

July 21, 1995

State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, TX 78711

Gentlemen:

Please advise me of the proper procedure to file a grievance. I would appreciate any forms or guidelines you have.

Sincerely,

*Udo Birnbaum*

Udo Birnbaum

Udo Birnbaum  
Rt. 1 Box 295  
Eustace, TX 75124

## *Filing a Complaint on a Texas Judge*

The State Commission on Judicial Conduct is the constitutional agency whose duty is to investigate and prosecute allegations of misconduct by judges in Texas. The Commission has authority over Texas judges, including appellate, district, county, justice and municipal level judges, visiting judges, and associate judges. The Commission has no jurisdiction over federal officials, mediators, arbitrators, or administrative judicial officers. The attached complaint form is used to open a file; it should be mailed to:

State Commission on Judicial Conduct  
P. O. Box 12265  
Austin, Texas 78711-2265

**Your complaint should state clearly what you believe the judge did that may be misconduct, together with sufficient facts to describe what occurred. Do not simply state conclusions: that is, do not say "the judge was rude." Describe fully instead what the judge did that you perceived as rude. If you have court documents or other written evidence of judicial misconduct, you should submit that evidence with your complaint. As the complainant, you may be contacted during the investigation for additional information. You could be called to testify in the event that the Commission files formal proceedings. The Commission may act on the basis of a news report or an anonymous complaint, although anonymous complaints are not encouraged. A telephone call is not sufficient grounds to open a file.**

If you file a complaint about a judge, you will be notified in writing that the complaint has been received and appropriate investigation has begun, and you will be notified in writing of the disposition of the complaint. If a public admonition, warning, or reprimand is ordered by the Commission, you will receive a copy of that document also.

**The Texas Constitution requires that all investigative activities of the Commission are confidential. This means that the Commission cannot confirm or deny that an investigation is underway or discuss the details of the investigation.**

If, however, the Commission votes "formal proceedings" to remove a judge from office, then, when the hearing is convened, it is a public hearing.

The Commission is an 11-member board of judges, citizens, and attorneys appointed by the Supreme Court, the Governor, and the State Bar of Texas for staggered six-year terms. The members are required by law to be from different areas of the state. The Commission meets at least six times each year, handling more than 100 cases at each meeting. Each and every complaint is reviewed, analyzed, investigated as appropriate, and presented to the Commission for its consideration and vote. **The Commission meetings are not open to the public or to complainants.** Some complaints can be handled quickly; others are more complex. Average time to conclude a case is 6.1 months. Judges under investigation are prohibited by law from privately communicating with Commissioners.

The duties of the Commission do not include appellate review. That is, the Commission cannot change the decision of any court and cannot give legal advice. **"Wrong" decisions by a judge are not misconduct, even if those decisions appear to fly in the face of the evidence or appear to be based upon "perjured" testimony, and even if the judge misapplies the law.** Appeal may be the only remedy for such a situation, or there may be no remedy. Granting of custody or visitation, or setting child support are generally decisions within the discretion of the trial court.

Any fine or sentence imposed by a judge in a traffic or criminal matter, if it is within the parameters set by law for the offense charged, is not usually a matter for Commission consideration. Even if the Commission were to find that a judge had imposed a sentence not permitted by law, the Commission would not be able to set aside the sentence; it is the responsibility of the complaining party to pursue his legal remedies, whatever they may be, through the court system. The Commission does not have the authority to order anyone to be released from jail.

Misconduct would include, but is not limited to the "improper or wrongful use of the power of his office by a judge acting intentionally, or with gross indifference to his conduct. It involves more than an error of judgment or a mere lack of diligence. Necessarily, the term would encompass conduct involving moral turpitude, dishonesty, corruption, misuse of office, or bad faith generally, whatever the motive." Examples of violations that might lead to disciplinary action would include intoxication on the bench, *ex parte* communication (with one side of a lawsuit without the other party present); written endorsement of a specific political candidate; use of judicial title or office for personal gain; bribery; ethnic slurs or profanity.

Each case is carefully and thoroughly reviewed and investigated as appropriate. The Commission considers and votes upon each matter on a case-by-case basis. Judges are held to a high standard of ethical conduct as prescribed by the laws of Texas, including the Canons of Judicial Conduct.

The Commission may vote to give a public or private admonition, warning, or reprimand. Also, a judge may be required to obtain additional legal or ethics education. In addition, the Commission has the power to suspend a judge, with or without pay, upon the judge's indictment by a grand jury for a felony or upon being charged with a misdemeanor involving official misconduct.

If the Commission determines that the allegations against a judge could warrant removal, or that a matter should be publicly litigated, it may vote "Formal Proceedings." In that event, the Supreme Court appoints a Special Master (usually a retired District Judge) and a full, open trial is held. The complainant is entitled to appear and give testimony. At the conclusion of the public trial, the Special Master reports "Findings of Fact" to the Commission. The members of the Commission may then dismiss, issue a public censure, or recommend that the judge be removed from office. If the Commission recommends removal, then the Supreme Court appoints a special seven-judge tribunal of appeals court judges randomly selected. If the Tribunal determines that removal (which may include a prohibition from ever sitting as a judge again) is appropriate, the judge may appeal to the Supreme Court of Texas under the substantial evidence rule.

STATE COMMISSION ON JUDICIAL CONDUCT

P. O. Box 12265
Austin, Texas 78711-2265

COMPLAINT FORM

Complainant: (name) Judge: (name)

(address) (type and number of court)

(city, state, zip) (city or county)

(telephone number)

Your Attorney: (name) Opposing Attorney: (name)

(address) (address)

(telephone number) (telephone number)

Status of Case: (pending, concluded or on appeal)

\*\*\*\*\*
The State of Texas }
County of }

Before me the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared to me well known, and who, after being by me duly sworn, deposes and says upon information and belief that: (State exactly, but briefly, what the judge did that you believe was misconduct. Type or print.)

(Complainant's signature)

Subscribed and sworn to me, this day of, 19.

(Notary's signature)

Notary Public in and for County, Texas

STATE COMMISSION ON JUDICIAL CONDUCT  
P. O. Box 12265  
Austin, Texas 78711-2265

COMPLAINT FORM

Complainant: Udo Birnbaum Judge: Tommy W. Wallace  
(name) (name)  
Rt. 1 Box 295 294th District Court  
(address) (type and number of court)  
Eustace, Texas 75124 Canton, Texas  
(city, state, zip) (city or county)  
(903) 479-3929  
(telephone number)

Your Attorney: Pro Se Defendant Opposing Attorney: Richard L. Ray  
(name) (name)  
 300 S. Hwy 19  
(address) (address)  
 Canton, Texas 75103  
 (903) 567-2051  
(telephone number) (telephone number)

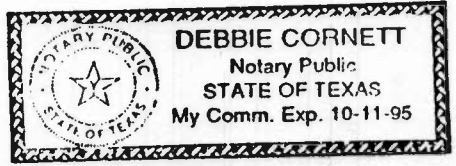
Status of Case: Pending  
(pending, concluded or on appeal)

\*\*\*\*\*  
The State of Texas }  
County of Van Zandt }

Before me the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Udo Birnbaum to me well known, and who, after being by me duly sworn, deposes and says upon information and belief that:  
(State exactly, but briefly, what the judge did that you believe was misconduct. Type or print.)

The judge has shown favoritism, suppressed evidence, obstructed my defense, and is derelict in his duties.

My complaint dated August 15, 1995 is attached and gives details.



Udo Birnbaum  
(Complainant's signature)

Subscribed and sworn to me, this 16<sup>th</sup> day of August, 19 95.

Notary Public in and for Van Zandt County, Texas  
Debbie Cornett  
(Notary's signature)

August 15, 1995

State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, Texas 78711-2265

Re: favoritism, dereliction of duty, suppression of evidence, obstruction of Defense, in 294th District Court, Van Zandt County, Texas.

Ladies and/or Gentlemen:

As a Defendant, I am held captive in 294th District Court because of the too close working relationship between the Court and an overly aggressive attorney. The Court has permitted the infiltration and manipulation of its Process to such an extent as to violate my Rights and to obstruct my Defense. I am forced to complain of the following:

1. FAVORITISM AND DERELICTION OF DUTY:

I was surprised and caught off guard by the Bench's discussion of a Default Judgment against me. Defendant had not been notified of such agenda, and no notice of such action was placed in File 95-63 until AFTER the hearing. Despite Defendant's Petition, the Court had allowed itself to be tricked into such a hearing.

2. FAVORITISM AND DERELICTION OF DUTY:

Upon my objection, the Court then proceeded to accept the Plaintiff's Original Petition at the same Hearing, even in the absence of the Plaintiff, and despite my Petition of false charges, and my specific request that Plaintiff be present.

3. FAVORITISM AND DERELICTION OF DUTY:

Despite common knowledge of the notorious tactics of the attorney to promote litigation, the Court was willing to accept his one man indictment and fabrications, yet was unwilling to act on my Petition complaining of false charges and assault by the attorney.

4. FAVORITISM AND DERELICTION OF DUTY:

Any proper action by the Court at any stage would have disposed of this whole matter. The attorney has been allowed to proceed without an evidentiary hearing.

5. FAVORITISM AND DERELICTION OF DUTY:

The Court has failed to correct its mistakes, even in the face of of a Sheriff's report, a crime report to the District Attorney, and my documentation of perjury by the attorney. There has never been an evidentiary hearing.

6. SUPPRESSION OF EVIDENCE:

The Court has refused all my requests for the transcripts of Hearings. What transpired before the Bench is pertinent and essential to my Defense.

7. FAVORITISM:

The Court has disregarded evidence and facts, and failed to initiate disciplinary actions against the attorney.

8. DERELICTION OF DUTY AND OBSTRUCTION OF DEFENSE:

The Court has ignored my pleas, petitions, requests, and complaints. The failure of the Court to act is impeding and obstructing my defense and extending my exposure and vulnerability.

I find it impossible to defend myself under such conditions. I request this panel to investigate, revue, and rule on my complaints.

Sincerely,

*Udo Birnbaum*

UDO BIRNBAUM  
ENGINEER, RANCHER  
PRO SE DEFENDANT  
RT. 1, BOX 295  
EUSTACE, TEXAS 75124  
(903) 479-3929

encl:

Request of Court 5-15-95  
Request of Court 5-31-95  
Request of Court 6-01-95  
Request of Court 6-26-95  
A Petition 7-07-95  
Request of Court 7-28-95

THE STATE OF TEXAS \*  
\*  
COUNTY OF VAN ZANDT \*

Before me the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared UDO BIRNBAUM to me well known, and who, after being by me duly sworn, deposes and says upon information and belief that these are his statements and that they are true and correct.

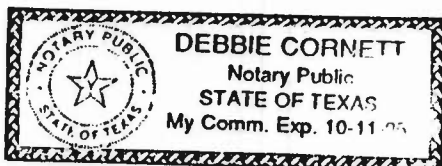
*Udo Birnbaum*

UDO BIRNBAUM

SUBSCRIBED AND SWORN TO BEFORE ME by the said Udo Birnbaum on this the 14 day of August, 1995.

*Debbie Cornett*

Notary Public, State of Texas



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**State Commission  
on Judicial Conduct**

December 19, 1995

Mr. Udo Birnbaum  
Route 1 Box 295  
Eustace TX 75124

Dear Mr. Birnbaum:

At its regularly scheduled meeting on December 8, 1995, the State Commission on Judicial Conduct considered your complaint against a Texas judge. The Commission found that the actions of the judge did not constitute judicial misconduct; accordingly, your complaint was dismissed.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert Flowers", written over a large, stylized circular flourish.

Robert Flowers

RF/nz