

No: 17-7349

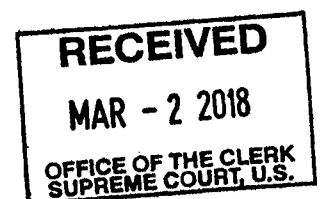
**In The
Supreme Court of the United States**

IN RE ERIC DRAKE
Petitioner/Relator

**On Petition for Writ of Mandamus to the United States
Court of Appeals for the Fifth Circuit**

**RELATOR'S RESPONSE TO RESPONDENTS
NON-RESPONSE AND SUPPLEMENT TO RELATOR'S
PETITION FOR WRIT OF MANDAMUS**

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IDENTITY OF PARTIES AND COUNSEL

Relator: Eric Drake
Movant in the underlying suit

Movant is pro-se: Eric Drake
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Respondents: Judges Leslie Southwick, Stephen
Higginson, and James Dennis
Fifth Circuit Court of Appeals
600 South Maestri Place
New Orleans, LA 70130-3408

Real Party in Interest: NORDSTROM DEPARTMENT
STORES, INCORPORATED;
BLAKE NORDSTROM; PETER
NORDSTROM; ERICK
NORDSTROM; JAMES
NORDSTROM; ENRIQUE
HERNANDEZ, JR., Nordstrom's
Chief Executive Officer;
NORDSTROM, INCORPORATED

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**RELATOR'S RESPONSE TO RESPONDENTS NON-RESPONSE TO HIS
MANDAMUS AND RELATOR'S SUPPLEMENTAL RELIEF SOUGHT**

I. RELATOR'S RESPONSE

On January 5, 2018, the Relator filed a writ of mandamus in this Honorable Court regarding several issues. The district court in the Southern District of Texas dismissed Nordstrom Inc with prejudice on January 8, 2017, alleging that Nordstrom Inc was not a proper defendant in Relator's civil personal injury lawsuit. Thereafter, the Relator filed a Rule 60 petition in the district requesting the court to reconsider. The Relator annexed to his Rule 60 petition several exhibits; among those exhibits was undeniable proof that Nordstrom Inc was a correct and viable defendant in the Relator's dispute where he was injured at a Nordstrom Department Store *Spa*. The Relator filed Nordstrom's entire *Securities and Exchange Report* into the courts record, which is proof that Nordstrom Inc was a proper defendant in Relator's personal injury claim against Nordstrom. Because the complete S&E Report is 76 pages, the Relator also provided the district court with excerpts of the full report so that the court could easily refer back to the legal points that the Relator made in the full report. On May 1, 2017, the district court denied the Relator's Rule 60.

After the district court denied the Relator's Rule 60, he filed on May 4, 2017, a notice of appeal in the Fifth Circuit Court of Appeals in New Orleans, Louisiana.

The Relator felt confident in his appeal because he filed uncontroverting evidence into the district courts record that he could refer to in his Circuit Court brief. Relator understood that it was very unlikely that legal counsel for the Defendant/Appellees could overcome the Nordstrom's Securities and Exchange Report, thus Nordstrom's legal counsel could not be successful in the appeal.

Relator filed his timely brief on September 14, 2017. The deadline for the Nordstrom's legal counsel to file their brief was October 16, 2017. But suspiciously, the district court filed a denial of the Relator's IFP on October 4, 2017 when the court had lost its jurisdiction to sign any orders in the legal matter.

On October 5, 2017, 10-days before Nordstrom's brief was due, the Fifth Circuit suspended briefing. The Relator left several message with the Circuit's clerk of court that the district court's October 4, 2017 order was error and an unethical act, but the clerk of court, nor any of his assistants returned the Relator's telephone calls. Relator spoke briefly with the clerk of court's secretary, but she was very rude, advising the Relator, "*You just need to file another IFP,*" and she hung up the telephone. Relator tape-recorded the conversation.

Unexpectedly, pages from the Relator's IFP that he filed in the district clerk's record on May 17, 2017, with no explanation had missing pages as seen in **Exhibit 1**. However, the document that the Relator actually filed was 7-pages long, but the IFP in the clerk's record has only two pages. When Relator files an IFP, he reviews the document several times, because it is sworn under the penalty

of perjury. There is not even a remote chance that the Relator would file the front page of his IFP and the end of the document. This was a deliberate and intentional action that could only come from someone who had the authority to commit such an offense, the district court judge and a willing clerk. It is a crime to destroy or alter legal pleadings in this manner. But the act of destroying Relator's pleadings is no greater than the act of a district judge signing an order when he or she is fully aware that they did not have jurisdiction over a case. Moreover, it could not be a mistake or simple error for 4-pages to be missing from the Relator's IFP. What the Relator actually filed into the district court record is annexed as Relator's **Exhibit 2**. These are serious criminal charges that the Court should investigate and punish those who are guilty. However, there have been other occasions where the post office verified that the Relator's legal pleadings were delivered to the district court, but the pleadings somehow got lost and were never filed into clerks record.

The district court judge has ties with Nordstrom's legal counsels law firm, and apparently his frivolous denial of Relator's IFP was a means to stop the clock on Nordstrom's legal counsel's due date for the filing of their brief. The Relator also viewed the unprecedented and dubious action of the district court as a "trap" to file another IFP. In such a case, according to case law, a single judge would rule on the matter. Relator believes that although he is unable to prove this theory, a judge most likely had already been hand picked to grant the IFP, and then rule that the Relator's appeal was allegedly frivolous. Thus, the only option that the Relator

had was to ask church members and friends for the filing fees, which the Relator was able to raise the funds and he paid the filing fees on October 17, 2017. Relator is a member of one of the most giving churches in America that has members consisting of past presidents of the United States and other celebrities. The members were very kind to the Relator.

But unfortunately, the Fifth Circuit would not put the case back on the docket even after the filing fees were paid, until the Relator had complained about the matter three times, which gave Nordstrom's legal counsel even more time to devise a plot of how to respond to the Relator's brief. Relator understood that Nordstrom's legal counsel could not respond to his brief without admitting that the Relator was correct. As a result, Nordstrom never filed a brief in the Circuit Court.

However, the Respondents came to Nordstrom's legal counsel rescue by what appeared to be at first an admonishment against Nordstrom's legal counsel, but then claiming that the Relator's appeal was frivolous without the slightest indication of how the Relator's appeal was in fact frivolous. Any competent lawyer that had [t]he *defendant* improperly dismissed with prejudice in a lawsuit would file an appeal, which is what the Relator filed. But the desire to win was so great that lawyers for Nordstrom was untruthful, misrepresented facts, and judges assisted them by either ignoring compelling evidence or by dismissing the Relator's appeal. In this wise, Nordstrom legal counsel was not required to file a brief and they would be rewarded by the Fifth Circuit with damages and fees.

In order for the circumstances in this case to take place, a district court judge would have to ignore blatant evidence to assist Nordstrom and its legal counsel by dismissing Nordstrom Inc with prejudice. If the Relator had failed to file a timely appeal, being that Nordstrom Inc is the *only* proper defendant in the Relator's case, the Relator claim against Nordstrom would have been concluded.

In addition, the same district court judge who dismissed Nordstrom Inc with prejudice, lend Nordstrom and its legal counsel another hand by denying the Relator's IFP when the court did not have jurisdiction to carryout such an order. And since that plan was spoiled because Relator's church members provided the filing fees, to further protect Nordstrom and its legal counsel from having to file a brief, three justices at the Fifth Court of Appeals claimed that the Relator's appeal was frivolous. Yet, these experts in the legal field are somehow unable to respond to this Court's requests to file even one page explaining how the Relator's appeal is frivolous. And the reason they are unable to do so is simple: the justices at the Fifth Circuit are incapable to justify their frivolous order to this Court as how the Relator's appeal is frivolous, because the appeal is not frivolous.

Relator also filed a motion to *Stay* the mandate on January 8, 2018, but as seen by the annexed **Exhibit 3** and the chart below, the Fifth Circuit claimed that no action would be taken at this time on the Motion to Stay the Mandate received from Appellant Drake because mandate was issued on January 19, 2018. But the Fifth Circuit had already denied the Relator's motion to Stay. *See Exhibit 4.*

The Fifth Circuit docket report or record is pasted below. On January 8, 2018, the Relator filed a motion to stay and a motion to recuse. The Circuit denied both motions by the Relator on January 12, 2018 as seen in **Exhibit 4**. Circuit's January 22, 2018 order claiming that it will take no action on Relator's motion to stay is misleading since the Circuit had already denied the motion to stay on January 12, 2018. It was an unconvincing excuse not to stay the mandate.

**General Docket
United States Court of Appeals for the Fifth Circuit**

Court of Appeals Docket #: 17-20317 Nature of Suit: 4360 Other Personal Liability E. Drake v. Nordstrom Dept Stores, Inc., et al Appeal From: Southern District of Texas, Houston Fee Status: Fee Paid	Docketed: 05/04/2017 Termed: 12/28/2017				
Case Type Information: 1) Private Civil Diversity 2) Private 3)					
Originating Court Information: District: 0541-4 : <u>4:16-CV-3526</u> Originating Judge: Ewing Werlein, Jr., U.S. District Judge Date Filed: 11/29/2016 <table style="width: 100%;"><tr><td style="width: 50%;">Date NOA Filed:</td><td style="width: 50%;">Date Rec'd COA:</td></tr><tr><td>05/03/2017</td><td>05/03/2017</td></tr></table>		Date NOA Filed:	Date Rec'd COA:	05/03/2017	05/03/2017
Date NOA Filed:	Date Rec'd COA:				
05/03/2017	05/03/2017				

12/13/2017 MOTION filed by Appellees Nordstrom Department Stores, Incorporated and Nordstrom, Incorporated to file out of time Motion for Leave to File Late Reply in Support of Motion to Dismiss [8659373-2]. Date of service: 12/13/2017 via US mail - Appellant Drake; email - Attorney for Appellees: Hemingson, Kamin, Leonard [17-20317] (Elizabeth Bonvillain Kamin)

12/14/2017 COURT ORDER denying appellees' motion for leave to file an out of time reply in support of motion to dismiss filed by Appellees Nordstrom, Incorporated and Nordstrom Department Stores, Incorporated [8659373-2] Judge(s): LHS. [17-20317] (DMS)

12/28/2017 COURT ORDER denying motion to dismiss for lack of subject matter jurisdiction filed by Appellee Nordstrom, Incorporated. Instead the appeals are dismissed on the basis that the case and the appeals are frivolous [8636419-2]. Denying motion to recover their costs of this appeal under FRAP 38 as not properly presented under the Rule filed by Appellee Nordstrom, Incorporated [8636419-3]. It is ORDERED that Drake respond to this Court's decision that the case and the appeals are frivolous, and comment on why appellees should not be awarded damages and single or double costs under FRAP 38. [8667858-2]. Mandate issue date is 01/19/2018. Judge: JLD, Judge: LHS, Judge: SAH [17-20317] (AS)

12/28/2017 COURT DIRECTIVE ISSUED that Drake respond to this Court's decision that the case and the appeals are frivolous, and comment on why appellees should not be awarded damages and single or double costs under FRAP 38. [8667858-2] Response/Opposition due on 01/08/2018. [17-20317] (AS)

01/08/2018 RESPONSE/OPPOSITION filed by Mr. E. V. Drake [8675394-1] to the Court Order Court directive requesting a response [8668406-2], Court Order to dismiss appeal as frivolous [8667858-2] Response/Opposition deadline satisfied. Date of Service: 01/06/2018. [17-20317] (DMS)

01/08/2018 MOTION filed by Appellant Mr. E. V. Drake to stay issuance of the mandate [8675492-2] Mandate issue date canceled.. Date of service: 01/06/2018 [17-20317] (DMS)

01/08/2018 MOTION filed by Appellant Mr. E. V. Drake To recuse Judges of this Court and other Justices [8675498-2]. Date of service: 01/06/2018 [17-20317] (DMS)

01/12/2018	COURT ORDER denying motion to stay issuance of the mandate filed by Appellant Mr. E. V. Drake [8675492-2] Mandate issue date is 01/19/2018; denying motion for recusal of judges filed by Appellant Mr. E. V. Drake [8675498-2] Judge(s): JLD, LHS and SAH. [17-20317] (Jd)
01/19/2018	MANDATE ISSUED. Mandate issue date satisfied. [17-20317] (Jd)
01/22/2018	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Motion to stay the mandate received from Appellant Mr. E. V. Drake because Mandate has issued on 1/19/2018, and a court order previously denied a motion to stay the mandate in this case on 1/12/2018. [17-20317] (DMS)

The Circuit Court filed on December 28, 2017 an order, “Court Directive,” as seen in the above chart. This order is essentially the same order filed by the Circuit on January 19, 2018. *See Exhibit 9.* But the Relator noticed that the Fifth Circuit has now removed its *Courts Directive Order* that was filed on Pacer into the docket dated December 28, 2017 to hide the fact that it is the same order filed on January 19, 2018. Although, Relator made a copy of that order before it was mysteriously removed from the courts docket by the judges in that Circuit, and have annexed it for this Court’s review, examination, and comparison of the two orders, which are identical. *See and compare Exhibit 5, [Fifth Circuit December 28, 2017 Court Directive before it was removed from Pacer] with Exhibit 9.*

A reasonable minded person could easily detect that there are some rather serious issues presented in this writ that prayfully this Court will address.

Furthermore, even though the Fifth Circuit claims that the Relator's appeal was closed, **Exhibit 6**, the Circuit's filed an order on 01/19/2018 that is not a final order. *See Exhibit 7*. The Fifth Circuit is waiting to see how this Court rules, and then it will likely sneak a final order into the record granting damages and fees to Nordstrom, just like the Circuit deleted the 12/28/2017 order from the docket.

It would appear that there are no limits to what the Fifth Circuit judges are willing to undertake to cover up their unethical and unfair conduct towards the Relator, who is of a protected class of person, *pro se* and whom has a form of brain damage, Post Concussive Syndrome.

The non-response from the Respondents who are experts in the judicial arena speaks volumes to their inability to prove their accusations that the Relator's appeal is frivolous. It is also indicative to what the Relator have pled in his original writ, and it also shows a lack of integrity that is evident by the behavior of the justices at the Fifth Circuit. These problems describe herein are amplified when this Circuit interacts with people of color who are *pro se*.

If the Relator had not filed a Mandamus, it is unquestionable that the Respondents would have filed a final judgment, which would have; in all probability, given Nordstrom legal counsels damages and attorney fees, although Nordstrom's legal counsel never filed a brief. The conduct of these justices at the Fifth Circuit is not upholding the integrity of judicial order. But it is an insult to the judicial Canons, while suppressing Candor and Trustworthiness to the public.

It is unmistakable that Nordstrom, and their legal counsel believes that they are above the law. When a district judge signs and files an order into the courts record that even he knows is improper, but is also fully aware that the order will result in the Circuit Court suspending briefing is reprehensible. It demonstrates a complete breakdown of any honor, fair play, and impartiality in the duties that a judge should uphold and carryout. This Court should not allow the district court judge to escape his underhanded ways without explaining his actions.

In addition, the justices in the Circuit Court who claimed that the Relator's appeal is frivolous should be ordered to respond by a written outline, report, and or narrative as to how the Relator's appeal is frivolous. To allow them to be silent when it is obvious that these justices were using their judicial positions to assist Nordstrom, a billion dollar company, and their high profile lawyers at Strasburger to defeat a *pro se* litigant with a medial disability is unconscionable. To allow these judges to go free to carryout the same conduct with another potential victim, regardless how the Court rules pursuant to the Relator writ, is to be complicit with the same type of awful pattern of abuse as the abusers. Those who allow abusers to abuse are no better than the abusers.

To leave these judges in their seats of injustice that are complained about herein and allow them to remain on the bench to cause harm to another person, is contradictory to the laws as set forth in our Constitution and it restricts integrity in our judicial system and makes it no more than a hoax. The actions of the district

judge complained about herein and the Fifth Circuit justices nullify 28 USC §453. The conduct described herein regarding the district court judge, and the Circuit Court judges destroys public confidence and trust in the U.S. judicial system.

This Court should take sweeping action to eliminate this type of disrepute in our judicial courts. The law is the law, but it is no better than the men and women who enforce it. Sometimes, those who are sworn to uphold the law become dissolution and turn into cheerleaders for one particular party in a legal proceeding. And at other times, judges lend the positions and authority to become worse than those who they pursue or condemn. As a follower of Christ and as a spokesman for God as an ordained minister, the Relator must obey the laws of man. But the Relator prays that this Court corrects this type of unethical demeanor in our judicial courts that deprive individuals like the Relator of his rights as a U.S. citizen.

II. RELATOR'S SUPPLEMENT TO RELIEF SOUGHT

Pursuant to 28 USC § 1651 Eric Drake, filed a Writ of Mandamus directing the Honorable Judges Leslie Southwick, Stephen Higginson, and James Dennis to vacate its December 28, 2017 order, [now January 19, 2018 order].

It is apparent that Judges Leslie Southwick, Stephen Higginson, and James Dennis have chosen not to respond to the Relator's mandamus as the Court asked these judges to respond. Whether the Court vacates the December 28, 2017 or now

the January 19, 2018 order annexed to this document, the Relator requests that the Court orders Judges Leslie Southwick, Stephen Higginson, and James Dennis to respond to the Relator's mandamus, and file a detail answer to Relator's writ of how and in what manner is the Relator's appeal is frivolous.

If the Court simply dismiss or rules in favor of the Relator in light of a rather obvious serious pattern of abuse, the Court will allow these men to continue its destructive pattern of the up-rightness in the judicial court system. If the judge's named herein refuse to file a response in writing, then they should be made to vacate their seats as judges permanently. This Court should hold these judges accountable for their actions and not allow them to disappear in the comfort of their silence, but call them out, and make them answerable for their actions.

Relator ask the Court to order Judges Leslie Southwick, Stephen Higginson, and James Dennis to show how the evidence (Nordstrom's Securities and Exchange Report) that proves that Nordstrom Inc was and still is a proper and viable defendant in a lawsuit where the Relator was injured in a Nordstrom Department Store *Spa* does not prove that Nordstrom Inc is a proper defendant in Drake's lawsuit against Nordstrom.

Further, that Judges Leslie Southwick, Stephen Higginson, and James Dennis explain in detail why they indicated in their December 28, 2017 and January 19, 2018 order the possibility of sanctioning the Relator when he filed a timely and competent brief, but they failed to sanction Nordstrom and its legal

counsel when they mislead the district court and made false and misleading statements, and by the Respondent's own admission that Strasburger's petitions were deficient and untimely pleadings. Otherwise, order the removal of Judges Leslie Southwick, Stephen Higginson, and James Dennis from the bench.

The Relator asks the Court to order an investigation into Nordstrom's attorneys for making misleading and false statements of fact to the district court and to the Relator who is *pro se*, (Nordstrom attorneys told the Relator and the district court that Nordstrom Inc was not a proper defendant), which is not true. Strasburger law firm is powerful enough to disregard complaints to the Texas Bar.

The Relator asks the Court to order an investigation into the district court's judge, Ewing Werlein relationship with Strasburger & Price law firm. Order the district court judge, Judge Ewing Werlein, Jr., to answer for what reason he signed and filed a denial of the Relator's IFP when he knew that he had lost jurisdiction to sign the order on October 4, 2017. *See Exhibit 8*. Whether Nordstrom's legal counsel prompted Judge Werlein to file the frivolous order. Whether Judge Ewing Werlein, Jr., knows how pages of the Relator's IFP became missing. Otherwise, order the removal of Judge Ewing Werlein, Jr from the bench permanently.

The Relator asks the Court to order an investigation into the clerk of court at the Southern District of Texas, whether he knows how pages of the Relator's IFP became missing and any clerk's that handled the Relator's pleadings. The clerk of court in the Southern District of Texas, David J. Bradley, refuse to take

telephone calls from the Relator regarding problems arising with his cases, because he is *pro se*.

The Relator asks the Court to order an investigation into the clerk of court at the Fifth Circuit, why he and his staff did not take action to nullify Judge Ewing Werlein, Jr., October 4, 2017 order denial of Relator's IFP when the Relator brought it to their attention. The Relator has tape recordings to prove whom he spoke with at the Circuit Court about Werlein's October 4, 2017 order. Similar to Mr. Bradley, Mr. Lyle W. Cayce, the clerk of court in the Circuit Court, nor any of his staff, other than the secretary as reported, would take a telephone call from the Relator for the same obvious reasons, being *pro se*.

The Relator has other cases pending at the Fifth Circuit presently. It would be highly unlikely that the Relator would be able to obtain an impartial review and rulings of his cases under the environment in the Circuit Court against the Relator.

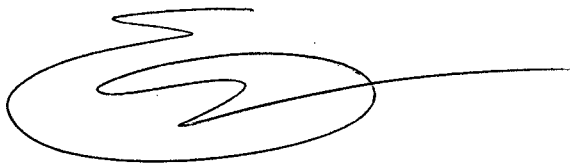
The idea behind an impartial court is to obtain justice, unfortunately, the evidence shared herein and the behavior of the district court and the Circuit Court revealed in the case at bar, crushes the concept of an orderly unbiased tribunal. Therefore, the Relator respectfully requests that his cases presently pending in the Fifth Circuit be transferred to another Circuit Court for review and final determination. Relator requests that his cases are transferred to the 1st Circuit, which is far away from the Fifth Circuit and allow the 1st Circuit to make final decisions in the Relator's cases, including the case pending before the Court.

Further, Relator requests that several of his prior cases be reviewed likewise by the 1st Circuit and those cases are: *Drake v. Navistar, et al*, cause number: 14-51240; and *Drake v. State of New York, et al*, cause number: 15-20690. In the case of *Drake v. Navistar*, the district court judge ignored legal standards. That judge is no longer presiding in the Western District of Texas because he was found guilty of sexual misconduct with a female federal court employee. The case of *Drake v. State of New York*, the Fifth Circuit dismissed the case because the Circuit said that the Relator's claims were unlikely, which was a quick way to reject the Relator's case without requesting any supporting proof. *Pro se* litigants are easy targets for Circuit Courts to dispose of their cases.

III. CONCLUSION

For the foregoing reasons, the Relator pray that the Court will consider the Relator's supplemental response, and supplemental relief sought pursuant to the Relator's original Writ of Mandamus, and compel the judges named herein to comply with the requests made herein by the Relator. Further, Relator requests that the December 28, 2017, January 12, 2018, and the January 19, 2018 orders be vacated in their entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Eric Drake', written over a horizontal line.

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