No. 24-CV-0226

IN THE

District of Columbia Court of Appeals

LARRY KLAYMAN,

Appellant,

v.

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

Appellees.

Appeal from an Order of the
District of Columbia Superior Court

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CERTIFICATE OF PARTIES

Pursuant to D.C. Court of Appeals Rule 28(a)(2)(A), Appellees provide 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 P. Fox – Appellee
Elizabeth A. Herman – Appellee
H. Clay Smith, III – Appellee
Julia L. Porter – Appellee
Office of Disciplinary Counsel – Appellee
Matthew Kaiser – Appellee
Michael Edward Tigar – Appellee
Warren Anthony Fitch – Appellee
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INTRODUCTION

If this case sounds familiar, that's because it is. For the twelfth time, Plaintiff Larry Klayman sued various individuals affiliated with the District of Columbia's attorney discipline system, in this instance Defendants Hamilton Fox, Elizabeth Herman, H. Clay Smith III, Julia Porter, the Office of Disciplinary Counsel, Matthew Kaiser, Michael E. Tigar, and Warren Anthony Fitch (collectively the Bar Defendants),[1] along with Appellee Elham Sataki, regarding his professional misconduct proceedings and the status of his license to practice law. Previously, this Court suspended Klayman from the practice of law for 18 months with a fitness requirement. It also denied his en banc petition seeking review of the panel's decision to suspend his law license. Rather than appeal to the U.S. Supreme Court—which has exclusive appellate jurisdiction over this Court's final judgments and

[1] The individual Defendants work or worked for the Board on Professional Responsibility, one of its Ad Hoc Hearing Committees, or the Office of Disciplinary Counsel. They are not agents of the D.C. Bar, and the D.C. Bar plays no role in disciplinary proceedings, as the moniker "Bar Defendants" may suggest. With that caveat, this brief continues to use "Bar Defendants" to maintain consistency with earlier briefing and the Appellant's Principal Brief, which refers to them as the "Bar Appellees."

orders—Klayman filed his latest lawsuit in the D.C. Superior Court, asking the Superior Court to "set aside and vacate" this Court's suspension of Klayman's law license because of the Bar Defendants' alleged fraud on this Court.

The D.C. Superior Court dismissed the complaint, concluding that (1) it lacked subject matter jurisdiction to review and alter this Court's final judgments and orders and (2) the complaint failed to state a claim upon which relief can be granted. Regarding jurisdiction, the Superior Court denied that D.C. Superior Court Rule of Civil Procedure 60(d) authorized it to invade the purview of the courts above it. On failure to state a claim, the Superior Court declined to revisit what many courts before it have already decided: that the Bar Defendants are immune from Klayman's claims because the allegations stem only from conduct wholly within their official duties. The Superior Court therefore dismissed, and it did so with prejudice, consistent with other courts' efforts to put a final stop to Klayman's ceaseless pursuit of harassing and frivolous suits against the Bar Defendants.

STATEMENT OF JURISDICTION

On March 1, 2024, the D.C. Superior Court dismissed Klayman's

complaint with prejudice both under Superior Court Rule of Civil Procedure 12(b)(1) for want of subject matter jurisdiction and under Superior Court Rule of Civil Procedure 12(b)(6) for failure to state a claim.[2] Klayman timely appealed. This Court has jurisdiction pursuant to D.C. Code § 11-721(a)(1).

STATEMENT OF THE ISSUES

1. Whether the D.C. Superior Court correctly dismissed Klayman's complaint for lack of subject matter jurisdiction where this Court has exclusive original jurisdiction over D.C. bar disciplinary proceedings, the U.S. Supreme Court has exclusive appellate jurisdiction over this Court's final judgments and orders, and Klayman asked the D.C. Superior Court to set aside this Court's prior order suspending Klayman's law license.

2. Whether the D.C. Superior Court correctly dismissed Klayman's complaint for the independent reason of failing to state a claim where the Bar Defendants are immunized from suit because the allegations related only to their official conduct, other courts have already held that

[2] Unless otherwise specified, any reference to a "Rule" is to the Superior Court Rules of Civil Procedure.

the Bar Defendants acted only within the scope of their duties in relation to the underlying allegations, the Superior Court lacked authority to overturn this Court's intact judgment, Klayman asserted an affirmative defense, not an independent cause of action, and all of Klayman's claims were speculative, vague, and conclusory.

STATEMENT OF THE CASE

Despite Klayman's florid statement of the case and facts, Appellant's Principal Brief ("APB") 1-11, this case is straightforward and simple. This Court already concluded that he violated numerous rules of professional responsibility and suspended his law license for 18 months with fitness, despite Klayman's vigorous objection. *See In re Klayman*, 282 A.3d 584, 598 (D.C. 2022). To reverse that suspension, Klayman sought to relitigate this Court's conclusions in a subsequent action filed in the subordinate D.C. Superior Court, alleging Rule 60(d), purported fraud on the court, and laches authorized the D.C. Superior Court to vacate this Court's judgment. The Superior Court dismissed Klayman's complaint with prejudice for two independent reasons: (1) lack of subject matter jurisdiction and (2) failure to state a claim.

STATEMENT OF THE FACTS

In 2010, Klayman's client, Elham Sataki, filed a complaint against him with the D.C. Office of Disciplinary Counsel (ODC or Office). App.017. The Office brought charges based on Sataki's complaint in 2017. *Klayman*, 282 A.3d at 589. In May 2018, an Ad Hoc Hearing Committee held a hearing on the complaint. App.030. According to Klayman, Sataki repeatedly perjured herself at the hearing. *Id.* The Committee nonetheless concluded Klayman "committed numerous disciplinary violations" and recommended this Court suspend Klayman's D.C. law license for 33 months with fitness. *Klayman*, 282 A.3d at 590.

With the Committee's recommendation pending, Klayman alleged that his "legal team independently" "uncovered evidence"—no less than a "smoking gun," according to Klayman—that was "fraudulently hidden" by Sataki and the ODC. App.032, 035. With this purported evidence in hand, Klayman asked the Board on Professional Responsibility (Board) to "open the record or even consider this new exculpatory evidence," App.035, but it declined because the motion raising the evidence "was received after the Board's recommendation

was pending in this [C]ourt," *Klayman*, 282 A.3d at 596. The Board subsequently adopted the Committee's findings and conclusions, although it recommended only an 18-month suspension with fitness. *Klayman*, 282 A.3d at 590, 598.

On September 15, 2022, this Court concurred with the Board and adopted its recommended sanction. *Id.* at 598. The Court addressed Klayman's allegations of prejudicial delay and bias and his effort to admit "fraudulently hidden" evidence. It rejected his request to dismiss based on delay, agreeing that the delay "was very unfortunate" but concluding that it did not amount to "substantial prejudice warranting dismissal." *Id.* at 592. The Court also concluded that the record "does not support Mr. Klayman's repeated assertions of bias." *Id.* at 593. The Court declined to address the evidentiary issue because Klayman failed to "adequately present[]" it, neglecting to confront the Board's reasoning or explain "applicable principles of law." *Id.* at 596. Finding the Board's credibility determinations sound and its factual findings supported by substantial evidence, this Court ruled that Klayman violated seven Rules of Professional Conduct. *Id*. at 594-97. It imposed the Board's recommended 18-month suspension with fitness. *Id.* at 598.

On September 29, 2022, Klayman then filed a rehearing petition, asking for en banc review of the panel decision suspending his law license. On October 6, 2022, this Court denied his petition.

Instead of petitioning the U.S. Supreme Court to review this Court's alleged errors, Klayman collaterally attacked this Court's order in its subordinate court, the D.C. Superior Court, by invoking Rule 60.[3]

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[3] Klayman has filed at least 11 other actions collaterally attacking disciplinary proceedings and the suspension of his D.C. law license. Those 11 cases include: *Klayman v. Fox*, No. 18-cv-1579 (D.D.C. July 3, 2018) ("*Klayman I*"); *Klayman v. Lim*, No. 18-cv-2209 (D.D.C. Sept. 24, 2018) ("*Klayman II*"); *Klayman v. Porter*, No. 2020 CA 000756 B (D.C. Super. Ct. Jan. 31, 2020) ("*Klayman III*"); *Klayman v. Porter*, No. 20-cv-02526-M (N.D. Tex. Aug. 26, 2020) ("*Klayman IV*"); *Klayman v. Porter*, No. 20-cv-1014 (W.D. Tex. Oct. 2, 2020) ("*Klayman V*"); *Klayman v. Kaiser*, No. 20-cv-09490 (N.D. Cal. Dec. 31, 2020) ("*Klayman VI*"); *Klayman v. Kaiser*, No. 21-cv-00727 (D.D.C. Mar. 19, 2021) ("*Klayman VII*"); *Klayman v. Porter*, No. 22-cv-80003-KAM (S.D. Fla. Jan. 3, 2022) (transferred from 15th Jud. Cir. Ct. Palm Beach Cnty., Fla., No. 50-2021-CA-013239) ("*Klayman VIII*"); *Klayman v. Porter*, No. 22-cv-00953 (D.D.C. Feb. 17, 2022) ("*Klayman IX*"); *Klayman v. Porter*, No. 22-cv-80642 (S.D. Fla. Apr. 25, 2022) (transferred from the 15th Jud. Cir. Ct. Palm Beach Cnty., Fla., No. 50-2022-CA-002797) ("*Klayman X*"); *Klayman v. Porter*, No. 22-cv-81295 (S.D. Fla. Aug. 22, 2022) (transferred from 15th Jud. Cir. Ct. Palm Beach Cnty., Fla., No. 2022-CA-006589) ("*Klayman XI*").

So far, the courts have rejected his attacks. *See Klayman v. Lim*, 830 F. App'x 660, 662 (D.C. Cir. 2020) (affirming dismissal of *Klayman I* and *II*); Order Granting Defendants Office of Disciplinary Counsel and Porter's Motion to Dismiss, *Klayman v. Porter*, No. 2020 CA 000756 B

App.034; *see* 28 U.S.C. § 1257 (granting U.S. Supreme Court exclusive appellate jurisdiction over D.C. Court of Appeals's "[f]inal judgments or decrees"); App.013-128 (complaint below filed November 4, 2022). In the Superior Court, Klayman "challenge[d] the Suspension Order and Judgment of September 15, 2022 issued by the District of Columbia Court of Appeals" that "suspended [him] for a period of eighteen (18) months." App.016. He renewed his complaints about prejudicial delay, App.017, 034, 039-040, bias, App.016, 022-029, perjury, App.030-032, 035-039, and suppressed evidence, App.032-035, 037-039. Indeed, Klayman described this case as merely "a continuation of *In re*

(D.C. Super. Ct. Oct 1, 2020) (dismissing *Klayman III*); *Klayman v. Kaiser*, No. 21-cv-00727, ECF No. 19 (D.D.C. Jan 23, 2023) (dismissing *Klayman VII*); *Klayman v. Porter*, No. 22-cv-80003, ECF No. 8 (S.D. Fla Jan. 6, 2022) (voluntary dismissal of *Klayman VIII*); *Klayman v. Porter*, 22-cv-00953, 2023 WL 2496738 (D.D.C. Mar. 14, 2023) (dismissing *Klayman IX*); *Klayman v. Porter*, No. 22-cv-80642, ECF No. 20 (S.D. Fla Aug. 8, 2022) (dismissing *Klayman X*); *Klayman v. Porter*, No. 22-cv-81295, ECF No. 11 (S.D. Fla. Sept. 30, 2022) (dismissing *Klayman XI*). In the remaining case, the district court dismissed Klayman's claims for damages against three individual Bar Defendants and is considering their motion to dismiss his remaining claim for injunctive relief. *Klayman v. Porter*, No. 20-cv-3109 (D.D.C.) (*Klayman IV*, *V*, and *VI* after their transfer to D.D.C. and consolidation); *see also Klayman v. Porter*, 104 F.4th 298 (D.C. Cir. 2024) (affirming dismissal of damages claims based on Bar Defendants' immunity but remanding for consideration of claim for injunctive relief).

Klayman" because he seeks "relief from [the Court of Appeals's] judgment." App.016. Klayman expressly and repeatedly asked the D.C. Superior Court to vacate the Court of Appeals's suspension order. App.017, 030, 039, 040. Klayman twice described vacatur as "the only possible remedy." App.030 (complaint); App.289 (proposed amended complaint).

The Bar Defendants moved to dismiss the complaint for lack of subject matter jurisdiction and for failing to state a claim for relief. App.395. Klayman moved to amend his complaint. App.264-387.

The Superior Court agreed that it lacked jurisdiction. It observed that it "does not have the authority or jurisdiction to vacate the order of … this jurisdiction's higher appellate court." App.408. The D.C. Code vests the D.C. Court of Appeals with exclusive jurisdiction both to discipline D.C.-barred attorneys and to review the D.C. Superior Court's orders and judgments, not vice versa. App.409, 411. Rule 60 does not permit a plaintiff to manufacture jurisdiction where none exists. App.411. "Mr. Klayman cites no authority for such a proposition, and the Court knows of none." App.411 (quoting Order of Suspension at 2, *In re Klayman*, No. 22-8521 (D.C. Cir. June 6, 2023)).

Even if it had jurisdiction, the Superior Court dismissed Klayman's complaint for a second, independent reason: failure to state a claim. The Superior Court agreed that Mr. Klayman failed to state a claim for relief that overcame the Bar Defendants' absolute immunity. App.412-13. And where "prior courts have already ruled that the Bar Defendants were not acting outside the scope of their duties" in the underlying disciplinary proceedings, "the Court will not now allow [Klayman] to relitigate this settled issue." App.413 (citing *Klayman v. Porter*, No. 22-cv-953, 2023 WL 2496738, at *6 (D.D.C. Mar. 14, 2023)).

The Superior Court also denied Klayman leave to amend, deeming his proposed amended complaint "simply futile." App.421. Klayman's newly requested relief, a Superior Court "judgment finding that [this Court's] Suspension Order was procured through Defendants' perjury, suborning of perjury, fraud on the court, and egregious prosecutorial misconduct," App.299, 300, did not remedy the court's lack of jurisdiction, App.421 (noting it was still "not clear to the Court how Plaintiff expects the Court to assist him in obtaining relief from a Suspension Order issued by the Court of Appeals."). The Superior Court explained that the case on which "Plaintiff rests his pleading,"

App.420, involved a higher court reviewing a lower court, not the reverse, App.421. Plaintiff's proposed amended conspiracy claim was also "futile as it fails to meet the requisite pleading standards." App.422.

Klayman timely appealed the Superior Court's dismissal. App.388.

SUMMARY OF THE ARGUMENT

First, Rule 60(d) does not confer jurisdiction on any court. The rule merely recognizes a court's inherent power to remedy manifest injustices regardless of Rule 60(c)'s one-year limitation on motions under Rule 60(b). Rule 60(d) therefore does not change the fact that this Court had exclusive jurisdiction here and the Superior Court had none. Klayman's argument for a different remedy is irrelevant, because without jurisdiction, there is no remedy to be had.

Second, even if Klayman could survive the threshold issue of subject matter jurisdiction, the complaint fails to state any claim upon which relief may be granted. There is nothing new in Klayman's allegations. And as other courts before it have held, the Superior Court concluded that the Bar Defendants are immune from Klayman's suit

because it implicates only their official conduct. On top of this, neither the Superior Court nor any of the named defendants—several of whom no longer hold positions with the Board, its committees, or the ODC—have the authority to grant and effectuate the relief Klayman seeks: vacatur of this Court's final order. And laches, Klayman's third cause of action, is an affirmative defense, not a cause of action. Finally, even if the claims could surpass all these hurdles, Klayman has failed to plead any of them with sufficient particularity to survive dismissal. The Superior Court therefore correctly dismissed his complaint and properly did so with prejudice because any amendment would be futile.

STANDARD OF REVIEW

The issue of subject matter jurisdiction is a question of law that this Court reviews de novo. *Grayson v. AT & T Corp.*, 15 A.3d 219, 228 (D.C. 2011). Dismissal for failure to state a claim is likewise reviewed de novo. *Id.* This Court must "accept the allegations of the complaint as true, and construe all facts and inferences in favor of" the nonmoving party. *Id.* (citation omitted). This Court reviews a trial court's denial of a motion to amend a complaint for abuse of discretion. *Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 402 (D.C. 2023).

ARGUMENT

I. The D.C. Superior Court Correctly Dismissed This Case For Lack Of Subject Matter Jurisdiction.

On appeal, Klayman does little to refute the Superior Court's jurisdictional holding. He does not dispute that this Court has exclusive jurisdiction over attorney discipline in the District of Columbia. App.411. He does not dispute that, as a subordinate court, the D.C. Superior Court cannot vacate the judgments of, or compel any action by, this Court, its higher appellate court. App.408. Indeed, he implicitly concedes as much, arguing that he "does not require the [Superior] Court to vacate this [Court's] order of suspension." APB 14. He does not dispute that courts have repeatedly denied his prior motions under Rule 60's federal equivalent as improper. App.409-410 (citing *Klayman v. Rao*, 49 F.4th 550, 553 n.3 (D.C. Cir. 2022); *Klayman v. Jud. Watch, Inc.*, No. 19-cv-2604, 2021 WL 602900, at *5 (D.D.C. Feb. 16, 2021)); *see also Klayman v. Rao*, 49 F.4th at 554 ("Klayman cites no authority, nor are we aware of any, in which a litigant was allowed to collaterally attack another federal court's judgment under Rule 60(d)(1)."); *Klayman v. Jud. Watch, Inc.*, 2021 WL 602900, at *5 ("Rule 60 does not provide an avenue for relief … in this court.").

Instead, Klayman makes two arguments.[4] One, despite the prior rulings against him, he claims that "this case was brought pursuant to [Rule] 60(d)," APB 12, "which expressly provides an avenue of relief under these circumstances," APB 16. In other words, "Rule 60(d) says I can." Two, although he is "not … 'relitigati[ng] … the Sataki Matter," APB 15, "the true relief" he seeks from the Superior Court is to "conduct[] discovery and a trial and issu[e] a judgment finding that the Suspension Order was procured through a" litany of the Bar Defendants' alleged misconduct, APB 14-15.

Neither argument meaningfully addresses jurisdiction; both lack merit. Rule 60(d) does not confer the jurisdiction that the Superior Court lacks. § I.A. Because this Court has exclusive authority over, and original jurisdiction to review, D.C. Bar disciplinary proceedings, the Superior Court has none. § I.B. Klayman offers not a single authority to the contrary. § I.C. Because it lacks any jurisdiction, the Superior Court can only dismiss the complaint; it cannot grant Klayman an alternative remedy. § I.D. This Court should therefore affirm the Superior Court's dismissal with prejudice for lack of subject

[4] He enumerates four, but they distill to just two.

matter jurisdiction.

A. Rule 60(d) does not confer jurisdiction on the Superior Court.

Rule 60(d) confers no jurisdiction; it is merely a savings clause reaffirming a court's inherent equitable powers against the limitations of Rule 60(c). *United States v. Foy*, 803 F.3d 128, 134 (3d Cir. 2015) (FRCP 60(d) "is a savings clause" that "by itself does not vest a district court with jurisdiction"); *see also In re Old Carco LLC*, 423 B.R. 40, 50-51 (S.D.N.Y. 2010) (FRCP 60(d) "is not an affirmative grant of power," just "a recognition" of the court's inherent power).[5] Rule 60(b) authorizes a court to relieve a party from a judgment for reasons including excusable neglect, newly discovered evidence, and fraud, but Rule 60(c) requires that such motions be brought within one year of

[5] Because Rule 60(d) mirrors the corresponding Federal Rule of Civil Procedure 60(d), this Court "may look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule." *Am. Fed'n of Gov't Emps. Nat'l Off. v. D.C. Pub. Emps. Relations Bd.*, 237 A.3d 81, 89 n.2 (D.C. 2020). Klayman's objection to the Superior Court's reliance on *Klayman v. Rao*, No. 21-cv-02473, 2021 WL 4948025 (D.D.C. 2021) because it "involved a case brought in federal court" that "did not invoke" D.C.'s rule, APB 16, is both meritless and ill-advised, as his own jurisdictional argument relies on two federal cases applying Federal Rule of Civil Procedure 60. *See* APB 12.

entry of judgment. Super. Ct. Civ. R. 60. Rule 60(d) simply clarifies that Rule 60(c)'s one-year limitation does not affect a court's inherent equitable power to grant relief from "a grave miscarriage of justice," *United States v. Beggerly*, 524 U.S. 38, 47 (1998),[6] or "fraud on the court," a more egregious species than mill-run "fraud" under Rule 60(b)(3), *Marco Destin, Inc. v. Levy*, 690 F. Supp. 3d 182, 191 (S.D.N.Y. 2023). *See* Super. Ct. Civ. R. 60; *see also Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944) *overturned on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 17, 18 & n.2 (1976) (describing the historic equity rule allowing courts "to fulfill a universally recognized need for correcting injustices" that FRCP 60(d) codifies).

As a savings clause, Rule 60(d) does not affect a court's subject matter jurisdiction. *Foy*, 803 F.3d at 134; *Inland Concrete Enters., Inc. v. Kraft*, 318 F.R.D. 383, 416-17 (C.D. Cal. 2016) ("No part of [FRCP]

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[6] Prior to 2007, the language of the current Federal Rule of Civil Procedure 60(d) was included in subsection (b), so older cases, like *Beggerly*, will refer to Rule 60(b) as the basis for equitable relief. *Jackson v. Thaler*, 348 F. App'x 29, 34 & n.6 (5th Cir. 2009) (explaining revision). D.C. Superior Court Rule of Civil Procedure 60 was amended to mirror the revised federal rule. Super. Ct. Civ. R. 60, Comment to 2017 Amendments.

60(d) confers any authority to vacate a judgment that the court does not already have pursuant to statute, case law, or some *other* rule."); Super. Ct. Civ. R. 82 ("These rules do not extend or limit [a court's] jurisdiction."); Fed. R. Civ. Proc. 82 (same). Unless a court can invoke ancillary jurisdiction over its own case, a Rule 60(d) request must have "an independent basis for jurisdiction." *Beggerly*, 524 U.S. at 46; *Marino v. Pioneer Edsel Sales, Inc.*, 349 F.3d 746, 754 n.2 (4th Cir. 2003) ("[A]ncillary jurisdiction merely authorized the district court … to decide an issue over which it already had jurisdiction.").

B. This Court has exclusive jurisdiction over attorney discipline; the Superior Court has none.

Klayman must therefore identify a source of jurisdiction other than Rule 60(d). He cannot. Congress has vested in this Court authority to regulate the practice of law within the District of Columbia. P.L. No. 91-358, 84 Stat. 521 (1970) (codified at D.C. Code § 11-2501) (this Court "shall make such rules … respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion"). This Court retains "exclusive authority" over the professional discipline of D.C. Bar members. *Bergman v. District of Columbia*, 986 A.2d 1208, 1229 (D.C.

2010); *see In re Fair*, 780 A.2d 1106, 1115 (D.C. 2001); *Doe v. Bd. on Pro. Resp. of D.C. Ct. of Appeals*, 717 F.2d 1424, 1428 (D.C. Cir. 1983).

This Court exercises its exclusive authority through several administrative "arm[s] of the court," including the D.C. Bar, the Committee on Admissions, and the Board of Governors. *Sitcov v. D.C. Bar*, 885 A.2d 289, 295 (D.C. 2005). It appoints the Board on Professional Responsibility to undertake disciplinary actions against Bar members. D.C. Bar Rule XI, § 4; *see Doe*, 717 F.2d at 1426 n.1, 1428; *In re Goffe*, 641 A.2d 458, 464 (D.C. 1994). In addition to regulating attorney discipline, this Court has original jurisdiction to review members' claims regarding admission and discipline. *In re Diviacchi*, 308 A.3d 1194, 1198 (D.C. 2024) ("this court has original jurisdiction to review Mr. Diviacchi's claims" regarding pending discipline and readmission to the Bar); *Bergman*, 986 A.2d at 1229 n.23 ("[T]his court's authority over the practice of law in the District of Columbia included original jurisdiction to review a decision by the Board of Governors … to suspend a member of the Bar for non-payment of Bar dues"); *Original Jurisdiction*, Black's Law Dictionary (12th ed. 2024) ("A court's power to hear and decide a matter before any other

court can review the matter.").

Notably, the D.C. Superior Court has no role in this disciplinary structure. As a subordinate court, "the Superior Court is without authority to hold or declare invalid a rule or policy of this Court within the ambit of its plenary authority under § 11-2501." *Sitcov*, 885 A.2d at 296 (quoting *Kennedy v. Educ. Testing Serv. Inc.*, 393 A.2d 523, 525 (D.C. 1978)); *see also Winslow v. FERC*, 587 F.3d 1133, 1135 (D.C. Cir. 2009) ("Vertical stare decisis … is a critical aspect of our hierarchical Judiciary."); *Ortiz v. Pratter*, No. 15-cv-00481, 2015 WL 1546252, at *1 (D.D.C. Apr. 3, 2015) ("This Court can neither review the decisions of its sister court nor compel it to act."). This Court's original jurisdiction over disciplinary matters "*must be exclusive of, not concurrent with, that of the Superior Court*." *Sitcov*, 885 A.2d at 296 (citation omitted). The Superior Court therefore can have neither ancillary nor original jurisdiction over a case within this Court's exclusive, original jurisdiction. *United States v. Sumner*, 226 F.3d 1005, 1013 (9th Cir. 2000).

Rather than file suit in the D.C. Superior Court, Klayman could seek relief from this Court's final judgment only by petitioning the U.S.

Supreme Court for certiorari under 28 U.S.C. § 1257. *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). Klayman must know that. When he sued in D.C.'s federal district court to enjoin this Court's temporary suspension of his law license in February 2021, the court granted defendants' motion to dismiss and advised Klayman that the correct "legal recourse" is to "appeal a final decision of the DCCA to the United States Supreme Court." *Klayman v. Blackburne-Rigsby*, No. 21-cv-0409, 2021 WL 2652335, at *4 (D.D.C. June 28, 2021). Klayman failed to take advantage of the available and adequate relief of direct appeal, and he cannot manufacture jurisdiction in the Superior Court now by artfully pleading Rule 60. *Klayman v. Jud. Watch, Inc.*, 2021 WL 602900, at *7 (Rule 60(d) relief unavailable because "Klayman had an adequate remedy at law to prosecute his claims"); *see Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) (allowing creditors to collaterally attack in Texas federal district court an injunction issued by Florida federal bankruptcy court would "seriously undercut[] the orderly process of the law").

C. Klayman offers not a single case supporting his jurisdictional inversion.

Tellingly, Klayman is unable to identify *any* authority permitting

an inferior court to exercise Rule 60 jurisdiction over a case within the exclusive, original jurisdiction of its higher appellate court. In *Beggerly*, APB 12, the plaintiffs filed their Federal Rule of Civil Procedure 60 challenge in the same district court that heard the parties' original quiet-title action 12 years earlier. 524 U.S. at 39. In *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*, APB 12, the plaintiff filed her motion to vacate an arbitration award and her Rule 60(b) motion to vacate the judgment confirming the award in the D.C. Superior Court. 858 A.2d 457, 461 (D.C. 2004). In *Dankese Engineering, Inc. v. Ionics, Inc.*, APB 12, the plaintiff moved under Federal Rule of Civil Procedure 60 to set aside judgment in the same district court that entered judgment. 89 F.R.D. 154, 156 (D. Mass. 1981).

Indeed, in *Klayman v. Rao*, APB 16, in which Klayman himself sought to vacate prior district court judgments against him without specifically invoking Federal Rule of Civil Procedure 60, he filed in the same district court that originally entered the challenged judgments. 2021 WL 4948025, at *1. Dismissing his complaint *sua sponte*, the district court highlighted the limits of its jurisdiction as a subordinate

trial court: It "cannot exercise appellate mandamus over other courts" and "cannot compel other Article III judges *in this or other districts or circuits* to act." *Id.* at *4 (cleaned up; emphasis added).

Klayman's jurisdictional argument includes only these four cases. APB 11-16. None affirmed anything remotely like his "novel" jurisdictional argument and one expressly rejected it. App.421.

D. The Superior Court lacks jurisdiction regardless of what relief Klayman requests.

Attempting to avoid the inexorable conclusion that the Superior Court lacks jurisdiction to vacate the judgment of this Court, Klayman recharacterizes the relief he seeks. APB 14-16. He contends that the Superior Court must give him "discovery and a trial," APB 14-15, to "set the record straight," APB 15. With this "corrected record," APB 15, and an aspirational Superior Court "judgment finding that the Suspension Order was procured through" misconduct, APB 14, Klayman asserts that this Court "can then determine whether to vacate the suspension order itself," APB 15. Klayman unsuccessfully moved to amend his complaint on the same basis below. App.415-416, APB 26-28. The Superior Court deemed this motion "simply futile" because it was still without jurisdiction "to assist him in obtaining relief from a Suspension

Order issued by the Court of Appeals." App.421.

Unfortunately for Klayman, requesting different relief does not remedy the Superior Court's lack of jurisdiction. *Capitol Hill Hosp. v D.C. State Health Plan. & Dev. Agency*, 600 A.2d 793, 799-800 (D.C. 1991) (a court lacks jurisdiction where "it has not been given power by the [District] to entertain the particular action" (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 105, cmt. a (1971))). Having relied only on Rule 60(d), App.014, 016-017, 037, 039 (complaint), App.272, 274-275, 297 (proposed amended complaint), Klayman asserted no valid basis for jurisdiction. *See supra* §§ I.A, I.B. Requesting a new remedy premised on the same defective jurisdiction does not change the result—without jurisdiction the Superior Court cannot grant *any* relief. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("[W]hen [jurisdiction] ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868))); *Sum-Slaughter v. Fin. Indus. Regul. Auth., Inc.*, 320 A.3d 313, 321 (D.C. 2024) (same). Regardless of remedy, "a court cannot grant [it] without a cause of action" over which it has jurisdiction. *Sum-Slaughter*, 320 A.3d at 324 (Superior Court

lacked jurisdiction to grant an equitable remedy on a cause of action vested exclusively in the jurisdiction of federal courts). In short, without jurisdiction there is no remedy at all.

The Superior Court correctly determined it lacked jurisdiction to decide Klayman's complaint. It also correctly denied him leave to amend. *See infra* § II.C. He fails to show otherwise on appeal. This Court should affirm on that basis.

II. The Superior Court Properly Dismissed The Complaint For The Additional Reason Of Failure To State A Claim.

Even if the complaint could survive the threshold issue of subject matter jurisdiction, this Court should still affirm because Klayman has failed to show that the Superior Court's second, independent reason for dismissal—failure to state a claim—was erroneous.

Klayman raised three purported causes of action in his complaint: (1) that he is entitled to relief from this Court's order under Rule 60(d) based on the Bar Defendant's purported fraud on the court (Claim 1), (2) that the Bar Defendants conspired to commit a fraud on the court (Claim 2), and (3) laches (Claim 3). None "state a claim upon which relief can be granted." Super. Ct. Civ. R. 12(b)(6).

Begin with Klayman's fraud-based claims (Claims 1 and 2). On

the merits, the Bar Defendants are immune from suit because the alleged conduct was within the scope of their official duties. Indeed, other courts facing this exact issue have repeatedly held as much. § II.A.1. Even if immunity were not at play, Klayman sought relief that the Superior Court lacked authority to grant. No statute or rule grants the Superior Court the ability to "set aside and vacate" this Court's order, App.039—the only relief, aside from attorney's fees, Klayman sought. § II.A.2. Assuming for argument's sake that Klayman could pierce the Bar Defendants' immunity and establish the Superior Court's jurisdiction, his complaint does not adequately plead his claims of fraud because Klayman relies on generalized accusations and conclusory statements. § II.A.3. Klayman's laches claim fares no better. Laches is an affirmative defense, not an independent cause of action. Even if it could stand on its own, it still must be dismissed as vague, speculative, and conclusory. § II.B. Klayman ignores these fatal flaws, blithely proceeding as though the Superior Court did not explain their consequences. The Superior Court's decision to dismiss with prejudice, rather than allow Klayman to amend his complaint or file a thirteenth frivolous suit, was proper. § II.C. This Court should affirm the

Superior Court's dismissal with prejudice for the independent reason of failure to state a claim.

A. Klayman's fraud-based claims (Claims 1 and 2) cannot survive under the dismissal standard.

The Superior Court dismissed Klayman's fraud-based claims for two reasons: (1) the Bar Defendants are immune from suit because the relevant conduct was wholly within their official duties, and (2) the Superior Court lacked authority to grant the relief Klayman sought. Both conclusions are correct.

1. The Bar Defendants are immune from Klayman's fraud-based claims.

Although styled differently, nothing in Klayman's current complaint is materially different from its predecessors. *See supra* pp. 6 note 2, 8. In this complaint, Klayman alleges that the Bar Defendants "have committed a fraud on [the D.C. Court of Appeals] by willfully suppressing exculpatory evidence and suborning … perjury at the disciplinary hearing." App.037; *see also* App.039; APB 19-20. The underlying allegations, as this Court is well aware, are not new and have been adjudged by many courts similarly presented with the same accusations about the adjudication of Klayman's D.C. Bar disciplinary

proceedings and the Bar Defendants' purported biases against and injustices to Klayman. For example, a federal district court, faced with materially identical allegations, previously held that "the basis for [Klayman's] claims consists of actions taken by the [Bar Defendants] in their capacities as members of the ODC and the Board." *Klayman v. Porter*, 2023 WL 2496738, at *5-6; *see also, e.g.*, Order Granting Defendants Office of Disciplinary Counsel and Porter's Motion to Dismiss at 9, *Klayman III* (D.C. Super. Ct. Oct. 1, 2020) (holding the same). Likewise, multiple courts have decided that D.C. Bar Rule XI, § 19(a), "expressly confers absolute immunity from suit on the Disciplinary Counsel and members of that office for actions taken in the course of their official duties" and accordingly dismissed Klayman's complaint, time and time again. *Klayman v. Porter*, 2023 WL 2496738, at *5 (citation omitted) (collecting cases); *see supra* p. 6 note 2.

The Superior Court reached the same conclusion here—that the Bar Defendants are immune from Klayman's suit. Citing D.C. Bar Rule XI, § 19(a), the Superior Court found that "the Bar Defendants are … subject to immunity for actions arising from their official conduct taken as members of the Disciplinary Counsel and Board." App.412-413. And

because "prior courts have already ruled that the Bar Defendants were not acting outside the scope of their duties in relation to the underlying allegations," the Superior Court declined to "allow [Klayman] to relitigate this settled issue." App.413 (citing *Klayman v. Porter*, 2023 WL 2496738). The Superior Court therefore held that the Bar Defendants are immune from Klayman's claims. App.413.

On appeal, Klayman concedes that Rule XI grants "absolute immunity" for the Bar Defendants' official conduct. APB 17. He challenges, however, the rule itself, arguing that Rule XI—promulgated by this Court—amounts to this Court "creat[ing] law" and invading the purview of Congress and D.C. legislators. APB 17. Not so. As the Superior Court explained, D.C. Code § 11-2501(a) authorizes this Court to "make such rules as it deems proper respecting the examination, qualification, and admission of persons to memberships in its bar, and their censure, suspension, and expulsion." D.C. Code § 11-2501(a); *see* App.413; *see supra* § I.B. Rule XI is precisely that. Klayman never mentions, much less reconciles, § 11-2501(a) with his argument that this Court "simply decided that it enjoys absolute immunity on its own," without any basis from "Congress or District of Columbia legislators."

APB 17-18.[7]

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[7] Although Klayman agrees that Rule XI provides absolute immunity, he later argues that there is a carve-out for injunctive-relief claims, pointing to the judicial-immunity exception that allows prospective injunctive relief against a judicial officer acting in her judicial capacity. APB 20-23. This argument is easily disposed. For one, although common law has long recognized that the immunity of judges from damages liability does not immunize them from equitable relief regarding their judicial practices, Klayman fails to cite any authority supporting a carve-out for the Bar Defendants' absolute immunity as provided in Rule XI. Indeed, multiple courts have held that the Bar Defendants are entitled to absolute immunity under Rule XI. *Supra* 27. And *Klayman v. Porter*, 104 F.4th 298, did not hold otherwise. *See* APB 20-21. Rather, the D.C. Circuit held that the "district court erred by dismissing his claims for injunctive relief under the *Younger* abstention doctrine," *Klayman v. Porter*, 104 F.4th at 312. In other words, it did not speak to the merits of whether his injunction claims could survive.

Further, Klayman's injunction claims in *Klayman v. Porter* were also markedly different than the relief sought here. There, Klayman asked for an order requiring that the defendants "provide him with copies of … *ex parte* letters" related to the disciplinary proceedings, not the undoing of this Court's final order. *Id.* at 302. Klayman has failed to show how the Bar Defendants—especially those no longer affiliated with the D.C. Bar's disciplinary functions—could effectuate prospective relief in the same way that a judge faced with a prospective injunction could. *Infra* 32-33. Indeed, the D.C. Circuit *affirmed* "on mootness grounds the district court's dismissal of Klayman's claims for injunctive relief against the now-former Board Chairman Matthew Kaiser." *Klayman v. Porter*, 104 F.4th at 305-06. Even the cases Klayman points to do not support his argument that immunity is inapplicable here. *See, e.g.*, *Moten v. Hatch*, No. 11-1556, 2011 WL 3847437, at *1 (D.D.C. Aug. 30, 2011) ("Plaintiff's dissatisfaction with these judges' rulings may be addressed by means of appeals to the [court above it]," not "injunctive relief."). At bottom, Klayman's diatribe about judicial immunity is simply a red herring.

For similar reasons, the two cases to which Klayman points on this issue are completely inapt. First, Klayman relies on Justice Thomas's concurrence, joined by Justices Scalia and Alito, in *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014). APB 17. In his concurrence, Justice Thomas cautioned that "we cannot draw from Congress' silence … an inference that Congress approved of" a Supreme Court judge-made doctrine. *Halliburton*, 573 U.S. at 299. That may be true, but there is no comparable silence here. D.C. legislators have explicitly authorized this Court to promulgate Rule XI. *See supra* § I.B.

Second, Klayman's other authority, *Wilder-Mann v. United States*, Civ. A. Nos. 87-2392, 90-2136, 1993 WL 260700 (D.D.C. June 28, 1993), advances the ball no farther. *See* APB 17. There, plaintiff brought a spoliation-of-evidence tort claim under the Federal Tort Claim Act, but the district court held that the law did not provide "a cause of action … for the injuries [plaintiff] allege[d]." *Wilder-Mann*, 1993 WL 260700, at *1 (citation omitted). The *Wilder-Mann* plaintiff urged the court to adopt the tort anyway, "to 'rectify the inequities under the current law.'" *Id.* (citation omitted). The district court "doubted[that it ha[d]

the power" to create the tort and "[e]ven assuming" it did, the district court "decline[d] to do so." *Id.* Nothing about *Wilder-Mann* requires overturning Rule XI.

Klayman's remaining quibbles with whether the Bar Defendants' conduct was within the scope of their official duties do nothing to show error in the Superior Court's decision. Indeed, Klayman completely ignores the basis of the Superior Court's decision—that "prior courts have already ruled that the Bar Defendants were not acting outside the scope of their duties" and the Superior Court would "not allow [Klayman] to relitigate this settled issue." App.413. In any event, Klayman's allegations concern only actions that fall squarely within the Bar Defendants' official duties, which include "[t]o investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction … which may come to the attention of Disciplinary Counsel or the Board" and "[t]o prosecute all disciplinary proceedings before Hearing Committees, the Board, and the Court." D.C. Bar Rule XI, § 6(a). The entirety of Klayman's allegations related to the Bar Defendants' official conduct in the investigation and prosecution of a professional conduct complaint against Klayman. *See*

App.015-040 (complaint); *e.g.*, App.030 (alleging that the Bar Defendants' liability stems from conduct such as "repeatedly deny[ing] Mr. Klayman leave to conduct discovery" and "refusing to reopen the record or to even consider the newly discovered exculpatory evidence").

At bottom, Klayman has failed to engage meaningfully with the Superior Court's decision or the flaws in his complaint that it identified. This Court should affirm the dismissal of the fraud-related claims because of the Bar Defendants' immunity.

2. The Superior Court lacks authority to vacate this Court's final judgments and orders, as do the Bar Defendants.

Even if the Superior Court could evaluate the merits of Klayman's fraud-based claims, the Superior Court lacks authority to grant the relief Klayman sought: "set[ting] aside the ruling of" this Court. App.413; *see supra* § I. No statute or rule grants the Superior Court such authority, and so, the Superior Court properly concluded that Klayman "fail[ed] to allege a claim upon which relief can be granted," App.414. This Court should affirm the dismissal of the fraud-related claims for the additional reason that the Superior Court lacked authority to grant the relief sought.

Even if the Superior Court had subject matter jurisdiction and the authority to grant the relief sought, the Bar Defendants lack the power to grant the relief Klayman seeks. None of the nine defendants named in the complaint can vacate this Court's suspension order. The ODC and the Board operate under the authority of this Court, and it is this Court that has the ultimate power to suspend or disbar attorneys from practicing law in D.C. Klayman has never explained how the Bar Defendants could effectuate the relief sought by overruling this Court's order and restoring his law license. Nor could he, as many (Kaiser, Herman, Smith, and Fitch) are no longer serving on the Board or one of its hearing committees or employed by the ODC. Therefore, even if the ODC or the Board could somehow overturn this Court's final judgment, the claims against Kaiser, Herman, Smith, and Fitch must be dismissed because they "cannot provide the requested relief." *Francis v. Recycling Sols., Inc.*, 695 A.2d 63, 70 (D.C. 1997); *see Klayman v. Porter*, 104 F.4th at 312 (affirming dismissal of injunctive claims "against Kaiser on mootness grounds because [he] no longer serves on the Board.").

3. The complaint does not adequately plead the fraud-based claims.

Even if Klayman could establish that his fraud-based claims were

properly before the Superior Court and even if he could show that the Bar Defendants were not immune from suit, the claims still must be dismissed because Klayman has failed to plausibly plead them. *See* App.412-413.

To survive a motion to dismiss under Rule 12(b)(6), a "complaint must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The facts pled "must support a 'reasonable inference that the Defendant is liable for the misconduct alleged,'" otherwise, dismissal is appropriate. Order Granting Defendants Office of Disciplinary Counsel and Porter's Motion to Dismiss at 8, *Klayman III* (D.C. Super. Ct. Oct. 1, 2020) (citation omitted). Klayman's complaint fails to satisfy this standard.

To plead a claim for fraud, a plaintiff must "state with particularity the circumstances constituting fraud or mistake by providing the time, place, and contents of the false representations, the facts misrepresented, and what was obtained or given up as a consequence of the fraud" and "invest the complaint with indicia of reliability." *Phone Recovery Servs., LLC v. Verizon Wash., DC, Inc.*, 191

A.3d 309, 322 (D.C. 2018) (internal quotation marks and citation omitted). The fraud must be specifically alleged as to each defendant, specifying "which defendant or defendants committed each allegedly fraudulent act, instead of pleading fraud generally as to all of the defendants." *Jackson v. ASA Holdings, LLC*, 751 F. Supp. 2d 91, 100 (D.D.C. 2010) (alteration omitted). The pleading standard for fraud on the court is even more demanding. "Fraud upon the court is [fraud] 'directed to the judicial machinery itself and is not fraud between the parties ….' A party alleging fraud upon the court must present '*clear and convincing evidence*.'" *Klayman v. Judicial Watch*, No. 19-cv-2604, 2021 WL 602900, at *7 (D.D.C. Feb. 16, 2021) (emphasis added). A Rule 60(d) action based on fraud on the court is "available 'only to prevent a grave miscarriage of justice.' The party seeking relief must show that it would be 'manifestly unconscionable' to allow the judgment to stand." *Olivarius*, 858 A.2d at 466 (citations omitted).

Klayman comes nowhere near meeting this standard. The complaint provides no support substantiating his barefaced claims that the Bar Defendants' actions were fraudulent and that "each and every one of the Defendants conspired to enter into an agreement to

participate in committing fraud on the court." App.039 (complaint), App.299 (proposed amended complaint). Even in his appellate briefing, much less the complaint, Klayman does not identify with particularity any instances of fraud by any of the Bar Defendants beyond his generalized accusations and say-so. As in his other cases, the crux of Klayman's complaint is that in assessing their credibility and weight, the ODC and Board fraudulently "largely credit[ed] [Sataki's] testimony rather than that of Mr. Klayman" or other witnesses. *Klayman*, 282 A.3d at 593; *see* App.031 (complaint) (alleging that Sataki's testimony "conflicts with the testimony of numerous material witnesses"). But the ODC's, the Board's, and this Court's assessment of the credibility and weight of the evidence does not constitute fraud simply because Klayman disagrees with what the evidence showed. Simply put, Klayman's bare allegations that the Bar Defendants "worked … in concert" with Sataki to present her allegedly perjurious testimony, App.030, does not create a "reasonable inference that [the Bar Defendants] [are] liable for the misconduct alleged," Order Granting Defendants Office of Disciplinary Counsel and Porter's Motion to Dismiss at 8, *Klayman III* (D.C. Super. Ct. Oct. 1, 2020) (citing

Twombly, 550 U.S. at 570), much less amount to the clear and convincing evidence required to allege fraud on the court. Klayman's accusations—conclusory, unsupported, and based only on his say-so—cannot satisfy that requirement.

Because Klayman has failed to adequately plead fraud on the court, his claim for conspiracy to commit fraud on the court necessarily fails too. *See* App.412. "[T]here is no recognized independent tort action for civil conspiracy in the District of Columbia." *Waldon v. Covington*, 415 A.2d 1070, 1074 n.14 (D.C. 1980). "Civil conspiracy depends on performance of some underlying tortious act." *Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 738 (D.C. 2000) (citation omitted); *see also Griva v. Davison*, 637 A.2d 830, 848 (D.C. 1994) (describing elements of civil-conspiracy claim to include: "(1) an agreement between two or more persons; (2) to participate in an unlawful act …."). Because the underlying tortious act—purported fraud on the court—does not survive, Klayman's claim for conspiracy to commit fraud on the court necessarily must be dismissed too. In any event, Klayman has done little more than asserted that the Bar Defendants "conspired and worked together in concert." App.030. Even

if this claim could stand on its own, Klayman has failed to plausibly allege the required elements of a conspiracy claim, such as an agreement to participate in an unlawful act.

B. Klayman's laches claim (Claim 3) is not a claim upon which relief can be granted.

Klayman's remaining claim fares no better.[8] Klayman's third cause of action for "laches" is based on allegations that "an undue, egregious and highly prejudicial delay of seven years … occurred." App.040. As the Superior Court held, "laches is an affirmative defense, and not an independent cause of action." App.414 (citing Super. Ct. Civ. R. 8(c)(1)); *see* Super. Ct. Civ. R. 8(c)(1) (listing "affirmative defenses," including "laches").

Even if Klayman could overcome that laches is an affirmative defense, the claim still requires dismissal because the complaint fails to adequately state a claim for laches. Klayman's laches claim rests on

[8] Klayman omitted laches from his proposed amended complaint. With the Superior Court refusing leave to amend, however, App.420-422, it remains in the operative complaint, App.040. Although this Court may treat the claim as abandoned because Klayman failed to raise it in his Appellant's Principal Brief, *In re Shearin*, 764 A.2d 774, 778 (D.C. 2000), the Bar Defendants defend the Superior Court's ruling out of an abundance of caution.

the same vague, speculative, and conclusory allegations as his fraud-based claims. Further, it is unclear what relief Klayman is seeking in his laches claim. To the extent he requests the same relief as with the fraud-based claims—vacatur of this Court's order—the Superior Court could not grant such relief, *supra* § 1, and even if it could, many of the named defendants would not be the proper defendants, *supra* pp. 31-32.

Accordingly, this Court should affirm the dismissal of his laches claim.

C. The Superior Court properly dismissed with prejudice.

In determining whether leave should be granted, the Superior Court considered five factors: "(1) the number of requests to amend; (2) the length of time the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party." App.420 (citation omitted). Ultimately, the Court found that "although this is [Klayman's] first Motion to Amend, the case has not been pending for an exorbitant amount of time, and there is no evidence of bad faith, the Motion must be denied because Plaintiff's Proposed Amended Complaint is simply futile." App.420-421.

That conclusion was correct. Any amendment to the complaint would not resolve the many fundamental flaws that necessitate dismissal—whether that be lack of subject matter jurisdiction, the Bar Defendants' immunity from suit, or that these issues have been raised and denied many times over in multiple fora. While Klayman is correct that trial courts generally should "freely grant[]" leave to amend, APB 27, this Court has also expressly noted that it is well within the trial court's discretion to "consider[] the merit of [a] proffered pleading, and properly conclude[] that [the] … proposed claim … did not have merit." *Rayner*, 289 A.3d at 401-02.

The Superior Court properly dismissed Klayman's complaint with prejudice, rather than provide him with yet another bite at the apple.

CONCLUSION

This Court should affirm the Superior Court's dismissal with prejudice.

Respectfully submitted,

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March 5, 2025

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing through the Court's eservice procedures on March 5, 2025.

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