

2001

# Green Tree Financial Servicing Corporation v. Donna Alexander, Joseph Michael Wisden: Brief of Appellant

Utah Court of Appeals

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in the Utah court of appeals

OCT 16 2001

*Lodged*  
COURT OF APPEALS

GREEN TREE FINANCIAL  
SERVICING CORPORATION.

vs.

DONNA ALEXANDER, JANE DOES 1  
through 25; JOSEPH MICHAEL  
WISDEN aka JOSEPH M. WISDEN  
aka FRANK WILLIAM LEONESIO aka  
FRANK W. LEONESIO aka VAL CRAM  
aka VALDEN CRAM aka TERRY J.  
ERICKSON aka TERRY ERICKSON aka  
VERD ERICKSON aka VERD J.  
ERICKSON; FRANK WILLIAM  
LEONESIO dba JOSEPH MICHAEL  
WISDEN and JOSEPH M. WISDEN;  
and JOHN DOES 1 through 25,

Civil Plaintiff,

Civil Defendants and Criminal Appellant'.



Joseph Michael Wisden

a

GREEN TREE FINANCIAL SERVICING  
CORPORATION, Autumn Dannenberg,  
[B.] [L.] Johnson (whose true  
unknown), and Donna LaRae A der,

Civil Cross-complainant and Criminal Appellant',

Civil Cross-complaint Respondents.

Utah court of appeals case no. 20010104 CA

Priority 2

## APPELLANT'S BRIEF

APPEAL FROM A CONTEMPT ORDER OF Homer [F.] Wilkinson (whose true name is unknown), TEMPORARY DISTRICT COURT JUDGE FOR THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY, UTAH, AFTER TRIAL, WITHOUT A JURY, WITHOUT A PROSECUTOR, AND WITHOUT AN ACCUSING WITNESS BROUGHT ON WRITTEN ALLEGATIONS OF CRIMINAL CONTEMPT BY James Lynn Shumate.

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Utah Court of Appeals~~

FILED

OCT 16 2001

THE CASE RE REPORTED

Julia Stagg

## in the Utah court of appeals

GREEN TREE FINANCIAL  
SERVICING CORPORATION,

vs.

DONNA ALEXANDER, JANE DOES 1  
through 25; JOSEPH MICHAEL  
WISDEN aka JOSEPH M. WISDEN  
aka FRANK WILLIAM LEONESIO aka  
FRANK W. LEONESIO aka VAL CRAM  
aka VALDEN CRAM aka TERRY J.  
ERICKSON aka TERRY ERICKSON aka  
VERD ERICKSON aka VERD J.  
ERICKSON; FRANK WILLIAM  
LEONESIO dba JOSEPH MICHAEL  
WISDEN and JOSEPH M. WISDEN;  
and JOHN DOES 1 through 25,

*Civil Plaintiff,*

*Civil Defendants and Criminal Appellant<sup>1</sup>.*



Joseph Michael Wisden

against

GREEN TREE FINANCIAL SERVICING  
CORPORATION, Autum Dannenberg,  
[B.] [L.] Johnson (*whose true name is  
unknown*), and Donna LaRae Alexander,

*Civil Cross-complainant and Criminal Appellant<sup>1</sup>,*

*Civil Cross-complaint Respondents.*

Utah court of appeals case no. 20010104 CA

Priority 2

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APPEAL FROM A CONTEMPT ORDER OF Homer [F.] Wilkinson (*whose true name is unknown*), TEMPORARY DISTRICT COURT JUDGE FOR THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY, UTAH, AFTER TRIAL, WITHOUT A JURY, WITHOUT A PROSECUTOR, AND WITHOUT AN ACCUSING WITNESS BROUGHT ON WRITTEN ALLEGATIONS OF CRIMINAL CONTEMPT BY James Lynn Shumate.

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## DEMANDED IS ORAL ARGUMENT AND THAT THE CASE BE REPORTED

<sup>1</sup> Appellee should be the accuser, who apparently is James Lynn Shumate, but appellant is uncertain how to caption the herein document or designate the parties as James Lynn Shumate is not really a party, or is he? Nor did James Lynn Shumate face the accused at trial. Green Tree Financial Servicing Corporation is *not* the adverse party in this case.

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## **JURISDICTION**

This appeal is taken from the 27 December 2000, CONTEMPT ORDER, which is a *final order* regarding the independent (from the above-captioned civil action) *criminal* action against the actual party, Joseph Michael Wisden, apparently initiated by the accusing party, James Lynn Shumate.

Pursuant to the 27 December 2000, CONTEMPT ORDER, from the district court, below, accused/appellant appeals to the Utah court of appeals, which has appellate jurisdiction over this matter in the nature of the Utah Judicial Code, Utah Code Annotated, § 78-2a-3 (2) (e), and also Article I Section 12, Utah State Constitution.

## **ISSUES PRESENTED ON APPEAL**

**POINT #1. WAS APPELLANT ACCORDED DUE PROCESS OF LAW BY SUFFICIENT NOTICE OF THE NATURE AND CAUSE OF THE CHARGES AGAINST HIM? WAS THE PROOF OF CONTEMPT CLEAR AND SATISFACTORY? WHAT ORDER WAS APPELLANT IN VIOLATION OR DEFIANCE OF? WAS APPELLANT'S ALLEGED CONDUCT BRINGING ABOUT A SUBSTANTIAL INTERFERENCE WITH THE ORDERLY ADMINISTRATION OF JUSTICE?**

## **STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, 437 P.2d 194 (1968). "The essence of contempt of court is the willful disregard or disobedience of its orders. ... Because of this it is essential that the rights of one so accused be carefully safeguarded. He must be apprised of the nature of the accusation; afforded an opportunity to meet it; and in order to justify a finding and sentence for contempt the proof should be clear and satisfactory that the contemner was in violation or defiance of the court's order." Powers vs. Taylor, 378 vs. 519 at 520 (Utah 1963). Contempt is a drastic remedy which should be invoked only when the right to its use is clear. It necessarily involves the element of willfulness, presenting a clear and present danger that the conduct cited will bring about a substantial interference with the orderly administration of justice." U.S. vs. Peterson, 456 F.2d 1135 at 1139 (C.A.10 (Utah) 1972). "Bullock [a collateral respondent in Peterson] was not afforded an opportunity to prepare or to obtain counsel and he was not advised of the

nature of the proceedings. In short, Bullock was denied fundamental procedural due process.” U.S. vs. Peterson, 456 F.2d 1135 at 1139/40 (C.A.10 (Utah) 1972). “Petitioner is still entitled to be informed of the charge against him, still permitted to plead to the charge ...” Robinson vs. City Court for City of Ogden, Weber County, 185 P.2d 256 at 258 (Utah 1947). “Indirect contempt, in contrast to direct contempt, can properly be adjudged only in a proceeding more tightly hedged about with procedural protections. The due process provision of the federal constitution requires that in a prosecution for a contempt not committed in the presence of the court, ‘the person charged be advised of the nature of the action against him [or her], ....’ Burgers v. Maiben, 652 P.2d at 1322; see U.S. Const. amend. XIV; cf. Robinson vs. City Court for City of Ogden, Weber County, 185 P.2d 256 at 259 (Utah 1947) (applying Utah Const. art. I, § 12 to criminal contempt proceedings). ... These protections are amplified upon in the Code, which requires, inter alia, that in a case of indirect contempt, an affidavit must be presented to the court reciting the facts constituting the contempt in order to ensure that the court and the person charged are informed of the conduct alleged to be contemptuous. Utah Code Ann. § 78-32-3 (1987); Robinson, 185 P.2d 256 at 258 (Utah 1947)” cited in Von Hake vs. Thomas, 759 P.2d 1162 at 1170 (Utah 1988); see also State vs. Long, 844 P.2d 381 (Utah App. 1992). “The notice required to satisfy Due Process includes notice of the court order allegedly violated, along with the facts supporting the contempt allegation. Cf. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 at 546 (1985),” cited in Khan vs. Khan, 921 P.2d 466 (Utah App. 1996). “No person shall be deprived of life, liberty or property, without due process of law.” Utah State Constitution, Article I Section 7. “In criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him, to have a copy thereof, ...” Utah State Constitution, Article I Section 12. “(1) In criminal prosecutions the defendant is entitled: (b) To receive a copy of the accusation filed against him.” Utah Code Annotated, § 77-1-6 (1) (b).

**POINT #2. DO THE FACTS PRESENTED IN THE TRIAL COURT, BELOW, SUPPORT THE FINDING THAT APPELLANT WAS DISOBEDIENT OF "ANY LAWFUL JUDGMENT, ORDER, OR PROCESS OF THE COURT"? IF "YES," WHAT ORDER WAS APPELLANT DISOBEDIENT OF?**

**STANDARD OF REVIEW**

This is an issue addressing the facts of the case. "On review of indirect criminal contempt proceedings 'we accept the trial court's findings of fact unless they are clearly erroneous.'" Von Hake vs. Thomas, 759 P.2d 1162 at 1172 (Utah 1988) cited in State v. Long, *Id.* "The elements of contempt must be proven beyond reasonable doubt in criminal contempt proceeding, ..." Von Hake vs. Thomas, *Id.* "Adjudication of contempt must be based on written findings of fact and conclusions of law with respect to each substantive element." Von Hake vs. Thomas, *Id.*, citing Salzetti vs. Backman, 638 P.2d 543 at 544 (Utah 1981); Thomas vs. Thomas, 569 P.2d at 1122; Race vs. Race, 740 P.2d 253 at 258 (Utah 1987) (Durham, J., dissenting); Utah Rules of Civil Procedure, Rule 52 (a); and, Utah Code Annotated, § 78-32-3. "The notice required to satisfy Due Process includes notice of the court order allegedly violated, along with the facts supporting the contempt allegation. Cf. Cleveland Bd. of Educ. v. Loudermill, *Id.*," cited in Khan vs. Khan, *Id.* "The essence of contempt ...[see ISSUE numbered 1, above]" Powers vs. Taylor, *Id.* "A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted." Utah Code Annotated, § 76-1-501 (1). "No person is guilty of an offense unless his conduct is prohibited by law and: (1) he acts intentionally , knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or (2) His acts constitute an offense involving strict liability." Utah Code Annotated, § 76-2-101. "Conduct which is justified is a defense to prosecution for any offense based on the conduct, The defense of justification may be claimed: ... (5) When the actor's conduct is justified for any other reason under the laws of this state." Utah Code Annotated, § 76-2-401 (5).

**POINT #3. WAS APPELLANT ACCORDED HIS RIGHT OF COUNSEL OF CHOICE?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, *Id.* “Bullock [a collateral respondent in Peterson] was not afforded an opportunity [see ISSUE numbered 1, above].” U.S. vs. Peterson, *Id.* “The right to counsel at a criminal trial is deemed so fundamental to the interests of justice that denial thereof automatically vitiates any conviction obtained. This is true even though there is no showing of any prejudice or unfairness in the proceedings, or even any need for counsel.” Gideon vs. Wainwright, 372 U.S. 335. “Lack of counsel of choice can be conceivably even worse than no counsel at all, or having to accept counsel beholden to one’s adversary.” Burgett vs. Texas, 389 U.S. 109. We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial. Under the rule we announce today, every judge will know, when the trial of a misdemeanor starts, that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel.” Argersinger vs. Hamlin, 407 U.S. 25 (1972). “In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, ...” Utah State Constitution, Article I Section 12. “(1) In criminal prosecutions the defendant is entitled: (a) To appear in person and defend in person or by counsel[.]” Utah Code Annotated, § 77-1-6 (1) (a).

**POINT #4. WAS APPELLANT’S DENIAL OF A TRIAL BY JURY, CORRECT OR APPROPRIATE? WAS APPELLANT DENIED DUE PROCESS IN THE TRIAL COURT, BELOW, BY DENIAL OF TRIAL BY JURY BY Homer [F.] Wilkinson (whose true name is unknown)?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, *Id.* “In criminal prosecutions the accused shall have the right ... to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, ...” Utah State Constitution, Article I Section 12. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “In

capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. ... In criminal cases the verdict shall be unanimous.” *Utah State Constitution, Article I Section 10*. “In criminal prosecutions the defendant is entitled: (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed[.]” *Utah Code Annotated*, § 77-1-6 (1) (f).

**POINT #5. (a.) WHAT WAS Wayne [H.] Braunberger USB #A0434's (whose true name is unknown), FUNCTION IN THE CRIMINAL CONTEMPT TRIAL, IN THE COURT BELOW AND WAS THAT FUNCTION CORRECT OR APPROPRIATE? (b.) WHAT WAS Wayne [H.] Braunberger USB #A0434's (whose true name is unknown), STANDING FOR CROSS-EXAMINING APPELLANT OR SUBMITTING EVIDENCE IN THE RECORD? (c.) WAS Wayne [H.] Braunberger USB #A0434's (whose true name is unknown), CHARGED WITH OR AUTHORIZED LAWFUL AUTHORITY, FOR PROSECUTING A CRIMINAL CONTEMPT TRIAL AGAINST APPELLANT IN THE COURT BELOW?**

#### **STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const'n, Art. I Sec. 7*. “A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.” *Utah Code Annotated*, § 77-1-5. “The prosecuting attorney shall sign all informations.” *Utah Code Annotated*, § 77-2-1.1. “For the purpose of this chapter: (3) ‘Commencement of prosecution’ means the filing of an information or an indictment.” *Utah Code Annotated*, § 77-2-2 (3).

**POINT #6. WAS APPELLANT PROPERLY PROSECUTED BY A “STATE” ATTORNEY IN THE TRIAL COURT BELOW?**

#### **STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* “In *Foreman v. Foreman*, Utah, 176 P.2d 165, an appeal from a judgment of criminal contempt was dismissed on the ground that, since the contempt was criminal, the state was a party, ...” *Robinson vs. City Court for City of Ogden*.

Weber County, Id. at 262. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “A defendant in a criminal proceeding is presumed to be innocent [see ISSUE numbered 2, above].” U.C.A. § 76-1-501 (1). “A criminal action for any violation of a state statute [see ISSUE numbered 5, above].” U.C.A. § 77-1-5. “A prosecuting attorney shall sign all informations.” Utah Code Annotated, § 77-2-1.1. “For the purpose of this chapter: (3) ‘Commencement of prosecution’ [see ISSUE numbered 5, above].” U.C.A. § 77-2-2 (3).

**POINT #7. WAS APPELLANT DENIED DUE PROCESS OF LAW BY NOT BEING ALLOWED CONFRONTING HIS “ACCUSOR,” James Lynn Shumate, AND CROSS-EXAMINING HIS ACCUSOR?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, Id. This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” Von Hake vs. Thomas, Id., at 1172 cited in State v. Long, Id. “Both this court and the United States Supreme Court have held that an individual’s constitutional rights must be protected during a contempt of court action. Thus, in a prosecution for contempt, not committed in the presence of the court, due process requires that the person charged ... have the right to confront witnesses, .... See, In re Oliver, 333 U.S. 257 (1948); Cooke v. United States, 267 U.S. 517 (1925); Powers vs. Taylor, Id.; Robinson vs. City Court for City of Ogden, Weber County, Id., at 259.” Cited in Burgers vs. Maiben, 652 P.2d 1320 (Utah 1982). ““Indirect contempt, in contrast to direct contempt, [see ISSUE numbered 1, above], .... Burgers v. Maiben, Id.; see U.S. Const. amend. XIV; cf. Robinson vs. City Court for City of Ogden, Weber County, Id., at 259 (applying Utah Const. art. I, § 12 to criminal contempt proceedings). Cited in Von Hake vs. Thomas, Id., at 1170; see also State vs. Long, Id. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “In criminal prosecutions the accused shall have the right ... to be confronted by the witnesses against him, ...” Utah State Constitution, Article I Section 12. “(1) In criminal prosecutions the defendant is entitled: (d) To be confronted by the witnesses against him.” Utah Code Annotated, § 77-1-6 (1) (d).

**POINT #8. WAS APPELLANT DENIED DUE PROCESS OF LAW (OR OTHER APPLICABLE STATE CONSTITUTIONAL PROTECTION) BY NOT HAVING HIS WITNESS, James Lynn Shumate, BROUGHT BEFORE THE COURT FOR TESTIMONY?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7.* “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 7, above].” *Utah Const’n, Art. I Sec. 12.* “In criminal prosecutions the accused shall have the right ... to have compulsory process to compel the attendance of witnesses in his own behalf, ...” *Utah State Constitution, Article I Section 12.* “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 7, above].” *U.C.A. § 77-1-6 (1) (d).* “(1) In criminal prosecutions the defendant is entitled: (e) To have compulsory process to insure the attendance of witnesses in his behalf.” *Utah Code Annotated, § 77-1-6 (1) (e).*

**POINT #9. WAS APPELLANT DENIED DUE PROCESS OF LAW (OR OTHER APPLICABLE STATE CONSTITUTIONAL PROTECTION) BY NOT HAVING HIS WITNESS, Garth Rand Beacham, BROUGHT BEFORE THE COURT FOR TESTIMONY?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7.* “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” *Utah Const’n, Art. I Sec. 12.* “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above]” *U.C.A. § 77-1-6 (1) (e).*

**POINT #10. WERE THE ALLEGATIONS/STATEMENTS/FINDINGS MADE BY James Lynn Shumate, IN THE 28 AUGUST 2000, FINDINGS AND ORDER FOLLOWING REVIEW OF FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE DOCUMENT, TRUE OR SUPPORTED BY SUFFICIENT EVIDENCE AND TESTIMONY IN THE 13 NOVEMBER 2000, CRIMINAL CONTEMPT TRIAL IN THE COURT BELOW, REGARDING THE FOLLOWING:**

- a. James Lynn Shumate’s STATEMENT, “DEFENDANT ALEXANDER HAD TRANSFERRED HER INTEREST IN THE PROPERTY TO THE DEFENDANT, JOSEPH MICHAEL WISDEN[;]”**



- b. James Lynn Shumate's STATEMENT, "AS PLAINTIFF ATTEMPTED TO RECOUP ITS INTEREST IN THE PROPERTY, DEFENDANT JOSEPH MICHAEL WISDEN, ACTING PRO SE, BEGAN MAKING FILINGS IN THE NAME OF OTHER PARTIES CLAIMING THAT THEY HAVE AN INTEREST IN THE PROPERTY OR THE PROCEEDINGS, BEGINNING WITH JOSEPH M. WISDEN, AND MOVING TO FRANKLIN WILLIAM LEONESIO, FRANK W. LEONESIO, VAL CRAM, VALDEN CRAM, TERRY ERICSON, TERRY J. ERICSON, VERD ERICSON, AND VERD J. ERICSON[;]"**
- c. James Lynn Shumate's STATEMENT, "EACH TIME A NEW NAME WAS INTRODUCED, DEFENDANT JOSEPH WISDEN CLAIMED THAT IT WAS A SEPARATE PERSON OR ENTITY;"**
- d. James Lynn Shumate's STATEMENT, "DEFENDANT WISDEN HAS ALSO ASSERTED THAT ONE ENTITY IS NOT AUTHORIZED BY LAW TO ACCEPT SERVICE FOR ANOTHER ENTITY[;]"**
- e. James Lynn Shumate's STATEMENT, "WHEN SERVICE WAS OBTAINED ON ONE PARTICULAR ENTITY, FRANK WILLIAM LEONESIO ...;"**
- f. James Lynn Shumate's STATEMENT, "ACCORDING TO DEFENDANT WISDEN, THE PRESENCE OR ABSENCE OF A COLON BETWEEN WILLIAM AND LEONESIO WAS DETERMINATIVE AS TO WHETHER THE CORRECT PARTY HAD BEEN SERVED[;]"**
- g. James Lynn Shumate's STATEMENT, "IT IS CLEAR BY ADDING NEW PARTIES THAT MUST, BECAUSE OF THEIR INTEREST, BE INCLUDED IN THE SUIT, DEFENDANT WISDEN IS SIMPLY ATTEMPTING TO INCREASE THE NUMBER OF TIMES ...;"**
- h. James Lynn Shumate's STATEMENT, "DEFENDANT WISDEN HAS FILED, SINCE THE INCEPTION OF THIS LAW-SUIT, THE FOLLOWING DOCUMENTS WITH THIS COURT," (VARIOUS DOCUMENTS BEING THEREAFTER LISTED);**
- i. James Lynn Shumate's STATEMENT, "MANY OF THESE DOCUMENTS ARE SIMPLY FRIVOLOUS IN NATURE, CONTAINING CONCLUSORY STATEMENTS AND INFLAMMATORY LANGUAGE[;]"**
- j. James Lynn Shumate's STATEMENT, "IN ADDITION, DEFENDANT WISDEN HAS ENGAGED AND IS FILING DOCUMENTS IN A CAMPAIGN OF SMEARING AND NAME CALLING, NOT ONLY OF THE PLAINTIFF, BUT OF THE COURT AS WELL[;]"**
- k. James Lynn Shumate's STATEMENT, "DEFENDANT WISDEN HAS ALSO ATTACHED VARIOUS FILED DOCUMENTS ... A STICKY NOTE WITH THE LIKENESS OF A SCARECROW FROM THE WIZARD OF OZ, WITH THE CAPTION 'IF I ONLY HAD A BRAIN,' AND STATING THAT HIS FORM FOR GIVEN DOCUMENTS IS ACCEPTABLE BY THE COURTS[;]"**

1. **James Lynn Shumate's STATEMENT, "THROUGHOUT HIS FILINGS, DEFENDANT WISDEN COMMANDS THE COURT AND DEFENDANT ALSO DEMANDS THE COURT IN AT LEAS SIX DIFFERENT DOCUMENTS AND COMMANDS[;]"**
  - m. **James Lynn Shumate's STATEMENT, "DEFENDANT WISDEN HAS FILED A SUIT IN FEDERAL COURT AGAINST GARTH RAND BEACHAM NECESSITATING JUDGE BEACHAM'S RECUSAL FROM THE CASE. IT IS OBVIOUS FROM THE PLEADINGS AND ALLEGATIONS OF THAT MATTER, THAT IT WAS DONE FOR THE SOLE PURPOSE OF FORCING JUDGE BEACHAM TO RECUSE HIMSELF[;]"**
  - n. **James Lynn Shumate's STATEMENT, "IT IS OBVIOUS FROM THE FRIVOLOUS NATURE OF DEFENDANT WISDEN'S FILINGS, AS WELL AS THE VERBALLY OBSTREPEROUS NATURE OF HIS PLEADINGS ... THEREFORE, DUE TO ITS ABUSIVE NATURE AND GOAL IN DELAYING THE PROCEEDINGS OF THIS CASE, THE FILINGS OF DEFENDANT WISDEN MAY RISE TO THE LEVEL OF CONTEMPT OF THIS COURT[;]"**
- TO SUPPORT THE CHARGE, OR THE ORDER OF CRIMINAL CONTEMPT AGAINST APPELLANT?**

## **STANDARD OF REVIEW**

This is an issue addressing the facts of the case. "On review of indirect criminal contempt [*see* ISSUE numbered 2, above]." *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* "The elements of contempt [*see* ISSUE numbered 2, above], ..." *Von Hake vs. Thomas, Id.*, at 1172. "Adjudication of contempt [*see* ISSUE numbered 2, above]." *Von Hake vs. Thomas, Id.*, at 1172 (*Utah 1988*) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (*Durham, J., dissenting*); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. "The object of contempt proceedings is not to enable a judge, who deems himself aggrieved, to punish the supposed wrongdoer to gratify his own personal feelings, but to vindicate the dignity and independence of the court, and to protect himself, and those necessarily connected with it, while a matter is pending before it, from insolent and contemptuous abuse calculated to intimidate, influence, embarrass, or impede the court in the exercise of its judicial functions, or prevent a fair and impartial trial." *Kirkham vs. Sweetring, 160 P.2d 435 at 438 (Utah 1945)*, citing *State vs. Sweetland, 54 N.W. 417*. "To assume that respect for courts and judges can be maintained by compulsion is to misjudge human nature. Respect for the courts is and must be a voluntary dignity to the bench." *Kirkham vs. Sweetring, Id.*, at 440. "The

assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.” *Kirkham vs. Sweetring, Id.*, at 440, citing *Bridges vs. State of California*, 314 U.S. 252. “No person ... [see ISSUE numbered 1, above].” *Utah Const’n*, Art. I Sec. 7. “This enumeration of rights shall not be construed to impair or deny others retained by the people.” *Utah State Constitution*, Article I Section 25. “Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government” *Utah State Constitution*, Article I Section 27. “A defendant in a criminal proceeding [see ISSUE numbered 2, above].” *U.C.A.* § 76-1-501 (1). “A criminal action [see ISSUE numbered 5, above].” *U.C.A.* § 77-1-5. “A prosecuting attorney shall sign all informations.” *U.C.A.* § 77-2-1.1. “For the purpose of this chapter: [see ISSUE numbered 5, above].” *U.C.A.* § 77-2-2 (3).

**POINT #11. WAS James Lynn Shumate A CREDIBLE WITNESS IN THE TRIAL COURT BELOW, WHERE APPELLANT CLEARLY DEMONSTRATED THE FALSITY OF James Lynn Shumate’s ACCUSATIONS/STATEMENTS/FINDINGS, ALBEIT James Lynn Shumate NEVER APPEARED OR GAVE TESTIMONY? WAS James Lynn Shumate AT ALL, A WITNESS IN THE TRIAL COURT BELOW?**

#### **STANDARD OF REVIEW**

This is an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (Utah 1988) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (Durham, J., dissenting); *U.R.C.P. Rule 52 (a)*; and, *U.C.A.* § 78-32-3. “No person ... [see ISSUE numbered 1, above].” *Utah Const’n*, Art. I Sec. 7. “In criminal prosecutions the accused shall have the right ... [see

ISSUE numbered 7, above]. ...” Utah Const’n, Art. I Sec. 12. “This enumeration of rights [see ISSUE numbered 10, above].” Utah Const’n, Art. I Sec. 25. “(1) In criminal prosecutions [see ISSUE numbered 7, above].” U.C.A. § 77-1-6 (1) (d).

**POINT #12. DID THE COURT BELOW ERR, BY NOT CONSIDERING THE FACTS IT TOOK JUDICIAL NOTICE OF?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, Id. This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” Von Hake vs. Thomas, Id., at 1172 cited in State v. Long, Id. “The elements of contempt [see ISSUE numbered 2, above], ...” Von Hake vs. Thomas, Id., at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” Von Hake vs. Thomas, Id., at 1172 (Utah 1988) citing Salzetti vs. Backman, Id., at 544; Thomas vs. Thomas, Id.; Race vs. Race, Id., at 258 (Durham, J., dissenting); U.R.C.P. Rule 52 (a); and, U.C.A. § 78-32-3. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “This enumeration of rights [see ISSUE numbered 10, above].” Utah Const’n, Art. I Sec. 25.

**POINT #13. WHAT INDICIA CONSTITUTES THE “MEMORANDA” SUPPORTING OR OPPOSING A MOTION, REFERENCED IN U.C.J.A. 4-501? IS THE MASTHEAD OF THE CASE FROM THE FRONT PAGE INCLUDED AS MEMORANDA? IS THE CERTIFICATE OF MAILING COMPRISING THE LAST PAGE INCLUDED AS MEMORANDA? ARE FOOTNOTES OR OTHER UNRELATED EXPLANATORY MATERIAL INCLUDED AS MEMORANDA? ARE STATEMENTS OF FACTS INCLUDED? ARE CONCLUSIONS AND RELIEF SOUGHT INCLUDED?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, Id.

**POINT #14. WERE THERE FACTS PRESENTED IN THE TRIAL COURT, BELOW, SUFFICIENT TO IDENTIFY WHICH DOCUMENTS James Lynn Shumate OR THE TRIAL JUDGE, Homer [F.] Wilkinson (whose true name is unknown), DECLARED BEING “FRIVOLOUS IN NATURE” OR CONTAINING CONCLUSORY STATEMENTS AND INFLAMMATORY LANGUAGE, AND IF**

**SUCH FACTS WERE PRESENTED AND SUFFICIENT,  
IDENTIFYING WHICH DOCUMENTS WERE OFFENDING, WAS  
THE LANGUAGE OF SUCH DOCUMENTS CONTEMPTUOUS?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner*, *Id.* This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas*, *Id.*, at 1172 cited in *State v. Long*, *Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas*, *Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas*, *Id.*, at 1172 (*Utah* 1988) citing *Salzetti vs. Backman*, *Id.*, at 544; *Thomas vs. Thomas*, *Id.*; *Race vs. Race*, *Id.*, at 258 (*Durham, J., dissenting*); *U.R.C.P.* Rule 52 (a); and, *U.C.A.* § 78-32-3. “All men have the inherent and inalienable right ... to communicate freely their thoughts and opinions, being responsible for the abuse of that right.” *Utah State Constitution*, Article I Section 1. “The rights of conscience shall never be infringed.” *Utah State Constitution*, Article I Section 4. “No person ... [see ISSUE numbered 1, above].” *Utah Const’n*, Art. I Sec. 7. “No law shall be passed to abridge or restrain the freedom of speech or of the press.” *Utah State Constitution*, Article I Section 15. “This enumeration of rights [see ISSUE numbered 10, above].” *Utah Const’n*, Art. I Sec. 25. “In criminal prosecutions the accused shall have the right ..., [see ISSUE numbered 7, above].” *Utah Const’n*, Art. I Sec. 12. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 7, above].” *U.C.A.* § 77-1-6 (1) (d). “A defendant in a criminal proceeding is presumed to be innocent [see ISSUE numbered 2, above].” *U.C.A.* § 76-1-501 (1). “No person is guilty of an offense unless [see ISSUE numbered 2, above].” *U.C.A.* § 76-2-101. “Conduct which is justified [see ISSUE numbered 2, above].” *U.C.A.* § 76-2-401 (5).

**POINT #15. Was James Lynn Shumate A PROPER PARTY FOR REVIEWING, OR IN OTHER WORDS, DID James Lynn Shumate HAVE STANDING FOR REVIEWING THE CASE FILE IN THE COURT BELOW, IN THE NATURE OF U.R.C.P., RULE 63, FOR CONSIDERING THE DISQUALIFICATION OF Garth Rand Beacham, A JUDGE OF THE SAME DISTRICT AND COUNTY IN WHICH James Lynn Shumate IS EMPLOYED, WHICH PRECIPITATED THE 28 AUGUST 2000, FINDINGS AND ORDER**

**FOLLOWING REVIEW OF FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE DOCUMENT, WHICH SUBSEQUENTLY PRECIPITATED THE ORDER TO SHOW CAUSE AND SUBSEQUENT 13 NOVEMBER 2000, CRIMINAL CONTEMPT TRIAL?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (*Utah 1988*) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (*Durham, J., dissenting*); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*. “This enumeration of rights [see ISSUE numbered 10, above].” *Utah Const’n, Art. I Sec. 25*. “The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge. ... In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.” *Utah Rules of Civil Procedure, Rule 63 (b) (2)*. “This Committee believes that the Oregon opinion provides a good reference point. The appearance of impropriety noted in that opinion is more pronounced when a court employee is involved in a court proceeding. The Committee is therefore of the opinion that, absent emergency circumstances, a judge should not adjudicate or participate in any proceedings involving employees of the judge’s judicial district. ... In conclusion, it is the Committee’s opinion that the Code requires a trial judge to disqualify himself or herself from participation in proceedings involving an employee of the judge’s district.” *INFORMAL ETHICS OPINION NO. 96-2, Issued 26 June 1996*. also *Utah Code of Judicial Conduct, CANONS 2 & 3*.

**POINT #16.DID THE TRIAL COURT, BELOW, ERR BY NOT REVIEWING THE ENTIRE CASE FILE AND DETERMINE AND THEREAFTER MAKE WRITTEN FINDINGS ON A DOCUMENT-BY-DOCUMENT BASIS WHETHER OR NOT THE DOCUMENTS CAUSED FILED BY THE APPELLANT ACTUALLY CAUSED DELAY, OR WERE, IN FACT, CONTEMPTUOUS?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (Utah 1988) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (Durham, J., dissenting); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. “All men have the inherent and inalienable right ... [see ISSUE numbered 14, above].” *Utah Const’n, Art. I Sec. 1*. “The rights of conscience shall never be infringed.” *Utah Const’n, Art. I Sec. 4*. “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*. “No law shall be passed [see ISSUE numbered 14, above].” *Utah Constitution, Art. I Sec. 15*. “This enumeration of rights [see ISSUE numbered 10, above].” *Utah Const’n, Art. I Sec. 25*. “A defendant in a criminal proceeding is presumed to be innocent [see ISSUE numbered 2, above].” *U.C.A. § 76-1-501 (1)*. “No person is guilty of an offense unless [see ISSUE numbered 2, above].” *U.C.A. § 76-2-101*. “Conduct which is justified [see ISSUE numbered 2, above].” *U.C.A. § 76-2-401 (5)*.

**POINT #17.WERE Wayne [H.] Braunberger USB #A0434’s (whose true name is unknown) “EXHIBITS” RECEIVED IN THE RECORD OF THE TRIAL COURT, BELOW, IN ERROR ?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of

contempt [see ISSUE numbered 2, above].” Von Hake vs. Thomas, Id., at 1172 (Utah 1988) citing Salzetti vs. Backman, Id., at 544; Thomas vs. Thomas, Id.; Race vs. Race, Id., at 258 (Durham, J., dissenting); U.R.C.P. Rule 52 (a); and, U.C.A. § 78-32-3. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “This enumeration of rights [see ISSUE numbered 10, above].” Utah Const’n, Art. I Sec. 25.

**POINT #18.WAS THE MOTION QUASHING APPELLANT'S SUBPOENA ON Garth Rand Beacham PROPER, OR TIMELY BEFORE THE TRIAL COURT, BELOW?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, Id. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” Utah Const’n, Art. I Sec. 12. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above].” U.C.A. § 77-1-6 (1) (e).

**POINT #19.DID THE TRIAL COURT, BELOW, ERR BY FINDING THAT SERVICE OF THE SUBPOENAS ON James Lynn Shumate AND Garth Rand Beacham WAS NOT PROPER?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. Syddall vs. Turner, Id. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” Utah Const’n, Art. I Sec. 12. “In criminal prosecutions ... In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed.” Utah State Constitution, Article I Section 12. “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” Utah Const’n, Art. I Sec. 12. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above].” U.C.A. § 77-1-6 (1) (e). “(2) In addition: (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;” Utah Code Annotated, § 77-1-6 (2) (b).



**POINT #20. ARE TENDERING OF FEES AT THE TIME OF SERVICE OF A SUBPOENA A FUNDAMENTAL REQUIREMENT FOR THE SUBPOENA BEING VALID? ARE "SUBPOENA" FEES REQUIRED IN A CRIMINAL ACTION?**

**STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* "No person ... [see ISSUE numbered 1, above]." *Utah Const'n, Art. I Sec. 7.* "In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ..." *Utah Const'n, Art. I Sec. 12.* "(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above]." *U.C.A. § 77-1-6 (1) (e).* "(2) In addition: [see ISSUE numbered 19, above]" *U.C.A. § 77-1-6 (2) (b).*

**POINT #21. DID APPELLANT TENDER PAYMENT OF FEES WITH HIS SUBPOENAS ON James Lynn Shumate AND Garth Rand Beacham?**

**STANDARD OF REVIEW**

This is an issue addressing the facts of the case. "On review of indirect criminal contempt [see ISSUE numbered 1, above]" *Von Hake vs. Thomas, Id., at 1172* cited in *State v. Long, Id.* This is also a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* "No person ... [see ISSUE numbered 1, above]." *Utah Const'n, Art. I Sec. 7.* "In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ..." *Utah Const'n, Art. I Sec. 12.* "(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above]." *U.C.A. § 77-1-6 (1) (e).* "This enumeration of rights [see ISSUE numbered 10, above]." *Utah Const'n, Art. I Sec. 25.* "An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument or property." *Utah Code Annotated, § 78-27-1.*

**POINT #22. WAS APPELLANT ACCORDED FULL OPPORTUNITY OF INQUIRY OF Wayne [H.] Braunberger USB #A0434 (whose true name is unknown), DURING THE CRIMINAL CONTEMPT TRIAL PROCEEDINGS ON 13 NOVEMBER 2000, FOR DETERMINATION OF ALLEGED ATTORNEY FEES PRECIPITATED BY ALLEGED DELAY IN THE ABOVE-CAPTIONED CASE?**

## STANDARD OF REVIEW

This is an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (*Utah 1988*) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (*Durham, J., dissenting*); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. This is also a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*. “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” *Utah Const’n, Art. I Sec. 12*. “In criminal prosecutions the accused shall have the right ... “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 7, above] ...” *Utah Const’n, Art. I Sec. 12*. “This enumeration of rights [see ISSUE numbered 10, above].” *Utah Const’n, Art. I Sec. 25*. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 7, above].” *U.C.A. § 77-1-6 (1) (d)*. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above].” *U.C.A. § 77-1-6 (1) (e)*.

**POINT #23.DID Homer [F.] Wilkinson (whose true name is unknown), PROVIDE Wayne [H.] Braunberger USB #A0434 (whose true name is unknown), LEGAL ADVICE DURING THE PROCEEDINGS IN THE TRIAL COURT, BELOW? IF “YES,” DID Homer [F.] Wilkinson (whose true name is unknown) ERR BY DOING SO?**

## STANDARD OF REVIEW

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* This is also a question of fact. “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*. “This enumeration of rights [see ISSUE numbered 10, above].” *Utah Const’n, Art. I Sec. 25*.

**POINT #24.WAS APPELLANT ALLOWED SUFFICIENT OPPORTUNITY FOR DETERMINING Wayne [H.] Braunberger USB #A0434’s (whose true name is unknown), QUALIFICATION(S) FOR PRACTICING LAW IN THE STATE OF UTAH?**

## STANDARD OF REVIEW

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id., at 1172* cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id., at 1172*. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id., at 1172* (Utah 1988) citing *Salzetti vs. Backman, Id., at 544*; *Thomas vs. Thomas, Id.; Race vs. Race, Id., at 258* (Durham, J., dissenting); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. This is also a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*. “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” *Utah Const’n, Art. I Sec. 12*. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above].” *U.C.A. § 77-1-6 (1) (e)*.

**POINT #25.WAS APPELLANT ALLOWED SUFFICIENT OPPORTUNITY FOR DETERMINING FROM Wayne [H.] Braunberger USB #A0434 (whose true name is unknown), THOSE PARTICULAR EVENTS REPRESENTED IN Wayne [H.] Braunberger USB #A0434’s (whose true name is unknown) PURPORTED 1 SEPTEMBER 2000, AFFIDAVIT OF ATTORNEY FEES, DOCUMENT, THAT ACTUALLY WENT TO THE PURPORTED “DELAY” APPELLANT WAS ACCUSED OF IN THE CRIMINAL CONTEMPT TRIAL IN THE COURT, BELOW?**

## STANDARD OF REVIEW

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.* This is also an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id., at 1172* cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id., at 1172*. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id., at 1172* (Utah 1988) citing *Salzetti vs. Backman, Id., at 544*; *Thomas vs. Thomas, Id.; Race vs. Race, Id., at 258* (Durham, J., dissenting); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. This is also a question of law, reviewed for correctness.

Syddall vs. Turner, *Id.* “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7. “In criminal prosecutions the accused shall have the right ... [see ISSUE numbered 8, above] ...” Utah Const’n, Art. I Sec. 12. “(1) In criminal prosecutions the defendant is entitled: [see ISSUE numbered 8, above].” U.C.A. § 77-1-6 (1) (e).

**POINT #26.SHOULD THE WEIGHT GIVEN APPELLANT’S TESTIMONY IN THE 13 NOVEMBER 2000, CRIMINAL CONTEMPT TRIAL IN THE COURT, BELOW, AND ALSO APPELLANT’S 5 SEPTEMBER 2000, AFFIDAVIT OF TRUTH, HAVE BEEN SUFFICIENT TO ESTABLISH “REASONABLE DOUBT” THAT APPELLANT WAS NOT GUILTY OF CONTEMPT?**

**STANDARD OF REVIEW**

This is an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” Von Hake vs. Thomas, *Id.*, at 1172 cited in State v. Long, *Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” Von Hake vs. Thomas, *Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” Von Hake vs. Thomas, *Id.*, at 1172 (Utah 1988) citing Salzetti vs. Backman, *Id.*, at 544; Thomas vs. Thomas, *Id.*; Race vs. Race, *Id.*, at 258 (Durham, J., dissenting); U.R.C.P. Rule 52 (a); and, U.C.A. § 78-32-3. “Contemptuous conduct must be demonstrated beyond a reasonable doubt.” U.S. vs. Peterson, *Id.*, at 1140. “As a general rule, in order to prove contempt for failure to comply with a court order it must be shown that the person cited for contempt knew what was required, had the ability to comply, and intentionally failed or refused to do so. Coleman v. Coleman, 664 P.2d 1155, 1156 (Utah 1983); (other citations omitted). These three elements must be proven beyond a reasonable doubt in a criminal contempt proceeding, (citations omitted).” Cited in Von Hake vs. Thomas, *Id.*, at 1172. “No person ... [see ISSUE numbered 1, above].” Utah Const’n, Art. I Sec. 7.

**POINT #27.WHAT DOCUMENT(S) HAS/HAVE APPELLANT FILED IN THE CIVIL ACTION IN THE COURT BELOW, THAT HAS NOT BEEN APPROPRIATE OR ACCEPTABLE UNDER THE RULES OF CIVIL PROCEDURE, OR WITHIN THE SOUND DISCRETION OF APPELLANT AS A RESPONSIVE LITIGANT IN THE ABOVE-CAPTIONED CIVIL CASE?**

## **STANDARD OF REVIEW**

This is an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (Utah 1988) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (Durham, J., dissenting); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. “The object of contempt proceedings is not to enable a judge, [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring, Id.* at 438, citing *State vs. Sweetland, Id.* “To assume that respect for courts and judges [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring, Id.* at 440. “The assumption that respect for the judiciary [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring, Id.* at 440, citing *Bridges vs. State of California, Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*. “A defendant in a criminal proceeding is presumed to be innocent [see ISSUE numbered 2, above].” *U.C.A. § 76-1-501 (1)*. “No person is guilty of an offense unless [see ISSUE numbered 2, above].” *U.C.A. § 76-2-101*. “Conduct which is justified is a defense [see ISSUE numbered 2, above].” *U.C.A. § 76-2-401 (5)*.

**POINT #28.IS AN ACTUAL, FLESH AND BLOOD, MAN/WOMAN,  
EMPLOYED AS A JUDGE, WHO IS NOT ACTING IN A JUDICIAL  
CAPACITY, THE “COURT”?**

## **STANDARD OF REVIEW**

This is a question of law, reviewed for correctness. *Syddall vs. Turner, Id.*  
This is an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (Utah 1988) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (Durham, J., dissenting); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. “The object of contempt proceedings is not to enable a judge,

[see ISSUE numbered 10, above].” *Kirkham vs. Sweetring*, *Id.* at 438, citing *State vs. Sweetland*, *Id.* “To assume that respect for courts and judges [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring*, *Id.* at 440. “The assumption that respect for the judiciary [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring*, *Id.* at 440, citing *Bridges vs. State of California*, *Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n*, Art. I Sec. 7.

**POINT #29. WHAT EVIDENCE WAS PRESENTED IN THE 13 NOVEMBER 2000, CRIMINAL CONTEMPT TRIAL IN THE COURT BELOW, SUPPORTING THE FINDING THAT APPELLANT WAS DISRESPECTFUL TO PLAINTIFF AND PLAINTIFF’S COUNSEL, DEMONSTRATING “CRIMINAL CONTEMPT” ON THE PART OF APPELLANT, THAT WAS PROVEN BEYOND A REASONABLE DOUBT?**

**STANDARD OF REVIEW**

This is an issue addressing the facts of the case. “On review of indirect criminal contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas*, *Id.*, at 1172 cited in *State v. Long*, *Id.* “The elements of contempt [see ISSUE numbered 2, above], ...” *Von Hake vs. Thomas*, *Id.*, at 1172. “Adjudication of contempt [see ISSUE numbered 2, above].” *Von Hake vs. Thomas*, *Id.*, at 1172 (*Utah* 1988) citing *Salzetti vs. Backman*, *Id.*, at 544; *Thomas vs. Thomas*, *Id.*; *Race vs. Race*, *Id.*, at 258 (*Durham, J., dissenting*); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. “The object of contempt proceedings is not to enable a judge, [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring*, *Id.* at 438, citing *State vs. Sweetland*, *Id.* “To assume that respect for courts and judges [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring*, *Id.* at 440. “The assumption that respect for the judiciary [see ISSUE numbered 10, above].” *Kirkham vs. Sweetring*, *Id.* at 440, citing *Bridges vs. State of California*, *Id.* “No person ... [see ISSUE numbered 1, above].” *Utah Const’n*, Art. I Sec. 7.

**POINT #30. WHAT EVIDENCE WAS PRESENTED IN THE 13 NOVEMBER 2000, CRIMINAL CONTEMPT TRIAL IN THE COURT BELOW, DEMONSTRATING THAT APPELLANT WAS UNDER A COURT ORDER TO NOT DO THE THINGS HE WAS ACCUSED OF, RISING TO THE LEVEL OF CRIMINAL CONTEMPT?**

## **STANDARD OF REVIEW**

This is an issue addressing the facts of the case. “On review of indirect criminal contempt [*see* ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 cited in *State v. Long, Id.* “The elements of contempt [*see* ISSUE numbered 2, above], ...” *Von Hake vs. Thomas, Id.*, at 1172. “Adjudication of contempt [*see* ISSUE numbered 2, above].” *Von Hake vs. Thomas, Id.*, at 1172 (*Utah* 1988) citing *Salzetti vs. Backman, Id.*, at 544; *Thomas vs. Thomas, Id.*; *Race vs. Race, Id.*, at 258 (*Durham, J., dissenting*); *U.R.C.P. Rule 52 (a)*; and, *U.C.A. § 78-32-3*. “The object of contempt proceedings is not to enable a judge, [*see* ISSUE numbered 10, above].” *Kirkham vs. Sweetring, Id.* at 438, citing *State vs. Sweetland, Id.* “To assume that respect for courts and judges [*see* ISSUE numbered 10, above].” *Kirkham vs. Sweetring, Id.* at 440. “The assumption that respect for the judiciary [*see* ISSUE numbered 10, above].” *Kirkham vs. Sweetring, Id.* at 440, citing *Bridges vs. State of California, Id.* “No person ... [*see* ISSUE numbered 1, above].” *Utah Const’n, Art. I Sec. 7*.

## **VERBATIM RECITALS OF CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS**

### Utah Constitution, Article 1, Section 1

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

### Utah Constitution, Article 1, Section 4

The rights of conscience shall never be infringed.

### Utah Constitution, Article 1, Section 7

No person shall be deprived of life, liberty or property, without due process of law.

### Utah Constitution, Article 1, Section 10

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Utah Constitution, Article 1, Section 12

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Utah Constitution, Article 1, Section 15

No law shall be passed to abridge or restrain the freedom of speech or of the press.

Utah Constitution, Article 1, Section 24

All laws of a general nature shall have uniform operation.

Utah Constitution, Article 1, Section 25

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Utah Constitution, Article 1, Section 27

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

Utah Code Annotated, § 76-1-501

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted.

(2) As used in this part the words "element of the offense" mean:

(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense;

(b) The culpable mental state required.

(3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence

Utah Code Annotated, § 76-2-101

No person is guilty of an offense unless his conduct is prohibited by law and:

(1) He acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or

(2) His acts constitute an offense involving strict liability.

These standards of criminal responsibility shall not apply to the violations set forth in Title 41, Chapter 6, unless specifically provided by law.

Utah Code Annotated, § 76-2-401

Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:



Utah Code Annotated, § 76-2-401 (continued)

- (1) When the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;
- (2) When the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;
- (3) When the actor's conduct is reasonable discipline of minors by parents, guardians, teachers, or other persons in loco parentis;
- (4) When the actor's conduct is reasonable discipline of persons in custody under the laws of the state;
- (5) When the actor's conduct is justified for any other reason under the laws of this state.

Utah Code Annotated, § 77-1-5

A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.

Utah Code Annotated, § 77-1-6

- (1) In criminal prosecutions the defendant is entitled:
  - (a) To appear in person and defend in person or by counsel'
  - (b) To receive a copy of the accusation filed against him;
  - (c) To testify in his own behalf;
  - (d) To be confronted by the witnesses against him;
  - (e) To have compulsory process to insure the attendance of witnesses in his behalf;
  - (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
  - (g) To the right of appeal in all cases; and
  - (h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.
- (2) In addition:
  - (a) No person shall be put twice in jeopardy for the same offense;
  - (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
  - (c) No person shall be compelled to give evidence against himself;
  - (d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
  - (e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

Utah Code Annotated, § 77-2-1.1

The prosecuting attorney shall sign all informations.

Utah Code Annotated, § 77-2-2

For the purpose of this chapter

- (1) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted;

Utah Code Annotated, § 77-2-2 (continued)

(2) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program or make restitution to the victim or fulfill some other condition; and

(3) "Commencement of prosecution" means the filing of an information or an indictment.

Utah Code Annotated, § 78-2a-3 (2) (e)

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

Utah Code Annotated, § 78-27-1

An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

Utah Code Annotated, § 78-32-3

When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as prescribed in Section 78-32-10 hereof. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators or other judicial officers.

Utah Rules of Civil Procedure, Rule 52 (a)

(a) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in Rule 41 (b). The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12 (b), 50 (a) and (b), 56, and 59 when the motion is based on more than one ground.

Utah Rules of Civil Procedure, Rule 63 (b) (2)

(b) *Disqualification.*

(2) The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

Utah Rules of Civil Procedure, Rule 63 (b) (2) (continued)

(3) (B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

Utah Code of Judicial Administration, CANON 2

A. A judge shall respect and comply with the law and should exhibit conduct that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of the judicial office to advance the private interests of others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness but may provide honest references in the regular course of business or social life.

C. A judge shall not belong to any organization, other than a religious organization, which practices invidious discrimination on the basis of race, sex, religion, or national origin.

Utah Code of Judicial Administration, CANNON 3

A. *Judicial duties in general.* The judicial duties of a full-time judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. *Adjudicative responsibilities.*

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or permitted by rule, or transfer to another court occurs.

(2) A judge shall apply the law and maintain professional competence. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge should maintain order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to judicial direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit, and shall use all reasonable efforts to deter, staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law. Except as authorized by law, a judge shall neither initiate nor consider, and shall discourage, ex parte or other communications concerning a pending or impending proceeding. A judge may consult with

the court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges provided that the judge does not abrogate the responsibility to personally decide the case pending before the court. No communication respecting a pending or impending proceeding shall occur between the trial judge and an appellate court unless a copy of any written communication or the substance of any oral communication is provided to all parties. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the court if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with the consent of the parties either in writing or on the record, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. A judge should require similar abstention on the part of court personnel subject to judicial direction and control. This Canon does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court. This Canon does not apply to proceedings in which a judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for purposes unrelated to judicial duties, information acquired in a judicial capacity that is not available to the public.

...

INFORMAL ETHICS OPINION NO. 96-2. Issued 26 June 1996.

This Committee believes that the Oregon opinion provides a good reference point. The appearance of impropriety noted in that opinion is more pronounced when a court employee is involved in a court proceeding. The Committee is therefore of the opinion that, absent emergency circumstances, a judge should not adjudicate or participate in any proceedings involving employees of the judge's judicial district.

In conclusion, it is the Committee's opinion that the Code requires a trial judge to disqualify himself or herself from participation in proceedings involving an employee of the judge's district."

**STATEMENT OF THE CASE**

**Nature of the Case**

Appellant, who is the respondent/cross-complainant in a civil action in the court below, was accused and charged, sans an information or a state prosecutor, in the civil action and court below, with various allegations of *criminal* contempt by written findings of fact by an otherwise disqualified judge [James Lynn Shumate] in the district court, below.

### **Course of the Proceedings and Disposition in the Court Below**

1. On 22 June 2000, caused filed was an AFFIDAVIT OF PREJUDICE against Garth Rand Beacham, in the trial court, below, by Joseph Michael Wisden. **(Record, pages numbered 770 - 782)**

2. On 22 June 2000, convened was a hearing on plaintiff's purported motion for partial summary judgment where counsel for the above-captioned plaintiff, Garth Rand Beacham, and Joseph Michael Wisden were all present and in attendance. **(Record, page numbered 769)**

3. During the 22 June 2000, hearing in the court below, attempted served on Garth Rand Beacham, was the AFFIDAVIT OF PREJUDICE referenced, above. **(Record, see VIDEO TAPE of the 22 June 2000, proceedings, numbered 000215, beginning at 4:05 pm.)**

4. Seeing that Joseph Michael Wisden was causing served on Garth Rand Beacham, an AFFIDAVIT OF PREJUDICE, caused arrested and incarcerated under the pretense of *contempt of court* was Joseph Michael Wisden by Garth Rand Beacham. **(Record, see VIDEO TAPE numbered 000215, beginning at 4:05 pm.)**

5. On or about 18 July 2000, Garth Rand Beacham apparently assigned the above-captioned case in the court below, to James Lynn Shumate, an employee of the same judicial district as Garth Rand Beacham, for the purpose of reviewing the AFFIDAVIT OF PREJUDICE caused filed in the court below, by way of the ORDER CERTIFYING AFFIDAVIT ..., document. **(Record, page numbered 833)**

6. On or about 28 August 2000, authored was the *bastard* [meaning: illegitimate] FINDINGS AND ORDER FOLLOWING REVIEW OF FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE document by James Lynn Shumate, which was thereafter caused filed on 29 August 2000, by James Lynn Shumate. **(Record, pages numbered 838 - 847)**

7. On 5 September 2000, caused judicial assignment of the above-captioned case in the court below was Homer [F.] Wilkinson (*whose true name is unknown*), by the court executive, James [M.] Nelson (*whose true name is unknown*). **(Record, pages numbered 893 - 894)**

8. Sometime during the month of September 2000, created was an ORDER TO SHOW CAUSE document by Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), apparently in pursuance of a directive from James Lynn Shumate. **(NOT IN RECORD, see Addendum numbered 1)**

9. On or about 16 October 2000, apparently signed and sealed was the ORDER TO SHOW CAUSE document created by Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), by Homer [F.] Wilkinson (*whose true name is unknown*). **(NOT IN RECORD, see Addendum numbered 1)**

10. On 28 October 2000, caused served upon Joseph Michael Wisden was the ORDER TO SHOW CAUSE document created by Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), which was apparently signed and sealed by Homer [F.] Wilkinson (*whose true name is unknown*), by R. Hymas, a purported deputy constable in Washington county, Utah. **(NOT IN RECORD, see Addendum numbered 1)**

11. On 30 October 2000, caused filed with the court below was the DEMAND FOR TRIAL BY JURY FOR HEARING REGARDING SO-CALLED CONTEMPT ALLEGATIONS BY James Lynn Shumate, document by Joseph Michael Wisden, which payment for a jury had been previously tendered on 10 January 2000, by Joseph Michael Wisden. **(Record, pages numbered 962 - 966)**

12. On 31 October 2000, caused served upon James Lynn Shumate by Earnest Paul Jessop was a subpoena and tender of fees for attendance and giving testimony at the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing scheduled for Monday, 13 November 2000, at the hour of 9:00 o'clock am, by Joseph Michael Wisden. **(Record, pages numbered 967 - 969)**

13. On 31 October 2000, caused served upon Garth Rand Beacham by Earnest Paul Jessop was a subpoena and tender of fees for attendance and giving testimony at the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing scheduled for Monday, 13 November 2000, at the hour of 9:00 o'clock am, by Joseph Michael Wisden. **(Record, pages numbered 970 - 972)**

14. On 13 November 2000, convened was the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, at the hour of 9:00 o'clock am., by Homer [F.] Wilkinson (*whose true name is unknown*). **(Record, pages numbered 997 - 998 and also the transcript of the proceedings, Record, pages numbered 1051 et seq.)**

15 On 13 November 2000, caused filed was Garth Rand Beacham's MOTION TO QUASH SUBPOENA and MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA, documents. **(Record, pages numbered 973 - 996)**

16 On 13 November 2000, during the proceedings of the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, granted was Garth Rand Beacham's motion quashing Joseph Michael Wisden's subpoena compelling Garth Rand Beacham's attendance for being a witness at the subject *criminal contempt trial*. **(Record, page numbered 1051, transcript of the proceedings, pages numbered 48 - 50)**

17. On 13 November 2000, during the proceedings of the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, Homer [F.] Wilkinson (*whose true name is unknown*) refused compelling James Lynn Shumate's attendance for being a witness in behalf of Joseph Michael Wisden at the subject *criminal contempt trial*. **(Record, page numbered 1051, transcript of the proceedings, pages numbered 48 - 50)**

18. On or about 12 December 2000, caused created was a CONTEMPT ORDER document by Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), a party not known being a prosecuting attorney for the the state of Utah or any of its political subdivisions. **(Record, page numbered 1011)**

19. On or about 27 December 2000, caused signed and sealed was the CONTEMPT ORDER document created by Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), by Homer [F.] Wilkinson (*whose true name is unknown*). **(Record, page numbered 1011)**

20. On 10 January 2001, caused filed was the NOTICE OF APPEAL FROM AN ORDER CHARGING CRIMINAL CONTEMPT by Joseph Michael Wisden. **(Record, page numbered 1017)**

## Statement of the Facts

1. Appellant is the respondent and also the cross-complainant in the above-captioned civil action in the trial court below. (**Record pp. 1 - 27 & pp. 163 - 223**)

2. In the trial court, below, appellant was put under attack by *criminal contempt* allegations by virtue of the 28 August 2000, FINDINGS AND ORDER FOLLOWING REVIEW OF FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE, apparently authored by James Lynn Shumate. (**Record pp. 838 - 847**)

3. On 05 September 2000, caused filed was an AFFIDAVIT OF TRUTH document, rebutting that particular 28 August 2000, FINDINGS AND ORDER FOLLOWING REVIEW OF FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE document apparently caused published and filed by James Lynn Shumate, by Joseph Michael Wisden, which AFFIDAVIT OF TRUTH document remains unrebutted. (**Record pp. 848 - 892**)

4. On 30 October 2000, caused filed with the court below was the DEMAND FOR TRIAL BY JURY FOR HEARING REGARDING SO-CALLED CONTEMPT ALLEGATIONS BY James Lynn Shumate, document by Joseph Michael Wisden, which payment for a jury had been previously tendered on 10 January 2000, by Joseph Michael Wisden. (**Record pp. 962 - 996**)

5. On 31 October 2000, caused served upon James Lynn Shumate by Earnest Paul Jessop was a subpoena and tender of fees for attendance and giving testimony at the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing scheduled for Monday, 13 November 2000, at the hour of 9:00 o'clock am, by Joseph Michael Wisden. (**Record, pp. 967 - 969**)

6. On 31 October 2000, caused served upon Garth Rand Beacham by Earnest Paul Jessop was a subpoena and tender of fees for attendance and giving testimony at the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing scheduled for Monday, 13 November 2000, at the hour of 9:00 o'clock am, by Joseph Michael Wisden. (**Record, pp. 970 - 972**)



7. On 13 November 2000, during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, denied Joseph Michael Wisden was notice of the nature and cause of the charges against Joseph Michael Wisden by Homer [F.] Wilkinson (*whose true name is unknown*). (**Record, p. 1051, transcript p. #5 et seq.**)

8. On 13 November 2000, during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, **no** evidence was produced demonstrating “any lawful judgment, order, or process of the court which Joseph Michael Wisden had allegedly been disobedient of. (**Record, p. 1051, transcript p. #6 et seq.**)

9. On 13 November 2000, during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, **no** testimony was given by an accusing witness demonstrating “any lawful judgment, order, or process of the court which Joseph Michael Wisden had allegedly been disobedient of. (**Record, p. 1051, transcript p. #6 et seq.**)

10. On 13 November 2000, during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, Joseph Michael Wisden was denied effective assistance of counsel and/or counsel of Joseph Michael Wisden’s choice, which counsel would **not** be beholden to the court or Utah State Bar, an Utah corporation, which corporation had previously filed suit against Joseph Michael Wisden. (**Record, p. 1051, transcript pp. #6 & #7.**)

11. On 13 November 2000, during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, Joseph Michael Wisden was denied a trial by jury. (**Record, p. 1051, transcript p. #6 et seq.**)

12. On 13 November 2000, during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing, Wayne [H.] Braunberger USB #A0434’s (*whose true name is unknown*), who was not a party, witness, nor a state prosecutor regarding the allegations of *criminal contempt* against Joseph Michael Wisden, spoke, presented documents, gave testimony, and otherwise interrupted the *criminal contempt* proceedings, with the apparent blessings of Homer [F.] Wilkinson (*whose true name is unknown*) . (**Record, p. 1051, transcript p. #8 et seq.**)

13. On 13 November 2000, at no time during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing was a Utah state or any political subdivision prosecutor in attendance for the purpose of representing the state of Utah or the county of Washington for prosecuting Joseph Michael Wisden for any *criminal* allegation of contempt. (**Record, p. 1051, transcript p. #9 et seq.**)

14. On 13 November 2000, at no time during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing was an accusing witness in attendance, nor did an accusing witness give testimony for the purpose of representing the state of Utah or the county of Washington for prosecuting Joseph Michael Wisden for any *criminal* allegation of contempt. (**Record, p. 1051, transcript p. #9 et seq.**)

15. On 13 November 2000, at no time during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing did the court compel James Lynn Shumate appear for the purpose of giving testimony in behalf of Joseph Michael Wisden. (**Record, p. 1051, transcript p. #11 et seq.**)

16. On 13 November 2000, at no time during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing did the court compel Garth Rand Beacham appear for the purpose of giving testimony in behalf of Joseph Michael Wisden. (**Record, p. 1051, transcript p. #11 et seq.**)

17. On 13 November 2000, sans the appearance of James Lynn Shumate, no evidence or testimony was proffered the court in support of the 28 August 2000, FINDINGS AND ORDER FOLLOWING REVIEW OF THE FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE document. (**Record, p. 1051, transcript p. #14 et seq.**)

18. On 13 November 2000, James Lynn Shumate was **not** a credible or viable witness for the state prosecuting alleged *criminal contempt* charges against Joseph Michael Wisden. (**Record, p. 1051, transcript p. #14 et seq.**)

19. On 13 November 2000, and also by causing signed and sealed the 27 December 2000, CONTEMPT ORDER, at no time during the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing did Homer [F.] Wilkinson (*whose true name is unknown*) consider the facts taken judicial notice of or presented at trial. (**Record, p. 1051, transcript p. #12 et seq.**)

20. Memoranda in the nature of and contemplated by Utah Code of Judicial Administration, Rule 4-501 does not incorporate or contemplate the masthead, the certificate of mailing, footnotes, statements of fact, conclusions, requests for relief, or other unrelated explanatory material accompanying the points and authorities or argument segment of a “memorandum” brief. **(Record, p. 1051, transcript p. #22 et seq.)**

21. No facts were presented in the trial court, below, sufficient to identify which documents James Lynn Shumate or Homer [F.] Wilkinson (*whose true name is unknown*), declared being “frivolous in nature” or containing conclusory statements and inflammatory language. **(Record, p. 1051, transcript p. #26 & 27 et seq.)**

22. James Lynn Shumate is/was employed in the same judicial district as Garth Rand Beacham. **(Record, p. 1051, transcript p. #31 et seq. see also, Record pp. 848 - 892)**

23. James Lynn Shumate is/was prohibited from considering or presiding over any matter judicially involving Garth Rand Beacham. **(Record, p. 1051, transcript p. #31 et seq. see also, Record pp. 848 - 892)**

24. James Lynn Shumate violated state law by creating the 28 August 2000, FINDINGS AND ORDER FOLLOWING REVIEW OF FILE UNDER RULE 63 UTAH RULES OF CIVIL PROCEDURE document. **(Record, p. 1051, transcript p. #31 et seq. see also, Record pp. 848 - 892)**

25. The trial court below did not review the case on a document-by-document basis for determining whether or not the documents caused filed by the appellant actually caused delay or were *contemptuous*. **(Record, p. 1051, p. #39 et seq.)**

26. The documents complained of by James Lynn Shumate were not caused filed by the appellant for the purpose of causing delay, nor were the documents *contemptuous*. **(Record, p. 1051, transcript p. #31 et seq. see also, Record pp. 848 - 892)**

27. Exhibits numbered 1 through 5, submitted by Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*) in the criminal contempt trial [ORDER TO SHOW CAUSE] hearing in the trial court, below, were not relevant or material to the proceedings, below, nor did Wayne [H.] Braunberger

USB #A0434's (*whose true name is unknown*) have standing in the *criminal contempt trial* [ORDER TO SHOW CAUSE] hearing in the trial court, below for submitting exhibits into the record. (**Record, pp. 1051, pp. #45 et seq.**)

28. James Lynn Shumate and Garth Rand Beacham were caused service of subpoenas at their usual place of business, the Washington county courthouse, where the clerk of the court **refused** access to the process server and the clerk agreed accepting service on behalf of James Lynn Shumate and Garth Rand Beacham. (**Record, pp. 1051, pp. #48 et seq.**)

29. Witness fees were tendered both James Lynn Shumate and Garth Rand Beacham at the time of service of the subpoenas caused served by Joseph Michael Wisden. (**Record, pp. 1051, pp. #48 et seq.**)

30. Appellant was denied adequate opportunity for examination of Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), during the criminal contempt trial proceedings on 13 November 2000, for determination of alleged attorney fees precipitated by alleged delay in the above-captioned case. (**Record, pp. 1051, pp. #64 et seq.**)

31. During the *criminal contempt trial* proceedings on 13 November 2000, Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), was provided "legal" advice from the bench by Homer [F.] Wilkinson (*whose true name is unknown*). (**Record, pp. 1051, pp. #57, inter alia.**)

32. Appellant was denied adequate opportunity for examination of Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), during the criminal contempt trial proceedings on 13 November 2000, for determination of Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*), qualifications as an alleged "licensed" attorney. (**Record, pp. 1051, pp. #57 et seq.**)

33. Appellant was the only witness in the *criminal contempt trial* proceedings on 13 November 2000, which gave testimony regarding the allegations purportedly found and ruled upon by James Lynn Shumate. (**Record, pp. 1051, pp. #5 et seq.**)

34. Each and every document submitted by the appellant [respondent/cross-complainant in the court, below] in the above-captioned civil action in the court, below, has been caused filed for the purposes directed in the nature of the Utah Rules of Civil Procedure or in the processes of

conducting a vigorous defense and/or prosecuting the various cross-complaint causes of action. (**Record, pp. 1051, pp. #5 et seq.**)

35. In his private capacity, Garth Rand Beacham **is not** “the court.” (**Record, pp. 1051, pp. #5 et seq.**)

36. Sans “judicial authority,” Garth Rand Beacham **is not** “the court.” (**Record, pp. 1051, pp. #5 et seq.**)

37. In his private capacity, James Lynn Shumate **is not** “the court.” (**Record, pp. 1051, pp. #5 et seq.**)

38. Sans “judicial authority,” James Lynn Shumate **is not** “the court.” (**Record, pp. 1051, pp. #5 et seq.**)

39. No evidence was presented in the *criminal contempt trial* proceedings on 13 November 2000, which supported finding that appellant was disrespectful to plaintiff or plaintiff’s counsel, demonstrating “*criminal contempt*.” (**Record, pp. 1051, pp. #5 et seq.**)

40. Disrespect towards a plaintiff or plaintiff’s counsel does not constitute “*criminal contempt*.” (**Not In Record**)

41. No evidence was presented in the *criminal contempt trial* proceedings on 13 November 2000, which supported finding that appellant was under a court order to not do the things appellant was accused of, rising to the level of *criminal contempt*, by James Lynn Shumate. (**Record, pp. 1051, pp. #5 et seq.**)

### **SUMMARY OF ARGUMENTS**

Being a criminal prosecution for *contempt*, the proceedings of the *criminal contempt trial* in the court below, were not in accordance with appropriate standards of law, constitutional protections, and/or other Utah appellate court decisions. Nearly every conceivable protection intended for the defense of a criminally accused, *inter alia*, was violated by James Lynn Shumate and Homer [F.] Wilkinson (*whose true name is unknown*), in the court below, ie. denial of the presumption of innocence, denial of an accusing witness, denial of a prosecuting attorney, denial of a state-action prosecution, denial of cross-

examination of an accusing witness, denial of effective assistance of counsel not beholden to appellant's adversaries, denial of a trial by jury, denial of compulsory process to compel the attendance of witnesses in appellant's/accused's own behalf, and denial of plenary opportunity for determination of purported damages alleged by the non-party/non-witness [Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*)], *inter alia*. Indeed, the 27 December 2001, CONTEMPT ORDER document appealed from attempts prohibiting conduct by Appellant explicitly granted/required by the Utah Rules of Civil Procedure, or otherwise compels conduct by Appellant which severely limits his ability to conduct a vigorous defense or prosecution of his own civil actions as protected by the Utah State Constitution, Article I Section 11, *inter alia*.

### **ARGUMENT**

"The essence of contempt of court is the willful disregard or disobedience of its orders. ... Because of this it is essential that the rights of one so accused be carefully safeguarded. He must be apprised of the nature of the accusation; afforded an opportunity to meet it; and in order to justify a finding and sentence for contempt the proof should be clear and satisfactory that the contemner was in violation or defiance of the court's order." Powers vs. Taylor, 378 vs. 519 at 520 (Utah 1963). Contempt is a drastic remedy which should be invoked only when the right to its use is clear. It necessarily involves the element of willfulness, presenting a clear and present danger that the conduct cited will bring about a substantial interference with the orderly administration of justice." U.S. vs. Peterson, 456 F.2d 1135 at 1139 (C.A.10 (Utah) 1972). The issues herein presented on appeal are numerous and complex. They bring into question the unbridled power of certain members of the Utah judiciary in Washington county to capriciously and arbitrarily abuse the "judicial power" they wield with impunity. Those actors are James Lynn Shumate and Garth Rand Beacham. Using the very words used by various appellate court personnel, Appellant refers to them as "actors in black robes." (see *The Problem with the Courts: Black-Robed Bureaucracy, or Collegiality Under Challenge*, 42 Md.L.Rev. 766 (1983)). The United States supreme court

refers to every “**actor**” in the Georgia capital sentencing process, and also other “**actors**” in the criminal justice system, such as defense attorneys, or judges (McCleskey vs. Kemp, 481 U.S. 279, at 317). In 1990, the United States supreme court said, “This scheme forces a young woman in an already dire situation to choose between two fundamentally unacceptable alternatives: notifying a possibly dictatorial or even abusive parent and justifying her profoundly personal decision in an intimidating judicial proceeding to a **black-robed** stranger.” (**emphasis added**) And in the 1984 case of Regan vs. Time, 468 U.S. 641, the supreme court, citing justice Jackson from a previous era, quoted, “The State announces rank, function, and authority through ... **black robes**.” (**emphasis added**)

In the court below the capricious and arbitrary, and abusive conduct of Garth Rand Beacham, and then James Lynn Shumate, and thereafter Homer [F.] Wilkinson (*whose true name is unknown*), is reprehensible, regarding their abject disregard for the law, from whatever source, be it the Code of Judicial Conduct, the Utah Code Annotated, the Utah State Constitution, or God’s law. In consideration of nearly every issue presented herein, Appellant was denied due process of law, *inter alia*, in the *criminal contempt* trial proceedings in the court below, **AND**, even though the matter(s) is/are not presently on appeal, in the above-captioned *civil* action as well.

The time has been far surpassed for the Utah courts and the individual actors-in-black-robes respecting non-represented, non “licensed” litigants, in the same status they deem themselves being, which, in fact, non “licensed” litigants are typically in the superior status in relation to the judges, who are mere public servants, with their minions [liaryers] being but lowly servants of servants.

The issues herein stated, speak for themselves, as do the facts, which are supported by the record. The transcript of the *criminal contempt* proceedings in the trial court, below, as well as the document(s) precipitating the *criminal contempt* proceedings are all a matter of record. It should be noted that the clerk of the court did not index the *bastard* ORDER TO SHOW CAUSE document, which precipitated the 13 November 2000, *criminal contempt* trial, which calls the entire proceedings into question. Was appellant ever served

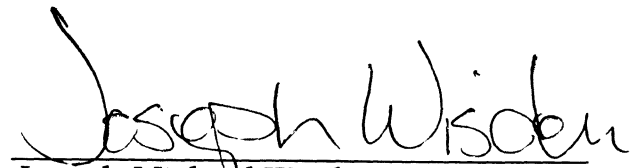
with any document purporting being a charging document? Did the court below even possess jurisdiction for conducting the *bastard criminal contempt* trial on 13 November 2000?

Appellant relies on the facts herein stated, the issues presented herein, and the record/transcript of the proceedings which are available for review by the appellate court. Appellant believes a long and drawn out argument, herein, will be pointless as the rights deprivations, the total lack of jurisdiction, and the blatant violations of law are self-evident by the record itself. The facts and law(s) speak for themselves. Appellant has raised the issues and demonstrated but some of the standard(s) for review, which were preserved in the record and the *criminal contempt* proceedings in the court below, remembering that Appellant does not have adequate access to the people's law library and other legal references in Washington county, Utah, for plenary presentation of standards from which the appellate court may review.

Appellant thanks the Utah court of appeals for its consideration in this matter and seeks remedy by the Utah court of appeals reversing the decision of the *criminal contempt* court, below, and granting Appellant costs and fees, which also includes the cost of providing the transcript, and payment of fees for a jury, and subpoenas, *inter alia*, which were not provided Appellant in the proceedings in the court, below. Appellant also seeks any other remedy the Utah court of appeals deems just and appropriate, which would most likely incorporate sanctions on James Lynn Shumate, Homer [F.] Wilkinson (*whose true name is unknown*), and Wayne [H.] Braunberger USB #A0434 (*whose true name is unknown*).

Is there no relief for the widow or the widow's orphan?

DATED THIS 06 September 2001.

  
Joseph Michael Wisden



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**ADDENDUM #1**  
**16 October 2000**  
**ORDER TO SHOW CAUSE**

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Wayne H. Braunberger, USB #A0434  
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Attorneys for Plaintiff  
765 East 9000 South, Suite A-1  
Sandy, Utah 84094  
Telephone: (801) 562-3200

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IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

---

GREEN TREE FINANCIAL SERVICING  
CORP.,

Plaintiff,

vs.

DONNA ALEXANDER, JANE DOES 1  
through 25; and JOSEPH MICHAEL  
WISDEN aka JOSEPH M. WISDEN aka  
FRANK WILLIAM LEONESIO aka  
FRANK W. LEONESIO aka VAL CRAM  
aka VALDEN CRAM aka TERRY J.  
ERICKSON aka TERRY ERICKSON aka  
VERD ERICKSON aka VERD J.  
ERICKSON, JOHN DOES 1 through 25,

Defendants.

ORDER TO SHOW CAUSE

Civil No. 9901501423

Judge Homer F. Wilkinson

---

To: Joseph Michael Wisden  
31 North 700 East, #160  
St. George, Utah 84770 or  
  
1674 North Dixie Downs Road No. 63  
St. George, Utah 84770

You are hereby given notice to appear before the Honorable Judge

Homer F. Wilkinson, District Court Judge, at:

Date: November 13, 2000 <sup>9.00 am</sup>  
~~October 2, 2000~~ Time: ~~2:00 p.m.~~

Place: 220 North 200 East, St. George, Utah 84770

to show and demonstrate cause, if there be any, why you should not be punished for contempt of Court because the content of your filings with the Court are contemptuous for the reasons of attempting to delay the process of this matter, for being inflammatory and abusive, and for causing plaintiff further injury by reason of delay as more specifically set forth on the "Findings and Order Following Review File under Rule 63 Utah Rules of Civil Procedure" entered by the Honorable James L. Shumate District Court Judge on August 28, 2000, a copy of which is attached hereto.

Dated <sup>October</sup> ~~September~~ 16, 2000.

BY THE COURT

  
Homer F. Wilkinson  
District Court Judge

**ADDENDUM #2**  
**27 December 2000**  
***[CRIMINAL]* CONTEMPT ORDER**

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Attorneys for Plaintiff  
765 East 9000 South, Suite A-1  
Sandy, Utah 84094  
Telephone: (801) 562-3200

---

IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

---

GREEN TREE FINANCIAL SERVICING  
CORP.,

Plaintiff,

vs.

DONNA ALEXANDER, JANE DOES 1  
through 25; and JOSEPH MICHAEL  
WISDEN aka JOSEPH M. WISDEN aka  
FRANK WILLIAM LEONESIO aka  
FRANK W. LEONESIO aka VAL CRAM  
aka VALDEN CRAM aka TERRY J.  
ERICKSON aka TERRY ERICKSON aka  
VERD ERICKSON aka VERD J.  
ERICKSON, JOHN DOES 1 through 25,

Defendants.

CONTEMPT ORDER

Civil No. 9901501423

Judge Homer F. Wilkinson

---

The order of the Court to defendant Joseph Michael Wisden to appear  
and show cause why he should not be held in contempt, as contemplated by Utah  
Code §§ 78-32-3 and 78-32-4, came before the Honorable Homer F. Wilkinson for



hearing, as contemplated by Utah Code §78-32-9, on November 13, 2000. Joseph Michael Wisden appeared pro se and Wayne H. Braunberger, a member of the Utah State Bar, appeared in behalf of Plaintiff. The Court, having heard the testimony and arguments of the parties hereby makes the following findings, conclusion and order:

#### **FINDINGS OF FACT**

1. The Court is comprised of the Judge, its Officers and Staff.
2. The attorneys that practice before it are officers of the Court.
3. The immunity relating to Court proceedings does not allow anyone to defame any judge.
4. The Court is intended to be a fair forum to all parties who appear before it.
5. Those who appear before it must comply with the rules of the Court.
6. The pleadings filed by Joseph Michael Wisden in this matter are lengthy, not clear as to position, not clear as far and the English language goes, skirt around the issues, are not rational and do not get to the point.
7. On its face the sticky note showing the Scarecrow from the Wizard of Oz with the caption "If I only had a brain" is defamatory to the Judge.
8. The judge is the Court. He is not an "actor in black robes."
9. Being a judge is not always easy or pleasant but laws must be enforced.

10. Use of the terms "so-called" and "whose true name is unknown" are disrespectful to the person referred to and to the Court.

11. Joseph Michael Wisden has filed numerous lengthy pleadings in violation of the rules of the Court.

12. Wisden's pleadings just didn't make sense regarding the things they were trying to say.

13. The Court observes that Wisden is not being fair to himself when the Court cannot understand what he is trying to say.

14. Wisden's pleadings are disrespectful to the Court, which is the same as the judge, to opposing counsel and to plaintiff.

15. An attorney would never be allowed to file such pleadings without sanctions being imposed.

16. Wisden is articulate and capable of understanding.

17. Because of Wisden's contempt, Green Tree Financial Servicing Corp. has incurred attorneys fees of \$8,944.00 and expenses of \$455.11 as set forth on the Revised Affidavit of Attorneys Fees and submitted by Wayne H. Braunberger in this matter.

### **CONCLUSIONS OF LAW**

1. The acts and omissions of Joseph Michael Wisden in this matter

constitute contempt of the authority of the Court under Utah Code § 78-32-1 (4) (5) & (9).

2. Under Utah Code § 78-32-11 Plaintiff, Green Tree Financial Servicing Corporation, has suffered loss or injury to equal to the additional attorneys fees, costs and expenses incurred by it to respond to Wisden contemptuous pleadings. Green Tree is not awarded those attorneys fees and costs which it would have normally incurred to prosecute this action.


### **ORDER**

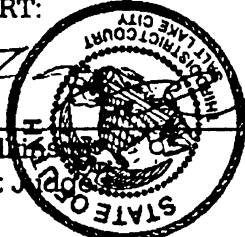
1. The Court finds Joseph Michael Wisden guilty of contempt.
2. The Court commits Joseph Michael Wisden to the Washington County, Purgatory Correctional Facility for ten days.
3. The Court fines Joseph Michael Wisden \$100.00.
4. The Court stays imposition of this sentence provided Wisden files no further contemptuous pleadings, nor engages in any further contemptuous act toward the the Court, including but not limited to its judges and officers.
5. Wisden may purge this contempt by not filing further contemptuous pleadings nor engaging in any other contemptuous act toward the Court, including but not limited to its judges and officers.
6. Green Tree Financial Servicing Corporation, is awarded the additional attorneys fees, costs and expenses incurred by it to respond to Wisden

contemptuous pleadings in the amount of \$8,944.00 attorneys fees and \$455.11 expenses. These amounts do not include those attorneys fees and costs which Green Tree would have normally incurred to prosecute this action.

Dated December 27, 2000.

BY THE COURT:

  
Homer F. Williams  
District Court Judge



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**CERTIFICATE OF SERVICE**

I, Joseph Michael Wisden, do hereby certify that I caused mailed or hand delivered true and correct original copies of the foregoing APPELLANT'S BRIEF, by personally delivering, or by depositing the same with the United States Postal Service, first-class postage prepaid, on the corresponding dates, upon the following:

06 September 2001

**CLERK OF THE COURT OF APPEALS**  
general delivery  
c/o Utah court of appeals  
c/o 450 South State Street  
[ circa: 84114 ] Salt Lake City, Utah  
(801) 578-3900 FAX: (801) 578-3999

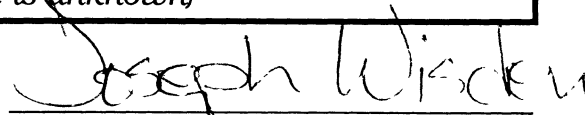
~~**Utah Attorney General**  
general delivery  
c/o Utah State Capitol  
[ circa: 84114 ] Salt Lake City, Utah~~

~~Attorney for the state~~

03 October 2001

Wayne [H.] Braunberger, USB #A0434  
(whose true name is unknown)  
general delivery  
c/o 765 East 9000 South • A-1  
[ circa: 84094 ] Sandy, Utah

substitute counsel for the Utah state  
attorney general per the 5 October 2001,  
order of Russell [W.] Bench (whose true  
name is unknown)

  
Joseph Michael Wisden