

No. 00-00619

THE LAW OFFICES OF	\$	IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C.	\$	
Plaintiff	\$	
v.	\$	294 th JUDICIAL DISTRICT
	\$	
UDO BIRNBAUM	\$	
Defendant / Counter-Plaintiff	\$	VAN ZANDT COUNTY,
	\$	
G. DAVID WESTFALL,	\$	
CHRISTINA WESTFALL	\$	TEXAS
STEFANI PODVIN	\$	
Counter-Defendants	\$	

PETITION TO SET ASIDE
ORDER REVIVING JUDGMENT

Hearing June 13, 2014 was in violation of Order of Assignment Assignment specifically precluded sitting as a “visiting magistrate”

To : Hon. Teresa Drum, District Judge 294th – in her magisterial capacity

At said hearing on June 13, 2014 for M / REVIVE JUDGMENT AND SCIRE FACIAS, “visiting judge” Paul Banner signed Order Reviving Judgment - of a judgment as he himself had rendered and signed long ago.

The Order of Assignment by the Presiding Judge, by Hon. Mary Murphy, however specifically reads “from this date **until plenary power has expired**”. It is elementary that a judgment requiring 10 years to go dormant, that clearly indicates that said hearing was **long after plenary power had expired** – i.e. the “assignment” of Banner is **patently and absurdly void**.

And as I learned from the very wording of Judge Mary Murphy’s little piece of paper “assigning” him, by googling on “**plenary power**”, a “scire facias hearing to revive” – is necessarily a purely MAGISTERIAL function. There is **nothing left to adjudicate**. The judgment is **final**.

(revival by an action on debt, however, would be an entirely different beast)

SUMMARY

“inconsistent with due process”

I filed Motion to Recuse Judge Banner, to keep Banner off this matter:

Banner stripped ALL of my text – also my 79 page 7,963KB CD Appendix

Left only my title – in his new blank he scribbled “I decline to recuse etc”

Immediately faxed his “pasting” to FAJR at 10:05 a.m. – per time stamp

“overruled” - reply from FAJR 10:32 a.m. Total time: **27 minutes**.

Indicated: FAJR Judge Mary Murphy **NEVER saw my Motion**.

All “clerk job”. Underlying Banner “assignment”: **VOID per se**

Underlying Order of Referral to warrant **any** “assignment” – **NONE**

PRAAYER

*“Oh, what tangled webs we weave
when first we practice to deceive”*

Judge Drum, the First Administrative Judicial Region has no authority to dump “visiting magistrates” upon me, in the name of your good court – and certainly NOT Judge Banner.

Judge Drum, in your magisterial capacity as 294th District Judge, you have the authority to simply set aside the Order Reviving Judgment as “inconsistent with due process” – i.e. no jurisdiction whatsoever.

And, in your magisterial capacity as a public servant, it is also your duty to set aside such wrongs.

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered **in violation of due process of law**, must be **set aside**, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994, 158 F.R.D. 278.

This the _____ day of _____, 2014

Respectfully,

UDO BIRNBAUM
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929
brnbm@aol.com

Attachments:

Order Reviving Judgment – by Judge Banner - 6-13-2014

Order of Assignment etc – by Presiding Judge Murphy - 5-21-2014

Order Setting Hearing – by Judge Banner – 5-29-2014

Notice of Setting for 6-13-2014 – set on 5-29-2014

Motion for Recusal of Judge Banner – with CD Appendix - 6-12-2014

“I decline to recuse myself etc” - by Judge Banner 6-13-2014 **10:05** a.m.

Order Denying Motion to Recuse – by Judge Murphy 6-13-2014 **10:32** a.m.

Application for Writ of Scire Facias – **THIS CAUSE** - 3-27-**2014**

ABSTRACT OF JUDGMENT – **THIS CAUSE** – 3-26-**2014**

WRIT OF EXECUTION – **THIS CAUSE** – 3-24-**2014**

SHERIFFS RETURN – **THIS CAUSE** – 3-28-**2014**

“Deputy unable to locate Judgment Debtor to make demand. Unable to locate Assets sufficient to satisfy the judgment”.