

JUDICIAL COUNCIL OF THE NINTH CIRCUIT
THIRD SUPPLEMENT TO COMPLAINT OF JUDICIAL MISCONDUCT

(Title 28 U.S.C. §372(c))

Docket No. 94-80469

CERTIFIED MAIL - RETURN RECEIPT REQUESTED - # P-498 824 911

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That the facts herein stated are personally known to me to be true, and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I am the complainant in the Complaint of Judicial Misconduct assigned Docket Number 94-80469; that I hereby present a *Third* Supplement to that Complaint citing additional and further judicial misconduct to that of which complaint has already been made and supplemented.

3. That I hereby add to Item 2 of the original Complaint, "Judges complained about" the names of MARY M. SCHROEDER, WILLIAM C. CANBY, JR., and EDWARD LEAVY, U.S. Court of Appeals for the Ninth Circuit and include herewith copies of all previous documents for distribution to them.

4. That as I reiterated in Paragraph 10 of my Second Supplement, as well as Paragraph 10 of the first Supplement, to the Complaint, the purpose for bringing this matter to the Judicial Council is to correct problems already existing in this case *before they are further compounded*.

5. That this Third Supplement to the Complaint is now necessitated by the "MEMORANDUM" filed February 27, 1995, a copy of which is attached hereto as "EXHIBIT 3A" and made a part hereof for evidentiary purposes only, but not acknowledging its contents.

6. That I file concurrently herewith my Exception to Memorandum Filed February 27, 1995, a copy of which is attached hereto as "EXHIBIT 3B" and made a part hereof.

7. That my Second Supplement to the Complaint, mailed January 23, 1995, fully explains the circumstances as they then existed regarding Appeal No. 94-55951; that in Paragraph 12 of the Second Supplement, I specifically requested the Judicial Council issue a *stay of any further proceedings in case No. 94-55951*, until such time as the existing problems are corrected so that the case can proceed according to law and not by fiat; I stated there that "the misconduct is spewing forth unabated, compounding the judicial misconduct which has already disfigured this case beyond recognition."

8. My final statement in that document states "That unless the Judicial Council intervenes, further disaster and injustice is sure to result." That preceding that statement, I said in Paragraph 13 of the Second Supplement, as I had stated before, "the Ninth Circuit Court, in its current state of denial, is now railroading this appeal through a *sham briefing schedule* and a *sham submission of the case* while the serious questions raised are ignored by the Court and remain unresolved in violation of my rights to fair and lawful procedures" and which is now a certainty."

9. That certainty has now taken place; the Ninth Circuit Court of Appeal, under the authority of Circuit Judges SCHROEDER, CANBY and LEAVY, whose names I now add to my Complaint of Judicial Misconduct, has carried out its mission-- that of railroading through this appeal despite the serious issues regarding several improprieties and acts of judicial misconduct which are the subject of a motion for recusal of the Ninth Circuit pursuant to Title 28 U.S.C. §455(a).

10. That the problems originally presented to the Judicial Council last December have not been resolved, or even acknowledged; instead, the problems have compounded as I have warned; the "MEMORANDUM" (EXHIBIT 3A) is a total *sham* and a disgrace to the judicial process in light of the record in this case.

11. That the bases for my current Exception (EXHIBIT 3B) are identical to those of my previous two exceptions filed in this case, which I again repeat are as follows:

(a) Appellant's first exception is to the court's having arbitrarily and capriciously "constru[ed]" the "Declaration of Appellant Ronald Branson" as a "motion for default judgment."

(b) Appellant's second exception is to the court's evasion of the issue of standing of the "appellees" to appear in this appeal, which evasion is now shown to be an intentional tactical maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment."

(c) Appellant's third exception to the Order [of December 9th] is the court's failure to address the conflict of interest issue to which the motion for recusal of the Ninth Circuit was specifically directed.

(1) First conflict cited: Three of the defendants are themselves Ninth Circuit judges.

(2) Second conflict cited: The impropriety of the Ninth Circuit unilaterally contacting the other side, to wit, the U.S. Attorney's Office and inviting it into this appeal on behalf of the non-appearing defendants.

(3) Third conflict cited: The judges of the Ninth Circuit, who would sit in judgment of this appeal [now shown to be SCHROEDER, CANBY and LEAVY] share the same legal counsel of the U.S. Attorney's Office, as do the defendants.

(d) Appellant's fourth exception to the Order [of December 9th] is the failure of the Ninth Circuit to carry out this "critically important" function [of identifying the facts that might reasonably cause an objective observer to question impartiality in deciding the Motion for Recusal under Title 28 U.S.C. §455(a)].

12. That those issues, listed above, have not changed; there is nothing in the "MEMORANDUM" filed February 27, 1995 (EXHIBIT 3A) reflecting a response to those issues; accordingly, the entire case is in a state of "limbo" and will remain so until the Judicial Council acts.

13. That the word "**denied**" does not respond to the above issues; nor does that word clear the way for the Ninth Circuit Court of Appeal to forge ahead in Case No. 94-55951 without disposing of the recusal motion as required under Title 28 §455(a).

14. That since my original Complaint on December 17, 1994, there have been now *three* incidents of further compounding the same judicial misconduct complained of:

(a) On January 18, 1995, I mailed to the Ninth Circuit Court my "Objection to Submission of Appeal" wherein I objected to a letter dated January 12, 1995, stating "The United States Court of Appeals for the Ninth Circuit is considering submission of your case...." while there was still pending and undecided my Exception to the Order filed December 9, 1994, and Motion for Rehearing of the Recusal Motion;

(b) On January 23, 1995, I mailed to the Ninth Circuit Court my "Exception to Order Filed January 19, 1995" wherein I excepted to the statement made in that order, to wit, "Appellant's motion for reconsideration of this court's December 9, 1994 order is denied" stating that "I did not file a 'motion for reconsideration of this court's December 9, 1994 order' but a 'Motion for Rehearing of Recusal Motion' under the **required procedures which this court has failed and now refuses to perform**,";

(c) Today, March 9, 1995, I am mailing to the Ninth Circuit Court my "Exception to Memorandum Filed February 27, 1995" wherein I am excepting to what is purporting to be a decision made in Appeal No. 94-55951, while there is still pending and undecided the issues raised in my Exception to the Order Filed December 9, 1994, and my Motion for Rehearing of the Recusal Motion. This third incident brings in three additional Ninth Circuit judges into the fray, for a total of *eight federal judges*

15. That I cannot take any action regarding the "merits" of the purported decision, such as a petition for rehearing, while the current issues stated herein remain unresolved; the merits of the decision are not reviewable.

16. That I am now awaiting notification of the Chief Judge's action under Rule 4(f) of the Judicial Council Rules.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9th day of March, 1995, at Los Angeles, California.

s/ _____

RONALD BRANSON, Complainant

Exhibits attached.

FILED
FEB 27 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD L. BRANSON,)	No. 94-55951
)	
Plaintiff-Appellant,)	D.C. No. CV-94-01932-R
)	
v.)	
)	
BETTY B. FLETCHER, personal)	MEMORANDUM*
capacity; DIARMIUD F. O'SCANNLAIN,)	
personal capacity; ANDREW J.)	
KLEINFELD, personal capacity;)	
WILLIAM D. KELLER, personal)	
capacity,)	
Defendants-Appellees.)	
)	

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, Chief Judge, Presiding

Submitted February 21, 1995**

Before: SCHROEDER, CANBY and LEAVY, Circuit Judges.

Ronald Branson appeals pro se the district court's dismissal of his Bivens action against a district judge and three judges of this court. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm. ¹

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. fed. R. App. P. 34(a); 9th Cir. R. 34-4. Accordingly, Branson's request for oral argument is denied.

^{1/} Branson's renewed motion for recusal of the entire Ninth Circuit and objection to this court's January 19, 1995 order are denied.

EXHIBIT 3A

We agree with the district court that Branson's claims are barred by the doctrine of judicial immunity. See Mullis v. United States Bankruptcy Court, District of Nevada, 828 F.2d 1385, 1394 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988). The district court properly denied Branson's motion for recusal because Judge Real's prompt sua sponte dismissal of Branson's complaint does not demonstrate bias or prejudice. See 28 U.S.C. § 455; United States v. Payne, 944 F.2d 1458, 1476 (9th Cir. 1991), cert. denied, 112 S.Ct. 1598 (1992). Finally, the district court correctly held that Branson was not entitled to a default judgment. See Aldabe v. Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980).

AFFIRMED.

EXCEPTION TO MEMORANDUM FILED FEBRUARY 27, 1995

***(filed concurrently with Third Supplement to Complaint
of Judicial Misconduct - Docket No. 94-80469)***

CERTIFIED MAIL - RETURN RECEIPT REQUESTED - #P-498-824-912

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That I am the appellant herein; that all facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I hereby except to the Memorandum filed February 27, 1995, before Circuit Judges SCHROEDER, CANBY and LEAVY, a copy of which is attached hereto as "EXHIBIT 3A" and made a part hereof as evidence of its existence only and not of its contents or statements therein.

3. That I file this Exception to Memorandum concurrently with my Third Supplement to Complaint of Judicial Misconduct, Docket No. 94-80469, wherein I am forced to add the names of MARY M. SCHROEDER, WILLIAM C. CANBY, JR., and EDWARD LEAVY, Circuit Judges of the Ninth Circuit Court of Appeals, due to their proceeding with such Memorandum filed in this appeal, Case No. 94-55951, BRANSON v. FLETCHER, et al.

4. That I make this Exception to the February 27th Memorandum on the identical bases as the Exception to the December 9th Order and the Exception to the January 19th Order, which I again set forth on this record, as follows:

(a) Appellant's first exception is to the court's having arbitrarily and capriciously "constru[ed]" the "Declaration of Appellant Ronald Branson" as a "motion for default judgment" in the Order of December 9, 1994, without citing any authority or

ESHIBIT 3B

basis for doing so, despite appellant's exception to said Order dated December 15, 1994 which is part of this record.

(b) Appellant's second exception is to the court's evasion of the issue of standing of the "appellees" to appear in this appeal, which evasion is now shown to be an intentional tactical maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment."

(c) Appellant's third exception to the Memorandum of February 27, 1995 is the court's failure to address the conflict-of-interest issue to which the Motion for Recusal of the Ninth Circuit, on file herein, is specifically directed, to wit:

(1) First conflict cited: Three of the defendants are themselves Ninth Circuit judges.

(2) Second conflict cited: The impropriety of the Ninth Circuit unilaterally contacting the other side, to wit, the U.S. Attorney's Office and inviting it into this appeal on behalf of the non-appearing defendants.

(3) Third conflict cited: The judges of the Ninth Circuit, who would sit in judgment of this appeal (now shown to be SCHROEDER, CANBY and LEAVY), share the same legal counsel of the U.S. Attorney, as do the defendants.

(d) Appellant's fourth exception to the Memorandum filed February 27, 1995 is the continuing failure and now deliberate refusal of the Ninth Circuit Court to carry out the "critically important" function, described by the U.S. Supreme Court in *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865. cited by appellant on page 4 of his Motion for Recusal of the Ninth Circuit, as "identify[ing] the facts that might reasonably cause an objective observer to question... impartiality" in order to decide and properly dispose of the Motion for Recusal as the Court is required to do under Title 28 U.S.C. §455(a).

5. That Circuit Judges SCHROEDER, CANBY and LEAVY deliberately disregarded the law cited in those exceptions requiring such procedures for the Ninth Circuit Court to follow before proceeding further in this Appeal, No. 94-55951, when filing the Memorandum of February 27, 1995.

6. The Ninth Circuit Court has again refused to acknowledge the several improprieties brought to its attention, ignoring the required formal decision-making process under Title 28 U.S.C. §455(a), and thus compounding the judicial misconduct that has already plagued this Appeal No. 94-55951, as reported to the Judicial Council, Docket No. 94-80469.

7. That I have repeatedly requested the Ninth Circuit Court to do the following:

(a) Determine the standing issue as a matter of law;

(b) Address and resolve the conflict arising out of Ninth Circuit judges being defendants;

(c) Address and resolve the conflict involving the impropriety of the Ninth Circuit Court having unilaterally contacted the U.S. Attorney's Office in violation of the Code of Judicial Conduct, and inviting that Office to appear in this appeal;

(d) Address and resolve the conflict involving the status of the U.S. Attorney's Office as legal counsel for the non-appearing defendants in this appeal, being the same legal counsel as that of the Ninth Circuit judges reviewing and deciding this appeal --the court and the defendants having the same legal counsel;

(e) Discuss and evaluate under the standards set forth in Title 28 §455(a) all other conflicts of interest that exist, whether or not mentioned in the recusal motion;

(f) Identify the facts that might reasonably cause an objective observer to question the impartiality of the Ninth Circuit Court of Appeal in this appeal, Case No.94-55951, as this Court absolutely must do under the standards established by the U.S. Supreme Court.

8. That the Ninth Circuit Court has ignored *all of the above*, and has acted in direct contempt of Congress and the law pertaining thereto.

9. That the Memorandum filed February 27, 1995, has exacerbated the problem that already exists, as aforesaid, further complicating and expanding the Complaint of Judicial Misconduct on

file before the Judicial Council of the Ninth Circuit, now adding three more federal judges to the list.

10. That clearly I am precluded by law from attacking the merits of the decision or seeking relief from the Ninth Circuit Court in this Appeal, No. 94-55951, until the jurisdictional issue of the underlying Motion for Recusal is disposed of according to law; I do not waive my right to seek proper relief at such time as it becomes appropriate.

11. That Case No. 94-55951 will remain in limbo, without a remedy, until the Judicial Council takes whatever steps are necessary to resolve the impasse and get the case back on track as has been fully described and presented in Docket No. 94-80469.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9th day of March, 1995, at Los Angeles, California.

s/ _____
RONALD BRANSON, Appellant

