

Barbara Ann Martin            {}       IN THE CITY OF MEADOWS  
  Alleged Accused  
  
VS                                {}       MUNICIPAL COURT NUMBER 1  
  
STATE OF TEXAS                {}       FORT BEND COUNTY, TEXAS

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**PETITION FOR TRIAL DE NOVO**

TO THE HONORABLE JUDGE OF SAID COURT;

COMES NOW, Barbara Ann Martin, a De Jure Citizen of the State of Texas hereinafter known as the (Accused), and would show unto this Honorable Court the following, to wit:

(1)

I am not the statutory (14<sup>th</sup> Amendment) "person" listed on Citation Number 103083. Because my status of Citizenship is De Jure, this court (Article I Tribunal) has no jurisdiction over me. Therefore, I am evoking my absolute right to a "de novo trial", to have this case adjudicated in a County Court of Record, so I can properly prepare my defense. Thompson v. Whitman, 85 U.S. 457,463 (U.S.N.Y. 1873) "The court must have had jurisdiction not only of the cause, but of the parties."

(2)

The Supreme Court of the United States held, in Justices of Boston Mun. Court v. Lydon, (U.S.Mass.1984) 104 S.Ct. 1805 at 1814, 466 U.S. 294 at 310, that "It is worthy of note that

virtually nothing can happen to a defendant at a first tier trial that he cannot avoid. He has an absolute right to obtain the de novo trial, and he need not allege error at the first tier trial to do so. Once the right to a de novo trial is exercised, the judgment at the bench trial is “wiped out.”  
Mann v. Commonwealth, 359 Mass. 661, 271 N.E. 2d 331 (1971)

(3)

My Citizenship is by right of heritage (blood) and does not emanate in, around, under or through the 14<sup>th</sup> Amendment. I am a member of the Posterity, of “We the People”, spoken of in the Preamble to the Constitution for the united States (1787), and the Preamble to the Constitution for the State of Texas (1845). These were the same “one People” (the original De jure Citizens) who wrote the Declaration of Independence to secure their “unalienable Rights”, and ordained and established the Constitution for the united States of America (1787) to secure the Blessings of Liberty to themselves and their Posterity.

(4)

Your *Article I Tribunal* is a creation of the Texas State Legislature, and your *Police Officers* get their license from the same Legislature. Therefore, both your Article I Tribunal and your Police Officers owe their allegiance to that Legislature, and not the *People* who ordained and established the Constitution for these united States of America and the Constitution for the State of Texas. Maxim of Law dictates that you cannot be greater than that which created you, thereby owing your allegiance to your Creator, the Legislature. The *People*, written of in the Preamble to the Constitution with the Rights therein and more, do not feel that Justice is in the *Article I Court*. The *People* have a *Separation of Powers Doctrine*, where Congress writes the law, the Executive branch enforces the law and the Judicial Branch adjudicates the law to determine if the law is Constitutional or not. The *Article I Tribunal* has no provision for this. The *Article I Court* was created to uphold the statutory laws of the State, written by that State's

Legislature. The *De jure Citizen*, a one of a kind of a people, (heritage, blood) from Europe, written of in the Preamble to the Constitution, are not statutory creations, and therefore the statutory court has no jurisdiction over these Citizens. The Office of the Attorney General, State Of Texas, Opinion No. JM-266:

(5)

"we conclude that the office of the district attorney is not within the judiciary exception. The office is not a court, nor is it directly controlled or supervised by the court. Its functions moreover, are primarily executive, in the sense that it's primary duty is to enforce the law. *Code Crim.Proc. art. 2.01.*"

and

" The District Attorney's Office is a 'law enforcement agency' within the meaning of section 3(a)(8)."

(6)

This admission from Jim Mattox is not a very comforting feeling for me. When the district attorney asks for my plea, who is trying to incarcerate me? This is not correct in my understanding of my law, *common law*, according to the Bill of Rights contained in THE CONSTITUTION FOR THE UNITED STATES OF AMERICA.

(7)

Black's Law Dictionary With Pronunciations, 6th Edition, (West's,1991) defines the word "De jure" as follows:

"Descriptive of a condition in which there has been total compliance with all requirements of law. Of right; legitimate; lawful; by right and just title. In this sense it is contrary of *de facto* (*q.v.*) It may also be contrasted with *de gratia*, in which case it means 'as a matter of right,' as *de gratia* means 'by grace or favor.' Again it may be contrasted with *de aequitate*; here meaning 'by law,'as the latter means 'by equity.'"

(8)

Whereas this Article I Tribunal is a Statutory creation of the State Legislature, and the Officer of the Court gets his license from the Legislature, and both parties owe their allegiance to their creator, (the Legislature), how can I get a Fair and Impartial trial? What happened to the Separation of Powers Doctrine, where Congress writes the law, the Executive branch enforces the law and the Judicial branch adjudicates the law to determine if it is constitutional or not, and if the statutory law constitutionally applies to me, a De Jure Citizen? This is why we have the Separation of Powers Doctrine; but there is no Separation of Powers in the Article I Tribunal. The Constitution for this State and for the United States of America, guaranties to me, a De jure Citizen, the Separation of Powers Doctrine. Thus, this Article I Tribunal has no Constitutional jurisdiction over me, a De Jure Citizen. This is why I would move the Court for dismissal; the Article I Tribunal has no Jurisdiction over a De jure Citizen.

(9)

The de novo trial is a method of alleviating the Article I Tribunal from the burden of their officers who mistakenly think that De Jure Citizens would volunteer, without knowledge, to lose or have stolen from them, their God given, Unalienable/Inalienable Rights.

(10)

Black's Law Dictionary With Pronunciations, 6th Edition, (West's,1991) defines the word "de novo Trial" as follows:

"Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered."

The word "de novo" is defined as follows :

"Anew; afresh; a second time."

(11)

Black's Law Dictionary With Pronunciations, 6th Edition, (West's,1991) defines the word "Trial de novo" as follows:

"A new trial or retrial had in which the whole case is retried as if no trial whatever had been had in the first instance. *Housing Authority of City of Newark v. Norfolk Realty Co.*, 71 N.J. 314, 364 A.2d 1052, 1058. A trial of the entire case anew, both on law and on facts. In re Initiative Petition No. 260, State Question No. 377, Okl., 298 P.2d 753, 756. See *New trial, above*. See also Motion for new trial; Plain error Rule

(12)

Black's Law Dictionary With Pronunciations, 6th Edition,(West's,1991) defines the word "Appeal" as follows:

Resort to a superior (*i.e.* appellate) court to review the decision of an inferior (*i.e.* trial) court or administrative agency. A complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed. *Board of Ed. of Cleveland City School Dist. v. Cuyahoga County Bd. of Revision*, 34 Ohio St.2d 231, 298 N.E.2d 125, 128. There are two stages of appeal in the federal and many state court systems: to wit, appeal from trial court to intermediate appellate court and then to Supreme Court. There may also be several levels of appeal within an Administrative Law Judge to Appeals Council in social security case. In addition, an appeal may be taken from an administrative agency to a trial court (*e.g.* from Appeals Council in social security case to U.S. district court). Also, an appeal may be as of right (*e.g.* from trial court to intermediate appellate court) or only at the discretion of the appellate court (*e.g.*, by writ of certiorari to U.S. Supreme Court). Provision may also exist for joint or for consolidated appeals (*e.g.*, Fed.R.App.P.3) and for cross appeals where both parties to a judgment appeal therefrom.

(13)

An appeal from the justice court to the county court at law is by trial de novo. Tex.Code Crim.Proc.Ann.art. 44.17 (Supp.1991)

(14)

Once an appeal is perfected all information from the trial court is brought to the higher appellant court, whereas the trial de novo has no provision for such information to be passed on to the appellant court. The United States Supreme Court found in *Justices of Boston Mun. Court v. Lydon*, 466 U.S. 294 at 1984

"We note at the outset that Lydon was in "jeopardy" in only a theoretical sense. Although technically "jeopardy" under the Double Jeopardy Clause entails the "potential or risk of trial conviction, not punishment, "Price v. Georgia *supra* 398 U.S. at 329, 90S Ct., at 1761, it is worthy of note that virtually nothing can happen to a defendant at first-tier trial that he cannot avoid. He has an absolute right to obtain the de novo trial and he need not allege error at the first-tier trial to do so. Once the right to a de novo trial is exercised the judgment of the bench trial is "wiped out". *Mann v. Commonwealth*, 359 Mass. 661, 271 N.E.2d 331 (1971).

(15)

The court of appeals, Austin, Texas said giving notice of appeal from the justice court judgment finding defendant guilty of speeding,

defendant invoked right to trial de novo before county court and deprived justice court judgment of any finality; therefore, county court erred in dismissing cause on ground the judgment of justice did not satisfy all statutory prerequisites. *Vernon's Ann. Texas C.C.P. arts. 42.01. 44.01(a)(1), 44.14; Vernon's Ann. Texas Civ.St.art 6701, Secs. 166.169B.*"

(16)

To further explain the difference in trial de novo and an appeal, in the above case, the Court of Appeals of Texas, Austin said

"A trial de novo literally is a trial from the beginning as if no former trial had been had."

"The giving and approval of a proper bond for appeal in such case from justice court to the county court frees the case from any aspect of review by the court to which the case is appealed other than to ascertain the sufficiency of bond...."

"By giving notice of appeal, appellee invoked his right to trial de novo and deprived the justice court of any finality. *Deal v. State*, 423 S.W.2d 929 (Tex. Crim. App.1968)"

"In an ordinary appeal, the appellate court either affirms or reverses the judgment of the trial court. In an appeal by trial de novo, the appellate court is given an entirely new trial. Therefore, this cause is not controlled by those opinions holding that ordinary appeal must be dismissed in the absence of a valid judgment in the court bellow. See *Savant v. State*, 535S.W.2d 190 (Tex.Crim.App.1976); *Richie v. State*, 542 S.W.2d 422 (Tex.Crim.App.1976)."

(17)

THE HONORABLE JUDGE OF SAID COURT;

The RIGHT to FAIR and IMPARTIAL TRIAL as Black's Law Dictionary With Pronunciations, 6th Edition, (West's,1991) defines the words "Fair and impartial trial" as follows:

"A hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial consideration of evidence and facts as a whole. A basic constitutional guarantee contained implicitly in the Due Process Clause of Fourteenth Amendment, U.S. Constitution."

"One where accused's legal rights are safeguarded and respected. *Raney v. Commonwealth*, 287 Ky. 492, 153 S.W.2d 935, 937, 938. A fair and impartial trial by a jury of one's peers contemplates counsel to look after one's defense, compulsory attendance of witnesses, if need be, and a reasonable time in the light of all prevailing circumstances to investigate, properly prepare, and present the defense. One wherein defendant is permitted to be represented by counsel and neither witnesses nor counsel are intimidated. One

wherein no undue advantage is taken by district attorney or any one else. *People v. Nationwide News Service*, 172 Misc. 752, 16 N.Y.S.2d 277, 279. One wherein witnesses of litigants are permitted to testify under rules of court within proper bounds of judicial discretion, an under law governing testimony of witnesses with right in parties to testify, if qualified, and of counsel to be heard. It requires that the jury chosen to sit in judgment shall have no fixed opinion concerning the guilt or innocence of one on trial. *Lane v. Warden, Md. Penitentiary, C.A.Md.*, 320 F.2d 179, 185. There must not only be fair and impartial jury, and learned and upright judge, but there should be atmosphere of calm in which witnesses can deliver their testimony without fear and intimidation, in which attorneys can assert accused's rights freely and fully, and in which the truth may be received and given credence without fear of violence. *Raney v. Commonwealth*, 287 Ky. 492, 153 S.W.2d 935, 937, 938."

(18)

Who has the authority to relinquish the rights guaranteed in the "Bill of Rights" of the Constitution for the united States"? What supreme court issued the authority to waive my God given, Unalienable/Inalienable Rights? Who has the authority to deny my Constitutionally guaranteed rights to Due Process and a Separation of Powers? Who would assume that I, a De Jure Citizen, would want those rights taken away? Jus sanguinis; Jus publicum are mine and are Unalienable/Inalienable.

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