

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND RON CHAPMAN,
Defendants.

§ IN THE DISTRICT COURT
§
§
§ VAN ZANDT COUNTY, TEXAS
§
§ 249TH JUDICIAL DISTRICT

DEFENDANTS' PLEA TO THE JURISDICTION

NOW COMES Defendants Judge Paul Banner and Judge Ron Chapman and file this Plea to the Jurisdiction. In support, Judges Banner and Chapman respectfully offer the following for consideration by this Court:

I. STATEMENT OF THE CASE

Defendant Judge Paul Banner sat by special assignment in the 294th District Court of Van Zandt County, Texas, in a case brought by the Law Offices of G. David Westfall, P.C., (“Westfall”) against Plaintiff Udo Birnbaum (“Birnbaum”) for unpaid legal services.¹ Not to be outdone, Birnbaum counter-claimed alleging fraud, violation of the DTPA, and civil RICO claims. Westfall had previously represented Birnbaum in a civil lawsuit brought against 294th District Court Judge Tommy Wallace and another state judge pursuant to federal RICO statute (18 U.S.C. §1964). That lawsuit, much like the instant action, accused the defendant judges of engaging in racketeering.

¹See *The Law Offices of G. David Westfall, P.C. v. Udo Birnbaum*, Cause No. 00-00619, 294th District Court, Van Zandt County, Texas.

After a hearing in the *Westfall* case, Judge Banner granted Westfall's motion for summary judgment concerning Birnbaums's fraud, DTPA, and RICO allegations. After a second hearing, Judge Banner granted Westfall's motion for sanctions and awarded damages in the amount of \$62,885.00. Plaintiff then filed yet another harassing lawsuit (this time in federal court) against Judge Banner and individuals associated with Westfall, which was ultimately dismissed.²

On April 8, 2002, the suit for unpaid legal services proceeded to a trial by jury, resulting in final judgment in favor of Westfall.³ The third party defendants to the suit filed a motion for sanctions which was granted in part and denied in part. Of course, Plaintiff appealed, but the Dallas Court of Appeals affirmed the judgment and orders of the trial court.⁴ Plaintiff then filed a petition for review with the Texas Supreme Court, which was flatly denied on March 26, 2004.⁵

On April 1, 2004, Birnbaum's second motion to recuse Judge Banner came to be heard by Judge Chapman, as well as a motion for sanctions filed by Westfall and the individual defendants. Judge Chapman denied Plaintiff's motion to recuse and granted the

²See *Udo Birnbaum v. Paul Banner, David Westfall, Christina Westfall, and Stefani (Westfall) Podvin*, Civil Action No. 6:04 CV 114, United States District Court for the Eastern District of Texas Tyler Division.

³See Exhibit B of Pl.'s Original Petition.

⁴See *Birnbaum v. The Law Offices of G. David Westfall*, 120 S.W.3d 470 (Tex. App.—Dallas 2003, pet. denied).

⁵See *Birnbaum v. The Law Offices of G. David Westfall*, 2004 Tex. LEXIS 268 (Tex. 2004).

motion for sanctions, and subsequently issued an order sanctioning Plaintiff for repeatedly filing frivolous motions and lawsuits.⁶ This next harassing lawsuit followed shortly thereafter.

II. STANDARD OF REVIEW

Subject matter jurisdiction cannot be presumed and cannot be waived. *Cont'l Coffee Prods. v. Cazarez*, 937 S.W.2d 444, 449 n.2 (Tex. 1996). Whether a trial court has subject matter jurisdiction is a question of law for the court. *See Michael v. Travis County Hous. Auth.*, 995 S.W.2d 909, 912 (Tex. App.—Austin 1999, *no pet.*). The plaintiff must allege facts affirmatively showing the trial court has subject-matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *Tex. Dep't of Criminal Justice v. Miller*, 48 S.W.3d 201, 203 (Tex. App.—Houston [1st Dist.] 1999), *rev'd on other grounds*, 51 S.W.3d 583, 589 (Tex. 2001)).

The plaintiff bears the burden of demonstrating the statute which waives the government's immunity from suit. *Tex. Dep't Criminal Justice v. Miller*, 51 S.W. 3d 583, 587 (Tex. 2001). Immunity from suit is properly raised through a plea to the jurisdiction. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex.1999). A plea to the jurisdiction challenges the court's authority to determine the subject matter of the controversy. *Axtell v. Univ. of Tex.*, 69 S.W.3d 261, 263 (Tex. App.—Austin 2002, *no pet.*). When reviewing a plea to the jurisdiction, a court should limit itself to the jurisdictional issue and avoid considering

⁶ See Exhibit A of Plaintiff's Original Petition.

the merits of the claims. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 552 (Tex. 2000). Judicial immunity involves immunity from suit, not just immunity from liability. *Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286 (1991). Therefore, it makes no difference what specific causes of action are brought against a judge, as judicial immunity dictates that a judge *is immune from being sued at all*. *Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286, 288 (1991) (emphasis added). Most Texas opinions discussing judicial immunity do not address whether it involves immunity from suit or immunity from liability; the opinions simply assume the issue was properly raised as an affirmative defense. *See, e.g., Sw. Guar. Trust Co. v. Providence Trust Co.*, 970 S.W.2d 777, 782 (Tex. App.—Austin 1998, *pet. denied*).

III. ARGUMENT AND AUTHORITIES

The Court lacks subject matter jurisdiction over the controversy between Plaintiff and Defendants Judge Banner and Judge Chapman because they enjoy judicial immunity from suit for acts arising from the discharge of their duties as state district court judges. Judges have broad immunity through both common law, *Baker v. Story*, 621 S.W.2d 639, 644 (Civ. App.—San Antonio 1981, *writ ref'd n.r.e.*), and statute, *see* TEX. CIV. PRAC. & REM. CODE § 101.053(a). A judge is not liable when acting in the course of a judicial proceeding in which he has subject-matter jurisdiction and colorable jurisdiction over the person of the complainant, even if acting in bad faith or with malice. *Twilligear v. Carrell*, 148 S.W.3d 502, 504–05 (Tex. App.—Houston [14th Dist.] 2004, *pet. denied*); *Spencer v. City of Seagoville*, 700 S.W.2d 953, 957–58 (Tex. App.—Dallas 1985, *no writ*); *Tedford v.*

McWhorter, 373 S.W.2d 832, 836 (Civ. App.—Eastland 1963, *writ ref. n.r.e.*); *Morris v. Nowotny*, 323 S.W.2d 301, 304 (Civ. App.—Austin 1959, *writ ref. n.r.e.*). Jurisdiction is to be construed broadly for immunity purposes, focusing on whether the judge had the jurisdiction necessary to perform the act, not whether the judge's action was proper. *Guerrero v. Refugio County*, 946 S.W.2d 558, 572 (Tex.App.—Corpus Christi 1997, *no writ*), *overruled on other grounds*, *NME Hosps., Inc. v. Rennels*, 994 S.W.2d 142, 147 (Tex.1999); *Bradt v. West*, 892 S.W.2d 56, 68 (Tex. App.—Houston [1st Dist.] 1994, *writ denied*). It is without question that Judge Banner had jurisdiction to adjudicate Plaintiff's original suit, and Judge Chapman had jurisdictional authority to hear the motion to recuse. Exhibit A (Affidavit of the Honorable Judge Paul Banner); Exhibit B (Affidavit of the Honorable Judge Ron Chapman).⁷

Judicial immunity shields judges and other persons acting in a judicial capacity from suit when a claim is based on actions they made while performing a judicial act in question, *Bradt*, 892 S.W.2d at 69; *see also Turner v. Pruitt*, 342 S.W.2d 422 (Tex. 1961) (holding a judge is immune whether act was judicial or ministerial). The court considers the following when determining whether judicial immunity applies to the judge's act: (1) whether the act is one normally performed by a judge, (2) whether the act occurred in the courtroom or an appropriate adjunct, such as the judge's chambers, (3) whether the controversy centered

⁷Exhibit A (Affidavit of the Honorable Judge Paul Banner) and Exhibit B (Affidavit of the Honorable Judge Ron Chapman) are incorporated by reference as if fully stated herein and for all purposes.

around a case pending before the judge, and (4) whether the act arose out of a visit to the judge, in his or her judicial capacity. *Bradt*, 892 S.W.2d at 67. The factors are to be construed broadly in favor of immunity. Moreover, immunity may exist if *any* of the factors are present, *Id.* at 67 (stating “immunity may exist even if three of the four factors are not met”); *Garza v. Morales*, 923 S.W.2d 800, 802–03 (Tex. App.—Corpus Christi 1996, *no writ*), and are to be weighted according to the facts of the particular case. *Hawkins v. Walvoord*, 25 S.W.3d 882, 890 (Tex. App.—El Paso 2000, *pet. denied*).

Judges Paul Banner and Judge Ron Chapman are without question judicial officers of the state of Texas.⁸ The actions complained of are, without question, judicial acts under *Bradt*. Although Plaintiff claims “there was nothing to adjudicate,”⁹ he requested adjudication through his motion to recuse Judge Banner. When a judge denies a motion to recuse, they must request the presiding judge to assign another judge to hear the motion. TEX. R. CIV. P. 18a(d). The movant in a recusal motion is entitled to a hearing. *Id.* Judge Chapman’s actions in hearing and ruling on the recusal motion occurred in a courtroom and were actions normally performed by him as a judge in his judicial capacity. Exhibit B. Plaintiff also complains that Judge Chapman’s sanctions order was not proper.¹⁰ Nevertheless, a judge hearing a motion to recuse may impose sanctions if “a motion to recuse is brought solely for the purpose of delay and without sufficient cause.” TEX. R. CIV. P.

⁸See Pl.’s Original Pet. at 1; Exhibit A; and Exhibit B.

⁹Pl.’s Original Pet. at 1, ¶ 2.

¹⁰Pl.’s Original Pet. at 3, ¶ 10.

18a(h). Judge Chapman found the motion to recuse was “groundless, vacuous, manufactured, and totally unsupported by any credible evidence” and was brought “to harass, intimidate and inconvenience.” Plaintiff’s Original Petition, Exhibit A at 3, ¶¶ 1, 4 (Order on Motions for Sanctions). Additionally, Judge Chapman found that Plaintiff 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.” *Id.* at 4, ¶ 11. Plaintiff cannot dispute the fact that an order for sanctions is within normal judicial activity, *see, e.g. Enterprise-Laredo Assocs. v. Hachar’s Inc.*, 839 S.W.2d 822, 841 (Tex. App.—San Antonio 1992) (sanctions available if there is sufficient cause), and therefore Judge Chapman is protected by judicial immunity. The proper remedy, if Plaintiff desired to contest the denial of recusal and order for sanctions, was to appeal. *In re Union Pac. Res.*, 969 S.W.2d 427, 428–29 (Tex. 1998); TEX. R. CIV. P. 18a(f).

Plaintiff asserts Judge Banner’s participation as a witness in the recusal motion, failure to protect Birnbaum during the recusal hearing, and failure to report the actions of Judge Chapman are actionable. This is utter non-sense. Judge Banner’s actions are protected by judicial immunity. Immunity is possible if any of *Bradt* factors are present, *Bradt*, 892 S.W.2d at 67 (stating “immunity may exist even if three of the four factors are not met”); *Garza v. Morales*, 923 S.W.2d 800, 802–03 (Tex. App.—Corpus Christi 1996, *no writ*), and are to be weighed according to the facts of the particular case, *Hawkins v. Walvoord*, 25 S.W.3d 882, 890 (Tex. App.—El Paso 2000, *pet. denied*). All actions complained of in

regard to Judge Banner occurred in a courtroom and arose out of actions pending before him and are therefore actions protected by judicial immunity. Exhibit A.

Even if either Judge Banner or Judge Chapman acted in bad faith or with malicious intent, they are still protected by judicial immunity. *Guerrero*, 946 S.W.2d at 572. In this regard, the fact that it is alleged that Judges Banner and Chapman acted pursuant to “racketeering activity” is not sufficient to avoid absolute judicial immunity. *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991).

In regard to Judge Banner’s alleged testimony, it is improper for a judge to voluntarily participate in a recusal hearing when he has a pecuniary interest in the outcome. *Blanchard v. Krueger*, 916 S.W.2d 15, 19 n.9 (Tex. App.—Houston [1st Dist.] 1995). However, Judge Banner had no pecuniary interest in the recusal hearing, or in any other court proceeding involving Plaintiff, and neither did Judge Chapman. Exhibit A; Exhibit B. All interactions between Judge Banner (and Judge Chapman for that matter) and Plaintiff arose out of Judge Banner’s role as a judge, for which he is protected by judicial immunity. *Id.* The proper remedy to contest a denial of recusal and order of sanctions is appeal, and Plaintiff did in fact exercise that remedy. *In re Union Pac. Res.*, 969 S.W.2d at 428–29; TEX. R. CIV. P. 18a(f); *Birnbaum v. The Law Offices of G. David Westfall*, 120 S.W.3d 470 (Tex. App.—Dallas 2003, pet. denied). Thus, no legal basis exists for Plaintiff to sue either Judge Banner or Judge Chapman in connection with those proceedings.

The Court is without jurisdiction to hear the claims because the conduct complained of occurred while Judge Banner and Judge Chapman were discharging their duties as a district court judges. Exhibit A; Exhibit B. In this regard, Judge Banner and Judge Chapman were carrying out their judicial obligations and are therefore immune from suit as a matter of law. Thus, the Court should grant Judge Banner and Judge Chapman's plea to the jurisdiction and dismiss all claims asserted against them by Plaintiff.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Judge Banner and Judge Chapman respectfully pray that this Court grant their Plea to the Jurisdiction thereby dismissing all claims against them asserted by Plaintiff and dismiss this action with prejudice. Judges Banner and Chapman further request all other relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division



JASON T. CONTRERAS
Texas Bar No. 24043967
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

*Attorneys for Judge Paul Banner and
Judge Ron Chapman*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on July 14, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND RON CHAPMAN,
Defendants.

§
§
§
§
§
§

IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

249TH JUDICIAL DISTRICT

AFFIDAVIT OF THE HONORABLE JUDGE PAUL BANNER

THE STATE OF TEXAS

COUNTY OF VAN ZANDT

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared The Honorable Judge Paul Banner, who being first duly sworn by me, says and deposes as follows:

1. My name is Paul Banner. I am over the age of twenty-one (21). I am competent to make this affidavit and have personal knowledge of all the facts stated herein, which are true and correct. I am in all respects qualified to make this affidavit.
2. I had previously served by special assignment as the presiding judge over the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619, 294th Judicial District Court of Van Zandt County, Texas; In the 294th Judicial District Court, Van Zandt County, Texas (the "underlying lawsuit"). My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my capacity as a judge, including the Final Judgment issued on July 30, 2002.
3. The underlying case was filed in the district court of Van Zandt County, Texas and I had subject-matter jurisdiction over the rulings and orders I made in that case, including the

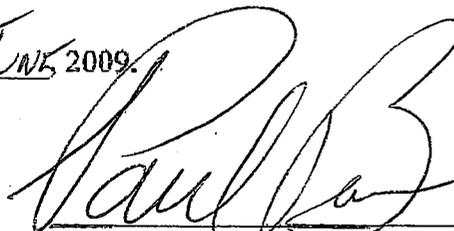


Final Judgment issued on July 30, 2002.

4. I have had no involvement or interaction, personal or otherwise, with Udo Birnbaum with the exception of 1) serving as a judge in the underlying case, 2) being the subject of Birnbaum's motions to recuse in the underlying case, and 3) being sued by Mr. Birnbaum.
5. I had no pecuniary interest in any hearing or court proceeding involving Udo Birnbaum, including but not limited to the recusal hearing or final judgment entered in the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619, 294th Judicial District Court of Van Zandt County, Texas.

Further affiant sayeth not.

EXECUTED this 24 day of JUNE, 2009.


PAUL BANNER

SUBSCRIBED and SWORN TO BEFORE ME, the undersigned authority, on this 24 day of JUNE, 2009, to certify which, witness my hand and seal of office.




Notary Public In and for the State of Texas

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND RON CHAPMAN,
Defendants.

§
§
§
§
§
§

IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

249TH JUDICIAL DISTRICT

AFFIDAVIT OF THE HONORABLE JUDGE RON CHAPMAN

THE STATE OF TEXAS

§
§
§

COUNTY OF VAN ZANDT

BEFORE ME, the undersigned authority, on this day personally appeared The Honorable Judge Ron Chapman, who being first duly sworn by me, says and deposes as follows:

1. My name is Ron Chapman. I am over the age of twenty-one (21). I am competent to make this affidavit and have personal knowledge of all the facts stated herein, which are true and correct. I am in all respects qualified to make this affidavit.
2. I served as a judge presiding over the 294th Judicial District Court of Van Zandt County, Texas in a recusal hearing in the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619; In the 294th Judicial District Court, Van Zandt County, Texas (the "underlying lawsuit"). My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my role as a judge, including the order on motions for sanctions issued on October 24, 2006. I issued this order on motions for sanctions either in the courtroom or in the appropriate adjunct.
3. The underlying lawsuit was filed in the district court of Van Zandt County, Texas and I



had subject-matter jurisdiction over the rulings and orders I made in that case, including the order on motions for sanctions issued on October 24, 2006. Accordingly, I had the jurisdiction necessary to issue rulings and orders in the underlying lawsuit.

4. I have had no involvement or interaction, personal or otherwise, with Udo Birnbaum with the exception of 1) serving as presiding judge in the recusal hearing of the underlying lawsuit and, 2) being sued by Mr. Birnbaum.
5. I had no pecuniary interest in any hearing or court proceeding involving Udo Birnbaum, including but not limited to the recusal hearing in the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619, 294th Judicial District Court of Van Zandt County, Texas.

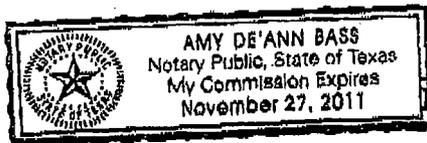
Further affiant sayeth not.

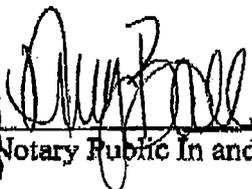
EXECUTED this 10th day of July, 2009.



RON CHAPMAN

SUBSCRIBED and SWORN TO BEFORE ME, the undersigned authority, on this 10th day of July, 2009, to certify which, witness my hand and seal of office.





Notary Public In and for the State of Texas

CAUSE NO. 06-00857

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND RON CHAPMAN,
Defendants.

§ IN THE DISTRICT COURT
§
§
§ VAN ZANDT COUNTY, TEXAS
§
§ 249TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS' PLEA TO THE JURISDICTION

ON THIS DAY came to be considered Defendant Judge Paul Banner and Defendant Ron Chapman's Plea to the Jurisdiction. After careful consideration of Defendants' plea, and any applicable response thereto by Plaintiff, this court is of the opinion that Defendants' plea is with merit and is therefore **GRANTED**.

ACCORDINGLY, it is **ORDERED, ADJUDGED AND DECREED** that all claims asserted by Plaintiff against Judge Banner and Judge Chapman in this action are hereby dismissed with prejudice thereby dismissing this action in its entirety with prejudice.

SIGNED on this _____ day of _____, 2009.

JUDGE PRESIDING

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND
RON CHAPMAN,
Defendants.

§ IN THE DISTRICT COURT
§
§
§ VAN ZANDT COUNTY, TEXAS
§
§
§ 249TH JUDICIAL DISTRICT

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants' Plea to the Jurisdiction has been set for hearing on **July 24, 2009 at 9:00 a.m.** in the 249th Judicial District Court of Van Zandt County, Texas.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division


JASON T. CONTRERAS
Texas Bar No. 24032093
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

*Attorneys for Judge Paul Banner and
Judge Ron Chapman*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on July 15, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General

OpenJustice.US

Udo Birnbaum
Maxwell Birnbaum

At it since 1994
"keeps on ticking"

903 479-3929
brnbn@aol.com
openjustice.us

July 15, 2009

Gregg Abbott
Attorney for Defendants
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Re: Letter from Attorney General

This is plain INSULTING – these characters need to go to JAIL!

Attached is copy of the **complaint** I made:

"public corruption", "under color of law", "retaliation", "failure to keep from harm".

Attached is copy of response I got:

"Thank you prohibited by law from providing legal advice, legal counsel, etc".

You guys are **defending** these monsters, when you need to **turn them in!**

Attached copy of my suit and the exhibits thereto - - **public court records** -- shows that these guys imposed a **\$125,770** unconditional – not "coercive" – FINE – for having exercised a First Amendment Right of access to the courts – that is RETALIATION, OBJECTIVELY UNREASONABLE, and OFFICIAL OPPRESSION:

"to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits"

Moreover, ANY FINE constituting PUNISHMENT is PROHIBITED by civil process!
(Got to have "keys to your own release", by complying with some sort of Order or such)

"Thank you prohibited by law from providing legal advice, legal counsel, etc"

Don't you guys understand "Official Oppression", "misprision of felony", and "accessory after the fact", and because it is ongoing, "aiding and abetting".

Stop covering up for these criminals! Remember, ex-AG Dan Morales went to the pen.

Udo Birnbaum

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124
(903) 479-3929

Att:

- **Complaint I made**
- **Stupid response I got back**
- **Suit – for violation of law - you are aiding and abetting these monsters**
See attached “Order on Motion for Sanctions” -- SELF-ADMISSION!
“to stop Birnbaum and others like him from filing
similar frivolous motions and other frivolous lawsuits”

The following directly from the Texas Attorney General web site”

“The Attorney General's **Criminal Investigation's Division** is comprised of commissioned peace officers and crime analysts who undertake a **wide range of investigations** and activities to support detection, prevention, and prosecution of crime. The Criminal Investigations Division of the OAG investigates and supports the prosecution of both violent crimes and **white-collar crimes**, including complex fraud crimes, Election Code violations, and **public corruption**.”

“The **Special Investigations Unit** responds to a **variety of law enforcement challenges** throughout the state. The Unit investigates a wide variety of cases, including violent crimes and **white-collar crimes**, such as fraud cases, **public corruption** matters, and Election Code violations.”

“Thank you prohibited by law from providing legal advice, legal counsel, etc”

Copy, including attachments:

Judge Paul Banner
24599 CR 3107
Gladewater, TX 75647-9620

Judge Ron Chapman
108 Ellen Lane
Trinidad, TX 75163

Judge Andrew J. Kupper
P.O. Box 666
Kaufman, TX 75142-0666

Judge John Ovard
Presiding Judge
First Administrative Judicial Region
133 N. Industrial / LB50
Dallas, TX 75207



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2009

Mr. Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124

Dear Mr. Birnbaum:

Thank you for your recent letter. Please understand that the Office of the Attorney General is prohibited by law from providing legal advice, legal counsel or interpretations of the law to private individuals.

Questions concerning the actions of a judge should be directed to the State Commission on Judicial Conduct. You can contact that office as follows:

State Commission on Judicial Conduct
Post Office Box 12265
Austin, TX 78711
(512) 463-5533
(877) 228-5750
www.scjc.state.tx.us

The State Bar of Texas is the agency with authority to regulate attorneys in Texas. You may also file a formal grievance with the State Bar under the Texas Disciplinary Rules of Professional Conduct by calling (800) 932-1900.

Again, thank you for writing.

Sincerely,

Robert Galindo
Public Information & Assistance
Office of the Attorney General of Texas

UDO BIRNBAUM, Plaintiff,	§ § § § § § §	IN THE DISTRICT COURT VAN ZANDT COUNTY, TEXAS 294TH JUDICIAL DISTRICT
v.		
PAUL BANNER AND RON CHAPMAN, Defendants.		

DEFENDANTS' DISCLOSURES TO PLAINTIFF

TO: Udo Birnbaum, 540 VZ 2916, Eustace, Texas 75124

Pursuant to Rule 194.3 of the Texas Rules of Civil Procedure, Defendants Judge Paul Banner and Judge Ron Chapman respond as follows to Plaintiff's request for Disclosure under Rule 194:

Rule 194.2(a) The correct names of the parties to the lawsuit:

RESPONSE:

Udo Birnbaum, Judge Paul Banner and Judge Ron Chapman.

Rule 194.2(b) The name, address, and telephone number of any potential parties:

RESPONSE: Defendants, at this time, are unaware of any unnamed potential parties.

Rule 194.2(c) The legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial):

RESPONSE: As purely defensive parties, Defendants assert no claims at this time. Defendants generally deny each and every allegation made by Plaintiff. Further, Defendants assert the following affirmative defenses: 1) sovereign immunity, to the fullest extent applicable to all claims, 2) absolute judicial immunity, 3) failure to mitigate damages, and 4) official immunity. Defendants further assert the right to raise additional defenses that become apparent throughout the factual development of this case. With respect to the affirmative defenses pled, Defendants incorporate by reference as if fully stated herein Defendants Plea to the Jurisdiction and the affidavits attached thereto in support of the factual bases of said defenses. Further, in this regard, all actions by Defendants for which Plaintiff complains took place within Defendants' official capacities as state judges and therefore Defendants are protected by sovereign immunity. Additionally, Defendants are entitled to official immunity because the actions for which Plaintiff complains were made by Defendants within their discretionary duties as judges, were within the scope of their authority as judges, and were performed in good faith.

Also, Plaintiff failed to mitigate his alleged damages by deciding to proceed with his motion to recuse against Judge Banner instead of simply withdrawing it and thereby avoiding an order on the motion for sanctions imposed against him.

Rule 194.2(d) The amount and any method of calculating economic damages:

RESPONSE: Defendants are not seeking damages, and assert that Plaintiff is not entitled to any of the damages he seeks by way of his claims against Defendants.

Rule 194.2(e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

Plaintiff

Judge Ron Chapman
Address and phone number of defense counsel
Defendant

Judge Paul Banner
Address and phone number of defense counsel
Defendant

G. David Westfall
Address and phone number unknown
Mr. Westfall was a party to the underlying lawsuit the Law Offices of G. David Westfall v. Birnbaum.

Christina Westfall
Address and phone number unknown
Ms. Westfall was a party to the underlying lawsuit the Law Offices of G. David Westfall v. Birnbaum.

Stefani Podvin
Address and phone number unknown
Ms. Podvin was a party to the underlying lawsuit the Law Offices of G. David Westfall v. Birnbaum.

Rule 194.2(f) For any testifying expert:

- (1) the expert's name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the

- control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
- (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) the expert's current resume and bibliography;

RESPONSE: Defendants have not designated any experts at this time, but reserve the right to supplement this response at a later date pursuant to TEX. R. CIV. P. 195.2.

Rule 194.2(g) Any indemnity and insuring agreements described in Rule 192.3(f)¹:

RESPONSE: None

Rule 194.2(h) Any settlement agreements described in Rule 192.3(g)²:

RESPONSE: There are no discoverable settlement agreements.

Rule 194.2(i) Any witness statements described in Rule 192.3(h)³:

RESPONSE: None.

¹ Rule 192.3(f) *Indemnity and Insurance Agreements*. Except as otherwise provided by law, a party may obtain discovery of the existence and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial.

² Rule 192.3(g) *Settlement Agreements*. A party may obtain discovery of the existence and contents of any relevant portions of a settlement agreement. Information concerning a settlement agreement is not by reason of disclosure admissible in evidence at trial.

³ Rule 192.3(h) *Statements of Persons with Knowledge of Relevant Facts*. A party may obtain discovery of the statement of any person with knowledge of relevant facts—a “witness statement”—regardless of when the statement was made. A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party.

Rule 194.2(j) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills:

RESPONSE: Not applicable.

Rule 194.2(k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party:

RESPONSE: Defendants have not obtained any such records.

Rule 194.2(l) The name, address, and telephone number of any person who may be designated as a responsible third party.

RESPONSE: None at this time.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil
Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division



JASON T. CONTRERAS
Texas Bar No. 24032093
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by certified mail return receipt requested on July 20, 2007 upon the following individual at the listed addresses:

Udo Birnbaum
540 VZ 2916
Eustace, Texas 75124



JASON T. CONTRERAS
Assistant Attorney General



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Udo Birnbaum
540 VZ 2916
Eustace, Texas 75124

RE: *Udo Birnbaum v. Paul Banner & Ron Chapman*; In the 249th Judicial
District Court of Van Zandt County, TX; Cause No. 06-00857

Dear Mr. Birnbaum:

Please be advised that, per the court, the hearing currently scheduled for Friday, July 24, 2009 on Defendants' Plea to the Jurisdiction will have to be re-scheduled to a later date. Once another date is secured on Defendants' plea, I will advise you of same by way of a notice of hearing.

If you have any questions regarding this matter feel free to contact me.

Regards,

JASON CONTRERAS
Assistant Attorney General

Enclosure

cc: Paul Banner (*via facsimile*)
Ron Chapman (*via facsimile*)

OpenJustice.US

Udo Birnbaum
Maxwell Birnbaum

At it since 1994
"keeps on ticking"

903 479-3929
brnbn@aol.com
openjustice.us

July 22, 2009

Jason T Contreras
Attorney for Defendants
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Re: Your July 15, 2009 Notice of Hearing for July 24, 2009 (attached)
Udo Birnbaum v. Paul Banner & Ron Chapman
Cause No. 06-00857, 294th District Court of Van Zandt County

Please explain, for the record, why you would be providing me said *Notice of Hearing*, when there was **no such setting**.

Sincerely,



Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124
(903) 479-3929

cc: Judge Paul Banner
24599 CR 3107
Gladewater, TX 75647-9620

Judge Ron Chapman
108 Ellen Lane
Trinidad, TX 75163

Judge Andrew J. Kupper
P.O. Box 666
Kaufman, TX 75142-0666

Judge John Ovard
Presiding Judge
First Administrative Judicial Region
133 N. Industrial / LB50
Dallas, TX 75207



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2009

Via Regular U.S. Mail

Karen Wilson, Clerk
Van Zandt County Courts
121 E Dallas St, Rm 302
Canton, Texas 75103-1465

RE: *Udo Birnbaum v. Paul Banner & Ron Chapman*; Cause No. 06-00857

Dear Ms. Wilson:

Enclosed for filing in the above-referenced cause please find the original and one copy of ***Notice of Hearing***.

Please *file-stamp* the enclosed and return the *file-marked copy* to us in the enclosed envelope provided for your convenience.

Thank you for your assistance with this matter.

Sincerely,

Lynne Erdek
Legal Secretary to
JASON CONTRERAS
Assistant Attorney General
General Litigation Division
(512) 475-4261

Enclosures

cc: Udo Birnbaum (via MRRR & ~~_____~~)
Paul Banner (via facsimile)
Ron Chapman (via facsimile)

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND
RON CHAPMAN,
Defendants.

§
§
§
§
§
§
§

IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

249TH JUDICIAL DISTRICT

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants' Plea to the Jurisdiction has been set for hearing on July 24, 2009 at 9:00 a.m. in the 249th Judicial District Court of Van Zandt County, Texas.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division



JASON T. CONTRERAS
Texas Bar No. 24032093
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

*Attorneys for Judge Paul Banner and
Judge Ron Chapman*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on July 15, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General