

February 17, 2004

TO: Judge Ron Chapman, sitting by assignment
COPY: 294th District Judge

Re: Motion to Recuse Judge Banner, No. 00-619, 294th District Court

Judge Chapman,

The purpose of this letter is that there be no surprise at your March 26, 2004 setting to hear my Sept. 30, 2003 *Motion to Recuse*.

To refresh your memory, I presented you with an earlier motion to recuse Judge Paul Banner, for not abiding by the rules of procedure, statutory law, nor the mandates of the U.S. Supreme Court. You heard that motion on Oct. 1, 2001, and let Judge Banner stay.

I filed THIS motion, even though the case had been at **appeal** for nearly one (1) year, when it became clear about Sept. 30, 2003, that Judge Banner and opposing counsel were **ex-parte** in the process of constructing *Findings* to prop up a **\$62,000 fine** ("Sanction Order", Aug. 9, 2002) against me that had stated NO particulars at all, NONE. RCP Rule 13 of course states that NO sanctions may be imposed without stating particulars.

Judge Banner was prohibited from making any more findings after my *Motion for Recusal*, but he **did it anyway**. Furthermore, his *Findings* have NO support in the record, and are diametrically opposite his true reason for punishing me, as caught by the court reporter at the July 30, 2002 sanctions hearing, where he found me "**well-intentioned**", just that he [Judge Banner] did not see the evidence as showing a **civil RICO** case. I had of course asked for weighing of the evidence by a **jury**.

Filing a lawsuit is of course **constitutionally protected conduct**, and Judge Banner himself said that he unconditionally punished ("sanctioned") me for having made my civil RICO claim:

*"In assessing the sanctions, the Court has taken into consideration that although Mr. Birnbaum may be well-intentioned and may believe that he had some kind of real claim as far as RICO there was nothing presented to the court in any of the proceedings since I've been involved that suggest he had any basis in law or in fact to support his suits against the individuals, and I think — can find that such sanctions as I've determined are appropriate."
(Transcript, **sanctions hearing**, July 30, 2002)*

Judge Banner's \$62,000 Sanction against me for making my civil RICO claim (when I was sued) is nothing less than retaliation and official oppression. As for the law:

A **retaliation claim** essentially entail three elements: 1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two -- that is, the adverse action was motivated at least in part by the plaintiff's protected conduct. See Bloch v. Riber, 156 F.3d 673 (6th Cir. 1998)

Texas Penal Code, Sec. 39.03. OFFICIAL OPPRESSION:

- (a) A public servant acting under color of his office or employment commits an offense if he:
- (1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
 - (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or
 - (3) intentionally subjects another to sexual harassment.
- (b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.
- (c) In this section, "sexual harassment" means ... etc

Summary

Judge Paul Banner has again shown that he will not abide by the rules of procedure, statutory law, nor the mandates of the U.S. Supreme Court.

Justice requires that Judge Banner be immediately removed from this case. This man appears not to want to abide by the bounds of his authority, nor the constitutional rights of those before him. Justice also requires that Judge Banner's latest *Findings*, made in the absence of jurisdiction, be officially declared NULL and VOID.

For details, I am attaching my Oct. 21, 2003 inquiry letter to Judge Banner ("WHAT IS GOING ON?"), a document I previously copied to you at that time, as you had already been assigned on Oct. 8, 2003 to hear THIS recusal.

Everything else about this case is fraud too. OVER MY OBJECTIONS, Judge Banner submitted WRONG JURY ISSUES. Plaintiff pleaded unpaid OPEN ACCOUNT for "legal services", but jury questions sounded in breach of contract, and even for that, Judge Banner

would not let the jury determine on ALL the elements. There of course was no "sale" and "delivery", nor question nor instruction thereto to the jury. Fraud, fraud, and more fraud.

Prayer

This whole mess upon me started in 1995, with a suit against me over a BEAVER dam! Except for that frivolous suit (No. 95-63, still active), neither you nor I would be involved in this today. Judge Chapman, PLEASE, resolve this matter, ONCE and FOR ALL.

Sincerely,



Udo Birnbaum, *Pro Se*
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Eustace, TX 75124
(903) 479-3929 (phone and fax)

Attachment: "WHAT IS GOING ON?" To Judge Banner, Oct. 21, 2003
Copied to Judge Chapman and Judge Ovard at that time

Copy (less attachment):

Hon. John Ovard
Presiding Judge, First Administrative Judicial Region
133 N. Industrial LB50, Dallas, Texas 75207

Hon. Judge Paul Banner (No. 00-619)
24599 CR 3107, Gladewater, TX 75647

Frank C. Fleming (No. 00-619, No. 03-0082) 214 373-1234 265-1979?
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File 95- 95 ⁶³	<i>William B. Jones v. Udo Birnbaum</i>
File 00-619	<i>The Law Offices of G. David Westfall, P.C. v. Udo Birnbaum</i>
File 03-0082	<i>Udo Birnbaum v. Frank C. Fleming</i>
File 03-00460	<i>Udo Birnbaum v. Richard L. Ray</i>