

**Complaint and Affidavit of Official Oppression and
Abuse of Official Capacity upon Udo Birnbaum**

SEC. 39.03, 39.02, SECOND DEGREE FELONY

synopsis

My name is UDO BIRNBAUM. I am 78 years old, reside in Van Zandt County, Texas, and am competent to make this affidavit.

This complaint arises out of a \$67,885 unconditional punishment upon me, by a Judge PAUL BANNER, by civil process, titled Order on Motion for Sanctions, for having made a cross-claim in a court of law, a First Amendment Right:

(HINT: civil process cannot unconditionally punish for past conduct – can only “coerce” into compliance – with some Order. Has to provide “keys to own release”)

*“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”. (Judge Paul Banner, Transcript, Sanction hearing)*

details

On or about the 14th day of November, 2014, Senior “visiting” Judge PAUL BANNER, in Van Zandt County, Texas, did then and there, under color of the 294th District Court of Van Zandt County, and after having been made fully aware by said UDO BIRNBAUM at such proceeding, that his action was unlawful, on or about such 14th day of November, 2014, did Official Oppression and Abuse of Official Capacity upon said UDO BIRNBAUM.

Such Official Oppression and Abuse of Official Capacity – by said Judge PAUL BANNER - in a non-adjudicative setting - on such 14th day of November, 2014 – by magisterially breathing life anew – and color of legitimacy - onto Order on Motion for Sanctions – as it was up that day for “revival” by Application for Writ of Scire Facias to Revive Judgment. (HINT: An Order in need of “revival”? – something STINKS)

Such fresh life by on such 14th day of November, 2014, “visiting” Judge Paul Banner magisterially signing into the records of the 294th District Court of Van Zandt County, a document titled Order Reviving Judgment - upon the July 30, 2002 \$67,885 Order on Motion for Sanctions - as he had unlawfully oppressed upon same UDO BIRNBAUM in 2002.

Again, such Official Oppression and \$67,885 Abuse of Official Capacity by said Judge PAUL BANNER upon said UDO BIRNBAUM – as punishment - for having dared to exercise a First Amendment Right – to make a counter-claim – in said 294th District Court – when said UDO BIRNBAUM was sued:

“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”. (Judge Paul Banner, Transcript, Sanction hearing July 30, 2002)

The attached documents speak for themselves:

- Transcript Sanction Hearing - 2002 – finding of “well-intentioned”
- Order on Motion for Sanctions - 2002 – [\$67,885] “no-mention-anything”
- Findings of Fact and Conclusions of Law - 2003 – re his \$67,885 Order on Motion for Sanction – suddenly “all-venom” - no more “well-intentioned”
- Order Reviving Judgment - 2014 – fresh life upon unlawful [\$67,885] Order on Motion for Sanctions – and conceal as “Sanction Judgment”

(details at www.OpenJustice.US)

summary

(all “venom” - no more “well-intentioned”)

Here, a few quotes from Judge Paul Banner’s Findings of Fact and Conclusions of Law as go with his [\$67,885] Order on Motion for Sanctions – which Order he re-executed on Nov. 14, 2014, by reviving same that day.

THINK – why would any judge want or have to make a FINDING on his own ORDER in the first place – and “revive” such own 2002 Order - in 2014? Something really STINKS.

Was of course a **JURY** cause. Findings had to be by **JURY**, but

11. ... **punitive** damages awarded **by the Court** prevent similar **future** action p3
14. ... the relief **which the Court seeks** **and others** similarly situated from **filing** lawsuits. p3
15. ... **punitive** damage conduct to be **punished** p3
4. ... on the evidence **presented to the Court** p5
9. ... **punitive** damages for the **filing** **lawsuit** p5
10. ... [for] **filing** this claim **calls out** for ... **punitive** damages p6
15. ... The award of **punitive** damages harm done p6
16. ... The award of **punitive** damages is not excessive. p5
- 17.... **Punitive** damages gain the **relief sought** which is to stop **and others like him**, from **filing** **lawsuits**. p6
18. ... **punitive** damage award to the harm done. p7
19. ... Authority for the **punitive** damage award etc. common law of Texas. p7

Totally “inconsistent with due process”. Filing a lawsuit (I did NOT – only made a counter and cross-claim) is a First Amendment Right. **ANY** adverse action – by a public official – for exercising a Right (and Judge Banner says that is why he did it) **is** official oppression. He also cannot impose **punitive** sanction by **civil** process – only “coercive” – where one has the “keys to one’s own release” – i.e. by complying with some Order – of which there was none – to purge a contempt!

And all these poison words? At his **very sanction hearing**, he found me “**well-intentioned**”, only that HE did not see my **evidence** as showing my **counter-claim**. Weighing the evidence is of course for the jury. And he even states – that he is **punishing** (“*sanctions*”) me – for **having** made a counter-claim – a **First Amendment Right!** Civil contempt cannot punish for past conduct. Period. US Supreme Court. Plum mad. So, once again:

"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". (Judge Paul Banner, Transcript, Sanction hearing)

Indicated real reason: - to stop this defendant "and others like him" (Judge Paul Banner Findings) - from going Pro Se with civil RACKETEERING counter-claims – against fraudulent suits – by lawyers - for that holiest-of-holies - LEGAL FEES!

summary

So, what happened to "well-intentioned"? ANSWER: All one big cover-up – and the Order Reviving Judgment of November 14, 2014 – of the \$67,885 sanction – is nothing less than a fresh re-execution – on November 14, 2014, of Official Oppression and Abuse of Official Capacity.

All statements upon personal knowledge, all attached documents true copies of the originals, except for obvious markups all by me, all of which also upon personal knowledge. Lots more "stuff" at www.OpenJustice.US

Attached: See page 2 for list

UDO Birnbaum
UDO BIRNBAUM
540 Van Zandt CR 2916
Eustace, TX 75124
(903) 479-3929
brnbm@aol.com

SIGNED this 31 day of Aug, 2015

UDO Birnbaum
UDO BIRNBAUM

SUBSCRIBED AND SWORN TO BEFORE ME on this 31st day of August, 2015



Brenda Harmison
Notary Public, State of Texas

7-30-2002 "Sanction Hearing". Compare the "well-intentioned" here, with all the POISON WORDS in the ONE YEAR LATER "Finding of Fact" ! HINT: The "Finding" was a CYA - for all this done WITHOUT THE JURY.

1 damages, \$5,000.00 in punitive and the joint and several
2 \$50,085.00 in attorneys' fees. Mr. Birnbaum's sanctions as
3 against Mr. Fleming or against the P.C. is denied and nothing
4 is ordered.

well-intentioned

was a JURY trial. Why is HE weighing the evidence?

5 In assessing the sanctions, the Court has
6 taken into consideration that although Mr. Birnbaum may be
7 well-intentioned and may believe that he had some kind of
8 real claim as far as RICO there was nothing presented to the
9 court in any of the proceedings since I've been involved that
10 suggest he had any basis in law or in fact to support his
11 suits against the individuals, and I think -- can find that
12 such sanctions as I've determined are appropriate. And if
13 you will provide me with an appropriate sanctions order, I
14 will reflect it.

\$67,000 Sanction - for a "well-intentioned" COUNTER-CLAIM - a First Amendment Right ! Official Oppression

15 Now, as far as relief for sanctions on behalf
16 of Mr. Westfall, individually, that is specifically denied.

17 Any relief sought by any party by way of
18 sanctions which have not been specifically addressed either
19 by the granting or the denial of same -- such is denied.

20 Okay. How soon can I expect an order because
21 I gather this matter will go up to whatever appropriate
22 appeals court for review?

23 MR. FLEMING: I will give Mr. Birnbaum the
24 statutory three days. I'll submit it to him. And if I don't
25 hear back from him, I'll submit it to you after.

www.OpenJustice.US

It was a JURY case - and ONLY the jury can award "damages". There was NO JURY making this AWARD!

It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are **awarded damages** as a sanction against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of **\$50,085.00** as reimbursement for their joint attorney's fees.

B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of **\$1,000.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of **\$1,800.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.

E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

Cannot award "judgment" - to someone who is NOT A PLAINTIFF !

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of **ten percent (10%)** from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.

Paul W. ...
JUDGE PRESIDING

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WESTFALL/UDO/PLEADINGS/ORDER ON SANCTIONS

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in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were **groundless and totally unsupported** by any credible evidence whatsoever.

Always remember - the court reporter found him saying - that Mr. Birnbaum was "well intentioned". Suddenly all this stuff.

2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original **Plaintiff**, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.

3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-Plaintiff wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.

4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and **totally uncorroborated** by any other evidence.

5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for **legal work** which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

Judge Paul Banner did NOT submit ANY of this to the jury! He INSTRUCTED THEM that Mr. Birnbaum had "FAILED TO ABIDE"!

full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

How about "well intentioned"? Remember?

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

Was a JURY case. No jury at this hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

B.S.

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11. The amount of **punitive** damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to **prevent similar future action** on the part of the Defendant/Counter-Plaintiff.

Can't do this in a CIVIL proceeding. Takes FULL CRIMINAL PROCESS.

12. The sanctions award is directly related to the harm done.

13. The sanctions award is not excessive in relation to the harm done and the **net worth of the Defendant/Counter-Plaintiff**.

No evidence to any of this B.S. ever!

14. The sanctions award is an appropriate amount in order to gain the **relief which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff and **others similarly situated** from filing **frivolous lawsuits**.

"relief which the Court seeks" - to keep from filing lawsuits - a First Amendment Right. OFFICIAL OPPRESSION PER SE.

15. The amount of the **punitive** damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be **punished**.

16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and **threats**.

No evidence to all this B.S. Remember "well intentioned"?

17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of **harassment**. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.

18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the legal theories of the Defendant/Counter-Plaintiff.

Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.
2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.
3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.
4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court. How about "evidence to the JURY"?
5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.
6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment. was "civil RICO" - not the mumbo-jumbo above
7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment.
8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P. what about "well intentioned"?
9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Findings of Fact and Conclusions of Law
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Official Oppression per se

10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and **punitive** damages to be assessed against the Defendant/Counter-Plaintiff.

11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.

12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of **\$50,085.00 in attorney's fees**. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of **\$1,000.00** to Christina Westfall and **\$1,800.00** to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of **\$5,000.00** to Christina Westfall and an award of **\$5,000.00** to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

15. The award of **punitive** damages is directly related to the harm done.

16. The award of **punitive** damages is not excessive.

17. The award of **punitive** damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and **others like him**, from **filing** similar frivolous lawsuits.

OFFICIAL OPPRESSION per se. Can't do "punitive" in a CIVIL proceeding. Only "coercive". Requires "keys to own release"!

Findings of Fact and Conclusions of Law

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westfall\udo\judgment\findings of facts2

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18. The amount of the **punitive** damage award is narrowly tailored to the harm done.

19. Authority for the **punitive** damage award is derived from §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

SIGNED THIS 30 day of September, 2003.



JUDGE PRESIDING

Careful study of this document shows that all this B.S. is to C.Y.A. for having "awarded damages" WITHOUT A JURY - in a jury cause - and trying to CONCEAL that this is exactly what Judge Paul Banner had done.

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It also is a window on his mindset during the JURY TRIAL of April 8-11, 2002, his hatred of Pro Se parties.

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JUST READ ALL THIS VENOM IN THIS DOCUMENT. Remember, "although Mr. Birnbaum may be well intentioned --- etc. I (Mr. Banner) did not see the evidence as showing etc " - or something like that.

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Was of course a JURY TRIAL - so why was Mr. Banner "weighing" the evidence?

Application should be granted and that the Sanctions Judgment revived for the period of time proscribed by law.

IT IS HEREBY, ORDERED, ADJUDGED, AND DECREED, that the Sanctions Judgment (a true and exact copy of which is attached hereto as Exhibit 1 and made a part of this Order as if fully set forth at length) rendered in the above-entitled and numbered cause on July 30, 2002 and signed on August 9, 2002, is hereby revived in all respects against defendant/counter-plaintiff Udo Birnbaum;

IT IS FURTHERED ORDERED that execution on the revived Sanctions Judgment may immediately issue; and

IT IS FURTHER ORDERED that all costs are taxed against the Defendant, Udo Birnbaum.

All relief requested, not granted herein, is expressly denied.

SIGNED this 14 day of November, 2014


JUDGE PAUL BANNER, PRESIDING

ALL FRAUD!
In a JURY case - "judgment" was done WITHOUT A JURY!
And "awarded" to someone who had been "out" by summary judgment long ago - and NEVER WAS A PLAINTIFF!
Also plum UNLAWFUL punishment for exercising a First Amendment Right to make a COUNTER-CLAIM! (see "Findings")
Official Oppression per se!