

April 18, 2005
1664 Buttercup Road
Encinitas, CA 92024

Justice Stephen Breyer, Chairman
Judicial Conduct & Disability Act Study Committee
Office of Judges Programs
Administrative Office of the United States Courts
Thurgood Marshall Judiciary Building
One Columbus Circle N.E. – Room 4-170
Washington, D. C. 20544

Via Federal Express

Re:

- Complaint of Judicial Misconduct/Declaration
- Conflict of Interest/Bias
- ADA Title II Access to the Courts
- Case No. 04-55769

Dear Justice Breyer:

I write to submit my complaint of judicial misconduct for investigation by this Committee pursuant to the Judicial Conduct and Disability Act of 1980. (See 28 U.S.C. §§ 351-364)

The Act authorizes “any person” to file a complaint alleging that a federal circuit judge, district judge, bankruptcy judge, or magistrate judge has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts...”

Your Committee has decided that “...it will initially examine as many non-frivolous Act-related complaints as can be identified...”¹

On June 29, 2004 fifteen Congressional Representatives jointly submitted a complaint for investigation by your Committee.

As a citizen, I am entitled to the same due process for my complaint that is afforded to those who are elected to serve the American public.

¹ Committee Press Release, June 10, 2004, U.S. Supreme Court website

COMPLAINT STATEMENT

Prior to January 1, 1996, U.S. District Judge Dickran Tevrizian made an illegal agreement with individuals representing the:

- California State Bar
- Judicial Council of California
- U.S. Department of Justice
- other entities

Their illegal agreement enabled the California judiciary to deny six million² disabled persons access to state courts under color of state law in violation of the Americans with Disabilities Act Title II. (Exhibit 1 – J. Finney Letter to Alberto R. Gonzales, U. S. Attorney General - 3/25/2005)

Pursuant to their illegal agreement:

- Judge Tevrizian and the California Bar proposed and drafted a discriminatory state law, California Rule of Court 989.3 (CRC 989.3) that violates ADA Title II both substantively and procedurally.
- Effective January 1, 1996, The Judicial Council of California adopted CRC 989.3 and applied its discriminatory procedures, fraudulently misrepresenting to the public that this law complies with ADA Title II.
- Judge Tevrizian and the California Bar also have fraudulently misrepresented to the public that CRC 989.3 “...is consistent with the Americans with Disabilities Act.”³
- Although the U. S. Department of Justice knows that CRC 989.3 denies disabled persons access to California courts, DOJ refuses to challenge the constitutionality of CRC 989.3 in federal court on the pretext of budgetary constraints. (Exhibit 2 – DOJ 4/5/2005 Response Letter to J. Finney)

² 2000 U.S. Census “California QuickFacts”

³ California Bar Journal, Feb 1996 (See J. Finney 3/25/05 Letter to Alberto Gonzales, Attachment 3)

- Neither the California courts nor the Ninth Circuit has ever published a judicial opinion regarding CRC 989.3's constitutionality and compliance with ADA, Title II.

I am a former federal fraud investigator, who is totally disabled by polio and intractable pain.

Judges' disability discrimination pursuant to CRC 989.3 has denied me meaningful access to the California courts, as a litigant and prospective juror, in violation of the U.S. Constitution and ADA Title II.

- CRC 989.3 permitted a California superior court judge to impose an \$1119.00 sanction, in retaliation for requesting protection from disability discrimination in court programs, services and activities pursuant to ADA Title II.
- CRC 989.3 permitted a California superior court presiding judge to ignore my complaint about the sanction, because "a presiding judge does not have any oversight... over other judges," even if they violate ADA. (Exhibit 3 – Richard E. L. Strauss 9/18/2003 Letter to J. Finney)
- CRC 989.3 permitted a California chief appellate court justice to ignore my two requests to reasonably accommodate my polio disability, preventing me from appealing the sanction.
- CRC 989.3 permitted a California court executive officer to expressly state that the court does not provide "...access as contemplated by the Americans with Disabilities Act," because the court decided not to fund ADA compliance requirements. (Exhibit 4 – D. Yamasaki 12/5/2003 Letter to J. Finney)
- CRC 989.3 puts me and all disabled persons at risk of imminent harm from financial and other sanctions due to California judges' discriminatory animus and retaliation against disabled persons in violation of ADA Title II.

I am the first party to ever challenge the constitutionality of CRC 989.3 in the Ninth Circuit. I did not challenge judicial decisions that imposed the \$1119.00 sanction.

- I sued The Judicial Council of California and other parties to obtain injunctive and declaratory relief and damages for enacting a discriminatory law and applying policies that permitted discrimination, discriminatory animus, coercion and retaliation against disabled persons in violation of ADA Title II.

- The Ninth Circuit ignored both my constitutional challenge to 989.3 and my request for declaratory and injunctive relief and damages for disability discrimination.
- The Ninth Circuit ruled that California law mandated that the judge impose the \$1119.00 fine, because requesting protection from disability discrimination is not “substantially justified” by ADA Title II.
- Ninth Circuit judges failed to disclose their conflict of interest and bias in reviewing constitutional challenges to a state law proposed and affirmed in 1996 by their colleague, Judge Dickran Tevrizian, as being “...consistent with the Americans with Disabilities Act.”
- In 2004, Judge Tevrizian expressed his opinion regarding ADA’s impact on the federal courts, i.e.:

“This [ADA] is a law that Congress passed... it’s causing a lot of court congestion... multiply that by all the federal judges in the country.” The San Diego Union-Tribune, September 12, 2004.

- Judge Tevrizian’s express hostility toward ADA in 2004 is indicative of his 1996 discriminatory mindset in proposing and affirming CRC 989.3.
- Judge Tevrizian’s and his colleagues’ hostility toward ADA may have influenced federal district and appellate judges to invent a pretext to enable the wrongful dismissal of the entire class of ADA Title II cases challenging disability discrimination and retaliation by state court judges.

Ninth Circuit judges failed to recuse themselves from deciding my case, ignoring their actual conflict of interest and an unrebuttable perception of bias in violation of 28 U.S.C. 455(a).

- Section 455 imposes an affirmative duty upon judges to recuse themselves when “...a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might be questioned.” *Yagman v. Republic Ins.*, 980 F.2d, 622, 626 (9th Cir. 1993).
- I was not informed that, in 1996, Judge Tevrizian had expressly affirmed that CRC 989.3 “...is consistent with the Americans with Disabilities Act,” denying me notice to exercise my right to move for recusal.

- Judge Tervizian’s proposal and affirmance of CRC 989.3, enacted by The Judicial Council of California, constitutes an extrajudicial episode requiring recusal. The Judicial Council of California is one of the defendants against whom I sought injunctive relief and damages in federal court for the enactment and application of CRC 989.3.
- This complaint documents with particularity the manifestation of conflict of interest and bias requiring recusal. Failure to disclose and remedy this obvious and undeniable conflict of interest and bias constitutes judicial misconduct.

In stark contrast to the Ninth Circuit, Judge Posner, writing for the Seventh Circuit, recused all district and circuit court judges from hearing *In re: Nettles* (7th Cir. Jan 21, 2005) to avoid even the perception of bias, stating:

- “The issue is appearances... [to the] reasonable, but outside, observer of the judicial system...”
- “...the argument that the judges of this court would appear prejudiced if we were to hear [the] appeal...”
- “...a more efficient method of proceeding is to recuse ourselves now, to be replaced by judges from other circuits who will be designated to hear any further proceedings.”

QUESTIONS

My complaint statement raises material questions that require investigation by your Committee:

1. Has the illegal agreement to deny disabled persons access to the California courts been expanded to include other federal judges who participated in or otherwise improperly influenced the adjudication of my constitutional challenge to CRC 989.3?
2. Who planned and executed the collaboration and agreement among Judge Tervizian, individuals representing the California Bar, the California Judicial Council, the U.S. Department of Justice and other individuals to propose, promote and protect CRC 989.3 from constitutional challenge in federal court?
3. Were “quid pro quo” incentives provided to Judge Tervizian and to the other individuals who were parties to the illegal agreement?

4. Was the illegal agreement known to and sanctioned by other federal judges who were provided with incentives to participate in and/or to otherwise improperly influence the adjudication of ADA cases?
5. If true, when did the illegal agreement become known to each federal judge? Who made the illegal agreement known?
6. Do any laws, rules, and codes of conduct permit federal judges to act in concert with state court governing bodies and state bar associations to propose, draft and affirm state court rules/laws that are subject to federal constitutional challenge?
7. What is the federal courts' oversight procedure and structure, if any, to detect and assure that cases concerning constitutional challenges to state court rules/laws proposed and affirmed by federal judges are not result driven?⁴
8. Are federal judges allowed to accept monetary and in-kind compensation from state courts, state bar associations, and other special interests to propose and affirm state court rules/laws that are subject to federal constitutional challenge?
9. Are federal judges permitted to accept monetary and in-kind compensation for their extrajudicial opinions that affirm the constitutionality of state court rules/laws in the context of judicial and attorney education, including but not limited to judicial and CEB courses?
10. Are federal judges subject to oversight regarding mandatory recusal and disqualification due to actual and perceived conflicts of interest and bias in adjudicating the constitutionality of state court rules/laws that they and/or their colleagues proposed and affirmed by extrajudicial statements on a prior date(s)?
11. Do formal oversight policies and procedures exist? Who administers these oversight policies and procedures? Do checks and balances exist to assure honest, effective oversight?

⁴ Professor Alan Dershowitz defines "result driven" to mean "Somebody decides what result they want and then they talk about the constitutional, procedural issues." CNN Interview, March 23, 2005.

12. Are written reports, regarding internal federal court oversight of conflict of interest and bias, submitted to the U.S. Senate and House Judiciary Committees?
13. If written reports are prepared, are they unredacted public documents that the Court will provide upon request or that can be discovered pursuant to the Freedom of Information Act?

CONCLUSION

The attached documents provide undisputed direct and circumstantial “actual evidence” to overcome the presumption of honesty and integrity in those serving as adjudicators in the Ninth Circuit. *Hirsh v. Justices of the Supreme Court of Cal.* 67 F.3d 708 at 713-14 (9th Cir. 1995).

If the Committee refuses to remedy Ninth Circuit judges’ participation in the execution of a decade-old illegal agreement to deny disabled persons’ fundamental constitutional right to access California courts, the Committee will render ADA Title II meaningless.

The Ninth Circuit’s judicial misconduct now compels me to submit a Petition for Certiorari to the U. S. Supreme Court in June, 2005. The Ninth Circuit is aware that such petitions are rarely accepted and rarely reversed, permitting judicial misconduct to evade review.⁵

REQUEST

On behalf of all disabled Americans and pursuant to the Committee’s mandate, I request that it investigate and act upon my complaint, as it concerns constitutional issues of extraordinary public importance,⁶ i.e.,

- “The participation of a judge[s] who has a substantial interest in the outcome of a case of which he knows at the time he participates, necessarily imparts a

⁵ The Hon. Richard Tallman, U.S. Circuit Judge, U.S. Court of Appeals for the Ninth Circuit testimony to the U.S. Senate Committee on the Judiciary, “A Proposal to Split the Ninth Circuit,” April 7, 2004.

⁶ “The public’s confidence in the integrity of the judicial branch depends not only upon the Constitution’s assurance of judicial independence. It also depends upon the public’s understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability.” (See footnote 1.)

bias into the deliberative process. This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process.”⁷

- “A reviewing court may never discover the actual effect a biased judge had on the outcome of a particular case.”⁸

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this declaration was executed in Encinitas, California on April 18, 2005.

Yours truly,

Jacquelyn Finney “/S/”
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E-mail: ADA@cpc-com.com

Exhibits:

1. Letter to Alberto R. Gonzales, U.S. Attorney General, March 25, 2005, including 3 attachments.
2. U. S. DOJ letter to J. Finney, April 5, 2005 (DJ No. 202-12-0)
3. Presiding Judge Richard E. L. Strauss’ letter to J. Finney dated September 18, 2003.
4. Assistant Court Executive David Yamasaki’s letter to J. Finney dated December 5, 2003.

Cc: Hon. Arlen Specter
Hon. F. James Sensenbrenner
Hon. Patrick J. Leahy
Hon. John Conyers, Jr.

⁷ *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), Justice Brennan concurring.

⁸ *Id.*, Justice Blackmun and Justice Marshall concurring.