

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

1. Complainant: Ann Ryder  
481 Wolf Pit Road  
Mars Hill, NC 28754  
828/689-5128
2. Judge complained about: Lacy Thornburg  
Western District  
North Carolina
3. Does this complaint concern the behavior of the judge in a particular lawsuit? YES  
Ryder v. Freeman 1:95CV67  
Western District, North Carolina  
Complainant is the plaintiff.  
Attorney: Charles Brewer  
P.O. Box 8938  
Asheville, NC 28814  
828/251-5002  
Attorney Brewer no longer represents plaintiff.  
Court of Appeals Docket Number: 96:1306
4. Have you filed any lawsuits against the judge? NO

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STATEMENT OF FACTS

Judge Thornburg's career includes serving four years as member of the North Carolina House of Representatives, nineteen years as Superior Court judge, eight years as North Carolina Attorney General and member of the small, powerful Council of State which meets monthly and advises the governor on the operation of the State. For forty years, he has been a major player in state politics. As Attorney General, his duties to the sovereign people were to represent the state agencies, departments, bureaus, etc., and to manage the state's legal affairs. While he was Attorney General, he allowed the state to act in an unconstitutional manner numerous times, although he recognized that he had "the primary duty to attempt to prevent the agency from violating the law." (1) He allowed the Department of Correction to discriminate against women during his entire 8-year tenure. It took a multi-million dollar lawsuit by the U.S. Justice Department to put an end to it.(2) During the discrimination suit, the prison unit for which I worked, burned employment records. I recovered much of the still-readable charred remains and offered them to the Justice Department and FBI. The suit was settled. While he was Attorney General, the U.S. Justice Department again stepped in, this time with "Operation Westvote", the second largest election fraud investigation in history....second only to Chicago. In this state, the SBI reports to the Attorney General.

In 1990, 91, and 92, Thornburg accepted contributions from the PAC representing the pepper spray supplier to the state (3), as well as individuals within the PAC (4). In 1990, Thornburg wrote, "More so than any other official, the Attorney General can serve as the balancing force--or pivot force--for the policy-making system in our state." (5) However, two years later, and before he left office at the end of 1992, he made the policy to force correctional officers and state troopers to be sprayed in the face with pepper spray (6), an untested, unregulated weapon. If the officers or troopers refused, they lost their job. This plainly violates their rights of bodily integrity and due process.

Without including amounts from any clerical staff, Thornburg received approx. \$20,000 in campaign funds from his colleagues in the Attorney General's office (7). One of these attorneys even played a key role in his run for governor in 1992, and received at least \$71,000 of the total campaign expenditure of \$685,000...over 10%. In 1995, when I was told I'd have to submit to being pepper sprayed, I sued. The defendant was represented by the Attorney General's office. The defendant, like Thornburg, had a long career with the state judicial system before being appointed Secretary of the Department of Correction. He, like Thornburg, served on the elite Council of State. He is now the Governor's Chief of Staff...a fellow political insider.

After a year, my case was scheduled for trial and my attorney had a confirmed appointment for the pre-trial conference. The state's expert witness, whom they had attempted to switch at the last minute, was deposed. It became clear that he was not willing to tell an out-and-out lie on behalf of the state. The very next day, Judge Thornburg threw out my case, even though we were scheduled for trial shortly. I appealed. He denied my appeal saying, "Nor can the Court agree that being subjected to pepper spray training will cause Plaintiff irreparable harm. Plaintiff is free to relinquish her employment rather than be subjected to the required training. Loss of her employment will not result in irreparable harm" (8). He made the determination that pepper spray is harmless without hearing the case. In fact, by that date, pepper spray had already caused death and had already cause irreversible blindness. I was forced to be sprayed the next day. I was treated at the emergency room for burns to my face and eyes, and am now losing sight in the eye that was burned the worse. I developed recurrent ventricular sustained tachycardia and was forced into early retirement/disability. I developed severe depression which continues to overwhelm me even at this late date.

Nine months after he denied my appeal, Judge Thornburg ruled in another case, this time a male plaintiff, that a public employer could not make such a demand. "The logic that prohibits conditioning public employment on the forfeiture of federal constitutional rights also prevents conditioning public employment on the forfeiture of analogous state constitutional rights." (9)

A year after I was forced to be sprayed, the North Carolina Department of Correction amended Attorney General Thornburg's pepper spray policy: "Staff members including pepper spray instructors shall refrain from encouraging or in any way coercing trainee(s) to volunteer for direct exposure." (10)

My attorney refused to ask Judge Thornburg to recuse himself, saying that would be committing professional suicide. He promised me that he would mention his concerns during the pre-trial conference. Even though either party can ask for recusal, the law squarely places the onus on the judge to disqualify himself. Case law and the US Judicial Code of Conduct, which Judge Thornburg swore to uphold, leaves no room for ambiguity in matters of judicial conflicts of interest and bias. It was not my obligation to move for recusal. The following case law is from US v. Tucker, 95-3268 (8th Cir. 1996): "Under §455(a), 'disqualification is required if a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown.' Gray v. University of Ark., 883 F.2d 1394, 1398 (8th Cir. 1989). Section 455(a) 'was designed to promote public confidence in the integrity of the judicial process by replacing the subjective "in his opinion" standard with an objective test.' Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 858 n. 7 (1988). In determining, then, whether remand to a different district judge is warranted to achieve the goal of ensuring "the appearance of impartiality," we apply "an objective standard of reasonableness." United States v. Poludniak, 657 F.2d 948, 954 (8th Cir. 1981, cert denied, 455 U.S. 940 (1982). It is the appearance of bias or partiality that matters here, Liteky v. United States, 510 U.S., 540, (1994) §455 "place[s] the obligation to identify the existence of those grounds upon the judge himself, rather than

requiring recusal only in response to a party affidavit." There was a reassignment of judges in US v. Tucker "not because we believe Judge Woods would not handle the case in a fair and impartial manner (we have every confidence that he would), but only because we believe this step is necessary in order to preserve the appearance as well as the reality of impartial justice." (11)

Nominees to the Federal Judiciary are asked how they would resolve any potential conflict of interest. Thornburg replied in a sworn statement, "I have no relationship with any business, corporation, partnership, law firm or other individual or association involving a potential for conflict of interest. However, should any conflict of interest arise, I would follow judicial code directives." (12) Another individual going through the confirmation process at the same time cited "personal knowledge of disputed evidentiary facts" as a potential conflict of interest. (13)

By reading the attached Letter to the Editor (14), you will see how tight the relationship remains between Judge Thornburg and his former associates with the state. As Attorney General, "he was involved with lawyers, 'an excellent staff', with whom he interacted daily." (15) "When I first came into the office of North Carolina Attorney General, I frequently joked that I was the senior managing partner in the State of North Carolina's largest law firm." (16)

Judge Thornburg used his position to achieve an illegitimate objective, and once again, he violated my constitutional right of due process.

## REFERENCES

1. Thornburg, Campbell Law Review Vol. 12:343 @ 359--Summer 1990
2. US v. State of NC (5:93-CV-763-B01) (not attached)
3. Parker, Poe, Adams & Bernstein PAC--Partial list of contributions
4. Thornburg's Contributors--Partial list
5. Thornburg, Campbell Law Review Vol. 12:343 @ 359
6. NCDOC memo, July 23, 1993
7. This was determined by comparing Thornburg's list of contributors to the list of attorneys with positions in the Attorney General's office, per The North Carolina Legal Directory. (not attached)
8. Thornburg's order, March, 12, 1996 Ryder v. Freeman
9. Thornburg's order, December 9, 1996 Ivey v. Yeager
10. NCDOC memo, March 31, 1997
11. US v. Tucker, partial
12. Confirmation Hearings on Federal Appointments, Feb. 8, 27; March 28; May 4; June 6 and 27, 1995 pg. 93
13. same pg. 657
14. Ryder Letter to Editor, June 7, 1998, Hendersonville Time-News
15. The North Carolina State Bar Quarterly, Spring 1996, pg. 29
16. Campbell Law Review, Vol. 12:343 @ 361

6. I declare under penalty of perjury that 1) I have read Rules 1 and 2 of the Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct or Disability, and 2) The statements made in this complaint are true and correct to the best of my knowledge.

Aune Rydov

Executed on: 1/22/99