Appendix

A brief overview of the law of voids in Arkansas

Appellee's attempted service of process was defective. Even if appellant was aware of the 1988 proceeding, the Arkansas Supreme Court has "made it clear that actual knowledge of a proceeding does not validate defective service of process." *Green v. Yarbrough*, 299 Ark. 175, 771 S.W.2d 760 (1989); *Wilburn v. Keenan Companies, Inc.*, 298 Ark. 461, 768 S.W.2d 531 (1989); *Tucker v. Johnson*, 275 Ark. 61, 628 S.W.2d 281 (1982). Accordingly, the trial court erred in refusing to vacate the default judgment which had been entered based upon the defective service. Because no notice sufficient to satisfy due process was obtained, the 1988 judgment was Void judgments have no legal effect. *Davis v. Office of Child Support Enforcement*, 322 Ark. 352, 357, 908 S.W.2d 649, 652 (1995) (citing Rankin v. Schofield, 81 Ark. 440, 98 S.W. 674 (1905)). They are worthless; no rights can be obtained from them and all proceedings founded upon them are equally worthless. Therefore, all subsequent orders, garnishments, attempts at revival, any and all actions flowing from the 1988 judgment are also void The majority holds that the trial court properly "concluded that the objection raised by the appellant to the default judgment had been waived." Appellant's objection was that the trial court had no jurisdiction to enter the default judgment. While I agree that it is possible for a party to waive the defense of personal jurisdiction, see *Arkansas Dep't of Human Servs. v. Farris*, 309 Ark. 575, 832 S.W.2d 482 (1992), I find no authority, and the majority cites none, for its proposition that personal jurisdiction is waived by a failure to appear in an action. If anything, appellant preserved his defense by failing to appear. The majority cites *Raymond v. Raymond*, 343 Ark. 480, 36 S.W.3d 733 (2001), to support its reasoning that the Arkansas Supreme Court would find that the facts of this case merely show a failure to prove service. Yet both the majority and the dissenting opinions in Raymond require that we hold the trial court lacked jurisdiction over the appellant and that the default

judgment is void The Raymond majority explained it simply. Service of valid process is necessary to give a court jurisdiction over a defendant. A summons is necessary to satisfy due process requirements. Statutory service requirements, being in derogation of common-law rights, must be strictly construed and compliance with them must be exact. Proceedings conducted where the attempted service was invalid renders judgments arising therefrom void *ab initio*. Even actual knowledge of a proceeding does not validate defective process. The dissent's reasoning in Raymond also supports that the case at bar be reversed. at 489, 36 S.W.2d at 738 (Imber, J., dissenting). Rules 12(b)(5) and 12(h)(1) of the Rules of Civil Procedure clearly set forth the procedure for raising an insufficiency-of-service-of-process defense. (citing *Sublett v. Hipps*, 330 Ark. 58, 63, 952 S.W.2d 140 (1997)). Where a defendant believes that the trial court lacks personal jurisdiction over him because of insufficient service of process, he may take one of three actions to preserve that defense: (1) he may file a motion to dismiss the complaint against him for failure to obtain service of process; (2) he may file a responsive pleading in which he asserts the defense of insufficient service; or (3) he may simply choose not to appear or to contest jurisdiction. (emphasis added). Therefore, the trial court's decision that appellant's objection had been waived is clearly erroneous as a matter of law. The majority's reference to "the intermittent reliance on the judgment" has no effect on the trial court's lack of jurisdiction to enter a default judgment in this case. Even a writ of *scire facias* cannot breathe life into a ***void judgment***: The legal effect of a judgment on a *scire facias*, where judgments remain without process or satisfaction, is to remove the presumption of payment arising from lapse of time. It adds nothing to the validity of the former judgment, but simply leaves it as it was when rendered. The *scire facias* is dependent for its legal existence upon a valid judgment; without it, the whole proceeding, by *scire facias*, is a nullity. It is, therefore, perfectly immaterial to the merits of this case whether the defendants appeared to the writ of *scire facias* or not. Pile et al. 9 Ark. 336, 4 Eng. 336 (1849). Because the original default judgment is void due to lack of service, I would reverse and remand with instructions to vacate the 1988 judgment and all garnishments and orders entered pursuant to it. *Adams v. Nationsbank*, 74 Ark.App. 384, 49 S.W.3d 164 (Ark.App. 07/05/2001). A void judgment or decree is a mere nullity, and

has no force, either as evidence or by way of estoppel. The holding that a void judgment may be attacked collaterally was reaffirmed in *Chester v. Arkansas State Board of Chiropractic Examiners*, 245 Ark. 846, 435 S.W.2d 100 (1968). A judgment rendered without jurisdiction is void. *Cloman v. Cloman*, 229 Ark. 447, 316 S.W.2d 817 (1958). ARCP Rule 58 states: "[a] judgment or decree is effective only when so set forth and entered as provided in Rule 79(a)." The comment to this rule points out that the date of entry, as opposed to the date of rendition, is the effective date for appeal purposes. However, the date of entry is not controlling in the present case because death extinguished the jurisdiction of the court. It is not necessary to appeal from a void order because it never became effective. A void order is subject to collateral attack. *Pendergist v. Pendergist*, 267 Ark. 1114, 593 S.W.2d 502 (1980). As a final argument, Daniel asserts that laches prevents Diane from petitioning to set aside the divorce decree, at least, by the time Diane signed the decree. In support of this contention, he cites *Self v. Self*, 319 Ark. 632, 893 S.W.2d 775 (1995), for its statement that laches "has been applied in numerous cases where one party has obtained an invalid divorce and remarried, but the first spouse then waits too long under the facts of the particular case to assert her right to have the ***void judgment*** vacated." Id. at 636. However, Self may be easily distinguished, in that the initial divorce decree in Self was held to be merely voidable; in the instant case, the decree was void *ab initio*. Certainly, when the May 12, 1997 decree was filed, the 120-day period under Rule 4(i) had passed, and as discussed in detail above, the reconciliation agreement did nothing to validate the service under the Rule. Thus, Daniel's attempt to invoke laches as a defense is misplaced because the trial court had no jurisdiction or authority to hear the cases in the first place. *Raymond v. Raymond*, 343 Ark. 480, 343 Ark. 480, 36 S.W.3d 733, 36 S.W.3d 733 (Ark. 02/01/2001). A judgment rendered without notice to the parties is void; when there has been no proper service and, therefore, no personal jurisdiction over the defendants in a case, any judgment is void *ab initio.* Once the judgment in Mississippi was found to have been rendered without jurisdiction over the defendants, such judgment was void; it was as though suit had never been brought and there was no impediment to bringing the suit where personal jurisdiction over the defendants could be had; a void judgment amounts to nothing and

has no force as res judicata. A void judgment amounts to nothing and has no force as res judicata." *Arkansas State Highway Commission v. Coffelt*, 301 Ark. 112, 782 S.W.2d 45 (1990). Where there is no valid charging instrument, and yet the defendant is convicted in a court of limited jurisdiction, there is a void judgment of conviction in the court of limited jurisdiction; a void judgment cannot provide valid notice for a subsequent proceeding in circuit court. The circuit court ruled that appellant appealed to circuit court from a conviction in municipal court for third degree battery and, as a result, had notice in the de novo circuit court hearing of the charge from which he appealed. We cannot uphold the conviction on that basis. The conviction of a person for a crime with which he was never charged constitutes a clear violation of the right to due process. *Allen v. State*, 310 Ark. 384, 838 S.W.2d 346 (1992). When there is no valid charging instrument, and yet the defendant is convicted in a court of limited jurisdiction, there is a void judgment of conviction in the court of limited jurisdiction. A void judgment cannot provide valid notice for a subsequent proceeding in circuit court. *Rector v. State*, 6 Ark. 187 (1845). Thus, the conviction in municipal court, if void, would not have provided notice of the charge in circuit court. *James Phillip HAGEN v. STATE of Arkansas* 864 S.W.2d 856 November 08, 1993. n erroneous judgment subject to direct attack does not impair its effect as *res judicata;* a void judgment, however, amounts to nothing and has no force as res judicata. The parties agree that an erroneous judgment subject to direct attack does not impair its effect as *res judicata*; a void judgment, however, amounts to nothing and has no force as res judicata. See *Selig v. Barnett*, 233 Ark. 900, 350 S.W.2d 176 (1961). This continued requirement of the showing of a meritorious defense to a void judgment now impresses us as somewhat inconsistent with our following the rule stated in *McDonald v. Fort Smith Western R. Co*., 105 Ark. 5, 150 S.W. 135, to permit a judgment to be disregarded as void on collateral attack. See *Anderson v. Walker*, 228 Ark. 113, 306 S.W.2d 318. If a judgment can be disregarded on collateral attack, there is no sound reason why it should not be set aside on direct attack. The appellee first contends that the appellant is pursuing the wrong remedy, in that he should have brought an action under the statute to vacate the judgment after the expiration of the term. Ark. Stat. Ann. 29-506 (Repl. 1962). We have held, however, that the statute does not apply to a void judgment.

*State v. West*, 160 Ark. 413, 254 S.W. 828 (1923). The question then is whether the order rendered by the State Board of Chiropractic Examiners was void. Since we consider the answer to that question to be definitely in the affirmative on one point raised, there is no necessity to discuss other arguments advanced by appellant in support of his. We hold that the instrument was void because the hearing was held on Sunday. *Dr. Kern E. CHESTER v. ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS* 435 S.W.2d 100 December 23, 1968.

## SUMMARY OF THE LAW OF VOIDS IN CALIFORNIA

Motions to vacate ***void judgments*** may be made at any time after judgment. (*County of Ventura v. Tillett*, supra, 133 Cal. App. 3d 105, 110.). A judgment is void on its face if the trial court exceeded its jurisdiction by granting relief that it had no power to grant. Jurisdiction cannot be conferred on a trial court by the consent of the parties. (*Summers v. Superior Court* (1959) 53 Cal. 2d 295, 298 [1 Cal. Rptr. 324, 347 P.2d 668]; *Roberts v. Roberts* (1966) 241 Cal. App. 2d 93, 101 [50 Cal. Rptr. 408].) Thus, the fact that a judgment is entered pursuant to stipulation does not insulate the judgment from attack on the ground that it is void. *In People v. One 1941 Chrysler Sedan* (1947) 81 Cal. App. 2d 18, 21-22 [183 P.2d 368], the court explained: "[P]rior to 1933 the provisions of section 473 and of section 473a were contained in one section, so that there was both a six-month and a one-year limitation found in the section, applicable, of course, to different situations. In that year the original section 473 was split into two parts. Old paragraph 3 of section 473 remained in that section. That paragraph refers to judgments taken against a party through his 'mistake, inadvertence, surprise, or excusable neglect,' and requires the motion to be made within six months. The paragraph has no direct reference to ***void judgments***. Section 473a (formerly and until 1933 a part of section 473) provides for a particular situation -- where summons has not been personally served (even though constructive service is permitted) the court may allow the aggrieved party

within one year to answer on the merits. Both the third paragraph of section 473 and section 473a are primarily directed to setting aside valid judgments. Prior to 1933, section 473 contained no express provision relating to the power of courts to set aside ***void judgments***. But prior to that time the law was settled that courts of record possessed inherent power to set aside a void judgment, whether or not it was void on its face, provided that, as to a void judgment not void on its face, the motion was made within a reasonable time. If the motion was not made within a reasonable time the party was relegated to an action in equity. In determining whether the motion was made within a reasonable time the courts applied by analogy the one-year provision of old section 473, now section 473a. Thus, when these old cases referred to the time limits of section 473 they were referring to the one-year limitation, not the six-month limitation. When the Legislature revamped section 473 in 1933, and broke it down into two sections, they added to section 473 paragraph 4. This paragraph was formerly section 900a of the Code of Civil Procedure, applying to courts not of record. So far as pertinent here that paragraph now reads: 'The court may . . . on motion of either party after notice to the other party, set aside any void judgment or order.' (For a discussion of the 1933 amendments to section 473 see *Estate of Estrem,* 16 Cal. 2d 563, 572 [107. It is well settled that erroneous final judgments serve as a bar to further litigation on the action, whereas in general ***void judgments*** may be collaterally attacked. Avoid judgment or order may properly be attacked at any time, directly or collaterally. We also conclude that the doctrine of res judicata does not apply to ***void judgments*** or orders. We therefore conclude that the trial court erred in sustaining defendants' demurrer and dismissing the present action, accordingly, we reverse the judgment of dismissal. The doctrine of res judicata is inapplicable to ***void judgments***. "Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud. [Citations.]" (7 *Witkin,* Cal. Procedure, supra, Judgment, § 286, p. 828.). Section 437, subdivision (d), provides that a court, on noticed motion, may set aside ***void judgments*** and orders. Courts also have inherent power to set aside a void judgment. (*Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1194.) " `It is well

settled that a judgment or order which is void on its face, and which requires only an inspection of the judgment-roll or record to show its invalidity, may be set aside on motion, at any time after its entry, by the court which rendered the judgment or made the order. [Citations.]' [Citations.]" (Ibid; accord *Plotitsa v. Superior Court* (1983) 140 Cal.App.3d 755, 761 ["a default that is void on the face of the record when entered is subject to challenge at any time irrespective of lack of diligence in seeking to set it aside within the six-month period of section 473."].). As the such ***void judgments*** or orders, the normal rule that "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order" ( § 916, subd. (a)) does not apply. "[A] court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree -- a void order." (*MacMillan Petroleum Corp. v. Griffin* (1950) 99 Cal. App. 2d 523, 533 [222 P.2d 69]; accord: *People v. West Coast Shows, Inc.* (1970) 10 Cal. App. 3d 462, 467 [89 Cal. Rptr. 290]; *Svistunoff v. Svistunoff* (1952) 108 Cal. App. 2d 638, 641-642 [239 P.2d 650]; and see: 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 7, pp. 4024-4025.) Consequently, notwithstanding the pending appeal from the earlier order of November 25, 1969, which necessarily carried with it a consideration of the validity of the judgment entered October 31, 1967, the order of August 14, 1970, limited to those aspects which trim off the void judgment and orders, should be affirmed. The courts' power to control their own judgments is statutory. (19 Cal. 2d at p. 573.) Apart from statutory authority, the courts have the inherent power to correct clerical errors in their judgments or to vacate ***void judgments***. Defendant's motion was not made under section 473 of the Code of Civil Procedure, but was addressed to the inherent power of the court to set aside ***void judgments***. Although it has been held, by analogy to section 473a, that such motions should be made within one year from the date the judgment sought to be set aside was rendered (*Washko v. Stewart*, 44 Cal. App. 2d 311, 317 [112 P.2d 306]; *Richert v. Benson Lbr. Co.*, 139 Cal. App. 671, 674-676 [34 P.2d 840]) this time limitation does not apply where the judgment is based on a fraudulent return. (*Washko v. Stewart*, supra, p. 318; *Richert v. Benson Lbr. Co.*, supra, p. 677.). Section 473 permits a trial court, on noticed

motion, to set aside ***void judgments*** and orders. Courts also possess inherent power to grant such relief. (*Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1194.) Because the order of dismissal was void on its face, it could be set aside at any time after its entry, and the six-month time limitation in section 473 for relief from improper orders, which is relied on by defendant in this appeal, is not applicable here. (Ibid.) The trial court's examination of the record would show the dismissal was invalid because it would show that the dismissal, under section 583.410, was not pursuant to a noticed motion, and was premature. (Id. at p. 1193.). It is true that the statute of limitations does not apply to a suit in equity to vacate a void judgment. (*Cadenasso v. Bank of Italy*, supra, p. 569; *Estate of Pusey*, 180 Cal. 368, 374 [181 P. 648].) But this rule holds as to all ***void judgments***. In the other two cases cited, *People v. Massengale* and *In re Sandel*, the courts hearing the respective appeals confirmed the judicial power and responsibility to correct ***void judgments*** (in excess of jurisdiction),

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ON THE LAW OF VOIDS IN COLORADO

Ordinarily, the decision whether to grant relief under C.R.C.P. 60(b) is entrusted to the sound discretion of the trial court. However, "a motion under [C.R.C.P. 60(b)(3)] differs markedly from motions under the other clauses of [C.R.C.P. 60(b)]." 10A Wright, § 2862, at 322-24. If the surrounding circumstances indicate that the defaulting party's due process right was unfairly compromised by lack of notice of the default proceeding, then relief under C.R.C.P. 60(b)(3) is mandatory. See *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998) (holding that under Fed. R. Civ. Pro. 60(b)(4) it is a per se abuse of discretion for a lower court to uphold a ***void judgment***); V.T.A., Inc., 597 F.2d at 224 & n.8 ("If voidness is found, relief is not a discretionary matter; it is mandatory."); *Small v. Batista*, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998) ("[U]nlike other motions made pursuant

to the other subsections of Rule 60(b), the court lacks discretion with respect to a motion made under Rule 60(b)(4). Accordingly, our review of motions for relief under C.R.C.P. 60(b)(3) is de novo. See *Carter*, 136 F.3d at 1005. Relief under C.R.C.P. 60(b)(3) is mandatory because a ***void judgment*** "is one which, from its inception, was a complete nullity and without legal effect." *Lubben v. Selective Serv. Sys. Local Bd*. No. 27, 453 F.2d 645, 649 (1st Cir. 1972); see also *Weaver Constr.*, 190 Colo. at 232, 545 P.2d at 1045 ("It is an elementary principle of due process that where [a default judgment is obtained without service of process] . . . the underlying judgment must be vacated in the first instance, as a ***void judgment*** cannot be allowed to remain in effect pending the outcome of a trial on the merits.") (emphasis added). Consequently, there is no judgment the propriety of which a court can review. Whether the judgment is void for failure to provide notice in compliance with C.R.C.P. 55(b) depends on whether the factual circumstances surrounding the default proceeding indicate that the defaulting party was nonetheless aware that a default judgment was sought against it and that the defaulting party had sufficient opportunity to be heard. C.R.C.P. 55(b) sets forth the due process expectations of a party against whom a default judgment is sought. If the notice provisions of C.R.C.P. 55(b) are not adhered to, then the presumption arises that the defaulting party has suffered a due process violation that renders the judgment against it ***void***. However, before a ***judgment*** is set aside as void under C.R.C.P. 60(b)(3), reviewing courts should carefully examine whether, though the literal requirements of C.R.C.P. 55(b) were not adhered to, the defaulting party was nonetheless aware of the default proceedings and was afforded a sufficient opportunity to be heard in defense. If there is substantial evidence that the defaulting party had adequate notice of the default proceedings despite failure of the moving party to comply with Rule 55(b), then the purposes of Rule 55(b) are achieved and there is no basis for voiding the judgment. First *National Bank of Telluride v. Fleisher*, 2 P.3d 706 (Colo. 05/30/2000). Although defendant has now made an appearance in this action and is subject to the jurisdiction of the court from the date he did so, his post-judgment appearance is not retroactive and does not serve to validate the ***void judgment***. See *Weaver Construction Co. v. District Court*. We also reject plaintiff's argument that defendant's C.R.C.P. 60(b)(3) motion was

untimely. To the contrary, a ***void judgment*** may be challenged at any time pursuant to C.R.C.P. 60(b)(3), and must be vacated upon request. See *United Bank v. Buchanan*, 836 P.2d 473 (Colo. App. 1992). We have considered the effect of a ***void judgment*** on numerous occasions and have consistently held that a Judgement entered where a jurisdictional defects exist is a nullity. See, e.g., *People v. Dillon*, 655 P.2d 841 (Colo. 1982) ("It is axiomatic that any action taken by a court when it lacked jurisdiction is a nullity." *Davidson Chevrolet, Inc. v. City and County of Denver*, 138 Colo. 171, 330 P.2d 1116 (1958) (same), cert. denied 359 U.S. 926, 3 L. Ed. 2d 629, 79 S. Ct. 609 (1959); see also *In re Marriage of Pierce*, 720 P.2d 591 (Colo. App. 1985) (same). The issue presented here was addressed by this court in *Don J. Best Trust v. Cherry Creek National Bank*, 792 P.2d 302 (Colo. App. 1990). In that case, a division of this court concluded that a judgment entered against a garnishee which was void because the writ of garnishment was facially insufficient could be attacked at any time. The court there stated: "This Conclusion is based upon the consideration that a ***void judgment*** is no judgment at all and, therefore, that the 'reasonable time' requirement of the rule 'means in effect, no time limitation.'" See *Mathews v. Urban*, 645 P.2d 290 (Colo. App. 1982). But see *Martinez v. Dixon*, 710 P.2d 498 (Colo. App. 1985)" ("the clear language of C.R.C.P. 60(b) requires that the motion must be filed within [a] reasonable time if it alleges that the judgment is void"). However, it has been determined that the doctrine of laches cannot be relied upon to preclude an attack upon a ***void judgment***. *Thompson v. McCormick*, 138 Colo. 434, 335 P.2d 265 (1959). Further, we have held that, if the judgment sought to be vacated is void because the court lacked subject matter jurisdiction, any time limit established by C.R.C.P. 60(b) is inapplicable. *Mathews v. Urban*, 645 P.2d 290 (Colo. App. 1982). It has long been established as basic law that the validity of a judgment depends upon the court's jurisdiction of the person and of the subject matter of the particular issue it assumes to decide. Considering what is meant by the term "jurisdiction" it is well settled that this term includes the court's power to enter the judgment, and the entry of a decree which the court has no authority to enter is without jurisdiction and void. A ***void judgment*** may be attacked directly or collaterally. *Newman v. Bullock*, 23 Colo. 217, 47 Pac. 379; *Atchison, Topeka and Santa Fe Railway*

*Co. v. Board of County Commissioners*, 95 Colo. 435, 37 P (2d). The defendants, Ivan and Molly Jenkins, appeal from a judgment of the Denver District Court holding them liable to the plaintiff, Merchants Mortgage & Trust Corporation, on a promissory note. The defendants challenge the judgment solely on the ground that the trial judge had no authority to decide the case after he had taken office as a judge of the Colorado Court of Appeals. We agree that the judgment is void, and we remand the case to the district court for further proceedings. Merchants Mortgage & Trust Corporation filed a complaint in Denver District Court to collect on a promissory note executed by the defendants. The case was tried to the court before the Honorable Howard M. Kirshbaum on November 8 and 9, 1979. After trial, the judge took the matter under advisement. He was later appointed to the Colorado Court of Appeals and was sworn in as a judge of that court on January 11, 1980. On May 5, 1980, Judge Kirshbaum issued written findings of fact and conclusions of law and ordered judgment against the defendants. The defendants did not immediately challenge the judge's authority to act, but instead filed a motion for a new trial on other grounds on May 27, 1980. The plaintiff also filed a post-trial motion, seeking to alter or amend the judgment to allow recovery of its costs and attorney fees. On November 14, 1980, Chief Justice Paul V. Hodges issued an order pursuant to Colo. Const. Art. VI, § 5(3) appointing Judge Kirshbaum to hear and rule on the post-trial motions. The defendants then filed two additional motions, entitled "Objection to Jurisdiction" and "Motion to ***Void Judgment***." In the first motion, the defendants asked that Judge Kirshbaum decline to hear any post-judgment motions, arguing that Colo. Const. Art. VI, § 5(3) does not authorize the chief justice to assign a court of appeals judge to perform judicial duties in a district court. In the second motion, they contended that the judgment of May 5, 1980, was void for lack of jurisdiction, again because the Colorado Constitution does not allow a court of appeals judge to be assigned to sit as a district court judge. On January 8, 1981, Judge Kirshbaum recused himself, and the case was reassigned to Denver District Judge Harold D. Reed to hear and determine all post-trial motions. Judge Reed denied the defendants' motions to ***void*** the ***judgment*** and for a new trial, and granted the plaintiff's motion to alter or amend the judgment to include its costs and attorney fees. The defendants then brought this appeal. We conclude that the

May 5, 1980, judgment is void and must be vacated Absent constitutional or statutory authorization, a former district court judge does not have authority to act in a judicial capacity, and orders entered by such a person after he ceases to be a district court judge are void. See *Olmstead v. District Court*,157 Colo. 326,403 P.2d 442(1965) (a district court judge whose term of office has expired lacks power to entertain a post-trial motion although he heard legal argument on the motion while still a judge). When Judge Kirshbaum made his decision, neither this court nor the chief justice had authorized such action. Since the chief justice's order of November 14, 1980, was expressly limited to the post-trial motions filed after the May 5, 1980, judgment, it provides no authority to support the judge's May 5 action. Because the judgment is void, the plaintiff's argument that the judgment should not be reversed because of procedural error having no prejudicial effect on the parties is inapposite. We also reject the plaintiff's argument that the defendants should be estopped from challenging the validity of the judgment because they acquiesced in its effectiveness until the chief justice's order was issued several months later. The plaintiff's reliance on *In Re Estate of Lee v. Graber*,170 Colo. 419,462 P.2d 492(1969) for its estoppel argument is misplaced. In that case, we held that a person who invokes the jurisdiction of a court, obtains a decree, and acquiesces in the judgment for several years cannot assert its invalidity in a later action on the basis that the first court had exceeded its authority because the amount in controversy exceeded its jurisdictional limit. On the facts before us, we decline to extend the holding of Lee v. Graber to a situation where the defendant challenges the judgment on the ground that the judge had no power to order it. We held in Olmstead v. District Court, supra, that the parties by their actions cannot confer power on a former judge who has no authority to act.157 Colo. at 330,403 P.2d at 443. *Merchants Mortgage & Trust Corp. v. Ivan R.*, 659 P.2d 690 (Colo. 03/07/1983). A ***void judgment***, it has no efficacy and may be treated as a nullity. A ***void judgment*** is vulnerable to a direct or collateral attack regardless of the lapse of time. A ***void judgment*** is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it. Defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or the relief to be granted. A judgment entered where such defect exists has neither life nor

incipience, and a court is impuissant to invest it with even a fleeting spark of vitality, but can only determine it to be what it is -- a nothing, a nullity. Being naught, it may be attacked directly or collaterally at any time. *Stubbs v. McGillis*, 44 Colo. 138, 96 Colo. 1005, 130 Am.S.R. 116, 18 L.R.A. N.S. 405. *In Anderson v. Colorado Department of Revenue*, 44 Colo. App. 157, 615 P.2d 51 (1980) we held that a jurisdictional challenge to a conviction may be raised at a driver's license revocation hearing because a ***void judgment*** is subject to attack directly or collaterally at any time. Likewise, since a conviction based on a guilty plea accepted in violation of Crim. P. 11(b) is constitutionally infirm, it may be challenged in a later proceeding to impose a statutory liability, see *People v. Heinz*, 197 Colo. 102, 589 P.2d 931 (1979), and such a challenge may also be raised at a license revocation hearing.

A brief overview of the law of voids in Florida

Objections to a ***void judgment*** can be raised at any time. The final judgment entered upon default in this case awarding un-liquidated damages without affording the defaulting party notice and opportunity to be heard is a ***void judgment***. Under the specific provisions of rule 1.540(b) R.C.P., a motion to set aside a final judgment bottomed upon the reason that the judgment is void is not subject to the one-year limitation but must be brought within a reasonable time. We glean from the record that defendant's motion to set aside default and final judgment was filed when knowledge first came to the defendant that the plaintiff was seeking satisfaction of the final judgment. Such, in our opinion, is within the reasonable time requirement of the rule. Osceola, 238 So. 2d at 480 (emphasis in original). While it is true that Rule 1.540(b)(4) states that a motion for relief from a ***void judgment*** must be made within a "reasonable time," most courts have felt constrained to interpret the "reasonable time" requirement of the rule to mean no time limit when the judgment attacked is void. Assuming that a judgment is null and void for lack of jurisdiction does a Rule 1.540(b) motion for relief not brought within a reasonable time have the effect of making a ***void judgment*** valid? The answer is "no." Florida Rule

of Civil Procedure 1.540 was acknowledged by its drafters to be substantially the same as Federal Rule 60. Like a Rule 1.540 motion, a federal motion for relief from a ***void judgment*** must be made within a "reasonable time." However, federal courts have reasoned that since a void federal judgment can be collaterally attacked at any time and because the judgment sustaining the collateral attack would have to be given effect in a subsequent motion for relief to set aside the void judgment, the "reasonable time" limitation must generally mean no time limitation, although there may be exceptional circumstances where the reasonable time limitation would require diligence on the part of the movant. See 7 Moore's Federal Practice, ¶ 60.25[4] (2d Ed.1983). *Whigham v. Whigham*, 464 So. 2d 674, 676 (Fla. 5th DCA 1985). See also *Del Conte Enters., Inc. v. Thomas Pub. Co.*, 711 So. 2d 1268 (Fla. 3d DCA 1998); Falkner, 489 So. 2d at 758. In addition, in *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984), the Florida Supreme Court approved a chart which indicates that there is no time limitation for attacking a ***void judgment*** under Rule 1.540(b). As we did in Kennedy v. Richmond, we once again affirm that we agree with those cases, which, like Whigham and Falkner, hold that a motion to vacate a ***void judgment*** under Rule 1.540 may be made at any time. While there is language in Polani and Osceola which can be interpreted as holding that a particular limitation applies to the time in which a motion to vacate a ***void judgment*** must be filed, those cases are, to that extent, inconsistent with Florida Supreme Court authority: A ***void judgment*** is a nullity, . . . and is subject to collateral attack and may be stricken at any time. The passage of time cannot make valid that which has always been void but it can and often does render valid that which was merely voidable or erroneously entered. *Ramagli Realty Co.*, 121 So. 2d at 654. Appellee further maintains that the trial judge's order in the instant case should be affirmed since, unlike the defendants in cases like Polani and Osceola, Ward did not promptly file his motion to vacate upon finding out about the judgment, but instead, waited almost eight months. For all of the reasons previously discussed, we do not agree that the length of the delay in filing a motion to vacate after learning of the entry of a ***void judgment*** is legally significant since it is well established that the passage of time cannot make valid that which has been void from the beginning. See *Ramagli Realty Co. v. Craver*. For instance, in *Del Conte Enterprises, Inc.*

*v. Thomas Publishing Co.*, 711 So. 2d 1268 (Fla. 3d DCA 1998), the defendant filed a motion to vacate an amended final judgment which was entered against it although the defendant had not been served with process. Upon learning of the final judgment, the defendant communicated informally with the plaintiff in an attempt to have the judgments vacated, but did not file a motion to vacate the judgment until over one year later. The plaintiff, Thomas Publishing Company, responded that the defendant had not timely moved to vacate the judgment. The trial court agreed that the judgment was void, but denied the motion to vacate because it was not filed within a reasonable time. The Third District reversed and stated that because the judgment was entered without service of process and was void, the fact that appellant moved to vacate the judgment over one year after learning of it was "irrelevant." Id. at 1269. *Accord Greisel v. Gregg*, 733 So. 2d 1119, 1121 (Fla. 5th DCA 1999)(reversing order denying motion to vacate ***void judgment***, despite trial court's finding that six-year delay in filing the motion to vacate after defendant learned of the judgment was "unconscionable"). Appellant, Del Conte Enterprises, Inc. (the "appellant") appeals the denial of a motion to vacate an amended consent final judgment entered in favor of appellee, Thomas Publishing Company ("Thomas Publishing"). We reverse, because the lack of proper service rendered the judgment void, and relief from a ***void judgment*** can be granted at any time. In the case of *East Auto Supply Co., Inc. v. Anchor Mortgage Servs., Inc.*, 502 So.2d 976 (Fla. 4th DCA 1987), our sister court held that since a reinstated corporation is treated as though it had never been dissolved, service upon a registered agent of a dissolved corporation is validated when a dissolved corporation is reinstated. In this case the appellant was not reinstated until after the ***void judgment*** was entered. At least to the extent that the holding in East Auto can be interpreted to mean that reinstatement after the entry of a ***void judgment*** can validate that judgment we disagree with our sister court. The judgment was void when entered and the fact that the appellant had to seek reinstatement in order to file a motion for relief from that judgment did not breathe life into it. See *Gotshall v. Taylor*, 196 So.2d 479 (Fla. 4th DCA), cert. denied, 201 So.2d 558 (Fla. 1967). See also *Falkner v. Amerifirst Fed. Sav. & Loan Ass'n*, 489 So.2d 758 (Fla. 3d DCA 1986). The appropriate procedure for attacking a ***void judgment*** is by a motion for relief from

judgment pursuant to Florida Rule of Civil Procedure 1.540(b). *Tucker*, 389 So.2d at 684. Failure to allege such jurisdictional facts is generally fatal. Service is void, and any judgment obtained is void. *Hargrave v. Hargrave*, 495 So.2d 904 (Fla. 1st DCA 1986); Laney v. Laney, 487 So.2d 1109 (Fla. 1st DCA 1986); *Mouzon v. Mouzon*, 458 So.2d 381 (Fla. 5th DCA 1984). Cf. *Kimbrough v. Rowe*, 479 So.2d 867 (Fla. 5th DCA 1985). A void judgment obtained without personal jurisdiction or subject matter jurisdiction may be set aside at any time. See *Palmer v. Palmer*, 479 So.2d 221 (Fla. 5th DCA 1985). A judgment entered without notice to a party is void. *Falkner v. Amerifirst Fed. Sav. & Loan Ass'n*, 489 So.2d 758 (Fla. 3d DCA 1986); cf. *Grahn v. Dade Home Serv., Inc*., 277 So.2d 544 (Fla. 3d DCA 1973) (where plaintiffs' failure to timely comply with trial court's order resulted in the dismissal of the complaint and entry of judgment against plaintiffs, the dismissal was reversed because the record failed to show that plaintiffs received notice of order); *McAlice v. Kirsch*, 368 So.2d 401 (Fla. 3d DCA 1979) (default judgment was void for failure to give notice to defendant even though defendant received original complaint which did not name him and summons which was not addressed to him). See generally *DeClaire v. Yohanan*, 453 So.2d 375 (Fla. 1984) (general discussion of the origin, purpose and application of Fla. R. Civ. P. 1.540(b)). Since the trial court specifically found that Shields had not received notice of the trial, the judgment was void. Because relief from a void judgment any be granted at any time, *Falkner*, 489 So.2d at 759, the trial court erred in denying Shields's motion as untimely. Consequently, the void judgment should be vacated. Where a judgment is vacated or set aside, it is as though no judgment had ever been entered. 49 C.J.S. Judgments § 306 (1977). Florida Rule of Civil Procedure 1.540 states that all motions for relief from judgment must be filed within a reasonable time and in some situations not more than one year after the judgment was entered. However, if a judgment or decree is void or it is not longer equitable that the judgment or decree should have prospective application, the one year limitation does not apply. This court and other Florida courts, both before and after the adoption of Florida Rule of Civil Procedure 1.540(b), have stated that a void judgment may be attacked "at any time" because a void judgment creates no binding obligation upon the parties, is legally ineffective, and is a nullity. See *Watkins v. Johnson*, 139 Fla. 712, 191 So. 2

(1939); *Malone v. Meres*, 91 Fla. 709, 109 So. 677 (1926); *Whigham v. Whigham*, 464 So.2d 674, 10 FLW 624 (Fla. 5th DCA Mar. 7, 1985); *Florida Power & Light Co. v. Canal Authority*, 423 So.2d 421 (Fla. 5th DCA 1982); *Tucker v. Dianne Elect., Inc.*, 389 So.2d 683 (Fla. 5th DCA 1980); *T.J.K. v. N.B.*, 237 So.2d 592 (Fla. 4th DCA 1970). See also DeClaire v. Yohanan, 453 So.2d 375 (Fla. 1984) (where judgment is void, there is no time limitation under Rule 1.540(b)). Assuming that a judgment is null and void for lack of jurisdiction does a Rule 1.540(b) motion for relief not brought within a reasonable time have the effect of making a void judgment valid? The answer is "no." Florida Rule of Civil Procedure 1.540 was acknowledged by its drafters to be substantially the same as Federal Rule 60. Like a Rule 1.540 motion, a federal motion for relief from a void judgment must be made within a "reasonable time." However, federal courts have reasoned that since a void federal judgment can be collaterally attacked at any time and because the judgment sustaining the collateral attack would have to be given effect in a subsequent motion for relief to set aside the void judgment, the "reasonable time" limitation must generally mean no time limitation, although there may be exceptional circumstances where the reasonable time limitation would require diligence on the part of the movant. See 7 Moore's Federal Practice, P60.25[4] (2d Ed. 1983). "A ***void judgment*** or decree is not entitled to the respect of a valid adjudication, and may be declared inoperative by any tribunal in which effect is sought to be given it. "A void adjudication has no legal or binding effect; it does not impair, or create, rights; it is not entitled to enforcement, and is ordinarily no protection to those who seek to enforce it. All proceedings founded on such an adjudication are regarded as invalid, for a ***void judgment*** or decree is regarded as a nullity, as mere waste paper. The situation is the same as if there had been no adjudication." Where such judgments or decrees rendered in this State against married women are void (as is the personal judgment in this case rendered on mere promissory notes for borrowed money) and the money so borrowed is not shown to have been used so as to charge the separate property of the married woman in this State, under the substantive law provisions of Section 1 and 2 of Article XI of the Florida Constitution, such a ***void judgment*** in so far as it was rendered against the married woman and is predicated upon promissory notes executed by her while a married woman

and not a free dealer under the laws of this State, may be quashed at any time by the court rendering the decree or judgment. Such notes being void as a personal obligation of the married woman, her failure to defend against the notes does not give validity to the judgment against her on promissory notes that are void as a personal liability against her, when such notes were not shown to have been executed for any of the substantive law purposes named in Sections 1 and 2 of Article XI, Constitution, and she was not a free dealer under the laws of Florida when the notes were executed. The judgment as against the married woman being void when rendered, may be quashed as to her, at her instance when she becomes a widow. A grantee of land from one having outstanding against her a ***void judgment***, may maintain a bill in equity to cancel a ***void judgment*** as a cloud upon its title to the land. Where such a bill in equity may be maintained by the grantee of land, a counter claim by the grantor to have the ***void judgment*** set aside, may likewise be maintained, particularly under circumstances such as exist in this case. *PROTECTIVE HOLDING CORPORATION v. CORNWALL COMPANY* (10/30/36). 173 So. 804, 127 Fla. 252.

A very brief overview of the law of voids in Georgia

A judgment void on its face may be attacked in any court by any person. Official Code of Georgia Annotated, Vol. 7, 1993, page 525. A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time, Official Code of Georgia Annotated, Vol. 7, 1993, page 526. Term "face of the record" has never been held to include papers involved in the litigation which are not a part of the record kept under the authority and direction of the clerk of the court in which the suit is pending; the phrase itself refers to the court record, not the file built up by litigants for their personal use, *Jennings v. Davis*, 88 S.E. 2d 544 (1955). Attack on a void judgment may be made directly in equity or collaterally, *Wasden v. Rusco Indus., Inc.* 211 S.E. 2d 733 (1975). This section (Georgia code section 9-11-60) provides, generally, for collateral attack in any court by any person where a judgment is void on its face - Official Code of Georgia

Annotated, Vol. 7, 1993, page 536. Judgment is "void on its face" when a non-amendable defect appears on the face of the record or pleadings - Void judgment may be attacked in any court by any person, Official Code of Georgia Annotated, Vol. 7, 1993, page 537. Punitive damages may be awarded only in tort actions, Code of Georgia, 51-12-5.1. An award of exemplary damages cannot stand where compensatory damages were not awarded, *Artis v. Crenshaw,* 256 Ga. 488, 350 S.E. 2d 679 (1985) and *Clarke v. Cox*, 197 Ga. App. 83, 397 S.E. 2d 598 (1990). Georgia law expressly provides for punitive damages but under Georgia law, three things are left for a jury to determine: (1) When punitive damages shall be allowed, (2) the amount of such damages, and (3) the purpose of the award as either to deter the wrongdoer from repeating the trespass or as compensation for the wounded feelings of the plaintiff, *Curtis Publishing Co. v. Butts,* 351 F.2d 702 (5th Cir. 1965) aff'd 388 U.S. 130, 87 S. Ct. 1975, 18 L.Ed. 2d 1094 (1967). Question of punitive damages is one for jury, *King v. Towns,* 102 Ga. App. 895, 118 S.E. 2d 121 (1960), *Moon v. Georgia Power Co.,* 127 Ga. App. 524, 194 s.e. 2D 348 (1972), and *Kicklighter v. Nails by Jannee, Inc.,* 616 F.2d 734 (5th Cir. 1980). Whether the aggravating circumstances of the alleged tort warrant the award to the plaintiff of punitive damages is a question for the jury, *Kelly v. Georgia Gas. ¶ Sur. Co.,* 105 Ga. App. 104, 123 S.E. 2d 711 (1961) and *Bonds v. Powl,* 140 Ga. App. 140, 230 S.E. 2d 133 (1976). Punitive damages are only to be given if there be circumstances of aggravation. Whether there be such circumstances or not, is a question for the jury, and not the court, *Townsend ¶ Ghegan Enters. v. W.R. Bean & Son, 117 Ga. App.* 109, 159 S. E. 2d 776 (1968). Seventy-five percent of any amounts awarded under the punitive damage section shall be paid into the treasury of the state. Punitive damages shall be limited to a maximum of $250,000.00, Code of Georgia 51-12-5.1. 9-11-60 G *** CODE SECTION *** 12/03/01 9-11-60.(a) Collateral attack. A judgment void on its face may be attacked in any court by any person.

Overview of the law of voids in Hawaii

Defendants' motion for Rule 60(b)(4) relief were not raised during the foreclosure proceeding. However, this is excusable under the rule because absent exceptional circumstances, there is no time limit on a Rule 60(b)(4) attack on a judgment. See *Calasa v. Greenwell*, 2 Haw. App. 395, 398, 633 P.2d 553, 555 (1981) ("Except in exceptional situations, there is no time limit on an attack on a judgment as void."); see also 11 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure: Civil § 2862, at 324-25 (2d ed. 1995) (construing the corresponding Federal Rule of Civil Procedure Rule 60(b)(4) by stating that "there is no time limit on an attack on a judgment as void. . . . A ***void judgment*** cannot acquire validity because of laches on the part of a judgment debtor."). "A ***void judgment***," the court declared, "is void no matter when." Granted, "[a] ***void judgment*** is void no matter when." But "[a] judgment is not void because it [may be] erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." 11 C. Wright & A. Miller, Federal Practice and Procedure § 2862, at 198-200 (1973) (footnotes omitted). Nothing in the record indicates the family court's decree was afflicted with any of these infirmities. Thus, the circuit court erred in awarding the defendants judgment. *Cooper v. Smith*, 70 Haw. 449 (Haw. 06/09/1989). Defendant has grounds for setting aside the default judgment which meet the requirements of H.R.C.P., Rule 60(b) (4). There has been a denial of due process and the judgment is void. Plaintiff, however, contends that defendant has failed to show a meritorious defense. But since the judgment was void, defendant did not have to show a meritorious defense. 7 Moore, Federal Practice, § 60.25(2) at 264 (2d ed.). See the following cases in which a ***void judgment*** was ordered vacated upon motion without any discussion of the question whether a meritorious defense was shown: *Shilhan v. Ho*, 40 Haw. 302; *Gouveia v. Nakamura*, 13 Haw. 450; *Phoenix Metals Corp. v. Roth, supra,* 79 Ariz. 106, 284 P.2d 645. In Wise v. Herzog, 114 F.2d 486 (D.C. Cir.) it was held that a meritorious defense need not be shown when the attack on the ***void judgment*** was by motion in the original suit. To the same effect are *Schwarz v. Thomas*, 222 F.2d 305 (D.C. Cir.) and *Hicklin v. Edwards,* 226 F.2d 410 (8th Cir.). Cf., *Perkins v. Sykes*, supra, in which the ground for setting aside the judgment was "surprise," and the circumstances were somewhat

different. Plaintiff's further contention is that defendant did not make his motion "within a reasonable time" as required by Rule 60(b). The court below evidently held for plaintiff on the ground that defendant delayed too long before making his motion. At most, there was a delay of nine months. Considering that the defendant was outside the State and had to determine how best to defend the California suit on the judgment, and considering also that the serious defects in the proceedings prior to judgment were disclosed by the court's own records, we are of the view that the delay was not a sufficient reason for denying the motion. Defendant argues that the requirement that the motion be made in a reasonable time does not apply to a motion to set aside a ***void judgment***. See 7 Moore, Federal Practice, § 60.25(4) (2d ed.); 3 Barron and Holtzoff, Federal Practice and Procedure, § 1327; cf., *Baker v. Brown*, 18 Haw. 22. In *Aiona v. Wing Sing Wo Co., supra*, 45 Haw. 427, 368 P.2d 879, we had occasion to note that the requirement that the motion be made in a reasonable time is applicable even to the clauses of Rule 60(b) not governed by the one-year limitation, and we find it unnecessary to decide in this case whether there is an exception to that requirement when the judgment is void. Though the judgment must be set aside, the further question arises: Should the entry of default be set aside? Here H.R.C.P., Rule 55(c), is involved. The setting aside of a default judgment and the setting aside of the entry of a default are two different things. White v. Sadler, supra, 350 Mich. 511, 87 N.W.2d 192; *United States v. Edgewater Dyeing & Finishing Co*., 21 F.R.D. 304 (E.D. Pa.). In the present case, however, unless the entry of the default is set aside the denial of due process remains. It is not a case for the exercise of discretion. See *Roller v. Holly*, 176 U.S. 398, 409, in which the court said: "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion." Hence the entry of the default, like the default judgment, must be set aside. The doctrine of res judicata is predicated upon a valid judgment and a ***void judgment*** may not be used to invoke its application. *Conway v. Sanset*, 59 Misc. 2d 666, 300 N.Y.S.2d 243, 247 (1969); 46 Am. Jur. 2d Judgments § 440. Generally, a default judgment constitutes a binding adjudication of all the rights of the parties embraced in the prayer for relief which arise from the facts stated in the complaint. *Yuen v. London Guar. & Acc. Co., Et Al*., 40 Haw. 213, 222-23 (1953). Rule 54(c) of the Hawaii Rules of Civil Procedure codifies the rule. It provides:

Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. By its plain meaning, HRCP Rule 54(c) restricts the scope of relief that may be granted by default judgment to that specifically prayed for. The Federal Rules of Civil Procedure upon which the Hawaii rule is based has been similarly interpreted. A default judgment cannot give to the claimant greater relief than the pleaded claim entitles him to and Rule 54(c) provides that such a judgment "shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." Since the prayer limits the relief granted in a judgment by default, both as to the kind of relief and the amount, the prayer must be sufficiently specific that the court can follow the mandate of the Rule.

## A BRIEF OVERVIEW OF THE LAW OF VOIDS, ILLINOIS

### JURISDICTION

The Illinois Supreme Court, in *Brown v. Van Keuren*, 340 Ill. 118, 122 (1930), held that "The petition required to put the court in motion and give it jurisdiction must be in conformity with the statute granting the right and must show all the facts necessary to authorize it to act, -i.e., it must contain all the statements which the statute says the petition shall state, and if the petition fails to contain all of these essential elements the court is without jurisdiction."

# SUBJECT-MATTER JURISDICTION IN COURTS PROCEEDING UNDER LIMITED JURISDICTION

Subject-matter jurisdiction is the authority of the court to hear and make a determination in a court action. *In Interest of M.V.*, 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997).

Without subject-matter jurisdiction, all of the orders and judgments issued by a judge are void under law, and are of no legal force or effect. *In Interest of M.V.*, 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997) ("Every act of the court beyond that power is void").

Under the current 1970 Illinois Constitution, all courts have general Jurisdiction; however in any proceeding based on an Illinois statute (whether divorce, adoption, paternity, juvenile, probate, Illinois Appellate Courts, Federal Courts, Bankruptcy Court, etc., i.e., in any statutory proceeding), the court immediately loses its general jurisdiction powers and becomes a court governed by the rules of limited jurisdiction.

If subject-matter jurisdiction is denied, it must be proved by the party claiming that the court has subject-matter jurisdiction as to all of the requisite elements of subject-matter jurisdiction. A partial list of the elements in which the Court is without subject-matter jurisdiction and all of its orders/judgments are void are:

(1) no Petition in the record of the case, *Brown v. VanKeuren*, 340 Ill. 118, 122 1930),

(2) defective Petition filed, *Brown v. VanKeuren*, 340 Ill. 118, 122 1930),

(3) fraud committed in the procurement of jurisdiction, *Fredman Brothers Furniture v Dept. of Revenue*, 109 Ill.2d 202, 486 N.E. 2d 893 (1985),

(4) fraud upon the court, *In re Village of Willowbrook*, 37 Ill.App.3d 393 (1962),

(5) a judge does not follow statutory procedure, *Armstrong v Obucino*, 300 Ill. 140, 143 (1921),

(6) unlawful activity of a judge, Code of Judicial Conduct,

(7) violation of due process, *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 25 (1936),

(8) if the court exceeded its statutory authority, *Rosenstiel v Rosenstiel*, 278 F.Supp. 794 (S.D.N.Y. 1967),

(9) any acts in violation of 11 U.S.C. 362(a), *In re Garcia*, 109 B.R. 335 (N.D. Illinois, 1989),

(10) where no justiciable issue is presented to the court through proper

pleadings, *Ligon v Williams*, 264 Ill.App.3d 701, 637 N.E.2d 633 (1st Dist. 1994),

(11) where a complaint states no congnizable cause of action against that party, *Charles v Gore*, 248 Ill.App.3d 441, 618 N.E. 2d 554 (1st Dist. 1993),

(12) where any litigant was represented before a court by a person/law firm that is prohibited by law to practice law in that jurisdiction,

(13) when the judge is involved in a scheme of bribery (the Alemann cases, *Bracey v Warden*, U.S. Supreme Court No. 96-6133 (June 9, 1997),

(14) where a summons was not properly issued,

(15) where service of process was not made pursuant to statute and Supreme Court Rules, *Janove v Bacon*, 6 Ill.2d 245, 249, 218 N.E.2d 706, 708 (1955),

(16) when the Rules of the Circuit Court are not complied with,

(17) when the Local Rules of the special court are not complied with,

(18) where the judge does not act impartially, *Bracey v Warden*, U.S. Supreme Court No. 96-6133 (June 9, 1997),

(19) where the statute is vague, *People v Williams*, 638 N.E.2d 207 (1st

Dist. 1994),

(20) when proper notice is not given to all parties by the movant, *Wilson v Moore*, 13 Ill.App.3d 632, 301 N.E.2d 39 (1st Dist. 1973),

(21) where an order/judgment is based on a void order/judgment, *Austin v. Smith*, 312 F.2d 337, 343 (1962); *English v English*, 72 Ill.App.3d 736, 393 N.E.2d 18 (1st Dist. 1979), or

(22) where the public policy of the State of Illinois is violated, *Martin-Tregona v Roderick*, 29 Ill.App.3d 553, 331 N.E.2d 100 (1st Dist. 1975).

In all courts of limited jurisdiction, the record of the case must support any claim of subject-matter jurisdiction. If subject-matter jurisdiction does not appear from the record of the case, the presiding judge is acting without subject-matter jurisdiction and his/her orders are void, of no legal force or effect. *State Bank of Lake Zurich v Thill*, 113 Ill.2d 294, 497 N.E.2d 1156 (1986) ("In determining whether a lack of jurisdiction is apparent from the record, we must look to the whole record, which includes the pleadings, the return on the process, the verdict of the jury, and the judgment or decree of the court."); *Wabash Area Development, Inc. v Ind. Com.*, 88 Ill.2d 392 (1981) "that compliance with the statutory requirements for the issuance of the writ must affirmatively appear in the record."); *I.C.R.R. Co. v Hasenwinkle*, 232 Ill.224, 227 (1908) ("The law presumes nothing in favor of the jurisdiction of a court exercising special statutory powers, such as those given by statute under which the court acted, (*Chicago and Northwestern Railway Co. v Galt*, 133 Ill. 657), and the record must affirmatively show the facts necessary to

give jurisdiction. The record must show that the statute was complied with"); *In re Marriage of Stefini*, 253 Ill. App. 3d 196, 625 N.E.2d 358 (1st Dist. 1993) ("A judgment is characterized as void and may be collaterally attacked at any time where the record itself furnished the facts which establish that the court acted without jurisdiction."); *People v Byrnes*, 34 Ill.App.3d 983, 341 N.E.2d 729 (2nd Dist. 1975) ("Whereas a court of general jurisdiction is presumed to have jurisdiction to render any judgment in a case arising under the common law, there is not such presumption of jurisdiction in cases arising under a specific statutory grant of authority. In the later cases the record must reveal the facts which authorize the court to act."); *Zook v Spannaus*, 34 Ill.2d 612, 217 N.E.2d 789 (1966) ("In the absence of such findings in the record and in the absence of any evidence in the record to support such findings the court was without jurisdiction in this special statutory proceeding to enter an order authorizing the guardian to consent to adoption."); *Fico v Industrial Com*., 353 Ill. 74 (1933) ("Where the court is exercising a special statutory jurisdiction the record must show upon its face that the case is one where the court has authority to act."). In a court of limited jurisdiction, whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc*., 168 Ill.App.3d 558, 522 N.E.2d 841(1988)("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge under court decisions has immediately lost subject-matter jurisdiction. In a court of limited jurisdiction, the court must proceed exactly according to the law or statute under which it operates. *Flake v Pretzel*, 381 Ill. 498, 46 N.E.2d 375 (1943) ("the actions, being statutory proceedings,

...were void for want of power to make them.") ("The judgments were based on orders which were void because the court exceeded its jurisdiction in entering them. Where a court, after acquiring jurisdiction of a subject matter, as here, transcends the limits of the jurisdiction conferred, its judgment is void."); *Armstrong v Obucino*, 300 Ill. 140, 143, 133 N.E. 58 (1921) ("The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgment or decree the law or statute which is applicable to it." *In Interest of M.V.*, 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997) ("Where a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction, and courts exercising jurisdiction over such matters must proceed within the strictures of the statute."); *In re Marriage of Milliken*, 199 Ill.App.3d 813, 557 N.E.2d 591 (1st Dist. 1990) ("The jurisdiction of a court in a dissolution proceeding is limited to that conferred by statute."); *Vulcan Materials Co. v. Bee Const. Co., Inc.*, 101 Ill.App.3d 30, 40, 427 N.E.2d 797 (1st Dist. 1981) ("Though a court be one of general jurisdiction, when its power to act on a particular matter is controlled by statute, the court is governed by the rules of limited jurisdiction."); *In re M.M.*, 156 Ill.2d 53, 619 N.E.2d 702 (1993) ("The legislature may define the `justiciable matter' in such a way as to preclude or limit the authority of the circuit court. When a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction and courts exercising jurisdiction over such matters must proceed within the strictures of the statute."); *Brown v. VanKeuren*, 340 Ill. 118, 122 (1930) ("Whatever the rank of the court exercising a special statutory jurisdiction, it is governed by the same rules as courts of limited jurisdiction."); *Midland Coal Co. v. Knox County*, 268 Ill.App.3d 485, 644 N.E.2d 796 (4th Dist. 1994) ("Special statutory jurisdiction is limited to the language of the act conferring it, and the court has no powers from any other source. ... [T]he authority of the court to make any order must be found in the statute. *Levy v. Industrial Comm'n* (1931), 346 Ill. 49, 51, 178 N.E. 370, 371."); *Skilling v. Skilling*, 104 Ill.App.3d 213, 482 N.E.2d 881 (1st Dist. 1982) ("the legislature

prescribes that a court's jurisdiction to hear and determine controversies involving a statutory right is limited in that certain facts must exist before a court can act in any particular case."); *Keal v. Rhydderick*, 317 Ill. 231 (1925) ("court exercising a special statutory jurisdiction, it is governed by the same rules as courts of limited jurisdiction."); *In re Chiara C.*, 279 Ill.App.3d 761, 765 (1996) ("Thus, in cases where `a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction [citations], and the courts exercising jurisdiction over such matters must proceed within the strictures of the statute".); *Johnson v. Theis*, 282 Ill.App.3d 966, 669 N.E.2d 590 (2nd Dist. 1996) ("A court in the exercise of special statutory jurisdiction is limited in its power by the language of the act conferring such jurisdiction."); *In Interest of Rami M.*, 285 Ill.App.3d 267, 673 N.E.2d 358 (1st Dist. 1996) ("In cases where the court is conferred power to adjudicate by virtue of a statute, the court's jurisdiction is strictly limited by the statute."). All orders or judgments issued by a judge in a court of limited jurisdiction must contain the findings of the court showing that the court has subject-matter jurisdiction, not allegations that the court has jurisdiction. *In re Jennings*, 68 Ill.2d 125, 368 N.E.2d 864 (1977) ("in a special statutory proceeding an order must contain the jurisdictional findings prescribed by statute."); *Zook v Spannaus*, 34 Ill.2d 612, 217 N.E. 2d 789 (1966); State Bank of Lake *Zurich v Thill*, 113 Ill.2d 294, 497 N.E.2d 1156 (1986). A judge's allegation that he has subject-matter jurisdiction is only an allegation (*Lombard v Elmore*, 134 Ill.App.3d 898, 480 N.E.2d 1329 (1st Dist. 1985); *Hill v Daily*, 28 Ill.App.3d 202, 204, 328 N.E.2d 142 (1975)); inspection of the record of the case has been ruled to be the controlling factor. If the record of the case does not support subject-matter jurisdiction, then the judge has acted without subject-matter jurisdiction. *The People v Brewer*, 328 Ill. 472, 483 (1928) ("If it could not legally hear the matter upon the jurisdictional paper presented, its finding that it had the power can add nothing to its authority, - it had no authority to make that finding."). Without the specific findings of jurisdiction by the court in an order or judgment, the order or judgment does not comply with the law and is void. Since a void order has no legal force or effect there can be no time limit within which to challenge the order or judgment. Further since the order has no legal force or effect, it can be repeatedly challenged, since no judge has the lawful

authority to make a void order valid. *Bates v Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260, 267 (1990) (a court "cannot confer jurisdiction where none existed and cannot make a void proceeding valid."); *People ex rel. Gowdy v Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52 N.E.2d 255 (1943). It is clear and well established law that a void order can be challenged in any court. *Old Wayne Mut. L. Assoc. v McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907) ("jurisdiction of any court exercising authority over a subject 'may be inquired into in every other court when the proceedings in the former are relied upon and ought before the latter by a party claiming the benefit of such proceedings,' and the rule prevails whether 'the decree or judgment has been given, in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations the practice in chancery, or the municipal laws of states.'"); *In re Marriage of Macino*, 236 Ill.App.3d 886 (2nd Dist. 1992) ("if the order if void, it may be attacked at any time in any proceeding,"); *Evans v Corporate Services*, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) ("a void judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"); *Oak Park Nat. Bank v Peoples Gas Light & Coke Col*, 46 Ill.App.2d 385, 197 N.E.2d 73, 77 (1st Dist. 1964) ("that judgment is void and may be attacked at any time in the same or any other court, by the parties or by any other person who is affected thereby."). It is also clear and well established law that a void order can be challenged in any court at any time. *People v Wade*, 116 Ill.2d 1, 506 N.E.2d 954 (1987) ("A void judgment may be attacked at any time, either directly or collaterally."); *In re Marriage of Macino*, 236 Ill.App.3d 886 (2nd Dist. 1992) ("if the order is void, it may be attacked at any time in any proceeding,"; *Evans v Corporate Services*, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) ("a void judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"). The law is well-settled that a void order or judgment is void even before reversal. *Vallely v Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920) ("Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to

reversal."; *Old Wayne Mut. I. Assoc. v McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v Berry*, 8 How. 495, 540, 12 L.Ed. 1170, 1189 (1850); *Rose v Himely*, *4 Cranch* 241, 269, 2 L.Ed. 608, 617 (1808).

PERSONAM JURISDICTION

In addition to the mandatory requirement of having subject-matter jurisdiction, a court needs to acquire in *personam* jurisdiction over the respondent/defendant. Any order issued by a judge when both subject-matter jurisdiction and *in personam* jurisdiction have not been properly conferred is void, of no legal force or effect. *In personam* jurisdiction is obtained when the respondent/ defendant is properly served either by certified mail, by personal service, or by publication (only rarely used and only when the address of the respondent/defendant is unknown). (Illinois) Personal service occurs whenever the sheriff or a person appointed by the court serves a copy of a legal summons and a copy of a legal Petition/Complaint directly upon the respondent/defendant or upon any person from his/her immediate family who is 13 years of age or over. Personal service upon any other person is not personal service on the respondent; the service is defective and does not confer *in personam* jurisdiction upon the court. Just as in subject-matter jurisdiction, if challenged, an inspection of the record of the case must show that legal service had been made upon the respondent/defendant. Contrary to some allegations, the appearance of a respondent/ defendant in the court when proper legal service had not been obtained does not confer jurisdiction upon the court. Mere notice is not legal notice. Without both subject-matter jurisdiction and *in personam* jurisdiction having been obtained, the proceeding is only a sham proceeding, having no legal force or effect. Even if one participates in the sham proceeding, no *in personam* jurisdiction has been conferred upon the court. The person is legally only an observer to a sham proceeding. However, if proper legal service upon the respondent had been obtained, and if the court also held subject-matter jurisdiction, then the appearance by the respondent or his/her attorney

confers *in personam* jurisdiction upon the court. The respondent then has made a general appearance before the court. Until the court obtains lawful *in personam* jurisdiction, all orders of the court are void, of no legal force or effect.

QUESTION "PURPORTED" AUTHORITY BUT RESPECT ACTUAL AUTHORITY

If the judge does not have judicial authority to hear and rule on a matter, the court is considered *coram non judice*, and the judge is a trespasser of the law and, under the law, is acting as an imposter. The judge is therefore acting unlawfully. Under U.S. Supreme Court decisions, the judge would be acting in treason to the Constitution. As to policemen, the Illinois Supreme Court has held that, under certain circumstances, they could be sued personally for what they did not do. In the past, under certain circumstances, they could be sued personally only for what they did. Police and sheriffs now should question their own authority when they act, or when they do not act, to prevent their being personally sued. You should also properly question their authority. Prosecutors and court reporters, who in the past believed that they had immunity from lawsuits, now, in certain circumstances, have had their immunity striped from them. Obey people with actual Authority, but they should first prove that they have actual Authority. Question "purported" Authority.

CONFLICT OF INTEREST

"[J]ustice 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).

## JUDGES AS CRIMINALS

Judges who do not report the criminal activities of other judges become principals in the criminal activity, 18 U.S.C. Section 1. Since no judges have reported the criminal activity of the judges who have been convicted, the other judges are as guilty as the convicted judges.

## JUDICIAL IMMUNITY

Judges have given themselves judicial immunity for their judicial functions. Judges have no judicial immunity for criminal acts, aiding, assisting, or conniving with others who perform a criminal act, or for their administrative/ ministerial duties. When a judge has a duty to act, he does not have discretion - he is then not performing a judicial act, he is performing a ministerial act. Judicial immunity does not exist for judges who engage in criminal activity, for judges who connive with, aid and abet the criminal activity of another judge, or to a judge for damages sustained by a person who has been harmed by the judge's connivance with, aiding and abetting, another judge's criminal activity.

TRESPASSERS OF THE LAW

Should the judge not have subject-matter jurisdiction, then the law states that the judge has not only violated the law, but is also a trespasser of the law. *Von Kettler et.al. v Johnson*, 57 Ill. 109 (1870) ("if the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers."); *Elliott v Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) ("without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any court exercising authority over a subject, may be inquired into in every court, when the proceedings of the former are relied on and ought before the latter, by the party claiming the benefit of such proceedings."); *In re TIP-PA-HANS enterprises, Inc.*, 27 B.R. 780, 783 (1983) (a judge "lacks jurisdiction in a particular case until it has been demonstrated that jurisdiction over the subject matter exists") (when a judge acts "outside the limits of his jurisdiction, he becomes a trespasser ... ".) (" ... courts have held that where courts of special or limited jurisdiction exceed their rightful powers, the whole proceeding is *coram non judice* ... "). Trespasser - "One who enters upon property of another without any right, lawful authority, or express or implied invitation, permission, or license, not in performance of any duties to owner, but merely for his own purpose, pleasure or convenience. *Mendoza v City of Corpus Christi*, Tex. App. 13 Dist., 700 S.W.2d 652, 654." Black's Law Dictionary, 6th Edition, page 1504. The Illinois Supreme Court held that if a court "could not hear the matter upon the jurisdictional paper presented, its finding that it had the power can add nothing to its authority, - it had no authority to make that finding." *The People v. Brewer*, 128 Ill. 472, 483 (1928). When judges act when they do not have jurisdiction to act, or they enforce a void order (an order issued by a judge without jurisdiction), they become trespassers of the law, and are engaged in treason (see below).

The Court in *Yates v. Village of Hoffman Estates, Illinois*, 209 F. Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse." When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect. *The U.S. Supreme Court, in Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner voilative of the Federal constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person).

VIOLATION OF OATH OF OFFICE

In Illinois, 705 ILCS 205/4 states "Every person admitted to practice as an attorney and counselor at law shall, before his name is entered upon the roll to be kept as hereinafter provided, take and subscribe an oath, substantially in the following form: 'I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of attorney and counselor at law to the best of my ability.'" In Illinois, a judge must take a second oath of office. Under 705 ILCS 35/2 states, in part, that "The several judges of the circuit courts of this State, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation, which shall be filed in the office of the Secretary of State: 'I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of judge of court, according to

the best of my ability.'" Further, if the judge had enlisted in the U.S. military, then he has taken a third oath. Under Title 10 U.S.C. Section 502 the judge had subscribed to a lifetime oath, in pertinent part, as follows: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; ...". The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.". *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401 (1958). Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason. Having taken at least two, if not three, oaths of office to support the Constitution of the United States, and the Constitution of the State of Illinois, any judge who has acted in violation of the Constitution is engaged in an act or acts of reason. If a judge does not fully comply with the Constitution, then his orders are void, *In re Sawyer*, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

TREASON

Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66 .Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821) Any judge or attorney who does not report such judges for treason as required by law may themselves be guilty of misprison of treason, 18 U.S.C. Section 2382.

# RULE 23 ORDERS COVER UP JUDICIAL MISCONDUCT

Justices of the Illinois First District Appellate Court use Rule 23 Orders to cover up their Judicial Misconduct. Justices of other Illinois Appellate Courts may also use Rule 23 Orders the same way, but, at this time, no person has presented Citizens with any documentation that it occurs in other Districts. What is a Rule 23 Order? It is an unpublished Order issued by an Illinois Appellate Court or the Illinois Supreme Court, so that the general public and lawyers in general do not read of the misconduct occurring in these courts. Probably if you have appealed a decision of the trial court, and the reviewing court issued a Rule 23 Order, you may have actually won your case, based on the law, but the reviewing court engaged in misconduct in covering up either the misconduct of the trial court judge, or where the reviewing judges did not know the law, or where the reviewing justices had taken a bribe (the law states that a bribe does not need to be money - Black's Law Dictionary). Most litigants do not understand the law sufficiently to know if the Rule 23 Order was valid or was void. If it is void, you have a legal right to open that appeal again, in any court, in any State, and all actions taken, based on that void order, are themselves void, of no legal force or effect. No person, bank, title company, etc. can rely on the order. As an example, should the judge order a house to be sold, and the judge did not have jurisdiction to do so, then even though another party believes that they have purchased the property, the legal owner of the property is the party from which the judge unlawfully took the property. Most judges and attorneys pretend not to understand jurisdiction, as it deprives them of purported

authority. As only one example, an order is void if proper legal notice is not given to the opposing party. An order is void if an attorney withdraws without first delivering to you all documents in his care, custody, or control which you may need to proceed with the case on your own, pro se, unless you have employed another attorney to handle your case before the order granting withdrawal is actually granted. Your attorney(s) may not have informed you that the Rule 23 Order was not legal, since the attorney(s) by law must protect the courts or be disbarred. Who loses? You, the litigant, and justice. Did the justices of the Appellate Court have lawful authority (jurisdiction) to issue that Rule 23 Order? If they did not have jurisdiction, a jurisdiction conferred only by law, then they have no legal right to issue that Rule 23 Order. That Order is void, of no legal force or effect, and legally does not exist.

APPELLATE JURISDICTION

The Illinois Appellate Court is a court governed by the rules of limited jurisdiction, therefore the Justices must first accurately determine if the appeal falls within their scope of jurisdiction. The Justices must first determine that the Notice of Appeal was filed within 30 days of a final order, that the trial court's order is truly a final order, and must first determine that the trial court actually was conferred subject-matter jurisdiction based on law. If the Justices should hear and rule on any appeal where the reviewing court was not properly conferred with subject-matter jurisdiction, then the order of the court has no legal validity. The reviewing court must first make a determination of its jurisdiction before it can legally issue any valid order. There is a presumption, under law, that a court governed by the rules of limited jurisdiction is without subject-matter jurisdiction. When jurisdiction is challenged, the party claiming that the court has jurisdiction has the legal burden to prove that jurisdiction was conferred upon the court through the proper procedure. Otherwise, the court is without jurisdiction. Should the justices of the appellate court act without jurisdiction, the U.S. Supreme Court has ruled that the justices

are engaged in treason. The Illinois Supreme Court has stated that the term "Law" denotes court rules as well as statutes, constitutional provisions and decisional law. Court Rules include Supreme Court Rules, Code of Judicial Conduct, Rules of Professional Conduct (for attorneys), and local Rules of the Court. The Code of Judicial Conduct, Rule 62(A), requires a Justice to comply with the law. When a Justice does not comply with the law, he/she violates the law and the Code of Judicial Conduct, and should be reported. Under certain circumstances, he loses subject-matter jurisdiction and has no lawful authority. In fact, he has engaged in treason. In the other circumstances, he/she acts as a criminal in violating the law. It is wrong for a Justice to act in either circumstance. Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 1821) Any judge or attorney who does not report such judges for treason as required by law may themselves be guilty of misprison of treason, 18 U.S.C. Section 2382. If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason. The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme

authority of the United States."

THE LAW OF VOIDS BACK HOME IN INDIANA. As to an act or omission rendering the judgment void, it is well settled that even though a void judgment is a nullity and may be ignored by those whose rights are attempted to be affected thereby, a court will not permit such a judgment to encumber the record, but will vacate the ineffectual entry thereof on proper application, although the application is made after the term of the rendition of the judgment. Even the lapse of a period of years does not necessarily preclude relief, which is sometimes declared available regardless of what length of time

has intervened since the rendition of the judgment. Laches does not operate to preclude the opening or vacating of a void judgment, for the reason that no amount of acquiescence can make it valid. 03/05/51 *SLACK v. GRIGSBY* 97 N.E.2d 145. The Treasurer correctly states the effect of a lack of subject-matter jurisdiction as creating a void judgment -- it is as if the case had never been decided. Thus, it has been stated that there is no question of discretion on the part of a court reviewing a void judgment, "[e]ither a judgment is void or it is valid." C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE, (1973) Civil § 2862. And there is no time limit or laches on an attack on a judgment as void. State v. Lindsey, (1952) 231 Ind. 126, 106 N.E.2d 230; Wright & Miller, supra at § 2862. Wright & Miller are even of the opinion that the reasonable time standard of Federal Trial Rule of Procedure § 60(B) would not apply. Other effects of the void judgment rule are that an appellate court must raise the subject matter jurisdiction issue sua sponte and that there can be no waiver of the issue or conferred jurisdiction by consent. *Matter of City of Ft. Wayne*, (1978) 178 Ind. App. 228, 381 N.E.2d 1093, 1095. A void judgment is one that, from its inception, is a complete nullity and without legal effect. *Stidham v. Welchel*, 698 N.E.2d 1152, 1154 (Ind. 1998). A void judgment is one rendered by a court . . . without jurisdiction of a particular case or the parties[.]*Yellow Cab Co. of Bloomington, Inc. v. Williams*, 583 N.E.2d 774, 777 (Ind. Ct. App. 1991). Ind. Rules of Procedure, T.R. 60(B) (6) authorizes a trial court to grant relief from a void judgment "upon such terms as are just. There is no . . . discretion on the part of a court reviewing a void judgment *Schoffstall v. Failey* (1979), Ind.App., 389 N.E.2d 361. Laches does not operate to preclude the opening or vacating of a void judgment, for the reason that no amount of acquiescence can make it valid. Under our constitution, there can be no valid trial of a criminal case unless a defendant is defended by counsel, if he desires counsel. A judgment rendered where counsel has been denied is void.... (Citations omitted). This court has further held that when a void judgment is entered it can be attacked at any time, directly or collaterally, whenever the question is raised. (Citation omitted). The rule therefore is that due diligence is not a necessary fact to be proven when it is alleged and proved that the petitioner's constitutional rights have been violated. It was not necessary for appellees to prove that due diligence was used in filing their petitions. 07/30/86 *DANNY J. RAY v. STATE INDIANA* 496 N.E.2d 93. An award of attorneys' fees depends upon valid judgment being entered and cannot be recovered as part of a void judgment. McMinn, at 620, 100 N.E.2d at 678. As already noted, Pickett's sentence was not coercive in nature or for the benefit of Pelican and must, therefore, be considered punitive and properly imposed only in a

criminal contempt proceeding. As such, the trial court's order was a void judgment and so its award of attorneys' fees must also fail. 07/17/86 *DENNIS PICKETT v. PELICAN SERVICE* 495 N.E.2d 245. A void judgment implies no judgment at all, and its nonexistence may be declared upon collateral attack, upon suggestion of an amicus curiae, or by the court at any time upon its own motion." *Lowery v. State Life Ins. Co.* (1899), 153 Ind. 100, 102, 54 N.E. 442, 443. Generally there is no requirement for one subjected to a "void" judgment to do anything more than call the trial court's attention to the mistake with a request that the same be corrected pursuant to Trial Rule 59. See *State, ex rel. Eggers v. Branaman* (1932) 204 Ind. 238, 183 N.E. 653. A party may secure an order declaring the invalidity of a void judgment by appeal. An appeal will lie from a void judgment and an appellate tribunal may be successfully resorted to to secure a judicial determination of its invalidity. *Board of Commissioners of Cass County v. The Logansport and Rock Creek Gravel Road Company* (1882), 88 Ind. 199, 200; Bartmess et al v. Holliday (1901), 27 Ind. App. 544, 557, 61 N.E. 750. Where it is alleged that there are radical jurisdictional defects, sufficient to render the judgment void and subject to collateral attack, and that such lack of jurisdiction can be determined from the record (the record proper is the petition and the return), habeas corpus is the proper remedy. Want of jurisdiction over the person or subject-matter is always ground for such relief. If the court has acted without such jurisdiction, the judgment is absolutely void, and one who is imprisoned under and by virtue of such a void judgment may be discharged from custody on habeas corpus. 29 C.J. 30, note 16; 12 R.C.L. 1196; *Miller v. Snider* (1854), 6 Ind. 1; *People v. Simon* (1918), 284 Ill. 28, 119 N.E. 940. As to person, see *In re Mayfield* (1890), 141 U.S. 107, 35 L. Ed. 635; *In re Reese* (1901), 107 Fed. 942; *Ex parte Reed* (1879), 100 U.S. 13, 25 L. Ed. 538; *Eureka Bank Cases* (1912), 35 Nev. 80, 126 Pac. 655. As to subject-matter, see *Hans Nielson, Petitione*r (1889), 131 U.S. 176, 33 L. Ed. 118; *Ex parte Lange* (1874), 18 Wall. 163; *Ex parte Yarbrough* (1884), 110 U.S. 651, 28 L. Ed. 274; *Ex parte Justus* (1909), 3 Okla. Crim. 111, 104 Pac. 933, 25 L.R.A. (N.S.) 483. We find an exhaustive and able case note in 154 A.L.R. 818 by P. H. Vartanian on the subject 'Lapse of time as bar to action or proceeding for relief in respect of void judgment.' We concur in his Conclusion that it is one of the fundamental policies of the law that there should be an end to litigation and that adherence to such policy has resulted in the common law doctrine of finality of judgments, and unless appealed from within a designated time and reversed for error, a judgment rendered by a competent court having jurisdiction over the subject matter of the action and the necessary parties thereto, cannot be vacated after the expiration of the term of court at

which it was rendered. However, in this state, by the statute under consideration, a limited control over judgments of final settlement in the administration of decedent's estates, after the expiration of the term in which they were rendered, is expressly conferred upon the courts and such a judgment may be vacated at any time within three years from the date of its rendition for 'illegality, fraud or mistake in such settlement.' The common law doctrine of the finality of judgments as modified by statute, however, presupposes a valid judgment, the jurisdiction of the court over the subject matter and the parties, and the competency of the court to render it. See cases cited in foot note 2, 154 A.L.R. 819. Consequently, says Vartanian, in the case note to which we refer above, 'it is recognized by almost the unanimous consensus of judicial authority that the doctrine and its corollary have no application to void judgments such as judgments rendered by a court having no jurisdiction over either the subject matter of the action or the parties, or both, or by a court having no power to render the judgment, or to judgments passing upon issues not within the case; and that such judgments may be opened or vacated by the court rendering them on motion made at any time, even after the expiration of the term at which they were rendered, or after the expiration of the period allowed by statute for opening or vacating judgments on certain grounds. Most of the courts, however, have confined this rule to judgments that are void on the face of the record and where a judgment is merely irregular, voidable or void because of extrinsic facts such as fraud or mistake, relief is governed by the common law rule or by the statute in those jurisdictions in which the common law rule has been modified. See cases cited in foot note 7, 154 A.L.R. 825. It is our considered opinion, supported by the great weight of authority, that the remedy afforded the appellants in this case by § 6-1424, supra, is not an exclusive one and the judgment involved, being void on the face of the record, is subject to appropriate attack even though more than three years have elapsed since the date of its rendition. There may be some doubt as to the propriety of an independent suit in equity to vacate a patently void judgment in view of the fact that the overwhelming weight of authority indicates that such a judgment may be set aside by motion in the same proceedings made in the court rendering the judgment, thus furnishing what would seem to be an adequate remedy at law. Accord, Smith v. Tisdal (1985), Ind. App., 484 N.E.2d 42 (an action seeking relief from a void judgment may be brought at any time).

Michigan has voids!

A court may at any time relieve a party from a void judgment. A judgment entered by a court without subject-matter jurisdiction is a void judgment and may be vacated at any time on

the court's own motion or upon the motion of any party thereto, including the party who originally invoked the jurisdiction of the court. A fraud is perpetrated upon a court when some material fact is concealed from the court or when some material misrepresentation is made to it; where, in a divorce case, the court was advised regarding a possible reconciliation of the parties and the decision not to take additional proofs on the issue of reconciliation was made by the trial court, not by either party, there was no fraud perpetrated upon the court. Honigman & Hawkins, Michigan Court Rules Annotated (2d ed), p 190. A judgment entered by a court without subject-matter jurisdiction is a void judgment and may be vacated at any time on the court's own motion or upon the motion of any party thereto, including the party who originally invoked the jurisdiction of the court. Carpenter v Dennison, 208 Mich 441 (1919); Orloff v Morehead Manufacturing Co, 273 Mich 62 (1935); Shane v Hackney, 341 Mich 91 (1954); Millman Brothers, Inc v Detroit, 2 Mich App 161 (1966). The district court found that the Wisconsin judgment was issued by the small claims court in that jurisdiction, and that that court's jurisdiction is limited to actions, "'where the amount claimed is $1,000 or less' (Wis Statutes 299.01[4]) or 'where the value of the property claimed does not exceed $1,000' (Wis Statutes 299.01[3])". In its original complaint filed in Wisconsin, plaintiff listed the value of the property as $1,800. Since the judgment ultimately entered was in excess of $3,000, the court concluded that the Marinette court did not have subject matter jurisdiction and reasoned that a void judgment is attackable whenever its effects are felt. Therefore, it concluded no writ of garnishment could issue based upon this void judgment. A judgment entered by a court without subject-matter jurisdiction is a void judgment and may be vacated at any time on the court's own motion or upon the motion of any party thereto, including the party who originally invoked the jurisdiction of the court. Carpenter v Dennison, 208 Mich 441 [175 NW 419]

(1919); Orloff v Morehead Manufacturing Co, 273 Mich 62 [262 NW 736] (1935); Shane v Hackney, 341 Mich 91 [67 NW2d 256] (1954); Millman Brothers, Inc v Detroit, 2 Mich App 161 [139 NW2d 139] (1966)." Banner v Banner, 45 Mich App 148, 153; 206 NW2d 234 (1973). The Justice had no jurisdiction to render judgment on March 18th. The transcript shows a void judgment. All proceedings based thereon are void. The transcript must affirmatively show jurisdiction. Wedel v. Green, 70 Mich 642. A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by ). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been. 10/13/58 *FRITTS v. KRUGH*. SUPREME COURT OF MICHIGAN, 92 N.W.2d 604, 354 Mich. 97. **On certiorari this Court may not review questions of fact. Brown v. Blanchard, 39 Mich 790. It is not at liberty to determine disputed facts (Hyde v. Nelson, 11 Mich 353), nor to review the weight of the evidence. Linn v. Roberts, 15 Mich 443; Lynch v. People, 16 Mich 472. *Certiorari is an appropriate remedy to get rid of a void judgment, one which there is no evidence to sustain*. Lake Shore & Michigan Southern Railway Co. v. Hunt, 39 Mich 469.** Void judgment is subject to collateral attack in State where rendered and in other States. 10/05/42 *NANCE v. GENTRY*, SUPREME COURT OF MICHIGAN, 5 N.W.2d 689, 303 Mich. 121.

MISSOURI VOIDS IN BRIEF

The motion is authorized by Rule 74.06(b), "on motion and upon terms that are just, the court may relieve a party . . . from a judgment [where] (4) the judgment is void." The motion must be made within a reasonable time. Rule 74.06(c). The "procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action." Rule 74.06(d). Here, we have a motion filed in an equitable dissolution proceeding. It pleads all the elements of a cause of action to set aside a void judgment which could be alleged in an independent action. The Missouri Supreme Court in *Sprung v. Negwer Materials, Inc.*, 727 S.W.2d 883 (Mo. banc 1987) held a motion to set aside a default judgment in a civil damage suit was "sufficient to invoke the equitable powers of the court; . . . [and] may be treated as an independent suit in equity." Id. at 889. Timothy Brown's motion contests the fundamental requirement of subject matter jurisdiction which implicates the issue of void judgment. It falls within the scope of the rule. Rule 74.06(d). We read Rule 74.06(b)(4) together with 74.06(d) to permit either motions or independent actions where the issue is a void judgment. We recently defined a void judgment in *K & K Investments, Inc. v. McCoy*, ___ S.W.2d ___ (Mo.App. E.D. 1994)(slip op. #64245, decided May 3, 1994) as: One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. One which, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, to any degree. 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. See also, *Platt v. Platt*, 815 S.W.2d 82, 83 (Mo. App. 1991)(quoting from Black's Law Dictionary 1574 (6th Ed. 1990)). A collateral proceeding may not generally be used to contradict or impeach a final judgment. *La*

*Presto v. La Presto*, 285 S.W.2d 568, 570 (Mo. 1955). However, a void judgment "is entitled to no respect, and may be impeached at any time in any proceeding in which it is sought to be enforced or in which its validity is questioned by anyone with whose rights or interests it conflicts." Id. Gary contends that the 1997 modification judgment is void in several respects because it did not comply with the statutory procedures for terminating parental rights section 211.444, RSMo Cum. Supp. 1996 and section 211.462, RSMo, 1994. The reported cases are clear that an attack upon a void judgment is not subject to the "reasonable time" requirements of Rule 74.06. *Williams v. Williams*, 932 S.W.2d 904, 905-06 (Mo. App. 1996); State ex rel. *Houston v. Malen*, 864 S.W.2d 427, 430 (Mo. App. 1993) (questioned on other grounds by *Brackett v. Laney*, 920 S.W.2d 597 (Mo. App. 1996)). In Williams, the Eastern District held that a direct attack filed eight years after entry of a void default judgment was timely under Rule 74.06. See Williams, 932 S.W.2d at 905-06. Similarly, in Houston, the appellate court approved of a direct attack upon a judgment filed four years and three months after the judgment was entered. See Houston, 864 S.W.2d at 430. A void judgment is subject to direct or collateral attack at any time. Additionally, principles of equity such as laches or estoppel cannot act as a bar to an attack upon a void judgment. See Houston, 864 S.W.2d at 430; *Hampton v. Hampton*, 536 S.W.2d 324, 326 (Mo. App. 1976). Under the holdings of Houston and Williams, Gary's three-year delay in attacking the modification judgment cannot bar him from collaterally attacking that void judgment in the conservatorship proceeding. One of the grounds the City circuit court specified for setting aside its order was that "the judgment is void pursuant to Rule 74.06(b)(4)." A court may relieve a party from a final judgment under Rule 74.06 by setting aside a judgment it finds void. A void judgment is defined as follows: One which has no legal force or effect, invalidity of which may be asserted by any person whose

rights are affected at any time and at any place directly or collaterally. One which, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. 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. (citations omitted). The City circuit court found that the judgment was void because it had never obtained jurisdiction over defendant and his wife in that they had not been served. Service of process is a prerequisite to jurisdiction over the person of a defendant. *Roberts v. Johnson*, 836 S.W.2d 522, 524 (Mo. App. 1992). A judgment entered against a party by a court lacking personal jurisdiction over that party is void. Id. A void judgment is not a "judgment, regularly made" as that term is used in § 511.240. An execution sale based on a void judgment does not vest title in the purchaser, even if the purchaser is a stranger to the proceedings. *State ex rel. Horine Farms, Inc. v. Jones*, 830 S.W.2d 894, 896 (Mo. App. 1992). Plaintiff's arguments relating to whether it was a bona fide purchaser for value do not apply in the context of a void judgment. See id. The City circuit court's action setting aside ab initio its previous judgment as void meant there was no judgment on which execution could be based. That the judgment was also set aside for other reasons does not diminish the fact that the trial court found the judgment to have been entered without jurisdiction and thus void. Plaintiff also contends that the execution sale could not be set aside under Rule 74.03 because the sale was neither an order nor a judgment and defendant's motion for summary judgment in the County case was not filed within six months. Plaintiff further argues that defendant was not entitled to relief in the County case under Rule 74.06. Plaintiff asserts that defendant did not properly support his motion in the County case with evidence to

support findings which plaintiff contends are required under Rules 74.03 and 74.06. These arguments have no merit. Defendant's counterclaim filed in the County case was an independent action in equity to quiet title, to cancel the sheriff's deed, and to set aside the execution. It was not a motion to set aside a judgment under Rules 74.03 or 74.06. An execution sale may be set aside by an independent suit in equity. See *Huff v. Huff*, 622 S.W.2d 731, 733 (Mo. App. 1981); Workman v. Anderson, 297 S.W.2d 519, 523 (Mo. 1957), and cases cited therein. It is axiomatic that a deed based on a void judgment may be collaterally attacked. *Davison v. Arne*, 348 Mo. 790, 155 S.W.2d 155, 156 (Mo. 1941). An irregular judgment for purposes of Rule 74.06(b) is defined as a judgment that is "materially contrary to an established form and mode of procedure for the orderly administration of Justice. An irregularity must render the judgment contrary to a proper result. The rule reaches only procedural errors which, if known, would have prevented entry of a judgment." *Burris v. Terminal R.R. Ass'n*, 835 S.W.2d 535, 538 (Mo. App. 1992) (citations omitted). A void judgment, on the other hand, is defined as: one which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. One which, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. 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. A void judgment is a nullity without integrity. *Ripley v. Bank of Skidmore*, 355 Mo. 897, 198 S.W.2d 861, 865 (1947); *Wright v. Mullen*, 659 S.W.2d 261, 263 (Mo. App. 1983). It was also noted in Wright, that the absence of subject matter jurisdiction resulting from a void judgment is a jurisdictional

defect. Wright, 659 S.W.2d at 263. (citing State ex rel., *MFA Insurance Co. v. Murphy*, 606 S.W.2d 661, 663 (Mo. banc 1980). The parties to a void judgment are estopped from raising a claim of lack of jurisdiction to enter a judgment in some circumstances. "It has often been said that a void judgment is no judgment; that it may be attacked directly or collaterally. . . . It neither binds nor bars anyone. . . . [Y]et, notwithstanding, a party to such judgment may voluntarily perform it, by paying the amount adjudged against him and, when paid, no inquiry will be made as to the validity of the judgment; or he may perform the acts required by a void decree, or accept its benefits, and thereby estop himself from questioning the decree. In other words, a party to a void judgment or decree may be estopped from attacking it, either directly or indirectly." *Tremayne v. City of St. Louis*, 6 S.W.2d 935, 936 (Mo. banc 1928) (quoting *Mohler v. Shank*, 61 N.W. 981, 984 (Iowa. 1895)); see also *RCA Mut. Ins. Co. v. Sanborn*, 918 S.W.2d 893, 897 n.6 (Mo. App. 1996), and *Matter of Estate of Ta*pp, 569 S.W.2d 281, 285 (Mo. App. 1978) (one accepting and retaining benefits of a void judgment is estopped to deny the validity of any part thereof, or any burdensome consequences, even where invalidity arises from want of subject matter jurisdiction). We have ex gratia reviewed the issue of void judgment under Rule 74.06(b). A dismissal is void if entered without either actual or constructive notice. Henningsen, 875 S.W.2d at 119. The issue of void judgment is not restricted by time. Rule 74.06(c); *Blanton v. United States Fidelity and Guar. Co*., 680 S.W.2d 206, 208 (Mo. App. 1984). We do not have jurisdiction to review an appeal of a void judgment. It has often been said that a void judgment is no judgment; that it may be attacked directly or collaterally . . . . It neither binds nor bars anyone . . . . [Y]et, notwithstanding, a party to such judgment may voluntarily perform it, by paying the amount adjudged against him and, when paid, no inquiry will be made as to the validity of the judgment; or he may perform the acts

required by a void decree, or accept its benefits, and thereby estop himself from questioning the decree. In other words, a party to a void judgment or decree may be estopped from attacking it, either directly or indirectly. State ex rel. *York v. Daugherty*, 969 S.W.2d 223, 225 (Mo. banc 1998); see also *Matter of Estate of Tapp*, 569 S.W.2d 281, 185 (Mo.App. 1978)(one accepting and retaining benefits of a void judgment is estopped to deny the validity of any part thereof, or any burdensome consequences, even where invalidity arises from want of subject matter jurisdiction); *State, Dept. of Social Services v. Houston*, 989 S.W.2d 950, 952 (Mo. banc 1999)(15 months failure to challenge validity of a child support modification order when circumstances "invited an expression of a position contrary to compliance with the order by filing a petition for review" constituted conduct affirming the validity of the order).

Brief overview of the law voids in Nebraska

A void judgment may be attacked at any time in any proceeding 03/27/92 *CHERYL PHYLIS MARSHALL v. GARY LYNN* 482 N.W.2d 1, 240 Neb. 322. It is the longstanding rule in Nebraska that "a void judgment may be attacked at any time in any proceeding." *Lammers Land & Cattle Co. v. Hans*, 213 Neb. 243, 249, 328 N.W.2d 759, 763-64 (1983). Accord *Drennen v. Drennen*, 229 Neb. 204, 426 N.W.2d 252 (1988). Moreover, "' void judgment is in reality no judgment at all. It does not bind the person against whom it is rendered. It may be impeached in any action, direct or collateral.'" *Stanton v. Stanton*, 146 Neb. 71, 75, 18 N.W.2d 654, 656 (1945) (quoting from *Hassett v. Durbin*, 132 Neb. 315, 271 N.W. 867 (1937)). See, also, *Shade v. Kirk*, 227 Neb. 775, 420 N.W.2d 284 (1988) (a void judgment is subject to

collateral attack); *Griffin v. Vandersnick*, 210 Neb. 590, 316 N.W.2d 299 (1982) (a judgment entered without jurisdiction is void and subject to collateral attack); *Strawn v. County of Sarpy*, 154 Neb. 844, 49 N.W.2d 677 (1951). Gary Marshall's paying any or all sums due under the modified but void judgment does not operate to validate the void judgment. "Litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent." *Coffelt v. City of Omaha*, 223 Neb. 108, 110, 388 N.W.2d 467, 469 (1986). Accord, *In re Interest of Adams*, 230 Neb. 109, 430 N.W.2d 295 (1988); *Andrews v. City of Lincoln*, 224 Neb. 748, 401 N.W.2d 467 (1987); *In re Interest of L.D. et a*l., 224 Neb. 249, 398 N.W.2d 91 (1986). Although this court declares that a collateral attack on a prior plea-based conviction is procedurally barred, the longstanding rule in Nebraska is that "'a void judgment is subject to collateral attack.'" *State ex rel. Ritthaler v. Knox*, 217 Neb. 766, 768, 351 N.W.2d 77, 79 (1984). Accord, *Schilke v. School Dist. No. 107*, supra ; State ex rel. *Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972). Moreover, "a void judgment may be attacked at any time in any proceeding." *Lammers Land & Cattle Co. v. Hans*, 213 Neb. 243, 249, 328 N.W.2d 759, 763-64 (1983). Accord *Drennen v. Drennen*, 229 Neb. 204, 426 N.W.2d 252 (1988). "'A void judgment is in reality no judgment at all. It does not bind the person against whom it is rendered. It may be impeached in any action, direct or collateral.'" *Stanton v. Stanton*, 146 Neb. 71, 75, 18 N.W.2d 654, 656 (1945). "'It is a general rule of law that a judgment which is null and void is subject to collateral attack.' 31 Am. Jur. 181, sec. 583. 'A void judgment may be impeached in a collateral proceeding.' 34 C.J. 510." *Drainage District No. 1 v. Village of Hershey*, 139 Neb. 205, 211, 296 N.W. 879, 882 (1941). See, also, *Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276*, 204 Neb. 316, 282 N.W.2d 576 (1979); *County of Douglas v. Feenan*, 146 Neb. 156, 18 N.W.2d 740 (1945). The courts of

Nebraska, through their inherent judicial power, have the authority to do all things reasonably necessary for the proper administration of justice, whether any previous form of remedy has been granted or not. This holds particularly true in the case of a void judgment. *Laschanzky v. Laschanzky*, 246 Neb. 705, 523 N.W.2d 29 (1994). A judgment issued from a proceeding that violates a citizen's right to due process is void. *State v. Rehbein*, 235 Neb. 536, 455 N.W.2d 821 (1990); *State v. Von Dorn*, 234 Neb. 93, 449 N.W.2d 530 (1989); *State v. Ewert*, 194 Neb. 203, 230 N.W.2d 609 (1975); *In re Application of Maher, North v. Dorrance*, 144 Neb. 484, 13 N.W.2d 653 (1944); *In re Betts*, 36 Neb. 282, 54 N.W. 524 (1893). A void judgment may be set aside at any time and in any proceeding. *VonSeggern v. Willman*, 244 Neb. 565, 508 N.W.2d 261 (1993); Marshall v. Marshall, 240 Neb. 322, 482 N.W.2d 1 (1992); *State v. Ewert,; Ehlers v. Grove*, 147 Neb. 704, 24 N.W.2d 866 (1946); *Hayes County v. Wileman*, 82 Neb. 669, 118 N.W. 478 (1908). 'A void judgment may be attacked at any time in any proceeding.'" *Marshall v. Marshall*, 240 Neb. 322, 328, 482 N.W.2d 1, 5 (1992). "A court of record has inherent authority to amend its records so as to make them conform to the facts." *Gunia v. Morto*n, 175 Neb. 53, 56, 120 N.W.2d 371, 373 (1963). "The District Court, of course, may grant relief where the judgment is void or the court was without jurisdiction. It may also correct a judgment in a criminal case to make it conform to the judgment actually pronounced." *State v. Adamson*, 194 Neb. 592, 594, 233 N.W.2d 925, 926 (1975). "Where a portion of a sentence is valid and a portion is invalid or erroneous, the court has authority to modify or revise the sentence by removing the invalid or erroneous portion . . . ." *State v. McDermott*, 200 Neb. 337, 339, 263 N.W.2d 482, 484 (1978). A judgment entered by a court which lacks subject matter jurisdiction is void. It is the longstanding rule in Nebraska that such a void judgment may be attacked at any time in any proceeding. 11/19/93 *O. WILLIAM VONSEGGERN v. WALTER H. WILLMAN*

508 N.W.2d 261. A judgment entered by a court which lacks subject matter jurisdiction is void. *Marshall v. Marshall*, 240 Neb. 322, 482 N.W.2d 1 (1992). Also, it is the longstanding rule in Nebraska that such a void judgment may be attacked at any time in any proceeding. Id. ; *Drennen v. Drennen*, 229 Neb. 204, 426 N.W.2d 252 (1988); *Lammers Land & Cattle Co. v. Hans*, 213 Neb. 243, 328 N.W.2d 759 (1983) . It may be impeached in any action, direct or collateral. *Marshall v. Marshal*l. *Stanton v. Stanton*, 146 Neb. 71, 18 N.W.2d 654 (1945); Hassett v. Durbin, 132 Neb. 315, 271 N.W. 867 (1937). See, also, *Shade v. Kirk*, 227 Neb. 775, 420 N.W.2d 284 (1988). That is because a void judgment is in reality no judgment at all. *Marshall v. Marshall*. As only a void judgment is subject to attack in a habeas corpus action, an appellate court is limited in such a case to reviewing a question of law, namely, is the judgment in question void? *Glantz v. Hopkins*, 261 Neb. 495, 624 N.W.2d 9 (2001); *Berumen v. Casady*, 245 Neb. 936, 515 N.W.2d 816 (1994). It is the longstanding rule in Nebraska that such a void judgment may be raised at any time in any proceeding. *Bradley v. Hopkins*, 246 Neb. 646, 522 N.W.2d 394 (1994); *VonSeggern v. Willman*, 244 Neb. 565, 508 N.W.2d 261 (1993). A void judgment may be attacked at any time in any proceeding. St*anton v. Stanton*, 146 Neb. 71, 18 N.W.2d 654 (1945); *Drainage District No. 1 v. Village of Hershey*, 139 Neb. 205, 296 N.W. 879 (1941). here a judgment is attacked in a way other than a proceeding in the original action to have it vacated, reversed, or modified, or a proceeding in equity to prevent its enforcement, the attack is a "collateral attack." County of Douglas v. Feenan, 146 Neb. 156, 18 N.W.2d 740 (1945); *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972). Only a void judgment is subject to collateral attack. *Stanton v. Stanton*, 146 Neb. 71, 18 N.W.2d 654 (1945); *Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276*, 204 Neb. 316, 282 N.W.2d 576 (1979). A void sentence is no sentence . . . ." *State v. Wren*, 234

Neb. 291, 294, 450 N.W.2d 684, 687 (1990). It has been a longstanding law in Nebraska that a void judgment may be attacked at any time in any proceeding. *State v. Rya*n, 249 Neb. 218, 543 N.W.2d 128 (1996); *State v. Ewert*, 194 Neb. 203, 230 N.W.2d 609 (1975). In keeping with that, the longstanding rule in Nebraska is that a void judgment may be attacked at any time in any proceeding. *Kuhlmann v. City of Omaha*, 251 Neb. 176, 556 N.W.2d 15 (1996). Likewise, a district court has the power to question sua sponte at any time its statutory authority to exercise subject matter jurisdiction. See, County of *Sherman v. Evans*, 252 Neb. 612, 564 N.W.2d 256 (1997); I*n re Adoption of Kassandra B. & Nicholas B.*, 248 Neb. 912, 540 N.W.2d 554 (1995). Because res judicata does not bar collateral attacks on void judgments, the outcome of this issue hinges on whether the district court had subject matter jurisdiction to divide Howard's VA disability income. As illustrated by our foregoing analysis, if the district court lacked subject matter jurisdiction to divide the VA disability income, then that portion of the order dividing such income was void and subject to collateral attack in any subsequent enforcement action. The question of a court's subject matter jurisdiction does not turn solely on the court's authority to hear a certain class of cases, such as dissolutions of marriage or accounting actions; it also involves determining whether a court is authorized to address a particular question that it assumes to decide or to grant the particular relief requested. Compare, *In re Interest of J.T.B. and H.J.T.*, 245 Neb. 624, 514 N.W.2d 635 (1994) (focusing on particular question lower court assumed to decide); *Lewin v. Lewin*, 174 Neb. 596, 119 N.W.2d 96 (1962) (indicating that court must have subject matter jurisdiction to address particular question it assumes to decide). Collateral Attack. is a proper means of collaterally attacking the validity of a void judgment. 09/30/94 *CON M. BRADLEY v. FRANK X. HOPKINS* 522 N.W.2d 394, 246 Neb. 646. We recognize that in *LeGrand*, the Nebraska Supreme Court stated

that a "void judgment may be set aside at any time and in any proceeding." 249 Neb. at 7, 541 N.W.2d at 385. *State v. LeGrand*, 249 Neb. 1, 9, 541 N.W.2d 380, 386 (1995). Judgments: **Collateral Attack**. A void judgment may be attacked at any time in any proceeding. Jurisdiction. Litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent. 03/27/92 *CHERYL PHYLIS MARSHALL v. GARY LYNN*, SUPREME COURT OF NEBRASKA 1992.NE.107 , 482 N.W.2d 1, 240 Neb. 322, March 27, 1992. It is the longstanding rule in Nebraska that "a void judgment may be attacked at any time in any proceeding." *Lammers Land & Cattle Co. v. Hans*, 213 Neb. 243, 249, 328 N.W.2d 759, 763-64 (1983). *Accord Drennen v. Drennen*, 229 Neb. 204, 426 N.W.2d 252 (1988). Moreover, '" void judgment is in reality no judgment at all. It does not bind the person against whom it is rendered. It may be impeached in any action, direct or collateral.'" *Stanton v. Stanton*, 146 Neb. 71, 75, 18 N.W.2d 654, 656 (1945) (quoting from *Hassett v. Durbin*, 132 Neb. 315, 271 N.W. 867 (1937)). See, also, *Shade v. Kirk*, 227 Neb. 775, 420 N.W.2d 284 (1988) (a void judgment is subject to collateral attack); *Griffin v. Vandersnick*, 210 Neb. 590, 316 N.W.2d 299 (1982) (a judgment entered without jurisdiction is void and subject to collateral attack); *Strawn v. County of Sarpy*, 154 Neb. 844, 49 N.W.2d 677 (1951). Gary Marshall's paying any or all sums due under the modified but void judgment does not operate to validate the void judgment. "Litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent." *Coffelt v. City of Omaha*, 223 Neb. 108, 110, 388 N.W.2d 467, 469 (1986). *In re Interest of Adams*, 230 Neb. 109, 430 N.W.2d 295 (1988); *Andrews v. City of Lincoln*, 224 Neb. 748, 401 N.W.2d 467 (1987); *In re Interest of L.D. et al.*, 224 Neb. 249, 398 N.W.2d 91 (1986). the longstanding rule in Nebraska is that "'a void judgment is subject to collateral attack.'" S*tate ex rel. Ritthaler v. Knox*, 217 Neb. 766, 768, 351 N.W.2d 77, 79 (1984). *Schilke*

*v. School Dist. No. 107*, *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972). Moreover, "a void judgment may be attacked at any time in any proceeding." *Lammers Land & Cattle Co. v. Han*s, 213 Neb. 243, 249, 328 N.W.2d 759, 763-64 (1983). Void judgment is in reality no judgment at all. It does not bind the person against whom it is rendered. It may be impeached in any action, direct or collateral.'" *Stanton v. Stanton,* 146 Neb. 71, 75, 18 N.W.2d 654, 656 (1945). "'It is a general rule of law that a judgment which is null and void is subject to collateral attack.' 31 Am. Jur. 181, sec. 583. 'A void judgment may be impeached in a collateral proceeding.' 34 C.J. 510." *Drainage District No. 1 v. Village of Hershey*, 139 Neb. 205, 211, 296 N.W. 879, 882 (1941). See, also, *Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276*, 204 Neb. 316, 282 N.W.2d 576 (1979); *County of Douglas v. Feenan*, 146 Neb. 156, 18 N.W.2d 740 (1945). Judgments: Jurisdiction: Collateral Attack. A judgment entered by a court which lacks subject matter jurisdiction is void. It is the longstanding rule in Nebraska that such a void judgment may be attacked at any time in any proceeding. at any time. It may be impeached in any action, direct or collateral. *Hassett v. Durbi*n, 132 Neb. 315, 271 N.W. 867 (1937). See, also, *Shade v. Kirk*, 227 Neb. 775, 420 N.W.2d 284 (1988). Collateral Attack. is a proper means of collaterally attacking the validity of a void judgment, 09/30/94 *CON M. BRADLEY v. FRANK X. HOPKINS* 1994.NE.476 , 522 N.W.2d 394, 246 Neb. 646.

VOID JUDGMENTS – NEVADA

NRCP 60(b)(3) allows a party to move for relief from a judgment which is void, and while motions made under NRCP 60(b) are generally required to "be made within a reasonable time" and to be adjudicated according to the district court's discretion, this is not true in the case of a ***void judgment***. Necessarily a motion under this part of the rule differs markedly from motions under the other clauses of Rule 60(b). There is no question of discretion on the part of the court when a motion is made under [this portion of the Rule]. Nor is there any requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly. By the same token, there is no time limit on an attack on a judgment as void. . . . [E]ven the requirement that the motion be made within a "reasonable time," which seems literally to apply . . . cannot be enforced with regard to this class of motion. Understandably, the parties were not attuned to our recent Jacobs decision during oral argument. Accordingly, it was determined at that time to allow the parties to supplement their briefs in order to determine with certainty whether, in fact, no default had been entered against Garcia prior to the entry of the default judgment. Garcia's supplemental material supplied additional evidence that no default was ever entered, including an affidavit by Clark County Court Clerk Loretta Bowman attesting that no such filing exists in the case file. Respondents also acknowledged that no default was ever entered but argue in their supplemental brief that Jacobs should not be applied retroactively, noting that the default judgment at issue herein was entered prior to our Jacobs decision. This argument is without merit. The court in Jacobs determined, consistent with law from other jurisdictions, that the default judgment entered in Jacobs was void. We accordingly ordered the district court to grant relief from the ***void judgment***, despite the fact that the ruling in Jacobs was, of course, preceded by entry of the default judgment against Jacobs. If this case, rather than Jacobs, were before us as a case of first impression, we would have reached the same conclusion. A ***void judgment*** is void for all purposes and may not be given life under a theory based upon lack of legal precedent. *Garcia v. Ideal Supply Co.,* 110 Nev. 493, 874 P.2d 752 (Nev. 5/19/1994). The defective service rendered the

district court's personal jurisdiction over Gassett invalid and the judgment against her ***void***. For a ***judgment*** to be void, there must be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or jurisdiction over subject matter in the suit. *Puphal v. Puphal,* 669 P.2d 191 (Idaho 1983). *In Price v. Dunn*, 106 Nev. 100, 787 P.2d 785 (1990). We now hold that the filing of a motion to set aside a ***void judgment*** previously entered against the movant shall not constitute a general appearance. See, e.g., *Dobson v. Dobson*, 108 Nev. 346, 349, 830 P.2d 1336, 1338 (1992). Nonetheless, since the order was ***void***, a ***judgment*** based thereon would likewise be void.. *Nelson v. Sierra Constr. Corp*., 77 Nev. 334, 364 P.2d 402. Under NRCP 60(b) a motion to set aside a ***void judgment*** is not restricted to the six months' period specified in the rule. NRCP 54(a) provides that the word "judgment" as used in these rules includes any order from which an appeal lies. Therefore there is no merit to appellants' contention that the motion to vacate the judgment was not timely made. *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (Nev. 6/19/1962). A ***void judgment*** is subject to collateral attack; a judgment is void if the issuing court lacked personal jurisdiction or subject matter jurisdiction; See 49 C.J.S. Judgments § 401, at 792 (1947 & supp. 1991); 46 Am.Jur.2d Judgments §§ 621-56 (1969 & supp. 1991).

A brief overview of the law of voids in New Mexico

If a court's decision is plainly contrary to a statute or the constitution, the court will be held to have acted without power or jurisdiction, making the judgment void for Rule 1-060(B) purposes, even if the court had personal and subject-matter jurisdiction. See, e.g., United States v. Indoor Cultivation Equip., 55 F.3d 1311, 1317 (7th Cir. 1995) (forfeiture statute required that complaint be filed within sixty days of certain action; failure to meet that deadline meant that court had no power to order forfeiture, and its order was void); Watts v. Pinckney, 752 F.2d 406, 409 (9th Cir. 1985) (after judgment awarded, defendant paid, then found out this was action in admiralty that should have

been brought solely against United States; court held that judgment was void); Compton v. Alton S.S. Co., 608 F.2d 96, 104 (4th Cir. 1979) (judgment by default awarded penalty wages under inapplicable statute; court held that judgment was void, not just erroneous); see also V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224-25 (10th Cir. 1979) (noting that judgment can be void if court's action involves a "plain usurpation of power"); Crosby v. Bradstreet Co., 312 F.2d 483, 485 (2d Cir. 1963) (court had no power to impose unconstitutional prior restraint on publication of true statements, so thirty-year-old consent judgment was void). In APCA, APCA as a defendant filed a cross-claim against defendant Martinez, but it was void because not served on Martinez. On February 28, 1968, entry of judgment was made on APCA's cross-claim against Martinez. Four years later, Martinez' heirs moved to set aside the APCA judgment under Rule 60(b) and in December, 1972, the 1968 judgment was set aside because it was void. No time limit applies where a ***void judgment*** is entered. Albuquerque Prod. Credit Ass'n v. Martinez, 91 N.M. 317, 573 P.2d 672 (1978). Since the 1973 judgment was void, the 1976 district court was required to set it aside pursuant to N.M.R. Civ.P. 60(b)(4) [§ 21-1-1(60)(b)(4)], N.M.S.A. 1953 (Repl. Vol.1970). There is no discretion on the part of a district court to set aside a ***void judgment***. Such a judgment may be attacked at any time in a direct or collateral action. Chavez v. County of Valencia, 86 N.M. 205, 521 P.2d 1154 (1974). At this point we call attention also to language found in the opinion in Moore v. Packer, 174 N.C. 665, 94 S.E. 449, 450, noticed by us and quoted with approval in the Ealy case. It was there said: "A ***void judgment*** is without life or force, and the court will quash it on motion, or ex mero motu. Indeed, when it appears to be void, it may and will be ignored everywhere, and treated as a mere nullity." All the appellees rely upon this general rule in answer to appellants' challenge that they never took an appeal from the order and judgment setting aside the June, 1937 default judgment and decree. The court being without jurisdiction to set aside its earlier judgment and decree, quieting title, appellees might ignore it as a void order or judgment, they say, and for this reason were not required to take an appeal therefrom, and may question the jurisdiction of the court and the validity of the order or judgment at any time. *Board of County Commissioners of Quay County v. Wasson*, 37 N.M. 503, 24 P.2d 1098; *Fullen v. Fullen*, 21 N.M. 212, 153

P. 294; *Baca v. Perea*, 25 N.M. 442, 184 P. 482; *De Baca v. Wilcox*, 11 N.M. 346, 68 P. 922. *In the case of Upjohn Co. v. Board of Commissioners of Socorro County* (Stephenson, Intervener) 25 N.M. 526, 185 P. 279, 280, we held a judgment against a garnishee void where service of the writ of garnishment was made by a person other than the sheriff, where we said: "The proceeding is wholly statutory, and compliance with the statute is essential to confer upon the court jurisdiction of the res." And held that the court was vested with power to set aside and vacate such ***void judgment*** at any time. A ***void judgment*** is one that has merely semblance, without some essential element or elements, as where the court purporting to render it has not jurisdiction. An irregular judgment is one entered contrary to the course of the court, contrary to the method of procedure and practice under it allowed by law in some material respect, as if the court gave judgment without the intervention of a jury in a case where the party complaining was entitled to a jury trial, and did not waive his right to the same. *Vass v. Building Association*, 91 N. C. 55; *McKee v. Angel*, 90 N. C. 60. An erroneous judgment is one rendered contrary to law. The latter cannot be attacked collaterally at all, but it must remain and have effect until by appeal to a court of errors it shall be reversed or modified. An irregular judgment may originally and generally be set aside by a motion for the purpose in the action. This is so because in such case a judgment was entered contrary to the course of the court by inadvertence, mistake, or the like. A ***void judgment*** is without life or force, and the court will quash it on motion, or ex mero motu. Indeed, when it appears to be void it may and will be ignored everywhere, and treated as a mere nullity." *Moore v. Packer*, 174 N. C. 665, 94 S. E. 449, at page 450. [T]he applicable ground [for relief] would be Rule 60(B)(4), ***void judgment***, under which the failure to move to vacate within one year after the entry of judgment would not be controlling. *Classen v. Classen*, 119 N.M. 582, 893 P.2d 478, 34 N.M. St. B. Bull. 24 (N.M.App. 02/27/1995). The appellants contend that the court lost jurisdiction over the action thirty days after the judgment was vacated. They argue that the appellees never appealed the order which vacated the judgment, consequently, thirty days later the court was divested of authority to entertain any motion concerning these parties and the same cause of action, and that for these reasons the motion to amend the cross-claim was improperly granted. This point is not well-taken.

The pertinent portions of Rule 60(b) state: On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:... (4) the judgment is void.... An order granting a motion for relief under 60(b) must be tested by the usual principles of finality; and when so tested will occasionally be final, although probably in most cases it will not be. Thus where the court, in addition to determining that there is a valid ground for relief under 60(b), at the same time makes a re-determination of the merits, its order is final since it leaves nothing more to be adjudged.... Since Martinez never received notice of the cross-claim, the stipulated judgment was void as to him. Therefore, it was completely proper for his heirs to move to set aside that ***void judgment*** under Rule 60(b)(4). When the original judgment was vacated as to Martinez, the status of the case was as though no judgment had been entered as to him. Wuenschel v. New Mexico Broadcasting Corp., 84 N.M. 109, 500 P.2d 194 (1972); Benally v. Pigman, 78 N.M. 189, 429 P.2d 648 (1967); Arias v. Springer, 42 N.M. 350, 78 P.2d 153 (1938). Rule 60(b) of the Rules of Civil Procedure abolishes the common law writ of coram nobis but authorizes relief from a "final judgment, order, or proceeding" on six specified grounds. Ground (2) involves newly discovered evidence; ground (4) involves a ***void judgment***; and ground (6) involves "any other reason justifying relief". Although Rule 60(b) is a civil rule, State v. Romero, supra, held that where a prisoner had served his sentence and had been released, this civil rule could be utilized to seek relief from a criminal judgment claimed to be void. This result was based on an intent to retain all substantive rights protected by the old writ of *coram nobis*. See *State v. Raburn*, supra; Roessler v. State, 79 N.M. 787, 450 P.2d 196 (Ct. App. 1969), cert. denied, 395 U.S. 967, 89 S. Ct. 2115, 23 L. Ed. 2d 754 (1969). Continuing jurisdiction over final judgment. The judgment entered on April 25 was a final judgment. The City argues that Brooks could obtain relief from the writ issued on May 1 only under SCRA 1986, 3-704(B) (Repl. Pamp. 1990), which limits relief to (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud, misrepresentation or other misconduct; (3) a ***void judgment***; or (4) satisfaction, release or discharge of the judgment or the reversal or vacation of a prior judgment upon which it is based. However, NMSA 1978, Section 34-8A- 6(E) (Repl. Pamp. 1990), states that "All

judgments rendered in civil actions in the metropolitan court shall be subject to the same provisions of law as those rendered in district court." Under NMSA 1978, Section 39-1-1 (Repl. Pamp. 1991), final judgments and decrees entered by the district courts remain under the control of such courts for thirty days after entry thereof. Therefore, the metropolitan court retained control of its judgment and had the right to set it aside after granting a rehearing on the matter. See, e.g., Nichols v. Nichols, 98 N.M. 322, 326, 648 P.2d 780, 784 (1982) (district court is authorized under Section 39-1-1 to change, modify, correct or vacate a judgment on its own motion) (citing Desjardin v. Albuquerque Nat'l Bank, 93 N.M. 89, 596 P.2d 858 (1979)). The fact that the ***void judgment*** has been affirmed on review in an appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time, capable of bearing no fruit to plaintiff but constituting a constant menace to defendant." *WALLS v. ERUPCION MIN. CO.* 6 P.2d 1021 November 3, 1931.

North Carolina: first in flight to void judgment relief?

And if the court has no jurisdiction over the subject matter of the action, the judgment in the action is void. A void judgment is one which has a mere semblance, but is lacking in some of the essential elements which would authorize the court to proceed to judgment. *Harrell v. Welstead,* 206 N.C. 817, 175 S.E. 283; *Monroe v. Niven*, 221 N.C. 362, 20 S.E.2d 311." It is well established law that a void judgment is no judgment, is a nullity without life or force, no rights can be based thereon, and it can be attacked collaterally by anyone whose rights are adversely affected by it. *Reid v. Bristol*, 241 N.C. 699, 86 S.E.2d 417; *Casey v. Barker.* Although Rule 60(b) contains the requirement that all motions made pursuant thereto be made "within a reasonable time," the requirement is not enforceable with respect to motions made pursuant to Rule 60(b)(4), because a void judgment is a legal nullity which may be attacked at any time. 11 Wright and Miller,

Federal Practice and Procedure: Civil §§ 2862, 2866 (1973). If the judgment of divorce from bed and board at issue in the present case is void, then, as with any other void judgment, it establishes no legal rights and may be vacated without regard to time. *Cunningham v. Brigman*, 263 N.C. 208, 139 S.E.2d 353 (1964). Our Supreme Court has described a void judgment as "one which has a mere semblance but is lacking in some of the essential elements which would authorize the court to proceed to judgment." *Monroe v. Niven*, 221 N.C. 362, 364, 20 S.E.2d 311, 312 (1942). "When a court has no authority to act its acts are void." If the court was without authority, its judgment . . . is void and of no effect. A lack of jurisdiction or power in the court entering a judgment always avoids the judgment, and a void judgment may be attacked whenever and wherever it is asserted, without any special plea. *Hanson v. Yandle*, 235 N.C. 532, 535, 70 S.E.2d 565, 568 (1952), *Carpenter v. Carpenter*, 244 N.C. 286, 93 S.E.2d 617 (1956). ). A void judgment, however, binds no one and it is immaterial whether the judgment was or was not entered by consent. *Hanson, supra*. "[I]t is well settled that consent of the parties to an action does not confer jurisdiction upon a court to render a judgment which it would otherwise have no power or jurisdiction to render." *Saunderson, supra* at 172, 141 S.E. at 574. Laches is an equitable doctrine and ordinarily should not be a defense to a motion to open a judgment that is void. 46 Am. Jur. 2d Judgments § 752 (1969). In *Powell v. Turpin*, 224 N.C. 67, 29 S.E.2d 26 (1944), plaintiff sought to have a tax foreclosure sale declared invalid for want of proper service of process. In deciding for the plaintiff, the court stated, "It is likewise elementary that unless one named as a defendant has been brought into court in some way sanctioned by law . . ., the court has no jurisdiction of the person and judgment rendered against him is void." Id. at 70, 71, 29 S.E.2d at 28. The court in Powell also examined whether such a judgment was subject to a collateral attack. "No statute of limitations runs against the plaintiffs' action by reason of the judgment of foreclosure, and laches, if any appeared, is no defense." Id. at 71, 29 S.E.2d at 29; see *Page v. Miller* and *Page v. Hynds*, 252 N.C. 23, 113 S.E.2d 52 (1960). Time, however great, does not affect the validity of a judgment; it cannot render a void judgment valid." *Monroe v. Niven*, 221 N.C. 362, 365, 20 S.E.2d 311, 313 (1942). "A nullity is a nullity, and out of nothing nothing comes. Ex *nihilo nihil* fit is one maxim that admits of no

exception." If there be a defect, e.g., a total want of jurisdiction apparent upon the face of the proceedings, the court will of its own motion, 'stay, quash, or dismiss' the suit. This is necessary to prevent the court from being forced into an act of usurpation, and compelled to give a void judgment . . . so, (out of necessity) the court may, on plea, suggestion, motion, or ex *mero mot*u, where the defect of jurisdiction is apparent, stop the proceedings. 238 N.C. at 646, 78 S.E.2d at 717-18. A void judgment is not a judgment at all, and it may always be treated as a nullity because it lacks an essential element of its formulation. See *Clark v. Carolina Homes, Inc.*, 189 N.C. 703, 128 S.E. 20 (1925). When a purported consent judgment is void because the consent is by an attorney who has no authority to consent thereto, the party for whom the attorney purported to act is not required to show a meritorious defense in order to vacate such void judgment. *Bath v. Norman*, 226 N.C. 502, 505, 39 S.E.2d 363. Where there is no service of process, the court has no jurisdiction, and its judgment is void. A void judgment is a nullity, and no rights can be based thereon. *Collins v. Highway Com.*, 237 N.C. 277, 74 S.E.2d 709; *Moore v. Humphrey*, 247 N.C. 423, 101 S.E.2d 460 '"The passage of time, however great, does not affect the validity of a judgment; it cannot render a void judgment valid.' 31 Am. Jur., 66; Anno. 81 A.S.R., 559," Now 30-A Am. Jur., 170. *Monroe v. Niven*, 221 N.C. 362, 20 S.E.2d 311. See also *Com'rs. of Roxboro v. Bumpass*, 233 N.C. 190, 63 S.E.2d 144. A void judgment is without life or force, and the Court will quash it on motion, or ex mero motu. Indeed, when it appears to be void, it may and will be ignored everywhere, and treated as a mere nullity." (Our Italics.) *Stafford v. Gallops*, 123 N.C. 19, 31 S.E. 265; *Moore v. Packer*, 174 N.C. 665, 94 S.E. 449; Duffer v. Brunson, 188 N.C. 789, 125 S.E. 619; *Dail v. Hawkins*, 211 N.C. 283, 189 S.E. 774; *Simms v. Sampson*, 221 N.C. 379, 20 S.E.2d 554; *Mills v. Richardson*, supra. See *McIntosh*, N.C.P.&P;, Secs. 651, 652 and 653. Quoting from Boone v. Sparrow, supra, "A void judgment is not a judgment and may always be treated as a nullity . . . it has no force whatever; it may be quashed ex *mero motu. Clark v. Homes*, 189 N.C. 703, 128 S.E. 20." And quoting from the latter, "A void judgment is not a judgment and may always be treated as a nullity. It lacks some essential element; it has no force whatever; it may be quashed *ex mero motu*. *Stallings v. Gully*, 48 N.C. 344; *McKee v. Angel*, 90 N.C. 60; *Carter v. Rountree*, 109 N.C. 29; *Mann*

*v. Mann*, 176 N.C. 353; *Moore v. Packer*, 174 N.C. 665." A void judgment is without life or force, and the court will quash it on motion, or *ex mero motu*. Indeed, when it appears to be void, it may and will be ignored everywhere, and treated as a mere nullity." (Emphasis added.) The later decisions are in full accord: *Stafford v. Gallops*, 123 N.C. 19, 31 S.E. 265; *Moore v. Packer*, 174 N.C. 665, 94 S.E. 449; *Duffer v. Brunson*, 188 N.C. 789, 125 S.E. 619; *Simms v. Sampson*, 221 N.C. 379, 20 S.E.2d 554. See *McIntosh*, N.C. P. & P. 734-737. A party who is subject to an order by a trial court which is void, may attack that order at any time, pursuant to Rule 60(b)(4) of the Rules of Civil Procedure. N.C.G.S. § 1A-1, Rule 60(b) (1990); *Allred*, 85 N.C. App. at 141, 354 S.E.2d at 294 (void judgment is legal nullity which may be attacked at any time). A Void judgment . . . binds no one and it is immaterial whether the judgment was . . . entered by consent." Id. at 144, 354 S.E.2d at 295. Rule 60(b)(4) provides that a court may relieve a party from a judgment if it is void. N.C. Gen. Stat. § 1A-1, Rule 60(b)(4)(1990). A void judgment is a nullity which may be attacked at any time. Allred v. Tucci, 85 N.C. App. 138, 141, 354 S.E.2d 291, 294, cert. denied, 320 N.C. 166, 358 S.E.2d 47 (1987). If a court has no jurisdiction over the subject matter, the judgment is void. *Pifer v. Pifer*, 31 N.C. App. 486, 229 S.E.2d 700, 702 (1976). A void judgment resembles a valid judgment, but lacks an essential element such as jurisdiction or service of process. *Windham Distributing Co., Inc. v. Davis*, 72 N.C. App. 179, 323 S.E.2d 506 (1984), disc. rev. denied, 313 N.C. 613, 330 S.E.2d 617 (1985). A judgment is not void if "'the court had jurisdiction over the parties and the subject matter and had authority to render the judgment entered.'" Id. at 181-182, 323 S.E.2d at 508 (quoting In re Brown, 23 N.C. App. 109, 110, 208 S.E.2d 282, 283 (1974)). It should be noted that since the Judgment entered by Judge Griffin on 18 March 1992 is void, no final judgment on the merits has been entered in this case. Any attempt by the defendants to appeal from that void judgment then, is inconsequential, and any errors made in attempting such appeal are without lasting significance. The plaintiff may raise a collateral attack on the order taxing costs as a defense to defendant's motion to dismiss only if the order taxing costs was void *ab initio. State v. Sams*, 317 N.C. 230, 345 S.E.2d 179 (1986); *Stroupe v. Stroupe*, 301 N.C. 656, 273 S.E.2d 434 (1981); *Lumber Co. v. West*, 247 N.C. 699, 102 S.E.2d 248 (1958);

*Massengill v. Lee*, 228 N.C. 35, 44 S.E.2d 356 (1947); *Edwards v. Brown's Cabinets*, 63 N.C. App. 524, 305 S.E.2d 765 (1983); *Manufacturing Co. v. Union*, 20 N.C. App. 544, 202 S.E.2d 309, cert. denied, 285 N.C. 234, 204 S.E.2d 24 (1974); but see *Thornburg v. Lancaster*, 303 N.C. 89, 277 S.E.2d 423 (1981); contra *In re Will of Parker*, 76 N.C. App. 594, 334 S.E.2d 97, disc. rev. denied, 315 N.C. 184, 337 S.E.2d 859 (1985). In *State v. Sams*, 317 N.C. 230, 235-36, 345 S.E.2d 179, 182-83, this Court stated that [a]n order is void *ab initio* only when it is issued by a court that does not have jurisdiction. Such an order is a nullity and may be attacked either directly or collaterally, or may simply be ignored. North Carolina allows for collateral attacks. See *Daniels v. Montgomery Mutual Insurance Co.*, 320 N.C. 669, 360 S.E.2d 772 (N.C. 10/07/1987). A void judgment, however, binds no one. Its invalidity may be asserted at any time and in any action where some benefit or right is asserted thereunder. A judgment is void if the court rendering it does not have jurisdiction either of the asserted cause of action or of the parties. *Moore v. Humphrey*, 247 N.C. 423, 101 S.E.2d 460; *Mills v. Richardson*, 240 N.C. 187, 81 S.E.2d 409; *Powell v. Turpin*, 224 N.C. 67, 29 S.E.2d 26; *Dunn v. Wilson*, 210 N.C. 493, 187 S.E. 802; *Clark v. Homes*, 189 N.C. 703, 128 S.E. 20; *Carter v. Rountree*, 109 N.C. 29, 13 S.E. 716.

## A BRIEF OVERVIEW OF THE LAW OF VOIDS IN OHIO

Irrespective of whether a party moves to vacate a judgment, Ohio courts have inherent authority to vacate a ***void judgment***. *Patton v. Diemer* (1988), 35 Ohio St.3d 68. A ***void judgment*** is one that is rendered by a court that is "wholly without jurisdiction or power to proceed in that manner." *In re Lockhart* (1952), 157 Ohio St. 192, 195, 105 N.E.2d 35, 37. A judgment is void *ab initio* where a court rendering the judgment has no jurisdiction over the person. *Records Deposition Service, Inc. v. Henderson & Goldberg, P.C.* (1995), 100 Ohio App.3d 495, 502; *Compuserve, Inc. v. Trionfo* (1993), 91 Ohio App.3d 157, 161; *Sperry v. Hlutke* (1984), 19 Ohio App.3d 156. In *Van DeRyt v. Van DeRyt* (1966), 6 Ohio St. 2d 31, 36, 35 Ohio Op. 2d 42, 45, 215 N.E.2d 698,704, we

stated, "A court has an inherent power to vacate a ***void judgment*** because such an order simply recognizes the fact that the judgment was always a nullity." Service of process must be reasonably calculated to notify interested parties of the pendency of an action and afford them an opportunity to respond. A default judgment rendered without proper service is void. A court has the inherent power to vacate a ***void judgment***; thus, a party who asserts improper service need not meet the requirements of Civ.R. 60(B). (Emphasis added.) *Emge*, 124 Ohio App.3d at 61, 705 N.E.2d at 408. We note further that appellant's main contention is that the default judgment granted by Judge Connor is void because it was rendered against a non-entity. As will be addressed infra, judgments against non-entities are void. A Civ.R. 60(B) motion to vacate a judgment is not the proper avenue by which to obtain a vacation of a ***void judgment***. See *Old Meadow Farm Co. v. Petrowski* (Mar. 2, 2001), *Geauga* App. No. 2000-G-2265, unreported; *Copelco Capital, Inc. v. St. Mark's Presbyterian Church* (Feb. 1, 2001), *Cuyahoga* App. No. 77633, unreported. Rather, the authority to vacate void judgments is derived from a court's inherent power. *Oxley v. Zacks* (Sept. 29, 2000), I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MR. FINESILVER'S MOTION TO VACATE ***VOID JUDGMENT*** WHEN THE UNCONTROVERTED TESTIMONY OF MR. FINESILVER SUBMITTED TO THE TRIAL COURT SHOWS THAT MR. FINESILVER NEVER RECEIVED THE COMPLAINT OF C.E.I., OR NOTICE OF THE PROCEEDINGS IN THE TRIAL COURT. II. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HOLD A HEARING ON MR. FINESILVER'S MOTION TO VACATE ***VOID JUDGMENT*** WHEN MR. FINESILVER TESTIFIED THAT HE NEVER RECEIVED NOTICE OF THE ACTION FILED BY C.E.I. III. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING MR. FINESILVER RECEIVED SERVICE OF THE COMPLAINT WHEN C.E.I. DID NOT OBTAIN SERVICE OF PROCESS AS REQUIRED BY THE OHIO CIVIL RULES. IV. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT MR. FINESILVER WAS SERVED AT A PROPER BUSINESS ADDRESS WHEN MR. FINESILVER HAD LEFT THE STATE AND NO LONGER MAINTAINED ANY PHYSICAL PRESENCE AT SAID BUSINESS ADDRESS. After reviewing the record and the

arguments of the parties, we reverse the decision of the trial court. *Cleveland Electric Illuminating Company v. Finesilver*, No. 69363 (Ohio App. Dist.8 04/25/1996). "The authority to vacate a ***void judgment*** is not derived from Civ.R. 60(B), but rather constitutes an inherent power possessed by Ohio courts." *Patton v. Diemer* (1988), 35 Ohio St.3d 68, paragraph four of the syllabus; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 368. Because a court has the inherent power to vacate a ***void judgment***, a party who claims that the court lacked personal jurisdiction as a result of a deficiency in service of process is entitled to have the judgment vacated and need not satisfy the requirements of Civ.R. 60(B). *State ex rel. Ballard v. O'Donnell* (1990), 50 Ohio St.3d 182, paragraph one of the syllabus; *Cincinnati School Dist. Bd. of Edn.* at 368; Patton at paragraph three of the syllabus; *Thomas* at 343. See, also *Williams v. Ludlum* (Aug. 20, 1999), *Portage* App. No. 98-P-0016, unreported, at 7, 1999 Ohio App. LEXIS 3869. The authority to vacate a ***void judgment***, therefore, is not derived from Civ. R. 60(B), "but rather constitutes an inherent power possessed by Ohio courts." *Patton, supra*, paragraph four of the syllabus. A party seeking to vacate a ***void judgment*** must, however, file a motion to vacate or set aside the same. *CompuServe, supra*, at 161. Yet to be entitled to relief from a ***void judgment***, a movant need not present a meritorious defense or show that the motion was timely filed under Civ. R. 60(B). ("A ***void judgment*** is one entered either without jurisdiction of the person or of the subject matter." *Eisenberg v. Peyton* (1978), 56 Ohio App.2d 144, 148. A motion to vacate a ***void judgment***, therefore, need not comply with the requirements of Civ.R. 60(B) which the petitioner ordinarily would assert to seek relief from a jurisdictionally valid judgment. *Demianczuk v. Demianczuk* (1984), 20 Ohio App.3d 244, 485 N.E.2d 785. Entry was void because it constituted a modification of a property division without a reservation of jurisdiction to do so--an act the court may not perform under *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399, at paragraph one of the syllabus, and our opinion in *Schrader v. Schrader* (1995), 108 Ohio App.3d 25. Because the notices required by R.C. Chapter 5715 were not given to Candlewood prior to the BOR's July 2, 1997 hearing and after its August 18, 1997 decision, and no voluntary appearance was made by Candlewood, the BOR's August 18, 1997 decision is a nullity and void as

regards Candlewood. As one Texas appellate court so aptly stated concerning a ***void judgment***, "[i]t is good nowhere and bad everywhere." *Dews v. Floyd* (Tex.Civ.App.1967), 413 S.W.2d 800, 804. A court has an inherent power to vacate a void judgment because such an order simply recognizes the fact that the judgment was always a nullity." The term "inherent power" used in the two preceding cases is defined in Black's Law Dictionary (6 Ed.1990) 782 as "[a]n authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another." Because this claim challenged the subject matter jurisdiction of the trial court, it was not barred by res judicata because a ***void judgment*** may be challenged at any time. See *State v. Wilson* (1995), 73 Ohio St.3d 40, 45-46, 652 N.E.2d 196, 200, fn. 6. If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*. See *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus. A ***void judgment*** is a mere nullity, and can be attacked at any time. *Tari v. State* (1927), 117 Ohio St. 481, 494, 159 N.E. 594, 597-598. A movant, however, need not present a meritorious defense to be entitled to relief from a ***void judgment***. *Peralta v. Heights Med. Ctr., Inc.* (1988), 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75. Nor must a movant show that the motion was timely filed under the guidelines of Civ.R. 60(B) if a judgment is void. *In re Murphy* (1983), 10 Ohio App.3d 134, 10 OBR 184, 461 N.E.2d 910; *Satava v. Gerhard* (1990), 66 Ohio App.3d 598, 585 N.E.2d 899; see, generally, *Associated Estates Corp. v. Fellows* (1983), 11 Ohio App.3d 112, 11 OBR 166, 463 N.E.2d 417.

## A BRIEF OVERVIEW OF THE LAW OF VOID JUDGMENTS IN OKLAHOMA

The general rule is that a void judgment is no judgment at all. Where judgments are void, as was the judgment originally rendered by the trial court here, any subsequent proceedings based upon the void judgment are themselves void. In essence, no judgment existed from which the trial court could adopt either findings of fact or conclusions of

law. *Valley Vista Development Corp. v. City of Broken Arrow*, 766 P.2d 344, 1988 OK 140 (Okla. 12/06/1988). A facially void judgment may be vacated at any time. Section 1038 provides that the passage of time does not operate to bar a quest to vacate a facially void judgment. *Read v. Read*, 2001 OK 87 (Okla. 10/16/2001). The pertinent provisions of 12 O.S. Supp. 1993 §1038 state: "A void judgment, decree or order may be vacated at any time on motion of a party, or any person affected thereby." Title 12 O.S. 1971 § 1038 provides that a void judgment may be vacated at any time on motion of "any person affected thereby." The insurance company claims that it has never asked that the default judgment be declared void, merely that the judgment should be ignored since it is a nullity. Defendant's argument is supported by the general rule that a void judgment is no judgment at all. *Le Clair v. Calls Him*, 106 Okl. 247, 233 P. 1087 (1925). "A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers." *High v. Southwestern Insurance Company*, 520 P.2d 662, 1974 OK 35 (Okla. 03/19/1974). A void judgment may be vacated at any time. Title 12, Oklahoma Statutes, Section 1038. d judgments may be vacated at any time, *Churchill v. Muegge*, Okl., 323 P.2d 339, and may be vacated at any time on the motion of any interested party. *State v. City of Tulsa*, 153 Okl. 262, 5 P.2d 744. A void judgment cannot constitute *res judicata*. Denial of previous motions to vacate a void judgment could not validate the judgment or constitute *res judicata*, for the reason that the lack of judicial power inheres in every stage of the proceedings in which the judgment was rendered. *Bruce v. Miller*, 360 P.2d 508, 1960 OK 266 (Okla. 12/27/1960). A void judgment is one that is void upon the face of the judgment roll. *Capitol Federal Savings Bank v. Bewley*, 795 P.2d 1051 (Okl. 1990). The judgment roll has been defined to include the petition, process, return, pleadings, reports, verdicts, orders and all acts and proceedings of the court. *Mayhue v. Mayhue*, 706 P.2d 890 (Okl. 1985). A void judgment may be attacked at any time, whereas a judgment which is only voidable may be successfully attacked only if the

requirements of 12 O.S. 1981 § 1031 are met. 12 O.S. 1981 § 1038 ; *Capitol Federal Savings Bank v. Bewley*, supra. Here, it is clear from the face of the order confirming sale that Appellant's due process rights were violated. Thus, the order confirming sale is void on its face and the trial court was without jurisdiction to enter such order. The trial court's judgment is REVERSED AND this matter is REMANDED for further proceedings consistent with this opinion. *Federal Deposit Ins. Corp. v. Duerksen*, 810 P.2d 1308, 1991 OK CIV APP 39 (Okla.App.Div.3 04/30/1991). Any interested party may move to set aside a void judgment. *High v. Southwestern Insurance Co.*, Okl., 520 P.2d 662 (1974). A different statutory rule applies when the judgment sought to be vacated is alleged to be void. Under the provisions of 12 O.S. 1971 § 1038 any party affected by a void judgment has an independent claim for vacation. It may seek vacation at any time. *Jent v. Brown*, Okl., 280 P.2d 1005, 1008 [1955].

## A BRIEF OVERVIEW OF THE LAW OF VOIDS IN SOUTH CAROLINA

A ***void judgment*** is one that, from its inception, is a complete nullity and is without legal effect." *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." Tyron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. The

requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *S.C. Dep't of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

A brief overview of the law of voids in Texas

Judicial action taken after the trial court's plenary power has expired is void. See *State ex. rel Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995); see also *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (defining a ***void judgment*** as one rendered when a court has no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court). A party affected by void judicial action need not appeal. *State ex rel. Latty*, 907 S.W.2d at 486. If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case.. "A ***void judgment*** is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). Only void convictions are subject to collateral attack. *Christian v. State*, 865 S.W.2d 198, 201 (Tex. App.-Dallas 1993, pet. ref'd) (challenge to voidable error in conviction, raised on appeal from revocation order, was impermissible collateral attack). A ***Void Judgment*** Is a ***Void Judgment*** Is a ***Void Judgment***-Bill of Review and Procedural Due Process in Texas, 40 Baylor L. Rev. 367, 378-79 (1988). See *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate

a ***void judgment***). A judgment is void only when it is clear that the court rendering judgment had no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court. When appeal is taken from a ***void judgment***, the appellate court must declare the judgment void. Because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A ***void judgment*** may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.--Houston [14th Dist.] 1994, no writ); see also *Evans v. C. Woods, Inc*., No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.--Tyler Aug. 30, 1999, no pet. h.). A ***void judgment*** is a "nullity" and can be attacked at any time. *Deifik v. State*, No. 2-00-443-CR (Tex.App. Dist.2 09/14/2001) "A ***void judgment*** is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack *Ex parte Williams*, No. 73,845 (Tex.Crim.App. 04/11/2001). "A ***void judgment*** is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring). Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack. See Ex parte Shields, 550 S.W.2d at 675 a void judgment can be collaterally attacked. See *Glunz v. Hernandez*, 908 S.W.2d 253, 255 (Tex. App.-San Antonio 1995, writ denied); *Tidwell v. Tidwell*, 604 S.W.2d 540, 542 (Tex. Civ. App.- Texarkana 1980, no writ) (finding that a ***void judgment*** may be collaterally attacked by a suit to set aside the judgment after it has become final if such ***void judgment*** becomes material). We agree. A collateral attack is any proceeding to avoid the effect of a judgment which does not meet all the requirements of a valid direct attack. See *Glunz*, 908 S.W.2d at 255. There is neither a set procedure for a collateral attack nor a statute of limitations. See *Glunz*, 908 S.W.2d at 255; *Davis v. Boone*, 786 S.W.2d 85, 87 (Tex. App.-San Antonio 1990, no writ). Collateral attacks may be only used to set aside a judgment which is void, or which involved fundamental error. See

*Glunz*, 908 S.W.2d at 255. Fundamental error for this purpose means cases where the record shows the court lacked jurisdiction or that the public interest is directly and adversely affected as that interest is declared in the statutes or the Constitution of Texas. See id. The cases distinguish between judgments which are void, and therefore may be set aside by a collateral attack, and those which are voidable and must be attacked by a valid direct attack. See id. A judgment is void if it is shown that the court lacked jurisdiction 1) over a party or the property; 2) over the subject matter; 3) to enter a particular judgment; or 4) to act as a court. Jurisdiction could not be conferred by waiver or retroactively *ELNA PFEFFER ET AL. v. ALVIN MEISSNER ET AL*. (11/23/55) 286 S.W.2d 241. Strictly speaking a ***void judgment*** is one which has no legal force or effect whatever. It is an absolute nullity and such invalidity may be asserted by any person whose rights are affected, at any time and at any place. It need not be attacked directly, but may be attacked collaterally whenever and wherever it is interposed. Usually it carries the evidence of its invalidity upon its face, while a voidable judgment is one apparently valid, but in truth wanting in some material respect; in other words, one that is erroneous. Such vice may be the want of jurisdiction over the person or other similar fundamental deficiency, but which vice does not affirmatively appear upon the face of the judgment."'*BILLY DUNKLIN v. A. J. LAND ET UX*. 297 S.W.2d 360 (12/21/56). Where a ***void judgment*** has been rendered and the record in the cause, or judgment roll, reflects the vice, then the court has not only the power but the duty and even after the expiration of the term to set aside such judgment. *Harrison v. Whiteley, Tex.Com.App.*, 6 S.W.2d 89. This court in *Neugent v. Neugent*, Tex.Civ.App., 270 S.W.2d 223, followed and applied the rule announced in the Harrison-Whiteley case. The Supreme Court, speaking through Folley, Commissioner, in *Bridgman v. Moore*, 143 Tex. 250, 183 S.W.2d 705, at page 707, said: "The court has not only the power but the duty to vacate the inadvertent entry of a ***void judgment*** at any time, either during the term or after the term, with or without a motion therefore." We will not extend this discussion further than to state that we here reaffirm the holding on the point involved as announced by Justice Hightower in the former appeal (301 S.W.2d 181). While this holding was premature in view of the action of the Supreme Court (304 S.W.2d 265) reversing our holding, it was not upon the points

discussed in Justice Hightower's opinion, but was on the point that since the judgment appealed from was an interlocutory one and not final, the appeal should be dismissed. However, we think our holding then is now appropriate. A ***void judgment*** has been termed mere waste paper, an absolute nullity; and all acts performed under it are also nullities. Again, it has been said to be in law no judgment at all, having no force or effect, conferring no rights, and binding nobody. It is good nowhere and bad everywhere, and neither lapse of time nor judicial action can impart validity. *Commander v. Bryan*, 123 S.W.2d 1008, (Tex.Civ.App., Fort Worth, 1938, n.w.h.); 34 Tex.Jur., Sec. 262, page 177; *Maury v. Turne*r, 244 S.W. 809, (Tex.Com.App., 1922). Also, a ***void judgment*** has been defined as "one which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at anytime and at any place directly or collaterally." Black's Law Dictionary; *Reynolds v. Volunteer State Life Ins. Co*., 80 S.W.2d 1087, (Tex.Civ.App., Eastland, 1935, writ ref.); *Gentry v. Texas Department of Public Safety*, 379 S.W.2d 114, 119, (Tex.Civ.App., Houston, 1964, writ ref., n.r.e., 386 S.W.2d 758). It has also been held that "It is not necessary to take any steps to have a ***void judgment*** reversed, vacated, or set aside. It may be impeached in any action direct or, collateral.' *Holder v. Scott*, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.).

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ON THE LAW OF VOIDS IN WASHINGTON

Court held that a quiet title action, not an action to vacate the judgment, was the appropriate means for the grantee of a judgment debtor to clear the title of land sold under a ***void judgment***. *Krutz*, 25 Wash. at 572-74, 577-78. In *Krutz*, the judgment and subsequent sheriff's sale were void for improper service. *Krutz*, 25 Wash. at 566-78. The court stated that the grantee, who purchased from the judgment debtor, was not a party to the prior judgment and could not have brought a motion to vacate the ***void judgment***. *Krutz*, 25 Wash. at 566-78. Similarly, Mueller, having an interest in the property as the

purchaser from Griffin's estate, made a collateral attack on the validity of the sheriff's sale through this quiet title action

If a motion to relieve a party from judgment is based on mistake, inadvertence, excusable neglect, newly discovered evidence or irregularity in obtaining the judgment, it must be made within a year of the judgment's entry. CrR 7.8(b). A motion based on a ***void judgment*** or "{a}ny other reason justifying relief from the operation of the judgment" may be brought within a reasonable time. CrR 7.8(b)(5); *State v. Clark*, 75 Wn. App. 827, 830, 880 P.2d 562 (1994)

A judgment is void when the court does not have personal or subject matter jurisdiction, or "lacks the inherent power to enter the order involved." *Petersen*, 16 Wash. App. at 79 (citing *Bresolin*, 86 Wash. 2d at 245; Anderson, 52 Wash. 2d at 761) (additional citation omitted). A trial court has no discretion when faced with a ***void judgment***, and must vacate the judgment "whenever the lack of jurisdiction comes to light." *Mitchell v. Kitsap County*, 59 Wash. App. 177, 180-81, 797 P.2d 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 P.2d 206 (1990)). As discussed above, since the judgment is void, this collateral attack through the quiet title action was proper.

A challenge to a ***void judgment*** can be brought at any time. *Matter of Marriage of Leslie*, 112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989) (citing John Hancock Mut. Life Ins. Co. v. Gooley, 196 Wash. 357, 370, 83 P.2d 221 (1938) (additional citation omitted); CR 60(b)(5).

A trial court's decision to grant or deny a motion to vacate a default judgment is generally reviewed for an abuse of discretion.*;* however, a court has a nondiscretionary duty to vacate a ***void judgment***. *Leen*, 62 Wash. App. at 478; *In re Marriage of Markowsk*i, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp*., 46 Wash. App. 517, 520, 731 P.2d 533 (1987).

A motion to vacate under CR 60(b)(5) “may be brought at any time" after entry of judgment. *Lindgren v. Lindgren*, 58 Wash. App. 588, 596, 794 P.2d 526 (1990), review denied, 116 Wash. 2d 1009, 805 P.2d 813 (1991); see also *Brenner v. Port Bellingham*, 53 Wash. App. 182, 188, 765 P.2d 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)"). Void judgments may be vacated regardless of the lapse of time. *In re Marriage of Leslie*, 112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989). Consequently, not even the doctrine of aches bars a party from attacking a ***void judgment***. *Leslie*, 112 Wash. 2d at 619-20.

Brenner provides a striking example of how meaningless the passage of time is in the context of a ***void judgment***. There, a default judgment was entered in 1969 condemning all interests in certain real property and vesting title in the Port of Bellingham. In 1985, Brenner sued the Port for damages resulting from the condemnation action and alleged in part that the Port had tailed to satisfy the statutory requirements of service by publication. The trial court denied Brenner's motion for summary judgment, ruling that the Port's error was merely an irregularity and, thus, voidable under CR 60(b)(1) rather than void under CR 60(b)(5). The trial court also found that Brenner had failed to move to vacate the judgment within a reasonable time as required by CR 60(b)(1). 53 Wash. App. at 185. The Court of Appeals reversed, holding that the Port's failure to strictly comply with the requirements of service by publication meant the court had no jurisdiction over Brenner when it entered the 1969 judgment condemning her interest in the property. Recognizing that a default judgment entered without valid service is void and may be vacated at any time, the court remanded the case to the trial court with instructions to vacate the 16-year-old judgment. 53 Wash. App. at 188. In the present case, the trial court expressly found Allstate's service of process was defective. "Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void." *Markowski*, 50 Wash. App. at 635-36; see also *Mid-City Materials. Inc. v. Heater Beaters Custom Fireplaces,* 36 Wash. App. 480, 486, 674 P.2d 1271 (1984). Because a party may move to vacate a ***void judgment*** at any time (*Leslie*, 112 Wash. 2d at 618-19), the trial court erred by finding that *Khani* failed to bring his motion within a reasonable time. Further,

as discussed in detail below, the trial court's finding that *Khani* had actual notice of the default judgment through the DOL notice is irrelevant on these facts. More significantly, the trial court erred by denying Khani's motion because it failed to fulfill its nondiscretionary duty to vacate a ***void judgment***. See *Leen*, 62 Wash. App. at 478; *Markowski*, 50 Wash. App. at 635. Thus, the trial court's order must be reversed and the case remanded with instructions to vacate the default judgment and quash the writ of garnishment. See *Leslie*, 112 Wash. 2d at 618 (a vacated judgment has no effect, and the parties' rights are left as though the judgment had never been entered).

A ***void judgment*** is always subject to collateral attack. *Bresolin v. Morris*, 86 Wash. 2d 241, 245, 543 P.2d 325 (1975). A ***void judgment*** must be vacated whenever the lack of jurisdiction comes to light. *Mitchell v. Kitsap Cy*., 59. Wash. App. 177, 180-81, 797 P.2d 516 (1990).

"A ***void judgment*** may be attacked collaterally as well as directly. It is entitled to no consideration whatever in any court as evidence of right, *Kizer v. Caufield*, 17 Wash. 417, 49 P. 1064.

A ***void judgment*** is defined in *Dike v. Dike*, 75 Wash. 2d 1, 7, 448 P.2d 490 (1968).

These historical rules are set against the fact that the law of reopening estates is derived from the law of vacating judgments. *In re Jones' Estate*, 116 Wash. 424, 426, 199 P. 734 (1921). With the advent of CR 60, additional justifications upon which to reopen an estate may exist. Specifically, CR 60(b)(4) allows the court to vacate a judgment procured through '{f}raud . . . , misrepresentation, or other misconduct of an adverse party.' CR 60(b)(4). Of course, a '***void*** ***judgment*** is also unenforceable. CR 60(b)(5). CR 60 also contain a catchall provision, which permits the court to vacate a judgment for '{a}ny other reason justifying relief from the operation of the judgment.' CR 60(b)(11).

It is true that, under CR 60(b)(5), a court may vacate a ***void judgment*** at any time. A judgment is void if entered by a court without jurisdiction. *In re Marriage of Ortiz*, 108 Wn.2d 643, 649, 740 P.2d 843 (1987).

Where the judgment was procured fraudulently so that it was void and its invalidity appeared on the face of the record so that either on the Henkles' or on the commissioner's own motion, the court commissioner had the power to vacate the ***void judgment*** without notice to McCormick. *Morrison v. Berlin*,. the court commissioner did not manifestly abuse his discretion here. *State v. Scott*.

Assuming the judgment to be void, the primary question is: Have they such right? There is no question but that a court has inherent power to purge its records of void judgments. It may do so of its own motion. It must be conceded that a party to the record, adversely affected by a ***void judgment***, may have the judgment vacated as a matter of right -- and this without a showing of a meritorious defense. *Hole v. Page*, 20 Wash. 208, 54 P. 1123; *Batchelor v. Palmer*, 129 Wash. 150, 224 P. 685. The parties to the record (the Pumneas) in this case, however, are not adversely affected by the judgment in question. For they have parted with their interest in the property, and the judgment has been satisfied. An order vacating the judgment would affect their rights or liabilities in no manner whatsoever. As to them it is 'functus officio, wherefore the question of the legality or illegality of its obtention is a mere abstraction with which it is no part of the business of appellate courts to deal.' *Davis v. Blair*, 88 Mo.App. 372.

## OVERVIEW OF VOID JUDGMENTS IN WISCONSIN

Orders or "[j]udgments entered contrary to due process are void." *Neylan v. Vorwald*, 121 Wis.2d 481, 488, 360 N.W.2d 537, 540 (Ct. App. 1984) (citations omitted). A void judgment or order is something very different from a valid one. Id. at 496, 360

N.W.2d at 544. "[I]t is legally ineffective[,] may be collaterally attacked at any time in any proceeding, state or federal [and] it should be treated as legally ineffective in the subsequent proceeding. Even the party which obtained the void judgment may collaterally attack it." Id. A void judgment cannot be validated by consent, ratification, waiver or estoppel. Id. at 495, 360 N.W.2d at 544. This principle is "of ancient and universal application." We conclude that the term "order" in 769.205(4) must be interpreted to mean a "valid order" to avoid an absurd result. Upon Nowak's 1991 motion, the trial court applied then effective Section(s) 767.65(40), Stats., 1991-92, and vacated registration of the Arizona judgment. The order vacating the Arizona registration of judgment was never appealed and remains in effect. Neither party disputes that the Arizona judgment was entered without notice and contrary to due process, rendering it void. An order issued contrary to due process is not an order issued "under a law substantially similar to this chapter." Section 769.205(4), Stats. Because the Arizona judgment is void, it is not recognized under Section(s) 769.205(4). We need not give full faith and credit to the void judgment of another state. Arizona's invalid judgment does not preclude Wisconsin from establishing paternity and support. 04/10/96 *STATE OF WISCONSIN, ex r v. BRIAN L. NOWAK* 1996.WI.547. Void judgments can always be challenged. Moreover, there is no need for a trial in any of the three instances. As a matter of law, the creditor violated the WCA and must suffer the consequences of its wrongful repossession and prohibited debt collection practices. These consolidated cases concern a car loan credit company's repossessions of three different customers' cars. The customers brought suit claiming violations under the Wisconsin Consumer Act (WCA) for wrongful repossession of their autos and prohibited debt collection practices. The basis for these causes of action was the alleged commercial practice of the loan company creditor to commence replevin actions in a county where venue does not lie. The two trial courts handling these three cases granted summary judgment to the creditor on the wrongful repossession claim finding that each customer waived his or her claim by not appearing at the replevin hearing and objecting to venue. While one trial court left the claim of prohibited debt collection practices for the trier of fact, the other used waiver to dismiss the prohibited debt collection practices claim as well. We reverse both trial

courts. The WCA plainly treats venue as a jurisdictional issue. Therefore, the failure to have proper venue means the judgment is void. Void judgments can always be challenged. Moreover, there is no need for a trial in any of the three instances. As a matter of law, the creditor violated the WCA and must suffer the consequences of its wrongful repossession and prohibited debt collection practices. Community Credit is correct that the determination of whether the judgments were void or voidable is critical in this case. A ***void judgment*** is a mere nullity, and any proceedings founded upon it are equally worthless. See *Fischbeck v. Mielenz,* 162 Wis. 12, 17, 154 N.W. 701, 703 (1916); *Neylan v. Vorwald*, 124 Wis.2d 85, 99, 368 N.W.2d 648, 656 (1985). A ***void judgment*** cannot create a right or obligation, as it is not binding on anyone. See id. A voidable judgment, on the other hand, has the same effect and force as a valid judgment until it has been set aside. See *Slabosheske v. Chikowske*, 273 Wis. 144, 150, 77 N.W.2d 497, 501 (1956). Thus, a voidable judgment protects actions taken under it before it is reversed. See id. Here, if the default judgments were voidable, then they were valid judgments until vacated. If so, Community Credit's repossessions were based on valid judgments and were not wrongful. However, if the default judgments were void, they had no legal effect. If void, they were not valid judgments. Thus, they did not authorize Community Credit's repossessions of the cars. *Kett v. Community Credit Plan Inc*., 222 Wis.2d 117, 586 N.W.2d 68 (Wis.App. 09/23/1998). And a ***void judgment*** can be attacked at anytime. See Neylan, 124 Wis.2d at 97, 368 N.W.2d at 655. This is an appeal from an order denying a motion to vacate a small claims judgment. The motion claimed that the judgment was void, thus requiring that the court vacate it pursuant to Section 806.07, Stats. The trial court denied the motion on the basis that the exclusive remedy to reopen a small claims default judgment is time barred if brought more than six months after the entry of judgment contrary to Section 799.29(1)(c), Stats. Because this case involves a motion to vacate a ***void judgment***, not a motion to reopen a default judgment, this court reverses. *Benitez v. Fasick*, 220 Wis.2d 358, 582 N.W.2d 505 (Wis.App. 05/27/1998). No statutory time limit applies to a motion to vacate void judgments. A ***void judgment*** may be expunged at any time. See *West v. West*, 82 Wis.2d 158, 166, 262 N.W.2d 87, 90 (1978). Laches do not apply to a motion to vacate for voidness either. See id. Nor does

the reasonable time test of Section 806.07(2), Stats., apply to this motion. See *Neylan v. Vorwald*, 121 Wis.2d 481, 497, 360 N.W.2d 537, 545 (Ct. App. 1984). We recognize that "' ***void judgment*** cannot be validated by consent, ratification, waiver, or estoppel.'" Neylan, 124 Wis. 2d at 97, 368 N.W.2d at 655 (quoting *Kohler Co. v. DILHR*, 81 Wis. 2d 11, 25, 259 N.W.2d 695, 701 (1977). Where material facts are undisputed, the question of whether a judgment is void for lack of jurisdiction is a matter of law that we review de novo. *State v. Big John*, 146 Wis. 2d 741, 748, 432 N.W.2d 576, 579 (1988). A judgment is void if the court rendering it lacked subject matter jurisdiction. See *Wengerd v. Rinehart*, 114 Wis. 2d 575, 578, 338 N.W.2d 861, 864 (Ct. App. 1983). Also, a ***void judgment*** is subject to collateral attack. *State v. Madison*, 120 Wis. 2d 150, 158, 353 N.W.2d 835, 839 (Ct. App. 1984). Section 806.07, Stats., governs relief from judgments. The Judicial Council Committee's Note, 1974, 67 Wis. 2d 726, states the section "is substantially equivalent to Federal Rule 60(b) and replace[d former sec.] 269.46." *fn12 This court stated in *West v. West*, 82 Wis. 2d 158, 165-66, 262 N.W.2d 87 (1978), that the former sec. 269.46(1) "presupposes the entry of a valid judgment . . . It has nothing whatsoever to do with the vacation of a ***void judgment***." A ***void judgment*** may be expunged by a court at any time. In *Kohler Co. v. ILHR*, 81 Wis. 2d 11, 25, 259 N.W.2d 695 (1977. "The fact that the award came many years after the void order is of no consequence. In *Halbach v. Halbach*, 259 Wis. 329, 331, 48 N.W.2d 617 (1951), the ***void judgment*** was challenged ten years after entry. The court stated that laches did not apply even if the plaintiff had been dilatory or lackadaisical in his efforts to overturn the judgment. 'It is the duty of the court to annul an invalid judgment.' "A ***void judgment*** cannot be validated by consent, ratification, waiver, or estoppel. Furthermore, void judgments may be attacked collaterally. The 1960 application was still valid." (Footnote omitted.). There is no time limit on an attack on a judgment as void. The one-year limit applicable to some Rule 60(b) motions is expressly inapplicable, and even the requirement that the motion be made within a 'reasonable time,' which seems literally to apply to motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion. A ***void judgment*** cannot acquire validity because of laches on the part of the judgment debtor. A ***void judgment*** is something very different than a valid judgment. The

***void judgment*** creates no binding obligation upon the parties, or their privies; it is legally ineffective. . . . The judgment may also be set aside under 60(b)(4) within a 'reasonable time,' which, as here applied, means generally no time limit, or the enforcement of the judgment may be enjoined. The judgment may also be collaterally attacked at any time in any proceeding, state or federal, in which the effect of the judgment comes in issue, which means that if the judgment is void it should be treated as legally ineffective in the subsequent proceeding. Even the party which obtained the ***void judgment*** may collaterally attack it. And the substance of these principles are equally applicable to a void state judgment. A party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf; he is entitled to have the judgment treated for what it is, a legal nullity, but he must establish that the judgment is void." (Footnotes omitted.) The Judicial Council Committee's Note, 1974, 69 Wis. 2d 726, states that sec. 806.07, Stats., is substantially equivalent to Federal Rule 60(b) and replaces sec. 269.46, Stats. (1973). There is no suggestion that the committee intended a departure from former Wisconsin law which is consistent with present federal cases construing Federal Rule 60(b). Section 806.07(2), Stats., requiring motions to vacate orders or judgments to be brought in a "reasonable time" does not apply to void judgments. 05/29/85 *KATHLEEN NEYLAN v. RICHARD VORWALD* 368 N.W.2d 648, 124 Wis. 2d 85.

**** **On the issue of whether a land contract vendee has standing to assert the lack of notice of foreclosure proceedings to his vendor, we agree with the similar result reached by the court of appeals in the recent case of *Preston v. Iron County*, 105 Wis. 2d 346, 314 N.W.2d 131 (Ct. App. 1981). That case involved the granting of a tax deed under sec. 75.12, Stats. However, we disagree with the court's attempt in Preston to distinguish the court of appeal's decision in Young on the ground that Young involved a partially *void judgment*. As stated above, a partially void foreclosure judgment may not exist in this area.** ******** *MATTER FORECLOSURE TAX LIENS* 316 N.W.2d 362, 106 Wis. 2d 244 (March 1982). **** It is manifest that the action of the court in tinkering with what it knew to be a ***void judgment*** constituted an abuse of discretion. Although the court's motive -- to save the parties the time and

expense of another proceeding -- was laudable, its efforts were based upon an erroneous view of the law. This constitutes an abuse of discretion. *State v. Hutnik*, 39 Wis. 2d 754, 159 N.W.2d 733 (1968). See also *West v. West*, 82 Wis. 2d 158, 262 N.W.2d 87 (1978), in respect to a court's jurisdiction where a ***void judgment*** has been entered. The fact that the award came many years after the void order is of no consequence. In *Halbach v. Halbach*, 259 Wis. 329, 331, 48 N.W.2d 617 (1951), the ***void judgment*** was challenged ten years after entry. The court stated that laches did not apply even if the plaintiff had been dilatory or lackadaisical in his efforts to overturn the judgment. "It is the duty of the court to annul an invalid judgment." A ***void judgment*** cannot be validated by consent, ratification, waiver, or estoppel. Furthermore, void judgments may be attacked collaterally. The 1960 application was still valid. A judgment or order which is void may be expunged by a court at any time. Such right to expunge a void order or judgment is not limited by statutory requirements for reopening, appealing from, or modifying orders or judgments. [Cases cited.]" *State ex rel. Wall v. Sovinski*, 234 Wis. 336, 342, 291 N.W. 344 (1940). See also, *Home Bank v. Becker*, 48 Wis. 2d 1, 7, 179 N.W.2d 855 (1970). It is a well-settled rule that lack of subject matter jurisdiction may not be consented to or waived. This "long-standing case law" rule is retained by sec. 802.06(8)(c), Stats. Clausen and Lowe, The New Wisconsin Rules of Civil Procedure: Chapters 801-803, 59 Marq. L. Rev. 1, 52 (1976), citing *Damp v. Town of Dane*, 29 Wis. 419 (1872), A ***void judgment*** or order may be expunged or vacated by a court at any time. *State v. Banks*, 105 Wis. 2d 32, 43, 313 N.W.2d 67, 72 (1981). Thus, the court was without authority to extend the injunction beyond two years from the date the injunction first was entered. When a court acts in excess of its jurisdiction, its orders or judgments are void and may be challenged at any time. *Kohler Co. v. DILHR*, 81 Wis. 2d 11, 25, 259 N.W.2d 695, 701 (1977). The extended injunction thus is void. A ***void judgment*** cannot be validated by consent, ratification, waiver, or estoppel and may be attacked collaterally. Moreover, it is axiomatic that a judgment secured without obtaining personal jurisdiction over a party is void, and a ***void judgment*** can be collaterally attacked at any time in any proceeding, state or federal. See *Neylan v. Vorwald*, 124 Wis. 2d 85, 99, 368 N.W.2d 648 (1985).

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