



On October 22, 2009, this Defendant demanded that the Plaintiff prove jurisdiction in a pleading titled JURISDICTION CHALLENGED. When challenged, jurisdiction must be proven by the Plaintiff. Jurisdiction must be proven over the person and entity being sued as well as over subject matter. In the Plaintiff's AMENDED COMPLAINT the Plaintiff alleges jurisdiction over D L P LT13 under 26 U.S.C. § 7401 and 7403.

On December 22, 2009, this Defendant filed his THIRD MOTION FOR DISMISSAL. The pleading was based upon "... Plaintiff's failure to respond to Defendant's challenge to jurisdiction dated October 22, 2009 ..." See page two of the pleading.

However, the Plaintiff, in over two and half months, has failed to prove or even address the matter of jurisdiction. Plaintiff has failed to follow both federal and local court rules to respond to the Defendant's December 22, 2009 THIRD MOTION FOR DISMISSAL which demands that the Plaintiff provide proof of jurisdiction as required by law. Plaintiff had until January 11, 2010, a Monday, to respond to Defendant's THIRD MOTION FOR DISMISSAL. Plaintiff failed to respond in any manner. Court rules now *require* the Court to dismiss the instant lawsuit for failure to respond to Defendant's motion.

Additionally, before filing a lawsuit, due process is required by the United States Constitution. This means that administrative procedures or requirements must be completed or exhausted before the Plaintiff can claim jurisdiction over D L P LT13 under 26 U.S.C. § 7401 and 7403, the Plaintiff must satisfy the due process requirements or prerequisites leading up to the use of 26 U.S.C. § 7401 and 7403.

In addition to the Due Process requirements of the United States Constitution the Plaintiff was required to provide proof of jurisdiction after being challenged on October 22, 2009. This means the Plaintiff was required to provide facts. Providing facts means producing records

demonstrating that all administrative procedures and requirements underlying or prerequisites to 26 U.S.C. § 7401 and 7403 were accomplished. Plaintiff failed to do so and the Defendant filed a motion to dismiss on December 22, 2009. This was the Plaintiff's last chance to meet the Due Process and Jurisdictional requirement to produce FACTS proving jurisdiction and compliance with all administrative due process procedures. There can be no doubt that the law required the Plaintiff to produce those facts.

"Court must prove on the record, **all jurisdiction facts** related to the jurisdiction asserted." *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York*, 37 F Supp. 150. (emphasis added)

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

"Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F 2d 906, 910.

The Plaintiff was required to provide several required notices and a Due Process hearing to D L P LT13. None of these requirements, among others, were accomplished and this lawsuit is premature. As stated above, "When jurisdiction is challenged, both jurisdiction over the person and subject matter must be proven."

According to information that can be gathered on the Internet there are seven issues or elements that must be proven before any court acquires jurisdiction. Below I have listed just item number four of the seven as it applies to this instant case.

4. "The accuser must be named. He may be an officer or a third party. **Some positively identifiable person (human being) must accuse.** Some certain person must take responsibility for the making of the accusation, not an agency or an institution. This is the only valid means by which a citizen may begin to face his accuser. Also, the injured party (*corpus delicti*) must make the accusation. Hearsay evidence may not be provided. Anyone else testifying that he heard that another party was injured does not qualify as direct evidence." (emphasis added)

Defendant believes the above listed element of jurisdiction to be true and has previously stated in these proceedings that the Plaintiff has failed to identify any live body Plaintiff/Accuser. The Plaintiff has not identified a live body Plaintiff and this lawsuit must therefore be dismissed for lack jurisdiction as well as being in violation of the United States Constitution for not identifying a live body Plaintiff/Accuser that the Defendant may face and cross-examine.

“Once Jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action.” *Melo v. US*, 505 F2d 1026.

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners*, 94 Ca 2d 751. 211 P2d 389.

In any case, this Court cannot ignore the jurisdiction issue which this Defendant has squarely put before the Court.

"There is no discretion to ignore lack of jurisdiction." *Joyce v. U.S.* 474 2D 215.

Likewise, the Court has no power to decide for itself if it has jurisdiction or not.

**"A court has no jurisdiction to determine its own jurisdiction**, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. (emphasis added)

From the above, it is clear that the Plaintiff has not provided proof of jurisdiction nor has the Plaintiff provided any and all live body Plaintiffs in order to provide and prove that element of jurisdiction.

On October 22, 2009 this Defendant filed a challenge to jurisdiction. Court rules require that the Plaintiff respond within 20 days to provide facts that prove jurisdiction. The Plaintiff did not respond and two months went by without the Court enforcing the rules of court. Consequently, on December 22, 2009 Defendant decided "enough was enough" of the Court failing to act on the Plaintiff's failure to address the very clear challenge to jurisdiction. This Defendant filed a THIRD MOTION TO DISMISS dated December 22, 2009. Well over 20 more days have passed and the Plaintiff has still not addressed this issue. Court rules, procedure and justice all required this instant action now be dismissed with prejudice.

Above premises considered, this Defendant moves this Court for dismissal with prejudice for failure of the Plaintiff to respond to this Defendant's challenge to jurisdiction and to provide all live body Plaintiffs.

Executed this 14<sup>th</sup> day of January, 2010.

A handwritten signature in cursive script that reads "Elmer P. Vild, Trustee". The signature is written in black ink and is positioned above a horizontal line.

D L P LT13  
Elmer P. Vild, Trustee

### CERTIFICATE OF SERVICE

This document has been submitted into the court record as evidence by Terry I. Major, Notary Public, in and for the state of Arizona, County of Yavapai. My stamp is attached to identify me and my commission.

Original for the Clerk of the Court and one copy for the Honorable Susan R. Bolton mailed this 14<sup>TH</sup> day of January, 2010 via first class mail to:

Clerk of the Court  
Sandra Day O'Connor U.S. Courthouse  
SPC 1  
401 W. Washington Street, Suite 130  
Phoenix, AZ 85003-2118

Copies mailed this 14<sup>TH</sup> day of January, 2010 via first class mail to:

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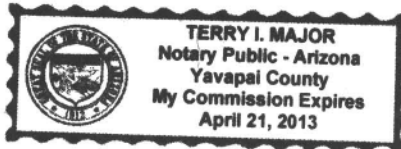
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County of Yavapai     )

{Seal}

This document has thus been served.



*Terry I. Major*  
Terry I. Major, Notary Public