5647 Santa Anita Drive
Tallahassee, FL 32308-2007
October 12, 2000[1]

Thomas K. Kahn, Clerk
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

RE: Petition for Review of Section 372 (c) Judicial Misconduct
    Complaint against Judge Joel F. Dubina
    <u>Miscellaneous No. 00-0041</u>

Dear Mr. Kahn:

    Pursuant to Rule 5 of the Rules of the Judicial Council for the Eleventh Circuit Governing Complaints of Judicial Conduct or Disability (Addendum III), I hereby petition the Judicial Council of the Eleventh Circuit for review of the order of Chief Judge R. Lanier Anderson III, dated August 22, 2000, dismissing my judicial misconduct complaint against U.S. Circuit Judge Joel F. Dubina.

    This petition must be granted because such order is non-conforming and violative of recognized standards for dismissal orders under 28 USC Section 372(c).

    As is immediately obvious from Chief Judge Anderson's three-sentence dismissal order, it fails to "set forth the allegations of the complaint". This, in the face of the 1993 recommendation of the National Commission on Judicial Discipline and Removal that dismissal orders "set forth the allegations of the complaint", as provided for by Rule 4(f) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, (p. 109). Such recommendation was endorsed by the Judicial Conference (p. 30), following recommendation of its Committee to Review Circuit Council Conduct and Disability Orders (pp. 3-4, 22-24)[2].

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1   This Petition was originally timely filed on September 20, 2000. The Petition was twice rejected by Deputy Clerk McElhenny by letters dated September 25 and October 6, for bogus reasons. See my responding letters, dated October 3, 2000, and responding letter to Thomas Kahn, clerk, dated October 12, 2000. addressed to Mr. McElhenney and you respectively.

2   The Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders noted (pp. 3-4, 24) that "all circuits and courts covered by the {1980} Act have adopted Rule 4(f) and have now indicated their intention to follow it, thus establishing national uniformity and making further action by the Conference unnecessary." This Circuit's rules, however, conspicuously omit Illustrative Rule 4(f)'s provision that dismissal orders "set forth the allegations of the complaint".

It is without setting forth my allegations that Chief Judge Anderson's order makes the completely boilerplate statement that "the allegations of the complaint are directly related to the merits of a decision or procedural ruling" and, consequently, the complaint is dismissed "pursuant to 28 U.S.C. Section 372(c)(3)(A) and Addendum Three Rule 4(a)(2)".

However, neither 28 U.S.C. Section 372 (c)(3)(A) nor Rule 4(a)(2) mandate dismissal of judicial misconduct complaints on such ground. This fact is evident from the discretionary language used in both the statute and rule. Yet, Chief Judge Anderson's order also sets forth no reason why the Chief Judge has exercised his discretion to dismiss the complaint, rather than appointing a special committee pursuant to Rule 4(b) – as 28 USC Section 372(c)(3)(A) and Rule 4(A)(2) left him free to do.

Thus, here too, Chief Judge Anderson's order is non-conforming with the 1993 recommendation of the National Commission on Judicial Discipline and Removal (pp.108-9), endorsed by the Judicial Conference (p. 30), based on the recommendation of its Committee to Review Circuit Conduct and Disability Orders (pp.3-4, 22-24), for reasoned non-conclusory dismissals. This is consistent with the Commentary on Rule 4 of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, recognizing that the "statutory purposes" of Section 372(c) are best served when the Chief Judge's orders disposing of complaints are "relatively expansive." (p. 20).

Additionally, Chief Judge Anderson's order disregards the National Commission's recommendation (p. 109), likewise endorsed by the Judicial Conference (p. 28) based on the recommendation of its Review Committee (pp. 24-26), that the Circuits resolve the substantive ambiguity of Section 372(c) by creating "a body of interpretive precedent".

As highlighted by the article, "*Without Merit: The Empty Promise of Judicial Discipline*", The Long Term View (Massachusetts School of Law), Vol. 4, No. 1, summer 1997 (p. 95) interpretive precedent is especially crucial as to the ground of dismissal for "merits-relatedness". As highlighted therein – and as applicable to my complaint – allegations of biased and improperly motivated conduct by a judge are not "merits-related". In my Section 372(c) complaint against Judge Dubina, I made clear in two separate places (pp 2, 4) that the judicial misconduct at issue is about judicial conduct that has the "appearance of judicial corruption, mental lapses or prejudice against pro-se litigants". I also made clear why the appearance is so apparent.
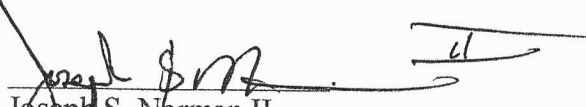
In this civil defamation case there were two very distinct groups of Plaintiff / Appellants. One group flew aircraft for Eastern Airlines during the 1989 strike and met the court and industry standard pilot work of flying airplanes during the labor strike and are thus "scabs". In the other group, I was the lone other Plaintiff/Appellant and I have never flown an aircraft for Eastern Airlines in my life. Additionally I was never disciplined by the union for strike breaking. I was always a union member in good

standing and I never met the court, industry or union definition of "scab" because I did not **fly** for the struck airline during the pilot strike. The court concluded I am a "scab" without identifying what case law or evidence of mine was used in its' conclusion. I did not even meet the union definition of "scab" of **flying** airplanes during the strike or I would have been disciplined under Article VIII of the union Constitution and By-Laws as were the other Plaintiff/Appellants. I presented overwhelming evidence to the court, including union membership cards, which are only given to union members in good standing and were issued for time frames during and after the strike. This evidence was never commented on by Judge Dubina. In both the BRIEF OF THE APPELLANT and SUGGESTION OF REHEARING EN BANC Judge Dubina had before him the evidence relevant to my appeal as well as the controlling 11th Circuit case law. Judge Dubina willfully opted to ignore both, without comment. This Judicial conduct in the face of overwhelming evidence in the record established I am not a "scab" under controlling case law of this circuit and presents the appearance of judicial corruption, mental lapses or prejudice against pro-se litigants.

In the entire court record there is no mention of any specific evidence viewed "in the light most favorable to the plaintiff" or any case law that supports the courts conclusions as it applied to Joseph S. Norman II. The knowing failure of Judge Dubina to examine, consider and comment "in the light most favorable to the plaintiff" on any evidence submitted by Plaintiff Norman and his failure to utilize existing relevant 11th Circuit case law in his conclusions is so far departed from the usual accepted methodology of due process, that an examination of Judge Dubina's treatment of Joseph S. Norman II is appropriate.

In an effort to provide Plaintiff Norman a fair and impartial review of the allegations in this complaint, it is suggested the court exercise its inherent powers and allow the final decision on this complaint be determined by a panel of impartial citizens or non-11th Circuit judges. It does not seem reasonable that the same individuals who declined the SUGGESTION OF REHEARING EN BANC should be asked to acknowledge their error and their "brothers of the bench" error. It is suggested a citizen panel of 3 or 5 individuals hear all the facts of the complaint then take a secret ballot. The secret ballot would insure an opinion free of judicial intimidation.

Respectfully,

Joseph S. Norman II

TEL: (850) 893-1484

The judicial conduct in this matter is of monumental public importance and this letter along with the original complaint is being widely distributed.