**Case Number: 24-CV-0226**

**IN THE DISTRICT OF COLUMBIA COURT OF APPEALS**

LARRY KLAYMAN,

Appellant

v.

ELHAM SATAKI, HAMILTON FOX, ELIZABETH HERMAN, H. CLAY SMITH, III, JULIA PORTER, OFFICE OF DISCIPLINARY COUNSEL, MATTHEW KAISER, MICHAEL E. TIGAR, WARREN ANTHONY FITCH,

Appellees.

APPEAL FROM AN ORDER OF THE DISTRICT OF COLUMBIA SUPERIOR COURT

# APPELLANT'S PRINCIPAL BRIEF

Date: February 3, 2025

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## CERTIFICATE OF PARTIES

Pursuant to D.C. Court of Appeals Rule 28(a)(2)(A), Appellant Larry Klayman provides a list of all parties, intervenors, amici curiae, and their counsel in the trial court or agency proceeding and in the appellate proceeding:

Larry Klayman – Appellant pro se
Elham Sataki – Appellee
Hamilton Fox -Appellee
Elizabeth Herman – Appellee
H. Clay Smith III – Appellee
Julia Porter- Appellee
Office of Disciplinary Counsel – Appellee
Matthew Kaiser – Appellee
Michael E. Tigar – Appellee
Warren Anthony Fitch – Appellee
Mark J. MacDougall – Counsel for Appellees
Caroline L. Wolverton – Counsel for Appellees
Samantha J. Block – Counsel for Appellees
Jane M. Mahan – Counsel for Appellees
Akin Gump Strauss Hauer & Feld LLP – Counsel for Appellees
Preston Burton – Counsel for Appellees
Jackson Hagen – Counsel for Appellees
Orrick Herrington & Sutcliffe LLP – Counsel for Appellees
Matthew Cohen – Counsel for Appellees
Toni Michelle Jackson – Counsel for Appellees
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## JURISDICTIONAL STATEMENT

This appeal is from a final order or judgment that disposes of all parties claims.

## STATEMENT OF ISSUES

Did the District of Columbia Superior Court ("Lower Court") err in issuing its March 1, 2024 Omnibus Order (the "Order") granting (1) Appellees Hamilton Fox ("Fox"), Elizabeth Herman ("Herman"), H. Clay Smith III ("Smith"), Julia Porter ("Porter"), Office of Disciplinary Counsel ("ODC") ("ODC Appellees") Matthew Kaiser ("Kaiser"), Michael E. Tigar ("Tigar"), and Warren Anthony Fitch ("Fitch") (collectively with the ODC Appellees, the "Bar Appellees") Motion to Dismiss; and (2) Appellee Elham Sataki's ("Sataki") Motion to Dismiss?

## STATEMENT OF THE CASE AND FACTS

This case involves fraud and prosecutorial misconduct committed by the Bar Appellees and Sataki in an attorney disciplinary proceeding in the District of Columbia styled *In re Klayman*, 20-BG-583 (D.C. Ct. App.) (the "Sataki Matter"). The Sataki Matter involved a disgruntled former client, Sataki, from 2010 who Mr. Klayman represented in a sexual harassment and workplace retaliation case. Comp. ¶¶ 18 – 35. Tellingly, however, Sataki actually abandoned her initial bar complaint against Mr. Klayman, Comp. ¶ 39 - which she filed also in Florida and Pennsylvania where they were summarily dismissed as meritless, Comp. ¶ 37, – but it was *sua sponte* resurrected by the Bar Appellees over seven (7) years later after they literally hired a private investigator to track Sataki down to persuade and/or

pressure her to renew her complaint against Mr. Klayman. Comp. ¶ 40. This alone - clearly not a normal course of action for most disciplinary and ethical counsel offices – as set forth below evidences the Bar Appellees' ongoing politically based First Amendment selective prosecution against conservative and Republican public interest attorneys, particularly those who support President Trump, such as Mr. Klayman, which is set forth in detail below.

Having become willing co-actors in the fraud and prosecutorial misconduct, the Appellees proceeded to make numerous false, fraudulent, and perjurious statements to the Ad Hoc Hearing Committee ("AHHC") in the Sataki Matter, which comprised of both Appellees Michael Tigar and Warren Fitch. These false, fraudulent, and perjurious statements then became part of the record upon which the AHHC, Tigar, and Fitch issued a fatally flawed Report and Recommendation. Despite Mr. Klayman having contemporaneously provided evidence of the false, fraudulent and perjurious nature of these statements to the AHHC, Tigar, and Fitch, this evidence was willfully ignored.

Notably, the inexplicable inclusion of Tigar on the AHHC is telling in and of itself. Tigar is a proud and avowed communist who, as Bob Woodward wrote in his book about the Supreme Court, titled The Brethren, in his early career had been fired, at the urging of J. Edgar Hoover, from his High Court clerkship by Justice William Brennan for his subversive communist ties. Comp. ¶ 63, 64, Ex. 2. Fitch was openly deferential to Tigar and himself highly politicized and leftist. Comp. ¶ 63. As part of their role in the matters at issue, Tigar and Fitch repeatedly denied Mr. Klayman leave to conduct discovery, which allowed the

ODC Appellees and Sataki to suppress material evidence and provide perjurious testimony, as Mr. Klayman did not have the benefit of discovery to uncover suppressed evidence and obtain the truth. Comp. ¶ 72. Tigar and Fitch then played their role by knowingly placing Sataki's false, fraudulent and perjurious testimony into the record after having denied Mr. Klayman the ability to uncover this fraud at prior to the AHHC hearing.

This was then adopted without any real consideration by the Board on Professional Responsibility ("Board") and its chairperson, Appellee Kaiser, and subsequently by the District of Columbia Court of Appeals ("DCCA") resulting in an eighteen-month suspension with reinstatement provision against Mr. Klayman in the Sataki Matter. Sataki knowingly gave this perjurious testimony, and the Bar Appellees knowing suborned this perjurious testimony from Sataki, the instrument for the prosecutorial misconduct, fraud and perjury. And, once this false, fraudulent and perjurious testimony became a part of the record at the AHHC level, Mr. Klayman had no chance to prevent it from metastasizing into a fatally flawed and manifestly unjust eighteen-month suspension with reinstatement provision.

As just one prominent example, Sataki committed the perjurious fraudulent testimony that she had not approved of engaging in publicity of her alleged sexual harassment case, which allowed the Bar Appellees to manufacture its primary ethical violation against Mr. Klayman that he had gone against her wishes in doing so. As just a few examples out of many, on May 31, 2018, Sataki committed the following perjurious fraudulent testimony to the AHHC, Tigar, and Fitch:

> Mr. Klayman: And that we agreed we would get some positive publicity here to try to coerce VOA into a favorable settlement so you could be in LA, correct?
> Defendant Sataki: Correct.
> Mr. Klayman: And –
> Defendant Sataki: **But I didn't agree to do it.** You explained all this to me. Comp. ¶ 75 (emphasis added).
>
> Chairman Fitch: Did he send you copies of some articles that he had written?
> Defendant Sataki: Yes, he did.
> Mr. Klayman: At that time you did not tell me, "Don't write any more."
> Defendant Sataki: I did.
> Mr. Klayman: There's nothing in writing that you presented to that effect at that time, did you?
> Defendant Sataki:. **We talked to each other. I explained to you on the phone why I don't want articles out there**. Comp. ¶ 75. (emphasis added).

Mr. Klayman did what he could to present record evidence to the AHHC that Sataki's testimony was perjurious. This included evidence that Sataki agreed to this publicity, with Mr. Klayman writing positive and complimentary articles and arranging for interviews with major publications, such as the Los Angeles Times. Indeed, a crucial piece of evidence is an email which Mr. Klayman sent to the LA Times, copying both Sataki and her union representative, Timothy Shamble ("Mr. Shamble"), attempting to arrange such an interview and to which there was no objection. Comp. ¶ 78. This was also consistent with Sataki being provided contemporaneously with all the articles and publicity that Mr. Klayman, who along with Mr. Shamble, he had generated for her. At no time did Sataki object and instead approved, and there is no contemporaneous written record of any objection. Comp. ¶ 79. In fact, Mr. Klayman presented record evidence that Sataki personally engaged in the publicizing of her case by personally handing out copies of one the articles written by Mr.

Klayman on Capitol Hill. Extensive efforts to lobby politicians with oversight over the Voice of America and others who could push for a settlement were made, often with Sataki present, but always with her informed consent. Comp. ¶ 80. And, as the final "nail in the coffin," Mr. Klayman uncovered evidence that was fraudulently hidden by Sataki and ODC in September of 2019—after the AHHC hearing had concluded—that Ms. Sataki had even participated in making a widely aired and publicized public video broadcast on Persian television about her case, with intimate personal details about her personal life, discussing her sexual harassment and workplace retaliation complaint against VOA and others, which further undercuts and totally refutes any possible false claim that Ms. Sataki did not agree to publicize her case. Comp. ¶ 81. However, this avalanche of evidence that Mr. Klayman presented was callously disregarded and ignored by the AHHC and the Board in favor of Sataki's perjurious testimony.

The Complaint further details Sataki's additional false, fraudulent, and perjurious statements – made in concert with the coaching of the ODC Appellees – including that Mr. Klayman forced her to move to Los Angeles, Comp. ¶ 89 – 91, and that Sataki wanted Mr. Klayman to dismiss all of her cases, Comp. ¶ 92 – 93. In each instance, these false, fraudulent, and perjurious statements were conclusively refuted on the record, but due to the actions of Defendants Tigar and Fitch at the AHHC level, and Kaiser at the Board level in consciously and intentionally ignoring every single piece of evidence presented by Mr. Klayman clearly refuting Sataki's and the ODC Appellees' fabricated allegations, the D.C.

Court of Appeals was presented with a record that was so skewed, devoid of facts, and intentionally wrong that they were deceived into adopting without any real analysis the Board's fatally flawed, skewed, and egregiously wrong Report and Recommendation ("Report") to suspend Mr. Klayman.

Even more, at the Lower Court level, the Appellees in bad faith moved for and obtained a stay of proceedings that severely prejudiced Mr. Klayman's rights and resulted in an unjustified delay of over eight (8) months. The Appellees had falsely and fraudulently claimed that the Honorable Reggie Walton ("Judge Walton") of the U.S. District Court for the District of Columbia in *Klayman v. Porter et* al, (20-cv-3109) (D.D.C.) through his August 29, 2022 order (the "Walton Order") had enjoined Mr. Klayman's instant Rule 60 Complaint. This was based on a false representation of the Walton Order to the Lower Court, which expressly did not apply to state court actions. And, as Mr. Klayman explained, the Walton Order itself was a prime example of judicial overreach and invalid in any event, and accordingly, it subsequently reversed by the U.S. Court of Appeals for the District of Columbia Circuit. *Klayman v. Porter et al*, 22-7123 (June 11, 2024 Opinion). However, the irreparable harm to Mr. Klayman had already been done.

The fraudulent and prosecutorial misconduct of the Appellees, and in particular the Bar Appellees, is even more egregious when the motivation behind their illegal and unethical conduct is revealed. Their conduct has been part and parcel to the weaponization of elements of our legal system – particularly against those, such as Mr. Klayman, who

supported or continue to support our 45th and now 47th President of the United States, Donald J. Trump, which can no longer be called into question, even by card-carrying members of the Democratic and leftist legal and government establishments in the District of Columbia and throughout the nation. That the American voters delivered a landslide to President Trump in the recent presidential election shows that the American people took "judicial notice" of and rejected this weaponization against Donald Trump and his supporters such as Mr. Klayman. It is time for this Court to take judicial notice of this as well. This Court must recognize reality and not itself be influenced by political and ideological backlash in the District of Columbia against persons such as Mr. Klayman now that President Trump has sounded defeated his Democrat leftist opponents and reassumed the presidency.

Mr. Klayman, like many other prominent Republican and conservative public interest activist attorneys, has been targeted by the weaponized District of Columbia attorney discipline apparatus. This is underscored by the fact that during the Trump years in particular, ethics complaints were filed, accepted and initiated against Trump White House Counselor Kellyanne Conway[1] over remarks she made on cable news, against former Trump Attorney General William Barr[2] (the complaint was actually filed by all prior Democrat and left-leaning presidents of the Bar as well as a former senior bar counsel) for withdrawing the indictment of General Mike Flynn and for remarks he made on Fox News,

[1] https://www.washingtonpost.com/politics/law-professors-file-misconduct-complaint-against-kellyanne-conway/2017/02/23/442b02c8-f9e3-11e6-bf01-d47f8cf9b643_story.html

[2] https://thehill.com/regulation/court-battles/508489-more-than-two-dozen-dc-bar-members-urge-disciplinary-probe-of-ag

Senators Ted Cruz[3] and Josh Hawley[4] over their role in advocating for President Trump in the last presidential election, Professor John Eastman[5] who served as a legal counsel for President Trump, and of course former U.S. Attorney Rudy Giuliani[6] to name just a few. Indeed, Giuliani was just recently disbarred by the Bar over his association with and legal representation of President Trump.[7]

In stark contrast, and as evidence of disparate treatment, this Court need only look to the matter of Kevin Clinesmith in *In Matter of Kevin E. Clinesmith*, 21-BG-018 (D.C. App.). In that case, Kevin Clinesmith—the former senior FBI lawyer and admittedly anti-Trump partisan who dishonestly falsified a surveillance document in the Trump-Russia investigation and who pled guilty to felony charges—was completely ignored by ODC and only temporarily suspended for five months after he pled guilty, and only after ODC's "blind eye" was uncovered and subjected to negative publicity. Clinesmith also did not submit an affidavit, as required under Rule 14(g), for five (5) months after he was suspended. Despite this, not only did the D.C. attorney disciplinary apparatus fast-track, if not whitewash, his case—clearly in order to minimize his temporary suspension period —this Court let

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[3] https://www.texasstandard.org/stories/lawyers-law-students-officially-file-grievances-seeking-to-disbar-senator-ted-cruz/

[4] https://thehill.com/homenews/state-watch/534783-attorneys-urge-missouri-supreme-court-to-probe-hawleys-actions

[5] https://www.reuters.com/legal/ex-top-justice-dept-officials-testimony-sought-ethics-hearing-trump-ally-clark-2022-10-06/

[6] https://www.law.com/newyorklawjournal/2021/03/03/nyc-bar-details-complaints-calling-for-full-attorney-discipline-investigation-of-giuliani/#:~:text=Under%20the%20New%20York%20state,censured%20or%20receive%20no%20punishment.

[7] https://www.cnn.com/2024/09/26/politics/rudy-giuliani-disbarred-washington-dc/index.html

Clinesmith off with barely a slap on the wrist with "time served" in just seven (7) months,. And importantly, this Court imposed no reinstatement provision on Clinesmith despite him literally being a convicted felon over making false statements to the government. In stark contrast, the Michigan Bar automatically suspended Clinesmith immediately upon his felony conviction, and then ordered a suspension period of two (2) years.[8] And, even more, as further evidence of just how egregious this was, the nominee for attorney general Pam Bondi at her confirmation hearing just the other day specifically cited Clinesmith as the type of person who should have been prosecuted and would be prosecuted under her regime. At her confirmation hearing, she stated:

> I said that on TV. I said prosecutors will be prosecuted, to finish the quote, if bad. Investigators will be investigated.
>
> You know, we all take an oath, Senator, to uphold the law. None of us are above the law. **Let me give you a really good example of a bad lawyer within the Justice Department, a guy named Clinesmith, who altered a FISA warrant, one of the most important things we can do in this country.**
>
> So will everyone be held to an equal, fair system of justice if I am the next Attorney General? Absolutely. And no one is above the law.[9] (emphasis added).

Indeed, this is the exact type of conduct that the U.S. District Court for the District of Columbia has found to be impermissible First Amendment selective viewpoint prosecution

[8] https://www.michbar.org/journal/Details/Orders-of-Discipline-and-Disability-November-2021?ArticleID=4277

[9]https://www.realclearpolitics.com/video/2025/01/16/pam_bondi_heres_an_example_of_a_bad_lawyer_within_the_doj_who_we_would_prosecute.html

in its recent landmark decision in *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122 (D.C. Cir. 2023). The Court must therefore take action now and send a message to the Bar Appellees that this type of illegal and unethical conduct will no longer be tolerated and that Democrat leftist anti-Trump attorneys like Clinesmith will get off scot free, while conservative and Republican pro-Trump lawyers are literally burned at the stake of the biased DC attorney disciplinary apparatus.[10]

In sum, the Bar Appellees all acted in concert with Sataki with the goal to just to get her false, perjurious, and fraudulent testimony onto the record, which they knew was enough for them to issue a fatally flawed Board Report recommending suspension to the DCCA due to the insular nature, with zero (0), that is no, accountability, of the D.C. attorney discipline apparatus. All the Bar Appellees needed was to just get this false, fraudulent, and perjurious testimony onto the record, and combined with the mutual understanding that Mr. Klayman's evidence and testimony conclusively refuting Sataki would be ignored by the AHHC caused the Board to issue its skewed, fatally flawed, and clearly wrong Report that was then adopted by the DCCA.

Moreover, the DCCA has an independent duty to investigate the fraudulent conduct that has been committed by the Appellees because the fraudulent conduct was aimed at

[10] Mr. Klayman has sent a letter titled *Weaponization of District of Columbia and New York Bars Against Pro-Trump Conservative and Republican Activist Attorneys* to Hon. Pam Bondi, Hon. Lindsey Graham, Hon. Jim Jordan, and Hon. Mike Johnson requesting investigations in this regard, has this conduct has reached acute levels. Meeting on Capitol Hill are planned in this regard.

this Court. It cannot just dismiss Mr. Klayman's allegations lightly as the conduct alleged in Mr. Klayman's complaint requires investigation and corrective action. It must be clear for the Court to see that this is selective prosecutorial and dishonest misuse of the attorney discipline procedure that must be remedied in the interest of justice and fundamental fairness and, as important, so Mr. Klayman can seek redress.

## SUMMARY OF THE ARGUMENT

Th Lower Court egregiously erred in finding that it lacked subject matter jurisdiction and that Mr. Klayman had failed to state claims for relief. It also egregiously erred when it denied Mr. Klayman leave to amend.

## LEGAL ARGUMENT

In its March 1, 2024 omnibus order, the Lower Court dismissed this case on two grounds: (1) that it lacked subject-matter jurisdiction to grant Mr. Klayman's sought relief, (2) that Mr. Klayman failed to state a claim. Furthermore, the Lower Court also denied leave to amend as "futile." As shown conclusively herein, each of these findings was erroneous and must be reversed by this Court.

### I. The Lower Court Had Subject Matter Jurisdiction

The Lower Court erroneously adopted the flawed arguments of the Appellees in finding that it lacked subject matter jurisdiction to grant the relief sought by Mr. Klayman. In doing so, the Lower Court held, "[t]he Superior Court of the District of Columbia does not

have the authority or jurisdiction to vacate the order of another trial court, a federal court. Not this jurisdiction's higher appellate court." Order at 18.

*First*, this case was brought pursuant to District of Columbia Rule 60(d) ("Rule 60"), which states that : "[t]his rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or (2) set aside a judgment for fraud on the court." *See also Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 464 (D.C. 2004). *Olivarius* defines the situations in which an "independent action" is proper, and this instant case fits those requirements like a glove. An independent action is available to "prevent a grave miscarriage of justice." *Id*. at 466 (quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998)). "The party seeking relief must show that it would be 'manifestly unconscionable' to allow the judgment to stand." *Id*. This type of action is reserved for situations where "the integrity of the court and its ability to function impartially is directly impinged." *Id*. at 465. Whereas courts have held that perjury of a single witness does not rise to this level, when the actions involve "a deliberately planned and carefully executed scheme," it does. *Dankese Eng'g, Inc. v. Ionics, Inc.*, 89 F.R.D. 154, 158 (D. Mass. 1981).

The allegations of the Complaint more than rise to the level of being "manifestly unconscionable' to allow the judgment to stand." The Complaint describes in detail a coordinated scheme amongst all of the Appellees to try to remove Mr. Klayman from the practice of law through fraud, perjury, suborning of perjury, and other egregious

prosecutorial misconduct. Sataki and the ODC Appellees' role was to get the perjurious testimony onto the record, in addition to suppressing material evidence. Comp. ¶ 70. Then, Tigar, Fitch, and Kaiser took the concerted action and ensured that the record presented to the DCCA would include Sataki's perjurious testimony and would not contain key exculpatory evidence that was suppressed by Sataki and the ODC Appellees. Comp. ¶¶ 72 – 73. Tigar and Fitch's role was to ensure that Mr. Klayman was denied even basic discovery, that is due process - which would have allowed him to contemporaneously refute Sataki's perjurious statements as well as discovery the exculpatory evidence that was illegally suppressed by Sataki and the ODC Appellees. Comp. ¶ 84. This decision was particularly egregious given the fact that discovery is generally allowed for and is an integral part of the attorney discipline process, particularly in a case such as this one where ODC delayed over seven (7) years to even file a Specification of Charges, resulting in passage of time causing memories to fade, documents to be discarded and lost, and witnesses to become unavailable and some even dead. See Board on Professional Responsibility Rules, Chapter 3. Comp. ¶ 84.

After getting past the AHHC stage with the contrived, perjurious, and fraudulent record, Kaiser then intervened when exculpatory material evidence was independently discovered by Mr. Klayman's legal team after the disciplinary hearing. As the head of the Board, Kaiser played his part by refusing to reopen the record or to even consider the newly discovered exculpatory evidence in order to ensure that the ODC Appellees and Sataki

would not be held accountable for their illegal and unethical conduct."[11] Comp.¶ 73. Of course, all of this was done with the understanding and agreement among all of the Appellees that any key witness testimony and conclusive evidence presented by Mr. Klayman would be ignored, minimized, or disregarded. In doing so, the Appellees ensured that record presented to the DCCA would be filled with uncorrected perjurious statements and devoid of case determinative exculpatory evidence, thereby forcing the DCCA's hand to simply adopt the Board's cooked, fatally flawed Report. Accordingly, the Complaint sets forth in extreme detail a "deliberately planned and carefully executed scheme" that requires relief under Rule 60.

*Second*, the Lower Court fundamentally erred in misinterpreting the relief sought by Mr. Klayman and adopting the "red herring" argument of the Appellees. As clarified by Mr. Klayman in his response in opposition to the Bar Appellees' Motion to Dismiss – and for which he sought leave to amend [*see supra* section III] – the true relief sought by Mr. Klayman does not require the Lower Court to vacate this order of suspension in the Sataki Matter. The Lower Court only needed to take action as it pertains to the Appellees by conducting discovery and a trial and issuing a judgment finding that the Suspension Order was procured through a perjury, the suborning of perjury, fraud and gross prosecutorial

[11]Kaiser has proven to be a leftist Democrat who was who was associated with the leftist legal publication "Above the Law," and wrote complementary columns extolling the virtues of an "honest" Hillary Clinton, but trashing Donald Trump, who Mr. Klayman had supported. Kaiser was even lead counsel a civil lawsuit which he filed against Donald Trump, *Garza v. Trump et al*, 1:23-cv-00038 (D.D.C.), which lawsuit defies well-settled principles of presidential immunity.

conduct on the court, and therefore creating a corrected record from which the DCCA can then act and decide whether to reverse the Suspension Order. There is no possible venue and procedural and substantive mechanism for this to occur other than through filing a Complaint pursuant to D.C. Superior Court Rule 60. There needs to be discovery and a trial as well as determinations made by the finder of fact, which the DCCA is not empowered and equipped to handle. In short, the Lower Court was the only possible place for this to occur. And, in the event that the Lower Court found any ambiguity in this regard, it is clear that Mr. Klayman also moved for leave to amend to emphasize this clarification, which leave therefore at a bare minimum should have been granted by the Lower Court. *See supra* section III.

*Third*, contrary to the Lower Court and the Appellees' false assertions, this case is not a "relitigation" of the Sataki Matter. A simple reading of the Complaint will show that the crux of Mr. Klayman's argument is that the DCCA made the decision to suspend Mr. Klayman based on the corrupted, cooked, contrived, fatally flawed, and erroneous fraudulently induced record that was presented to it by the Appellees. Mr. Klayman is arguing that the DCCA's decision was induced by fraud and gross prosecutorial misconduct and looks to this Rule 60 Complaint to set the record straight, from which the DCCA can then determine whether to vacate the suspension order itself. Mr. Klayman is now challenging the process and the perjury. suborning of perjury, and fraud on the court that led to the corrupted, fatally flawed, and erroneous record being placed before the DCCA in the

first place. It is clear that this question and issue has never been before any Court, and therefore cannot be found to be a relitigation under any circumstances.

*Lastly*, it is clear that this case presents a unique set of facts and circumstances that should be viewed as a matter of first impression by this Court. As set forth above, the Complaint alleges in detail an extremely coordinated scheme and conspiracy by the entire District of Columbia attorney discipline apparatus at every level to commit fraud and perjury. Rule 60 expressly provides an avenue of relief under these circumstances, and that is exactly what Mr. Klayman has done. The Lower Court apparently looked for the easy way out in adopting the Appellees reliance on *Klayman v. Rao*, 2021 U.S. Dist. LEXIS 204644, at *10 (D.D.C. Oct. 25, 2021), but this ignores the plain facts that (1) *Rao* is not controlling precedent as a federal case, and (2) *Rao* involved a case brought in federal court, and therefore did not invoke District of Columbia Superior Court Rule 60.

## II. Mr. Klayman Has Properly Stated Claims for Relief

The Lower Court erroneously found that (1) the Bar Appellees had absolute immunity and (2) that Mr. Klayman failed to state a claim for relief. Both of these findings are erroneous for the reasons set forth herein.

### A. The Bar Appellees Do Not Have Absolute Immunity

The Lower Court regrettably adopted without question the Bar Appellees' predictable argument that they enjoy "absolute immunity" for their complete subterfuge of the attorney

discipline process. Any Court viewing the facts of this case with neutral, unbiased eyes can see that this is simply not the case.

*First and foremost*, the source of the "absolute immunity" cited by Bar Appellees, is the District of Columbia Bar Rules ("Bar Rules"). See D.C. Bar R. XI § 19(a). However, the Preamble of the Bar Rules sets forth that (1) the District of Columbia Bar is created by the District of Columbia Court of Appeals as an "official arm of the Court" and (2) the District of Columbia Court of Appeals promulgated the Bar Rules itself. Thus, it is indisputable that the District of Columbia Court of Appeals has granted itself "absolute immunity." This flies in the face of well-established precedent that it is not a court's duty much less right to create law, but only to interpret it. "To begin with, it is inappropriate to give weight to Congress' unenacted opinion when construing judge-made doctrines, because doing so allows the Court to create law and then effectively codif[y] it based only on Congress' failure to address it. Our Constitution, however, demands that laws be passed by Congress and signed by the President. Art. I, §7." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 299 (2014) (emphasis added) (internal citation and quotations omitted). See also *Wilder-Mann v. United States*, 1993 U.S. Dist. LEXIS 9166, at *3 (June 27, 1993) ("The Court doubts that it has the power to create law for the District of Columbia and thereby create jurisdiction for itself under the FTCA."). Here, the District of Columbia Court of Appeals has simply decided that it enjoys absolute immunity on its own. This "absolute

immunity" was not legislated by Congress or District of Columbia legislators. This is not the function of a court and is wholly improper and in fact unconstitutional.

Indeed, this is actually the express role of the District of Columbia City Council, as set forth on their website:

> As the central and chief policy-making body for the District of Columbia, the Council's mission is to provide strong, innovative and effective leadership for the benefit of residents across the city. The Council's central role as a legislative body is to make laws. However, its responsibilities also include oversight of multiple agencies, commissions, boards and other instruments of District government. Led by the Council Chairman, the members of the Council are working to improve the quality of life in District neighborhoods by ensuring safer streets, furthering education reform, developing a vibrant economy, and implementing groundbreaking programs. Working with the Mayor and the executive branch, the Council also plays a critical role in maintaining a balanced budget and the fiscal health of the District of Columbia government. (emphasis added).[12]

Thus, by in effect "legislating" absolute immunity for itself, the D.C Court of Appeals, through the Office of Disciplinary Counsel and the D.C. Bar., have illegally and unconstitutionally usurped the role of the D.C. City Council. Their so-called grant of immunity to themselves is therefore of no force or effect, and if this honorable Court chooses to rule otherwise, this matter will be appealed all the way to the U.S. Supreme Court if necessary. Judges simply cannot legislate and create law out of whole cloth!

*Secondly,* even if the District of Columbia Court of Appeals' self-granted "absolute immunity" were proper – again, it is not, as set forth above – it does not apply to the allegations set forth in the Complaint. The Court in *Richardson v. District of Columbia*, 711

[12] https://dccouncil.us/about-the-council/

F. Supp. 2d 115 (D.D.C. 2010), expressly found this grant of immunity only applies to conduct taken "in the course of [Bar officials'] official duties." As the Court is certainly aware, this case is currently at the motion to dismiss stage. Thus, pursuant to *Iqbal,* 556 U.S. at 678, the factual allegations of the Complaint must be taken as true at this stage of the litigation. This is black-letter law. As set forth above, the Complaint sets forth in excruciating detail in Bar Appellees' participation concerted coordinated action to suborn perjury, suppress material evidence, and just pervade the attorney discipline process in its entirety. This must be taken as true, particularly where Mr. Klayman has had his discovery requests completely stonewalled by the Bar Appellees throughout this case as well.

It is, therefore, frankly unbelievable, but sadly not surprising, that the Bar Appellees would have the audacity to argue that this type of conduct falls within the scope of their official duties. There is no credible argument that participating in type of scheme to subvert justice can be viewed as "arising from their official investigation and prosecution of a professional conduct complaint." Order at 23. Here are the differences:

| NORMAL PROSECUTORIAL DUTIES | WHAT APPELLEES DID |
|---|---|
| Prepare witnesses for testimony, elicit testimony that the attorney believes to be truthful on the witness stand. | Intentionally suborn perjury from Defendant Sataki in order to knowingly place false, perjurious testimony onto the record in order to maliciously harm Mr. Klayman. Comp. ¶ 75, 76, 89, 91, 92. |
| Turn over relevant documents, including those that may be exculpatory to the other party | Intentionally and knowingly suppress material, exculpatory evidence. Comp. ¶ 81. Deny discovery without any plausible basis so that Mr. Klayman does not have |

| | |
|---|---|
| | an opportunity to discovery exculpatory evidence in furtherance of the scheme to knowingly suppress material, exculpatory evidence. Comp. ¶ 84. |
| Ensure that the record contains all relevant evidence, including exculpatory evidence once it is discovered. | Refuse to allow the record presented to the D.C.C.A to contain material, exculpatory evidence that was independently discovered by Mr. Klayman despite the concerted efforts of the Defendants to suppress it. Comp. ¶ 88. |

It is therefore clear that what the Bar Appellees did cannot plausibly be held to fall within the scope of their official duties, and the Lower Court egregiously erred in finding otherwise.

*Third*, it is clear that even judicial immunity, much like prosecutorial immunity, does not apply to claims for injunctive relief. Numerous courts have made this finding, including the Lower Court. "…[J]udicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity," *Moten v. Hatch*, 2011 U.S. Dist. LEXIS 97661, at *3 (D.D.C. Aug. 25, 2011). *See also Livingston v. Guice*, 1995 U.S. App. LEXIS 29238 (4th Cir. Oct. 18, 1995) ("Equally clear, however, is the principle that judges are not absolutely immune from suits for prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, 536-543, 80 L. Ed. 2d 565, 104 S. Ct. 1970 (1984). "Absolute" immunity, therefore, is only absolute insofar as it limits claims for damages brought against judges.") *Id.* at 10.

This was the finding reached by the United States Court of Appeals for the District of Columbia in its June 11, 2024 order in *Klayman v. Porter et al*, 22-7123, where it found that

Mr. Klayman's claims for injunctive relief against the Bar Appellees could proceed in another case:

> For the foregoing reasons, we vacate the district court's pre-filing injunction, affirm the district court's dismissal of Klayman's damages claims, and **reverse the district court's dismissal of Klayman's claims for injunctive relief as to all of the ODC Employees except Kaiser**. We remand to the district court for further proceedings on those injunctive-relief claims. (emphasis added).

This is further supported by the landmark case of *Pulliam v. Allen*, 466 U.S. 522 (1984), the United States Supreme Court expressly held that "[w]e conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." *Id.* at 541-42. In *Pulliam*, the Petition, Gladys Pulliam was a Magistrate judge. She had a practice of imposing bail on persons arrested for non-jailable offenses and then incarcerating those persons if they could not meet bail. *Id.* at 524. Respondents challenged this practice under 42 U.S.C. § 1983. The District Court found that this was a violation of due process and equal protection and enjoined Pulliam. *Id.* at 526. The Supreme Court affirmed. In doing so, it provided sound landmark legal reasoning that resonates and applies to this day:

> If the Court were to employ principles of judicial immunity to enhance further the limitations already imposed by principles of comity and federalism on the availability of injunctive relief against a state judge, it would foreclose relief in situations where, in the opinion of a federal judge, that relief is constitutionally required and necessary to prevent irreparable harm. Absent some basis for determining that such a result is compelled, either by the principles of judicial immunity, derived from the common law and not explicitly abrogated by Congress, or by Congress' own intent to limit the relief

> available under § 1983, we are unwilling to impose those limits ourselves on the remedy Congress provided. *Id.* at 539-40.
>
> We remain steadfast in our conclusion, nevertheless, that Congress intended § 1983 to be an independent protection for federal rights and find nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review. *Id*. at 541.

This Supreme Court precedent has been followed and adhered to by the U.S. Court of Appeals for the District of Columbia Circuit in *Wagshal v. Foster*, 307 U.S. App. D.C. 382, 28 F.3d 1249, 1251 (1994) (finding that the Appellant's claim for injunctive relief was not barred by judicial immunity). As recently as 2014, the Honorable Ketanji Brown Jackson ("Judge Jackson"), now a justice on the Supreme Court, cited both *Pulliam* and *Wagshal* in finding that "The Supreme Court has held that 'judicial immunity is not a bar to prospective [injunctive] relief against a judicial officer acting in her judicial capacity…" *Smith v. Scalia*, 44 F. Supp. 3d 28, 43 (D.D.C. 2014). Thus, under the firm and convincing precedent set by *Pulliam, Wagshal*, and *Smith*, claims for injunctive relief are not barred by judicial immunity.

There are numerous law review articles and other authority on judicial immunity which have discussed and confirmed this fundamental principle. *See* Absolute Judicial Immunity Makes Absolutely No Sense: An Argument for an Exception to Judicial Immunity, 84 Temp. L. Rev. 1071.; *see also* Note: Pulliam v. Allen: Harmonizing Judicial Accountability for Civil Rights Abuses with Judicial Immunity 34 Am. U. L. Rev. 523.

> Judicial immunity, unlike other forms of official immunity in the United States, is almost entirely a creation of the men and women it immunizes….Such

> analysis shows that the wall of judicial immunity, which uses its purposes as mortar, is not without cracks and under certain pressures should crumble. 84 Temp. L. Rev. 1071.
>
> In Pulliam v. Allen, the Court considered whether judicial immunity bars injunctive and declaratory relief, as well as legal fees associated with gaining that relief. In Pulliam, a county magistrate judge allegedly incarcerated persons for "nonjailable offenses….Similarly, American courts "never have had a rule of absolute judicial immunity from prospective relief." The Court noted that the concerns with granting injunctive relief against a judge were distinct from those alleviated by protecting judges from damages. Further, the Court noted that the hurdles for obtaining equitable relief are sufficiently high to guard against harassment of judges and the chance of compromising judicial independence is lower in the case of injunctions. 84 Temp. L. Rev. 1071
>
> In Pulliam v. Allen the Supreme Court took a major step in removing one of the last vestiges of sovereign immunity for members of the judiciary. In Pulliam the Court upheld the award of injunctive and declaratory relief under section 1983 and attorney's fees under section 1988 against a state magistrate who, although acting within a magistrate's proper jurisdiction, had violated a litigant's civil rights. Pulliam was the first Supreme Court case to reject judicial immunity by holding a judge civilly accountable for her conduct. 34 Am. U. L. Rev. 523

Mr. Klayman has asked for injunctive relief in his Complaint, and accordingly, it is clear that any grant of "absolute immunity," at a bare minimum, should not have applied to those claims.

### B. Mr. Klayman Has Properly Pled Causes of Action

As set forth in the foregoing section, Mr. Klayman more than sufficiently pled a cause of action under Rule 60. Rule 60 permits the Court to act where there has been a "fraud on the court." Dismissal for failure to state a claim under D.C. Super. Ct. R. Civ. P. 12(b)(6) is

"substantially the same" as Fed. R. Civ. P. 12(b)(6*). McBryde v. Amoco Oil Co.*, 404 A.2d 200 (D.C. 1979). When reviewing a Fed. R. Civ. P. 12(b)(6) motion to dismiss, the court must "accept the complaint's allegations as true and draw all reasonable inferences in favor of the non-moving party." *Gordon v. United States Capitol Police*, 778 F.3d 158, 163-164 (D.C. Cir. 2015).

A complaint "does not require detailed factual allegations." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (U.S. 2009) (internal quotations omitted). To survive a motion to dismiss, a complaint need only "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face*." Id.* (internal quotations omitted). As such, a motion to dismiss at this stage must be decided solely on what the Plaintiff has plead in the complaint, taken as true, and not upon any factual "contradictions" that the Defendants have attempted to insert. The Supreme Court has held that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 486 (U.S. 1935)

This case was disposed of at the motion to dismiss stage, without any discovery, and as such, the Lower Court fundamentally erred. Mr. Klayman's Complaint sets forth in meticulous detail each of the Appellees' participation in the fraudulent scheme to commit and suborn perjury and commit a fraud on the court. In sum, the Complaint more than sufficiently details the specific role of each of the Bar Appellees in this concerted scheme.

This includes Sataki and the ODC Appellees' role being to get the perjurious testimony onto the record, in addition to suppressing material evidence. Comp. ¶ 70. Tigar's and Fitch's role was to ensure that Mr. Klayman was denied even basic discovery - which would have allowed him to contemporaneously refute Sataki's perjurious statements as well as discovery the exculpatory evidence that was illegally suppressed by Sataki and the ODC Appellees. Comp. ¶ 84. Kaiser then intervened in when exculpatory material evidence was independently discovered by Mr. Klayman's legal team after the disciplinary hearing. As the head of the Board, Kaiser played his part by refusing to reopen the record or to even consider the newly discovered exculpatory evidence in order to ensure that the ODC Appellees and Sataki would not be held accountable for their illegal and unethical conduct." Comp.¶ 73. Of course, all of this was done with the understanding and agreement among all of the Appellees that any key witness testimony and conclusive evidence presented by Mr. Klayman would be ignored, minimized, or disregarded. In doing so, the Appellees ensured that record presented to the DCCA would be filled with uncorrected perjurious statements and devoid of exculpatory evidence, thereby forcing the DCCA's hand to simply adopt the Board's cooked, fatally flawed Report. This is a wholesale, concerted scheme to defraud the DCCA and to intentionally present a cooked, fraudulent, perjurious record that gave the DCCA no choice but to adopt without any real analysis the Board's Report.

Given this, the Lower Court's subsequent finding that Mr. Klayman failed to sufficiently plead a claim for civil conspiracy is erroneous. The elements of civil conspiracy

are: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or in a lawful act in an unlawful manner; and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to, and in furtherance of, the common scheme." *Griva v. Davison*, 637 A.2d 830, 848 (D.C. 1994). Mr. Klayman has more than shown this. The Lower Court, in a conclusory fashion, merely stated that because the Complaint failed to allege fraud on the court, there was no underlying tortious act to sustain a claim for civil conspiracy. As shown above, this is not true. Mr. Klayman has more than sufficiently shown a fraud on the court and the Lower Court's error must be reversed.

**III. At a Minimum, Mr. Klayman Should Have Been Granted Leave to Amend**

Mr. Klayman moved the Lower Court for leave to amend, contemporaneously with having opposed the Appellees' Motions to Dismiss. Specifically, Mr. Klayman sought leave to amend in order to moot out any potential issues and make his prayer for relief clear as to what he sought. As Mr. Klayman explained to the Lower Court, the proposed Amended Complaint would have (1) clarified the relief sought by Mr. Klayman is not to vacate the Suspension Order per se, as that would be left for the DCCA, but also to conduct discovery and a trial to ultimately obtain a judgment stating that the Suspension Order was procured through a perjury, the suborning of perjury, fraud and gross prosecutorial conduct on the court that can then be presented to the DCCA for them to ultimately vacate the Suspension; and (2) clearly laid out the distinct role that each and every Appellee had in committing a fraud on the court and that once discovery occurred and the Lower Court found the requisite

fraud, perjury, and suborning of perjury and other egregious prosecutorial misconduct, the corrected record could have then been submitted to the DCCA.

Mr. Klayman also argued convincingly that leave to amend should be "freely granted" under well-established precedent. District of Columbia Civil Rule 15(a)(3) states "[t]he court should freely give leave when justice so requires." Furthermore, "[l]eave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." *Richardson v. United States*, 193 F.3d 545, 548-49 (D.C. Cir. 1999). The U.S. Supreme Court has declared that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Davis v. Liberty Mut. Ins. Co*., 871 F.2d 1134, 1136 (D.C. Cir. 1989). Thus, the burden is on the opposing party to show that there is reason to deny leave. *In re Vitamins Antitrust Litigation*, 217 F.R.D. 30, 32 (D.D.C. 2003). The U.S. Supreme Court explained that "if the underlying facts or circumstances relied upon by a plaintiff may be a proper source of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman,* 371 at 182.

The Lower Court found that it lacked subject matter jurisdiction because it did not have the authority to overturn an order of the DCCA, a higher court. The proposed Amended Complaint clarified that this was not the relief sought by Mr. Klayman, and that he was not asking the Lower Court to overturn any order from the DCCA, but instead develop the record for this Court to ultimately act by vacating the suspension order. Thus, it was an

error for the Lower Court to find that leave to amend would have been futile under the facts herein.

## CONCLUSION

Based on the foregoing, it is clear that the Lower Court erred in adopting the arguments of the Appellees wholesale and finding that it lacked subject matter jurisdiction over this case. This finding was premised on a fundamental misunderstanding and misconstruing of the relief sought by Mr. Klayman, and the Lower Court then doubled down on this error by denying Mr. Klayman even leave to amend to correct this fundamental misunderstanding.

The Lower Court also incorrectly found that that the Bar Appellees enjoyed absolute immunity, which under the facts here where they have been alleged to have participated in a concerted scheme to defraud the Court, commit and suborn perjury, is a finding that simply does not make sense. There is no possible rational argument that such conduct falls within the scope of their official duties.

Accordingly, the entire March 1, 2024 omnibus order must be reversed and this matter remanded for further proceedings.

Oral argument is respectfully requested as this is compelling case of first impression with unique issues of fact and law.

Date: February 3, 2025

Respectfully submitted,

/s/ Larry Klayman
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was served through the Court's eservice procedures February 3, 2025.

/s/ Larry Klayman
Larry Klayman, Esq.