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Cynthia L. Fernandez
Name
24520 Thunderbird Dr.

Chugiak, AK 99567
Mailing address

(907) 230.2704
Telephone

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Cynthia L. Fernandez,
(Full name of plaintiff in this action)

Plaintiff,
vs.

Judge John Suddock,
_____,
_____,
_____,
_____,
(Full names of ALL defendant(s) in this action.
Do NOT use *et al.*)

Defendant(s).

COMPLAINT UNDER
THE CIVIL RIGHTS ACT
42 U.S.C. § 1983

(NON-PRISONERS)

A. Jurisdiction

Jurisdiction is invoked under 28 U.S.C. § 1333(a)(3) and 42 U.S.C. § 1983. If you assert jurisdiction under any different or additional authorities, list them below:

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Cynthia L. Fernandez,
(print your name)
who presently resides at 24520 Thunderbird Dr. Chugiak, AK 99567, were
(mailing address)
violated by the actions of the below named individual(s).

2. **Defendants** (Make a copy of this page and provide same information if you are naming more than 3 defendants):

Defendant No. 1, John Sudock, is a citizen of
(name)
Alaska, and is employed as a Judge.
(state) (defendant's government position/title)

This defendant **personally participated** in causing my injury, and I want **money damages**.

OR

The **policy or custom** of this official's government agency violates my rights, and I seek **injunctive relief** (to stop or require someone do something).

Defendant No. 2, _____, is a citizen of
(name)
_____, and is employed as _____.
(state) (defendant's government position/title)

This defendant **personally participated** in causing my injury, and I want **money damages**.

OR

The **policy or custom** of this official's government agency violates my rights, and I seek **injunctive relief** (to stop or require someone do something).

Defendant No. 3, _____, is a citizen of
(name)
_____, and is employed as _____.
(state) (defendant's government position/title)

This defendant **personally participated** in causing my injury, and I want **money damages**.

OR

The **policy or custom** of this official's government agency violates my rights, and I seek **injunctive relief** (to stop or require someone do something).

C. Causes of Action (You may attach additional pages alleging other causes of action and facts supporting them if necessary. Make copies of page 5 and rename them pages 5A, 5B, etc. and rename the claims, "Claim 4," "Claim 5, etc.").

Claim 1: The following civil right has been violated: Due Process
(e.g., due process, freedom of religion, free speech, freedom

of association and/or assembly, freedom from cruel and unusual punishment, etc. List **only one** civil right violation.)

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Claim 1: The following civil right has been violated: Due Process

Supporting Facts: (Briefly describe facts you consider important to Claim 1. State what happened clearly, in your own words. DO NOT cite legal authority or argument. Be certain to describe exactly what each defendant, by name did to violate the alleged in Claim 1.): Judge Suddock impartiality and unfairly performed judicial duties based on manifested bias which impaired the fairness of the proceeding:

1.) Judge **acted with bias and prejudice manifest, by words or conduct**, bias or prejudice based upon sex, disability, age, marital status, economic status: Judge Sudocks opening on the settlement conference was a recitation of "*Mr. Fernandez, being a sixty something, 100% PTSD, Vietnam Vet, with no income, and you have a house with a lot of equity, so how you going to give him some.*" The judge continued with "*you are a 55 year old, single women, with no savings or retirement,*" then proceeded to tell me that I needed to sell my house. The court also attributed the ending of the martial relationship, the 2010 (2%) house refinance/modification and Mr. Fernandez leaving his family to the diagnosis of PTSD.

2.) The court engaged in independent **ex parte investigation** of the case facts, and considered ex parte communications, where substantive matters or the merits of the issues were litigated and a procedural or tactical advantage was acquired: At the settlement conference, (5/10/2011), Judge Suddock initially stated that he could not make the Judgment for the child support go away. He was aware that this was an Administrative Order and acknowledged that the deadline to request a modification had expired. He further stated that Mr. Fernandez was out of luck and that it would have to remain, as the court doesn't take lightly to remove a previous order of the court. After Judge Suddock came back from a conference with Bobbi Erwin, Mr. Fernandez and Mrs. Peggy Fernandez-Smith, I was informed by Judge Suddock that the Judgment (Exhibit A) wasn't valid, ("*I researched it on line*") and that he was taking it off the table. When efforts by my attorney (Mr. Wheeles), and of myself, to provide the judge with an explanation of Child Support being a judgment in and of itself i.e., general judgment guidelines don't apply, the judge stated, '*if you bring this into "my court, " the court, I won't even entertain it. It's off the table.*' When challenged, the judge stated, "*This isn't the forum*" and then said, '*the court could just order you to give Mr. Fernandez half the house.*"

Ms. Erwin's (September 13, 2011 5:07) e-mail, indicated that the statues of limitations, with respect of the judgment, was addressed during the settlement and (they) agreed it was beyond the 10 years to collect. Hench, child support arrears have been addressed and are in the Settlement agreement.

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3.) A coerced (contingent) settlement :resulted from the trier of facts assuming the **Role of decision Maker**, during the settlement process: Judge Suddock proceeded to tell me that I needed to sell my house, because I didn't have the money to pay what he and Ms. Erwin believed David was entitled to. Judge Suddock suggested I get a renter, at \$400-500 a month, or become a foster parent to obtain funds to pay Mr. Fernandez. I stated that the sale of my house was no longer a topic for discussion, as I'd re-modified at a 2% interest rate with a current monthly payment of \$1036.00. Moreover, I didn't believe that I owed Mr. Fernandez any money. Judge Suddock stated, "*Oh, you are going to pay him. We're just here to figure out how much.*" Again, he focused on the perceived equity of the Thunderbird House and was persistent on me obtaining bank financing. I made multiple attempts to convey that a bank wasn't an option and that the bank wasn't going to give me a loan. I ultimately stated, "I'm not going to set myself up to fail by agreeing to a settlement based on bank financing, or of a payment, that I can't get, nor afford"- as the bank had just established the re-modification and monthly payment around my current monthly income, I knew that I wasn't eligible for a loan.

4.) The actions resulting out of the settlement conference were reflective of the judge displaying a **personal bias or prejudice concerning a party or a party's lawyer**; they were neither mutually agreeable, fair or voluntary. The court only acknowledged my assets in the matrix (Exhibit C.): the Thunderbird Falls house, and the 2002 Mercedes. At the March 2011 status hearing, there had been dialogue about having forensic appraisals done regarding the value of the house that I reside in (the Thunderbird house) and the triplex owned by Mr. Fernandez. Mr. Fernandez was to accomplish these tasks. This was never done. The court did not look at the Mountain View triplex that Mr. Fernandez purchased; the Judge deemed it to be "under water" and therefore not subject for consideration (Mr. Fernandez had taken a \$190,000 personal loan against the property), but it was rental generating property that Mr. Fernandez quit claimed it to his new wife. In addition, Mr. Fernandez purchased a cabin when living with me from 2001-2005, held bank account and retirement assets, and neither did the court acknowledge the \$100,000 in debts, paid by me after Mr. Fernandez left the martial relationship in 1997. When I questioned Judge Suddock about the lack of discussion on all things other than the equity in the Thunderbird House, as the original motion requested "to equitably divide domestic partnership property," he stated that, "*we were here only to discuss the equity in the house and how you are going to give Mr. Fernandez some.*" There was no discussion about Mr. Fernandez's retirements, pensions, the assets already taken, or in any interest that I might have in them, as claimed within Ms. Erwin's Finding of Facts (Exhibit D), and signed by Judge Suddock (September 26th).

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Judge Suddock restricted the settlement conference to only one issue 'what I could pay Mr. Fernandez,' as the court was led in believing that there was significant equity in the Thunderbird falls home, and that the Thunderbird falls home tax assessment was accurate. I questioned, Judge Suddock, as to why Mr. Fernandez was entitled to equity specifically since he left leaving me with the house in foreclosure. The judge stated, "The house had value, you just didn't make payments." The judge further indicated that "Mr. Fernandez has binders full of receipts verifying the large amounts of cash, from his VA disability settlements, that he'd put in to the house. Therefore he's entitled to equity out of it." With the judge still instructing me to get a loan or face a forced sell, "I agreed to apply for a loan" prior to the discussion of any settlement or payment options. I knew the bank wasn't going to give me a second due to my debt/credit ratio and this was clearly stated to the judge. I agreed to "apply for a loan" solely based on Judge Suddock's insistence and refusal to believe that I couldn't obtain financing. The court, when putting the terms of the negotiation on the record, was aware of my credit and debt history impeding my ability to obtain the bank loan for the equalization payment to Mr. Fernandez. This contingency, presented by myself, was made very clear to the court "if funds could not be acquired then we would be back at square one- starting over."

In Judge Suddock's words, it was doubtful that I could obtain loan funding due to my credit worthiness and income (May 10, 2011 tape 8:52:00). "Agreement: Mrs. Fernandez going to bank try to get a 2nd mortgage to fund \$33K settlement and Mr. Fernandez agrees to accept full and final rights arising out of this relationship. "

Difficulty is that, the bank, the parties agree that she may not, her credit worthiness, income may not justify a 33k 2nd mortgage on the house, but she's agreed to make best efforts to get that accomplished (May 10, 2011 tape 8:52:12), so that he can be cashed out. If she can't get 33k she's going to negotiate for the highest amount in good faith (8:52:22). (8:52:29). Let's imagine that's 20K, then there's a 13K difference, (8:52:37) at that point the parties are going to start negating on terms in good faith- is there a deal to be made where Mr. David Fernandez takes a 20k and a 13k note for the negotiated duration, negotiated interest rate. (8:53:02) If they can make that deal at that time, in the light of the circumstances, which I can't know at this moment- they have a settlement. If they can't, all bets are off and they're back to square one!"

This was a contingent agreement. Strictly a contingent agreement. I relied on this agreement that I had a do over if I could not get funding. My attorney at the time, Ian Wheeles did as well (Exhibit E)

As part of the negotiation, the child support judgment and my car (a gift) were provided to Mr. Fernandez. I disagreed to and opposed this, Judge Suddock stated, "What do you need a Mercedes in Alaska for, all you need is about \$3000.00 to buy a good Subaru." I felt that I was bullied into this as

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Judge Suddock had been very clear that he would not agree to the enforcement of the child support judgment even though he had no right to waive this judgment. I'd further challenged his removal of support arrears "specifically" if I was being forced to provide Mr. Fernandez additional funds and the negotiation process wasn't going to factor in other assets or debts. Judge Suddock stated, "It doesn't work that way, it's already off the table" and motioned as though he was reeling in a fish.

Summer 2011, I made several good faith attempts to get the loans against the house. To date, I have been denied; I got a home inspection on the house documenting that over \$80,000 in repairs are needed prior to the house even be considered worthy of a home loan. This home inspection report contradicts Judge Suddock's concept that Mr. Fernandez, put a great deal of monies in to the house, as well as, recently remodeled the home. Furthermore, the home inspector found that the "home repairs" claimed by Mr. Fernandez actually decreased the value of the home, as he never finished replacing the kitchen hardwood floor he tore out. Copies of the home inspection were provided to both the court and Ms. Erwin. I was unable to get a loan for any amount.

At the hearing on September 19th, 2011, my counsel, Ms. Porter, asked the court for the set aside as promised and requested Judge Suddock play the portion of the tape indicating the do over. (3:46:10) Judge Suddock, "*If what you're talking about is a new settlement conference, I can do a trial faster than I can do another protracted settlement conference with a risk of doing a trial anyway, so.*"

Judge Suddock became annoyed and stated lets go off record while I get the tape. He then stood up, turned around and picked up a transcript, and limited his response to the section that indicated I'd negotiated on terms in good faith and deferred the court's direction/action toward Ms. Erwin:

(3:41:33) Ms. Erwin, stated, "our position was that, we spent hours trying to figure out a way to preserve this residence for Ms. Fernandez, to try and come up with a method in which it would not have to be sold and we did that to the great equity against Mr. Fernandez's interest. My understanding, when we came down to it, not that we were going to throw out the entire settlement, but we would be back to a start over on the equalizing payment would be made. As we left the settlement conference it was vastly unequal. Mr. Fernandez is not in a position where he can continue to come back and come back, attorney fees wise, to resolve it. He wants to come up with some sort of resolution on the attorney fees- on the equalization payment issues. Even if we have to work out some sort of a payment plan."

The court denied the right to a set aside and stated that I had to enter into a payment plan. The court indicated that it did not matter what my credit history was, I needed to come up with a payment plan that

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the court would approve, or the court was clear it would take in to consideration that I had not entered into the May negotiations in good faith.

(3:22:22) Judge Suddock, "You are going to have to convince me that you have negotiated in good faith, Here's expenses, here's what I can do, here's the term, here's the interest rate and Ah, I have to believe those are good faith offers. (3:51:09) Don't get to a do over unless you can convince me that there's no payment plan you can come up with in good faith. "My next step would be to impose terms on You!"

During this four minute gap, the Judge continued to inform me that since I applied for a Loan, I must have expected to enter into a payment of \$300-400; I could therefore make this same payment to Mr.

Fernandez. Judge Suddock instructed me to negotiate with Mr. Fernandez and stated that if I didn't offer \$300-400, he might just force me in to payments.

The court then held a hearing on September 26th, 2011 to confirm, whether or not I had negotiated in good faith on the payment plan. My attorney's efforts to change the value of the Mercedes was rejected by the court which then indicated that my attorney was thinking that this was an Alice in Wonderland moment.

My counsel, Ms. Porter, pointed out that, " It defies logic that a woman who has dutifully spent years of her life paying off debts that were incurred when they were a couple would not only waive her right to her child support judgment, as only she can do under the Bradley Amendment, but she would also ask the court to ignore her payment of all of the debts, and to put aside Mr. Fernandez's assets, so that she could pay Mr. Fernandez \$33,000 plus give him her only means of transportation."

Judge Suddock told me that my attorney needed to file a Rule 60b motion, this was not the first- It was filed on October 7, 2011 (Exhibit F.). The Judge then offered to sign Ms. Erwin's Finding of Facts, "You want me to sign your order leaving the property dispute open?" Not having reached an agreeable offer, with Mr. Fernandez, the Judge states he now believes that \$400-500 payment would be a good faith offer and if I can't make an offer that he will impose a payment on me.

As per the CD of the (12/9/11) hearing, Ms. Erwin, avoiding the term "we don't have an agreement," and asks the court to decide. Judge Suddock acknowledged my prior offer of \$250.00 then stated, "*how about \$250.00 a month, let's say at 5% interest and the car.*" Ms. Erwin told the judge, "*that is unacceptable, and we're looking for at least 350.00 a month,*" then requests an evidentiary hearing.

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5.) Grounds for disqualification in a proceeding in which the judge's impartiality might reasonably be questioned: As per the CD of the (Status hearing 3/7/11 at 2:30:30). The court gave the option at a later point in the hearing as to determine who would conduct the settlement conference and suggested Judge Joannides (Status hearing 3/7/11 at 2:32:10). Ms. Erwin continued to push on this issue and inquired from the court as to whether the court conducted this hearing for a settlement conference. Ms. Erwin then reassured the court that the settlement conference should be a shorter one as it was all forensics, *the hearing was about valuations and offsets so the hearing should not take more than a couple of hours* (Status hearing 3/7/11 at 2:31:35). *Ms. Erwin stated that it was valuation and offsets (2:31:51)*

Ms. Erwin, Mr. Fernandez's attorney, pushed for Judge Suddock to have the settlement conference as well as preside over the case; I deferred to my attorney Mr. Wheeles, I was not present. While this was a creative solution by the attorneys as a means to resolve the issues in the case, it was not a viable one as it poses a conflict of interest. Cannon 4 section F of the Judicial Conduct. As per the commentary, section 4F "does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of judicial duties." This is undisputed, but conducting a settlement conference for a case where the court is presiding over the case, puts the court in the uncomfortable position of knowing too much. As per the scope defined by Administrative Rule 23, subsection 1, under the Service as an Arbitrator or Mediator, (the private practice rules) a judge shall

(1) The judge shall refrain from soliciting or accepting employment as an arbitrator or mediator from a lawyer or party who is currently appearing in a case assigned to the judge.

(2) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge has previously served as an arbitrator or mediator in the same matter. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(3) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge is currently serving or scheduled to serve as an arbitrator or mediator for a lawyer or party in the case. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

The conflict identified in the judicial cannons has occurred here, and an issue has now arisen that the Cannons were meant to avoid. The court has seen all of the positions of the parties, and conducted the negotiation. As this is the same judge presiding over the settlement conference and over the case, the briefs were made public as part of the file, and the result is that the court is over informed as to what resources the parties have, what evidence would be used at trial, and what realistic settlement options are. The net effect is that the impartiality of the trier of fact is regrettably called into question. Even though

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the court entered into the settlement conference in good faith, there is now a question of impartiality, despite all best intentions. This is a conflict as per Judicial Cannon 3 Commentary (3) paragraphs (6) and (7).

In light of the clear conflict of interest of having Judge Suddock act as the settlement judge as well as the trial judge. I feel that I was compromised by actions that not only question bias and partiality, but have lent themselves to question manipulation and contempt on the process/court. Judge Suddock (As per the CD of the hearing December 9th, 2011) acknowledged his preference toward Ms. Erwin as "she tends to be a very precise thinker" and credited my bad deal to Ms. Erwin out smarting my prior counsel (Mr. Wheeles). Judge Suddock acknowledged that he's only removed himself once, after having facilitated both roles as the settlement and trial judge. In that situation Judge Suddock indicated it was because that individual was only trying to get out of paying child support. Judge Suddock's rulings (established during a SETTLEMENT CONFERENCE) are skewed in the favor of Mr. Fernandez (Exhibit G.) and I am deprived of any meaningful recourse available.

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Claim 2: The following civil right has been violated: Due Process

Supporting Facts: (Briefly describe facts you consider important to Claim 2. State what happened clearly, in your own words. DO NOT cite legal authority or argument. Be certain to describe exactly what each defendant, by name did to violate the alleged in Claim 2.): Failure to comply with the amendment to US Code Title IV-D (42 U.S.C. § 666(a)(9)(c)) which requires state courts to prohibit retroactive reduction of child support obligations:

1.) January hearing Ms. Erwin requests to Motion the court for a Modification of Child Support (As per the CD of the January 11, 2011 status hearing), Judge Suddock, suggests that the issue of child support be handled by a Magistrate. Ms. Erwin remains persistent and continues to request the motion be handled before Judge Suddock. By her reports, the court is short on magistrates and having the same Judge assigned to equitably divide domestic partnership it will not only save time, but it will also allow for an off set . . . Judge Suddock instructed, Ms. Erwin to re-write her motion.

As of the September 19, 2011 hearing and Judge Suddock's ruling that we cannot get a do over, the court then held a status hearing on September 26th, 2011 to confirm, whether or not I had negotiated in good faith on the payment plan. In doing so, Ms. Erwin was advised by Ms. Porter (September 23,2011 2:05pm e-mail) that this good faith offer was specific to the required equalization payment and it by no means meant to agree to a waiver to debts or to child support arrears. Ms. Erwin was advised that the Stay on support was still in place, which opened the process for a 60 (b) motion and subsequent appeal, particularly with regards for the Bradley Amendment.

September 26th, 2011, Judge Suddock, offered to sign Ms. Erwin's Finding of Facts after being, advised by Ms. Erwin, that CSSD was about to re-instate the collection process due to the expiration of the Stay. Judge Suddock, "Ms. Erwin, You want me to sign your order leaving the property dispute open?"

As of October 6, 2011, despite the US Code Title IV-D (42 U.S.C. § 666(a)(9)(c).) prohibiting Judicial discretion at the state level, to retroactively reduce child support obligations, and the potential of Penalties under AK Rule 95. (a) (b), for failure to comply with these rules, or any rules promulgated by the supreme court- all child support arrearages held by the State of Alaska Child Support have been returned to Mr. Fernandez, and the case reflects a zero balance with no monies due. I haven't received the child support I am entitled to for supporting our two children between 1997-2005.

I hereby certify that a copy of the above (Supporting Facts : Claim 1 & 2) .was served upon Judge John Suddock by mail at 825 W. 4th Avenue, Anchorage, AK 99501-2004 on January 3, 2012.

Ms. Cynthia L. Fernandez

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Request for Relief

Given the circumstances of the case, undersigned respectfully requests the disqualification of Judge Suddock, that the court overturn the decision and to set aside the agreement as per Civil Rule 60 (b), and provide the "do over" as the court had indicated at the settlement conference on May 10, 2011.

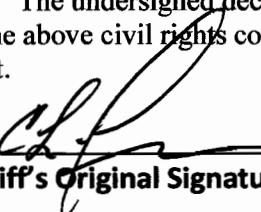
Re-instatement the Child Support Judgment and all Child Support Arrears, and order CSSD to collect on any/all legally allowable monthly withholding amount from The Department of Veterans Affairs.

It's further requested that the court impose, upon offending attorneys or parties. any and all penalties, including, but not limited to Rule 95 Penalties. (a) (b) [Applicable to cases filed on or after August 7], to punish for contempt and failure to comply with US Code Title IV-D (42 U.S.C. § 666(a)(9)(c),)

Plaintiff requests a trial by Court.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under perjury that s/he is the plaintiff in the above action, that s/he has read the above civil rights complaint and that the information contained in the complaint is true and correct.

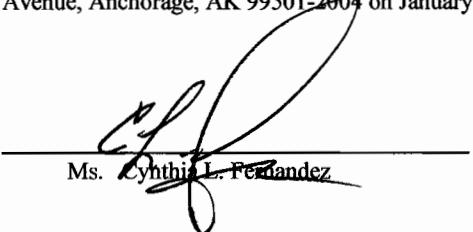


Plaintiff's Original Signature

Cynthia L. Fernandez
Plaintiff's Full Name:

Executed at 24520 Thunderbird Dr., Chugiak, AK 99567 on January 3, 2012
(Location) (Date)

I hereby certify that a copy of the above (Request for Relief) .was served upon Judge John Suddock by mail at 825 W. 4th Avenue, Anchorage, AK 99501-2004 on January 3, 2012



Ms. Cynthia L. Fernandez