STATE OF IDAHO)
County of BONNER)ss

FILED_____

AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

_____
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

TERRY-LEE, ***sui juris*****, a Sovereign Being,**)
)
Plaintiff,)
)
vs.)
)
NATHON-DAVID, *sui juris*, a Sovereign Being,)
)
Defendant)
)

Case No. **s CV 2009 788**

MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND OTHER MOTIONS

I. PROCEDURAL HISTORY AND BACKGROUND.

This Court has previously set forth the factual and procedural history of this case. In the Court's Memorandum Decision and Order Denying Plaintiff's Motions, dated September 30, 2010, the Court wrote:

> Can a party's refusal to accept mail, or refusal to open mail, provide a defense of "excusable neglect" to a subsequent motion? Turns out, the answer to that question is "No." Plaintiff Terry-Lee (Terry-Lee), pro se, has filed the following pleadings which are now at issue:
>
> "By Forced Attendance Motion to Vacate Judgment and to Vacate the Transfer of the Undivided Half Interest of the Land(s) in Question Against the State Created trust TERRY LEE for Cause and for Fraud Against the Court and Against Terry-Lee the Sovereign Being for Rule 60(b) and by and Thru [sic] Your Rule 59(b), and Rule 26(e)(3), and Rule 9(b)- 4 pages
>
> Defendant's Objection to Notice of Scheduled Hearing to Vacate Default Judgment and Set Trial Date" - 2 pages
>
> "By Forced Attendance Terry-Lee's Rebuttal's [sic] to All Documents Found in the Clerks [sic] File on This Case by Lukins & Annis Just Received and Paid For July 8th AD 2010"- 24-pages with extensive exhibits
>
> "Objections and Denials to Defendants Opposite [sic] to Motion to Vacate Judgment Dated August 3, 2010- 8 pages

> and handwritten corrections to Young's Opposition to Motion to Vacate and Objection to Hearing"
>
> Defendant Nathon Young (as referred to by Terry-Lee, Nathan David Young as referred to by Nathan David Young) (Young), through his attorney Michael G. Schmidt, filed an: "Opposition to Motion to Vacate Judgment", an "Objection to Notice of Scheduled Hearing to Vacate Default Judgment and to Set Trial Date", and "Opposition to Motion to Vacate Judgment", and supporting Affidavit of Michael G. Schmidt. Oral argument was held on Terry-Lee's motions on September 29, 2010.
>
> Terry-Lee filed his *pro se* "Verified Request for Dissolution of Partnership and Division of Real Property's [sic] in Bonner County" on May 6, 2009. Young filed his Answer, Affirmative Defenses and Counterclaim on November 10, 2009. On December 15, 2009. Young filed a 3-day Notice of Intent to Take Default; thereafter, Terry-Lee filed what he identified as "Evidence Being Entered into the Record on This Matter" on December 28, 2009, this evidence consisted of numerous documents regarding Terry-Lee's designating himself as "Terry-Lee" and as a sovereign. On January 5, 2010, Young filed his motion and affidavit for default, and this Court entered its Order for entry of Default on January 5, 2010, stating, "IT IS HEREBY ORDERED that default against Plaintiff/Counterclaim Defendant Terry-Lee be entered." Order for Entry of Default, p. 1. On May 12, 2010, Young filed his motion for entry of judgment and affidavit in support thereof. On June 2, 2010, this Court granted the motion for entry of judgment after the hearing on the matter held on June 1, 2010. The two-day Court trial in this matter, scheduled to begin on August 16, 2010, was vacated on that date.
>
> Terry-Lee then filed a motion to vacate the judgment and a "rebuttal" to all documents in the Court file. The "rebuttal" was filed on July 13, 2010. The motion to vacate was received by this Court via United States Postal Service on June 14, 2010, but was not then noticed up for hearing, and no action was taken on the motion. On July 23, 2010, a Notice of Scheduled Hearing to Vacate Default Judgment and to Set Trial Date was filed by Terry-Lee (the Notice was captioned for Case CV 2009 198, a case before District Judge Ben Simpson, but presumably was filed for Case CV 2009 788). Young objected to the timeliness of the originally set August 5, 2010, hearing date. The matter was then reset for September 29, 2010.

September 30, 2010, Memorandum Decision and Order Denying Plaintiff's Motions, pp. 1-3.

After this decision was filed, Terry-Lee filed his "Objections and Acceptions [sic]" thereto. Terry-Lee sought reconsideration of this Court's rulings on his previous motions. In its March 8, 2011, Order Denying Terry-Lee's motions and/or Requests, the Court ordered:

> Having considered the documents field by Terry Lee in this matter since entry of Judgment on June 1, 2010, and also since entry of this Court's Memorandum Decision and Order Denying Plaintiff's Motions (to vacate/reconsider said Judgment) on September 30, 2010, the Court hereby exercises its discretion pursuant to IRCP Rule 7(b)(3)(D) and denies the requests, and overrules all objections made in said documents, except for Terry-Lee's motion to reconsider which will be heard on April 12, 2011 at 11:00 a.m.

Order Denying Terry-Lee's Motions and/or Requests, p. 1. Extensive pleadings were filed by Terry-Lee:

- Terry-Lee's Objections to and he Takes Acceprions [sic] to this Court's Ruling "Memorandum Decision and Order Denying Plaintiffs' Motions." To Vacate Default Judgment and Resubmitts [sic] His "Motion to Vacate Default Judgment Against Terry-Lee the Implied Trust." Resubmitted with Corrections- 10 pages
    - Supporting "Affidavit"
- By the Necessity for the Newly Discovered Evidence, Terry-Lee, Object [sic] to and Takes Acception [sic] to the Defendants [sic] "Opposition to Miscellaneous Motion and Documents Filed by (The Implied Trust) Terry-Lee- 5 pages
- For the Record Rule 201 Judicial Notice of Adjudicative Facts exposure to the Courts the Scope of the Project Maps and Picture
- For the Record Rule 201 Judicial Notice of Adjudicative Facts True Market Value July AD 2008 and Current Sale and Current Comparable Listings
    - Supporting "Affidavit"
- For the Record Rule 201 Judicial Notice of Adjudicative Facts Closing and Related Documents for the Courts [sic] Review of Who the True Buyers and Owners Are
- For the Record Rule 201 Judicial Notice of Adjudicative Facts The Letter Sent by Nathon-David Before Going to Court
- For the Record Rule 201 Judicial Notice of Adjudicative Facts Evidence that Teryy-Lee's True and Correct Name and Correct Location to Receive Post is on the Summons and Petition
- For the Record Rule 201 Judicial Notice of Adjudicative Facts Acknowledgement by Many of Terry-Lee's True Name and Correct Location to Receive Post
- For the Record Rule 201 Judicial Notice of Adjudicative Facts Verification of Terry-Lee's True Name and Capacity Affirmed
- "Transcript" of June 1, 2010 hearing
    - Supporting "Affidavit"
- "Transcript" of June 17, 2010 hearing
    - Supporting "Affidavits"
- Motion to Impeach All Claims, Findings and Determinations by Judge James R. Michaud for Cause- 5 pages and 1 Exhibit
- For the Record Terry-Lee's Presumption's [sic] Against James R. Michaud and JAMES R. MICHAUD- 5 pages
- For the Record Terry-Lee Objects to and Takes Exception to Judge Mitchell's Order Denying (The Implied Trusts) Terry-Lee's Motions and/or Requests and Motion for Hearing- 5 pages
- For the Record Terry-Lee's Presumptions Against Steve Verby and STEVE

VERBY (A Trust)- 5 pages
- For the Record Terry-Lee's Presumptions Against Marie Scott and MARIE SCOTT- 5 pages
- For the Record Terry-Lee's Presumptions Against Paul Harrignton and PAUL HARRINGOTN (A Trust) – 6 pages
- For the Record Terry-Lee's Presumptions Against Michael G. Schmidt and MICHAEL G. SCHMIDT (A Trust) – 5 pages
- For the Record Terry-Lee's Presumptions Against Nathon-David My True Partner- 12 pages

Oral argument was held on April 12, 2011. Counsel for defendant Nathon David did not appear, but had previously filed an Opposition to Miscellaneous Motions and Documents field by Terry-Lee (3 pages) and a Notice of Non-Attendance and Opposition. Terry-Lee conducted examination of three witnesses: George Cook, Larry Witt, and Lynn Williams. Terry-Lee offered fifty-one exhibits, which were admitted. While a variety of pleadings were filed by Terry-Lee, primarily, this is another motion to reconsider. Terry-Lee's Motion to Reconsider was taken under advisement following the April 12, 2011, hearing.

II. STANDARD OF REVIEW.

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Jordan v. Beeks,* 135 Idaho 586, 592, 21 P.3d 908, 914 (2001). A party making a motion for reconsideration is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros,* 143 Idaho 468, 147 P.3d 100 (Ct.App. 2006).

A motion for relief from a final judgment, pursuant to I.R.C.P. 60(b), is committed to the sound discretion of the trial court. *Clear Springs Trout Co. v. Anthony,* 123 Idaho 141, 143, 845 P.2d 559, 561 (1992); *Johnston v. Pascoe,* 100 Idaho 414, 599 P.2d 985 (1979). Denial of an I.R.C.P. 60(b) motion is reviewed for an abuse of discretion. *Alderson v. Bonner,* 142 Idaho 733, 743, 132 P.3d 1261, 1271 (Ct.App.2006). Where a motion invokes discretionary grounds for relief from a judgment, the standard is review of

discretion; however, where the grounds are non-discretionary, as when a judgment is void, the question presented is one of law over which reviewing courts exercise free review. *Knight Ins., Inc. v. Knight,* 109 Idaho 56, 704 P.2d 960 (Ct.App.1985).

The Idaho Supreme Court and Court of Appeals agree that the decision as to whether to enter default judgment is a matter of discretion for the trial court. *Mastrangelo v. Sandstrom, Inc.,* 137 Idaho 844, 849-850, 55 P.3d 298, 303-304 (2002); *Johnson v. State,* 112 Idaho 1112, 1114, 739 P.2d 411, 413 (Ct.App. 1987) (comparing I.R.C.P. 55 to Fed.R.Civ.P. 55); *see also Clear Springs Trout Co. v. Anthony,* 123 Idaho 141, 143, 845 P.2d 559, 561 (1992).

> A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a) or 60(b).

I.R.C.P. 11(a)(2)(B).

III. ANALYSIS.

A. Terry-Lee's Motions Pursuant to Idaho Rules of Civil Procedure 59(b), 26(e)(2)(A), and 9(b) Must be Denied.

Again, Terry-Lee moves this Court to vacate the judgment entered in CV 2009 788 (*Terry-Lee v. Natahan Young*) on June 2, 2010. He argues he did not receive proper service of process or notices of hearing. Objection, pp. 3-4. Terry-Lee's allegations find no support in Idaho statutes, rules, or case law. Terry-Lee states he does not seek a new trial under I.RC.P. 59(b), but, instead wishes for the original trial to carry on. *Id.*, p. 4. However, trial was vacated in this matter after judgment was entered against Terry-Lee following his default. Terry-Lee cites no authority which would permit this Court to order a

new trial given these facts. *See Soria v. Sierra Pacific Airlines, Inc.,* 111 Idaho 594, 726 P.2d 706, (1986) ("[W]ise appellate review should only require the ordering of a new trial where there is a probability that a different result would occur upon the completion of the new trial.")

Terry-Lee's argument regarding the Affidavit of Young is misplaced as well. Terry-Lee now argues Young supplied an affidavit containing erroneous and false claims, "and is in substance a knowing concealment", and appears to have withdrawn his earlier argument that such Affidavit was improper under Rule 26(e)(2)(A). Objections, pp. 4-5. Idaho Rule of Civil Procedure 26(e)(2)(A) refers to the duty of a party to supplement discovery responses learned not to have been true when made or learned to no longer be true because of information the party obtains. That Rule is simply inapplicable to the instant facts. And, where Terry-Lee seeks such vague relief, the Court would run afoul of case law and rules if it were to grant the relief sought.

> …[T]hat the trial court must "state its particular reasons" for granting a motion for new trial is met when there is an adequate explanation to allow the reviewing court to understand the basis upon which the action was taken. The trial court must state both the factual basis for its decision and the particular rule of the Idaho Rules of Civil Procedure under which it is acting.

Pratton v. Gage, 122 Idaho 848, 853, 840 P.2d 392, 397 (1992) (quoting *O'Dell v. Basabe,* 119 Idaho 796, 809, 810 P.2d 1082, 1095 (1991)).

Finally, Terry-Lee appears to argue I.R.C.P. 9(b) applies to statements by Young, who has "claimed the low value of the project…with no supporting evidence." Objections, p. 4. Terry-Lee again argues the total value of the property at issue was $2,640,000. *Id.* But, I.R.C.P. 9(b) involves the requirement that fraud claims be pled with particularity. Terry-Lee, who filed the suit, did not allege fraud and, therefore, I.R.C.P. 9(b) has no applicability to his claim seeking dissolution of a partnership.

Ultimately, I.R.C.P. 26 and I.R.C.P. 9 have no application to the matter Terry-Lee has brought before the Court. And, Terry-Lee has not set forth proper grounds for a new trial as required by I.R.C.P. 59(a); nor is a motion for reconsideration of a denial of an I.R.C.P. 59(a) motion permitted by the plain language of I.R.C.P. 11(a)(2)(B). Therefore, although such a motion was likely timely brought under I.R.C.P. 59(b), it is nonetheless a motion which this Court cannot properly grant.

B. Terry-Lee's Motion to Vacate Judgment Must be Denied.

Terry-Lee's previous motion sought to vacate this Court's entry of judgment. He argued his excusable neglect in defaulting and not appearing to defend against the motion for entry of judgment was the result his not receiving service. Motion to Vacate Judgment, p. 2.

> For the Premeditated mistake's by Nathon's Illegal Attorney, willful misrepresentations and other misconduct by Anthon-David and his illegal attorney, and I's excusable non-attendance (neglect) by lack of service of prossess, I did not receive any notice of hearing or I would have been there.

Id. [Sic in original]. Similarly, now Terry-Lee argues he acted reasonably and prudently in not committing mail fraud or "opening mail sent to a legally built, implied constructive trust…" Objections, p. 5.

Substantively, Young opposes Terry-Lee's instant motion, *as well as future filings,* on the grounds that I.R.C.P. 11(a)(2)(B) prohibits reconsideration of the Court's decisions outright, and the Court's ability to exercise its discretion under I.R.C.P. 7(b)(3)(D) to deny motions prior to hearing when the Court deems such action appropriate. Opposition to Miscellaneous Motions and Documents, p. 2.

Previously, in response to Terry-Lee's motion, Young objected to the Motion to Vacate because Terry-Lee has not met the requirements of I.R.C.P. 60(b) and has not presented a meritorious defense. Opposition to Motion to Vacate Judgment, pp. 2-4.

Young noted Terry-Lee had not alleged any purported fraud upon the Court which would justify vacating the judgment, "the entirety of his fraud argument rests on unsupported allegations that Mr. Young's testimony was inaccurate or untruthful." *Id.,* p. 2. Additionally, Young argued Terry-Lee's neglect cannot be considered "excusable neglect" within the meaning of the Rules.

> Mr. Lee's garbled and nonsensical allegations (generally refusing to acknowledge jurisdiction or the existence of governmental states, zip codes, social security numbers, and the like) are not "reasonable" as contemplated by Rule 60(b). The unreasonableness of his actions is compounded by the fact that he was the first to bring suit in this action and therefore availed himself of the courts.

Id., p. 3. Finally, Young stated Terry-Lee has not presented a meritorious defense to the judgment entered against him. *Id.,* pp. 3-4.

Young's arguments remain well-taken. Excusable neglect is determined by examining what might be expected of a reasonably prudent person under similar circumstances. *Johnson v. Pioneer Title Co.,* 104 Idaho 727, 662 P.2d 1171 (Ct.App. 1983). Refusing to accept mail and returning any correspondence utilizing a zip code is not acting as a reasonably prudent person would under similar circumstances. In *Rodell v. Nelson,* the Court of Appeals found that the district court was justified in not setting aside a default judgment, and finding that the defendant refused service, where a process server was attacked by dogs as he attempted to serve a copy of an order for the withdrawal of defendant's attorney and where a certified mailing to the defendant was returned unclaimed. 113 Idaho 945, 947, 750 P.2dd 966, 968 (Ct.App. 1988). The Court stated:

> It is a well-settled general principle that a person has no right to shut his eyes or ears to information and then to say that he lacked notice of the avoided facts. As a corollary to that principle, a person may not avoid the effect of a written notice by refusing service of the notice.

Id. The Court must also determine whether the party seeking to set aside the default judgment has pled facts which, if established, present a meritorious defense to the action. *Johnson,* 104 Idaho 727, 732, 662 P.2d 1171, 1176. A party seeking to set aside a default judgment must show a meritorious defense and go beyond the mere notice requirements that would have been sufficient if the party had pled them before the default; factual details must be pled with particularity. *Hearst Corp. v. Keller,* 100 Idaho 10, 12, 592 P.2d 66, 68 (1979). Terry-Lee has not done so. Rather, he argues Young was not a party to the contract between "Terry-Lee and Nathon-David". Objections and Denials, p. 4. He states the Judgment was improperly entered against a "State Created Legally 'Built' Implied Constructive Trust, known as TERRY LEE which has no interest in the land development project stated in this case." *Id.* (emphasis in original).

The fraud allegations also remain insufficient with regard to Terry-Lee's instant motion. *See Anderton v. Herrington,* 113 Idaho 73, 741 P.2d 360 (Ct.App. 1987) (Perjury or misrepresentation by a party or witness does not constitute the fraud contemplated by I.R.C.P. 60); *Compton v. Compton,* 101 Idaho 328, 334, 612 P.2d 1175, 1181 (1980) (Fraud, for the purposes of this rule, requires more than interparty misconduct and "will be found only in the presence of such 'tampering with the administration of justice' as to suggest 'a wrong against the institutions set up to protect and safeguard the public'".) No such showing has been made. Terry-Lee has again submitted evidence which he states definitively establish the fair market value of the property at issue in the underlying dispute. *See* For the Record Rule 201 Judicial Notice of Adjudicative Facts True Market Value July AD 2008 and Current Sale and Current Comparable Listings; For the Record Rule 201 Judicial Notice of Adjudicative Facts Exposure to the Courts the Scope of the Project Maps and Picture. But, fraud within the meaning of I.R.C.P. 60(b)(3) will only be

found where there has been such tampering with the administration of justice as to indicate a wrong against the very institutions set up to protect and safeguard the public. *Win of Mich., Inc. v. Yreka United, Inc.,* 137 Idaho 747, 754, 53 P.3d 330, 337 (2002). In *Suitts v. Nix,* 141 Idaho 706, 709, 117 P.3d 120, 123 (2005), the Idaho Supreme Court found no such tampering with the administration of justice where Nix argues Suitts had committed fraud by making false statements in his affidavits. The purported false statements were: Nix's failure to file a notice of appearance, her not actually having any equity in the property at issue, that Suitts never refused a payoff of their contract, Nix's failure to provide irrigation to the real property, Nix's not having planted trees or landscaping the property, and that the irrigation ditch on the property had been in disrepair and remained so. *Id.* The Court stated, "[n]one of the statements, even if false, constitute such tampering with the administration of justice as to suggest a wrong against the institutions set up to protect and safeguard the public." *Id.* Similarly, here there has been no showing that any fraud alleged by Terry-Lee rose beyond the level of interparty misconduct.

It should also be noted that, although Terry-Lee does not appear to seek relief pursuant to I.R.C.P. 60(b)(2) on the grounds of newly discovered evidence, he has made no showing that the materials Terry-Lee now seeks to have the Court take judicial notice of were previously undiscoverable. Newly discovered evidence within the meaning of I.R.C.P. 60(b)(2) is evidence which was in existence at the time of trial, but which could not have been discoverable with due diligence and therefore was not disclosed in time to move for a new trial under I.R.C.P. 59(b). *Obendorf v. Terra Hug Spray Co., Inc.,* 145 Idaho 892, 902, 188 P.3d 834, 844 (2008) (citing *Savage Lateral Ditch Unsers Assoc'n v. Pulley,* 125 Idaho 237, 245, 869 P.2d 554, 562 (1993)). There is simply no indication that

material submitted regarding the underlying property and development efforts were undiscoverable with due diligence.

Idaho Rule of Civil Procedure 60(b)(4) allows for relief from a void judgment, but generally only where a court lacks the jurisdiction to enter judgment, such as where the court lacks either personal jurisdiction or subject-matter jurisdiction. *See Catledge v. Transport Tire Co.,* 107 Idaho 602, 607, 691 P.2d 1217, 1222 (1984). Here, as previously stated, it was Terry-Lee who availed himself of the Courts by filing the instant lawsuit. Ultimately, Terry-Lee can point to no reasons justifying relief from the entry of judgment. While Terry-Lee has submitted for the Court "evidence" regarding his legal name change and preferred mailing address, the Court file contains mail received by Terry-Lee, refused, and returned to sender. There is simply nothing to support the contention that Terry-Lee failed to receive notice of any hearing or copies of any filings. It was his choice to return the correspondence received in an unopened state because of a claimed flaw in his name and/or mailing address.

In a decision dealing with a *pro se* litigant's appeal, the Idaho Supreme Court has written:

> These issue statements, filled with pseudo-legal hodgepodge and unintelligible verbiage, set the stage for Bach's arguments. "Because an appellate brief is a communication, the writer typically seeks to be understood, in order that the writer may persuade." *City of Kansas City, Inc. v. Hayward,* 954 S.W.2d 399, 401 (Mo.Ct.App. 1997). However, Bach "appears to believe the purpose of a brief to be obscure and esoteric." *Id.* Accordingly, we will not consider Bach's claims on appeal because he has failed to support them with either relevant argument and authority or coherent thought.

Liponis v. Bach, 149 Idaho 372, 374, 234 P.3d 696, 698 (2010). In that case, as in the present one, a litigant is held to the standard of, at a minimum, setting forth clearly the relief he seeks and a basis or authority for the relief sought. Terry-Lee has, again, not

done so. He provides the Court with pleadings, motions, and requests for judicial notice which are not in proper form pursuant to the Idaho Rules of Civil Procedure. To the extent his submissions are affidavits, they nonetheless do not lay an adequate foundation for the matters attached to them and are rife with inadmissible hearsay.

C. Terry-Lee's Motion for Disclosure of Bench Manuals and Notes Must be Denied.

Terry-Lee moves this Court for disclosure of the name of each Judges' Bench Manual and any and all bench notes taken and kept by the Judge in presiding over Case No. CV 2009 788. Public Disclosure Request, p. 1. This Court did not utilize any bench manuals, but to the extent they exist, the same Local Rules of the First Judicial Court are available at www.co.kootenai.us/departments/districtcourt/rules.asp, and I.C. § 9-340A governs the disclosure of notes. Idaho Code § 9-340A makes exempt from disclosure "any drafts or other working memoranda related to judicial decision-making." "A judge's notes are not public simply because the judge is an elected official." *Beuhler v. Small,* 115 Wash.App.914, 919, 64 P.3d 78, 82 (WA Ct.App. 2003). (Attorney brought Public Disclosure Act action against Superior Court judge for access to computer files judge occasionally referred to during sentencing; the Court of Appeals held attorney had no right to judge's computer files.) *See also, State ex rel Steffen v. Kraft,* 67 Ohio St.3d 439, 619 N.E.2d 688 (Ohio 1993) (holding trial judge's personal, handwritten notes created during trial were not public records.)

D. Terry-Lee's Motion to Strike Must be Denied.

Finally, Terry-Lee seeks an Order of this Court striking all pleadings by Defendant on several grounds: (1) neither of the attorneys representing Young have provided a license issued by the Idaho State Department of Licensing with the seal of the State of Idaho on its face; (2) by virtue of retaining counsel, Young is "incompetent", has availed

himself as a ward of the State, and any statements or claims by him should be stricken; (3) none of the attorney affidavits are based on first-hand knowledge of the underlying facts; (4) attorney Paul Harrington engaged Judge Michaud in *ex parte* communication during a June 17, 2009 "secret meeting"; (5) attorney Michael Schmidt knew of the "secret meeting" furthering the fraud upon the Court; and (6) Young has presented no evidence and therefore all of his claims are solely based upon hearsay. Motion to Strike, pp. 1-3.

Terry-Lee's arguments in this regard find no support in fact or law. Importantly, Terry-Lee has provided no support for his contention that *ex parte* communication took place and no argument regarding why he failed to raise his concerns with the very Court he accuses of improper communication, but rather opts to raise the issue with this Court nearly 18 months later.

E. Terry-Lee's Numerous Presumptions and Transcripts.

In his Motion to Impeach the claims, findings, and determinations of Judge Michaud, Terry-Lee argues Judge Michaud improperly presided over a case assigned to Judge Verby. Motion to Impeach, p. 4. Terry-Lee also posits counsel for the defendant improperly appeared telephonically. *Id.,* p. 3.

The Idaho Constitution is dispositive on the issue of Judge Michaud's hearing the June 17, 2009 status conference in this matter:

> Every judge of the district court shall reside in the district for which he is elected. A judge of any district court, or any retired justice of the Supreme Court *or any retired district judge,* may hold a district court in any county at the request of the judge of the district court thereof…

Idaho Const. art. V, § 12. And, there is no evidence that Terry-Lee objected at the time of the June 17, 2009, telephonic Status Conference appearance by opposing counsel. Any objection nearly two years later to such an appearance is improper.

Terry-Lee supports his contentions with regard to the June 17, 2009, Status

Conference with transcripts he prepared himself. It is unclear why Terry-Lee failed to secure official transcripts, but his creating his own transcripts is in contravention of the Idaho Court Administrative Rules. The Rules state, in relevant part:

> Official Transcripts. When a court reporter stenographically reports court proceedings, the court reporter's certified transcript *shall be the official transcript of the proceedings.* If a court reporter has not reported a district court proceeding, a transcript or partial transcript prepared from the electronic recording of the proceeding becomes the official transcript of the proceeding for all purposes if it is prepared by the district court reporter or a transcriber under the control or supervision of the district court clerk and the transcriber executes a certificate of transcription attesting to its accuracy in the form prescribed by rule 83(k), I.R.C.P.

I.C.A.R 27(d). Here, the Register of Actions in CV 2009 788 indicates that, on June 17, 2009, the Court Reporter Val Larson for the District Court reported the 11:00 a.m. proceeding. As such, Terry-Lee's self-prepared transcripts are not the official transcript of the proceeding and therefore not properly before the Court.

IV. CONCLUSION AND ORDER.

For the reasons stated above, this Court must deny any and all of Terry-Lee's motions for relief.

IT IS HEREBY ORDERED all additional motions of Terry-Lee are DENIED, including but not limited to: any and all Motions Pursuant to Idaho Rules of Civil Procedure 59(b), 26(e)(2)(A), and 9(b); any Motion for Disclosure and any Motion to Vacate Judgment; and any Motion to Strike.

Entered this 17th day of May, 2011.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of May, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	
Michael Schmidt		Terry-Lee c/o [box 1084] Loon-Lake, non-domestic Washington state, dejure (address certified by Terry-Lee would result in delivery to Terry-Lee)

_____
Jeanne Clausen, Deputy Clerk