**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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| **LARRY KLAYMAN**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**ELHAM SATAKI, *et al.***<br><br>**Defendants.** | **Case No. 2022 CAB 005235**<br><br>**Judge Ebony M. Scott** |

## OMNIBUS ORDER

This matter is before the Court on: (1) Plaintiff Larry Klayman's Motion to Strike, filed on March 23, 2023, and Defendants' Opposition to Plaintiff's Motion to Strike, filed on April 6, 2023; (2) Bar Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim, filed on September 29, 2023, Plaintiff Larry Klayman's Opposition to Bar Defendants' Motion to Dismiss, filed on November 17, 2023, and Bar Defendants' Reply in Support of their Motion to Dismiss, filed on November 30, 2023; (3) Defendant Sataki's Motion to Dismiss the Complaint, filed on September 29, 2023, Plaintiff Larry Klayman's Opposition to Defendant Sataki's Motion to Dismiss, filed on November 17, 2023, and Defendant Sataki's Reply, filed on November 30, 2023; (4) Plaintiff Larry Klayman's Expedited Motion to Compel Discovery Responses from Bar Defendants, filed on October 19, 2023, and Bar Defendants' Opposition to Plaintiff's Motion to Compel Discovery Responses, filed on November 2, 2023; and (5) Plaintiff's Motion for Leave to Amend Complaint, filed on November 17, 2023, Bar Defendants' Opposition to Plaintiff's Motion for Leave to Amend Complaint, filed on December 1, 2023, and Plaintiff's Reply to Opposition to Bar Defendants' Motion for Leave to Amend Complaint, filed on December 7, 2023; and (6) Plaintiff Larry Klayman's Opposition to Defendants' Motion to Stay

and Cross Motion for Sanctions for Award of Attorneys Fees and Costs and Other Appropriate Relief, filed on January 3, 2023.

## I. PROCEDURAL AND FACTUAL HISTORY

On November 2, 2022, Plaintiff Larry Klayman filed suit against Defendants Elham Sataki, Hamilton Fox III, Elizabeth Herman, H. Clay Smith, III, Julia Porter, Office of Disciplinary Counsel, Matthew Kaiser, Michael E. Tigar, and Warren Anthony Fitch.[1] Plaintiff brought suit alleging and seeking: (1) Relief from Judgment pursuant to D.C. Superior Court Civil Rule 60(d), alleging that the Defendants committed a fraud on the court; (2) Civil Conspiracy; and (3) Laches. *See* Compl. ¶¶ 94–109. These claims arise from a September 15, 2022, District of Columbia Court of Appeals ("Court of Appeals") Order suspending Plaintiff's law license and the related disciplinary proceedings. *See In Re Klayman*, 20-BG-583 (D.C. Sept. 15, 2022).

On December 20, 2022, the Bar Defendants filed a Motion to Stay, asking the Court to stay proceedings in the instant matter pending resolution of a Motion for Clarification and Enforcement then pending before the United States District Court for the District of Columbia. *See* Dec. 20, 2022 Motion to Stay. The Bar Defendants asserted that the District Court issued an August 29, 2022 Order enjoining Plaintiff from filing any new actions against the Bar Defendants without receiving leave of court. *Id.* at 1; *see also* Aug. 29, 2022 Mem. Op. and Order, *Klayman v. Porter*, No. 20-cv-03109 (D.D.C.). Defendants filed the Motion for Clarification and Enforcement in the District Court, asking the District Court to clarify and enforce the court's August 29, 2022 Order that "enjoined [Plaintiff] 'from filing any new actions against, or serving any additional subpoenas on, the defendants, without first making application to and receiving the consent of [the district

[1] Defendants Hamilton Fox III, Elizabeth Herman, H. Clay Smith III, Julia Porter, the Office of Disciplinary Counsel ("ODC"), Matthew Kaiser, Michal E. Tigar, and Warren Anthony Fitch shall be hereinafter collectively referred to as the "Bar Defendants."

court] or any other court where additional litigation is proposed to be filed.'" *See* Dec. 20, 2022 Mot. to Stay at 2 (citing Ex. 1, Mem. Op., *Klayman v. Porter*, No. 20-cv-03109 (D.D.C.), ECF No. 94 at 21-22) (internal quotation marks and alterations omitted). On January 3, 2023, Plaintiff filed an Opposition to the Bar Defendants' Motion to Stay and Cross Motion For Sanctions For Award of Attorney's Fees And Costs And Other Appropriate Relief, arguing that the instant Complaint is not enjoined by the federal District Court's Order. *See* Pl.'s Opp'n to Defs.' Mot. to Stay at 2. On January 17, 2023, Plaintiff filed a Motion for Entry of Default against Defendant Elham Sataki. *See* Jan. 12, 2023 Mot. for Entry of Default.

On February 3, 2023, this Court held an Initial Scheduling Conference, and granted the Bar Defendants' Motion to Stay, staying the case pending the resolution of the pending Motion for Clarification and Enforcement in the District Court. *See* Feb. 13, 2023 Order. The Court also held the pending Motion for Entry of Default in abeyance until the stay was lifted. *Id.* Further, the Court reserved ruling on Plaintiff's request for sanctions made in Plaintiff's Opposition to Defendants' Motion to Stay and Cross motion for Sanctions for Award of Attorneys Fees and Costs and Other Appropriate Relief. *Id.* at 2.

On March 23, 2023, the Bar Defendants filed a Notice Regarding Status of Other Cases Involving These Parties, updating the Court on the status of cases involving Plaintiff and the Defendants in other, related matters in the United States District Court for the District of Columbia. *See* March 23, 2023 Praecipe. On March 23, 2023, Plaintiff filed a Motion to Strike, asking the Court to strike the Bar Defendants' Notice Regarding Status of Other Cases Involving These Parties, arguing the Praecipe is irrelevant and was only filed to prejudice Plaintiff. *See* March 23, 2023 Mot.

The Court held hearings in this matter on March 24, 2023, and June 16, 2023, extending the stay as the Motion for Clarification remained pending in the District Court and holding the pending Motions in abeyance. *See* April 7, 2023 Order; June 30, 2023 Order.

On July 21, 2023, the Bar Defendants filed a Motion for Court Order Instructing Them to Contact Chambers of U.S. District Court Judge Reggie B. Walton. *See* July 21, 2023 Mot. for Court Order. The Bar Defendants argued that the Honorable Reggie B. Walton's General Order prohibited communication from parties inquiring about the status of a pending motion for less than nine months, and asked this Court for an Order that would direct the Bar Defendants to reach out to the Honorable Reggie B. Walton's Chambers before the time permitted in the General Order. *Id.* at 2–3.

On August 30, 2023, the Honorable Reggie B. Walton issued an order granting in part and denying in part the Bar Defendants' Motion for Clarification and Enforcement. *See* Aug. 30, 2023 Order, ECF No. 111, *Klayman v. Porter*, No. 20-cv-03109 (D.D.C.). As a preliminary matter, Judge Walton found that, contrary to Plaintiff's assertions, the District Court "is permitted to enjoin a state proceeding 'concerning any matter derived from the plaintiff's disciplinary proceedings which are the subject of this case as well as [similar cases,]' as specified in the Court's August 29, 2022 Order, Order at 2 (Aug. 29, 2022), under the relitigation exception to the Anti-Injunction Act." *Id.* at 5, n.2. However, Judge Walton went on to opine that:

> [R]ecognizing the potential for unfairness that could result from the expansion of an injunction, the contours of which were ambiguous, the Court finds it is in the interests of justice to delay enforcement of the expansion of the pre-filing injunction in this case prior to the issuance of this Order, clarifying the scope of that injunction, is issued . . . Therefore, the Court will not enjoin the Superior Court proceedings in Klayman v. Sataki, 2022 CAB 005235, in light of the ambiguity of the pre-filing injunction when the plaintiff filed that action.

*Id.* at 6–7. On September 1, 2023, this Court held a hearing, lifting the stay in the matter given Judge Walton's August 30, 2023 ruling, setting a briefing schedule for the parties in order to file any appropriate Motions, and denying the Bar Defendants' Motion for Court Order Instructing Them to Contact Chambers of U.S. District Court Judge Reggie B. Walton as moot. *See* Sept. 18, 2023 Order.

On September 29, 2023, the Bar Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim. *See* Sept. 29, 2023 Bar Defs.' Mot. to Dismiss. Also on September 29, 2023, Defendant Sataki filed a Motion to Dismiss the Complaint. *See* Sept. 29, 2023 Def. Sataki's Mot. to Dismiss. On October 19, 2023, Plaintiff filed an Expedited Motion to Compel Discovery Responses from Bar Defendants. *See* Oct. 19, 2023 Mot. to Compel. On November 17, 2023, Plaintiff filed a Motion for Leave to Amend Complaint. *See* Nov. 17, 2023 Mot. for Leave. Plaintiff attached the Proposed Amended Complaint as an exhibit to the Motion. In Plaintiff's Proposed Amended Complaint, Plaintiff: (1) supplements his allegations of fraud on the court; (2) withdraws his claim for laches; and (3) amends his prayer for relief to seek only "a judgment finding that the Suspension Order was procured through Defendants' perjury." *See generally* Proposed Am. Compl.

On January 26, 2024, this Court held a Motion Hearing, hearing oral argument from the parties on the pending motions. At the Hearing, the Court denied Plaintiff's Motion for Default Against Defendant Elham Sataki. The Court reserved ruling on all other pending Motions and advised the parties that it would rule on the Motions in a written Order. As such, the Court now addresses the pending Motions.

## II. MOTIONS TO DISMISS

### a. Bar Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim

#### *i. Bar Defendants' Motion to Dismiss*

In their Motion to Dismiss, the Bar Defendants move the Court to dismiss the Complaint under Rules 12(b)(1) and 12(b)(6). *See* Bar Defs.' Memo. in Support of Mot. to Dismiss at 1. The Bar Defendants begin by arguing that "enough is enough[,]" as the Bar Defendants assert that this current matter is the twelfth frivolous lawsuit filed by Plaintiff seeking to collaterally attack the disciplinary proceedings that resulted in Plaintiff's suspension of his license to practice law in the District of Columbia. *Id.* The Bar Defendants assert that the instant matter, though styled differently than other prior collateral attacks, presents the same arguments arising from the same series of events that multiple courts have already previously rejected. *Id.* at 1–3.

The Bar Defendants first argue that this Court lacks subject matter jurisdiction over Plaintiff's Complaint, and thus, the case should be dismissed pursuant to Super. Ct. Civ. R. 12(b)(1). *Id.* at 4. The Bar Defendants contend that this Court cannot grant Plaintiff the relief he seeks because Plaintiff is requesting that this Court set aside the Court of Appeals' Suspension Order suspending Plaintiff's law license. *Id.* at 5. The Bar Defendants argue that this Court lacks authority to order the Court of Appeals, the higher court in this jurisdiction, to take any action. *Id.* Further, the Bar Defendants argue that District of Columbia attorney disciplinary matters are exclusively within the jurisdiction of the Court of Appeals. *Id.* The Bar Defendants posit that Plaintiff is unable to provide any authority to support his argument that this Court has the power to set aside an order of the Court of Appeals. *Id.* at 6. They argue that the Office of Disciplinary Council and members of the Disciplinary Board ("the Board") operate under the power of the Court of Appeals, and the Bar Defendants themselves similarly lack the authority to set aside the

Court of Appeals' ruling. *Id.* Additionally, the Bar Defendants contend that Defendants Herman, Smith, and Fitch no longer serve on the Board, and thus, even if the Board had the authority to overstep the Court of Appeals' ruling, Defendants Herman, Smith, and Fitch would not. *Id.* at 7.

Moreover, the Bar Defendants assert that Super. Ct. Civ. R. 60(d) does not authorize the claims Plaintiff presents. *Id.* The Bar Defendants assert that Rule 60(d) does not grant this Court authority to allow Plaintiff to collaterally attack the Court of Appeals' Suspension Order, as Rule 60(d) does not affirmatively provide relief where a court otherwise lacks the authority to grant such relief. *Id.* Additionally, the Bar Defendants contend that the issues in Plaintiff's Complaint have been fully litigated and rejected by other courts, and the instant Complaint is based on Plaintiff's contention that the District of Columbia Bar holds bias against Plaintiff. *Id.* at 8. The Bar Defendants claim that these theories of bias have continuously been rejected, and this Court should not allow Plaintiff to relitigate these issues by twisting the authority of Rule 60(d). *Id.*

Lastly, the Bar Defendants assert that the Complaint must be dismissed under Rule 12(b)(6) as Plaintiff fails to state a claim upon which relief may be granted. *Id.* at 10. The Bar Defendants assert they are immune from liability for conduct arising from their position on the Board under D.C. Bar Rule XI, § 19(a). *Id.* The Bar Defendants contend that the allegations in the underlying Complaint arise from the Bar Defendants' official roles, and thus, the Bar Defendants are immune from the claims. *Id.* at 11. Additionally, the Bar Defendants argue that Plaintiff fails to adequately plead his claim of fraud on the Court. *Id.* The Bar Defendants assert that Plaintiff "fails to identify with particularity any instance of fraud by any of the Bar Defendants[,]" and even if he had, those issues have been rejected by courts prior to this matter. *Id.* at 12. The Bar Defendants contend that Plaintiff's conclusory allegations are insufficient to support Plaintiff's claim for fraud on the court, and must be dismissed. *Id.* at 13. Further, the Bar Defendants argue that Plaintiff fails to

state a claim for civil conspiracy or laches as the Complaint does not make clear what Plaintiff is alleging or seeking under these claims. *Id*. at 13–14. The Bar Defendants assert that these counts do not include specific requests for relief, but rather, reargue Plaintiff's request for relief from the Suspension Order. *Id.* at 14. Lastly, the Bar Defendants argue that Plaintiff fails to plead sufficient facts to support an underlying tort required to plead civil conspiracy and that Plaintiff fails to support a claim for laches, as it is an affirmative defense. *Id.* at 14–15.

For these reasons, the Bar Defendants ask the Court to dismiss the Complaint with prejudice. *Id.* at 15.

***ii. Plaintiff's Opposition to the Bar Defendants' Motion to Dismiss[2]***

In Opposition, Plaintiff argues that the Bar Defendants' Motion to Dismiss should be denied, as this Court has subject matter jurisdiction and Rule 60(d) provides Plaintiff an avenue to bring his claims in the Superior Court.[3] *See* Opp'n to Bar Defs.' Mot. to Dismiss at 1, 11. Plaintiff begins by arguing that the instant matter has been pending over a year, in part due to the stay that was in place while the Bar Defendants' Motion for Clarification was pending in the United States District Court for the District of Columbia. *Id.* at 2. Plaintiff asserts that the Defendants' Motion was a frivolous tactic that prejudicially delayed the instant matter, and Plaintiff contends that by the time this matter is adjudicated, Plaintiff's suspension will be near or fully complete. *Id.*

[2] Plaintiff's Opposition is a total of 25 pages long, in violation of this Court's General Order requiring leave of Court to file Motions or Oppositions in excess of 15 pages in length. *See* Judge Scott's Supplement to General Order at 3, https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/judge_scott_supplemental_order.pdf

[3] The Court notes that, in the Opposition, the Plaintiff also details what he believes to be a smear campaign led by the Bar Defendants to remove him from the practice of law and prevent him from pursuing his conservative public interest work. According to Mr. Klayman, "[t]he Bar Defendants were able to find a willing participant in their co-Defendant, Elham Sataki ("Defendant Sataki"), a disgruntled former client from 2010 who Mr. Klayman represented in a sexual harassment and workplace retaliation case." *See* Opp'n to Bar Defs.' Mot. to Dismiss at 6.

Plaintiff posits that the Bar Defendants' actions, and the suspension itself, were fraudulently conducted to prejudice Plaintiff and his bar license due to Plaintiff's political work, legal representations, and ideology. *See id.* at 2–4.

Plaintiff asserts that this Court has proper subject matter jurisdiction and the authority to grant Plaintiff the relief he seeks. *Id.* At 11. Plaintiff contends that Rule 60(d) requires the Court to entertain Plaintiff's action for fraud on the court. *Id.* (citing *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 464 (D.C. 2004)). Plaintiff argues that all the Defendants participated in actions to defraud the record presented to the Court of Appeals and prevented Plaintiff from conducting even basic discovery. *Id.* At 12. Plaintiff also contends that the instant action is not a re-litigation of the Court of Appeals' suspension order, but rather, Plaintiff's Complaint argues that the record presented to the Court of Appeals was corrupt and flawed and that Plaintiff is seeking to correct that record. *Id.* At 13. Plaintiff asserts that Rule 60 allows the Plaintiff to set the record straight, and once a new record is created, the Court of Appeals can then decide what action to take with respect to the Suspension Order. *Id.* at 13–14. Plaintiff contends that this issue itself has not been before any Court before and thus, the instant matter would not be relitigating previously argued issues. *Id.* at 14. Moreover, Plaintiff argues that both the Court and the Defendants do have authority to grant Plaintiff the relief he seeks. *Id.* Plaintiff asserts he is not seeking this Court to order the Court of Appeals to act, only that he is seeking for this Court to allow discovery to be conducted and for a trial to take place to create a corrected record for the Court of Appeals to act upon. *Id.* Plaintiff contends there is no other venue where this would be appropriate, and thus the Superior Court does have proper jurisdiction. *Id.* at 14–15. Plaintiff asserts that Rule 60 allows for Plaintiff to bring his claims, and argues that "the language of Rule 60 does not in any way limit its applicability to only orders and judgments from

lower courts, [and] nothing presented by the Bar Defendants precludes this Court from vacating the Suspension Order." *Id.* at 15.

Additionally, Plaintiff argues that the Complaint does allege sufficient facts to successfully state a claim, and thus, the Bar Defendants' Motion should fail. *Id.* at 16. Plaintiff asserts that the Bar Defendants are not immune from suit, because the source of immunity, D.C. Bar. Rule XI § 19, unconstitutionally allows the Court of Appeals to grant itself immunity. *Id.* Plaintiff asserts that this self-imposed immunity violates the Constitution as the rules were not legislated by Congress or the District of Columbia legislature. *Id.* at 16–17. Plaintiff contends, even if immunity was proper, immunity would be inapplicable in this case because the actions and conduct of the Bar Defendants go far beyond the scope of their official duties. *Id.* at 18. Moreover, Plaintiff asserts that judicial immunity precludes damages, but it does not preclude the injunctive relief that Plaintiff is seeking in this case. *Id.* at 19. Plaintiff also argues that the allegations in the Complaint sufficiently allege the claims of perjury, misconduct, and fraud on the court, and thus, should not be dismissed. *Id.* at 22. Plaintiff contends that the allegations include sufficient details of the roles each Defendant played in the underlying actions. *Id.* at 23. Plaintiff argues that he has more than sufficiently pled civil conspiracy as well, and that the Complaint includes allegations of overt acts from each individual Defendant. *Id.* at 24.

### *iii. Bar Defendants' Reply in Support of Their Motion to Dismiss*

In Reply, the Bar Defendants again ask the Court to dismiss the Complaint with prejudice for lack of subject matter jurisdiction and for Plaintiff's failure to state a claim. *See* Bar Defs.' Reply at 1. The Bar Defendants contest Plaintiff's assertion that Plaintiff is seeking to challenge the process that led to the suspension. *Id.* at 1–2. The Bar Defendants assert that Plaintiff's allegations about the disciplinary proceedings have been litigated and rejected numerous times in

various courts, and that Plaintiff's allegations that the Bar Defendants suppressed evidence or prevented discovery have already been rejected by the Court of Appeals. *Id.* at 2. The Bar Defendants contend that Plaintiff cannot now use a Rule 60(d) independent action to relitigate issues that have already been decided. *Id.* Moreover, the Bar Defendants argue that this Court lacks authority to reverse the decision of the Court of Appeals in suspending Plaintiff's law license, as a lower court lacks authority to order a higher court to take action or to review the actions of the higher court. *Id.* The Bar Defendants argue that this Court further lacks subject-matter jurisdiction, as issues of attorney discipline are solely within the Court of Appeals' exclusive jurisdiction. *Id.* The Bar Defendants note that while Plaintiff argues that he is not asking for this Court to overturn the Court of Appeals' decision, this assertion is contradicted by Plaintiff's argument that nothing prevents this Court from vacating the Suspension Order. *Id.* at 2–3.

Additionally, the Bar Defendants argue that Plaintiff fails to sufficiently state a claim for relief for the underlying claims and thus, the Complaint must be dismissed. *Id.* at 3. The Bar Defendants posit that Plaintiff's allegations are insufficient to meet the relevant legal standards and that Plaintiff's claims are simply conclusory statements. *Id.* Further, the Bar Defendants assert that Plaintiff's allegations of fraud and suppression of evidence were previously rejected by the Court of Appeals and are barred from being raised again. *Id.* The Bar Defendants similarly argue that Plaintiff's civil conspiracy claim also fails as Plaintiff does not allege any agreement to support a conspiracy claim. *Id.* at 4.

Lastly, the Bar Defendants assert that Plaintiff's argument that absolute immunity afforded to the Bar Defendants is unconstitutional lacks merit, as the District of Columbia Code authorizes the Bar Defendants' immunity. *Id.* (citing D.C. Code. § 11-2501(a)). Additionally, the Bar Defendants contend that Plaintiff previously raised claims that the Bar Defendants acted outside

the scope of their duties, and this argument has been rejected by other courts and cannot be relitigated here in this Court. *Id.*

**b. Defendant Sataki's Motion to Dismiss the Complaint**

**i. *Defendant Sataki's Motion to Dismiss***

In her Motion to Dismiss, Defendant Sataki chiefly argues that Plaintiff's Complaint must be dismissed with prejudice pursuant to Super. Ct. Civ. Rs. 12(b)(1) and 12(b)(6), and that "the litigation should end now." *See generally* Def. Sataki's Mot. to Dismiss; *see also* Def. Sataki Memo. in Supp. of Mot. to Dismiss at 2.

According to Defendant Sataki, Plaintiff's Complaint must be dismissed pursuant to Super. Ct. Civ. R. 12(b)(6) "under the doctrine of collateral estoppel or issue preclusion—a form of *res judicata." Id.* at 1. Defendant Sataki claims that the issues Plaintiff raises in his Complaint, which are based on members of the Office of Disciplinary Counsel's alleged conduct that led to the Suspension Order, have already been litigated in the Court of Appeals and thus Plaintiff is precluded from re-litigating these issues before the Court. *Id*. at 1-2, 3-5. Citing *Klayman v. Rao*, Defendant Sataki alleges that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first case." *Id.* at 3-4 (49 F.4th 550, 553 (D.C. Cir. 2022)). Defendant Sataki also cites *Colvin v. Howard University*, 257 A.3d 474 (D.C. 2021), to cement this point, noting that issue preclusion prevents re-litigation of issues that have previously been raised and decided. *Id.* at 4. Defendant Sataki contends that there is no doubt that the issues raised in Plaintiff's Complaint regarding his suspension have already been raised and litigated, despite Plaintiff's attempts to "style his new lawsuit as one to vindicate a fraud" by the Defendants. *See* Def. Sataki Memo. in Supp. of Mot. to Dismiss at 4. Specifically, Defendant Sataki states:

> Klayman claims in Counts I and II of the Complaint (Relief from Judgment Pursuant to Rule 60 and Civil Conspiracy) that the ODC Defendants, Defendant Sataki, and Defendants Tigar, Fitch, and Kasier (members of the Ad Hoc Hearing Committee) engaged in misconduct such as "willfully suppressing exculpatory evidence," (Compl. ¶ 96), "suborning and committing perjury at the disciplinary hearing," (*Id.*), and "conspir[ing] to enter into an agreement to participate in committing fraud of the court in the Sataki Matter." Compl. ¶ 104. In the Suspension Order, however, the Court of Appeals addressed Mr. Klayman's grievances against the defendants, including that they were allegedly biased against him. Suspension Order at 13-16. The Court of Appeals concluded after a review of the entire disciplinary proceeding record that "substantial evidence supports the Board's conclusion that Mr. Klayman violated the rules at issue." Suspension Order at 20.

*Id*.

Defendant Sataki also alleges that Plaintiff's Complaint must be dismissed because Super. Ct. Civ. R. 60 does not provide Plaintiff with a mechanism to overturn the Court of Appeals' Order. *See id.* According to Defendant Sataki, Plaintiff's Complaint fails for multiple reasons. *See id.* at 5-7. First, Defendant Sataki claims that Plaintiff's case is a continuation of the Suspension Matter, and is thus "an impermissible backdoor attempt by Plaintiff to appeal the Suspension Order." *Id.* at 6. Second, Defendant Sataki asserts that it is "well-established that a party cannot use an 'independent action' under [Super. Ct. Civ. R.] 60(d) as a vehicle for the re-litigation of issues." *See generally* Def. Sataki Memo. in Supp. of Mot. to Dismiss at 6. (citing *Klayman v. Jud. Watch, Inc.*, 2021 WL 602900, at *5 (D.D.C. Feb. 16, 2021) (rejecting Mr. Klayman's Rule 60 challenge of order because "the issues he raised here are the same ones he raised before [the court] in *Judicial Watch I*")). Finally, Defendant Sataki notes that pursuant to Super. Ct. Civ. R. 12(b)(1), this Court does not have subject matter jurisdiction to reconsider decisions of other trial or appellate level courts. *See id.* at 6-7.

### *ii. Plaintiff's Opposition to Defendant Sataki's Motion to Dismiss*

In Opposition, Plaintiff asserts that the Court must refrain from dismissing his Complaint because his claims are not barred by collateral estoppel, Super. Ct. Civ. R. 60 grants the Court

authority to proceed on his claims, the relief sought by Plaintiff falls within the Court's authority, and he sufficiently pleaded civil conspiracy. *See generally* Opp'n to Def. Sataki Mot. to Dismiss.

Plaintiff begins by addresses Defendant Sataki's collateral estoppel argument. *See id.* at 10. Plaintiff claims that it is clear that his challenge to the Court of Appeals' decision has never been before any Court, and is thus not a re-litigation of any prior proceeding. *See id.* Plaintiff claims that a plain reading of the Complaint illustrates that the crux of his argument is that the Court of Appeals made the decision to suspend him based on the erroneous and fraudulent testimony it received. *See id.* According to Plaintiff, arguing that the Court of Appeals' decision was incorrect would be a re-litigation of the issues, and because he is not arguing that the decision was incorrect, his claims are not barred by collateral estoppel. *See id.* However, in this same sentence, Plaintiff avows that the Court of Appeals decision was incorrect. *See id.* Plaintiff claims that he is not collaterally estopped from bringing his claims because a crucial piece of exculpatory video evidence was never presented to the Court of Appeals, "meaning that [his] arguments and instant Complaint cannot in any way be construed as being a re-litigation of the DCCA's Suspension Order." *Id.* at 11.

Next, Plaintiff contends that nothing prohibits him from bringing a Complaint pursuant to Super. Ct. Civ. R. 60 in this Court because this is "the only possible Court equipped to handle the discovery that will be required." Opp'n to Def. Sataki Mot. to Dismiss at 1. Plaintiff argues that Super. Ct. Civ. R. 60 is the only possible mechanism for him to obtain the desired relief, and therefore, the Court "must go on and adhere to the express language of Rule 60." *Id.* at 2. Noting that the Court has unlimited power to entertain an independent action to relieve a party from an Order and alleging that an "independent action is available to 'prevent a grave miscarriage of justice,'" Plaintiff claims that the instant case is fit for this Court to handle. *Id.* at 11 (quoting

*Olivarius,* 858 A.2d at 464). Plaintiff alleges that he is required to illustrate that "it would be 'manifestly unconscionable' to allow the judgment to stand" and "the integrity of the court and its ability to function impartially [was] directly impinged." *Id.* at 11 (quoting *Olivarius,* Inc., 858 A.2d at 464-65). According to Plaintiff, he has done just that as the allegations in the Complaint paint a clear picture of a "deliberately planned and carefully executed scheme" to try to remove Plaintiff from the practice of law through perjury, fraud, prosecutorial misconduct, and conspiracy. *Id.* at 12. Thus, Plaintiff alleges that his allegations more than justify the relief sought pursuant to Super. Ct. Civ. R. 60. *Id.* at 13.

In response to Defendant Sataki's argument that the Superior Court may not order action from the Court of Appeals, Plaintiff highlights that the only cases that Defendant Sataki cites to support her proposition are federal cases. *See* Opp'n to Def. Sataki Mot. to Dismiss at 13. Plaintiff then states that he is only asking this Court to conduct discovery and a trial; issue a judgment that the Suspension Order was procured through a perjury, fraud, and prosecutorial misconduct; and ultimately create a corrected record from which the Court of Appeals can act, which this Court has the authority to do, according to him. *See id.* at 13-14.

Finally, Plaintiff argues that he sufficiently pleaded civil conspiracy. Namely, he has demonstrated:

> 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.

*Id.* at 14 (citing *Griva v. Davison*, 637 A.2d 830, 848 (D.C. 1994)). Plaintiff claims that the Complaint has more than illustrated the overt acts from each Defendant, which demonstrate a civil conspiracy to defraud the court, and ultimately satisfies the elements of civil conspiracy. *See id.* at 14-15 ("The Complaint alleges that the Bar Defendants along with Defendant Sataki agreed to

commit perjury, suborne perjury, commit fraud on the court, and engage in gross prosecutorial misconduct.").

***iii. Defendant Sataki's Reply***

In Reply, Defendant Sataki begins by claiming that "[Plaintiff's] Opposition. . .is heavy on bravado, self-aggrandizement, and conspiracy theories, but light on legal authorities as to why his claims survive dismissal." Def. Sataki Reply at 1. Defendant Sataki reiterates the arguments she advanced in her Motion to Dismiss. *See generally id*; *see also* Def. Sataki Mot. to Dismiss; Def. Sataki Memo. in Supp. of Mot. to Dismiss.

Defendant Sataki claims that Plaintiff is mistaken in his viewpoints on collateral estoppel. *See* Def. Sataki Reply at 2. According to Defendant Sataki, because the issues Plaintiff alleges in the Complaint are ones that he has previously raised, collateral estoppel indeed bars him from bringing these issues. *See id.* Defendant Sataki argues that even the exculpatory video documentary evidence issue that Plaintiff highlighted in his Opposition as an example of a process issue cannot be relitigated before this Court because Plaintiff attempted to provide the Board with that same video, which the Board rejected. *See id.* at 3. Thus, Defendant Sataki again claims that "Mr. Klayman is seeking to relitigate issues raised unsuccessfully before the Court of Appeals and he is estopped from doing so here no matter how he characterizes or styles his challenge." *Id.* at 2.

Defendant Sataki also reiterates that Plaintiff's Super. Ct. Civ. R. 60 claim is improper. *Id.* at 3. Defendant Sataki notes that Plaintiff failed to provide authority that supports the viability of an independent action that raises issues already considered by the Court of Appeals. *Id*. According to Defendant Sataki, Super. Ct. Civ. R. 60(d) "does not affirmatively grant the courts any authority to provide relief where they otherwise lack the power to do so." Def. Sataki Reply at 3 (citing

*Klayman v. Rao,* 49 F.4th at 553). Defendant Sataki also alleges that Plaintiff's reliance on *Olivarius* is improper as the case explicitly states that wrongfully withheld evidence does not establish the "grave miscarriage of justice," which is required for a court to entertain an independent action to relieve a party from an Order. *Id*. (referring to 858 A.2d at 457). Defendant Sataki argues that Plaintiff does not cite any authority that would permit this Court to review an Order of an appellate court under Super. Ct. Civ. R. 60 or otherwise. *Id.* at 4. For these reasons, Defendant Sataki requests that the Court dismiss Plaintiff's Complaint.

Finally, Defendant Sataki urges the Court to deny Plaintiff's Motion for Leave to Amend the Complaint. *Id.* Defendant Sataki claims that Plaintiff's proposed amendments do not cure any of the deficiencies raised in either of the Motions to Dismiss or the current Reply. *Id.* (citing *Farris v. District of Columbia,* 257 A.3d 509, 517 (D.C. 2021) (affirming denial of leave to amend if amendment fails as a matter of law to state a claim upon which relief can be granted).

**c. Legal Standard**

Dismissal under Rule 12(b)(1) is appropriate when the Court lacks subject matter jurisdiction to hear the matter. *See* Super. Ct. Civ. R. 12(b)(1). In analyzing a Rule 12(b)(1) motion, while the Court must accept all facts in the Complaint as true, the Court's inquiry "may extend beyond the facts pled in the complaint." *UMC Dev., LLC v. District of Columbia,* 120 A.3d 37, 43 (D.C. 2015). While a challenge to the Court's subject matter jurisdiction may be raised throughout the litigation, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Super. Ct. Civ. R. 12(h)(3).

Dismissal under Rule 12(b)(6) is warranted "where the complaint fails to allege the elements of a legally viable claim." *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1060 (D.C. 2014) (quoting *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007);

citing *Potomac Dev. Co. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011)). In deciding a Rule 12(b)(6) motion, this Court must accept "all of the allegations in the complaint as true" and "construe all facts and inferences in favor of the plaintiff." *Id.* (quoting *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008)).

To survive a motion to dismiss a claim must have facial plausibility, that is, "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Potomac,* 28 A.3d at 544 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009)). Conclusory pleadings are not entitled to an assumption of truth and will not sustain a complaint. *Grimes v. District of Columbia*, 89 A.3d 107, 112 (D.C. 2014) (internal citations omitted). Neither will "formulaic recitation[s] of the elements of a cause of action." *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019 (D.C. 2013) (*quoting (Michael Patrick) Murray v. Motorola, Inc.*, 982 A.2d 764, 783 n.32 (D.C. 2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

**d. Analysis**

**i. *Subject-Matter Jurisdiction***

This Court lacks subject-matter jurisdiction to grant Plaintiff the relief that he seeks. In the Complaint, Plaintiff asks this Court to "set aside and vacate the DCCA's Suspension Order and Judgment as it was a direct and proximate result of fraud on the court." *See* Compl. ¶ 102. Further, in Plaintiff's prayer for relief, Plaintiff "prays that the DCCA's September 15, 2022 Suspension Order and Judgment be vacated pursuant to Rule 60[.]" *Id.* at 28.

The 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, nor this jurisdiction's higher appellate court. *See, e.g., Partington v. Houck*, 2014 U.S. App. LEXIS 19014, *2 (D.C. Cir. Oct. 3, 2014) ("The district court correctly held that it lacked authority to declare void a decision of [the

appellate] court."); *Pollock v. Brown*, 441 A.2d 276, 280 ("[A] lower court is bound to respect the mandate of an appellate tribunal and cannot reconsider questions which the mandate has laid at rest."). Moreover, the District of Columbia Code explicitly provides the District of Columbia Court of Appeals with the jurisdiction to review orders and judgments of the Superior Court of the District of Columbia. *See* D.C. Code § 11-721(a). The District of Columbia Code does *not* provide the Superior Court of the District of Columbia with the authority to review orders of the Court of Appeals. *See* D.C. Code § 11-921. Additionally, the Court is persuaded by the Defendants' argument, and legal support thereto, that Rule 60(d) does not provide Plaintiff with a mechanism for the relief that he seeks. The Bar Defendants assert that Plaintiff's attempt to use Rule 60(d) as a vehicle to establish subject matter jurisdiction is without merit or legal support. *See* Bar Defs.' Memo. in Support of Mot. to Dismiss at 7. In her Motion to Dismiss, Defendant Sataki makes the same contention. *See generally* Def. Sataki Mot. to Dismiss. Specifically, Defendant Sataki notes that it is "well-established that a party cannot use an 'independent action' under [Super. Ct. Civ. R.] 60(d) as a vehicle for the re-litigation of issues." *See* Def. Sataki Memo. in Supp. of Mot. to Dismiss at 6. (citing *Klayman v. Jud. Watch, Inc*., 2021 WL 602900, at *5 (D.D.C. Feb. 16, 2021) (rejecting Mr. Klayman's Rule 60 challenge of order because "the issues he raised here are the same ones he raised before [the court] in Judicial Watch I")). The Bar Defendants also contend that Plaintiff has previously attempted to bring a Federal Rule of Civil Procedure Rule 60(d) action in the federal District of Columbia courts, and his argument was rejected by various courts. *See* Bar Defs.' Memo. in Support of Mot. to Dismiss at 8 (citing *Klayman v. Jud. Watch, Inc*., 2021 WL 602900, at *5 (D.D.C. Feb. 16, 2021); *In re Salas*, No. 18-00260, 2020 Bankr. LEXIS 2867, 2020 WL 6054783, at *22 (Bankr. D.D.C. Oct. 13, 2020)).

A court's power to grant relief under Rule 60 "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." Super. Ct. Civ. R. 60(d). However, Super. Ct. Civ. R. 60(d) does not grant this Court the power to establish jurisdiction where the Court would not otherwise possess authority or jurisdiction to hear the matter. *See e.g., Klayman v. Rao,* 49 F.4th 550, 553 n.3 (D.C. Cir. 2022) (finding that Rule 60(d) "does not affirmatively grant the courts any authority[.]"). As explained above, the Court does not have the underlying power to review or set aside the Court of Appeals' order and the Court cannot use Rule 60(d) as a mechanism to affirmatively create that authority. Further, Plaintiff's reliance on *Olivarious* to support his argument that the underlying action results to a grave miscarriage of justice that would support a Rule 60(d) claim is misplaced, as this argument still fails to overcome this Court's lack of jurisdiction to review an order of the Court of Appeals. *See* Opp'n to Bar Defs.' Mot. to Dismiss at 11 (quoting *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.,* 858 A.2d 457, 464 (D.C. 2004)).

Plaintiff asserts in his Oppositions that he is only asking this Court to issue a judgment finding that the Court of Appeals' Order was procured through perjury and fraud, and create a corrected record that the Court of Appeals can then decide to act on. *See* Opp'n to Bar Defs.' Mot. to Dismiss at 14. However, this assertion directly contradicts the current record. In Plaintiff's Opposition to the Bar Defendants' Motion to Dismiss, Plaintiff claims that "nothing presented by the Bar Defendants precludes this Court from vacating the Suspension Order." *Id.* at 15. In Plaintiff's Opposition to Defendant Sataki's Motion to Dismiss, in the same sentence that Plaintiff claims that he is only asking this Court to issue a judgment finding that the Court of Appeals' Order was procured through perjury and fraud, Plaintiff avows that the Court of Appeals' Order

was indeed incorrect. *See* Opp'n to Def. Sataki Mot. to Dismiss at 10. Thus, the Court finds that regardless of Plaintiff's assertion that he is simply seeking a corrected record, Plaintiff's Complaint, and further arguments in the Oppositions, make clear that Plaintiff is indeed asking this Court to set aside the Court of Appeals' Suspension Order, which this Court simply does not have the jurisdiction or power to do. Allowing Plaintiff to *procure a new record* to take to the Court of Appeals is neither within this Court's jurisdiction nor contemplated by the rules of this jurisdiction.

Moreover, the Court of Appeals has made clear to Plaintiff that the Superior Court of the District of Columbia is bound by the aforementioned. Specifically, in denying one of Plaintiff's requests to stay proceedings in a separate case, the United States Court of Appeals for the District of Columbia Circuit expressed that "Mr. Klayman has failed to explain how his ongoing proceedings before the D.C. Superior Court, a court bound by the D.C. Court of Appeals' precedent, could disturb the D.C. Court of Appeals' decision. To be sure, Mr. Klayman cites no authority for such a proposition, and the Court knows of none." *In Re Klayman,* 2023 U.S. App. LEXIS 14046 (D.C. Cir. June 6, 2023). The same principle applies here, and Super. Ct. Civ. R. 60 is not the proper mechanism by which this Court can aid Plaintiff in his efforts to debunk or reverse the Court of Appeals' Suspension Order.

Additionally, the Court finds that matters of attorney discipline are solely within the jurisdiction of the District of Columbia Court of Appeals. *See, e.g.*, D.C. Bar Rule Preamble ("The District of Columbia Court of Appeals in the exercise of its inherent powers over members of the legal profession . . . and pursuant to its statutory authority governing admissions to the Bar promulgates the following rules for the government of the Bar and the individual members thereof[.]"); D.C. Bar Rule XI, § 1(a) ("All members of the District of Columbia Bar . . . and all

persons who have been suspended or disbarred by [the District of Columbia Court of Appeals] are subject to the disciplinary jurisdiction of this Court and its Board on Professional Responsibility."); D.C. Code § 11-2502 ("The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice."). There exists no statutory authority providing this same power to the Superior Court, and the Plaintiff fails to cite any authority otherwise. Thus, discipline of attorneys is squarely within the exclusive jurisdiction of the District of Columbia Court of Appeals, and not within the subject-matter jurisdiction of this Court.

**ii.** ***Failure to State a Claim***

Even if this Court were to have proper subject-matter jurisdiction to hear the matter, dismissal in this case remains warranted. The Court finds, even when accepting all the allegations in Plaintiff's Complaint as true, that Plaintiff fails to successfully plead a claim upon which relief may be granted.

The Bar Defendants assert they are subject to absolute immunity from suit for the claims that Plaintiff alleges. *See* Bar Defs.' Memo. in Support of Mot. to Dismiss at 10. The Bar Defendants argue that D.C. Bar Rule XI, § 19(a) provides immunity for members of the Office of Disciplinary Counsel and the Board for conduct when acting within their official duties. *Id.* Plaintiff claims that the Bar Defendants are not subject to immunity for two reasons: first, Plaintiff claims that the D.C. Bar Rules impermissibly grants absolute immunity in violation of the Constitution; and second, Plaintiff argues that the Bar Defendants' actions overstepped their official duties and are not subject to immunity. *See* Opp'n to Bar Defs.' Mot. to Dismiss at 16–17.

Here, the Court finds that the Bar Defendants are indeed subject to immunity for actions arising from their official conduct taken as members of the Disciplinary Counsel and Board. *See* D.C. Bar Rule XI, § 19(a) ("Members of the Board. . . Disciplinary Counsel . . . shall be immune from disciplinary complaint under this rule and from civil suit for any conduct in the course of their official duties."). Despite Plaintiff's allegation that the D.C. Bar Rules impermissibly allow the Court of Appeals to grant itself immunity in violation of the Constitution, the Court of Appeals is duly authorized by statue to create and enforce the D.C. Bar Rules. *See* D.C. Code § 11-2501(a) ("The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion."). Thus, the Court concludes that the Bar Defendants are properly subject to absolute immunity. Further, prior courts have already ruled that the Bar Defendants were not acting outside the scope of their duties in relation to the underlying allegations, and the Court will not allow Plaintiff to relitigate this settled issue. *See Klayman v. Porter*, 2023 U.S. Dist. LEXIS 42844, at *12–16 (D.D.C. Mar. 14, 2023) (finding the Bar Defendants' actions fell within their official duties as officials of the Board and Disciplinary Counsel).

Turning to whether Plaintiff successfully states a claim upon which relief can be granted, Plaintiff's first count alleges fraud on the court Under Rule 60(d). *See* Compl. ¶¶ 94–102. As explained above, Rule 60(d) is not an appropriate vehicle by which Plaintiff may bring this claim. Moreover, Plaintiff's prayer for relief asks the Court to "set aside and vacate the DCCA's Suspension Order and Judgment as it was a direct and proximate result of fraud on the court." *Id.* ¶ 102. As explained above, the Court lacks the jurisdiction to set aside the ruling of the Court of

Appeals. Accordingly, Plaintiff's claim of fraud on the court fails to allege a claim upon which relief can be granted and shall be dismissed.

Plaintiff also alleges a claim of civil conspiracy against the Defendants. *Id.* ¶¶ 103–06. In order to successfully bring a claim of civil conspiracy, a plaintiff must prove the following elements: (1) an agreement between two or more people; (2) to participate in an unlawful act, or in a lawful act in an unlawful manner; (3) an injury caused by an unlawful act performed by at least one of the parties to the agreement; and (4) the act was taken pursuant to, and in furtherance of, the common scheme. *See Greenpeace, Inc v. Dow Chem. Co.*, 2013 D.C. Super. LEXIS 22, *12 (D.C. Super. Ct. 2013) (citing *Weishapl v. Sowers*, 771 A.2d 1014, 1023 (D.C. 2001). Further, civil conspiracy is not an independent action, but instead a means of establishing liability for the underlying tortious act. *See Weishapl*, 771 A.2d at 1024. Here, Plaintiff alleges that a civil conspiracy exists as the Bar Defendants and Defendant Sataki conspired to commit a fraud on the court. *See* Compl. ¶ 104–05. However, as the Court has found that Plaintiff failed to successfully allege a claim of fraud on the court, there is no underlying tortious act that can successfully support Plaintiff's civil conspiracy claim. *See Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 738 (D.C. 2000) (explaining that civil conspiracy depends on the performance of some underlying tortious act); *see also Halberstam v. Welch*, 227 U.S. App. D.C. 167, 174 (1983). Thus, the Court concludes that Plaintiff fails to successfully allege a claim of civil conspiracy.

Plaintiff's third and final claim brought against the Defendants alleges Laches. *See* Compl. ¶¶ 107–09. However, laches is an affirmative defense, and not an independent cause of action. *See* Super. Ct. Civ. R. 8(c)(1). Accordingly, the Court finds that Plaintiff cannot successfully bring a claim for laches.

For the reasons stated above, the Court concludes that even if this Court did have proper subject-matter jurisdiction, a dismissal of the Complaint is appropriate as Plaintiff fails to successfully allege a claim upon which relief can be granted.

#### *iii. Collateral Estoppel*

Although the Court notes Defendant Sataki's claims that Plaintiff is precluded from bringing his Complaint due to collateral estoppel, the Court need not consider the merits of this issue considering the Court's determination that it lacks subject matter jurisdiction and even if it had such jurisdiction, Plaintiff has failed to state a claim pursuant to Super. Ct. Civ. R. 12(b)(6).

## III. PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

### a. Summary

#### i. *Plaintiff's Motion for Leave to Amend Complaint*

In Plaintiff's Motion for Leave to Amend Complaint, Plaintiff requests leave to file the Amended Complaint attached to the Motion as Exhibit A, pursuant to Super. Ct. Civ. R. 15(a). *See generally* Mot. for Leave. Plaintiff notes that Super. Ct. Civ. R. 15(a)(3) requires the Court to freely give leave "when justice so requires." *Id.* at 1. Citing *Richardson v. United States,* 193 F.3d 545, 548-49 (D.C. 1999), Plaintiff claims that "leave 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." *Id.* Plaintiff also notes that "the burden is on the opposing party to show that there is reason to deny leave." *Id.* (quoting *In re Vitamins Antitrust Litigation*, 217 F.R.D. 30,32 (D.D.C. 2003)).

Plaintiff contends that he would like to amend his Complaint to prevent any potential issues and to ensure that his prayer for relief is "crystal clear as to what exactly he seeks, and how this Court is the correct one to grant such relief." *Id.* at 4. Namely, Plaintiff alleges that the Proposed Amended Complaint clarifies that the relief sought is "not to vacate the Suspension Order *per se,*"

but to conduct both discovery and a trial such that a judgment is obtained that clearly notes that the Suspension Order was "procured through a perjury, the suborning of perjury, fraud, and gross prosecutorial conduct." *Id.* Plaintiff then wishes to present evidence from the discovery and trial to the Court of Appeals in hopes that the Court of Appeals will vacate the Suspension Order. *See* Mot. for Leave at 4 ("Once discovery occurs and this Court finds the requisite fraud, perjury, and suborning of perjury and other egregious prosecutorial misconduct, the corrected record can then be submitted to the [Court of Appeals], which can then consider it to vacate the Suspension Order at issue and award to Mr. Klayman costs and attorney's fees and other sanctions."). Additionally, Plaintiff alleges that the Proposed Amended Complaint outlines the distinct roles that each Defendant had in committing a fraud on the court. *See id.* Further, Plaintiff withdraws his claim for laches. *See generally* Proposed Am. Compl. In urging the Court to grant leave, Plaintiff claims "this is the only way that justice can prevail," and claims that the amendment will not prejudice any party as the case is still in the early motion to dismiss stage. *Id.* at 5.

#### *ii. Bar Defendants' Opposition to Plaintiff's Motion for Leave to Amend Complaint*

In their Opposition, the Bar Defendants first outline how the Proposed Amended Complaint differs from the original Complaint. *See* Opp'n at 2. According to the Bar Defendants, Plaintiff's Proposed Amended Complaint deviates from the original Complaint in four ways: (1) in the Proposed Amended Complaint, Plaintiff adds book excerpts; (2) Plaintiff attempts to supplement his allegations of fraud on the court; (3) Plaintiff withdraws his claim for laches, which is not a cause of action; and (4) Plaintiff amends his prayer for relief to seek only "a judgment finding that the Suspension Order was procured through Defendants' perjury." *Id.* at 2-3. According to the Bar Defendants, even with these amendments, Plaintiff's Proposed Amended Complaint still contains jurisdictional and legal defects that are fatal to his case. *See id.* at 3.

According to the Bar Defendants, courts in this jurisdiction consider five factors when determining whether to grant leave for the purposes that Plaintiff requests in his Motion for Leave: "(1) the number of requests to amend; (2) the length of time that 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." *Id.* at 3 (quoting *Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 401-02 (D.C. 2023); *Crowley v. N. Am. Telecomms. Ass'n*, 691 A.2d 1169, 1174 (D.C. 1997)). Here, the Bar Defendants contend that Plaintiff's Proposed Amended Complaint is futile and fails to state a claim for four reasons. *See id.* at 3-9.

First, the Bar Defendants claim that Plaintiff's Proposed Amended Complaint is futile because the Bar Defendants are immune from suit. *See* Opp'n at 4. The Bar Defendants refer to D.C. Bar Rule XI, § 19(a), which provides immunity for "conduct taken in the course of Bar officials' official duties." *Id.* (quoting *Richardson v. District of Columbia*, 711 F.Supp. 2d 115, 128 (D.D.C. 2010)). The Bar Defendants also refer to *In Re Nace*, 490 A.2d 1120, 1124 (D.C. 1985), which establishes that Disciplinary Counsel has a "general grant of immunity" pursuant to Bar Rule XI, § 19(a) when an attorney brings an action as a result of the defendants' official conduct during the investigation and prosecution of a professional conduct complaint against the plaintiff. *Id.*

Second, the Bar Defendants claim that Plaintiff's Proposed Amended Complaint is futile because Plaintiff's claims are barred by issue preclusion as they were specifically raised, litigated, and decided in the Court of Appeals. *Id.* at 5 (*see In re Klayman*, 282 A.3d 584, 587, 592, 596 (D.C. 2022)). Third, the Bar Defendants claim that Plaintiff's Proposed Amended Complaint is futile because the facts alleged in the Proposed Amended Complaint do not adequately plead claims of fraud on the court or civil conspiracy. *Id.* at 5-6. According to the Bar Defendants, a

claim for fraud on the court has a high pleading standard. *See id*. at 6. Quoting *Klayman v. Judicial Watch*, 2021 U.S. Dist. LEXIS 28116, at *16-19 (D.D.C. Feb. 16, 2021) and *Shepherd v. Am. Broad. Cos.*, 62 F.3d 1469, 1477 (D.C. Cir. 1995)), the Bar Defendants claim: "a party alleging fraud upon the court must present 'clear and convincing evidence.'" Opp'n at 6. Applying this principle to the present case, the Bar Defendants claim that Plaintiff's allegations of fraud fall short as the Proposed Amended Complaint does not include any supporting facts regarding purported fraud committed by the Bar Defendants. *See id.* In other words, the Bar Defendants claim that Plaintiff's allegations are conclusory and lack particularity. *See id.* at 6-7. Additionally, Bar Defendants assert that the Proposed Amended Complaint fails to state a claim for civil conspiracy as it does not (a) seek any remedy related to the alleged conspiracy among the Defendants or (b) explain how Plaintiff's claim for civil conspiracy may be brought under Super. Ct. Civ. R. 60. *See id.* at 7.

Fourth, the Bar Defendants claim that Plaintiff's Proposed Amended Complaint is futile because Plaintiff's amended prayer for relief improperly seeks a declaratory judgment. *See id.* at 8-9. According to the Bar Defendants, the declaratory relief sought does not present a justiciable claim because Plaintiff is not seeking a determination of legal rights to be applied in the future. *See id.* at 9. Noting that a declaratory judgment is appropriate when there is a controversy of sufficient immediacy between parties with adverse legal interests, and inappropriate where "an action, breach, or damage has already occurred and there is no future uncertainty to resolve by the courts," Bar Defendants state that the Proposed Amended Complaint's request for a declaratory judgment is inherently backward-looking. *Id.*

### *iii. Plaintiff's Reply to Opposition to Bar Defendants' Motion for Leave to Amend Complaint*

In Reply, Plaintiff contends that nothing set forth in the Opposition addresses the fact that Super. Ct. Civ. R. 15(a)(3) states that "the court should freely give leave when justice so requires." *See* Reply at 1. Plaintiff reiterates that the Proposed Amended Complaint sufficiently pleads viable causes of action as it clarifies the prayer for relief and outlines the role that each Defendant played in committing a fraud on the court. *See id.* at 2.

Plaintiff responds to the Bar Defendants' immunity argument by claiming that this is a fact-intensive issue improperly suited for a Motion to Dismiss. *See id*. at 2-3. According to Plaintiff, there needs to be "significant factual discovery" on the issue of whether the Bar Defendants were acting within the bounds of their official duties when they took action against him, and therefore, this issue is "not ripe for the court's consideration at this point." *Id.* at 3. (citing *Richardson v. District of Columbia*, 711 F. Supp. 2d 115 (D.D.C. 2010) (finding that a grant of immunity only applies to conduct taken within the course of Bar officials' official duties)). Relying on four different cases outside of this jurisdiction, Plaintiff also posits that judicial immunity does not apply to claims for injunctive relief, which is all the Proposed Amended Complaint seeks. *See id.* (*See 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); *Pulliam v. Allen*, 446 U.S. 522 (1984)("We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity."); *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)).

Moreover, Plaintiff claims that it is clear that issue preclusion does not apply because this instant matter is not a re-litigation of the Court of Appeals' Suspension Order and Judgment. *See*

*id.* at 5. Plaintiff also reiterates that he more that sufficiently pleaded both fraud on the court and civil conspiracy. *See* Reply at 6-7. Finally, Plaintiff rests his pleading on Super. Ct. Civ. R. 60 and *Olivarius,* 858 A.2d at 464, urging the Court that it is not limited in its 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." *Id.* at 7-8.

**b. Legal Standard**

Pursuant to Super. Ct. Civ. R. 15(a), courts "should freely give leave when justice so requires." As indicated in *Richardson,* 193 F.3d at 548-49, this means that "[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." In this jurisdiction, courts consider the following factors in determining whether leave should be granted or not: "(1) the number of requests to amend; (2) the length of time that 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." *Id.* at 3 (quoting *Rayner,* 289 A.3d at 401-02; *Crowley v. N. Am. Telecomms. Ass'n,* 691 A.2d 1169, 1174 (D.C. 1997)).

**c. Analysis**

At the outset, the Court notes that Plaintiff's Proposed Amended Complaint differs from the original Complaint substantively in three ways. As the Bar Defendants correctly noted, in the Proposed Amended Complaint, Plaintiff: (1) supplements his allegations of fraud on the court; (2) withdraws his claim for laches; and (3) amends his prayer for relief to seek only "a judgment finding that the Suspension Order was procured through Defendants' perjury." *See generally* Proposed Am. Compl. After fully examining and considering the Proposed Amended Complaint, the Court finds that although this is Plaintiff'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. *See Rayner*, 289 A.3d at 402.

First, the Court finds that Plaintiff's Super. Ct. Civ. Rule 60 claim, as outlined in Count I of the Proposed Amended Complaint is futile. As indicated above, in this claim, Plaintiff seeks to conduct discovery and a trial to ultimately obtain a judgment stating that the Suspension Order was procured through improper means. *See* Proposed Am. Compl. ¶¶ 99-107. Plaintiff then wishes to present this judgment to the Court of Appeals for the Court of Appeals to ultimately vacate the Suspension Order. *See id.; see also* Mot. for Leave at 4. In support of his proposition, Plaintiff cites *Olivarius*, 858 A.2d at 464-69, urging the Court that it is not limited in its 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." Reply at 7-8. However, as indicated above, Super. Ct. Civ. R. 60 is not the proper mechanism by which this Court can grant Plaintiff relief from the Court of Appeals' Suspension Order, nor provide Plaintiff discovery or trial evidence to create a new record. Even in *Olivarius*, the Court of Appeals—the higher court—reviewed the trial court's—the lower court's—denial of a Motion to Vacate a Final Judgment confirming an arbitration award that allegedly had been procured by fraud. 858 A.2d at 464-69. Here, Plaintiff is requesting the opposite. Thus, it is 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 – a ideal that is perhaps novel but certainly not axiomatic in this jurisdiction, or any other.

The Court also finds that Plaintiff's civil conspiracy claim, which is based on allegations of fraud on the court, is futile. Plaintiff asserts that "each and every one of the Defendants conspired to enter into an agreement to participate in committing fraud on the court in the Sataki matter." Proposed Am. Compl. ¶ 109. Plaintiff also asserts that at the disciplinary hearing in the

Sataki matter, the ODC Defendants conspired and worked together to suppress material evidence and. . .provided perjurious testimony to the AHHC." *Id.* at ¶ 71. Plaintiff supports the civil conspiracy claim by alleging the following: (1) Defendant Sataki gave fraudulent and perjurious testimony; (2) Defendants Office of Disciplinary Counsel, Fox, Herman, and Smith suppressed material exculpatory evidence, which was later furthered by Defendants Tigar, Fitch, and Kaiser, who refused to hold the aforementioned Defendants accountable; (3) these actions allowed for "routine discovery under the circumstances of extreme delay in the prosecution which would have disclosed the fraud in full detail;" (4) Defendant Kaiser refused to reopen the record to consider newly discovered exculpatory evidence; and (5) because the fraud remained on the record when presented to the Court of Appeals, the Defendants "directly and proximately caused the issuance of the September 15, 2022 Suspension Order and Judgment." *See id*. at ¶¶ 72-76, 80, 110. Plaintiff repeats and furthers these allegations in other sections of the Proposed Amended Complaint, claiming that Defendants were "driven by an extrajudicial bias and animus based on both ideology, politics, and gender and their singular and admitted goal to remove Mr. Klayman from the practice of law;" he was repeatedly denied leave to conduct discovery, and exculpatory evidence was not considered during the proceeding, all of which supports his notion that the Defendants conspired against him. *See id.* at ¶¶ 13, 74-79. Plaintiff then provides examples of what he claims to be fraudulent testimony. *See id.* at ¶¶ 80-98.

However, even with the additional allegations, Plaintiff's conspiracy claim is futile as it fails to meet the requisite pleading standards. To be clear, Plaintiff alleges that the Defendants engaged in a civil conspiracy to defraud the court. *See generally id.* "Fraud upon the court is a distinct subclass of the broader category of fraud." *Synanon Church v. United States,* 579 F. Supp. 967, 974 (D.D.C. 1984). This allegation is "directed to the judicial machinery itself." *See Baltia*

*Air Lines, Inc. v. Transaction Mgmt., Inc.*, 98 F.3d 640, 642, 321 U.S. App. D.C. 191 (D.C. Cir. 1996). Fraud between the parties, fraudulent documents, false statements, fabricated evidence, nor perjury constitute fraud on the court. *See id*; *see also Hunt v. Nationstar Mortg*., LLC, 779 F. App'x 669, 671 (11th Cir. 2019). That said, Plaintiff's allegations that Defendant Sataki presented false/perjurious statements does not constitute fraud on the court. Plaintiff's allegations that he was denied leave to conduct discovery, and Defendant Kaiser refused to reopen the evidentiary record, absent factual allegations that Defendant Kaiser had an obligation to reopen the record, also do not successfully plead fraud on the court. Additionally, even if Defendant Kaiser refused to reopen the record and had an obligation to do the same, absent further factual allegations that evinces foul play, the Court does not find this to be a form of fraud on the court. *See Baltia Air Lines, Inc*, 98 F.3d at 642-43 ("Fraud upon the court refers only to very unusual cases involving far more than an injury to a single litigant."). As indicated in *Baltia Air Lines, Inc*., "examples [of fraud on the court] include the bribery of a judge or the knowing participation of an attorney in the presentation of perjured testimony." 98 F.3d at 643.

Regarding Plaintiff's remaining claims of fraud on the court, although Plaintiff broadly alleges that the Defendants conspired with one another to manipulate the record and participated in the presentation of perjured testimony, the Court finds that these allegations do not meet the clear and convincing evidence standard, which is required here. *See Shepherd,* 62 F.3d 1469, 1477 (D.C. Cir. 1995) ("a party alleging fraud upon the court must present clear and convincing evidence."). Specifically, Plaintiff's claims provide no supportive evidence that the Bar Defendants manipulated the record or knowingly participated in the presentation of perjured testimony. In short, Plaintiff makes bold, conclusory accusations 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 in the Sataki matter," however, these accusations fall short of the pleading requirement for claims of fraud on the court. Proposed Am. Compl. ¶ 109. As such, Plaintiff's fraud on the court claim, which is the underlying basis for the civil conspiracy claim, is futile as the allegations are conclusory and unsupported. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 ("Factual allegations must be enough to raise a right to relief above the speculative level"). Given that "there is no recognized independent tort action for civil conspiracy in the District of Columbia," the Court finds that Plaintiff's failure to adequately plead fraud on the court is fatal to his civil conspiracy claim.

Lastly, the Court notes that the decision here to deny Plaintiff's Motion for Leave to Amend the Complaint is closely aligned with guidance from the Court of Appeals. Specifically, the Court of Appeals has noted that it has "declined to find an abuse of discretion when a trial court considered the merit of [a] proffered pleading, and properly concluded that appellant's proposed claim. . .did not have merit." *Rayner*, 289 A.3d at 402. Specifically, in *Rayner*, the Court of Appeals upheld the lower court's decision to deny leave after examining plaintiff Rayner's proposed amendments and concluding that they were futile. ("After reviewing the proposed amendments that Rayner presented to the trial court, we see no basis to second guess its decision. His proposed amendments fail to overcome the same hurdles that merited dismissing his claims under Rule 12(b)(6)"). Just as the *Rayner* court denied plaintiff's request, this Court denies Plaintiff's request for leave to amend as the Proposed Amended Complaint is futile.

## IV. PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' NOTICE REGARDING STATUS OF OTHER CASES INVOLVING THESE PARTIES

Given the Court's rulings on the Bar Defendants' Motion to Dismiss, Defendant Sataki's Motion to Dismiss, and Plaintiff's Motion for Leave to Amend Complaint, the Court deems this Motion as moot.

## V. PLAINTIFF'S EXPEDITED MOTION TO COMPEL DISCOVERY RESPONSES FROM BAR DEFENDANTS

Given the Court's rulings on the Bar Defendants' Motion to Dismiss, Defendant Sataki's Motion to Dismiss, and Plaintiff's Motion for Leave to Amend Complaint, the Court deems this Motion as moot.

## VI. PLAINTIFF'S REQUEST FOR SANCTIONS MADE IN PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STAY AND CROSS MOTION FOR SANCTIONS FOR AWARD OF ATTORNEYS FEES AND COSTS AND OTHER APPROPRIATE RELIEF

On January 3, 2023, Plaintiff filed Plaintiff's Opposition to Defendants' Motion to Stay and Cross Motion for Sanctions for Award of Attorneys Fees and Costs and Other Appropriate Relief. *See* Jan. 3, 2023 Opp'n. Given the Court's ruling on the Bar Defendants' Motion to Dismiss, Defendant Sataki's Motion to Dismiss, and Plaintiff's Motion for Leave to Amend Complaint, the Court shall deny the request for sanctions as moot.

Accordingly, on this **1st day of March, 2024,** it is hereby:

**ORDERED** that the Bar Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim is **GRANTED**; it is further

**ORDERED** that Defendant Sataki's Motion to Dismiss the Complaint is **GRANTED**; it is further

**ORDERED** that Plaintiff's Motion for Leave to Amend Complaint is **DENIED**; it is further

**ORDERED** that Plaintiff Larry Klayman's Motion to Strike is **DENIED AS MOOT**; it is further

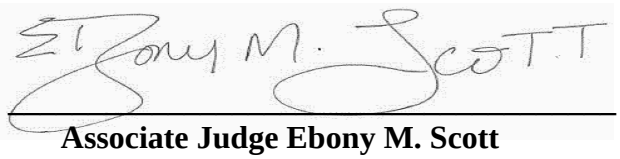
**ORDERED** that Plaintiff's Expedited Motion to Compel Discovery Responses from Bar Defendants is **DENIED AS MOOT**; it is further

**ORDERED** that Plaintiff's request for sanctions in Plaintiff's Opposition to Defendants' Motion to Stay and Cross Motion for Sanctions for Award of Attorneys Fees and Costs and Other Appropriate Relief is **DENIED AS MOOT**; it is further

**ORDERED** that the March 29, 2024 Status Hearing is **VACATED**; and it is further

**ORDERED** the above-captioned case is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**



**Associate Judge Ebony M. Scott**
***(Signed in Chambers)***

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