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No. 00-00619

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

MOTION FOR RECUSAL OF JUDGE PAUL BANNER

"The [$67,000] sanctions … which the Court seeks … filing … lawsuits"

First Amendment Right - - - Official Oppression Per Se

To: Judge Mary Murphy – Presiding Judge First Administrative Region

re: Hearing June 13, 2014 10:00 a.m. for scire facias – to revive dormant judgment

COMES NOW UDO BIRNBAUM to show exactly how and why Mr. Banner, ***"and others like him"***, to re-use Mr. Banner's own poison toward me, needs to be kept off this case – and permanently off the bench – to prevent him ***"and others like him … … from committing such … … in the future"***, again Mr. Banner's, and Judge Ron Chapman's own phrases.

Background

There exist **THREE (3) judgments** in this cause, going way past where Mr. Banner's "impartiality might reasonably be questioned". Just read these documents – unbelievable – but there they are.

"The Westfalls" (definition later) are at the same time trying to **revive the first judgment**, while simultaneously doing **execution on the third judgment** – the full kebob, Abstract of Judgment, filing same with the County clerk to create liens against me, and Writ of Execution to the Sheriff to seize my property – **all at the same time**. There can be only ONE judgment, so ... … … .

And Judge Banner having made (or having to have made, or wanting to make) **Findings of Fact and Conclusions of Law**, regarding the **second judgment**, in a **jury case**? And more than a YEAR later, on Sept. 3, 2003, after a verdict on April 11, 2002? That takes the cake. Issues of fact of course needed to have gone **to the jury**!

This Findings is a CYA for Banner's underlying stinking skeletons, i.e. that he **did not use the jury** – not for the first judgment, nor for the second, nor did Judge Ron Chapman for the third. This document, Judge Banner's **Findings**, (together with **three** judgments) is the **smoking gun** –
"The [$67,000] sanctions … which the Court seeks … filing … lawsuits"
However, access to the Courts is a First Amendment Right. That makes it official oppression per se. Also, **unconditional** punishment by civil process is unlawful. But first, to put some meat on these old skeletons:

1. First Judgment

1. $ 85,000 or so plus interest – Judge Paul Banner - ***"This judgment rendered April 11, 2002, signed July 30, 2002"*** - to a "The Law Offices of G. David Westfall, P.C.", now **dormant** since 2012, the subject of a current "Motion to revive etc." at immediate issue.

2. Second Judgment

2. "$67,000 or so plus interest – Judge Paul Banner – ***"This judgment rendered July 30, 2002, signed August 9, 2002"*** – to a Christina Westfall and daughter Stefani Podvin ("The Westfalls") – **unconditionally punishing** me for making counter- claims upon **being sued**:

Judge Banner's true "issue" – he did not like my **civil RICO** counterclaim!
Was of course a jury trial. His below "issue" needed to go to the jury

*"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.* **Court Reporter** Transcript, hearing July 30, 2002.

Here is Judge Banner's cover-up. All made up.
One YEAR later. I am no longer "**well-intentioned**"!
This was jury trial. Needed to go to the jury!

"14. The [$67,000] 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.

"15. The [$67,000] amount of the punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.

"… … to stop … … and others similarly situated from filing frivolous lawsuits."

"… … punitive** sanction **… … for the filing … … lawsuit …"

"… … punitive … … to stop … … , and others like him … filing … … lawsuits."

"… … delusional belief held only inside the mind of Birnbaum"

"to stop Birnbaum and others similarly situated"

"delusional belief held only inside the mind of Birnbaum"

"was engaged in by Birnbaum with intent to harm"

"to stop this litigant and others similarly situated"

"to stop Birnbaum and others like him"

"concludes as a matter of law ... ... was brought for harassment"

"the award of exemplary and/or punitive damages is not excessive"

"... punitive damage award is narrowly tailored to the harm done"

"is a delusional belief held only inside the mind of Birnbaum"

" … … etc, etc, … … ad nauseam

3. Third Judgment

Very important Note: Judge Banner participated as a **witness** before Judge Ron Chapman on a Motion to recuse Judge Banner – and together with the Westfalls' attorney, a Frank C. Fleming, they "worked me over" as detailed in my **"Happy April Fools Day"** – contemporaneously written and part of this document.

3. $125,000 or so plus interest – Judge Ron Chapman – ***"This judgment rendered April 1, 2004, signed October 6, 2006*** – to a Christina Westfall

and daughter Stefani Podvin ("The Westfalls") – **unconditionally punishing** me for making counter- claims **when I was sued**:

"14. The [$125,000] 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.

"15. The [$125,000] amount of the punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.

" … … etc, etc, … … ad nauseam (same stuff, de ja vu all over again – Pogo)

4. Intermediate Summary

There exist THREE "judgments" in this cause. The last TWO stink to high heaven, and by their very existence so cloud the integrity of the entire proceedings in this cause that – I do not even know how to say it.

In any case, the modus operandi that is clear in the last TWO – is more hidden in the FIRST – but it is also there.

5. Findings of Fact and Conclusions of Law

re Banner's second judgment – titled "Order"

"the smoking gun"

QUESTION: A judge making "Findings" – on his own "Order"? Come on.
ANSWER: Simple answer – Banner needed "Findings" – cause he got caught with a skeleton, a **second judgment** at that – that he had done **without a jury** - in a jury cause.

Bingo, another skeleton produced (this Findings, the "smoking gun") to cover up his earlier skeleton – the **second judgment**!

(Note: When there is no jury, i.e. a bench trial, the parties are entitled to a Finding from the judge, and that is what and **why I demanded**. My demand, and I myself, became Banner's problem, two times over. You can tell – just read what he "found", upon my demanding a Finding. Certainly, no more **"well-intentioned"**!)

*"The above-captioned cause came on for a **trial to a jury** on April 8, 2002." (par1 line1)*
*"The combined issues of **counter-claim** on frivolous lawsuit and the Rule 13 Motion were **tried** together **to the Court** on July 30, 2002". (par2 line4).*

QUESTION: Try "***to the Court***" (i.e. a bench trial), in a **jury case**?
QUESTION: A **second trial** – at the bench – after **jury verdict** on April 11, 2002?
QUESTION: There was **no counter-claim**. Never. Even if there had been, it would have had to go to the jury – not ***"tried … to the Court"***. Another skeleton.
QUESTION: Why is someone (The Westfalls) entitled to a judgment, when they NEVER asked for such. ANSWER: They are NOT.

"14. The [$67,000] 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.

QUESTION: ***"which the Court seeks"***? Why is this NOT official oppression?
ANSWER: It IS. A public official taking adverse action against someone for exercising his First Amendment Right of access to the courts – satisfies all the elements of official oppression.

*"After considering the pleadings, the evidence presented at the trial to the jury as well as the **evidence** presented at the summary judgment hearings and the **sanctions hearing before the Court**, in response to a request from the Defendant / Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows: "*

QUESTION: Wasn't this a **jury** cause? So why does Banner try **"before the Court"**?
ANSWER: Unconscionable lawlessness as a modus operandi.

6. Judge Banner's first judgment

Retaliation using the JURY AS A WEAPON

Yes, Judge Banner had a **jury sitting there**, but **did not use it**. I do not at this time want to belabor this matter, except for the following:

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 Banner **completely bypassed the jury** on this **essential element**, by presenting **only** the following question, de facto **instructing the jury** that I had **failed to abide**.

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?"*

Never mind the fact that the cause was brought as **"sworn open account"**, having the elements of **sale and delivery** of **goods and services**.

Same modus operandi by Judge Banner, fraud upon the Court, by the Court, and thru the prism of the **other TWO judgments.** nothing less than **RETALIATION** using the **JURY AS A WEAPON**.

7. Prayer

thru the prism of the <u>second judgment</u> and <u>third judgment</u>

Because of the entangled nature of all these "events" over a TWENTY year period, I suggest the following:

1. Scan the attached documents – this stuff is REAL. It is NOT ***"a delusional belief held only inside the mind of Birnbaum"***, as per Judge Banner and Judge Chapman "<u>Findings of Fact</u>" and "<u>Finding of Law</u>".

2. Read my "<u>Happy April Fools Day</u>" . Judge Banner and Chapman conduct is **<u>plum asinine</u>** – no other way to phrase it.

3. This is official **<u>oppression per se</u>** - - a public official **<u>punishing</u>** – for the exercise of a First Amendment right to speak out in court.

4. This is also **<u>outright retaliation</u>** – as indicated by the **<u>astronomical</u>** fines.

<u>Flagrant lawlessness</u> – so obviously inconsistent with what is right, proper, and decent.

This the 12TH day of June, 2014

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

Attachments:

As a single PDF file – on a CD. Trying to avoid "paper overload".

(in this order, not individually indexed or numbered)

Motion for Recusal of Judge Paul Banner – this document – here as PDF

Docket Sheet – in this cause – Judge Banner, Judge Chapman

Application for writ of scire facias – now set for June 13, 2014

Jury Question Issues – **first judgment -** not consistent with due process

Order on Motion for Sanctions - **second judgment** – by Judge Banner

Findings of Fact and Conclusions of Law - **second judgment** – by Banner

Order on Motion for Sanctions - **third judgment** – by Judge Chapman

Abstract of Judgment – **of third judgment** – of Chapman Sanction

Writ of Execution - **of third judgment** – of Chapman Sanction

Sheriff's Return – **of third judgment** – of Chapman Sanction

Happy April Fools Day – re Banner, Chapman – plum **asinine** conduct

www.OpenJustice.US - supporting documents – top web page as PDF

Certificate of Service

This document filed with the Clerk as indicated by their date stamp, and to be handed to opposing council Frank C. Fleming prior to the hearing set for June 13, 2014, 10:00 a.m. to revive the **first judgment**, else mailed, faxed, or emailed to his address.

Udo Birnbaum