

D L P LT13
Elmer P. Vild, Trustee
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Elmer P. Vild is the Trustee for the
D L P LT13 contractual entity.

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA**

United States of America,)	
)	Civil No. CV 09-00444-PHX-SRB
Plaintiff,)	
)	MOTION TO COMPLY WITH
v.)	RULE 17
)	
Maria D. Forman; Jimmy C. Chisum, and)	
Elmer P. Vild, also known as Phillip)	
O'Neil, as Trustees for the DLP LT 13)	
Trust; and Arizona Department of)	
Revenue)	
)	
Defendants.)	
)	

COMES NOW Elmer P. Vild, Trustee for the D L P LT13 contract in the form of a trust proceeding without the assistance of counsel relying on *Haines v. Kerner* and other U.S. Supreme Court decisions that hold pro se litigants cannot be held to the same standards as an attorney and the lower courts must point out any defects and allow a pro se litigant sufficient time to correct any defects. And, that the pro se litigants' pleadings are sufficient to call for an opportunity to be heard.

This Defendant has informed the Court of its duty to follow the law whenever a non-attorney Defendant proposes a legal theory. This Defendant feels the Court has

failed miserably in following this duty. Both D L P LT13 and Maria D. Forman have asked the Court for assistance because neither D L P LT13 nor Maria D. Forman have money to pursue this lawsuit through an attorney. The Court has refused. See the orders in Doc. #7, 27 and 29. Maria D. Forman became disabled, incapacitated, incompetent and unable to defend herself as stated by both her daughter and this Defendant. The Court refused to assist. See Dulce Shimkus' letter to the Court (Doc. #30), this Defendant's Motion to the Court (Doc. #32) and the Court's order at Doc. #34.

In its order of December 18, 2009 (Doc. #34) the Court claimed the same reasons for not appointing counsel to be the same as that stated in its order of October 27, 2009 Doc. #27. In its order of October 27, 2009 the Court dodged the question by stating "The Court is unaware of any authority by which it could appoint counsel and the Court has no budget from which any appointed counsel could be paid." Rule 17(c)(2) provides the Court with that authority.

This Defendant submitted a DEMAND FOR DELAY on December 3, 2009 (Doc. #32) so the Court could take time to decide how to handle the situation of Maria D. Forman being incompetent to continue on her own due to medical reasons. This Defendant stated:

Both this Court and the government are in a quandary. Both the government and the Court are duty bound to delay the instant proceedings until this dilemma is resolved.

Additionally, financing cannot be a factor in any decision to disobey the law. The law has no provision that it can be ignored because of lack of funding. Through court costs and/or levies, fines and other means this Court could easily provide funds for legal representation for Maria D. Forman. One only needs to look to the Judges' retirement fund to see the Court's power to raise funds. Further, each lawyer is a member of the court and duty bound to do its bidding. Attorneys could be ordered to assist Maria D. Forman *pro bono* and/or encouraged to do so to meet their *pro bono* obligations.

The Court dismissed this Defendant's motion DEMAND FOR DELAY on December 3, 2009 (Doc. #32). Well over two months have passed since this Defendant and Defendant Maria D. Forman's daughter informed the Court of Maria D. Forman's further disability which renders her incompetent to defend the instant lawsuit.

Rule 17(c)(2) states:

(c) MINOR OR INCOMPETENT PERSON.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. **The court must appoint a guardian ad litem** — or issue another appropriate order — to protect a minor or incompetent person who is unrepresented in an action. (emphasis added)


The last sentence in Ms. Shimkus' November 30, 2009 letter filed December 1, 2009 (Doc. #30) is:

Please inform me as soon as possible whether the Court will now somehow find the means to provide legal assistance for her under these new developments or what else the Court has in mind regarding an indigent, incompetent Defendant who has been declared uncollectible by the IRS.

The question is when will this Court answer Ms. Shimkus regarding her mother Maria D. Forman? It would seem that the Court's statement of "The Court is unaware of any authority by which it could appoint counsel ..." may be incorrect according to Rule 17 which states "...**The court must appoint a guardian ad litem**...". (emphasis added)

Above premises considered, the Defendant requests the Court follow Rule 17 and appoint a guardian *ad litem* for Maria D. Forman.

Respectfully submitted this 16th day of February, 2010.


DLP 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 16th day of February, 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 16th day of February, 2010 via first class mail to:

DIANE J. HUMETEWA
United States Attorney
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5640 East Duane Lane
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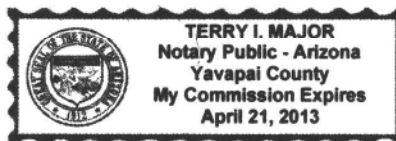
Jimmy Chisum, 84388-008
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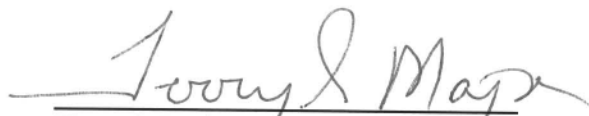
DENISE ANN FAULK
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State of Arizona)
) ss.
County of Yavapai)

{Seal}

This document has thus been served.




Terry I. Major, Notary Public