

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

MARC AND TYRONE STEPHENS,  
Plaintiffs,  
v.

CITY OF ENGLEWOOD,  
ENGLEWOOD POLICE DEPARTMENT,  
DET. MARC MCDONALD,  
DET. DESMOND SINGH,  
DET. CLAUDIA CUBILLOS  
DET. SANTIAGO INCLE JR.,  
AND DET. NATHANIEL KINLAW,  
Individually and in official capacity  
NINA C. REMSON ATTORNEY AT LAW,  
LLC, AND COMET LAW OFFICES, LLC  
Defendants

CASE NO. 16-1868  
CASE NO. 2:14-cv-05362-WJM-MF

**PETITION FOR REVIEW OF COMPLAINT  
OF JUDICIAL MISCONDUCT AND  
JUDICIAL DISABILITY AGAINST  
FEDERAL JUDGE WILLIAM J MARTINI,  
ANTHONY JOSEPH SCIRICA, LUIS FELIPE  
RESTREPO, AND DENNIS MICHAEL  
FISHER**

**PETITION FOR REVIEW**

I hereby petition the judicial council for review of the Chief Judge opinion dated **April 10, 2018**, for the following reasons:

**1. Chief Judge opinion states page 2, “An allegation that calls into question the correctness of a judge’s ruling...without more, is merits-related”... “Merit-related allegations are not appropriately raised in a judicial misconduct proceeding”, page 2.**

The Judicial Council opinion states, “[W]e need not reject the possibility of an exceptional case developing where the nature and extent of the legal errors are so egregious that an inference of judicial misconduct might arise”. **In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).** “[Error] involving the denial of basic fundamental rights may constitute judicial misconduct”. **In re Dileo, 83 A. 3d 11 - NJ: Supreme Court 2014 at 20.** “Indeed, either a pattern of incompetent or willful legal error or a sufficiently egregious instance of such error can undermine public confidence in the judiciary”. **Id at 15.** “Where willful abuse of judicial power or inability to follow the law has been found, demonstrating judicial misconduct in the extreme, this Court has not hesitated to impose the harshest of sanctions and has removed a sitting jurist on the basis of incompetence and unfitness for judicial office.” See In re Yengo, 72 N.J. 425, 451, 371 A.2d 41 (1977) (removing judge from office based on multiple instances of abuse of judicial process constituting misconduct and unfitness). **Id at 23.** In re Scott, 377 Mass. 364, 386 N.E.2d 218, 220–21 (1979) (publicly reprimanding judge and imposing one-year hiatus for course of conduct that resulted in violation of constitutional rights). **Id at 24.**

“Errors of law may constitute ethical misconduct when the error clearly and convincingly reflects bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty”, **Id at 26**. In re Quirk, the Supreme Court of Louisiana held that a judge's legal ruling may be found to have violated the code of judicial conduct only if the action is contrary to **clear and determined law** about which there is no confusion or question as to its interpretation and the legal error was egregious, made in bad faith, or made as part of a pattern or practice of legal error. **In re Quirk, 705 So.2d 172, 178 (La.1997)**. (“A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct.” (citing Jeffrey M. Shaman, Judicial Ethics, 2 Geo. J. Legal Ethics 1, 9 (1988))). **See Alvino, supra, 100 N.J. at 97 n. 2, 494 A.2d 1014**. It is emphatically the province and duty of the judicial department to say what the law is. **Marbury v. Madison, 5 US 137 - Supreme Court 1803 at 177**.

As shown in the Judicial Complaint, and on record, the Subject judges **granted** a summary judgment based on erroneous and distorted conception of the facts and law.

**Pursuant to Fed. R. Civ. P. 56(a)**, “If the evidence “presents a sufficient disagreement” over a factual issue, summary judgment must be denied”. **See Chiari v. City of League City, 920 F.2d 311, 314–15 (5th Cir. 1991)**. “[i]f ... there is any evidence in the record from any source from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply cannot obtain a summary judgment....” **Aman v. Cort Furniture Rental Corp., 85 F. 3d 1074 - Court of Appeals, 3rd Circuit 1996 at 1081**.

The 3<sup>rd</sup> Circuit Panel Opinion states, **Page 5**, “The facts here, viewed most favorably to the Stephenses, **do not create a genuine dispute** as to whether probable cause existed when Tyrone was arrested. The defendants had three compelling pieces of evidence implicating Tyrone in the attack: (1) the identification by Natalia Cortes; (2) the statement made by Justin Evans that Tyrone had participated in the attack; and (3) inconsistencies in testimony regarding Tyrone’s alibi. This evidence was more than sufficient to establish probable cause.

The record clearly show that there was no identification by Natalia Cortes, **SA234, Doc 003112432109, Page: 80, para #9, #7-10**, Justin Evans testified the officers coerced him to implicate Tyrone, McDonald testified that both he and Desmond Singh coerced and provided all the potential suspect names to Justin Evans, McDonald testified that Kinlaw confirmed seeing Tyrone at McDonald’s Restaurant at the same time of the incident almost a mile away at 7-eleven. **See Statement of Facts and argument in both of Stephens’ Judicial Misconduct Complaint, page 1-6**.

2. Chief Judge opinion states in Footnote #2, “The appellate panels were critical of the Subject Judge’s case-related actions and decision, but did not indicate that Subject Judge I had engaged in judicial misconduct”.

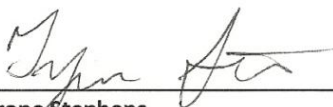
Chief judge overlooked the evidence of Judge Martini long history of improper motives. “If a complaint of an otherwise merits-related complaint includes supported allegations that the judge had an improper motive in acting, in many unrelated cases, those allegations will be considered”, see Judicial Conference of The United States Committee on Judicial Conduct and Disability, page 3.

The record shows in 2004, and 2012, the U.S. Court of Appeals REMOVED Judge Martini from THREE CASES for “USURPING THE JURY’S ROLE”, “unwillingness to conduct a fair trial”, and for “Bias toward the Defendant”. See United States v. Douglas Kennedy, 11-1145 (3rd Cir. 2012), and United States v. Bergrin, 682 F.3d 261 (3d Cir. 2012). In an article titled, “For 2 Titans of U.S. Court in Newark, Bad Blood”, The New York Times covered the inappropriate conduct of Judge Martini. In another article titled, “U.S. Court of Appeals removes federal judge from two cases, including Paul Bergrin's trial”, NJ.com goes into detail about the actions of Judge Martini, who is said to be, by some prosecutors and others, unfairly 'defense-friendly' in general.

As shown in the Judicial Complaint, and on the record, the Judges took on the role of the Jury, and denied Appellants right to due process and right to trial by jury. “[I]t is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter”, Anderson v. Liberty Lobby, Inc., 477 US 242 - Supreme Court 1986 at 249. Celotex Corp. v. Catrett, 477 US 317 - Supreme Court 1986.

**CONCLUSION:** Egregious errors involving the denial of basic fundamental rights equates to judicial misconduct. Please correct the errors of fact and law, and send this case to trial.

Respectfully Submitted,

  
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Tyrone Stephens  
Plaintiff, pro se

  
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Marc Stephens  
Plaintiff, pro se

Date: May 18, 2018