particular circumstances of the individual case. *Murat v. F/V Shelikof Strait* (Alaska) 793 P.2d 69.

Fraud or collusion.

The validity of a judgment may be affected if obtained by fraud³¹ or by collusion between the parties,³² especially where the court was imposed upon and the complaining party was prevented from having its interest fairly presented or fully considered by the court.³³ Where extrinsic fraud is involved,³⁴ fraud or collusion in connection with the rendition of a judgment may render the judgment void³⁵ or merely voidable.³⁶

The legal effect of a constructive or unintentional fraud in connection with a judgment may be the same as an actual intentional fraud.³⁷ In the case of an intentional fraud, the judgment may be regarded as good against all but the interests intended to be defrauded by it.³⁸

Court's authority to render judgment.

A court may not render a judgment which transcends the limits of its authority,³⁹ 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.⁴⁰ Thus, if a court is

³¹ See *Wyman v. Newhouse* (CA2 NY) 93 F.2d 313, 115 ALR 460, cert den 303 US 664, 82 L Ed 1122, 58 S.Ct. 834; *Harjo v. Johnston*, 187 Okla 561, 104 P.2d 985; *Corvin v. Commonwealth*, 131 Va 649, 108 SE 651, 39 ALR 592.

³² See *Branan v. Feldman*, 158 Ga 377, 123 SE 710.

³³ See *Harjo v. Johnston*, 187 Okla 561, 104 P.2d 985.

³⁴ See *In re Estate of Milliman*, 2 Ariz App 155, 406 P.2d 873, mod and reh den 2 Ariz App 338, 409 P.2d 54 and vacated 101 Ariz 54, 415 P.2d 877.

³⁵ See *League v. De Young*, 52 US 185, 11 How 185, 13 L Ed 657; *President, Directors, & Co. of Bank of United States v. Moss*, 47 US 31, 6 How 31, 12 L Ed 331. If a court has jurisdiction over the parties on a subject matter of the proceeding, a decree in usual equity form is not void, even if erroneous, unless it was procured by fraud or collusion. *Johnson v. Johnson*, 1 Va App 330, 338 S.E.2d 353.

³⁶ See *Simms & Wise v. Slacum*, 7 US 300, 3 Cranch 300, 2 L Ed 446.

³⁷ See *In re Riley*, 120 Minn 210, 139 NW 361.

³⁸ See *Rock Springs Coal & Mining Co. v. Black Diamond Coal Co.*, 39 Wyo 379, 272 P. 12.

³⁹ 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.

⁴⁰ 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

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.⁴¹ The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack.⁴² In a particular case, the validity of a judgment may be affected by the—

- absence of jurisdiction in regard to the amount in controversy.⁴³
- territorial limits of the jurisdiction of the court.⁴⁴
- particular matter which the judgment professes to decide.⁴⁵
- particular relief granted.⁴⁶
- requirement that the action be entertained only in specialized a court.⁴⁷

Jurisdiction of the subject matter.

A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void,⁴⁸ and may be attacked in any direct or collateral proceeding where a

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.

⁴¹ 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.

⁴² See *Bennett Estate v. Travelers Ins. Co.*, 140 Vt 339, 438 A.2d 380 (ovrld in part on other grounds by *Bevins v. King*, 147 Vt 645, 513 A.2d 41).

⁴³ See *Salitan v. Dashney*, 219 Or 553, 347 P.2d 974, 81 ALR2d 532; *Mueller v. Brunn*, 105 Wis 2d 171, 313 N.W.2d 790.

⁴⁴ See *Howle v. Twin States Express, Inc.*, 237 NC 667, 75 S.E.2d 732.

⁴⁵ See *Sharp v. Sharp*, 65 Okla 76, 166 P. 175; *Standard Sav. & Loan Ass'n v. Anthony Wholesale Grocery Co.*, 62 Okla 242, 162 P. 451. A judgment rendered by a justice of the peace is void under the law of the state because justices of the peace are not empowered to deal with the subject matter of the action. *Mueller v. Brunn*, 105 Wis 2d 171, 313 N.W.2d 790.

⁴⁶ See *Bates v. Bates*, 1 Ariz App 165, 400 P.2d 593; *Hunter v. Superior Court of Riverside County*, 36 Cal.App. 2d 100, 97 P.2d 492; *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848; *Road Material & Equipment Co. v. McGowan*, 229 Miss 611, 91 So.2d 554, motion dismd 229 Miss 630, 92 So 2d 245; *Apple v. Edwards*, 123 Mont 135, 211 P.2d 138; *State ex rel. Commissioners of Land Office v. Keller* (Okla) 264 P.2d 742; *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.

⁴⁷ See *Mueller v. Brunn*, 105 Wis 2d 171, 313 N.W.2d 790.

⁴⁸ See *Blume v. United States* (DC SD) 40 BR 551; *Commodity Futures Trading Com. v. Nahas*, 238 US App DC 93, 738 F.2d 487; *Ex parte J.E.W.* (Ala) 608 So.2d 728; *Cockerham v. Zikratch*, 127 Ariz 230, 619 P.2d 739; *Chun v. Employees' Retirement Sys.*, 73 Hawaii 9, 828 P.2d 260, reconsideration den 73 Hawaii 625, 829 P.2d 859; *Cooper v. Smith*, 70 Hawaii 449, 776 P.2d 1178, reconsideration den (Hawaii) 796 P.2d 1005 and reconsideration den (Hawaii) 796 P.2d 1005; *Puphal v. Puphal*, 105 Idaho 302, 669 P.2d 191; *People v. Wade*, 116 Ill 2d 1, 107 Ill Dec 63, 506 N.E.2d 954; *Producers Equipment Sales, Inc. v. Thomason*, 15 Kan App 2d 393, 808 P.2d 881; *Vung*

person seeks to assert a right arising from the judgment, and at any time when the judgment is to be enforced or its validity is questioned.⁴⁹ Either party, even the party that invoked the jurisdiction of the court, can attack the jurisdiction at any time after judgment is rendered.⁵⁰

Voidable judgments; erroneous judgments.

The term voidable denotes an action in which a judgment nonetheless operates to accomplish the results sought to be accomplished, until the flaw is judicially ascertained and declared.⁵¹ Thus, a judgment which is voidable is not a nullity,⁵² and is capable of confirmation or ratification.⁵³ Until superseded, reversed, or vacated it is binding, enforceable,⁵⁴ and has all the ordinary attributes⁵⁵ and consequences of a valid judgment.⁵⁶ It constitutes sufficient

Ngoc Tran v. Schwegmann's Giant Super Market (La App 4th Cir) 609 So.2d 887; *Barry v. Barry* (La App 2d Cir) 606 So.2d 1391; *Eastern Sav. Bank v. Salem*, 33 Mass App 140, 597 N.E.2d 55, review den 413 Mass 1106, 600 N.E.2d 1000; *State Industrial Ins. System v. Sleeper*, 100 Nev 267, 679 P.2d 1273; *Editorial Photocolor Archives, Inc. v. Granger Collection*, 61 NY2d 517, 474 NYS2d 964, 463 N.E.2d 365; *Wandling v. Ohio DOT* (Gallia Co) 78 Ohio App 3d 368, 604 N.E.2d 825; *Hough v. Hough* (Okla) 772 P.2d 920; *Hermens v. Veal*, 117 Or App 316, 843 P.2d 1013; *Reynaud v. Koszela* (RI) 473 A.2d 281; *Van Der Stappen v. Van Der Stappen* (Utah App) 815 P.2d 1335, 166 Utah Adv Rep 58; *State v. Turner*, 98 Wash.2d 731, 658 P.2d 658; *State ex rel. R.G. v. W.M.B.* (App) 159 Wis 2d 662, 465 N.W.2d 221.

⁴⁹ *Blume v. United States* (DC SD) 40 BR 551; *Editorial Photocolor Archives, Inc. v. Granger Collection*, 61 NY2d 517, 474 NYS2d 964, 463 N.E.2d 365; *Van Der Stappen v. Van Der Stappen* (Utah App) 815 P.2d 1335, 166 Utah Adv Rep 58. The basis for allowing a challenge to subject matter jurisdiction to be raised for the first time on appeal is to be found in the doctrine that the judgments of a court acting outside of the limits of the constitutional and statutory provisions defining its subject matter jurisdiction are void. *Paine, Webber, Jackson & Curtis, Inc. v. Adams* (Colo) 718 P.2d 508.

⁵⁰ See *Caphart-Creager Enterprises, Inc. v. O'Hara & Kendall Aviation, Inc.* (WD Ark) 543 F Supp 259.

⁵¹ See *Lucas v. Estate of Stavos* (Ind App) 609 N.E.2d 1114, reh den (Apr 19, 1993) and transfer den (Jun 21, 1993).

⁵² See *Tari v. State*, 117 Ohio St 481, 5 Ohio L Abs 830, 159 NE 594, 57 ALR 284; *Commonwealth v. Mackley*, 380 Pa 70, 110 A.2d 172.

⁵³ See *Lucas v. Estate of Stavos* (Ind App) 609 N.E.2d 1114, reh den (Apr 19, 1993) and transfer den (Jun 21, 1993).

⁵⁴ See *Farms v. Carlsbad Riverside Terrace Apartments* (App) 102 NM 50, 690 P.2d 1044; *Commonwealth v. Mackley*, 380 Pa 70, 110 A.2d 172.

⁵⁵ See *Johnson v. McKinnon*, 54 Fla 221, 45 So 23; *Pitkin v. Burnham*, 62 Neb 385, 87 NW 160; *Farms v. Carlsbad Riverside Terrace Apartments* (App) 102 NM 50, 690 P.2d 1044; *Commonwealth v. Mackley*, 380 Pa 70, 110 A.2d 172; *H. F. Watson Co. v. Citizens' Concrete Co.*, 28 RI 472, 68 A 310; *Robinett Adm'r v. Mitchell*, 101 Va 762, 45 SE 287.

⁵⁶ See *Farms v. Carlsbad Riverside Terrace Apartments* (App) 102 NM 50, 690 P.2d 1044; *Ex parte Steele*, 220 NC 685, 18 S.E.2d 132, cert den 316 US 686, 86 L Ed 1758, 62 S.Ct. 1275; *Tari v. State*, 117 Ohio St 481, 5 Ohio L Abs 830, 159 NE 594, 57 ALR 284; *Commonwealth v. Mackley*, 380 Pa 70, 110 A.2d 172. A judgment which is wrong but unreversed and unmodified is just as effective as a judgment which is right. *Thrift v. Bell Lines, Inc.* (DC SC) 269 F Supp 214, 56 CCH LC ¶ 12144.

justification for all acts done in its enforcement,⁵⁷ and affords complete protection to one who acts in reliance upon the adjudication.⁵⁸

Erroneous judgments are those which have been issued by a court with jurisdiction but which are subject to reversal on timely direct appeal.⁵⁹ Erroneous judgments are not void, but only voidable, and may not be collaterally attacked.⁶⁰ An error of law in the proceedings, for example, may furnish grounds for appeal but it does not invalidate the judgment.⁶¹ Other imperfections such as improper venue also make a judgment voidable through appeal, and not void and subject to collateral attack.⁶²

A void judgment is one that, from its inception, is a complete nullity and without legal effect,⁶³ and must be distinguished from one which is merely erroneous,⁶⁴ irregular,⁶⁵ or voidable.⁶⁶

⁵⁷ See 47 Am.Jur.2d, Judgments, Division X, Actions on Judgments.

⁵⁸ See *Dodson v. Butler*, 101 Ark 416, 142 SW 503; *Laird v. Vogel* (Fla App D3) 334 So.2d 650, cert den (Fla) 348 So.2d 949; *State Nat'l Bank v. Ladd*, 65 Okla 14, 162 P. 684.

⁵⁹ See *Cockerham v. Zikratch*, 127 Ariz 230, 619 P.2d 739; *Mishler v. County of Elkhart* (Ind) 544 N.E.2d 149.

⁶⁰ See 20 Am.Jur.2d, Courts § 90.

⁶¹ See *In re Estate of Hansen* (ND) 458 N.W.2d 264, 113 OGR 297, later proceeding (ND) 507 N.W.2d 903. A judgment incorrectly interpreting a rule of law does not divest the court jurisdiction over the subject matter of the proceeding; Where the court has jurisdiction over the class of case involved, judgment is not void on the ground that the right involved in the suit did not embrace the relief granted. *In re Estate of McLaughlin* (Utah App) 754 P.2d 679, 82 Utah Adv Rep 65.

⁶² See *Mishler v. County of Elkhart* (Ind) 544 N.E.2d 149.

⁶³ See *Holstein v. Chicago* (ND Ill) 803 F Supp 205, reconsideration den (ND Ill) 149 FRD 147 and affd (CA7 Ill) 1994 US App LEXIS 17428; *Jones v. Giles* (CA9 Wash) 741 F.2d 245, 26 BNA WH Cas 1447, 101 CCH LC ¶ 34575; *Olivera v. Grace*, 19 Cal 2d 570, 122 P.2d 564, 140 ALR 1328; *Prather v. Loyd*, 86 Idaho 45, 382 P.2d 910; *Bank of Edwardsville v. Raffaele*, 381 Ill 486, 45 N.E.2d 651, 144 ALR 401; *Aramovich v. Doles*, 244 Ind 658, 195 N.E.2d 481; *Chariton v. J. C. Blunk Constr. Co.*, 253 Iowa 805, 112 N.W.2d 829; *Grubb v. Wurtland Water Dist.* (Ky) 384 S.W.2d 321; *Metcalfe v. American Surety Co.*, 360 Mo 1043, 232 S.W.2d 526; *Apple v. Edwards*, 123 Mont 135, 211 P.2d 138; *Sedlak v. Duda*, 144 Neb 567, 13 N.W.2d 892, 154 ALR 490; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *Howard v. Boyce*, 254 NC 255, 118 S.E.2d 897; *Salitan v. Dashney*, 219 Or 553, 347 P.2d 974, 81 ALR2d 532; *Yarbrough v. Collins* (App) 290 SC 76, 348 S.E.2d 194, revd on other grounds 293 SC 290, 360 S.E.2d 300, later proceeding (App) 301 SC 339, 391 S.E.2d 873; *Robertson v. Commonwealth*, 181 Va 520, 25 S.E.2d 352, 146 ALR 966; *Perkins v. Hall*, 123 W Va 707, 17 S.E.2d 795; *2-H Ranch Co. v. Simmons* (Wyo) 658 P.2d 68; *Wunnicke v. Leith*, 61 Wyo 191, 157 P.2d 274. Void properly denotes only those actions in which a judgment has no effect whatsoever, and is incapable of confirmation or ratification. *Lucas v. Estate of Stavos* (Ind App) 609 N.E.2d 1114, reh den (Apr 19, 1993) and transfer den (Jun 21, 1993).

⁶⁴ See *Kammerman v. Kammerman* (Dist Col App) 543 A.2d 794 (a judgment is not void merely because it is or may be erroneous); *Lewis v. Lewis*, 213 Ga 856, 102 S.E.2d 559; *Francis v. Legris*, 297 Ill App 164, 17 N.E.2d 359; *State ex rel. Lacy v. Probate Court*, 243 Ind 30, 182 N.E.2d 416; *Becker v. Rooth*, 184 Kan 830, 339 P.2d 292; *Skinner v. Morrow* (Ky) 318 S.W.2d 419; *Fisher v. De Marr*, 226 Md 509, 174 A.2d 345; *Incorporated Consultants v. Todd*, 175 Ohio St 425, 25 Ohio Ops 2d 440, 195 N.E.2d 788; *Perkins v. Masek* (Okla) 366 P.2d 101; *Lytle v. Payette-Oregon Slope Irr. Dist.*, 175 Or 276, 152 P.2d 934, 156 ALR 894; *Dike v. Dike*, 75 Wash.2d 1, 448 P.2d 490.

⁶⁵ See *Pruitt v. Taylor*, 247 NC 380, 100 S.E.2d 841.

A void judgment is not entitled to the respect accorded to,⁶⁷ and is attended by none of the consequences of, a valid adjudication.⁶⁸ Indeed, a void judgment need not be recognized by anyone,⁶⁹ but may be entirely disregarded⁷⁰ or declared inoperative by any tribunal in which effect is sought to be given to it.⁷¹ It has no legal or binding⁷² force or efficacy⁷³ for any purpose⁷⁴ or at any place.⁷⁵ It cannot affect,⁷⁶ impair,⁷⁷ or create rights,⁷⁸ nor can any rights be based on it.⁷⁹

⁶⁶ See *Fisher v. De Marr*, 226 Md 509, 174 A.2d 345; *Shaver v. Shaver*, 248 NC 113, 102 S.E.2d 791; *Dike v. Dike*, 75 Wash.2d 1, 448 P.2d 490.

⁶⁷ See *Mathews v. Mathews* (Ky App) 731 S.W.2d 832; *In re Main's Estate*, 236 Mo App 88, 152 S.W.2d 696; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157.

⁶⁸ See *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157.

⁶⁹ See *Aramovich v. Doles*, 244 Ind 658, 195 N.E.2d 481; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157.

⁷⁰ See *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848; *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *Page v. Miller*, 252 NC 23, 113 S.E.2d 52. When a judgment appears to be void, it may and will be ignored everywhere, and treated as a mere nullity. *Stroupe v. Stroupe*, 301 NC 656, 273 S.E.2d 434.

⁷¹ See *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848; *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157.

⁷² See *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *Tari v. State*, 117 Ohio St 481, 5 Ohio L Abs 830, 159 NE 594, 57 ALR 284; *Eaton v. St. Louis S. F. R. Co.*, 122 Okla 143, 251 P. 1032.

⁷³ See *Ward v. Terriere*, 153 Colo 326, 386 P.2d 352; *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *Holder v. Scott* (Tex Civ App Texarkana) 396 S.W.2d 906, writ ref n r e (May 11, 1966); *Bragdon v. Wright* (Tex Civ App) 142 S.W.2d 703, writ dism w o j.

⁷⁴ See *Ruckert v. Moore*, 317 Mo 228, 295 SW 794; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *Mach v. Blanchard*, 15 SD 432, 90 NW 1042.

⁷⁵ See *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492.

⁷⁶ See *Sedlak v. Duda*, 144 Neb 567, 13 N.W.2d 892, 154 ALR 490; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157; *Olson v. Leith*, 71 Wyo 316, 257 P.2d 342.

⁷⁷ See *Sedlak v. Duda*, 144 Neb 567, 13 N.W.2d 892, 154 ALR 490; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157. A bank which had obtained a judgment in Virginia against a debtor and then allowed the judgment to become void under statute, for failure to serve notice of its recording upon the debtor, was not foreclosed from bringing an action on the underlying debt since the void judgment was a nullity which neither created nor impaired rights. *Cook v. Alexandria Nat'l Bank*, 263 Md 147, 282 A.2d 97.

⁷⁸ See *Weber v. Williams*, 137 Colo 269, 324 P.2d 365; *Apple v. Edwards*, 123 Mont 135, 211 P.2d 138; *Sedlak v. Duda*, 144 Neb 567, 13 N.W.2d 892, 154 ALR 490; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157.

⁷⁹ See *Prather v. Loyd*, 86 Idaho 45, 382 P.2d 910; *Columbus County v. Thompson*, 249 NC 607, 107 S.E.2d 302; *First Seneca Bank v. Greenville Distributing Co.*, 367 Pa Super 558, 533 A.2d 157.

A judgment is void when the court lacks jurisdiction of the parties or of the subject matter,⁸⁰ lacks the inherent power to make or enter the particular order involved,⁸¹ or acts in a manner inconsistent with due process of law.⁸²

Although it is not necessary to take any steps to have a void judgment reversed or vacated,⁸³ it is open to attack or impeachment in any proceeding,⁸⁴ direct⁸⁵ or collateral,⁸⁶ and at any time⁸⁷ or place,⁸⁸ at least where the invalidity appears upon the face of the record.⁸⁹ All proceedings founded on the void judgment are themselves regarded as invalid⁹⁰ and ineffective for any purpose.⁹¹

Under the Federal Rules of Civil Procedure, the court may relieve a party or its legal representative from a final judgment, order or proceeding, on motion and upon such terms as are just, where the judgment is void.⁹²

The general rule is that a judgment which is void cannot be cured by subsequent proceedings.⁹³ Such a judgment cannot, for example, be validated by citing the parties against

⁸⁰ See 46 Am.Jur.2d Judgments §§ 26, 27.

⁸¹ See 46 Am.Jur.2d Judgments § 25.

⁸² See 46 Am.Jur.2d Judgments §§ 17, 18.

⁸³ See *Page v. Miller*, 252 NC 23, 113 S.E.2d 52; *Holder v. Scott* (Tex Civ App Texarkana) 396 S.W.2d 906, writ ref n r e (May 11, 1966).

⁸⁴ See *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848; *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Bragdon v. Wright* (Tex Civ App) 142 S.W.2d 703, writ dism w o j. A judgment which is void because of lack of jurisdiction over the subject matter or the parties whose rights are to be adjudicated is nothing more than a piece of paper which can be expunged from the record at any time. *Reynaud v. Koszela* (RI) 473 A.2d 281.

⁸⁵ See *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848; *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Holder v. Scott* (Tex Civ App Texarkana) 396 S.W.2d 906, writ ref n r e (May 11, 1966); *Rook v. Rook*, 233 Va 92, 353 S.E.2d 756; *In re Randall's Estate*, 8 Wash.2d 622, 113 P.2d 54.

⁸⁶ See 47 Am.Jur.2d, Judgments, Division IX, C, Collateral Attack.

⁸⁷ See *Brandt v. Brandt*, 76 Ariz 154, 261 P.2d 978; *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848; *Grubb v. Wurtland Water Dist.* (Ky) 384 S.W.2d 321; *Mathews v. Mathews* (Ky App) 731 S.W.2d 832; *Hughes v. Neely* (Mo) 332 S.W.2d 1; *Rook v. Rook*, 233 Va 92, 353 S.E.2d 756.

⁸⁸ See *Grubb v. Wurtland Water Dist.* (Ky) 384 S.W.2d 321; *Mathews v. Mathews* (Ky App) 731 S.W.2d 832; *Howard v. Boyce*, 254 NC 255, 118 S.E.2d 897.

⁸⁹ See *Howard v. Boyce*, 254 NC 255, 118 S.E.2d 897.

⁹⁰ See *Ripley v. Bank of Skidmore*, 355 Mo 897, 198 S.W.2d 861; *Apple v. Edwards*, 123 Mont 135, 211 P.2d 138; *Second Nat'l Bank v. Thompson*, 141 NJ Eq 188, 56 A.2d 492; *Valley Vista Dev. Corp. v. Broken Arrow* (Okla) 766 P.2d 344; *Olson v. Leith*, 71 Wyo 316, 257 P.2d 342.

⁹¹ See *Apple v. Edwards*, 123 Mont 135, 211 P.2d 138.

⁹² See FR Civ P, Rule 60(b)(4).

⁹³ See *Troup County Board v. Public Finance Corp.*, 109 Ga App 547, 136 S.E.2d 509; *J.C. Penney Co. v. West* (1st Dist) 114 Ill App 3d 644, 70 Ill Dec 314, 449 N.E.2d 188; *Nesbit v. Albuquerque*, 91 NM 455, 575 P.2d 1340; *Eaton v. Cooke*, 74 NM 301, 393 P.2d 329; *Global Truck & Equipment, Inc. v. Plaschinski* (Tex App Houston (14th Dist)) 683 S.W.2d 766.

whom it was rendered, to show cause why it should not be declared valid,⁹⁴ or by an affirmance by an appellate court, at least if the affirmance is put upon grounds not touching the validity of the judgment.⁹⁵ A judgment in the absence of written pleadings defining the issues is also void and not subject to judicial reincarnation by the filing of written pleadings post-judgment.⁹⁶ Neither may the legislature ratify a judgment which is void for want of jurisdiction, so as to impart validity to it.⁹⁷

The presumptions in favor of the regularity and validity of a judgment become stronger with the lapse of years.⁹⁸ In such case, almost any reasonable presumption of fact will be conclusively indulged in order to sustain rights asserted under the judgment.⁹⁹ To sustain an ancient judgment, time may authorize the presumption of an extraneous fact which the record does not contradict, and the exhibition of which was not indispensable to the validity of the judgment.¹⁰⁰

The general presumptions in favor of the validity of judgments are especially applicable where the rights of bona fide purchasers are involved.¹⁰¹

Dated: December _____ 2009

Presented by:

The Honorable Chief Kurt Riggan

⁹⁴ See *Jewett v. Iowa Land Co.*, 64 Minn 531, 67 NW 639.

⁹⁵ See 5 Am.Jur.2d, Appeal and Error § 935.

⁹⁶ See *Telesco v. Telesco*, 187 Conn 715, 447 A.2d 752, later proceeding (CA2 Conn) 765 F.2d 356.

⁹⁷ See 46 Am.Jur.2d Judgments § 15.

⁹⁸ See *Thompson v. Thompson*, 91 Ala 591, 8 So 419; *Copelan v. Kimbrough*, 149 Ga 683, 102 SE 162; *Shaver v. Shaver*, 248 NC 113, 102 S.E.2d 791; *Singleton v. Mullins Lumber Co.*, 234 SC 330, 108 S.E.2d 414.

⁹⁹ See *Thompson v. Thompson*, 91 Ala 591, 8 So 419, **referring to a 20-year-old judgment.**

¹⁰⁰ See *Copelan v. Kimbrough*, 149 Ga 683, 102 SE 162.

¹⁰¹ See *McGowan v. Lufburrow*, 82 Ga 523, 9 SE 427.