No. 14-00266

| | | |
|---|---|---|
| UDO BIRNBAUM | $ | |
| Plaintiff | $ | IN THE DISTRICT COURT |
| v. | $ | |
| | $ | |
| Christina Westfall, Stefani Podvin, and | $ | 294th JUDICIAL DISTRICT |
| Frank C Fleming | $ | |
| "The Westfall Bunch", reference only | $ | VAN ZANDT COUNTY, |
| | $ | TEXAS |
| THREE PIECES OF PAPER | $ | |
| At Issue ("defendants"?) | $ | |

# First Amended Original Petition to Declare three judgments as inconsistent with due process, unlawful, criminal, and void

Perversion of Court process - - by the Court - - "The Emperor has no Clothes!"
Cranking up a NON-CAUSE - - into $500,000 in "judgments" – unlawful on their faces

## Synopsis

This Petition is upon THREE "judgments" procured in this 294th in cause 00-00619 - - on their faces "inconsistent with due process" - - and to judge these "judgments" for what they are – mere pieces of paper, and void.

Hereby attached: Objections to Today's Court Charge – hand-written to perverted jury charge , Review of File and Order of Voluntary Recusal - Judge Teresa Drum, "judgments", Complaint of Official Oppression, Cease and Desist, Recusal of Judge Banner, etc. etc. at **www.OpenJustice.US**. (just google on *"damn courthouse criminals"* or *"presiding pumpkin"*)

And especially attached, the "start" of this unholy mess – the May 5, 1999 $20,000 **pre-paid non-refundable** attorney retainer agreement - - and the unconscionable Sept. 21, 2000 **sworn suit of Open Account** thereon.

Regarding the "judgments": **res judicata** does NOT apply to something with "mere semblance" - - and the ONLY issue is whether these documents are in **FACT** "inconsistent with due process of law", outright frauds, and outright criminal. Plaintiff demands determination by JURY.

## the duck test

If it looks like a duck, and quacks like a duck,
we have at least to consider the possibility that it is a duck.

There are THREE judgments, in the SAME cause, No. 00-00619, The Law Offices of G.W. Westfall, P.C. vs. Udo Birnbaum, TWO by Judge Paul Banner, then yet ANOTHER, by Judge Ron Chapman – **FOUR** years later!

1. $ 85,000 or so plus interest – Judge Paul Banner - ***"This judgment rendered April 11, 2002, signed July 30, 2002"***
2. "$67,000 or so plus interest – Judge Paul Banner – ***"This judgment rendered July 30, 2002, signed August 9, 2002"***
3. $125,000 or so plus interest – Judge Ron Chapman – ***"This judgment rendered April 1, 2004, signed October 6, 2006*** "

- ***"If there is insanity around – well, some of us gotta have it"***

## re "inconsistent with due process"

Re res judicata, collateral attack, Rooker-Feldman doctrine,
plenary power, statute of limitations, one bite at the apple, etc
Randomly off the web (emphasis added) – but the concept is pretty clear:

**Void judgment** may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in manner **inconsistent with due process of law** Eckel v. MacNeal, 628 N.E.2d 741 (Ill. App.Dist. 1993).

**Void judgment** under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties or acted in manner **inconsistent with due process of law** or otherwise acted **unconstitutionally** in entering judgment, U.S.C.A. Const. Amend. 5, Hays v. Louisiana Dock Co., 452 N.E.2d 1383 (Ill App. 5 Dist. 1983).

A **void judgment** is one which has a **mere semblance**, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, Henderson v. Henderson, 59 S.E.2d 227, (N.C. 1950).

**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.

**Black's Law Dictionary, Sixth Edition, p. 1574:**

> **Void judgment**. One which has **no legal force or effect**, invalidity of which may be asserted **by any person** whose rights are affected at **any time** and at **any place** **directly or collaterally**. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. **Judgment is a "void judgment"** if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner **inconsistent with due process**. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.
>
> [Black's Law Dictionary, Sixth Edition, p. 1574]

## So, the issue, the ONLY issue:

**Res judicata** does NOT apply to something having only **"mere semblance"** - - and the ONLY issue is whether these specific documents are in **FACT** "inconsistent with due process" and outright **UNLAWFUL**.

## Short note

This, First Amended Original Petition to Declare etc., is to rid me not only of the menace of "The Westfall Bunch" – but to officially and simply declare these pieces of paper - as - **just pieces of paper**.

## FIRST JUDGMENT ($85,000)

titled "Final Judgment" – Retaliation using the Jury as a Weapon
Always remember - - suit was for supposed "**sworn open account**"

Plaintiff's submitted first question was : **"Did Defendant, Udo Birnbaum fail to comply with the terms of the attorney client agreement?"**

Thereupon I submitted my issue, **"Was Udo Birnbaum's failure to comply excused – by Plaintiff's failure to comply with a material obligation of the same agreement?"**

Whereupon Judge Paul Banner, over my strong **Objection** (handwritten, filed, attached), **completely bypassed the jury**, by presenting **only** the following question, de facto **instructing the jury** that there **was** *"failure to comply"* and that I **was** *"still obligated financially"*.

QUESTION NO.1

"What sum of money, if paid now in cash, would fairly and reasonably compensate the Law Offices of G. David Westfall, P.C., for its damages, if any, that resulted from Defendant Udo Birnbaum's, **failure to comply** with the agreement between the Plaintiff and the Defendant?"

INSTRUCTION:
You are **instructed** that after the attorney-client relationship is terminated, a client or an attorney can have post termination obligations to each other, such as, **the client is still obligated financially** for the lawyer's time in wrapping up the relationship and the lawyer is still obligated to perform tasks for the client to prevent harm to the client during the termination process."

Never mind the fact that the cause was brought as a sworn suit on an **open account**, which of course has the elements of **sale and delivery** of **goods and services**.

There was of course no open account at all – or account of any kind - Only a letter memorandum of understanding regarding expectations regarding **accounting** – for the $20,000 pre-paid **non-refundable RETAINER** – of an **attorney** - to make time available - - the letter itself so states! It even named the only right of Plaintiff – the **right to terminate** for future non-payment (above the $20,000 **credited**).

Retaining a lawyer does not constitute "sale and delivery" of "goods and services" a la "open account"! Not only was the jury not asked – but they were **actively defrauded** by Judge Paul Banner himself.

Fraud upon the Court, by the Court, by Judge Paul Banner, and thru the prism of the other "judgments" – nothing less than **RETALIATION** using the **JURY AS A WEAPON**.

And the blatant jury "instructions" as to the ***"obligations to each other"*** – in ***"wrapping up"*** is completely out of line with sworn **open account**.

## SECOND JUDGMENT ($62,885)

titled "Order on Motion for Sanctions" -- Award of *"**punitive** damages" "which **the Court** seeks"* – plum **unlawful** in **CIVIL** process! Also was **jury** case???

The following from the Findings of Fact and Conclusions of Law by the **JUDGE** re this SECOND "judgment". 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-claim!) is a First Amendment Right. **ANY** adverse

action – by a public official – for exercising a Right (and he 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. Plum mad. This guy needs to be gotten off the bench!

> *"In assessing the **sanctions**, the Court has taken into consideration that although Mr. Birrnbaum 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, Sanction hearing July 30, 2002)

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

## The THIRD "judgment" – plum INSANE

titled "Order on Motion for Sanctions" ($125,770, exactly DOUBLE $62,885)

Judge Ron Chapman was assigned solely to hear a Motion for Recusal – TWO (2) YEARS **after** Final Judgment – a purely **administrative**

assignment at that - **no personal jurisdiction whatsoever**. The case was OVER! Judge Chapman did not hear an IOTA in the case! But … …

B. … … $124,770.00 … … **punitive** damages … deterrent … … from **committing** … … in the **future** p2
7. … … **delusional belief** held only inside the mind of Birnbaum p3
19. … … relief which **the Court** seeks … stop this litigant … **others** similarly situated … **filing** … **lawsuits** … **counter-claims** … **new lawsuits**. p3
20. … … **punitive** damage … narrowly tailored … conduct to be **punished** p5
21. … … intimidation, and **threats** p5
8. … … **punitive** sanction … … **filing** … … $124,770.00 p6
9. … … **punitive** damages is directly related to the harm done. p6
10. … … **punitiv**e damages is not excessive p6
11. … … **punitive** damages … … relief sought **by the Court** … … and others … from **filing** … … **lawsuits**. p7
12. … … [$124,770] **punitive** damage … narrowly tailored to the harm done p7
13. … … **punitive** damages … … narrowly **tailored** to exactly **coincide** p7

Same "inconsistent with due process". Plum insane. Was not the trial judge – cannot sign **ANY** judgment under **ANY** circumstances! This guy also needs to be gotten off the bench!

## Summary and Conclusion

The issue in **this cause** – is NOT whether there was fraud involved in another cause. (there was)

The issue in **this cause** – is NOT whether these documents in another cause – were indeed issued by a court.

The issue in **this cause** – is NOT whether the matter regarding another cause - is outside or inside or sideways of some statute of limitations.

The issue **in this cause** – is NOT whether this suit is a collateral attack on a judgment or judgments or has been settled by res judicata, estoppel, latches, Rooker-Feldman Doctrine, or whatsoever, ad nauseam.

There is no "judgment" or "judgments" to have this stuff on. The three "judgments" above have a "mere semblance", but are void – and no

such stuff attaches to these pieces of paper – i.e. “inconsistent with due process”.

## PRAYER

Texas courts were not established for the purpose of cranking crap into $500,000 pieces of paper parading as “judgments”.

REGARDLESS of exact details - it is still PERVERSION OF COURT PROCESS - - no cause to start with – perpetrated by officers of the court – i.e. EXTRINSIC FRAUD.

Plaintiff prays that these “judgments” be “judged” for exactly what they are – “inconsistent with due process” – and VOID.

And again, Plaintiff demands determination by JURY.

_____

Udo Birnbaum, Pro Se
540 VZ County Road 2916
Eustace, TX 75124
903-479-3929
brnbm@aol.com

**attached – physical:** (also at www.OpenJustice.US)

Attorney Retainer – for $20,000 **non-refundable pre-payment**
Original Petition – suit thereon - claiming commercial **open account**
Objections to Today’s Jury Questions - verbal, handwritten, file-stamped
Review of File and Order of Voluntary Recusal – by Judge Teresa Drum

**attached – by reference:** (available at www.OpenJustice.US)

FIRST Judgment – “Final Judgment” - annotated
SECOND Judgment – “Order on Motion for Sanctions” - annotated

SECOND Judgment – "Findings of Fact and Conclusions of Law" – ann.
THIRD Judgment – "Order on Motion for Sanctions" - annotated
"Securing Execution of Documents by Deception"
"Complaint of Official Oppression"
"Cease and Desist"
"Motion for Recusal of Judge Banner" – latest, same subject matter
ALSO – all that fraudulent BEAVER DAM SCHEME stuff
ALSO - EVERYTHING ELSE openly available at www.OpenJustice.US

THIS is the document - and the ONLY document - upon which judgments of $85,000, another for $65,000, and yet another for $125,000, all plus 10% interest since 2002 - all in the SAME case - were assessed against Mr. Birnbaum.
Total TODAY - $700,000 or so.

ALL fraudulent legal fees - and fraudulent legal fees - for collecting on fraudulent legal fees. "Smoke OLD MOLD - the ONLY cigarette - that is ALL filter"

LAW OFFICES OF
G. DAVID WESTFALL, P.C.
*A Professional Corporation*
714 JACKSON STREET
700 RENAISSANCE PLACE
DALLAS, TEXAS 75202

www.OpenJustice.US

Telephone: (214) 741-4741
Fax: (214) 741-4746

May 5, 1999

This "agreement" is the ONLY agreement ever between the parties.
It was upon THIS agreement that G. David Westfall brought a SWORN suit claiming an additional $18,000 due on an unpaid "OPEN ACCOUNT". (above the $20,000 PREPAID non-refundable "retainer-fee".
FRAUD - right out of the chute.

Mr. Udo Birnbaum
Route 1 Box 295
Eustace, Texas 75124

RE: Birnbaum v. Ray, et al.

This is clearly NOT an "open account" - but merely a prepaid "non-refundable retainer fee".

Dear Mr. Birnbaum:

You have requested that I act as your attorney in the above referenced suit pending in the U.S. District Court for the Northern District of Texas. This letter sets forth the agreement concerning our representation of you. This agreement shall become effective upon our receipt of a counter-signed copy of this agreement and upon the payment of the retainer.

More next pages

You agree to pay our firm a retainer fee of $20,000.00, which is non-refundable. This retainer is paid to us for the purpose of insuring our availability in your matter. The retainer will be credited against the overall fee in your matter.

We have agreed to handle this matter on an hourly basis at the rate of $200.00 per hour for attorney time and $60.00 per hour for paralegal time. In addition, we have agreed that you will reimburse us for expenses incurred on your behalf, such as, but not limited to, filing fees, deposition expenses, photocopy expenses, travel expenses, and employment and testimony of expert witnesses, if necessary. I will not obligate you for any large expense without your prior approval. I would ask and you have agreed to pay expenses as they are incurred.

After the $20,000.00 has been expended in time we will then operate on a hybrid type of agreement wherein we will lower our hourly rate to $100.00 for

does NOT use the phrase "IS DUE" as is used for BILLING on an "Open Account" - or for that matter - ANY account!

This is the ONLY "right" retained for "non-payment". "expressio unius est exclusio alterius"
(to name one is to exclude all others)

attorney's time and $30.00 an hour for paralegal time, but then charge as an additional fee a 20% contingency of the gross recovery in this case.

You will be billed monthly for the time expended and expenses incurred. Payment of invoices is expected within 10 days of receipt unless arrangements are made in advance. We reserve the right to terminate our attorney-client relationship for any of the following reasons:

clearly NOT "open account"

1. Your non-payment of fees or costs;

2. Your failure to cooperate and comply fully with all reasonable requests of the firm in reference to your case; or

3. Your engaging in conduct which renders it unreasonably difficult for the firm to carry out the purposes of its employment.

Fees and costs, in most cases, may be awarded by the Judge against either party. Sometimes, the court makes no order for fees or costs. Because fees and costs awards are totally unpredictable, the court's orders must be considered merely "on account" and the client is primarily liable for payment of the total fee. Amounts received pursuant to any court order will be credited to your account.

You have represented to me that the purpose of this litigation is compensation for damages sustained and that you are not pursuing this matter for harassment or revenge. In this regard, if settlement can be reached in this case whereby you will be reimbursed for all actual damages and I will be paid for my services, you agree to accept the settlement. Notwithstanding this agreement, however, I will not settle this cause of action without your prior approval and any settlement documents must bear your signature.

Inasmuch as I am a solo practitioner, we have agreed that I at my sole discretion may hire such other attorneys to assist in the prosecution of this matter as may be reasonably necessary.

Ever wonder what is wrong with our courts?
*
Just read this stuff - UNBELIEVABLE - but real.

FRAUD - right out of the chute - and ever after!

I will keep you informed as to the progress of your case by sending you copies of documents coming into and going out of our office. Every effort will be made to expedite your case promptly and efficiently. I make no representations, promises or guarantees as to the outcome of the case other than to provide reasonable and necessary legal services to the best of my ability. I will state parenthetically, from what you have told me, you have a very good case. Various county officials and others involved in this matter should never have done what they apparently did. I will explain in detail the ramifications and affect of Section 1983 and Civil Rico when we next meet.

Please retain a copy of this letter so that each of us will have a memorandum of our understanding concerning fees and expenses.

A "memorandum of our understanding" - regarding a "retainer agreement" for a lawyer - regarding "expectations" - does NOT constitute the opening of a commercial "OPEN ACCOUNT" for the purpose of dealing with systematic "SALE AND DELIVERY" of "GOODS OR SERVICES"!

Sincerely yours,

David Westfall

Accepted: Udo Birnbaum Date: 5-5-99

Udo Birnbaum

Ever wonder what is wrong with our courts?

www.OpenJustice.US

No. 00-00619

| | | |
|---|---|---|
| THE LAW OFFICES OF G. DAVID WESTFALL, P.C. | )( | IN THE DISTRICT COURT |
| vs. "The Law Offices" | )( | 294th JUDICIAL DISTRICT |
| UDO BIRNBAUM | )( | VAN ZANDT COUNTY, TEXAS |

FILED FOR RECORD
00 SEP 21 PM 4:08
NANCY YOUNG
DIST. CLERK VAN ZANDT CO. TX
DEP

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE LAW OFFICES OF G. DAVID WESTFALL, P.C., Plaintiff, complaining of UDO BIRNBAUM, hereinafter referred to as Defendant, and for cause of action would respectfully show the court the following:

Birnbaum was retaining attorney G. David Westfall. That "Law Offices" mumbo-jumbo in the "retainer" - was already intent to harm Birnbaum by a fraudulent "open account" suit!

I.

Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas.

principal

Defendant is an individual whose residence is in Eustace, Van Zandt County, Texas and may be served with process at Route 1, Eustace, Texas.

ABSOLUTE FRAUD - retained G David Westfall. One CANNOT retain a "LAW OFFICE"!

"sale and delivery" of "goods or services"

II.

On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas.

the attorney retainer agreement has NO SUCH WORDS- only "we reserve the right to terminate for non-payment"

watch the wording

III.

The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business. In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of $18,121.10, being a reasonable charge for such services. A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit "A". Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the

this is legal wording for "open account"

"prices charged" - sounds like a lumber yard - charging for the stuff sent to a builder - on "OPEN ACCOUNT. "you order - we send - and put it on your bill! "SALE AND DELIVERY OF GOODS"

again, no such right established by the lawyer "retainer agreement"

standard "open account" wording

account to Plaintiff's damage in the total amount of $18,121.10. All just and lawful offsets, payments and credits have been allowed.

IV.

Plaintiff is entitled to recover reasonable attorney's fees incurred in the filing of this suit. Demand for payment from Defendant has been made. Plaintiff requests reasonable attorney's fees as determined by the trier of fact.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer and upon final hearing, Plaintiff have judgment against Defendant for $18,121.10 plus prejudgment and postjudgment interest at the highest rate allowed by law, attorney's fees, costs of court and for such other and further relief, both at law and equity, to which Plaintiff may show himself to be justly entitled.

Cause clearly brought as an "open account".
The "elements" of an "open account":
1. That an open account indeed existed
2. That there was indeed "sale and delivery of goods or services"
3. That the goods or services had "worth".
*
NONE of this was submitted to the jury!
Judge Paul Banner - over objection by Birnbaum - instead POISONED the jury:
*
QUESTION 1: "How much does Birnbaum owe by his FAILURE TO ABIDE by the agreement?" (my paraphrase - details in later documents)
Intentionally defrauded the jury. FRAUD UPON THE COURT - BY THE COURT

Respectfully submitted,

G. David Westfall
Law Offices
714 Jackson Street
Suite 217
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746

Ever wonder what is wrong with our courts? KEEP LOOKING

No 00-619



Law Offices of Westfall

v.

Birnbaum

294th Dist Ct

Van Zandt

this was a desperate last moment effort - just after I was presented with Judge Paul Banner's Court's Charge - just before 20 minute "closing argument" - to put what Banner had done - "on the record". (file stamp below)`



Birnbaum's Objections to Today's Plaintiff's Court charge.

1. ~~Pltf Dew~~ Elimination of Pl's Initial Question 1 with current phraseology does not allow for Defendant's Question as to whether he is excused by Plaintiff's prior failure to abide by a material issue in the same contract (FAILURE TO BILL MONTHLY), Not get HIS APPROVAL BEFORE LARGE EXPENSE)

Served today, 4-11-02 by hand to Fleming

Exhibit "D"

# TERESA A. DRUM

**DISTRICT JUDGE**

**294th Judicial District Court**

**121 East Dallas Street**
**Room 301**
**Canton, Texas 75103-1465**
**Tel: (903) 567-4422 Fax: (903) 567-5652**

Pamela Pearman
Court Administrator


| | | | |
|---|---|---|---|
| To: | Judge Banner | Via Facsimile | 903-845-5982 |
| | Hon. Frank Fleming | Via Facsimile | 469-327-2930 |
| | Mr. Udo Birnbaum | Via Email | |
| From: | Pam Pearman | | |
| Date: | September 29, 2014 | | |
| Subject: | Cause No.00-00619, The Law Office of G. David Westfall Vs. Udo Birnbaum | | |

Please find Review of File and Order of Voluntary Recusal on the above Referenced cause number.

Thank You

Pam Pearman

First Administrative Judicial Region Judge Mary Murphy - what about all the horrible unlawfuls Judge Drums meticulously detailed to YOU as part of this "voluntary recusal"? "Motion for Sanctions for $62,885.00" and "PUNITIVE Sanction of $124,770.00"
You KNOW that a court cannot UNCONDITIONALLY PUNISH by civil process!
And so you RE-ASSIGN the very judge - who committed all these crimes! SHAME

**Cause No: 00-00619**

| | | |
|---|---|---|
| **THE LAW OFFICE OF** | **§** | **IN THE DISTRICT COURT** |
| **G. DAVID WESTFALL, P.C.** | **§** | |
| **Plaintiff** | **§** | |
| **vs.** | **§** | **294th DISTRICT COURT** |
| | **§** | |
| **UDO BIRNBAUM** | **§** | |
| **Defendant** | **§** | **VAN ZANDT COUNTY, TX** |

## REVIEW OF FILE AND ORDER OF VOLUNTARY RECUSAL

In reviewing this rather voluminous file, I find in a nutshell that on September 21, 2000, Plaintiff, THE LAW OFFICE OF G. DAVID WESTFALL, P.C. (hereinafter referred to as "WESTFALL"), filed suit complaining of Defendant, UDO BIRNBAUM (hereinafter referred to as "BIRNBAUM"). On October 3, 2000, Defendant, BIRNBAUM, filed Defendant's Answer, Counterclaim and Cross-Complaint. Defendant, BIRNBAUM filed counterclaims and cross-claims against G. DAVID WESTFALL, CHRISTINA WESTFALL, (hereinafter referred to as "CHRISTINA") and STEFANI PODVIN (hereinafter referred to as "PODVIN").

On January 26, 2001, John Ovard, Presiding Judge, First Administrative Judicial Region appointed the Honorable Paul Banner, pursuant to Art. 74.056 of the Texas Government Code.

On August 20, 2001, Third-Party Defendants, CHRISTINA and PODVIN filed motions for summary judgment. On September 7, 2001, a hearing was had on Third-Party Defendants' motions for summary judgment.

On or about September 10, 2001, it appears that Defendant, BIRNBAUM filed a Motion for Recusal of Hon. Paul Banner. On September 21, 2001, Judge Ovard appointed the Honorable Ron Chapman, pursuant to Rule 18a, to hear the aforementioned Motion for Recusal of Hon. Paul Banner. On October 1, 2001, a hearing was had on Defendant's Motion for Recusal of Hon. Paul Banner.

In addition on September 10, 2001, the Defendant, BIRNBAUM, filed a Notice of Appeal of the granting of CHRISTINA and PODVIN's motion for summary judgment and a Writ of Mandamus with the Twelfth Court of Appeals. On November 7, 2001, the Twelfth Court of Appeals denied Defendant BIRNBAUM's Writ of Mandamus. On March 11, 2002, the Twelfth Court of Appeals dismissed Defendant BIRNBAUM'S appeal for want of prosecution.

It is PLUM UNLAWFUL - for CIVIL process to unconditionally PUNISH. Can only "coerce" - has to provide "keys to your own release" to purge the contempt - by complying with some Order or mandate. U.S. Supreme Court, no less

On November 13, 2001, Presiding Judge Paul Banner signed Order Sustaining Motions for Summary Judgment, sustaining the motions for summary judgment of CHRISTINA and STEFANI.

On or about April 8, 2002 a jury trial began and on April 11, 2002, the jury returned with a verdict for Plaintiff WESTFALL against Defendant BIRNBAUM for $59,280.66.

On May 9, 2002, Third Party Defendants WESTFALL, CHRISTINA and PODVIN filed a Motion for Sanctions.

On July 30, 2002, Final Judgment was signed.

In addition on July 30, 2002, Judge Banner heard and granted Third Party Defendants WESTFALL, CHRISTINA and PODVIN's Motion for Sanctions for $62,885.00.

On August 28, 2002, Defendant BIRNBAUM filed a Motion for New Trial.

On September 3, 2002, Defendant BIRNBAUM filed a Notice of Appeal of both the Final Jury Verdict as well as the Order for Sanctions.

On September 30, 2003, Defendant, BIRNBAUM filed a Motion for Recusal of Judge Banner.

On October 23, 2003, the Fifth Court of Appeals affirmed the trial court. No writ was filed with the Texas Supreme Court.

On April 1, 2004, a hearing was heard on Defendant BIRNBAUM's Motion for Recusal of Judge Banner. Judge Chapman was assigned to hear the Recusal. Judge Chapman also heard the Motion for Sanctions filed by WESTFALL, CHRISTINA and STEFANI.

On October 24, 2006, Judge Chapman signed Order on Motions for Sanctions denying Defendant's Motion for Recusal of Judge Banner and granted Third-Party Defendant's Motion for Sanctions for $1,000 in Attorney's Fees and exemplary and/or punitive sanction of $124,770.00.

On December 2, 2006, in the 294th District Court, cause No:06-00857, BIRNBAUM filed suit against Judge Paul Banner and Judge Ron Chapman. Judge John McCraw was assigned to hear. A plea to the jurisdiction was granted on August 25, 2009.

On March 27, 2014, CHRISTINA WESTFALL, as successor in interest of a final judgment filed an Application for Writ of Scire Facias to Revive the Judgment.

On June 12, 2014, Defendant BIRNBAUM filed a Motion for Recusal of Judge Paul Banner.

Cannot do PUNITIVE by CIVIL process. Period. U.S. Supreme Court, various

assigned ONLY to do recusal. No jurisdiction to hear Motion for Sanctions

Also, access to the courts is a First Amendment Right - and a public official PUNISHING thereon - is official oppression per se

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NO. Not because his authority had "lapsed" - but because he NEVER had it. Was assigned specifically to do a recusal hearing - and the assignment specifically stated his assignment terminated upon him having ruled on that.

On June 13, 2014, Defendant BIRNBAUM's Motion for Recusal of Judge Paul Banner was denied and the Order Reviving the Judgment was signed.

On August 20, 2014, Defendant BIRNBAUM filed a Petition to set aside Judgments alleging among other things that when Judge Chapman signed the Order on Motions for Sanctions on October 24, 2006, the Court was without jurisdiction as his authority to hear the Motion for Sanctions had lapsed. In addition, BIRNBAUM alleges the Court having granted third-Party Defendants, CHRISTINA and PODVIN motions for summary judgment on November 13, 2001, third-party Defendants CHRISTINA and STEFANI lacked standing to bring a Motion for Sanctions on July 20, 2002 and April 1, 2004.

On January 1, 2003, I, Teresa A. Drum, was sworn in as Judge of 294th District Court. Defendant, UDO BIRNBAUM, was and still is a personal friend of mine. He was instrumental in my campaign for the 294th District Court. In addition, for several years Mr. Birnbaum attended a Sunday School class which I taught at Lakeside Baptist Church. Upon taking the bench, I voluntarily recused myself from all matters regarding Mr. Udo Birnbaum because my impartiality might reasonably be questioned.

Accordingly, I, Judge Teresa A. Drum, voluntarily recuses herself from any and all rulings in this cause.

SIGNED this 29th day of September, 2014.

Hon. Teresa A. Drum

Judge Mary Murphy:

Did you INTENTIONALLY not notice all the horrible unlawfuls as documented in Judge Drums meticulous details referred to YOU as part of this voluntary recusal?

Did not even the phrases therein of "Motion for Sanctions for $62,885.00" and "PUNITIVE Sanction of $124,770.00" - move YOU to do something about this?

Both YOU, Judge Drum, Judge Banner, and Judge Chapman KNOW that a court cannot UNCONDITIONALLY PUNISH by CIVIL process - can ONLY "coerce".

This matter must, however, have rung your bell - why else would you have jumped through hoops to come up with your specifically tailored "assignment" for this mere case - to include the phrase "regardless of whether the proceedings involve matters that arise after the original judgment or final order"?

And all that fancy formatting - instead of the ordinary "fill in the blanks" as in your previous assignment "till plenary power expires" - which it had - some time in 2002. You were very careful NOT to do that again.

But NOW - stop this outrage - CEASE AND DESIST - IMMEDIATELY