

It is therefore, **ORDERED, ADJUDGED, and DECREED** that the motion by the defendant, Udo Birbaum, that Judge Paul Banner be recused from further matters effecting this cause of action is denied.

It is therefore, **FURTHER ORDERED, ADJUDGED, and DECREED** that the Plaintiff, G. David Westfall, P.C., and Counter-Defendants, Christina Westfall and Stefani Podvin, are awarded damages as a sanction against and to be paid by defendant, Udo Birbaum, to G. David Westfall, P.C., Christina Westfall, and Stefani Podvin as follows:

A. A monetary sanction in the amount of **\$1,000.00** as actual damages, representing the reasonable value of the legal services rendered to the Sanctions Movants by their attorney for the defense of Birbaum's Motion to Recuse and the prosecution of the Sanctions Movants' Motion for Sanctions.

B. A monetary sanction in the amount of **\$124,770.00** as exemplary and/or punitive damages to serve as a deterrent to prevent Birbaum from committing further similar acts again in the future.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of five percent (5%) from the date of the signing of this order, until paid.

All other relief regarding any motions for relief on file in this cause of action not expressly granted in this order is hereby denied.

With regard to the award of sanctions, the Court makes the following findings and conclusions in support of the Court's award of sanctions and in support of the type and dollar amount of the sanctions imposed:

Findings of Fact

1. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were **groundless, vacuous, manufactured,** and totally unsupported by any credible evidence whatsoever.
2. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were without merit and brought for the purpose of **harassment** and/or **delay.**
3. The testimony of Birnbaum regarding the attempt to have Judge Paul Banner recused was **biased, not credible,** and totally uncorroborated by any other evidence.
4. The sole purpose of Birnbaum filing the motion regarding the attempt to have Judge Paul Banner recused was an attempt to **harass, intimidate,** and inconvenience the Sanctions Movants.
5. Birnbaum has a track record and history of filing lawsuits, motions, and writs of mandamus against judges that rule against him in litigation.
6. Birnbaum filed a pleading containing a completely false and **outrageous** allegation that **Judge Paul Banner** had conducted himself in a manner that showed bias and a **lack of impartiality.**
7. Birnbaum's difficulties with judges and the repeated allegations of a lack of impartiality have had nothing at all to do with the conduct of the judges that Birnbaum has appeared before, but instead, is a **delusional belief held only inside the mind of Birnbaum.**
8. Birnbaum will seemingly go to any length, even filing new lawsuits in State and Federal courts in an attempt to re-litigate issues which a court has already ruled upon and which all appropriate courts of appeal have affirmed.
9. Birnbaum's filing of this Motion to recuse Judge Banner was consistent with a **proven pattern** and **practice** of **behavior** engaged in by Birnbaum **over many years** and currently ongoing now in this court **and in other federal courts.**

Go diagnose yourself, you idiot

Where did you get all this stuff from? You were NOT the trial judge. We hardly met. Is everybody talking about me? Seems like it.

10. Birnbaum has a track record and history of bickering and quarreling with judges that have ruled against him in litigation.

11. Birnbaum has a track record and history of filing lawsuits without merit against judges, attorneys, and other individuals in an attempt to gain tactical advantage in other ongoing litigation.

12. Prior to this hearing, Birnbaum filed in March 2004, **new legal action** in Federal District Court against Judge Paul Banner, G. David Westfall, Christina Westfall, and Stefani Podvin. **This new Federal lawsuit** attempts to re-litigate the same issues Birnbaum unsuccessfully raised in this lawsuit.

Judge Ron Chapman -- you were assigned to hear a Motion for Recusal, rule, then go HOME. Why are you all tight up? Where did you get all this stuff?

13. Prior to this hearing, Birnbaum has initiated a lawsuit against the attorney for the Sanctions Movants, Frank C. Fleming. Birnbaum admitted in open court that he has never had any dealings with Frank C. Fleming other than in connection with Mr. Fleming's representation of the Plaintiff and the counter-defendants in this cause of action. Birnbaum admitted in open court that the legal basis of his lawsuit against Mr. Fleming, civil RICO, is the same basis Birnbaum was previously sanctioned in this lawsuit for attempting to bring against Christina Westfall and Stefani Podvin.

14. The behavior of Birnbaum himself in prosecuting the Motion to recuse Judge Banner has been **vindictive, unwarranted, mean-spirited, frivolous**, and totally without substantiation on any legally viable theory for the recusal of Judge Banner.

15. The Motion itself to Recuse Judge Banner without any ounce of evidence to support it, was **frivolous, vindictive**, and brought for the purpose of **harassment**.

16. The conduct of Birnbaum giving rise to the award of exemplary and/or **punitive** damages was engaged in by Birnbaum **willfully** and **maliciously** with the intent to **harm** the Sanctions Movants, Judge Paul Banner, and the attorney for the Sanctions Movants, Mr. Fleming.

YES - out in the halls - around the coffee pot - around the table in the jury room - ALL WITHOUT A COURT REPORTER - yes you threatened me. YES - this was ALL BEFORE we went into the courtroom - and before a COURT REPORTER.

17. Prior to the hearing on the Motion to Recuse, the Court admonished Birnbaum that if his Motion to Recuse Judge Banner was not withdrawn, that if it became appropriate, the Court would hear the Motion for Sanctions. In response to this admonition, Birnbaum unequivocally elected to move forward with a hearing on his Motion in an attempt to have Judge Banner recused.

18. The type and dollar amount of the sanctions award is directly related to the harm done. The Court has not been presented with any evidence to believe that the amount of the sanctions award is excessive in relation to the net worth of Birnbaum. a truly AMAZING "Finding of Fact". lol

19. The type and dollar amount of the sanctions award is appropriate in order to gain the relief which the Court seeks, which is to stop this litigant and others similarly situated from filing frivolous motions, frivolous lawsuits, frivolous defenses, frivolous counter-claims, and new lawsuits which attempt to re-litigate matters already litigated to a conclusion. Official Oppression per se.

20. The amount of the exemplary and/or punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished. UNLAWFUL by CIVIL process

21. The Sanctions Movants have suffered damages as a result of Birnbaum's frivolous counter-claims and Birnbaum's motion to recuse. These damages include expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and threats.

Conclusions of Law

1. On the issue of the recusal of Judge Paul Banner, Birnbaum wholly failed to provide any credible evidence to substantiate any of his claims.

2. All of Birnbaum's claims were as a matter of law unproved and untenable on the evidence presented at the hearing.

3. The court concludes as a matter of law that Birnbaum's claim that Judge Paul Banner acted biased and with a lack of impartiality, was brought for the purpose of harassment. The Court makes

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westfall\udo\pleadings\Order 02

this conclusion based upon the fact that Birnbaum was not a credible witness, that other credible witnesses totally contradicted Birnbaum's version of the facts, and that evidence was presented establishing that Birnbaum has had a track record and history of harassment towards other opposing litigants, opposing counsels, and other judges before whom Birnbaum has appeared.

4. The Plaintiffs behavior in bringing and prosecuting this frivolous motion to recuse Judge Banner was a violation of one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

GOOD SHOPPING LIST. Well - exactly which one - and HOW?

5. The Court has the power to award both actual and exemplary (and/or punitive) damages against Birnbaum for the filing and prosecution of a frivolous motion. This authority stems from one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

AGAIN - sort of lacking specificity. But, at least no violation of MOTHERHOOD and APPLE PIE?

6. The behavior and attitude of Birnbaum in filing and prosecuting this Motion to Recuse claim against Judge Paul Banner calls out for the award of both actual and exemplary (and/or punitive) damages to be assessed against Birnbaum.

AGAIN - can't do "punitive" in CIVIL process. Requires "keys to own release"

7. The appropriate award for actual damages as a result of the filing and prosecution of the frivolous Motion to Recuse, is an award of \$1,000.00 in attorney's fees. The Court makes this award under power granted to the Court by §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

???"and/or" sort of like "maybe"

8. The appropriate exemplary and/or punitive sanction for the filing and full prosecution of the frivolous Motion to Recuse is an award of \$124,770.00 to be paid by Birnbaum to the Sanctions Movants.

\$124,770.00 - Judge Ron Chapman. One might overlook this if you had been DRUNK - but to put this stuff on paper - and actually SIGN IT? CRAZY.

9. The award of exemplary and/or punitive damages is directly related to the harm done.

10. The award of exemplary and/or punitive damages is not excessive.

PLUM CRAZY

Order on Sanctions

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11. The award of exemplary and/or punitive damages is an appropriate amount to seek to gain the relief sought by the Court which is to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits.

OFFICIAL OPPRESSION - retaliation for exercising a First Amendment Right. CRAZY

12. The amount of the exemplary and/or punitive damage award is narrowly tailored to the harm done.

13. The amount of the exemplary and/or punitive damages is narrowly tailored to exactly coincide with the amount (in total) assessed against Birnbaum to date in this litigation. This amount was selected by the Court deliberately and on purpose to send a clear message to Birnbaum. The message this award of damages is intended to relay to Mr. Birnbaum is that this litigation is over, final, and ended. The message is that further attempts to re-open, re-visit, and re-litigate matters which have already been decided in court, reduced to judgment, and affirmed on appeal will not be tolerated; and that further attempts by this litigant to engage in such activity will not be conducted without the imposition of very serious and substantial monetary sanctions imposed upon Mr. Birnbaum.

THANK YOU, JUDGE CHAPMAN - for putting this stuff down on paper - so the whole world can see - in official documents - just how EVIL or CRAZY you are.

14. Authority for an exemplary and/or punitive damage award is derived from §§10.001, et seq., Tex. 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.

24 day of Oct, 2006.


JUDGE PRESIDING

-
WOULD YOU BELIEVE - "The Westfalls" actually got the 294th District Clerk to issue an "Abstract of Judgment" on this ORDER - for close to \$250,000 with interest.
--
Filed it with the County Records, to put liens on all my property, did a "writ of execution" to send the sheriff out to seize my property.
--
While at the SAME TIME doing a "scire facias" to revive the FIRST judgment in the case (2002) which had gone "dormant" after TEN YEARS. (There can be only ONE judgment - this mess has THREE - over a period of SIX years or so!)
--
Lots more detail - at "home" - www.OpenJustice.US

Attached in below pages is:
*
1. MOTION FOR RECUSAL OF JUDGE BANNER - clearly indicating that my MOTION was to STOP Judge Banner from "ex parte" concocting a "Finding" - diametrically opposite of his extemporaneous finding of "well-intentioned" - and while Banner had NO JURISDICTION.
*
2. ASSIGNMENT OF JUDGE CHAPMAN - for Chapman solely to "do" a RECUSAL HEARING - a purely ADMINISTRATIVE assignment, i.e. NO jurisdiction to DO anything "in" the case. (There was of course no case left - case was OVER)
*
3. LETTER TO JUDGE CHAPMAN - that there be no "surprises" - i.e. me telling Chapman exactly why I had made my Motion for Recusal of Banner - i.e. that my Motion - was a "whistle blow", a CRY FOR HELP - and a complaint of CRIMES.

No. 00-619

The Law Offices of G. David Westfall, P.C
v. Udo Birnbaum
v. The Three Westfalls

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(

FILED FOR RECORD
In the 294th District Court.
Of Van Zandt County AM 7:56

Motion for Recusal of Judge Banner

This motion is by reason of Judge Banner **communicating ex-parte** with opposing counsel to plot a **vituperative finding** against Birnbaum's **conduct**, such finding diametrically opposite his prior finding of Birnbaum being **WELL-INTENTIONED**, such prior finding made **extemporaneously** and **in the heat of battle** and caught by the court reporter at the close of the Sanction Hearing on July 30, 2002.

Also by reason of Judge Banner having **previously retaliated** with a \$62,000 sanction against Birnbaum for having exercised his statutory and Constitutional Right to make a **civil RICO** pleading, i.e. protected activity. Judge Banner's words that he imposed such sanction because Birnbaum had made a civil RICO pleading were also caught by the court reporter at the same hearing.

Also by having demonstrated that he **cannot or will not** abide by statutory law, the Rules of Procedure, or the mandates of the Supreme Court of the United States. Details are in my prior Motion for Recusal (denied) and in my prior petition for writ of mandamus (denied) to make him go by the law.

Also for now trying to "undo" his finding of my [Birnbaum] being **well-intentioned**, and with opposing counsel paint me as some sort of monster to the judicial system, all while the cause is **on appeal** in the Dallas Fifth, and **while he has NO JURISDICTION**.

Details to follow shortly.

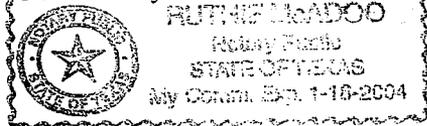
Udo Birnbaum
UDO BIRNBAUM, Pro Se
540 VZ CR 2916
Eustace, TX 75124
(903) 479-3929

STATE OF TEXAS
COUNTY OF VAN ZANDT

Before me, a notary public, on this day personally appeared Udo Birnbaum, known to me to be the person whose name is subscribed to above, and being by me first duly sworn, declared that the matters in his Motion for Recusal of Hon. Paul Banner are true and correct.

Udo Birnbaum
Udo Birnbaum

Given under my hand and seal of office this 30 day of September, 2003



Ruthe McAdoo
Notary in and for The State of Texas

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via Reg. Mail on this the 30 day of September, 2003 upon Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

Udo Birnbaum
UDO BIRNBAUM

46

FILED FOR RECORD
03 SEP 30 AM 7:56

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.

HEREIN lies the real reason! "civil RICO"

\$62,885 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?

"Oh HORROR of HORRORS - a Pro Se - with a CIVIL RACKETEERING counter-claim!"

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

**THE STATE OF TEXAS
FIRST ADMINISTRATIVE JUDICIAL REGION
ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE**

Persuant to Rule 18a, Texas Rules of Civil Procedure, I hereby assign the:

Honorable Ron Chapman ,

Senior Judge of The 5th Court Of Appeals

To The 294th District Court of Van Zandt County, Texas.

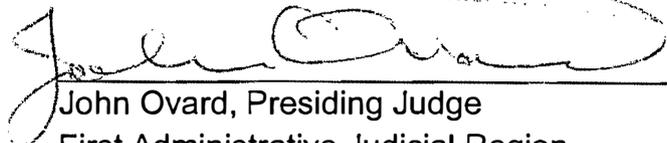
This assignment is for the purpose of the assigned judge hearing a **Motion to Recuse** as stated in the Conditions of Assignment. This assignment is effective immediately and shall continue **for such time as may be necessary for the assigned judge to hear and pass on such motion.**

CONDITION(S) OF ASSIGNMENT:

Cause No. 00-00619; Westfall vs. Birnbaum.

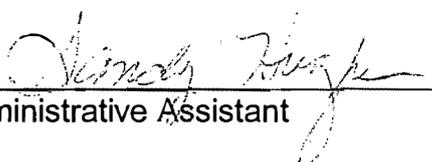
The Clerk is directed to post a copy of this assignment on the notice board so that attorneys and parties may be advised of this assignment, in accordance with the law.

ORDERED this 8th day of Oct, 2003



John Ovard, Presiding Judge
First Administrative Judicial Region

ATTEST:



Administrative Assistant

Assgn#

14797

(65)

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*
540 VZCR 2916
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?
6611 Hillcrest, PMB 305, Dallas, TX 75205-1301 214 373-3232 fax

Richard Ray (No. 95-63) 903 567-2051
300 S. Trade Days Blvd., Canton, TX 75103 903 567-6998 fax

Joel C. Elliott (No. 03-00460) 903 567-2051
300 S. Trade Days Blvd., Canton, TX 75103 903 567-6998 fax

File 95- 93 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>