

To: Chris Martin
Van Zandt DA

Complaint of Official Oppression
introductory package.

There are THREE (3) documents, each a **rendered judgment**, in the **same cause**, evidencing by their own words, and each **other's presence**, unlawful assessments against me. Looked at individually they show defrauding of due process. Looked at in totality, they show a pattern of retaliation for having exercised a First Amendment Right of access to the court.

"... .. 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."

The venom gets progressively more obvious, until the THIRD JUDGMENT shows itself to be outright idiotic, i.e. "never mind the law, we got to stop this guy!"

NOTE: There can only be ONE judgment in a cause. This one has THREE! For one "judgment", at least the judge had a jury at least **sitting** there -- the other two, not. This was as a jury cause. Also, at a minimum, TWO of the "judgments" have to be unlawful!

NOTE: **The key issue in official oppression is about "knows that it is unlawful."**
The evidence to this can best be found in the FIRST question to the jury, the court's instructions thereto, and the rapid-fire documents just preceding this question.

For now, I will let the documents speak for themselves, except for these short notes:

"first judgment"
FINAL JUDGMENT – Judge Paul Banner
\$85,207.46 + \$157,899.36 interest
Rendered April 11, 2002, Signed July 30, 2002

The case was over legal fees in a \$20,000 prepaid, non-refundable attorney retainer agreement, with the lawyer retaining the right to terminate. (“We reserve the right to terminate for ... 1) your non-payment”, etc). Cause, however, was brought as a sworn suit on unpaid “Open Account”. Fraud right out of the chute!

It was a JURY trial, but the judgment clearly shows that the elements of open account were not only NOT submitted to the jury, but intentionally twisted to such an extent as to be fraud upon the court per se, **by the court itself**.

Present status: Judgment dormant since 2012, now in process of being revived by writ of scire facias. . Those documents in themselves evince the pattern of defrauding.

Attached: 1) agreement with attorney, 2) canceled check, 3) suit 00-619, 4) Application for Writ of Scire Facias

“second judgment”

ORDER ON MOTION FOR SANCTIONS – Judge Paul Banner

\$62,885.00 + 10% per annum since July 30, 2002

Rendered July 30, 2002, signed Aug. 9, 2002

FINDINGS OF FACT AND CONCLUSIONS OF LAW -Judge Banner

found ???, by whom ???, signed Sept. 30, 2003 (was JURY case!)

The case had been closed by Final Judgment – there was nothing left for the court to do. All other things had been “denied”. Yet here we were on new ground again!

Real goal of the proceedings was caught by the court reporter – Judge Banner upset by my civil RICO filing – i.e. filing a lawsuit, a **First Amendment Right**:

*In assessing the sanctions, the Court has taken into consideration that although Mr. Birrbaum 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.

Weighing of the evidence of course needed to be by the JURY. Civil RICO is intentionally written to be ALL “issues of fact”, and no issue of law to be determined by the judge. It IS the law, a statutory criminal law, with a civil remedy (“civil RICO”)

Real goal of Judge Banner is contained in his Findings, which he was finally forced to make to cover up for NOT identifying the conduct he was supposedly sanctioning for, as he had failed to do in his Order on Motion for Sanctions, as required by RCP Rule 13. And so, but not until ONE YEAR after Final Judgment, the venom spits out – just read this stuff!

*“ ... delusional belief held only inside the mind of Birnbaum”
“ ... etc, etc, ad nauseam (details later)*

Present status: Just sitting there. Based on the other goings-on, no telling what's next.

Attached: 1) Findings of Fact, 2) Interrogatories – Banner, 3) something to give flavor

“third judgment”

ORDER ON MOTION FOR SANCTIONS – Judge Ron Chapman
\$126,262 + 5% per annum since 2006
Rendered April 1, 2004, signed Oct. 24, 2006

Case was of course long over. Judge Banner was still mucking to paint me as the devil with his Findings (above) – while the case was on appeal. In desperation I submitted a motion to recuse to get attention and STOP this nonsense.

Judge Ron Chapman is assigned to hear the motion for recusal. He had NO personal jurisdiction of any kind. Between him and Judge Paul Banner as a witness – they went plum BONKERS on April 1, 2004. (See “*Happy April Fools Day*”, below)

It is clear why they wanted to PUNISH Birnbaum – “to stop Birnbaum and others like him, etc”, just read this raving. All venom and NO substance.

Status: The Westfalls obtained an Abstract of Judgement on this ORDER, filed liens with the County Clerk, and presently have sent the Sheriff out to do EXECUTION! Plum bonkers.

Attachments: 1) Happy April Fools Day, 2) First Interrogatories – Chapman, 3) Copy of my web site “OpenJustice.US”, making almost ALL of the court documents available, in this case and matters related

More Detail

The flavor of this entire mess is best seen by starting with this third “judgment” group of documents, Order on Motion for Sanctions (Judge Chapman, \$125,770 unconditional fine), and working backwards, chronologically.

Order on Motion for Sanctions

Judge Chapman - \$125,770 assessment

"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"

Chapman’s sole assignment was to rule on a motion to recuse.

A strictly administrative task – i.e. rule, and then **go back home**.

Chapman had no personal jurisdiction over me whatsoever. Besides, the cause was finished with Judge Banner's Final Judgment rendered April 11, 2002

:

"G. David Westfall, appeared in person All other parties to this lawsuit having been dismissed previously"
"All other relief not expressly granted in this order is hereby denied"

It had been out of desperation to stop Judge Banner from mucking around to CYA (Judge Banner's Findings) in the court late in 2003 to cover his sins, by painting me as the devil, that I believed that a motion to recuse would at least call someone's attention to this, and put a stop to such conduct. Attention I obviously got, but

To top-off this madness, now, in March 2014, the Westfalls actually managed to turn this outrageous and unlawful Order on Motion for Sanctions into an actual Abstract of Judgment, filed it to put liens with the County Clerk, got a Writ of Execution, and got the Sheriff out after me!

Anyhow, key in this Order on Motion for Sanctions – besides the venom - is the assessment of unconditional punishment (no "keys to own release") and upon completed acts (not "coercive"). Such sanction is CRIMINAL in nature, requiring full criminal process, including a finding of "beyond a reasonable doubt" – that is the law.

Also, there is the matter of a First Amendment right of access to the courts – including the right to file a lawsuit. And admitting – in writing - that the punishment was for filing a lawsuit – that is official oppression per se.

And Judge Chapman threatening Birnbaum with further sanction (for filing a lawsuit):

"Complete & full access to the xxxx ?? xxx ?? ..."

"our jurisprudence envisions finality of litigation after the parties have availed themselves of the remedies available under our laws"

“You <now> have the keys on whether there are? any? Further proceedings in this case in the future. Please be aware that any further actions might result in further sanctions”

(longhand calculation 62,385 x 2 = 125,770 124,770)

A little flyer I published right after this sanction, titled “Happy April Fools Day” shows this insanity in a little less formal manner, and provides some additional insight.

More enlightenment is on my website OpenJustice.US, as well as almost ALL of the documents related to this matter.

Order on Motion for Sanctions

Judge Banner - \$62,885 – July 30, 2002

Findings of Fact and Conclusions of Law

(re Order above) – July 30, 2003

This document clearly flows out of the same pit of venom. I have some of the intermediate documents that show careful tweeking and sanitizing.

“ to prevent similar future action on the part of the Defendant/Counter-Plaintiff.”

“...“.....filing claims concerning civil RICO”

... to stop the Defendant/Counter-Plaintiff and others similarly situated from filing frivolous lawsuits.”

“ the offensive conduct to be punished.”

“ that this lawsuit was filed”

“... .. punitive damages for the filing lawsuit.”

“... .. punitive sanction for the filing lawsuit ...”

“... .. punitive to stop , and others like him ... filing lawsuits.”

It was upon this Sanction that I went to the Dallas Court of Appeals, the Texas Supreme Court, then the U.S. Supreme Court. Lots of detail in the intermediary appeals.

For completeness and flavor, a copy of my Petition for Writ of Certiari to the U.S. Supreme Court is available, as are all of the intermediate documents in getting there. These documents provide a little broader view on what is going on in this court.

Final Judgment – Judge Banner

Suit was brought against me for claimed unpaid legal fees.

My dealing with the lawyer, G. David Westfall, had been solely regarding a Federal Civil Racketeering suit against about eight (8) assorted court-related individuals, including Van Zandt District Judge Tommy Wallace, his “court administrator” Betty Davis and court reporter Becky Malone, ex Van Zandt District Judge Richard Davis, Canton attorney Richard L. Ray, Van Zandt District Attorney Leslie P. Dixon, Visiting Judge James B. Zimmermann, First Administrative Judicial Region Presiding Judge Pat McDowell, McDowell’s lawyer – and maybe some more.

My dealings with G. David Westfall was upon an agreement for a \$20,000 up-front non-refundable retainer agreement, him promising not to surprise me with sudden big charges, and promising to bill me monthly, and “the law office” reserving the right to terminate in case of my not paying him any more moneys.

Anyhow, he never billed me monthly – and the case was dismissed under truly bizarre circumstances (a judgment ordering the amendment of the complaint). Then he told me that our judge never saw the case – and Westfall would not do anything about it – and I fired him, waving good bye to my non-refundable \$20,000.

Then about half a year later, he suddenly sends a huge \$18,000 or so additional “bill”, and as plaintiff “The Law Office, P.C.” ultimate files suite claiming an unpaid “open

account” – in the very court of the Judge he had sued for racketeering – Tommy Wallace. I deny such account under oath, and counter and cross claim against him personally and his wife and daughter office staff.

Fast-forward to the trial. Just look at that first question. It bypasses the jury on the elements of a suit on “open account”, whether there even was an “open account” with “systematic records”, and whether there was 1) sale and delivery of goods or services, and 2) did the “goods” have any “worth”.

The wording of the question even pre-supposes a “failure to abide”. The instruction is totally out of line for “open account”. Just look at this stuff. NOT “due process”.

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 a 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.

ANSWER:

Answer in dollars and cents

*“failure to comply” - but it was a JURY TRIAL – had to be submitted to jury
“wrapping up the relationship” – in an “open account” matter?*

ESSENCE OF THIS COMPLAINT OF OFFICIAL OPPRESSION
And notification of such

This stuff has been going on upon me ever since I was sued under Section 11.06 of the Texas Water Code in 1995 for a dam built by beavers on a creek on my farm. Suit said I was the one who built “The Dam” dam. ALL the jury heard was about BEAVERS – 166

mentions in the transcript of the FOUR (4) day trial. Then fraudulent issues to the jury of whether I “allowed dams”. But enough of that for now.

Been complaining to just about every law enforcement body I know of. No protection, of ANY kind. Tried hiring a lawyer against the “beaver dam scheme” matter, wound up with Westfall, and now this mess.

So, I call particular attention to the events of my recent trip to the Tyler FBI. Took a friend along, about ten years older than I. The agent recognized me from back in 1995.

The FBI arranged for our visit to the U.S. Attorneys Office in downtown Tyler. What the Justice Department told me to do, as strange as it may seem, was to “just SHOOT them”.

I have a sort of video deposition I made thereafter with the friend I took along, contemporaneously documenting our immediate recollections.

And in making this recording, she somehow came to bring out a murder trial she or a friend sat on, where “that black woman” had killed her husband – by just sewing him up in a bed sheet when he was drunk, and killing him with a frozen pork roast. “We did not have any beef at the time”, was her explanation. She had come to Van Zandt county as a war bride way back in the early 50’s.

Anyhow, “that black woman” went home free. “She had bruises on her”, was my friend’s add-on. “That black woman” must have, at least in the eyes of that jury, acquired the right to end matters as she did..

On my mind ever so often:

1) At what stage of her husband’s conduct did she acquire the right of self-defense to kill her husband?

2) And at what stage of conduct in this matter, if ever, do I acquire a right to “just shoot them”?

3) And at the age of 77 – at what stage, if ever, of my remaining life and strength, do I acquire an actual duty to “just shoot them”?

This complaint honestly presented in order to not have to make such decisions.

April 29, 2014

Sincerely,



Udo Birnbaum
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929

brnbn@aol.com

List of documents provided herewith:

Final Judgment – Judge Paul Banner – on **jury verdict**

Order on Motion for Sanctions - Judge Paul Banner – **no jury**

Order on Motion for Sanctions – Findings thereto – since there had been **no jury**

Order on Motion for Sanctions – Judge Ron Chapman – also **no jury**

“Happy April Fools Day” – good over-all introduction

“OpenJustice.US” - more detail, repository of court documents

Lawyer retainer w cashed \$20,000 check – “**non-refundable**”, “**we reserve ..**”

Lawyer suit – “**Open Account**” w “Bill”

Westfall deposition – shows the fraud of “Open Account”

Motion for appointment of auditor – shows fraud by court

Plaintiff’s Requested Jury Questions

Objections to Plaintiff’s Requested Jury Questions

Birnbaum's Objections to Court Charge – **handwritten and hand filed**
Court's Charge – carefully observe **Question 1 and instructions thereto**
Closing Pleading in Writing – complaint of **retaliation by official oppression**
Oral Pleading in Writing – complaint of **fraud upon the court**
Assignment of Judge Ron Banner – **solely to hear a motion to recuse**
Docket sheet – Judge Ron Banner doodling – **\$125,885 + more threats**
Abstract of Judgment – on Chapman's \$124,770 + interest – had **NO jurisdiction**
Execution – Chapman NEVER had jurisdiction over the PERSON of Birnbaum
Application for Writ of Scire Facias – to revive **dormant** Judge Banner 2002 judgment

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.

ANSWER:

Answer in dollars and cents:

ANSWER: \$15,817.60

QUESTION NO. 2

What is a reasonable fee for the necessary services of the Plaintiff's attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following:

- | | |
|--|-------------|
| A. For preparation and trial in this matter: | \$41,306.91 |
| B. For an appeal to the Court of Appeals, if necessary: | \$20,000.00 |
| C. For making or responding to a petition for review to the Supreme Court of Texas | \$5,000.00 |
| D. If petition for review is granted by the Supreme Court of Texas | \$10,000.00 |

QUESTION NO. 3

(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any false, misleading, or deceptive act or practice that Udo Birnbaum relied on to his detriment and that was a producing cause of damages to Udo Birnbaum?

“Producing cause” means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

“False, misleading, or deceptive act” means any of the following:

Failing to disclose information about services that was known at the time of the transaction with the intention to induce Udo Birnbaum into a transaction he otherwise would not have entered into if the information had been disclosed; or

Answer: NO

QUESTION NO. 4

(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any unconscionable action or course of action that was a producing cause of damages to Udo Birnbaum?

“Producing cause” means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

An unconscionable course of action is an act or practice that, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

Answer: NO

If your answer to Question 3 or Question 4 is "Yes", then answer Question 5. Otherwise do not answer Question 5.

QUESTION NO. 5
(Finding of "knowingly")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: [Not answered by reason of submission]

If your answer to Question 3 or Question 4 is "Yes", then answer Question 6. Otherwise do not answer Question 6.

QUESTION NO. 6
(Finding of "intentionally")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct intentionally?

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception. Specific intent may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: [Not answered by reason of submission]

If your answer to Question 3 or Question 4 is "Yes", then answer Question 7. Otherwise do not answer Question 7.

QUESTION NO. 7
(“Compensatory” damages)

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Udo Birnbaum for his damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents, if any, for each of the following:

The difference, if any, in the value of the services as received and the price Udo Birnbaum paid for them. The difference, if any, shall be determined at the time and place the services were done.

Answer: [Not answered by reason of submission]

Expense costs to Udo Birnbaum, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: [Not answered by reason of submission]

The reasonable value of Udo Birnbaum’s lost time, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: [Not answered by reason of submission]

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what a party’s ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

If your answer to Question 5 "Yes", then answer Question 8. Otherwise do not answer Question 8.

QUESTION NO. 8
(“Compensatory” damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.’s conduct was committed knowingly?

Answer in dollars and cents, if any.

Answer: [Not answered by reason of submission]

If your answer to Question 6 "Yes", then answer Question 9. Otherwise do not answer Question 9.

QUESTION NO. 9
(Additional damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.’s conduct was committed intentionally?

Answer in dollars and cents, if any.

Answer: [Not answered by reason of submission]

The charge of the Court and the verdict of the jury are incorporated for all purposes by reference. Because it appears to the Court that the verdict of the jury was for the Plaintiff and against the Defendant, judgment should be rendered on the verdict in favor of the Plaintiff and against the Defendant.

It is therefore, **ORDERED, ADJUDGED and DECREED** that Plaintiff, G. David Westfall, P.C., be awarded damages as follows:

- A. Actual damages in the amount of \$15,817.60 plus pre-judgment interest up through the date of this Order which the Court finds to be \$2,156.15.
- B. Attorney's fees in the amount of \$41,306.91.
- C. An additional award of attorney's fees as follows:
1. \$20,000.00 in the event of an appeal to the Court of Appeals.
 2. \$5,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas.
 3. \$10,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas and the writ is granted.
- D. Taxable Court costs in the amount of \$926.80.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from April 11, 2002 until paid.

All costs of court expended or incurred in this cause are adjudged against Udo Birnbaum, Defendant/ Counter-Plaintiff. All writs and process for the enforcement and collection of this judgment or the costs of court may issue as necessary. All other relief not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON APRIL 11, 2002, AND SIGNED THIS 30
day of July, 2002.


JUDGE PRESIDING



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

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, and
Stefani Podvin,**

Counter-Defendants

VAN ZANDT COUNTY, TEXAS

ORDER ON MOTIONS FOR SANCTIONS

On July 30, 2002, came on to be heard, Motions for Sanctions filed by G. David Westfall, Christina Westfall, and Stefani Podvin, as well as to be heard Motions for Sanctions filed by Udo Birnbaum. The plaintiff, The Law Office of G. David Westfall, P.C. (the "Plaintiff"), appeared in person by representative and by attorney of record. The defendant, Udo Birnbaum, appeared in person, pro se. The counter-defendant, G. David Westfall, appeared by representative and by attorney of record. The counter-defendants, Christina Westfall and Stefani Podvin appeared in person and by attorney of record. All parties announced ready for a hearing on all the pending motions for sanctions currently on file in this matter at the time of the hearing.

Based upon the pleadings of the parties, the evidence presented at trial and the evidence presented at the sanctions hearing, and the arguments of counsel and by the pro se defendant, the Court is of the opinion that the Movants, Christina Westfall and Stefani Westfall are entitled to prevail on their claim for sanctions against the Defendant, Udo Birnbaum.

156/834

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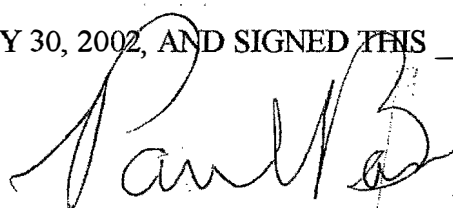
It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are awarded damages as a sanction against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

- A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of \$50,085.00 as reimbursement for their joint attorney's fees.
- B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of \$1,000.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of \$1,800.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.
- E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day
of August, 2002.



JUDGE PRESIDING

FILED
02 AUG 21 AM 9:59
WESTFALL/UDO/PLEADINGS/ORDER ON SANCTIONS

156/835

FRANK C. FLEMING

ATTORNEY AND COUNSELOR

6611 Hillcrest Ave. #305
Dallas, TX 75205-1301
lawyerof@aol.com

Voice: 214/373-1234
Fax: 214/373-3232
or Fax: 214/265-1979

October 6, 2003

Court Clerk
294th District Court
Van Zandt County
121 E. Dallas Street
Canton, Texas 75103

FILED FOR RECORD
03 OCT -8 PM 12:14
KAREN WILSON
DIST. CLERK
VAN ZANDT CO. TX
BY _____ DEP
Via Registered Mail

Re: Cause No. : 00-00619
294th District Court
Law Offices of G. David Westfall, P.C.
v. Udo Birnbaum

Dear Clerk of the Court:

This matter is on appeal. However, Judge Banner still has authority to File Findings of Facts and Conclusions of Law in this matter. *But not ~~controversy~~*

unsupported by the trial record.

Enclosed please find and file Judge Banner's cover letter and the original signed Findings of Fact and Conclusions of Law, signed by Judge Banner on September 30, 2003 along with one copy of the Findings. I have enclosed a returned envelope. Please mail me a copy of the file marked Findings.

No "cover letter" filed

If you have any questions, please call.

Very truly yours,

Frank C. Fleming

FRANK C. FLEMING

cc: Udo Birnbaum

Via Fax No. : 903/479-3929

APP 34

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in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were groundless and totally unsupported by any credible evidence whatsoever.
2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original Plaintiff, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.
3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-Plaintiff wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.
4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and totally uncorroborated by any other evidence.
5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for legal work which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

11. The amount of punitive damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to prevent similar future action on the part of the Defendant/Counter-Plaintiff.
12. The sanctions award is directly related to the harm done.
13. The sanctions award is not excessive in relation to the harm done and the net worth of the Defendant/Counter-Plaintiff.
14. The 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 amount of the punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.
16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and threats.
17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of harassment. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.
18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the legal theories of the Defendant/Counter-Plaintiff.

Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.
2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.
3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.
4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court.
5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.
6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment.
7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment.
8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P.
9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Findings of Fact and Conclusions of Law

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10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and punitive damages to be assessed against the Defendant/Counter-Plaintiff.

11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.

12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of \$50,085.00 in attorney's fees. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of \$1,000.00 to Christina Westfall and \$1,800.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of \$5,000.00 to Christina Westfall and an award of \$5,000.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

15. The award of punitive damages is directly related to the harm done.

16. The award of punitive damages is not excessive.

17. The award of punitive damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and others like him, from filing similar frivolous lawsuits.

Findings of Fact and Conclusions of Law

18. The amount of the punitive damage award is narrowly tailored to the harm done.

19. Authority for the punitive damage award is derived from §10.000 et seq. 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.

SIGNED THIS 30 day of September, 2003.



JUDGE PRESIDING

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

THIS JUDGMENT RENDERED ON APRIL 1, 2004, AND SIGNED THIS

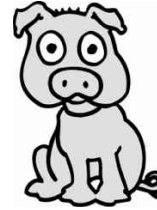
24 day of Oct, 2006.


JUDGE PRESIDING

Courthouse Vignettes — “*Tales from the Hive*”

Just like “court TV” — except real and in writing and in OUR courthouse

From a fresh and personal perspective — go turn off judge Judy!



"A masterpiece of accomplishment" or "April fools"?

How, on a DEAD case, TWO visiting judges, ONE hearing a motion to remove the OTHER from the case, ONE judge from the bench, the OTHER from the witness box, managed to assess a \$125,770 FINE ("sanction") against a 67 year old non-lawyer on April 1, 2004.

For having filed (out of desperation) a ONE page "motion to recuse", SIX (6) MONTHS AGO!

"If there is insanity around, well, some of us gotta have it!"

APPEARANCES

- ONE:** Hon. Ron Chapman, Senior judge, assigned to hear a "motion to recuse"
- OTHER:** Hon Paul Banner, Senior judge, assigned to hear a suit over "open account"
- Non-lawyer:** Udo Birnbaum, was sued because beavers had built a dam on his farm
- Lawyer:** Frank C. Fleming, sued Birnbaum claiming \$38,121.10 "worth" of legal services in suing the ex-Van Zandt district judge and other state judges for racketeering.

1.

*All "arising from" a dam built by BEAVERS!
Watch YOUR fire ants -- or YOU could be next*

It was April 1, 2004, "April Fools Day", and I was driving into town for yet another hearing in our district court.

The whole thing had started in 1995 when I was sued because BEAVERS had built a dam on my farm. Before that I was living peacefully on my farm in Van Zandt County, taking care of my cows and ninety (90) year old invalid mother, and had only known the courthouse from getting automobile license tags.

Even today, the beavers are still in court, after NINE years, with their THIRD judge, just assigned to the case.

2.

*“Legal fees” and “legal fees” for collecting on “legal fees”
"Smoke Old Mold -- The ONLY cigarette that is ALL filter!"*
But today's hearing was on a case where (continued page 2)

More

“Tales from the Hive”
All from public records

“Disciplinary Trial”

The problems the State Bar has with lawyers and vice versa

“Case of *res ipsa loquitur*”

In OUR courthouse. NO, it is NOT a disease, or is it?

“Bunk-bed Bunk”

A kid falls out of bed, and the lawyers

At www.OpenJustice.US

2.

"Legal fees" and "legal fees" for collecting on "legal fees"

"Smoke Old Mold -- The ONLY cigarette that is ALL filter!"

But today's hearing before Judge Chapman was on a case where FOUR years ago I was sued by a Dallas lawyer, in the name of his "Law Office", claiming I owed \$18,121.10 on a supposed unpaid OPEN ACCOUNT for "legal services". There of course never was an "open account", not with a \$20,000 non-refundable prepayment "*for the purpose of insuring our availability in your matter*", and the lawyer retainer agreement plainly stating, "*We reserve the right to terminate ...for your [Birnbaum] non-payment of fees or costs". Also, an "open account" is where the parties are as buyer and seller, where there is a sale, followed by a delivery, such as between a lumber yard and a house builder, where there is actual delivery of "goods", or where a repairman delivers "services".*

My paying a lawyer a non-refundable "up-front" retainer does not fit into that category! Then neither do BEAVERS building a dam on a live creek provide a "cause of action" for a lawyer to sue! Then of course my paying that lawyer in the first place does not make sense, certainly not in hindsight. All this was going through my mind as I was looking back over the last NINE years.

Anyhow, the judge on the beaver case did not submit the proper question to the jury. Neither did the judge on the "open account" case.

Add to this that the supposed \$38,121.10 "legal services" had been for suing Tommy Wallace, then 294th district judge, other state judges, the Van Zandt district attorney, several lawyers, plus assorted court personnel for racketeering (18 U.S.C. § 1964(c) "civil RICO") regarding the beaver dam scheme. The lawyer had talked me into it, but his suit in the Dallas federal court had NO WORTH because judges are absolutely immune from liability. Anyhow, I finally fired the lawyer, and waved bye-bye to my non-refundable \$20,000 retainer.

Yet a year later he comes back to file this \$18,121.10 "open account" suit against me in Judge Wallace's court, to collect on "legal fees" for

suing this very judge! There was of course method in this apparent madness, for if I had not made what is called a "mandatory counterclaim", under oath, denying the "account", it would have been "deemed" true, and the lawyer would have gotten by with it, lest the judge were honest, instead of going strictly by the letter of the Rules of Civil Procedure.

But since I did deny the account, under oath, the judge was supposed to appoint an auditor to determine the "state of the account", as the Rules say. But he did not. But that is another story.

3.

\$62,885 FINE for being "well-intentioned"? They file cases in court all the time, BUT

Not only did I deny the account, but I also filed a counterclaim under the anti-racketeering statute ("civil RICO) regarding the \$20,000 I had been fleeced out of, and asked for trial by jury. Instead the "visiting judge", Hon. Paul Banner, himself "weighs" the evidence, and FINES ("sanctions") me \$62,885 for that **piece of paper**, stating:

*"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 [civil RICO] suits against the individuals, and I think -- can find that such sanctions as I've determined are appropriate." (as caught by the court reporter)*

Filing a lawsuit is of course constitutionally protected conduct (First Amendment). And a court is to examine the acts or omissions of a party or counsel, not the legal merit of a party's pleading. (*McCain*, 858 S.W.2d at 757). And civil contempt sanctions are only to "coerce" one to do or not do something, like make child support payments, as previously ordered by a court, NOT to punish for a completed act. Punishment by civil process is UNLAWFUL, period. I had appealed those issues, to the Dallas appeals court, and then to the Texas supreme court, and they had just denied hearing

the case, without giving a reason.

So even though this "open account" case against me was clearly no longer in the local trial court, yet here we were about to have another "hearing" in what was clearly a DEAD case as far as the 294th district court was concerned!

4.

*"Oh what tangled webs we weave,
when first we practice to deceive!"*

The "hearing" was to hear "motion to recuse Judge Banner". "Motion" is "legalese" for the normal way of doing things before a judge, i.e. "moving" that something be "moved" a certain way, i.e. that a certain thing happen or not happen.

"Recusation", according to Blacks Law Dictionary, is "in civil law, a species of exception or plea to the jurisdiction, to the effect that a particular judge is disqualified from hearing the cause by reason of **interest or prejudice**". My "motion to recuse" was for the judge to step aside, i.e. asking for a different judge, because this judge's "impartiality might reasonably be questioned", to use the phrase out of the Rules of Civil Procedure.

On a motion to recuse a judge has TWO choices, 1) sign an "order of recusal", recusing himself, and asking that another judge be assigned, or 2) signing an "order of referral", asking that another judge be assigned to "hear" if he should be "recused", or allowed to stay. Anyhow, that was what we were here for, to hear "motion for recusal of Judge Banner".

I should of course not have had to ask Judge Banner to step aside, for he should not have been doing anything, yet there he had been, in September, 2003, while the case was in the appeals court, working with opposing counsel, to file "findings" to support the \$62,885 FINE, and painting me as some sort of monster to the judicial system, when he had clearly found me "well-intentioned".

No judge should of course been assigned to "hear" a recusal, because the case was DEAD, and Judge Banner certainly signed no order asking another judge to come "hear" if he should be allowed to stay on the case. But here we were, on April 1, having just such "hearing"!

5.

Ready, get set, GO -- but WHERE?

Hon. Ron Chapman had been assigned to hear the recusal, but that was way back in October, 2003, SIX months ago. Then it took about a month for the piece of paper assigning him to find its way into the files in the court. Then nothing happened. The assignment had appeared for a short time at the web site for the First Administrative Judicial Region in Dallas (www.firstadmin.com) who assign judges, then the posting had suddenly disappeared.

Judge Chapman made the national news when he was assigned to Tulia, Texas, and released a whole bunch of black prisoners who had been convicted on drug charges based solely on the testimony of an undercover officer, who had made "lawman of the year", but who had made the whole thing up. Via the internet I also learned that Judge Chapman ran for U.S. Congress in 2002, Texas 5th district, and was defeated by Republican Jeb Hensarling.

Judge Chapman had once before been assigned to this case in 2001 to hear an earlier motion to recuse Judge Banner, but had let Judge Chapman stay. Nevertheless, I had high hopes regarding Judge Chapman now being assigned to hear my "motion for recusal".

The hearing was to be in the downstairs county courtroom because district court was already going on upstairs. I did not believe anybody would show up, till I saw Judge Banner, whom I had subpoenaed to be present as a witness. I did not expect him to actually come, judges do pretty much as they want to. Then I saw Frank Fleming, the opposing lawyer, and someone with Judge Banner whom I did not recognize, but presumed to be some judge sent down to hear the matter. I did not recognize him as Judge Chapman, although I had been before him for about two hours in the fall of 2001.

6.

*"If one does not know where one is going,
ANY road will lead there"*

How about, "Let's try the JURY ROOM"

We somehow started talking in the hall and wound up in the upstairs jury room sitting around the large table. Fleming handed me a two-page motion for sanctions against me. The man at the end of the table introduced himself as Judge Chapman.

Fleming wanted to start with his motion for sanctions. I stated that Fleming had SIX months to file such, if he wanted to, and that this came under the "no surprises" rule, that there be no "surprises", and that I be given time to properly respond to it. The assignment of Judge Chapman of course had been only to hear a motion to recuse, i.e. decide whether Judge Banner should stay as judge, NOT to hear anything "in the case":

*"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.**"*

Judge Chapman, on the other hand, seemed to recognize that something was wrong, and was thinking out loud that he was not sure whether he could remove Judge Banner from the case, since then ANOTHER judge would have to come in. Fleming wanted to get back to his motion for sanctions. I again said that such was a "surprise", and should be addressed at another time.

Judge Chapman wanted to know where the case stood, and I told him that the Texas Supreme Court had two days ago just denied to hear the case, and Fleming agreed. Next Chapman wanted to know whether there was any other litigation associated with the case, and I handed him a copy of a complaint for what is called "declaratory relief" under the Civil Rights statutes I had filed in the Tyler federal court, not seeking any damages, but asking them to declare that the \$62,885 fine Judge Banner had assessed was "contrary to law", and should be declared as such. There was of course no reporter present in the jury room.

Fleming complained that he had not been given a copy of my federal complaint. I told him that was because he was not a "party" to that case, only

Judge Banner, and the ones I was to pay that \$62,885 to.

It must have been about this time that Chapman recognized who I was, stating that he heard my October 2001 motion to recuse Judge Banner, and that he would probably also hear the motion for sanctions today, or to that effect.

The purpose of bringing a witness of course is to "examine" him in a court proceeding, before a court reporter, and Judge Banner, as a subpoenaed witness, certainly had no place in this off-the-cuff proceeding. Anyhow, after about twenty minutes or so of this, we drifted out into the hallways again. The judges wound up somewhere near the coffee pot on the second floor, while I settled for a downstairs bench.

7.

Small-talk in the halls

County commissioners were still in the county courtroom, and would be in there for another 30 minutes or so. Judge Chapman and Judge Banner had settled on the bench in the hallway close to me. Both judges were quite friendly, and Judge Banner wanted to know about my background. I told him I was born in Houston, of German parents, but that they went back when I was one year old, and that I grew up in Germany during World War II, to come back here as a thirteen year old, go to high school in Houston, then on to college at Rice, then worked for Texas Instruments in Dallas, ultimately to retire to a farm in Van Zandt county. I told the judges that I was writing a book, and this information, plus a lot more about my childhood in Germany, could be found on my web page. It also contains all my court documents, and Fleming would later be complaining that whenever his name was typed into any internet search engine, one would always arrive at my web site.

But Judge Banner already knew a lot about me, for at the time of the trial in April 2002, I was running as an independent for county judge, and he had been concerned whether this would have an influence on the jurors in that trial.

I left the judges talking on the bench, letting them know I would be just outside the door right in front of them, sitting on the wall of the main

entrance, and someone to come and get me when it was time.

8.

Finally, the "real thing" Into an actual courtroom!

The county commissioners finally finished, and we moved into the county courtroom. Of the two big tables in front of the bench, Fleming chose the one by the window, and I settled at the one near the door. Next I went to the court reporter to find out her name and where I might order a transcript of this hearing and to give her my name and address. It is a shame that courts are not in the 21st century, where one can make a six hour video recording for a dollar or two, instead of having a court reporter take it down, manually, and to have to pay literally thousands of dollars for it, at \$4.00 per page, and yet not have ALL of it show up on the record, certainly not the pauses, intonations, puzzled looks, and the like. But that is another matter. Anyhow, the recollections below are to the best of my ability.

Judge Chapman called the case, this time from the bench, and administered the oath to tell the truth, etc. I am not sure whether Fleming went first, or whether I did, we more or less did everything at the same time, from one table to the next, with the court reporter, settled near the empty witness box, somehow doing her best.

There was no one in the audience except someone who had come along with me, and there was of course Judge Banner, but I do not know where he settled down in the courtroom. It may have been in the jury box, but I am not sure, but I do remember asking that he be put "under the Rule". It is a term lawyers use, I have never heard under exactly what Rule, for asking a witness not to be present till called, and to remain outside the courtroom, and Judge Banner went out into the hall.

I was trying to show that Judge Banner's impartiality "might reasonably be questioned" not only because of the \$62,885 sanction he had put on me, never mind whether it was lawful or not, but also that there was something drastically wrong when Fleming, while the case is in the appeals

court, and starting with no more than Judge Banner's finding of "**well-intentioned**", comes up with a "finding" for Judge Banner to sign, that finds me "**vindictive**", "**harassing**", having made "**threats**", that my claim was "**vacuous**", "**manufactured**", "**intimidating**", "**simply for spite**", and all other kinds of hate-words in there, and Judge Banner signed it!

My point was that under such circumstances, Judge Banner's "impartiality might reasonably be questioned", at the present time, and that he should be removed from doing anything more to the case.

I do not remember all the "objections" Fleming made, that either what I was talking about was not "relevant", "material", or whatever, that it was either "before", or "after" and was therefore not relevant. I did get Judge Banner on the witness stand, and asked him point blank if under the present circumstances he could be impartial towards me, and his answer was "yes". That of course begged the question as to whether there was anything for him to do in the case, or to have been doing!

9.

\$125,770 in "sanctions" In a DEAD case?

Anyhow Judge Chapman quickly denied the motion to recuse Judge Banner, and proceeded to go into Fleming's motion for sanctions against me. That of course should have put Judge Banner back in charge, and Judge BANNER should have been on the bench, if there was indeed to be a hearing "in the case" on Fleming's motion for sanctions. But then NOBODY should have been here today. The case was DEAD!

Then Fleming started lighting into me, naming all the reasons I should be sanctioned. First for even questioning the "impartiality" of Judge Banner. Also for "suing Judge Banner", when my Civil Rights complaint had been not for damages, like an ordinary suit, but procedural and solely for "declaratory relief", i.e. simply asking a federal judge to rule that what Judge Banner had done was "contrary to law".

Fleming was complaining that I had sued him, when he was just the lawyer, and that everything

he did was as the lawyer. Lawyers seem to think that they are free to do ANYTHING as a lawyer. I tried to explain that it was exactly BECAUSE Fleming was a lawyer, that his conduct of lying in the court rose to such a level that it actually violated the anti-racketeering statute ("civil RICO").

Filing a lawsuit is of course constitutionally protected conduct, and they file lawsuits all the time. Besides that, why are we here, at a hearing on a "motion to recuse Judge Banner", arguing the merits of my civil rights suit for declaratory relief against Judge Banner, or the merits of my suit against lawyer Fleming, and on April 1, and on a DEAD case?

Anyhow Judge Chapman assessed \$125,770, in unconditional fines against me, doing exactly DOUBLE the thing that I had been complaining about regarding Judge Banner, i.e. the unconditional \$62,885 fine he had assessed against me.

I had done my very best to show that unconditional punishment, which is not "coercive", where one does not have "the keys to one's release", such as paying child support, or sitting in jail till one testifies, is UNLAWFUL by civil process, so says no less than the U.S. Supreme Court!

10.

On "finality of litigation"

The case was DEAD!

From the scratching Judge Chapman put on the back of Fleming's motion for sanctions, as I later found filed in the case, I remember the exact words Judge Chapman spoke. Judge Chapman "did not get it", meaning the law about "keys to one's release". Under his heading of "*Complete & full access to cts.*", he wrote:

"Our jurisprudence envisions finality of litigation after the parties have availed themselves of the remedies available under our law, You now have the keys on whether there are any further proceeding in this case in the future. Please be aware that any further actions might result in further sanctions."

I clearly do NOT have the "keys to my release" from this UNLAWFUL \$125,770 sanction. Also if

there is any issue as to "finality", what were we doing here today on a DEAD case?

The scratching Judge Chapman did on the back of Fleming's motion for sanctions is interesting, to say the least. I see the amount of the original sanction of \$62,885 by Judge Banner, then a 2 below it, multiplied out to be \$125,770. The entry on the case on the docket sheet gives further clues:

"grounds for sanctions do exist and the Ct. assesses said sanctions for [Birnbaum's] violations of Rule 13 of the TRCP and/or Sections Rule 10.001 et seq/ TCPRC in the amount of \$1,000 for actual damages and \$124,770 for exemplary damages against Birnbaum who is Ordered to pay said sums to [Westfalls].

[Westfalls'] attorney is instructed to draft a proposed Order and submit a copy of same to [Birnbaum]. (emphasis added)

Judge Ron Chapman.

Exemplary (punitive) court sanctions are of course UNLAWFUL by CIVIL process!

11.

" Déjà vu all over again "

I go home puzzled, having expected better than this from Judge Chapman. Then at 9:55 p.m. that same night, April 1, 2004, I receive a copy of Fleming's proposed sanction order faxed to Judge Chapman to sign. Just a few of the phrases:

- "Birnbaum's claims were **groundless, vacuous, manufactured, and totally unsupported** by any credible evidence whatsoever"
- "The testimony of Birnbaum ... was **biased, not credible, and totally uncorroborated** by any other evidence"
- "Birnbaum filed a pleading containing a **completely false and outrageous** allegation that Judge Banner had conducted himself in a manner that showed bias and lack of impartiality"
- "Birnbaum's difficulties with judges and the repeated allegations of a lack of impartiality have had **nothing at all to do with**

\$125,770 total

Date of Orders			ORDERS OF COURT CONTINUED	Minute Book	
Month	Day	Year		Vol.	Page
4	8	02	CR all present; jury selected; sworn in started; Open State, Enid Recor		
4	10	02	CR all present; bid confer		
4	11	02	CR all present; Enid confer Jury Verdict		
7	30	02	CR all present & not signed	156	228
3	17	03	Order for 5 th Court of Appeals - check record		
4	1	04	CR all present Movant Birmingham P ¹⁰ and atty Fleming representing If are present. Hearing conducted on Birmingham's Motion to Revoke filed 9/30/03. Testimony presented. Both sides rest. Arguments presented. Motion to revoke is in all things denied. Hearing held on the Motion for Sanctions filed this date. Testimony presented. Both sides rest. Arguments presented - et find based on the arguments, testimony, and pleadings that grounds for sanctions do exist and the et shall assess said sanctions for A's violation of Rule 13 of the TCP & for Section 11.001 et seq. TCPRC in the amount of \$1,000 - for actual damages and \$124,770 - for exemplary damages against A Birmingham who is ordered to pay said sum to T. If atty is instructed to draft a perfected order, Judge Ralston and submit a copy of same to A.		

2004
 Exhibit
 (2nd page)

Complete & full access to et's
 Sanctions are for conduct outside of
 our jurisprudence environment faculty of
 litigation after the parties have ~~been~~ avoided
 themselves of the remedies available under
 or law,
 Now
 You have the keys as whether there
 are any further proceedings in this case in the
 future. Please be aware that any further actions
 might result in further sanctions

62,885
 125,770

 124,770

ABOVE:
 Docket sheet in the case, assessing
 a FINE ("sanction") of **\$125,770**

LEFT:
 Warning that, "Please be aware
 that any further actions might re-
 sult in further sanctions"

the conduct of the judges that Birnbaum has appeared before, but instead, is a **delusional belief** held only inside the mind of Birnbaum. (a mightical MEDICAL diagnosis!)

- "The award of **exemplary and/or punitive** damages is **not excessive**"
- "The award of the **exemplary and/or punitive** damage award is **narrowly tailored** to the harm done" (**\$124,770?**)

Judge Chapman had said none of this! This is a repeat of what I had been complaining about to Judge Chapman about Judge Banner, where Fleming had faxed the likes over to Judge Banner late one evening, which had no basis in fact (remember "**well-intentioned**"?) and Judge Banner faxed me back immediately the next morning at 8:52 a.m., stating, "*I have this date signed and mailed to Mr. Fleming the Findings of Fact and Conclusions of law as received from Mr. Fleming*".

But that was AFTER I that evening recognized what Fleming and Banner were up to in this case, DEAD even then in this court, and out of desperation the next morning, Sept. 30, 2003, ran to the courthouse to file at **7:56 a.m.** my "Motion for Recusal of Judge Banner" that was the subject of this April 1, 2004 hearing.

12.

When in doubt -- PUNT

But this time, with Judge Chapman also assigned to hear the case I had filed against the lawyer who had started it all with his BEAVER dam case, and also assigned to the BEAVER dam case against me, and with Fleming laying the groundwork at this "motion to recuse Judge Banner" for more sanctions against me because of my suit against Fleming, and Judge Chapman threatening more sanctions against me, I decided I have but one choice, that they are after me, "To hell with the law, this man is rocking our boat, and has to be stopped, never mind the Constitution!"

I type out TWO simple "motion for non-suit", dropping my cases against the two lawyers, the "beaver dam" lawyer, and Fleming, and file it first

thing April 2, 2004. By the Rules of procedure, they HAVE to sign it, lest there are counterclaims, of which there are none.

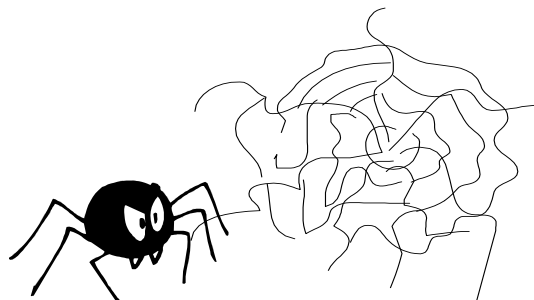
Judge Donald Jarvis has signed my non-suit against Fleming. Judge Chapman has not signed my non-suit against the beaver dam lawyer, nor the **\$125,770 FINE** he pronounced on April 1, 2004.

That leaves only my case in the Tyler federal court seeking "declaratory relief", i.e. that a federal judge declare Judge Banner's **\$62,885 FINE** against me is contrary to law.

Plus of course the original 1995 "beaver dam" case against me, now with Judge Ron Chapman as the judge sitting on that one, set for a "hearing" for July 9, 2004, where despite a UNANIMOUS jury verdict in 1998 of **ZERO damages**, the lawyer still wants \$10,000 in attorney's fees, plus a "permanent mandatory injunction" against me, demanding that water flow UPHILL.

Epilogue

"Oh what tangled webs we weave, when first we practice to deceive!"



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From a fresh and personal perspective -- go turn off judge Brown and judge Judy, and watch the real thing!



Before the frivolous "BEAVER DAM" suit, I was peacefully RETIRED on my farm, taking care of my cows and invalid 90 year old mother, and had only known the courthouse from getting LICENSE PLATES!

Now I am accused of "living in the courthouse", "vengeance and anger towards the legal system", and sued for "libel", "libel and slander", etc., "with malice", and for causing a lawyer "to suffer from stress, anxiety, and loss of confidence", and loss of benefits of "social intercourse", etc. ad nauseam. See NOTE, etc., somewhere down below.

"The morass in the court"

Who all is **evil**?

Attorney Richard L. Ray, for his "BEAVER dam scheme"?

Judge Tommy Wallace, for allowing lawyers to do such stuff in his court?

Judge Richard Davis, sham mediation, to cover up such stuff?

Judge James Zimmermann, who put **fraudulent questions**

"The BEAVER DAM scheme"

I get SUED because **BEAVERS** had built a dam on my farm!

Adjacent landowner gets real mad when I would not sign a "**permission request**" to let him DYNAMITE on a creek on my farm for the "**overgrown rats**".

Goes to attorney Richard L. Ray, who sees "legal fees" and **TWO suckers**, but knows

"Happy April Fools Day"

I scream FRAUD, and get **FINED** \$125,700 for wanting a different judge!

How, on a **DEAD case**, TWO visiting judges, ONE hearing a motion to remove the OTHER from the case -- ONE judge from the **bench**, the OTHER from the **witness box** -- managed to assess a \$125,700 FINE against a then 67 year old non-lawyer, on **APRIL 1**,

to the jury?

Attorney G. David Westfall, fraudulent suit for "legal fees", claiming "open account", when it was strictly PREPAID.

Judge Paul Banner, who likewise put **fraudulent questions** to the jury?

Judge Ron Chapman, who got so mad he could not think and FINED \$125,770, then got assigned to the stupid BEAVER case, and "lost it" again?

Judge Andrew Kupper who FINED \$1050, would not take action on the **fraud he learned of** in the BEAVER DAM case and those **huge retaliatory unlawful FINES**, then himself got assigned to the stupid BEAVER case? [Assignment](#) [Hearing](#) [PDF](#) [WORD](#)

Judge John Ovard, Presiding Judge of the First Administrative Judicial Region, who assigns these MONSTERS?

"Oh what tangled webs we weave, when first we practice to deceive"

he can't sue me over BEAVERS - they are not my beavers - so lawyer **fraudulently changes the facts** to me building and maintaining a dam ("**The Dam**") in violation of Section 11.06 of the **Texas Water Code!**

[Ray letter](#) - complaining of BEAVERS!

[Ray suit](#) - NO BEAVERS!

[Ray Deposition](#) -- ALL BEAVERS!

[Trial transcript](#) -- ALL BEAVERS!

[Judge forbids](#) -- mention "**The Dam**"

[Jury questions](#) - NO beavers -- NO "The Dam" -- NO Texas Water Code -- NO jury instructions -- **all fraud!**

I did not hire a lawyer, screamed fraud at the top of my lungs -- and judges get so MAD at me that they can't THINK -- and assess **hundreds of thousands of dollars in FINES.**

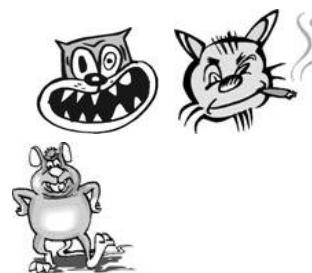
Before the **Richard L. Ray** BEAVER DAM SUIT, I was peacefully retired on my farm, taking care of my cows and invalid 90 year old mother, and had only known the courthouse from getting **LICENSE TAGS.**

2004 -- for having filed a **ONE page motion to recuse** SIX months ago!

[Happy April Fools Day](#) -- good summary -- adventures in la-la land!

[Docket entries](#) -- occupational hazard from too much sitting on high perches?

[Order on Motion for Sanctions](#) -- **Judge Ron Chapman** painting me as the devil -- "*a delusional belief held only inside the mind of Birnbaum*" -- a MEDICAL diagnosis! go diagnose yourself, you idiots. [PDF](#)



[Local Man Fined \\$125,770](#)

If there is insanity around, well, some of us gotta have it!"

[What is "civil RICO"? No. 2](#) [No. 3](#)

[Letter to Senate Judiciary Committee](#)

The Beaver Dam Scheme

Your neighbor wanted to use DYNAMITE on your farm?

Yes, wanted permission to blow up beaver dams on our creek.

Those Huge Fines

What started all these horrendous FINES?

I was sued for an unpaid "open account" for "legal fees"

Why did you not give him permission?

There was no problem, except in his head, and no beavers.

So he sued you?

Yes, over beavers.

How can he sue you over wild beavers?

He can't, so his lawyer sued for violating the Texas Water Code.

How can beavers violate the Texas Water Code?

They can't, and that is where the fraud started.

What do mean by fraud?

Beavers build a dam, and I get sued under the Texas Water Code.

So why did you not complain to the judge?

I did.

So why has this case been going on now for fourteen years?

Because of shyster lawyers and judges, and me screaming fraud..

Why do you use as strong a word as shyster?

Any lesser word would be an untruth.

So, what is this case really about?

Shyster lawyer, this being the US, and me not putting up with it.

How about in terms not quite as broad?

to be continued

Isn't "open account" like a lumber yard supplying a builder?

Yes, it is "systematic" arrangement for "sale and delivery".

Was your arrangement with your lawyer like that?

Of course not. I paid him a "non-refundable" \$20,000 up front.

Then how can he sue you under "open account"?

That is the fraud. Earlier fraud was in the crook soliciting me.

What do you mean by soliciting you?

Dallas attorney G. David Westfall got one of his lady clients, who he had conned to work off her "legal fees" at "Westfall family farms", to tell me these bastards in Van Zandt County really needed to be sued over all that BEAVER stuff, that attorney G. David Westfall was honest and different, and that I had a "very good case".

Did you know David Westfall was soliciting you?

No, of course not. I also did not know that a lawyer is strictly prohibited from soliciting on a particular matter.

What about that strange JUDGMENT by the Dallas Court?

That was after about half a year in the Dallas Federal Court, when Magistrate Paul Stickney and Judge Henry Buchmeyer signed a JUDGMENT in the case ORDERING the amendment of pleadings!

You said you fired David Westfall, your attorney, upon that?

Yes, David Westfall said Judge Henry Buchmeyer never saw our case, and when Westfall would not do anything about it, I fired him.

to be continued

Latest "goings on"**LATEST:**

Suit against Judge Ron Chapman and Paul Banner - for a "scheme to deprive" the state of Texas of "honest

LATEST:

Attorney Richard L. Ray counter-sues me for libel and slander - claims I caused him "*stress, anxiety, and loss*"

services"

Original Petition -- "civil RICO" - for a scheme to deprive the people and the state of Texas of the "honest services" as they swore to do. [PDF](#) [WORD](#) [FBI website re public corruption](#)

Interrogatories to Judge Ron Chapman -- go choke on these constitutional issues! [PDF](#) [WORD](#)

Interrogatories to Judge Paul Banner - same constitutional issues. [PDF](#) [WORD](#)

Letter to US Attorney's Office -- they can't put \$62,885 and \$125,770 **unconditional punishment** by civil process! A "new and evolving angle" of hiding in plain sight, in an institution we normally associate with doing good – the courts – and **do evil**. [PDF](#) [WORD](#) [FBI website re public corruption](#)

Judge Chapman's \$125,770 Sanction -- all he was assigned to do was decide if Judge Banner needed to be got off the case! Just look at all those hateful words he used. An open window to his mind!

Judge Banner's \$62,885 Sanction --he "sanitized" his version. More clever than Judge Chapman -- and more evil. [PDF](#)

Complaint to Judge John Ovard -- re Judge Ron Chapman - "get this madman off my back". [PDF](#) [WORD](#)

of confidence".

Richard Ray is upset over my using the phrase "**shyster lawyer**" in describing his BEAVER DAM case upon me. [PDF](#)

But then, some people WANT a "shyster lawyer".

My defense, of course, is that he **IS** a "shyster lawyer". [PDF](#)

And, as an attorney "**public citizen**" he has to prove "**actual malice**" on my part, i.e. that when I used the phrase, I then **KNEW** that he was **NOT** then a "shyster lawyer".

US Supreme Court **Times vs. Sullivan** - [Wikipedia](#)

He has to **PROVE** that **I DO NOT INDEED BELIEVE** that he was in fact, then and / or now, a "shyster lawyer". Good Luck.

Third Amended Original Petition - my suit against Ray for all these HUGE FINES ultimately stemming from his fraudulent BEAVER dam case against me. [HTML](#) [PDF](#) [WORD](#)

Original Petition - Richard Ray counter for libel etc [PDF](#)

Hearing - Judge Andrew Kupper - insight into BEAVER DAM case, those HUGE FINES, "honest service" doctrine

[Assignment](#) [Hearing](#) [PDF](#) [WORD](#)

A lawyer has a DUTY to be honest, lest he be in violation of the federal anti-racketeering statute, "RICO"!

[FBI website re public corruption](#)

NOTE: The below kept as "*as was*", as was at the time I was sued for "**Slander and Libel**", "**Libel**", and "**Intentional Infliction of Emotional Distress**", and causing "**anxiety, stress, and lack of confidence**" to a lawyer.

Lawyer attached copy of this web site, as below, as EXHIBIT "A" to his counter-claim. Suit still active -- see above. But he **does not want to go to trial**

(As an attorney "**public citizen**", and under the US Supreme Court's [Times vs. Sullivan](#), he has to prove "**actual malice**", i.e. that at such time as I may have referred to him in the context of "shyster lawyer", that at that time **I did not indeed believe** that he was such.)

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[Notice](#) as to the tone of this site. Not ALL lawyers are evil. There ARE good lawyers (and judges)! All this stuff "*arises out of*" (a favorite lawyer phrase) the OLD (Tommy Wallace) court, finally voted OUT in 2002

Mission:

"Let US learn more about our American rights under the law, rather than just do LAWYER bashing. But let US never fall back to our OLD ways of letting a small "good-old-boy" pack of Canton lawyers take advantage of our COURTHOUSE ILLITERACY to talk us into crowning (electing) one of THEM to be THEIR private judge against US!" See [Notice](#) as above.

Latest goings-on:

On Oct. 24, 2006 retired Judge Ron Chapman actually signs his idiotic \$125,770 FINE he sat

The case had been DEAD ever since FINAL JUDGMENT on July 30, 2002 !
 It was DEAD when Chapman sat on it in April 1, 2004. Just as DEAD now in 2006!
 Also it is a PUNITIVE sanction by CIVIL process --- that violates "*due process*"
 It is also indictment, medical diagnosis, and punishment -- all rolled into ONE!

"to stop this litigant and others similarly situated"

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

The Constitution of course allows "*delusional belief*", but NOT from the BENCH!

[The \\$125,770 fine](#) -- key phrases bold emphasized

[April 1 2004 docket entry](#) -- occupational hazard from too much looking down from high perches?

["Happy April Fools Day"](#) -- it all started when I was sued because BEAVERS had built a dam on my farm!

[RICO suit for \\$377,310](#) -- treble damages - for injury by a "*scheme to deprive of honest services*"

The surest sign that intelligent life exists elsewhere in the universe is that it has never tried to contact us. Bill Watterson in his comic strip "Calvin and Hobbs"

I get FINED \$125,770 for wanting a different judge! [more](#)

Retired judge Ron Chapman came on [April 1, 2004](#) to hear whether retired judge Paul Banner should be removed from the case. [Chapman's April 1 2004 docket entry](#) [Happy April Fools Day](#) -- A REAL HOOT!

Then, after more that TWO years, on [Oct. 24, 2006](#) judge Chapman actually signs his idiotic \$125,770 FINE, finding that I was guilty of "*attempt to harass, intimidate, and inconvenience*", "*delusional belief held only inside the mind of Birnbaum*", "*bickering and quarreling with judges*", "*has been vindictive, unwarrented, mean-spirited, frivolous, and totally without substantiation*", and that Birnbaum's "*conduct was engaged in willfully and maliciously with the intent to harm*", and that the fine is "*an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished*", and "*to stop this litigant and others similarly situated*" [Chapman's 8 page Order on Motion for Sanctions](#) -- A REAL HOOT!

"I'm not a lawyer, but this whole thing sounds more like a criminal indictment, medical diagnosis, and sentencing -- all rolled into one".

"If I had been guilty of all this stuff, why didn't the judge have the bailiff arrest me right there on the spot?"

"It ALL started when I was sued because BEAVERS had built a dam on my farm!"

"And when I did not NOT hire a lawyer, that upset the whole system, and everybody went MAD".

The case had of course been DEAD ever since FINAL JUDGMENT on July 30, 2002
 It was DEAD when Chapman sat on it in April 1, 2004. Just as DEAD now in 2006!
 Also it is a PUNITIVE sanction by CIVIL process --- that violates "*due process*"

My response to the whole thing -- sue the judges for the damages they did to me. There was NO CASE to sit on!

[RICO suit for \\$377,310.00](#) -- treble damages by a "pattern of racketeering activity" involving a "*scheme to deprive of honest services*"!

The surest sign that intelligent life exists elsewhere in the universe is that it has never tried to contact us. Bill Watterson in his comic strip "Calvin and Hobbs"

Overview - details below:

[The dogs that caught the train](#) -- I get sued because BEAVERS had built a DAM on my farm!

Judges and lawyers get sued for "*a pattern of racketeering activity*" under the federal RICO statute.

And get so MAD they can't THINK -- and make dam fools of themselves (pun intended) ON APRIL 1!

Overview -- "Oh what tangled webs we weave -- when first we practice to deceive"

[Happy April Fools Day](#) -- "if there is insanity **around**, well, some of us gotta **have it!**"

How, on a **DEAD case**, TWO visiting judges, ONE hearing a motion to remove the OTHER from the case, ONE judge from the bench, the OTHER from the witness box, managed to assess a **\$125,700 FINE** ("**sanction**") against a 67 year old non-lawyer (me), on **APRIL 1**, 2004. (for having filed a ONE page motion SIX months ago!)

[April 1, 2004 docket scratch -- unbelievable!](#) [Happy April Fools Day](#) -- as **MS Publisher file** (large 3.7MB)

Follow-up - coming - "**Fruit-Cake II**" ?? -- I am accused of "**living in the courthouse**"!

July 19, 2004 -- Dallas "visiting judge" has a hearing on the **1995!** "beaver dam" suit against me

Overview -- from another perspective:

[Going looking for a lawyer](#) -- The Wallace "good old boy" network as seen from nearby Henderson County

Other nuttiness -- misc. other cases

[Lawyer Disciplinary Trial](#) -- Some of the problems the State Bar has with lawyers, and vice versa. Lesson for lawyers: **Don't take a mad grandmother for a client!**

[Case of res ipsa loquitur](#) -- Drunk kids joyriding at night on flatbed truck. One falls off relieving himself. Claims **drunk** driver was **negligent** for letting HIM ride **drunk** on flatbed!

[Bunk-bed Bunk](#) -- A circus. A kid falls out of bed, **and the (lots of) lawyers** Another hoot. More "*lawyer speak*"

Puppy Mill Madness -- The Dallas SPCA awarded judgment of **\$6,480, \$24,080, \$7,920, \$4,970** in seizure of Van Zandt "puppy mill" animals, to be paid as "costs of court". But the JP courts had NO "*costs of housing*" (the seized animals) ! And the SPCA was **NOT EVEN A PARTY** to the case! And the jurisdictional limit for a JP court is **\$5000!** And **Punishment** of ANY kind by civil process "offend the Constitution"!

The beaver dam suit against me - a wake-up call -- what started it all:

[Beaver Dam Bunk](#) -- I get sued because BEAVERS had built a dam on my farm! Senile neighbor (ex-military) goes to war -- against beavers -- with DYNAMITE! Calling them "overgrown rats", he gets mad at me too.

His shyster lawyer, knowing he can't sue me over BEAVERS (they are state animals) , simply changes the facts.

Claims I had violated the TEXAS WATER CODE, by ME having built a dam, that caused "sand, driftwood, and debris" to wash upon my neighbor -- when he is entirely UPSTREAM!

Before that I was living peaceably on my farm taking care of my cows and my 90 year old invalid mother, and had only known the courthouse from getting **automobile license tags**.

A little bit about me -- before all this beaver dam madness



elementary school
Germany, 1947, after the war

[My upcoming book](#)



me

Excerpts and some more pictures



Village train station

[Story behind this](#)



File in the 294th
see below



[My stand more](#)

The federal RICO case -- Against the whole bunch -- lawyer, judges, district attorney, the whole pack. Dallas lawyer had talked me into it -- "you have a very good case" -- Oh how naive I was!

Also, had to have been a severe case of "loose screws" by the Dallas lawyer, to sue Texas judges for engaging in a "pattern of racketeering activity" as outlawed by the federal anti -racketeering statute, RICO.

I get sued by my lawyer -- claiming he did \$38,121 "worth" of services -- in suing the Texas district judges???

Appeal to U.S. Supreme Court -- "Since when, in AMERICA?" Filed Aug. 16, 2004

"Whether a person without a lawyer, filing a pleading in a Texas court under U.S.C. § 1964(c), ("civil RICO"), can be sanctioned as much as \$62,885 merely because the evidence is found to be insufficient to show his claim." See [Questions Presented](#) (filing a lawsuit is of course constitutionally protected! [Rutan, 497 U.S. 62](#))

Had gone first to Texas Fifth Court of Appeals ([Brief](#)), then Texas Supreme Court ([Part A](#) [Part B](#)), now U.S. Supreme Court [Notice](#) as to the tone of this site. Not ALL lawyers are evil. There ARE good lawyers (and judges)!



Paper Bunk

[Paper to the Appeals Court \(25 lbs\)](#) [Appeal brief](#) [Reply brief](#) [For rehearing DENIED](#)
[To the Texas Supreme Court \(more paper\)](#) [Then they cant find it!](#) [Petition Part A](#) [Petition Part B](#)
[Motion for Rehearing](#) with interesting exhibits: [Exhibit 1](#) [Exhibit 2](#) [Exhibit 3a](#) [Exhibit 3b](#)

Miscellaneous:

[Archive of my 2002 run for Van Zandt County Judge](#)

[The Duties of a Citizen](#) from 1950's U.S. Department of Justice brochure (Eisenhower was President)

[What is "civil RICO"?](#) [No. 2 in the series](#) [No. 3](#)

[Domestic white-collar terrorists](#)

[In honor of our troops](#)

[On the lighter side](#) -- REALLY WILD! -- I am NOT allowed to tell the jury what I was sued for!!!!

[Going looking for a lawyer](#) -- Sometimes it is hard to stay sane

Complaints::

[Complaints of corruption in Wallace's \[old\] Court](#)
[Letter to Senate Judiciary Committee](#)

Events around our county courthouse:

[Our district courtroom update](#) Housecleaning - new carpets
[Our county Law Library](#)
[A modest proposal](#)
[Winter around the square](#) -- Seasons Greetings from Canton, Texas
[Justice of the Peace - Pct 1](#) [Pct 2](#) [Pct 3](#) [Pct 4](#)

[Texas Supreme Court Petition for Review](#)
[Paper that went to the appeals court \(25 lbs\)](#)
[Now to the Texas Supreme Court \(still more paper\)](#)
[Front section](#) [Main body](#) [They cant find it!](#)

BELOW:

My personal experience "arising out of" the [old Wallace] Court.
 Tying me up in the courthouse to get lots and lots of "**legal fees**" (\$122,000). ZERO damages, all "fees".
"Smoke *Old Mold*, the *ONLY* cigarette that that is ALL FILTER".
 Let us NEVER again let crooks run our District Court! So here goes:

**The Van Zandt "beaver dam" scheme** 1995 suit on me that STARTED IT ALL!

Over "my" beavers! Watch "your" fire ants (and some of "our" lawyers)
 Among the 5000+ skeletons (backlog cases) from the (old Wallace) court. [Still active case.](#)
[MOTION for new trial](#) I'm asking that the judge next time put the RIGHT QUESTIONS to the jury
[Motion for Recusal](#) That the judge was no longer UNBIASED after being sued for "racketeering"
[The "beaver dam" judge finally steps down](#) after EIGHT YEARS. Now waiting on a different judge.
 STATUS: waiting on Dallas to assign a judge for the one who stepped aside [inquiry letter](#)

[On the lighter side](#) *Judge Zimmermann: "To make a pleading (a lawsuit), you put a piece of paper in a typewriter and you type on it anything you want to -- And you come down to the courthouse. You give it to this lady right over here, the District Clerk. She puts a file stamp on it. **It's a pleading.**" FROM OFFICIAL RECORD*
 That is exactly what the "beaver dam" lawyer had done! [old court] [more](#)

Civil RICO suit against the "beaver dam scheme" - judges, lawyers etc**Civil RICO suit against Canton lawyer** (for his "beaver dam" scheme) [Lawyer's Answer](#)

Started **eight years ago**. Lawyer still perpetrating it in our District Court **as of this day**.
 Perpetrating a scheme to "**deprive of honest service**" (i.e. pattern of lying in court) violates "RICO". (Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*)
 EASY READING. MAKES "RICO" UNDERSTANDABLE.
 "RICO" is really very simple. See why bad lawyers (and bad judges) **hate** civil

RICO

[Civil RICO jury instructions](#) If juries can understand what RICO is, lawyers can too!

[My APPEAL BRIEF on the TWO UNLAWFUL judgments](#) See exactly how they did it.

Near end of document shows picture of the HUGE FILE in the court.

Would not have happened if they had gone by the RULES of court. [old court]

Try the "hyperlink" footnotes in the document (the blue things one clicks on)

[Appellees Brief](#) They claim I "[waived](#)" my right. How ridiculous. Look up "[waived](#)"

[My REPLY BRIEF](#) They have [got to be teaching lying in law school!](#)

[Request for FINDINGS](#) "Judge, please put on PAPER, what you thought I did so AWFUL" [DENIED!](#)

[Request for ORAL ARGUMENT](#) I want to be heard! [DENIED!](#)

[THE BEAUTIFUL DOCKET SHEET IN THIS CASE!](#) worth seeing! (best viewed printed) [page 2](#)

[The heart of the LAWLESSNESS](#) "Judge, how did you do this? The [jury](#) was supposed to decide!"

One and a half year after the case is over, Judge Banner suddenly "finds" that I was not "well-intentioned" as he found at the end of the case, but paints me to be some sort of monster to the judicial system:

[Letter to Judge Banner re his "Findings"](#) [Motion for Recusal of Judge Banner](#)

[My Response to Judge Banner's "just-now-being-made" Findings](#) (filed in the appeals court)

[My Rule 298 Request for Clarification](#) (filed in our 294th District Court, regarding the new "findings")

[The Appeals Court has spoken](#) - Except they made up the "facts" and sprinkled some law on top

[My Petition for Rehearing En Banc](#) - Asking ALL (en banc) the judges that this is not per the Law

(as a group, *en banc*) [Haven't these guys ever heard about our Constitution!?!?](#) [pictures](#) [DENIED!](#)

[Now to the Texas Supreme Court \(still more paper\)](#) My Petition: [Front section](#) [Main body](#)

Then they think they LOST it!

[A failure to communicate - short and self explanatory](#) - would be funny if it were not so sad or "Did the Texas Supreme Court really LOOSE 24 lbs of my documents, or WHY?"

[Motion to file another set](#) - like above letter, except [more formal](#). Maybe they will find my documents

first?

Civil RICO Suit against the Dallas lawyer For perpetrating a scheme to "deprive of honest service"

(i.e. lawyer lying in court) violates the anti-racketeering statute ("RICO").

EASY READING. MAKES "RICO" UNDERSTANDABLE. ("RICO" is really very simple) See why bad lawyers (and bad judges) hate civil RICO.

["A Beautiful Mind"](#) Lawyer's [closing argument](#). Then see "predicate act 7" in suit above..

[Petition for writ of mandamus](#) The assigned judge won't show! Trying to make him show up.

The Appeals Court has [DENIED!](#) my writ of mandamus. (???, the judge does not need to show?)

[INQUIRY LETTER](#) Is someone [custom picking judges?](#) [ASSIGNMENT of Judge Donald Jarvis](#)

Go to [www.firstadmin.com](#) and "Get Court Assignments by the Judge of your choice."

STATUS: waiting on the judge assigned by Dallas to show up [inquiry letter](#)

[Going looking for a lawyer](#) The Wallace "good old boy" network as seen from Henderson County. Pretty good summary of the "beaver dam" scheme in Wallace's [old] court

[Letter to Senate Judiciary Committee](#) (regarding "white collar crime" in the courts. "Enron-itis"?)

Miscellaneous.

[Happy Holidays](#) What if we were through with the old year, and the new one were not ready to start!!!

[COSMOLOGY - "a theory of everything?"](#) Does there really have to be a reason?
[a modest proposal](#) How commissioners can REALLY save money
[Lessons from the fire ants](#) Why ants always get into electrical control boxes and gum things up
[power outage exercises?](#) A tax on throwing rocks? and other tools to fight terrorism.
[No more wild hog stories](#) Just WILD predictions
[Lessons from the wild hogs](#) The grass roots war
[Hog alert!](#) Hogs can be a problem. So can "beaver dam" schemes. SEE ABOVE.
[Institutions matter](#) Reflections on Liberty and Justice at Home (and looting and lawlessness in Iraq)
[In praise of JP courts](#) "where there are fewer lawyers involved"
[Self Evaluation Quiz](#) "For Democrats and Republicans alike"
[Domestic white-collar terrorists](#) A threat to the economy and the war on terrorism
[ALL ABOARD!](#) Let us make the most of what we got
[Journey of the ship of state](#) On freedom under the law
[On Free Speech and Due Process](#) Lawlessness in the name of the law. There is no 9-1-1 to call!
[Happy New Year](#) Suggestions for OPEN local government
[Thanks](#)
[Happy Holidays](#)

County judge race:

[Archive of my 2002 run as an independent candidate for county judge](#)

District judge race: Rocks (newspaper ads) I threw into the **district judge** race:

["Is it fair for lawyers to contribute to judges?"](#) It is not against the law, but is it right?

["fashioned innovations" or "lawlessness" in Wallace's \[old\] 294th District Court](#)

["Wallace Receives Bar Award"](#)

["294th District Judge Wallace Endorsed by Good-Old-Boy Network"](#)

[No 9-1-1 to call for crimes committed in the courtroom!](#)

[Complaints of corruption in Wallace's \[old\] Court](#)

ISSUES BEING CONSIDERED:

Tort Reform (hot topic in Austin. House Bill 4, "***Trial Lawyer Extinction Act***")

Whether Texas district judges should be elected or appointed

Whether the Rules of Civil Procedure (rules of court) should be taught in high school

How to get more people to watch what goes on in our courts (and make better jurors)

How Texas trial lawyers are among the best in the nation at representing plaintiffs before juries, yet ineffective when it comes to defending themselves in the court of public opinion.

(Answer: In court they can get by with lying)

HOW THIS SITE CAME TO BE - My intent is to have US learn how to improve justice in OUR county, rather than just do LAWYER bashing. There are good lawyers.

This site grew out of my old campaign web site when I tried to run as an independent for Van Zandt county judge in 2004 on a platform of OPEN GOVERNMENT. That run sprang from being politically awakened after finding myself suddenly being run over in the [old crooked Wallace] District Court.

I have since come to recognize that even **good lawyers** cannot provide JUSTICE, if **WE** should fall back on **OUR** old ways, of IGNORANTLY rubber stamping (electing) a **bad lawyer** which the **bad lawyers** want to push on **US** to be **THEIR** [CROOKED] JUDGE.

NOTICE:

Any erroneous reflection upon the character, standing or reputation of any person or firm or corporation which may appear on this site will be gladly corrected upon being brought to my attention. Also, if I have erred in any **facts**, or **conclusions**, or if your **facts** or **conclusions** differ from mine, please let me know. E-mail: Brnbm@aol , Snail-mail: Udo Birnbaum, 540 VZ County Road 2916, Eustace, TX 75124, Phone 903/ 479-3929

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

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

May 5, 1999

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

RE: Birnbaum v. Ray, et al.

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.

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

Exhibit
"A"

DEPOSITION
EXHIBIT

3

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:

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.

Mr. Birnbaum
May 5, 1999
Page three

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.

Sincerely yours,



Accepted: Udo Birnbaum
Udo Birnbaum

Date: 5-5-99

BANK ONE
Bank One, Texas, NA

CREDIT

R/T 520101023

9028012 (02/99)

MAFLAND 845053

Today's Date 5-5-99 Customer Social Security No. / Tax I.D. No.

Customer Name (Please Print) G. David Westfall PC

Customer Address 714 Jackson # 700

City Dallas State TX ZIP Code 75202

Sign Here (If cash is received from this deposit) X

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL. Checks and other items deposited for deposit are subject to the provisions of the Uniform Commercial Code and the Deposit Account Agreement with Bank One.

ACCOUNT NUMBER - Right Justify

0100077276

CURRENCY ▶

COIN ▶

CHECK ▶ 20000.00

TOTAL FROM OTHER SIDE ▶

SUB TOTAL ▶

LESS CASH ▶

TOTAL \$

20000.00

CHECKING DEPOSIT

N08393 16-981

⑆520101023⑆

UDO H. BIRNBAUM 88-944/1119 1432
RT. 1, BOX 295 PH. 903-479-3929 0546143
EUSTACE, TEXAS 75124

DATE 5-5-99

PAY TO THE ORDER OF G. David Westfall, P.C. \$20,000^{00/100}

Twenty thousand and 00/100 — DOLLARS

FIRST STATE BANK
P.O. Box 97 Ben Wheeler, TX 75754 (903) 833-5861
BRANCH: The Edom Bank Edom, TX (903) 852-7726

MEMO Udo H. Birnbaum

⑆111909443⑆ 1432⑆0546143⑆

BANK ONE

Customer Receipt

THANK YOU!

0187 14010 00 4888 05 05 1999 14124

ACCT# 0000078276

CHECKING DEPOSIT \$20,000.00

05 05 1999

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

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

September 20, 2000

Ms. Nancy Young, District Clerk
Van Zandt County
302 Courthouse
121 E. Dallas Street
Canton, Texas 75103

00-00619

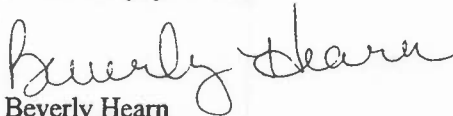
RE: Law Offices of G. David Westfall, P.C. v. Udo Birnbaum

Dear Ms. Young:

Enclosed are an original and 3 copies of Plaintiff's Original Petition to be filed in connection with the above referred to matter along with our check in the amount of \$228.00 for the filing fee, issue a citation and for process service. Please return the extra filed stamped copies of the petition in the enclosed envelope.

If you have any questions please feel free to give us a call.

Sincerely yours,



Beverly Hearn
Paralegal to G. David Westfall

GDW:bh
Enclosures

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

vs.

UDO BIRNBAUM

)
)
)
)
)
)
)

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

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:

I.

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

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

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.

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

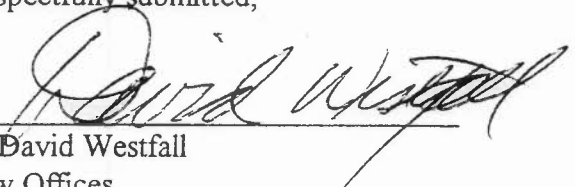
account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed.

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.

Respectfully submitted,



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

Exhibit
1-A

LAW OFFICES OF G. DAVID WESTFALL, P.C.

714 Jackson Street, Suite 700
Dallas, Texas 75202
(214) 741-4741

BILLING STATEMENT

December 31, 1999

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

RE: No. 3:99-CV-0696-R
Birbaum v. Ray, et al.

PROFESSIONAL SERVICES RENDERED:

5/3/99	Telephone conference with Kathy Young	
5/5/99	Review portions of file; conference with client; telephone conferences (3)	
5/6/99	Review Rule 12(b) Motions (4); telephone conferences (4)	
5/7/99	Telephone conferences with client (2); legal research on Rule 12(b); Rule 56; conference with client (@ 7points)	4.9
5/8/99	Legal research and case preparation	4.3
5/10/99	Review fax (Scheduling Order); telephone conferences (3); correspondence; telephone conferences with other attorneys regarding extension of time (3)	2.4
5/11/99	Correspondence; telephone conference with office of Roxie Cluck; review file; work on amended complaint; conference with client; legal research	3.7
5/13/99	Receipt and review correspondence (2) and Davis and Malone's 12b Motions; prepare stipulations and order re: enlargement of time, motion and order to file amended complaint and motion and order for notice of appearance; correspondence; telephone conferences (14); court appearance to review file	7.1
5/14/99	Telephone conference with client	0.2
5/17/99	Review Amended Complaint with Exhibits; telephone conferences with other attorneys (3)	2.9
5/18/99	Review correspondence, Order re: Scheduling Order	0.6

2nd Reminder - 2-1-00
Udo - what's the problem? - please remit 4-3-00
first notice B-4 6-1-00
formal collection 7-31-00
certified mail 7689-3200
9131

5/19/99	Receipt and review correspondence and Order of Stipulation signed by Richard Davis	0.2
5/21/99	Receipt and review Order of Stipulation signed by Richard Ray; court appearance to file Motion and Order; review file and amended complaint with exhibits	2.9
5/22/99	Review file and case preparation	3.3
5/24/99	Legal research; case preparation	2.7
5/25/99	Legal research; case preparation	2.3
5/26/99	Receipt and review signed Order of Stipulation; review draft of amended complaint; conference with client	2.9
5/27/99	Receipt and review Defendant Young's 1st W.I. to Plaintiff; telephone conference with A.G.'s office; correspondence	4.5
5/28/99	Legal research and case preparation	3.1
6/1/99	Telephone conference with client	0.3
6/2/99	Receipt and review correspondence and proposed Amended Complaint and proposed W.I. Answers	1.4
6/4/99	Review file; work on Amended Complaint	1.6
6/5/99	Review file; work on draft of Amended Complaint; legal research	3.8
6/8/99	Legal research; work on Amended Answer	2.6
6/9/99	Legal research re: 11(b) and 12(b) Motions	3.1
6/11/99	Receipt and review Defendant Young's 1st Request for Production; conference with staff and S.Podvin	3.8
6/12/99	Review file; legal research	1.8
6/15/99	Telephone conference	0.1
6/21/99	Review file; work on response to W.I.; telephone conferences (2)	1.9
6/24/99	Review file; review draft of Amended Complaint; review draft of responses to W.I.; telephone conferences (2)	3.9
6/25/99	Review file; conference with client; prepare and file Answers to Defendant Young's W.I.	3.5
6/29/99	Telephone conferences (8); correspondence	2.3

6/30/99	Receipt and review correspondence; telephone conferences (8); correspondence	1.7
7/1/99	Review faxes (3) and correspondence; sent 3 faxes; telephone conference with D.Maseo; R.Davis' office and C.Van Cleef	1.3
7/2/99	Receipt and review correspondence; review faxes (4); prepare and file Joint Status Report; telephone conferences (6); correspondence; conference with client	6.4
7/5/99	Telephone conferences (2); conference with client	1.8
7/9/99	Receipt and review correspondence; telephone conferences (6); legal research; work on response to 12(b) motions	3.5
7/10/99	Legal research and case preparation	4.6
7/13/99	Telephone conferences (3); legal research	2.9
7/14/99	Legal research	1.6
7/16/99	Receipt and review Original Answer of K.Young to Amended Complaint; telephone conferences (3)	0.8
7/17/99	Legal research; conference with S.Podvin; work on Response to 12(b) Motions, etc.	3.2
7/18/99	Conference with S.Podvin; legal research; work on Response to 12(b) motions, etc.	4.6
7/19/99	Conference with S.Podvin; work on Response to 12(b) motions	3.9
7/23/99	Receipt and review correspondence (3)	0.3
7/28/99	Receipt and review correspondence, Defendants' Amended Motion to Dismiss Under 12(b)(6)	2.1
8/2/99	Review file; pleadings; correspondence	1.2
8/4/99	Review file; correspondence pleadings; telephone conferences (4)	1.9
8/5/99	Telephone conferences (4)	0.4
8/6/99	Receipt and review correspondence and Davis' Objection to U.Bimbaum's Affidavit	0.4
8/18/99	Telephone conference with client	0.2
8/25/99	Supplemental response to Defendants' 12(b)	0.5

9/1/99	Receipt and review Defendant Young's Designation of Expert Witnesses; telephone conferences (3)	0.4
9/3/99	Telephone conferences with other attorneys (3)	0.6
9/9/99	Review proposed Findings and Conclusions; telephone conferences (3)	1.6
9/10/99	Review file; review rules re: reply to Findings and Conclusions	1.6
9/13/99	Review file; legal research re: Findings of Facts and Conclusions of Law; telephone conferences (2); review fax (10 pages); telephone conference with Mike Collins	5.1
9/14/99	Conference with client; legal research and work on Findings of Fact and Conclusions of Law	5.7
9/15/99	Conference with client; conference with S.Podvin; legal research; review findings of fact and conclusions	5.3
9/17/99	Conference with client; work on objections to Findings and Conclusions; legal research; conference with S.Podvin; court appearance to review file	5.5
9/20/99	Receipt and review Young's Motion to Dismiss under FRCP 12(b)(6) and Brief; correspondence; telephone conferences (3)	0.9
9/24/99	Receipt and review Order re: File Amended Complaint and 12(b) Motions; correspondence; telephone conferences (3)	0.7
9/25/99	Legal research re: prospective appeal	2.3
9/28/99	Legal research re: appeal	1.2
9/29/99	Telephone conferences (3)	0.7
9/29/99	Telephone conferences (2); conference with client	1.7
9/30/99	Legal research; work on Plaintiff's response to Young's 12(b); conference with C.McGarry and S.Bush	4.8
10/1/99	Telephone conferences (3); legal research	1.9
10/2/99	Legal research re: appeal	2.3
10/4/99	Telephone conferences with client (2)	0.4
10/6/99	Receipt and review correspondence; legal research; conference with client; conference with S.Podvin; review Plaintiff's response to Young's 12(b) Motion	4.3
10/7/99	Telephone conferences (4); conference with client and S.Podvin; to	

	courthouse to file response to Young's 12(b) motion	2.8
10/9/99	Conference with S.Podvin; legal research re: appeal	3.4
10/11/99	Conference with staff; legal research	1.3
10/13/99	Telephone conferences (7); telephone conference with client	1.6
10/14/99	Conference with client	0.6
10/15/99	Telephone conference with court clerk; legal research re: appeal	3.1
10/16/99	Legal research; conference with S.Podvin	2.6
10/18/99	Telephone conferences (3); telephone conference with 5th Circuit Clerk's office	0.6
10/19/99	Telephone conferences (2); legal research	1.9
10/22/99	Legal research and work on appeal	2.2
10/23/99	Conference with S.Podvin; additional legal research re: appeal	5.1
10/26/99	Telephone conferences (3)	0.6
10/27/99	Receipt and review correspondence; telephone conference with court clerk	0.4
10/27/99	Telephone conferences with court clerk at 5th Circuit (3)	0.6
10/28/99	Telephone conference with Judge's briefing clerk	0.3
10/29/99	Telephone conference with client	0.1
10/30/99	Conference with S.Podvin	2.4
11/1/99	Telephone conference with client and M.Collins	0.2
11/2/99	Telephone conference with court clerk; conference with client and M.Collins; legal research and conference with S.Podvin	5.8
11/4/99	Telephone conferences (2) with court clerk	0.3
11/5/99	Telephone conference with court clerk's office (3)	0.3
11/6/99	Conference with S.Podvin; legal research	2.6
11/8/99	Telephone conference with court clerk; conference with staff; legal research	2.3
11/9/99	Conference with S.Podvin; legal research	3.9

11/13/99	Conference with S.Podvin	0.6
11/16/99	Telephone conferences (3)	0.6
11/17/99	Telephone conference with court clerk	0.2
11/23/99	Telephone conferences (2)	0.2
12/1/99	Receipt and review correspondence; telephone conference with court clerk	0.3
12/6/99	Receipt and review Plaintiff's Pro Se Appearance and correspondence; telephone conference with M.Collins	0.5
12/8/99	Telephone conferences (2)	0.3
12/9/99	Telephone conference with District Clerk's office and Judge's briefing clerk	0.4
12/10/99	Receipt and review Young's Response to Plaintiff's MSJ and Brief; telephone conference with Young's attorney and court clerk	0.9
12/11/99	Draft Motion and Order to Withdraw	1.2
12/13/99	Receipt and review Order Denying Plaintiff's MSJ; telephone conference	0.3
12/14/99	Telephone conference with court clerk and other attorneys (3)	0.6
12/20/99	Telephone conference with court clerk	0.2
12/21/99	Finalize Motion and Order to Withdraw; correspondence	0.9

100	HOURS at \$200.00 per hour	\$	20,000.00
129.9	HOURS at \$100.00 per hour	\$	12,990.00

EXPENSES:

Paralegal: 68.6 at \$60.00 per hour	\$	4,116.00
Photocopies: 3,384 at \$.25 per page	\$	846.00
Facsimiles: 105 at \$1.00 per page	\$	105.00
Long Distance telephone expense	\$	64.10

Total expenses: \$ 5,131.10

Total amount: \$ 38,121.10

Less: \$ (20,000.00)

***** TOTAL AMOUNT DUE: \$ 18,121.10**

Udo Birnbaum v. Ray, et al

Prepared By	Initials	Date
Approved By		

	1	2	3	4
Date	Description	Charges	Payments	Balance
(1999)				
1 5 5	Check # 1432 of 5/5/99 (Retainer)		20000-	20000-
2 12 31	Bill sent (year end)	3812110		<1812110
<hr/>				
(2000)				
5 2 1	Reminder sent			<1812110
6 4 3	Reminder sent #2			<1812110
7 6 1	Reminder sent #3			<1812110
8 7 31	Reminder sent #4 (Final notice)			<1812110
9 9 2	" " #5 (cert mail)			<1812110
	(file sent)			
11				
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1 on the bottom of page 2, using the 1962-A pattern
2 jury instruction and the evidence I have designated,
3 can you give me a specific reason as to why I cannot
4 convince a jury to find affirmatively as to
5 participating as a principal?

6 MR. FLEMING: Objection.

7 MR. WESTFALL: Objection to the
8 form.

9 MR. FLEMING: Form.

10 Q (By Mr. Birnbaum) Using pattern jury
11 instructions, can you give me any reason as to why I
12 cannot convince a jury to find affirmatively as to
13 mail fraud by an affirmative finding?

14 MR. WESTFALL: Same objection.
15 Objection as to form.

16 Q (By Mr. Birnbaum) Do you see any flaws in
17 the 1962-A jury instructions?

18 A I haven't had an opportunity to view them.

19 Q I refer you to section 3. This is the May
20 5, 1999 contract between us.

21 Did you promise that you would bill me
22 monthly?

23 A I don't believe so.

24 Q Why don't you believe so, Mr. Westfall?

25 A Because I don't know that I've ever

Exhibit
2

1 promised anyone that I would bill them monthly.

2 Q Never promised anybody you would bill them
3 monthly?

4 A Not that I recall.

5 Q Would you look on page 2, first paragraph?

6 A Okay.

7 Q Let me ask you the question again,
8 Mr. Westfall.

9 A Okay.

10 Q Did you promise that you would bill me
11 monthly?

12 A It is contained in the agreement that you
13 will be billed monthly for the time expended and
14 expenses incurred.

15 MR. BIRNBAUM: Nonresponsive.

16 Q (By Mr. Birnbaum) Did you bill me monthly,
17 as you contracted?

18 A I don't believe so.

19 Q Did you bill me at all?

20 A Yes, sir.

21 Q When did you bill me? When did you start
22 billing?

23 A Can you give me the tab that's immediately
24 in front of --

25 Q Mr. Westfall, where would we have to look

1 to find out when you started billing?

2 A I guess we'd have to look at the contract.
3 Possibly May the 5th.

4 Q Mr. Westfall, what documents at a law
5 office would I have to look at to find out when you
6 started billing me monthly?

7 A You would look at the agreement would be
8 one thing, I would say.

9 Q Well, look at it. You got it in front of
10 you.

11 A May the 5th is the date of it. And that's
12 the day that it was prepared and the date that you
13 signed it.

14 Q Is that the date you should have started
15 billing or the day you did start billing?

16 A I guess -- the day I did or the day I
17 should? I guess it's the date that I should start
18 billing.

19 Q Monthly?

20 A I guess I'm not understanding that
21 question. Were you expecting a monthly bill on the
22 5th of May?

23 Q Mr. Westfall, look at line number --
24 paragraph 2, says, You will be billed monthly.

25 Did you promise to bill me monthly?

2

1 A The contract contains that language. I
2 don't know that I promised to bill you monthly.

3 Q Mr. Westfall, did you sign this contract?

4 A Yes.

5 Q Did you intend to bill me monthly?

6 A I guess that depends on the amount of time
7 that we expended. I mentioned to you at the
8 beginning of this that this was going to be time
9 consuming, particularly initially, and that's why --
10 that there would be a \$20,000 retainer.

11 Q Mr. Westfall, would you explain to me your
12 understanding of monthly?

13 A Monthly is pretty plain.

14 Q It is to me. I took that to mean that you
15 were going to bill me monthly. All right.

16 A Did you ever complain to me for not -- for
17 doing it any differently than was done?

18 MR. BIRNBAUM: Nonresponsive.

19 Q (By Mr. Birnbaum) What all sort of
20 information did you put in such bills?

21 A I beg your pardon?

22 Q Did you ever bill?

23 A Yes, sir. I billed you on December the
24 31st of 1999. I sent you a remainder on February the
25 1st of 2000. I sent you another on April the 3rd of

1 2000. I sent you another on June the 1st of 2000.

2 And I sent you another on 7/31/2000.

3 Q Who-all do you designate as having actually
4 prepared those bills as you claim you sent?

5 A I beg your pardon?

6 Q Who-all do you designate as having prepared
7 such bills as you sent?

8 A My secretary, Beverly Hearn.

9 Q What evidence do you have of actually
10 mailing such bills? Mr. Westfall, do you have any
11 evidence of having mailed me any bill before you
12 mailed this piece of paper? Do you have any
13 evidence?

14 A I can tell you that I know that the billing
15 went out to you at the end of 1999.

16 MR. BIRNBAUM: Nonresponsive.

17 Q (By Mr. Birnbaum) Mr. Westfall, do you
18 have any evidence of having billed me, ever having
19 mailed me anything?

20 A Yes.

21 Q What?

22 A My statement that we did it, Beverly Hearn's
23 statement that we did it. I think we even have a
24 green card finally that you signed.

25 Q According to your own documents, you had

1 already eaten up the entire \$20,000 retainer
2 agreement by July of 1999, in just two months; is
3 that correct?

4 A I haven't bothered to view it in that
5 fashion. I can certainly go through it if you'd like
6 me to do that.

7 Q Do you have any reason to doubt that that's
8 what you did?

9 A I do not doubt that we spent \$20,000 worth
10 of time on your case within two months. I have no --

11 Q Okay. So the answer is yes, according to
12 your own documents you had already eaten up or may
13 have already eaten up the \$20,000 agreement by July
14 1999; is that correct?

15 A I said that I do not have any reason to
16 doubt, based upon the amount of time that we were
17 spending on your matter, that we would have spent
18 \$20,000 worth of time within the first couple of
19 months.

20 Q So you're running in the red ever after,
21 after the first two months; is that correct?

22 A Running in the red, in other words, you now
23 owe me more money?

24 Q No. Your accounting system had a negative
25 balance. I'm not saying who owed who. Your

1 accounting system showed a negative balance when the
2 \$20,000 was eaten up; is that correct?

3 A I don't know that our accounting system is
4 as you've stated. We just simply keep time records.

5 Q What sort of flag does running into the red
6 raise in your bookkeeping system?

7 A We don't -- well, I don't understand that
8 question.

9 MR. BIRNBAUM: Okay.

10 Nonresponsive.

11 Q (By Mr. Birnbaum) You contracted in this
12 contract -- look toward the end of the page 3 of
13 that. You contracted to explain in detail the
14 ramifications -- look at the last sentence of that
15 paragraph. You contracted to explain in detail the
16 ramifications and effect of Section 1983 civil RICO.

17 Why would you need to explain to me Section
18 1983 civil RICO? You were signing on to what you
19 knew were two existing parallel civil RICO causes,
20 were you not?

21 A Yes.

22 Q And we had been talking civil RICO, had we
23 not?

24 A Yes.

25 Q Why would you want to explain -- let me

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Vs.

UDO BIRNBAUM

) (IN THE DISTRICT COURT
) (
) (294TH JUDICIAL DISTRICT
) (
) (VAN ZANDT COUNTY, TEXAS
) (

**MOTION FOR APPOINTMENT OF AUDITOR PURSUANT TO RULE 172 RCP
TO MAKE FINDING
OF STATE OF THE ACCOUNTS BETWEEN THE PARTIES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Udo Birnbaum, Defendant and Counter and Cross Claimant, in the above-styled and numbered cause and makes and files this his Motion For Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts Between Parties and would thereby show the Court the following:

I.

Birnbaum moves the Court to note the nature and state of the pleadings, including the issue of fraud in the "accounts for services rendered" as evidenced by Defendant's Answer, Counterclaim, and Cross-Complaint and exhibits attached thereto, and moves for appointment of an auditor to make a finding for the Court of the state of the accounts between the parties.

II.

Plaintiff "The Law Offices of G. David Westfall, P.C." even now has failed to provide a copy of the "accounts for services rendered" allegedly attached as Exhibit "A" to Plaintiff's Original Petition. Furthermore no copy is to be seen with the document Plaintiff filed with the Clerk.

III.

At issue in this Cause is whether the alleged "accounts for services rendered" (allegedly shown as Exhibit "A") is fraudulent or not. At issue in the process is whether the filing of Plaintiff's Original Petition without Exhibit "A", and still without Exhibit "A", is fraud in itself.

WHEREFORE Birnbaum requests a hearing upon these matters as to show that such appointment of an auditor is necessary for the efficient and just adjudication of this Cause.

Respectfully submitted

Aldo Birnbaum

UDO BIRNBAUM, *Pro Se*
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 26 day of December, 2000 upon G. David Westfall, 5646 Milton, Suite 520, Dallas, Texas 75206 and Frank C. Fleming, Law Office of Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

Aldo Birnbaum
UDO BIRNBAUM

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT
294TH JUDICIAL DISTRICT
VAN ZANDT COUNTY, TEXAS

**SUPPLEMENT TO MOTION FOR APPOINTMENT OF AUDITOR
UNDER RULE 172 RCP AND NOTICE OF CANCELLATION OF DEPOSITIONS D.T.
OF G. DAVID WESTFALL, CHRISTINA WESTFALL, AND STEFANI PODVIN**

TO THE HONORABLE JUDGE OF SAID COURT:

DEFENDANT Udo Birnbaum hereby notifies the Court and the parties of the cancellation of the above referenced notices of depositions as are currently the subject of numerous motions for protective order before this Court.

I.

Defendant moves this Court for appointment of an auditor under Rule 172 RCP to make a finding for the Court upon the claim of a pattern of fraudulent accounting practices by Plaintiff, The Law Offices of G. David Westfall, P.C.

II.

Defendant called cross-defendants' counsel Frank Fleming to find out if he opposes Defendant's motion for appointment of such auditor and was informed that he [Fleming] definitely did. Fleming stated that he did not see a need for such auditor because this cause was "just a matter of [Birnbaum] not having paid a bill".

III.

Defendant moves for a hearing to show that this cause is not "just a matter of not having paid a bill", but about the recent creation of fraudulent "account" statements by the Plaintiff "The Law Offices" and the cross-defendants for the purpose of extorting "legal fees".

Respectfully submitted

Udo Birnbaum

UDO BIRNBAUM, *Pro Se*

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 8 day of January, 2001 upon G. David Westfall, 5646 Milton, Suite 520, Dallas, Texas 75206 and Frank C. Fleming, Law Office of Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

Udo Birnbaum
UDO BIRNBAUM

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

v.

UDO BIRNBAUM

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

PLAINTIFF'S REQUESTED JURY QUESTIONS

QUESTION NO. 1:

Did the Defendant, Udo Birnbaum, fail to comply with the terms of the attorney-client agreement, between the Law Offices of G. David Westfall, P.C. and Udo Birnbaum?

Answer "Yes" or "No "

Answer _____

If you have answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question and proceed to answer Question No. 3.

QUESTION NO. 2:

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

Answer in dollars and cents:

Answer: _____

If you have answered "yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 3:

What is a reasonable fee for the necessary services of the Law Offices of G. David Westfall, P.C.'s attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following.

- A. For preparation and trial in this matter. \$ _____
- B. For an appeal to the Court of Appeals, if necessary: \$ _____
- C. For making or responding to a petition for review to the Supreme Court of Texas \$ _____
- D. If petition for review is granted by the Supreme Court of Texas \$ _____

Respectfully submitted.
LAW OFFICE OF FRANK C. FLEMING


FRANK C. FLEMING
 State Bar No. 00784057
 PMB 305, 6611 Hillcrest Ave
 Dallas, Texas 75205-1301
 (214) 373-1234
 (fax) 373-3232

ATTORNEY FOR PLAINTIFF

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT
294TH JUDICIAL DISTRICT
VAN ZANDT COUNTY, TEXAS

**DEFENDANT BIRNBAUM'S OBJECTIONS TO
PLAINTIFF'S REQUESTED JURY QUESTIONS**
(Case Filed Sept. 20, 2000. Trial set for Apr. 8, 2002)

To this Honorable Court:

1. Defendant Udo Birnbaum provides the following question to be answered by the jury **immediately after Plaintiff's Question 1** ("failure to comply"). A finding of "Yes" of course precludes the jury from ever reaching Plaintiff's Question 2 ("damages") and Question 3 ("attorney fees"), and **excuses Udo Birnbaum from any and all off Plaintiff's claims.**

2. Defendant Birnbaum also objects to Plaintiff's Question 3 being submitted upon an Affirmative finding to **Question 1**. Plaintiff's Question 3 should be contingent to an answer of "Yes" to Plaintiff's **Question 2**.

3. Birnbaum's requested **Question** is as follows:

INSTRUCTION

If your answer to [Plaintiff's] Question 1 is "Yes", then answer the following question. Otherwise, do not answer the following question.

QUESTION

Was Udo Birnbaum's failure to comply excused?

a. Failure to comply by *Udo Birnbaum* is **excused** by *The Law Offices of G. David Westfall, P.C.*'s previous failure to comply with a material obligation of the same agreement.

b. Failure to comply by *Udo Birnbaum* is **excused** if all the following circumstances occurred:

1. *The Law Offices of G. David Westfall, P.C.*

- a. by words or conduct made a false representation or concealed material facts,
- b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and
- c. with the intention that *Udo Birnbaum* would rely on the false representation or concealment in acting or deciding not to act; and

2. *Udo Birnbaum*

- a. did not know and had no means of knowing the real facts and
- b. relied to *his* detriment on the false representation or concealment of material facts

c. Failure to comply by *Udo Birnbaum* is **excused** if the agreement was made as the result of undue influence by *The Law Offices of G. David Westfall, P.C.*

"Undue influence" means that there was such dominion and control exercised over the mind of the person executing the agreement, under the facts and circumstances then existing, as to overcome his free will. In effect, the will of the party exerting undue influence was substituted for that of the party entering the agreement, preventing him from exercising his own discretion and causing him to do what he would not have done but for such dominion and control.

Answer "Yes" or "No"

ANSWER: _____

Respectfully submitted

Udo Birnbaum

UDO BIRNBAUM, *Pro Se*

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has today been delivered to G. David Westfall and Frank C. Fleming, by facsimile transmission on this the 4th day of April, 2002.

Udo Birnbaum
UDO BIRNBAUM

No 00-619

Law Office

v.

Birnbaum

~~Law Office of Westel~~
284th Oval Ct

Van Zee

RECEIVED FOR RECORD
02 APR 11 AM 9:18
FIRST CLERK VAN ZANDT CO. EX.
BY _____ DEP.

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

1. ~~The New~~ Elimination of Pl's Intrinsic
question & 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"



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

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IN THE DISTRICT COURT

v.

294th JUDICIAL DISTRICT

UDO BIRNBAUM

VAN ZANDT COUNTY, TEXAS

COURT'S CHARGE

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

DEP. _____ BY _____
DIST. CLERK VAN ZANDT CO. TX.
JUN 11 11 51 AM '07
CO. CLERK VAN ZANDT CO. TX.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence *unless otherwise instructed*. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence *unless otherwise instructed*.

INSTRUCTION

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

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 the 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.

ANSWER:

Answer in dollars and cents:

ANSWER: \$ 15,817.60

QUESTION NO. 2

What is a reasonable fee for the necessary services of the Plaintiff's attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following:

- A. For preparation and trial in this matter: \$ \$41,306.91
- B. For an appeal to the Court of Appeals, if necessary: \$ 20,000.00
- C. For making or responding to a petition for review to the Supreme Court of Texas \$ 5,000.00
- D. If petition for review is granted by the Supreme Court of Texas \$ 10,000.00

QUESTION NO. 3
(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any false, misleading, or deceptive act or practice that Udo Birnbaum relied on to his detriment and that was a producing cause of damages to Udo Birnbaum?

"Producing cause" means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

"False, misleading, or deceptive act" means any of the following:

Failing to disclose information about services that was known at the time of the transaction with the intention to induce Udo Birnbaum into a transaction he otherwise would not have entered into if the information had been disclosed; or

Answer: NO

QUESTION NO. 4

(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any unconscionable action or course of action that was a producing cause of damages to Udo Birnbaum?

"Producing cause" means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

An unconscionable course of action is an act or practice that, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

Answer: No

If your answer to Question 3 or Question 4 is "Yes", then answer Question 5. Otherwise, do not answer Question 5.

QUESTION NO. 5
(Finding of "knowingly")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: _____

If your answer to Question 3 or Question 4 is "Yes", then answer Question 6. Otherwise, do not answer Question 6.

QUESTION NO. 6

(Finding of "intentionally")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct intentionally?

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception. Specific intent may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: _____

If your answer to Question 3 or Question 4 is "Yes", then answer Question 7. Otherwise, do not answer the following question.

QUESTION NO. 7
("Compensatory" damages)

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Udo Birnbaum for his damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents, if any, for each of the following:

The difference, if any, in the value of the services as received and the price Udo Birnbaum paid for them. The difference, if any, shall be determined at the time and place the services were done.

Answer: _____

Expense costs to Udo Birnbaum, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: _____

The reasonable value of Udo Birnbaum's lost time, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: _____

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

If your answer to Question 5 is "Yes", then answer Question 8. Otherwise, do not answer Question 8.

QUESTION NO. 8
(Additional damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.'s conduct was committed knowingly?

Answer in dollars and cents, if any.

Answer: _____

If your answer to Question 6 is "Yes", then answer Question 9. Otherwise, do not answer Question 9.

QUESTION NO. 9
(Additional damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.'s conduct was committed intentionally?

Answer in dollars and cents, if any.

Answer: _____

MEMBERS OF THE JURY:

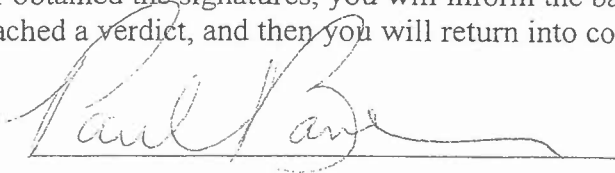
After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.



JUDGE PRESIDING

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

PRESIDING JUROR

(To be signed by those rendering the verdict if not unanimous.)

William M. Hart
Kathleen Taylor
Ken Curtis
Ann M. Phillips
Brenda Mitchell
Joseph L. Patchell

Wanda Butler
Ernest A.
Luce Thomas
Solita Joe Carter
Jammy Armstrong

It is now clear to me that the entire matters I have been subjected to in this Court is retaliation by official oppression for having spoken out on an issue of great public importance, namely rampant corruption and lawlessness in Judge Tommy C. Wallace's 294th District Court.

UDO BIRNBAUM
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

Official court documents indicating such perversion of the judicial process are available at Van Zandt E-Forum, www.vzinet.com/vzeforum.



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Randi Scott

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

)

IN THE DISTRICT COURT

)

294TH JUDICIAL DISTRICT

Vs.

)

VAN ZANDT COUNTY, TEXAS

UDO BIRNBAUM

)

)

Vs.

)

)

"enter judgment and frivolous lawsuit sanctions"

G. DAVID WESTFALL
STEFANI PODVIN
CHRISTINA WESTFALL

)

)

Hearing for July 30, 2002, 10:00 A. M.

)

)

Hon. Paul Banner, by assignment

)

ORAL PLEADING IN WRITING

About two years ago the Law Office, a professional corporation, sued me, claiming an unpaid open account on which systematic and routine records were being kept, all of which I denied under oath. This issue, however, was never submitted to the jury.

Then ten days before the trial the Law Office submitted special jury issues in the nature of a breach of contract. The elements of such cause are elemental: 1) an agreement, 2) plaintiff had abided, 3) defendant had not, 4) plaintiff was damaged. I objected that I was "excused" because plaintiff had previously broken its agreement. Plaintiff presented no evidence that it had abided, and submitted no issues as to this element to the jury.

I asked for determination by the jury as to whether I was "excused" by the Law Office's prior breach of agreement. The Court of course did not have to submit this issue to the jury. That was a clear matter of law that I was "excused" by prior breach of the agreement, namely for failure to openly and honestly bill and obtain permission before incurring large

expenses.

Furthermore, the letter agreement gave the remedy available to the Law Office if I did not pay, namely that the lawyer had the right to withdraw and quit working (*"We reserve the right to terminate for ... 1) Your non-payment of fees or costs"*). That is the remedy, the only remedy. *"Expressio unius est exclusio alterius"*. (expression of one thing is the exclusion of another)

On top of that, the Law Office had admitted that it was not a person, i.e. not capable of holding a property interest, but only an entity. It therefore has no more right to sue or be awarded judgment than a can of Coca Cola or a potted plant!

And a jury "adjusting" a sworn account down by five thousand dollars is absurd. Something stinks about the "systematic records maintained" claim.

Furthermore, the Law Office P.C. had only one participating attorney, who was the only officer, and the only shareholder, and he is now dead. Poof, Law Office is no more! And just whom, if anyone, opposing "counsel" is representing under these truly bizarre circumstances is beyond me!

With this said, I am ready to argue the motions. The provided binder has the motions and supporting documents.

UDO BIRNBAUM
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

**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)

ORDERS OF COURT CONTINUED

Date of Orders
Month Day Year

4 8 02 4R All present, jury selected, sworn in shackled; Open Streets, Enid Recor

4 10 02 4R all present; bid work

4 11 02 4R all present; bid work Jury Verdict

7 30 02 4R all present; bid work signed

3 17 03 Order for 5th Court of Appeals - clerks record

4 1 04 ~~4R~~ Movant Bainsbaum, P¹⁰³ and atty Fleming representing
 are present. Hearing conducted on Bainsbaum's Motion to Revoke
 filed 9/30/03. Testimony presented. Both sides rec'd.
 Arguments presented. Motion to renew is in all things denied.
 Hearing held on 11a Motion for sanctions filed this date.
 Testimony presented. Both sides rec'd. Arguments presented.
 Ct find, based on the arguments, testimony, and pleadings
 that grounds for sanctions do exist and the Ct ~~shall~~
 assess and sanction for A's violation of Rule 13
 of the TCP and for Section 110.001 et seq. TCPRC in the amount
 of \$1,000- for actual damages and \$124,770- for exemplary damages.
 against A. Bainsbaum who is ordered to pay said sums to the
 attorney in and to be paid a preferred order. Judge Culberson had submit a copy of same to A.

Complete & full access to its

~~Sections are for conduct outside of~~

Our jurisprudence envisioning justly of
litigation after the parties have ~~been~~ avoided
themselves of the remedies ~~of~~ available under
our laws

^{now}
You have the keys as whether there
are any further proceedings in this case in the
future. Please be aware that any further actions
might result in further revelations.

62885
2
125770
124770

Exhibit
"B"

ABSTRACT OF JUDGMENT – Prop.Code ch. 52

CAUSE NO. 00-00619

THE LAW OFFICES OF	§	IN THE 294th DISTRICT COURT
G. DAVID WESTFALL, P. C.,	§	
PLAINTIFF,	§	
VS.	§	OF
UDO BIRNBAUM	§	
DEFENDANT/COUNTER-PLAINTIFF	§	
VS.	§	
G. DAVID WESTFALL, CHRISTINA	§	
WESTFALL, AND STEFANI PODVIN,	§	VAN ZANDT COUNTY, TEXAS

Attorney for Plaintiff/Judgment Creditor:

Frank C. Fleming
3326 Rosedale
Dallas, Texas 75205

Name of Plaintiff/Judgment Creditor in Judgment:

G. David Westfall, P.C. and Counter-Defendant,
Christina Westfall and Stefani Podvin

Address of Plaintiff/Judgment Creditor:

3326 Rosedale
Dallas, Texas 75205

Defendant/Judgment Debtor's Information:

Name:

Udo Birnbaum

Address or where citation was served:

540 VZCR 2916
Eustace, Texas 75124

Birth date, if available:

N/A

Last three numbers of driver's license, if available:

xxxxxxx

Last three numbers of Social Security No., if available:

xxxx-xx-xxxx

Date of Judgment:	October 24, 2006
Amount of Judgment:	\$124,770.00
Attorney's Fees:	\$ 1,000.00
Amount of Cost:	\$ 492.00
Post-Judgment Interest Rate:	5% per annum
Amount of Credits:	\$-0-
Balance Due on Judgment:	\$126,262.00 plus 5% per annum

I, KAREN WILSON, CLERK of the District Court of Van Zandt County, Texas, do hereby certify that the above and foregoing is a true and correct Abstract of the Judgment rendered in said Court in the above numbered and styled cause as it appears in the Records of said Court.

WITNESS my hand and seal of said court at office in Canton, Texas on this the 26th day of March, 2014.

Karen Wilson, District Clerk
Van Zandt County, Texas

By Vanira Riley Deputy

SHERIFF'S RETURN

Came to hand the ___ day of _____ 20__ at _____ o'clock ___ M and executed at _____ in _____ County, Texas on the ___ day of _____ 20__ at _____ o'clock ___ M by levying upon and seizing the following described property as property of the defendant, and situated in _____ County, Texas, viz:

And afterwards, on the ___ day of _____ 20__ advertised the same for sale at the courthouse door of _____ County/ _____ on the ___ day of _____ 20__ being the _____ of the month (*by advertisement in the English language, published once a week for 3 consecutive weeks preceding such sale, the first publication appearing not less that 20 days immediately preceding the day of sale, beginning on the ___ day of _____ 20__ in the _____, a newspaper published in the County of _____ stating in said advertisement the authority by virtue of which said sale was to be made, the time of levy, the time and place of sale, a brief description of the property to be sold, the number of acres, the original survey, its locality in the county and the name by which the land is generally known), (by written advertisement posted for ___ successive days next before the day of sale at 3 public places in the county of _____ on of which is at the Courthouse door of said County, and one was at the place of sale) ** and also delivered/mailed one to each of the within named defendants a copy of said notice of sale; and also mailed a copy of said notice of sale to _____ defendant's attorney of record in said cause.

And on said ___ day of _____ 20__ between the hours of 10 o'clock AM and 4 o'clock PM at the Courthouse door of said County, _____ in pursuance to said advertisement, sold said property at public sale to _____ to whom the same was struck off for the sum of \$ _____ Dollars, that being the highest secure bid for the same; and the said _____ having been paid the sum so bid by ___h___ I executed to ___h___ a _____ for said property. And after first satisfying the Sheriff's costs accruing under this writ, amounting to the sum of \$ _____ an itemized bill of which appears below, and the further sum of \$ _____ original Court costs, the remainder, being the sum of \$ _____ was paid to _____ whose receipt for the same is herewith presented, and this writ is hereby returned on this the ___ day of _____ 20__.

SHERIFF'S FEES

Executing Writ & return	\$ _____	_____ Sheriff
Executing deeds	\$ _____	_____ County, Texas
Executing ___ bill of sale	\$ _____	By _____ Deputy
_____	\$ _____	
_____	\$ _____	
TOTAL.....	\$ _____	
Original court costs.....	\$ _____	
TOTAL AMT IN COSTS	\$ _____	

*If no newspaper will publish said advertisement then strike out the first clause and leave the clause showing advertisement "posted", etc. If published in newspaper, strike out the clause in regard to posting. ** I sale was at a courthouse of said county, then strike out this last clause, but if sale is elsewhere, strike out and make your form read accordingly.

RETURNED AND FILED this the ___ day of _____, 2000, at _____ o'clock ___ M LINDA UECKER, District Clerk, Kerr County By _____ Deputy
--

3. Based upon the date of rendition of the Judgment, the Judgment became dormant on July 29, 2012. This Application seeks to revive the Judgment as to the judgment debtor Udo Birnbaum ("Judgment Debtor") pursuant to TEX. CIV. PRAC. & REM. CODE § 31.006.

4. As of April 1, 2014, there remains due and owing on the Judgment by the Judgment Debtor, damages in the amount of \$15,817.60, prejudgment interest in the amount of \$2,156.15, attorney fees in the amount of \$66,306.91 and costs of court of \$926.80. Post-judgment interest has and continues to accrue from the original date of judgment at the rate of ten percent (10%) and as of July 30, 2013 was \$157,899.36 and remains unpaid as well.

5. All payments made, credits, and offsets have been credited to the Judgment.

6. The Judgment has not been paid or otherwise settled or compromised.

7. Christina Westfall brings this proceeding to revive the Judgment and to extend the enforcement of same.

8. Christina Westfall asks the Court to take Judicial Notice of the Judgment.

WHEREFORE, PREMISES CONSIDERED, Christina Westfall requests from this Court the following:

1. A Scire facias writ be issued as to defendant, Udo Birnbaum in the manner and form prescribed by law, requiring defendant, Udo Birnbaum to appear and show cause why the Judgment should not be revived;
2. The Judgment be revived in all respects and extended for the full period provided by law;
3. The Court direct the issuance of execution on the Judgment;
4. The Court award Christina Westfall all costs; and

5. The Court grant Christina Westfall such other and further relief to which Christina Westfall may show herself to be justly entitled.

Respectfully submitted,


FRANK C. FLEMING
State Bar No. 00784057

Law Office of Frank C. Fleming
3326 Rosedale Ave,
Dallas, Texas 75205-1462
(214) 373-1234
(fax) 1-469-327-2930

**ATTORNEY FOR CHRISTINA
WESTFALL**

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Plaintiff

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

G. David Westfall, Christina Westfall, and
Stefani Podvin,

Counter-Defendants

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

AFFIDAVIT OF CHRISTINA WESTFALL

IN SUPPORT OF

APPLICATION FOR WRIT OF SCIRE FACIAS TO REVIVE JUDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority on this day personally appeared Christina Westfall, known by me to be a credible person and competent in all respects to make this Affidavit, and, who, being duly sworn, upon her oath stated:

1. "My name is Christina Westfall. I am over twenty-one (21) years of age, and have never been convicted of a crime and am fully competent to execute this Affidavit. I have personal knowledge of the facts set forth herein and each averment is, to the best of my knowledge, true and correct.

2. "On July 30, 2002, a final judgment was rendered in favor of The Law Office of David G. Westfall, P.C., in the above-entitled and numbered cause against Udo Birnbaum in the total sum of \$85,207.46, which included damages of \$15,817.60, prejudgment interest of \$2,156.15, attorney fees of \$66,306.91, and costs of court in the amount of \$926.80 (hereinafter, the

Exhibit "A"

“Judgment”). Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment and as of July 30, 2013, post-judgment interest amounted to \$157,899.36. A true and correct copy of the Judgment is attached hereto as **Exhibit “1”** to this affidavit and incorporated by reference herein for all purposes.

3. “There is no outstanding and unreturned execution on the Judgment.
4. “All payments made, credits, and offsets have been credited to the Judgment.
5. “The Judgment has not been paid or otherwise settled or compromised.
6. “There are no counterclaims or set-offs in favor of Judgment Debtor.
7. “As of April 1, 2014, there remains due and owing on the Judgment by the Judgment Debtor, damages in the amount of \$15,817.60, prejudgment interest of \$2,156.15, attorney fees of \$66,306.91, and costs of court in the amount of \$926.80 (hereinafter, the “Judgment”). Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment and as of July 30, 2013 amounted to \$157,899.36.

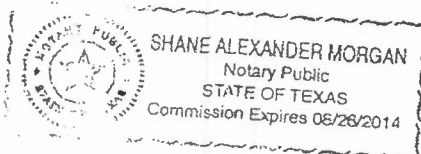
8. “This Affidavit is made and filed for the purpose of reviving the Judgment in the manner and for the period prescribed by law.”

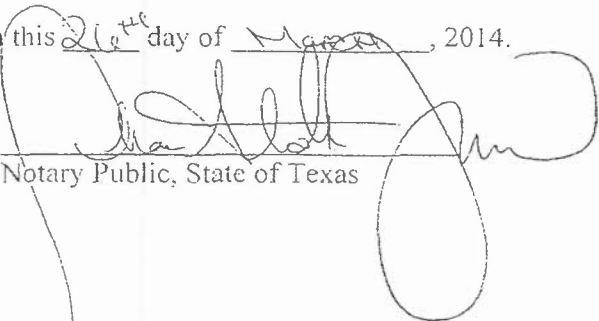
FURTHER AFFIANT SAYEHT NOT.

SIGNED this 26 day of March, 2014.


CHRISTINA WESTFALL

SUBSCRIBED AND SWORN TO BEFORE ME on this 26th day of March, 2014.




Notary Public, State of Texas

Westfall. On your failure to do so, an order and judgment will enter for the relief demanded in the application.

The nature of Christina Westfall's demand is shown by a true and correct copy of her application accompanying this citation, the original of which is on file in this cause.

If this citation is not served within 30 days after the date of its issuance, it shall be returned unserved.

The officer executing this writ shall promptly serve the same according to the requirements of law, and the mandates of this order, and make due return as the law directs.

ISSUED and given under my hand and seal of the court on this 2 day of April, 2014.

CLERK OF THE 294TH DISTRICT COURT
VAN ZANDT COUNTY, TEXAS

Karen Wilson
KAREN WILSON

Vania Ritey
Deputy Clerk.

PROOF OF SERVICE

SERVED AT:

Date	Time	Place
------	------	-------

SERVED ON: (Print Name) _____ by personally delivering to such person the Writ of Scire Facias, as well as a copy of the "Application for Writ of Scire Facias to Revive Judgment" related thereto.

SERVED BY:

Name	Title	License No.
------	-------	-------------

DECLARATION OF SERVER

I declare under penalty that the foregoing information contained in the Proof of Service is within my personal knowledge and it is true and correct.

SIGNED this _____ day of _____, 2014

Signature of Officer

_____, Affiant
Print Name

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____, 2014.

Notary Public, State of Texas