

Judicial Council of the Ninth Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Ninth Circuit Judicial Council also adopted local misconduct rules. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on www.uscourts.gov, and https://www.ca9.uscourts.gov/misconduct/judicial_misconduct.php.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. Under the Ninth Circuit's local misconduct rules, you are required to file five copies of your misconduct complaint and exhibits, plus one copy for each additional judge if more than one subject judge is named in your complaint. Enclose your complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Darryl Cotton
Contact Address: 6176 Federal Blvd.
San Diego, CA 92114
Daytime telephone: (619) 954-4447
2. Name(s) of Judge(s): Hon. Cynthia Bashant
Court: US District Court Southern District of California
3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?
☒ Yes ☐ No
If "yes," give the following information about each lawsuit:
Court: 9th Circuit - San Diego
Case Number: 18-cv-325-BAS-MDD
Docket number of any appeal to the NA Circuit: _____
Are (were) you a party or lawyer in the lawsuit?
☒ Party ☐ Lawyer ☐ Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

I am currently a Pro Se litigant in the previously referenced case.

There is a related case that is being presided over by Judge Bashant that was filed by my previous attorney Andrew Flores. That is Case No. 20CV0656 JLS LL

Law Office of Andrew Flores 945 4th Ave., San Diego, CA 92101

Ph: 619.256.1556

4. Have you filed any lawsuits against the judge?

[X] Yes [] No

If "yes," give the following information about each such lawsuit:

Court: US District Court Southern District of California

Case Number: 18-cv-325-BAS-MDD

Present status of lawsuit: 5%

Name, address, and telephone number of your lawyer for the lawsuit against the judge:

Self Represented Darryl Cotton

6176 Federal Blvd. SD CA 92114

619.954.4447

Court to which any appeal has been taken in the lawsuit against the judge:

Docket number of the appeal:

Present status of the appeal:

5. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation. Local Rule 6.1(b) provides that your statement of facts must not be longer than five pages (five sides), or 1,200 words, whichever is less.

You must provide objectively verifiable proof such as the names of witnesses or recorded documents or transcripts to support your allegations. Adverse rulings do not support misconduct allegations, as the appropriate forum for an argument that a judge erred is the appellate court. Thus, you need not include copies of your filings in the underlying case or the judge's orders because even if a review of those documents is necessary, the documents are accessible via PACER. Excess or irrelevant documentation will be returned to the complainant.

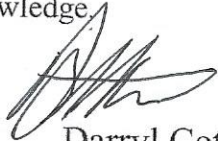
6. Acknowledgment, declaration and signature:

In the space provided below, please write the following statement: "I understand that even if I successfully prove that the judge engaged in misconduct or is disabled, this procedure cannot change the outcome of the underlying case." (If this statement is not written, your complaint will not be processed and will be returned to you.)

I understand that even if I successfully prove that the judge engaged in misconduct or is disabled, this procedure cannot change the outcome of the underlying case.

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) _



Darryl Cotton

(Date) May 05, 2020

May 5, 2020

Chief Judge Sidney Thomas
Judicial Council of the Ninth Circuit

Re: Judicial Misconduct by Judge Cynthia Ann Bashant

Chief Judge Thomas,

Judge Cynthia Ann Bashant has taken unethical actions either knowingly or with purposeful negligence to cover up the biased/unethical actions of state court judge Joel Wohlfeil. Wohlfeil and Bashant served together for approximately seven years in the San Diego Superior Court.

On November 2, 2016, Lawrence Geraci and I reached an oral joint venture agreement (the “JVA”) to develop a cannabis store (the “Business”) at my real property (“Property”). Geraci’s attorney, Gina Austin, was to reduce the JVA to writing. That same day, Geraci and I executed a three-sentence document (the “November Document”), as my acceptance of \$10,000 in cash towards a total \$50,000 agreed-upon nonrefundable deposit.

Also that same day (i) Geraci emailed me a copy of the November Document; (ii) I replied and requested that Geraci confirm in writing the November Document is not a purchase contract (the “Request for Confirmation”); and (iii) Geraci replied and confirmed the November Document is not a purchase contract (the “Confirmation Email”).

“As every first-year law student knows, an agreement or mutual assent is of course essential to a valid contract.” *Jacks v. CMH Homes, Inc.*, 856 F.3d 1301, 1304 (10th Cir. 2017). The Request for Confirmation and the Confirmation Email prove that I and Geraci did not mutually assent to the November Document being a purchase agreement for the Property (the “Mutual Assent Issue”).

I terminated the JVA with Geraci on March 21, 2017 for failing to reduce the JVA to writing and because I discovered he had applied for a cannabis permit at the Property in the name of his receptionist (the “Berry Application”). On March 22, 2017, Geraci’s attorney, Michael Weinstein, served me with a suit alleging the November Document is a fully integrated purchase contract for the Property (“*Cotton I*”).¹

In the Berry Application, Berry certified she is the sole owner of the cannabis application being sought (the “Berry Fraud”). At trial in *Cotton I*, both Geraci and Berry testified that the false statements made in the Berry Application were made knowingly and allegedly because Geraci is an Enrolled Agent with the IRS and not because he is prohibited by law from owning a cannabis business as a result of at least three sanctions by the City for owning/operating illegal marijuana dispensaries (the “Illegality Issue”). See, e.g., *City of San Diego v. CCSquared Wellness Cooperative*, Case No. 37-2015- 00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 (“The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego[.]”).

Cotton I can be determined to be a malicious prosecution action filed without probable cause for at least three reasons. First, the Mutual Assent Issue is case-dispositive. Second, the November Document has an unlawful object; Geraci’s ownership of a cannabis business that he is prohibited from because of the Illegality Issue. Third, Geraci cannot own a cannabis permit via the Berry Application because of the Berry Fraud.

Wohlfeil has stated from the bench that he does not believe Weinstein and Austin are capable of acting unethically. There is an ongoing investigation by the state court against Wohlfeil that I filed.

¹ *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

In February 2018, I filed suit and a TRO in federal court against, *inter alia*, Geraci, Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims.² On February 28, 2019, because of *Cotton I* Judge Curiel stayed the action pursuant to the *Colorado River* doctrine.

In July 2019, Wohlfeil entered judgment against me in *Cotton I* after a jury trial. I filed a motion for new trial (“MNT”) arguing, *inter alia*, assuming the November Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.) Wohlfeil denied the MNT believing his buddy Weinstein’s frivolous argument that I had waived the defense of illegality to the enforcement of a contract - Wohlfeil is a biased idiot. *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) (“**A party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense.**”).

On January 10, 2020, Judge Curiel recused himself. On January 15, 2020, Bashant lifted the *Colorado River* stay, but denied my request for counsel. On April 9, 2020, I filed an ex parte application seeking reconsideration of the Court’s denial of my request for counsel premised on, *inter alia*, the argument I needed to prove Judge Wohlfeil is biased. Further, I moved for Judge Bashant to vacate the order denying my request for counsel pursuant to FRCP 60(b) because, *inter alia*, the *Cotton I* judgment enforces an illegal contract.

On April 16, 2020, Judge Bashant denied my ex parte application in pro se fashion conclusory finding I had failed to prove “exceptional circumstances,” but without describing why.

On April 3, 2020, my former attorney, Andrew Flores, filed suit in federal court and an ex parte TRO after I told him that some of my supporters who had lent me significant money were planning to shoot one of Geraci’s attorneys to bring in law enforcement agencies to investigate what we believe to be a political corruption that includes Wohlfeil. (*Flores, et al. v. Austin, et al.*, Case No.20-cv-656-BAS-MDD.)

On April 20, 2020, Judge Bashant denied Flores’ TRO. The opening paragraph states: “Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a ‘neglect to perform wrongful act’ cause of action, and seek various forms of declaratory relief. The complaint is almost impossible to summarize due to its length and confusing nature.” Also, she alleges that Flores did not comply with FRCP 65(b) for the issuance of a TRO because his reasoning is unclear on the premise that Corina Young is a “defendant.”

First, according to Bashant, Flores is an idiot that sued someone for “neglect[ing] to perform wrongful act.” Flores did not. Flores filed a § 1986 cause of action for “neglect to **prevent** a wrongful act.” Bashant either purposefully is attempting to make Flores appear to be an idiot – what kind of moron sues somebody for **not** committing a crime? - or she did not bother to read the complaint with even the most minimal diligence that presumably is expected of any attorney, much less that of a federal judge.

Second, Corina Young is a witness who has been threatened from providing her testimony. She is not a “defendant.” Bashant simply made that up.

Third, Flores **did** provide notice, case law and argument for why notice is not required pursuant to FRCP 65.

Fourth, given the preceding, her allegation that the Flores’ complaint is “confusing” is denigrating as she clearly does not understand even the most basic facts she was presented with.

² *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

Bashant's actions reflect she would rather ratify and enforce an illegal contract rather than expose Wohlfeil as a biased judge. How can justice ever be achieved when judges like Bashant fabricate and attribute statements to parties that prevent them from exposing judge's unethical actions?



Darryl Cotton