

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

**COMPLAINT AGAINST JUDICIAL OFFICER
UNDER 28 U.S.C. § 351 et. seq.**

INSTRUCTIONS:

- (a) All questions on this form must be answered.
- (b) A separate complaint form must be filled out for each judicial officer complained against.
- (c) Submit the correct number of copies of this form and the statement of facts.
For a complaint against:

- a court of appeals judge -- original and 3 copies
- a district court judge or magistrate judge -- original and 4 copies
- a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

- (d) Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).
- (e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.

1. Complainant's Name: EVELYN LITWOK
Address: 507-6 HARDING RD.
FREEMOLD N.J 07728
Daytime Telephone No. (include area code): 732-303-7839

2. Judge or magistrate judge complained about:

Name: JUDGE DORA L. PIZARRI

Court: EASTERN DISTRICT OF N.Y.

3. Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?

Yes No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: EASTERN DISTRICT OF N.Y. 225 CADMAN PLAZA

Docket number: 00-CV-7626 BROOKLYN, N.Y.

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

Yes No

If "yes" give the name, address, and telephone number of your lawyer:

4. Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?

Yes No

If "Yes," give the docket number of each complaint.

5. You should attach a statement of facts on which your complaint is based, see rule 2(b), and

EITHER

- (1) check the box and sign the form. You do not need a notary public if you check this box.

[] I declare under penalty of perjury that:

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and
- (2) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

(signature)

Executed on _____
(date)

OR

- (2) check the box below and sign this form in the presence of a notary public;

[] I swear (affirm) that--

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

- (3) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

 Anna Litwin

(signature)

Executed on *9/18/06*
(date)

Sworn and subscribed to before me
this *18* day of *September* 200 *6*

Veronica Wieggers
Notary Public, State of New Jersey
My Commission Expires June 6, 2011
 Veronica Wieggers
(Notary Public)

My commission expires: *6/6/11*

Clerk of Court
United States Court of Appeals
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, N.Y. 10007

Re: Judge Dora L. Irizarry

8/25/06

Complaint of Misconduct

I am the defendant in case # 00 CV 7626 with Judge Dora L. Irizarry. My first interaction with Judge Irizarry was February 22, 2006 for a telephone status conference. Prior to February 22, 2006, Magistrate Judge Lindsay handled this case.

From the start of the conference call Judge Irizarry berated me relentlessly, threatened me, flew into rage easily and was clearly biased. She treated me with contempt, impatience and lacked knowledge of the facts of this case. She was short tempered and threatened to sanction me often. The rage, the temper, and threats were within the first ten minutes of the call.

Judge Irizarry has put this case on a fast track and expects to begin in a few weeks. Based on our first two interactions and because this is a bench trial, I believe my right to a fair trial is jeopardized.

This complaint is being sent to the Second Circuit because Chief Judge Edward Korman (Exh. 1) as well as the pro ce office told me this court is the proper jurisdiction.

Judge Irizarry's conduct is not in line with the "Code of Judicial Conduct". This complaint is being sent for the following reasons:

- 1) The minutes and tape recorded minutes will verify the statements I have made with regard to Judge Irizarry's lack of knowledge to proceed, her bad temperament and her already prejudiced biased opinion of me
- 2) Judge Irizarry has refused to respond to both a letter and a motion to recuse herself from this case (Exh. 2) The Judge refused to write a response to either the letter or the motion.

I am attaching the minutes of the telephone status conferences (Exh.3). I am also including a tape recorded conversation of the same sessions (Exh.4).The tape recorded conversation provides the clear rage, impatience, quick judgments I previously mentioned. Judge Irizarry was condescending and screamed at me repeatedly while not raising her voice to the SEC attorney's, Cynthia A. Matthews and David Markowitz.

According to my reading of "The Code of Judicial Conduct", Judge Irizarry has violated at least the following:

- 1) She did not observe high standards
- 2) She did not "act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary".
- 3) She was disrespectful of me and condescending.

These two telephone conferences were alarming. Given her statements during the phone calls, I will not get a fair trial and this is a bench trial.

After sending both a letter and a Motion to Recuse to Judge Irizarry, I checked the internet and found my reaction to Judge Irizarry to be similar to 70 lawyers and Judges interviewed by the American Bar Association. Exh. 5 is testimony by American Bar Association with regards to Judge Irizarry's nomination in 2003. Their description of her behavior is similar to mine.

After conducting 70 confidential interviews, including 50 lawyers and 17 Judges, the committee from the ABA found a common theme in the comments of those 70 people. Comments included " Judge Irizarry was gratuitously rude and abrasive and demeaned attorneys; that she flew off the handle in a rage for no apparent reason and screamed at attorneys; that she was impatient and did not fully listen to attorney's legal arguments, and did not have a good grasp of the legal issues presented to her; that she took offense easily , was short tempered and volatile, and got angry when lawyers agreed with her, she was rigid and dismissive and did not treat lawyers with respect" (Exh.5)

JUDGE IRIZARRY'S LACK OF KNOWLEDGE OF THIS CASE

THE DELAYS IN THE CASE

Cynthia A Matthews and David Markowitz have spent years writing letters to the court citing me as responsible for the delays in the case. Their use of the words "the SEC has been prejudiced" is unparalleled.

During the November 23, 2004 meeting with Judge Lindsay, Mr. David Markowitz stated "At the heart of this is that the SEC has been litigating

this case through facetious litigation practices through four years” (Exh. 6). On December 16, 2005, Judge Lindsay, reviewed the entire case to establish who caused the “DELAYS”.

Judge Lindsay’s review of the case(Exh.7).from Page 3

“I thought it necessary in light of the submission from the SEC to make sure that the record is clear because the submission from the SEC suggests and I want to make clear that I disagree with their suggestion, that this case was dragged out by the Defendant as part of a delay strategy or some kind of tactic to mislead. I don’t see any of that in this case. And for that reason I want to go through the record because while the SEC charges that there have been inappropriate or undue delay, I don’t see it that way. ...

“ There is no way you can lay this on the Defendant...”

1. In the two telephone conferences, 2/21/06 and 3/1/06, Judge Irizarry repeatedly referred to me as an “obstructionist” and held me responsible for the delays in the case.

Judge Irizarry may have read the SEC letters but she did not read the minutes from Judge Lindsay. Had she read the minutes, she would have known Judge Lindsay pointed to the SEC as primarily involved in the delay.

Judge Irizarry did not even know that 9/11 was in part responsible for the delay as the World Trade Center 7 which housed the SEC was destroyed. Judge Lindsay documented each delay and clearly Judge Irizarry did not know this information.

2. From the moment Judge Irizarry picked up the phone on February 23, 2006, she had no patience for me. She threatened me almost immediately “ you had better darn well pick it up because I ‘ll tell you something , my patience is wearing thin, Ms. Litwok, and I’m about ready to send the marshals out to your house and pick you up”

(Exh. 3 P.7/ L 4).

3. A few minutes into the phone call (P. 11/ L.) she stated “ I have the record in front of me . You have been given adjournment after adjournment in this case....(contrary to Judge Lindsay’s findings)

4. Page 15/ L. 17 “I am just taking this as another attempt by you to postpone these proceedings”.

5. March 1, 2006 tape– within a few minutes of the conversation
“ I find you are being obstructionist”
6. Between the 2 phone calls, Judge Irizarry called and screamed at me for being an obstructionist no less than 4 times. She stated “I was responsible for the 5 1 ½ year delay”. She also repeatedly referenced “me” as the problem in the case.

DISMISSIVE, RUDE, ACCUSATORY & THREATENING COMMENTS

1. “We are not going to adjourn this case. You have had more than enough time and you have wasted ten minutes of my time”
2. “you never do anything on time”.
3. “You have a history of not complying . Sanctions will be imposed”
4. In denying me the right to write a summary judgment, Irizarry said “ you would write a frivolous summary judgment.. and if I were to find out it was frivolous, it would not prevent me from imposing sanctions on you for filing a frivolous motion, especially with my history of obstructing the case”

CONCLUSION

In the minutes of the first meeting, Judge Irizarry told the Matthews and Markowitz “she expected Litwok to be late. Prior to me ever talking to her, her bias was clear. She believes I do frivolous things to delay this case, she repeated called me an obstructionist. She has not read and does not know the facts of this case.

Her contempt and impatience for me is clear on the tapes. Her cordial relationship with Ms. Matthews and Mr. Markowitz is apparent.

LITWOK WAS INTENSELY INVOLVED & ACTIVE IN CASE TILL 2005

Both the SEC and the Magistrate Judge strongly agreed I was an active Participant in my defense at all times. Mr. Markowitz stated “ Ms. Litwok sat there and was tenaciously involved in the case” (Exh. 6 P. 25/ L. 14).

This case began in 1997 and was filed in 2000. Until 2005, I was an active participant in this case. Almost 9 years of my life have exclusively been spent defending myself in this case.

MEDICAL PROBLEMS BEGIN IN 2005

Judge Irizarry was provided with several letters from doctors concerning my health. She not only dismissed the doctor’s letters but

threatened to bring "Doctor's" into court. Exh. 2 & 3, P 9/L - I am not completely satisfied with the letters from your Doctors.. the Doctors letters don't give the court any real information.

Exh. 8 contain letters and medical information.

**** From Dr. Benjamin Natelson,

1. 1/10/06 Ms. Litwok is seeing me for a medical condition which currently is disabling her. She is not able to go to court to trial at this time. A follow up can be done in 4 months

2. 3/14/06 I believe Ms. Litwok is a disabled person because of her symptoms of severe fatigue, cognitive problems and marked widespread pain. .. She has shown a progressive course with no evident improvement.. I believe the patient to be disabled because of her diagnosis of chronic fatigue syndrome(CFS) and fibromyalgia (FM).

" Stress exacerbates her underlying condition" I respectfully request that her current court activities be delayed at least four months.."

3. 7/26/06 Chronic fatigue syndrome is an illness of severe fatigue, producing a decrease in activity lasting at least six months, and accompanied by neurological, infectious, and rheumatologic symptoms. Asking her to participate in court room activities .. is beyond her capabilities."

**** From Dr. Amos Katz

1. 1/9/06 Because of her symptoms, the patient has had quite difficulty functioning at this time... the length of time for treatment is unknown at this time."

2. 3/21/06 chronic fatigue and fibromyalgia included severe fatigue, difficulty focusing, and poor short term memory, inability to work for more than 2 - 3 hours per day, muscle and joint aches, as well as inability to handle stress..

3. 8/30/06 - Last year, 2005, the patient was complaining of back pain and abdominal pain. She thought the pain from due to the Fibromyalgia..Recent symptoms were noted in lower extremities. Evaluation in this office is consistent with lumbar radiculopathy. An MRI of the lumbar spine and an EMG are pending.. I do not believe this patient can participate in court proceedings at this time. Delay trial for six months. Has also difficulty sitting because of severe back pain.

CONCLUSION

Judge Irizarry said the Doctors letters “ don’t give any real information” I believe the doctor’s letters are specific and clear. This is another dimension of her bias. Judge Irizarry is dismissive of the letters and the medical problem because she believes it is another way in which I am trying to delay this case.

The doctor’s letters from 2005 and 2006 indicate the Court failed to give me proper time to deal with my health. As a direct result of “not allowing me time for proper testing and recovery”, I have an illness which might have been dormant. I am now disabled from the illness.

Crippling back pain has gone on since April 2005 (Exh. 9). Both an emergency visit to the hospital and a pelvic ultrasound indicated “degenerative changes of the lumbar spine”. I am faced with upcoming “back surgery”, and Judge Irizarry believes this to be a tactic for delay.

I am not willing to be a permanently disabled person because of Judge Irizarry’s prejudice and bias towards me. MRI results received this week indicate “back surgery”. I cannot sit in a chair– this is not a delay tactic.

The cost, both financially and emotionally, to me and my family is and has been enormous. I implore you to read the minutes, listen to the tapes of the sessions, and review the documents being provided. I ask you for:

1. A formal review of Judge Irizarry’s
2. Assign a more partial and fair Judge to this case
3. An immediate adjournment for medical reasons (if this is within your jurisdiction)

After 9 years of methodically preparing documents for this case, I am not prepared to be found “guilty” ahead of trial. Judge Irizarry’s tenured position should not allow her to mistreat me.

I urge you to respond to this request as soon as possible.

Respectfully submitted,


Evelyn Litwok

cc: Judge Irizarry