

CAUSE NUMBERS 699540~699547

THE STATE OF TEXAS § IN THE COUNTY CRIMINAL COURT
 §
 § AT LAW NO. 6
 §
JAMES MARLIN EBERT § TRAVIS COUNTY, TEXAS

LAWFUL
JUDICIAL NOTICE
PURSUANT TO T.R.E. RULE 902
MANDATORY

The court will take Judicial Notice:

Due Process provides that the "rights of pro se litigants are to be construed liberally and held to less stringent standard [with appropriate benevolence] than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements. Haines v Kerner, 404 U.S. 519-520 (1972); further at, supra, 520; allegations of pro se complaints are held to "less stringent standards than formal pleading drafted by lawyers," reaff'd, Hughes v. Rowe, 449 U.S. 5, 9-10 (1980) (Emphasis added.)

"Right to proceed pro se is fundamental statutory right that is afforded highest degree of protection" DEVINE V INDIAN RIVER COUNTY SCHOOL BD., 11TH CIR. 1997

All officers of the court are hereby lawfully placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution, incorporated into this instant matter, and the common law authorities of Haines v Kerner, 404 U.S. 519-421 (1972), Platsky v. C.I.A. 953 F.2d. 25, and Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000), Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647. In re Haines: pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In re Platsky: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings. In re Anastasoff: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000)

On “pro se”

pro se For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court. Black’s Law Dictionary, Fifth edition, 1979, page 1099

pro se For one’s own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for

himself in court. Black's Law Dictionary, Sixth edition, 1990, page 1221

pro se *adv. adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. — Also termed *pro persona*; *in propria persona* Black's Law Dictionary, Seventh edition, 1999, page 1236

pro persona *adv. & adj.* [Latin] For one's own person; on one's own behalf <a *pro persona* brief>. — Sometimes shortened to *pro per*. See PRO SE. Black's Law Dictionary, Seventh edition, page 1232

pro persona (= for his own person, on his own behalf) is a LATINISM used in some jurisdictions as an equivalent of *pro se* and *in propria persona*. A Dictionary of Modern Legal Usage, 1987

In Propria Persona. "In ones own proper person. It was a former rule in pleading that pleas to the jurisdiction of the court must be plead in propria persona, because if pleaded by attorney they admit the jurisdiction, as an attorney is an officer of the court, and he is free to answer charges after "taking leave" of the accused, which admits the jurisdiction." Black's Law Dictionary, Fifth edition, 1979, page 712

pro se, n. One who represents oneself in a court proceeding without assistance of a lawyer <the third case on the court's docket involving a pro se>. — Also termed *pro per*. Black's Law Dictionary, Seventh edition, page 1237 (also Black's Eight edition, 2004)

pro se = on his own behalf. The phrase is two words, and should not be hyphenated. Functionally, the phrase may be either adjectival or adverbial. Here it is the former: "In this *pro se* action, plaintiff contends that..." Just as frequently it is adverbial, as here: "The petitioner appeals *pro se* from..." A Dictionary of Modern Legal Usage, 1987

It may be said that the authorized agent, the man sometimes designated with the appellation James-Marlin Ebert, as may be case manager, is *pro se*. If the court means that the authorized agent, the man sometimes designated with the appellation James-Marlin Ebert in *propria persona* proceeding *sui juris* is without assistance of a lawyer or disability of an attorney – he agrees. If the Court concludes anything else, the man sometimes designated with the appellation James-Marlin Ebert does demand the Court to timely and factually explain it on the record, as the man sometimes designated with the appellation James-Marlin Ebert is not an attorney or a lawyer.

Sui Juris - Possessing all the rights to which a freeman is entitled; not being under the power of another, as a slave, a minor, and the like. To make a valid contract, a person must, in general, be *sui juris*. Every one of full age is presumed *sui juris*. Story, Ag 10, Harrison v. Laveen 196 P.2nd 456, 461

A man's "name" is that person's property. For a man's "name" to enjoy *Sui Juris* status, that "name" must be free of explicit legal disability resulting from some contract, indenture or commercial agreement, which is "held-in-due-course" by a fellow Citizen, alleged corporation or by an alleged agency of government.

Sui juris Lat. Of his own right; possessing full social and civil rights; not under any legal disability, or the power of another, or guardianship.

Having capacity to manage one's own affairs; not under legal disability to act for one's self. Black's Law Dictionary, Fifth edition, 1979, page 1286

All officers of the court are hereby lawfully placed on notice:

The private property title, "James-Marlin Ebert" is *sui juris*. The man sometimes designated with the appellation James-Marlin Ebert is *sui juris*. As authorized agent, the man sometimes designated with the appellation James-Marlin Ebert is *sui juris*.

The use of a Notary does not create any powers of attorney. Purpose of Notary Public is for identification, verification and acknowledgment only. The use of a Notary does not provide for and is not for entrance or adhesion into any foreign jurisdiction nor does it alter status in any manner.

The private man, the authorized agent, so titled James-Marlin Ebert is not a corporation. (T.R.C.P. 52)

James Marlin Ebert is not a corporation. (T.R.C.P. 52)

The private man, the authorized agent, so titled James-Marlin Ebert is not the thing so identified as, "JAMES MARLIN EBERT" and vice versa. (T.R.C.P. 52)

Notice: James-Marlin Ebert is not JAMES MARLIN EBERT and vice versa. (T.R.C.P. 52)

Notice: James Marlin Ebert is not JAMES MARLIN EBERT and vice versa. (T.R.C.P. 52)

Notice: {any other assemblage, or order, of characters} is not James-Marlin Ebert and vice versa. (T.R.C.P. 52)

Notice: {any other assemblage, or order, of characters} is not James Marlin Ebert and vice versa. (T.R.C.P. 52)

Notice: {any other assemblage, or order, of characters} is not JAMES MARLIN EBERT and vice versa. (T.R.C.P. 52)

The private man, the authorized agent, sometimes designated with the appellation James-Marlin Ebert, in good faith responds to this instant matter, which was presented under conditions of threat and duress and coercion and which attempts to create a colorable persona, (CONVERSION) under colorable law by the use of the all-capital-letter-spelled, “JAMES MARLIN EBERT”.

Any artifice bearing “JAMES MARLIN EBERT” is being used to deceive this court and must be abated as a public nuisance as the private man sometimes designated with the appellation James-Marlin Ebert who is not a corporation, not an artificial or juristic person, not an entity of government and cannot be created as such by law, or by deception, as it [conversion] could only be done without knowledge or consent — voluntary or otherwise.

“All codes, rules and regulations are applicable to the government authorities only, not human/Creators in accordance with God's law. All codes, rules and regulations are unconstitutional and lacking in due process as applied to Sherwood T. Rodrigues.” Rodrigues vs Ray Donovan (US Secretary of Labor) 769 F2d 1344, 1348 (1985) (Emphasis added)

Yick Wo v Hopkins, 118 US 356, 370, which states that People are "not subject to the law" which is called code. "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but, in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." Justice Matthews in Yick Wo v Hopkins, supra, at page 370 (1886)

"...The Congress cannot revoke the Sovereign power of the people to override their will as thus declared." Perry v. United States, 294 U.S. 330, 353 (1935).

"In the United States, Sovereignty resides in the people, who act through the organs established by the Constitution." Chisholm v. Georgia, 2 Dall 419, 471; Penhallow v. Doane's Administrators, 3 Dall 54, 93; McCullock v. Maryland, 4 Wheat 316, 404, 405; Yick Yo v. Hopkins, 118 U.S. 356, 370.

This court should know, a STATE, or MUNICIPAL corporation cannot compel performance of any kind, over any natural, flesh and blood man, up/down to and including even a 'juristic person', unless he, or it, has entered into an unconditionally and knowingly signed contract free of fraud voluntarily and freely entered into compelling such performance.

The evidence in this instant matter clearly goes to deny that any such adhesion or accommodation contract exists.

And if is so supposed that any alleged adhesion or accommodation contract was entered into willingly, knowingly, and intentionally, or that any others are in fact [a] 'Holder in Due Course' – let it be judicially known that these presumptions are false and hereby rebutted. A superior lien is held by the one who files first. There

exists a Uniform Commercial Code (UCC1) Financing Statement on file with the Secretary of State of Texas, (02-0034941629, 06/25/02) establishing the private man, the authorized agent, sometimes designated with the appellation James-Marlin Ebert as holder in due course.

When the (private) Citizen is aware of a controversy regarding agency practice, he/she may elect to protect their *in Propria Persona*, sui juris status.

Pursuant to Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380, 384; the United States Supreme Court stated, "Whatever the form in which government functions anyone entering into arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority... and this is so, even though, as here, the agent himself may have been unaware of the limitations upon his authority."

The private man sometimes designated with the appellation James-Marlin Ebert in *propria persona* proceeding *sui juris*, without assistance of a lawyer or attorney, in want of clear title, in this lawful judicial notice, in demand well made, hereby notices this honorable court that in addition to dismissal, timely restitution and expungement are right and proper in this instant matter.

Notice of law regarding alleged immunity of alleged governmental official is made part of this lawful Judicial Notice.

"If a public officer authorizes the doing of an act not within the scope of his authority, he will be held liable." Bailey v. New York, 3 Hill (NY) 531, 38 Am Dec 669, affirmed in 2 Denio 433.

"The officers of the law, in the execution of process, are obliged to know the requirements of the law, and if they mistake them, whether through

ignorance or design, and anyone is harmed by their error, they must respond in damages." Rogers v. Conklin 1 Wall. (US) 644, 17 Led 714.

"The authority of public officers to proceed in a particular way and only upon specific conditions as to such matters implies a duty not to proceed in any manner other than that which is authorized by the law." First Nat. Bank v. Filer, 107 Fla. 526, 145 So 204, 87 ALR 267.

"A public officer is liable for the misconduct or negligence of his subordinates where he is intrusted with their selection or employment, and through carelessness or unfaithfulness appoints incompetent or untrustworthy persons." Wile v. Harrison, 105 Okla 280, 232 P 816, 38 ALR 1408.

"An officer who wilfully and wantonly appoints an unfit and incompetent person for public duties may be liable for damage which proximately results therefrom." Richmond v. Long, 17 Gratt (Va) 375, 94 Am Dec 461.

The courts are not bound by an officers interpretation of the law under which he presumes to act, Hofsommer v. Hayes, 92 Okla 32, 217 P 477, citing RCL

"Courts should not tolerate or condone disregard of law and arbitrary usurpation of power on the part of any officer. Ours is a government of law, and not of men, and before any act of any official will be sustained by the courts such act must be authorized by law." Ex Parte Owen, 10 Okla Crim Rep 284, 136, P 197, Ann Cas 1916A 522.

It is a general rule that good faith and absence of malice constitute no defense in an action to hold a ministerial officer liable for damages caused by his nonfeasance or misfeasances, Amy v. Supervisors (Amy v. Barkholder) 11 WaII.(S) 136, 20 Led 101; for an officer is under a constant obligation to discharge the duties of his office, and it is not necessary to show that his failure to act was wilful or malicious, 95 Ant St Rep 74. And this is likewise the rule in respect of officers with discretionary powers who have exceeded their jurisdiction and have acted without authority of law, Stiles v. Lowell (Stiles v. Morse) 233 Mass 174, 123 NE 615, 4 ALR 1365.

It is a general rule that an officer -- executive, administrative, quasi-judicial, ministerial, or otherwise -- who acts outside the scope of his jurisdiction and without authorization of law may thereby render himself amenable to personal liability in a civil suit, Cooper v. O'Connor, 69 App DC 100, 99 F(2d) 138, 118 ALR 1440; Chamberlain v. Clayton, 56 Iowa 331, 9 NW 237, 41 Ant Rep 101. If he exceeds the power conferred on him by law, he cannot shelter himself by the plea that he is a public agent acting under color of his office, Nelson v. Babcock, 188 Minn 584, 248 NW 49, 90 ALR 1472; or that the damage was caused by an act done or omitted under color of office, and not personally, First Nat: Bank v. Filer, 107 Fla 526, 145 So 204, 87 ALR 267. In the eye of the law, his acts then are wholly without authority, Kelly v. Bemis, 4 Gray (Mass) 83, 64 Am Dec. 50.

As relating to the above said items, the court will take notice that that the private man sometimes designated with the appellation James-Marlin Ebert, does rely on decisions of the United States Supreme Court, to wit:

While the Supreme Court should have "the prerogative of overruling its own decisions", National Foreign Trade Council v. Natsios, 180 F.3d 38, 59 (1st Cir. 1999) (citations omitted)

'The lower courts are bound by Supreme Court precedent', Adams v. Dept. of Juvenile Justice of New York City, 143 F.3d 61, 65 (2nd Cir. 1998)

'The decisions of the United States Supreme Court, whether right or wrong, are supreme: they are binding on all courts of this land', Hoover v. Holston Valley Community Hosp., 545 F.Supp. 8, 13 (E.D. Tenn. 1981) (quoting Jordan v. Gilligan, 500 F.2d 701, 707 (6th Cir. 1974))

Said lawful Notice is placed on these Cause numbers **699540~69947**.

**Tendering, filing or Notice
neither confers jurisdiction nor does it constitute a plea.**

CERTIFICATE OF SERVICE

I personally hand delivered a copy of this JUDICIAL NOTICE to the County Attorney of Travis County, Texas and Court Clerk, Travis County Texas, 1000 Guadalupe, Austin, Texas on above the 27th day of June, 2005 for filing into the records of 699540~699547, each.

James-Marlin Ebert
authorized signature

James-Marlin Ebert[©]